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IN THE COURT OF COMMON PLEAS OF CENTRE CO
PENNSYLVANIA
CIVIL ACTION - LAW

ESTATE of JOSEPH PATERNO;

and

WILLIAM KENNEY and JOSEPH V. ("JAY")
PATERNO, former football coaches at
Pennsylvania State University,
Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION ("NCAA"),

MARK EMMERT, individually and as President
of the NCAA, and

EDWARD RAY, individually and as former
Chairman of the Executive committee of the
NCAA,

Defendants.

) **Docket No.:** 2013-2082
)
) **Type of Case:**
) Declaratory Judgment
) Injunction Breach of Contract
) Tortious Interference with
) Contract
) Defamation
) Commercial Disparagement
) Conspiracy
)
) **Type of Pleading:**
) NCAA's Objections to
) Plaintiffs' Proposed Subpoena
) to Penn State University
)
) **Filed on Behalf of:**
) National Collegiate Athletic
) Association & Mark Emmert
)
) **Counsel of Record for this**
) **Party:**
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) Killian & Gephart, LLP
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) Harrisburg, PA 17108-0886
) TEL: (717) 232-1851
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) tscott@killiangephart.com
) PA I.D. Number: 15681
)
)
)

2013 DEC 27 PM 1:19
PROthon, LLC
PROTHON, LLC
CENTRE COUNTY, PA

ORIGINAL

2016 JUL 27 PM 1:19
CENTRE COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO, et al.;
Plaintiffs,
v.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et
al.,
Defendants,

Civil Division
Docket No. 2013-
2082

**NCAA’S OBJECTIONS TO PLAINTIFFS’ PROPOSED SUBPOENA TO
PENN STATE UNIVERSITY**

Pursuant to Rule 4009.21(c) of the Pennsylvania Rules of Civil Procedure, Defendant the National Collegiate Athletic Association (the “NCAA”), by its counsel, objects to the subpoena proposed by Plaintiffs, attached hereto as Exhibit A (the “Subpoena”). The Subpoena seeks documents from The Pennsylvania State University (“Penn State”) related to the amendments and subsequent repeal of the Consent Decree. The NCAA objects to issuance of the Subpoena as untimely.

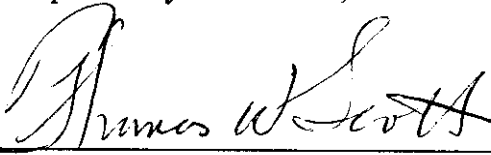
Fact discovery closed on April 29, 2016—many months ago. Revised Scheduling Order (Mar. 11, 2016). Although the Court reopened fact discovery on May 16, 2016, the Court narrowly “limited [the reopened discovery] to outstanding

discovery requests and depositions, as well as any discovery relating to recent allegations as contained in documents authored by Judge Glazer of the Philadelphia Court of Common Pleas relative to certain insurance litigation.” Order (May 16, 2016), attached as Exhibit B. It is undisputed that Plaintiffs had no requests to Penn State related to the repeal and/or amendment of the Consent Decree outstanding at that time. At no time has the Court reopened discovery to permit new third-party requests, especially requests that Plaintiffs were capable of pursuing long before the close of discovery. Indeed, Plaintiffs already sought identical and duplicative discovery from the NCAA, which, unlike Penn State, is actually a party.¹

For these reasons, the NCAA objects to Plaintiffs’ proposed Subpoena to Penn State University.

¹ To the extent that the Subpoena requests material broader in scope than the discovery the Court permitted Plaintiffs to take of the NCAA regarding the same subject matter, then the requests are impermissibly broad, and the NCAA objects on that basis as well. *See* Opinion & Order (Sep. 19, 2016) (limiting discovery to communications between the NCAA’s board members and administrators, and the NCAA and Penn State).

Respectfully submitted,



Date: December 27, 2016

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*Counsel for Defendants the NCAA, Dr.
Emmert, and Dr. Ray*

EXHIBIT A

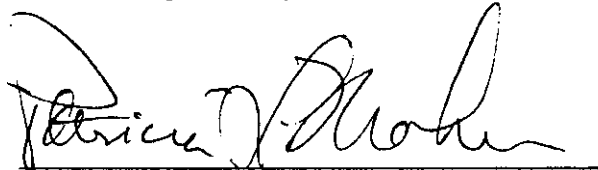
IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;) Civil Division
and) Docket No. 2013-2082
WILLIAM KENNEY and JOSEPH V. ("JAY"))
PATERNO,)
former football coaches at Pennsylvania State)
University,)
Plaintiffs,)
v.)
NATIONAL COLLEGIATE ATHLETIC)
ASSOCIATION ("NCAA");)
MARK EMMERT, individually and as)
President of the NCAA;)
and)
EDWARD RAY, individually and as former)
Chairman of the Executive Committee of the)
NCAA,)
Defendants.)

