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PROBATE JUDICIAL
PROthonOTARY
CENTRE COUNTY, PA

2015 FEB 25 AM 11:42

FILED FOR RECORD

**IN THE COURT OF COMMON PLEAS
OF CENTRE COUNTY, PENNSYLVANIA**

ESTATE of JOSEPH PATERNO;)
)
 AL CLEMENS, member of the Board of Trustees of)
 Pennsylvania State University; 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,)
)
 and)
)
 THE PENNSYLVANIA STATE UNIVERSITY,)
 Nominal Defendant.)
)

CIVIL DIVISION
 Docket No. 2013-2082
**Non-Party Pepper Hamilton LLP's
 Statement of Errors Complained of
 on Appeal**
 Filed on Behalf of: Non-Party Pepper
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CIVIL DIVISION
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 DEBRA A. HANDEL
 PROthonARY
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**NON-PARTY PEPPER HAMILTON LLP’S CONCISE STATEMENT
OF ERRORS COMPLAINED OF ON APPEAL**

In accordance with the Court’s Order entered February 12, 2015, and Pa. R. App. P. 1925(b), Non-Party Pepper Hamilton LLP (“Pepper Hamilton”), by and through its counsel, hereby submits this concise statement of errors complained of on appeal that individually or cumulatively warrant reversal of the Order and Opinion entered on November 20, 2014 denying

the Motion for Stay Pending Appeal and for Protective Order by Non-Party Pepper Hamilton LLP:

1. The Court erred in denying a stay of any obligation to produce documents that are or may be protected by the attorney-client privilege in response to the subpoena duces tecum served upon Pepper Hamilton by Plaintiffs (“Subpoena”) pending the appeal by Defendant The Pennsylvania State University (“Penn State”) of the Court’s Order entered September 11, 2014 (“Penn State Appeal”) denying Penn State’s objections to the Subpoena because: (1) Pepper Hamilton made a strong showing that Penn State is likely to prevail on the merits of the Penn State Appeal; (2) Pepper Hamilton and Penn State will suffer irreparable injury without the stay; (3) a stay will not substantially harm the interest of the other parties to this action; and (4) the public interest strongly supports the issuance of a stay under the circumstances.

2. The Court erred in denying a stay of any obligation to produce documents that are or may be protected by the attorney-client privilege in response to the Subpoena pending the Penn State Appeal because, absent a stay, the attorney-client privilege, which is deeply rooted in public policy, will be sacrificed and the protection of that privilege irretrievably lost.

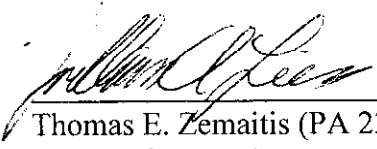
3. To the extent the Court’s ruling denying Pepper Hamilton’s motion for protective order to prevent disclosure of documents protected by the work product doctrine is premised on the Court’s earlier holding that Penn State lacks standing to assert the work product doctrine, the Court erred because a client, as well as that client’s attorney, has standing to assert the work product doctrine to prevent disclosure of documents protected by it.

4. The Court erred in denying Pepper Hamilton’s motion for protective order to prevent disclosure of documents protected by the work product doctrine on the grounds that “Pepper Hamilton has not yet responded to the subpoena” because the Pennsylvania Rules of

Civil Procedure provide that the proper method for a non-party to raise objections to a subpoena served on that party is by motion for protective order, as Pepper Hamilton did in this action. Pa. R. Civ. P. 4012. There is no other procedure provided in the Pennsylvania Rules of Civil Procedure for a non-party to raise objections to a subpoena served upon it.

5. The Court erred when it refused to enter a protective order to prevent the disclosure of documents protected by the work product doctrine because Pepper Hamilton made a showing that the work product doctrine applies to documents responsive to the Subpoena and Plaintiffs have not borne the burden of demonstrating that the doctrine does not apply or that Pepper Hamilton has waived the protection of the doctrine.

Dated: February 25, 2015



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AL CLEMENS, member of the Board of Trustees of Pennsylvania State University; and)	Docket No. 2013-2082
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Plaintiffs,)	
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MARK EMMERT, individually and as President of the NCAA; and)	
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EDWARD RAY, individually and as former Chairman of the Executive Committee of the NCAA,)	
Defendants,)	
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and)	
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THE PENNSYLVANIA STATE UNIVERSITY, Nominal Defendant.)	
)	

PROOF OF SERVICE

I, William A. Liess, hereby certify that on February 25, 2015 a true and correct copy of the foregoing Non-Party Pepper Hamilton LLP's Statement of Matters Complained of on Appeal was served via First Class Mail upon the following:

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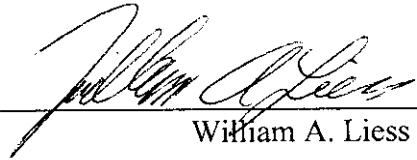
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Dated: February 25, 2015