Notice of Intent to Serve a Subpoena on Pennsylvania State University to Produce Documents and Things for Discovery Pursuant to Rule 4009.21

Plaintiffs intend to serve a subpoena identical to the one that is attached to this notice. You have twenty days from the date listed below to file of record and serve on the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Date: December 19, 2016



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L. Joseph Loveland (admitted *pro hac vice*)
Mark A. Jensen (admitted *pro hac vice*)
Patricia L. Maher (admitted *pro hac vice*)
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aparrish@kslaw.com

Counsel for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO, et al. : CIVIL ACTION – LAW
:
Plaintiffs : DOCKET NO.: 2013-2082
:
v. :
:
NATIONAL COLLEGIATE ATHLETIC :
ASSOCIATION (“NCAA”), et al. :
:
Defendants :

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Penn State University
c/o Reed Smith LLP
Donna M. Doblack, Esq.
5 Fifth Avenue
Pittsburgh, PA 15222

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Name: Patricia L. Maher
Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006
Telephone: 202-626-5504
Supreme Court ID #: Admitted pro hac vice
Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

ATTACHMENT A

INSTRUCTIONS

1. These instructions and definitions should be construed to require responses based upon the knowledge of, and information available to, the responding party, the Pennsylvania State University, as well as its agents, representatives, and, unless privileged, attorneys and accountants, including but not limited to Reed Smith LLP.

2. These Requests are continuing in character, so as to require that supplemental responses be served promptly if additional or different information is obtained with respect to any Request.

3. No part of a Request should be left unanswered merely because an objection is interposed to another part of the Request. If a partial or incomplete response is provided, the responding party shall state that the response is partial or incomplete.

4. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.

5. Each Request shall be read to be inclusive rather than exclusive. Accordingly, the words "and" as well as "or" shall be construed disjunctively or conjunctively as necessary, in order to bring within the scope of each Request all information that might otherwise be construed to be outside its scope. "Including" shall be construed to mean "including, without any limitation." The word "all" includes "any" and vice versa. The past tense shall include the present tense so as to make the request inclusive rather than exclusive. The singular shall include the plural and vice versa. The masculine includes the feminine and vice versa.

6. Where a claim of privilege is asserted in objecting to any Request or part thereof, and documents or information is not provided on the basis of such assertion:

A. In asserting the privilege, the responding party shall, in the objection to the

Request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed; and

B. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information:

(1) For documents:

- a. the type of document;
- b. the general subject matter of the document;
- c. the date of the document; and such other information as is sufficient to identify the document, including, where appropriate, the author, addressee, custodian, and any other recipient of the document, and where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other.

7. If, in responding to these Requests, you encounter any ambiguity when construing a Request, instruction, or definition, your response shall set forth the matter deemed ambiguous and the construction used in answering.

8. All documents that are responsive, in whole or in part, to any portion or clause of any paragraph of any Request shall be produced in their entirety.

9. Where any item contains marking(s) not appearing in the original, or drafts are altered from the original, then all such items must be considered as separate documents and identified and produced as such.

10. Unless otherwise specified in a particular Request, the time period covered by these

Requests is January 1, 2013 through February 28, 2015.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under Pa. R.C.P. No. 4003.1. As used in these Requests, the following terms are to be interpreted in accordance with these definitions:

1. "You," "your," "yours," "Defendant," and "Penn State" shall refer to the Pennsylvania State University, to whom these Requests are directed, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of the Penn State.

2. "Plaintiff," "Joe Paterno," or "Paterno" shall refer to former Penn State head football coach Joseph ("Joe") V. Paterno or his Estate, or any other person authorized to act on behalf of Joe Paterno or his Estate.

3. "Communication" means the transmittal of information by any means, and shall mean and be deemed to refer to any writing or oral conversation, including, but not limited to, telephone conversations, conversations in meetings, letters, memoranda, notes, or electronic communications.

4. "Document" is defined as broadly as possible to include anything stored in any medium, including but not limited to, all written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, of every type and description that is in your possession, control, or custody, or of which you have knowledge, including but not limited to, correspondence; memoranda; transcriptions of any conversation or testimony; tapes; stenographic or hand-written notes; studies;

publications; books; diaries; phone records; logs; instant messaging (public and private IM); electronic mail (email), including but not limited to, server-based email, web-based email (e.g., gmail.com, yahoo.com, hotmail.com), dial up email, email attachments, deleted email, and email stored on hard drives or portable media; voicemail; information stored on social media and social networking sites; information created or received with the use of PDAs or smartphones; information stored in a cloud environment; text messages; information stored on removable hard drives, thumb drives, flash drives, CDs, DVDs, disks and other portable media; pamphlets; pictures (drawings and photographs); films; images; microfilms; recordings (including any analog, digital, electromagnetic, optical, phonographic, or other media of audio and/or visual recordings); maps; reports; recommendations; surveys; appraisals; charts; minutes; statistical computations; spreadsheets; telegrams; telex messages; listings of telephone calls; calendars; datebooks; books of account; ledgers; expense records; accounts payable; accounts receivable; presentations; analyses; computer records, data compilations and/or databases; every draft of each such document; every copy of each such document where the original is not in your possession, custody or control; and every copy of each such document where such copy is not an identical copy of an original, or other copy, or where such copy contains any commentary or notation whatsoever that does not appear on the original or other copy. "Document" includes any electronically stored information ("ESI").

5. "Evidence, reflect, or relate to" means in the broadest sense and includes documents and things alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, evidencing, contradicting,

showing, describing, reflecting, analyzing and/or constituting the subject matter of the request.

6. "NCAA" shall refer to the National Collegiate Athletic Association, as well as any attorney, assignee, agent, representative or any other person acting, authorized to act, or purporting to act on behalf of the National Collegiate Athletic Association.

7. "Person" means any natural person or any business, corporation, public corporation, municipal corporation, state government, local government, agency, partnership, group, association, or other organization, and also includes all of the person's representatives.

8. "Penn State" shall refer to employees, administrators, and personnel of The Pennsylvania State University, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Penn State.

9. The "Consent Decree" shall refer to the document titled the "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," released on July 23, 2012, as well as all footnotes, exhibits, drafts, and other notes related to the Consent Decree.

DOCUMENT REQUESTS

1. All documents that evidence, reflect or relate to the repeal, termination, dissolution, modification or superseding treatment of the Consent Decree.
2. All Communications between Penn State and the NCAA regarding the repeal, termination, dissolution, modification or superseding treatment of the

Consent Decree.

3. All documents that evidence, reflect or relate to Communications between Penn State and the NCAA regarding the repeal, termination, dissolution, modification or superseding treatment of the Consent Decree.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE A SUBPOENA ON PENNSYLVANIA STATE UNIVERSITY TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21** was served this 19th day of December, 2016 by email and First-Class Mail to the following:

Thomas W. Scott
Killian & Gephart
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Email: tscott@killiangephart.com

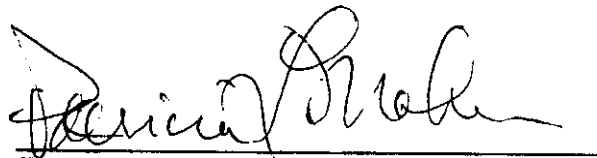
Counsel for Counsel for the NCAA, Mark Emmert, and Edward Ray

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Counsel for Plaintiffs

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW

ESTATE of JOSEPH PATERNO; WILLIAM KENNY : NO. 2013-2082
and JOSEPH ("JAY") PATERNO, former football :
coaches at Pennsylvania State University :
vs.
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION :
("NCAA"); MARK EMMERT, individually and as :
President of the NCAA; and EDWARD RAY, :
individually and as former Chairman of the :
Executive Committee of the NCAA :



O R D E R

AND NOW, May 16, 2016, pursuant to a conference held this day, it is ORDERED that counsel for Pepper Hamilton promptly furnish to the Court a plan for narrowing and at least in part resolving outstanding discovery issues as mandated by the Superior Court. Further, discovery will be reopened for a period of 45 days from this date to complete discovery, said discovery being limited to outstanding discovery requests and depositions, as well as any discovery relating to recent allegations as contained in documents authored by Judge Glazer of the Philadelphia Court of Common Pleas relative to certain insurance litigation.

Counsel for Penn State University will, as appropriate, approach victims in the Sandusky matter to ascertain their willingness to take part in voluntary discovery in the above-captioned matter. The Court will take all necessary steps to protect the confidentiality and anonymity of any such persons.

In view of the foregoing, the Court will make adjustments to the scheduling order of March 11, 2016, as needed.

BY THE COURT:

John B. Leete, Senior Judge
55th Judicial District
Specially Presiding

DECLARED
PROTECTED
ORDER

2016 MAY 16 PM 2:04

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving the *NCAA's Objections to Plaintiffs' Proposed subpoena to Penn State University*, on the following by First Class Mail and email:

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Mark A. Jensen, Esquire
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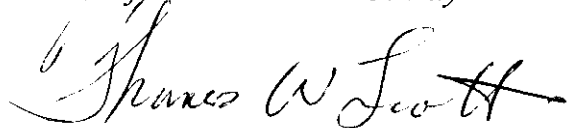
Counsel for The Pennsylvania State University

2016 FEB 27 PM 1:19
PROFESSIONAL
SERVICES
CENTRE
PITTSBURGH, PA

Via FedEx Overnight Delivery
The Honorable John B. Leete
Senior Judge, Specially Presiding
Potter County Courthouse
One East Second Street, Rm. 30
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*Counsel for the NCAA, Dr. Emmert
and Dr. Ray*

Dated: December 27, 2016