



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;

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,

) Civil Division

) Docket No. 2013-2082

) **Objections to Subpoena Pursuant to**
) **Rule 4009.21**

) Filed on Behalf of the Plaintiff Joseph V.
) ("Jay ") Paterno

) Counsel of Record:

) Thomas J. Weber

) GOLDBERG KATZMAN, P.C.

) 4250 Crums Mill Road, Suite 301

) P.O. Box 6991

) Harrisburg, PA 17112

) Telephone: (717) 234-4161

) Email: tjw@goldbergkatzman.com

) Wick Sollers (admitted *pro hac vice*)

) L. Joseph Loveland (admitted *pro hac*
) *vice*)

) Patricia L. Maher (admitted *pro hac vice*)

) Ashley C. Parrish (admitted *pro hac vice*)

) KING & SPALDING LLP

) 1700 Pennsylvania Avenue, NW

) Washington, DC 20006

) Telephone: (202) 737-0500

) Email: wsollers@kslaw.com

) jloveland@kslaw.com

) pmaher@kslaw.com

) aparrish@kslaw.com

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CLERK OF COURT
CENTRE COUNTY, PA

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) KING & SPALDING LLP
) 1700 Pennsylvania Avenue, NW
) Washington, DC 20006
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WILLIAM KENNEY and JOSEPH V. ("JAY"))	
PATERNO,)	Docket No. 2013-2082
former football coaches at Pennsylvania State)	
University,)	
)	
Plaintiffs,	)	Counsel of Record:
	)	Thomas J. Weber
v.	)	GOLDBERG KATZMAN, P.C.
	)	4250 Crums Mill Road, Suite 301
NATIONAL COLLEGIATE ATHLETIC	)	P.O. Box 6991
ASSOCIATION ("NCAA");	)	Harrisburg, PA 17112
	)	Telephone: (717) 234-4161
MARK EMMERT, individually and as	)	Email: tjw@goldbergkatzman.com
President of the NCAA;)	
	)	Wick Sollers (admitted <i>pro hac vice</i>)
and	)	L. Joseph Loveland (admitted <i>pro hac vice</i>)
	)	Patricia L. Maher (admitted <i>pro hac vice</i>)
EDWARD RAY, individually and as former	)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
Chairman of the	)	KING & SPALDING LLP
Executive Committee of the NCAA,	)	1700 Pennsylvania Avenue, NW
	)	Washington, DC 20006
Defendants.	)	Telephone: (202) 737-0500
	)	Email: wsollers@kslaw.com
	)	jloveland@kslaw.com
	)	pmaher@kslaw.com
	)	aparrish@kslaw.com
)	
)	

**OBJECTIONS BY PLAINTIFF JOSEPH V. ("JAY") PATERNO TO SUBPOENA
PURSUANT TO RULE 4009.21**

Plaintiff ("Jay") Paterno ("Paterno"), by and through his counsel, objects to the subpoena attached as Exhibit A to these Objections for the following reasons:

Paterno has asserted claims for defamation and interference with contractual relations in this action against the NCAA, its President, and the former chairman of its Executive

Committee, based on statements they made in 2012 that damaged his reputation and made it impossible for him to secure employment in his profession as a football coach. Paterno has been self-employed since early 2012, when he was terminated by Penn State. Despite his efforts, it became clear that Paterno would not be hired again as a football coach after the publication of the Freeh Report and the NCAA's adoption of statements from the Freeh Report, followed by the NCAA's threat that it reserved the right to pursue individual disciplinary action against former Penn State coaches looking to coach again.

Because Coach Jay Paterno was unable to return to coaching, he pursued other endeavors, including writing, consulting, real-estate activities, speaking engagements, and production of a craft beer. Because he has been self-employed since his termination by Penn State, Paterno established a vehicle through which he could conduct his business ventures. That entity, Blue Line 409 LLC, was established in July, 2014 under the laws of the Commonwealth of Pennsylvania.

In discovery to date, the parties have produced documents and information only up to the date of the filing of the complaint (May 30, 2013), unless they intend to rely on information that post-dates the filing in support of their claims or defenses. The subpoena at issue is addressed to Blue Line 409, which did not exist until more than a year after this action was filed. Paterno objects to the NCAA's attempt, through this subpoena, to obtain extensive information about his business ventures unrelated to coaching, his father's Estate, or to his claims in this action.

The NCAA's subpoena, which is addressed to Paterno's home address, is overbroad and calls for production of documents unrelated to the claims in this action. Among other things, it would require Blue Line 409 to produce all documents related to its corporate formation, its ownership, its sources of income, financial statements from January 2006 to the present, and

documents about all “actual or potential business ventures, opportunities or partnerships,” and information about any income generated for Jay Paterno. None of this information has any bearing on Paterno’s claims against the NCAA, but it is another means for the NCAA to exert financial pressure on Paterno and to continue to interfere with his ability to earn a livelihood. Moreover, many of the Requests in the subpoena to Blue Line 409 are repetitive of document requests the NCAA has previously made to Jay Paterno, the Estate of Joseph Paterno, and George Scott Paterno, to which all of them have responded. For these and the reasons set forth below, Paterno objects to service of the document subpoena on Blue Line 409 LLC.

GENERAL OBJECTIONS

1. Paterno objects to these Requests to the extent the Definitions and Instructions purport to impose obligations greater than the requirements of the Pennsylvania Rules of Civil Procedure.
2. Paterno objects to these Requests to the extent these Requests seek documents that are protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable legal privilege.
3. Paterno objects to the extent these Requests to the extent they seek documents from someone other than Blue Line 409.

OBJECTIONS TO SPECIFIC REQUESTS FOR PRODUCTION

REQUEST NO. 1

Your articles of incorporation, certificates of formation, charters, bylaws, operating agreements and other such corporate formation Documents.

RESPONSE:

Paterno objects to this request on grounds that it calls for production of documents that are not relevant to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 2:

Documents sufficient to identify all persons and/or entities having an ownership interest or other financial interest in Your assets or income.

RESPONSE:

Paterno objects to this request on grounds that it calls for production of documents that are not relevant to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 3:

Your financial statements, federal and state tax returns, and any other statement or record of income You received from January 1, 2006 to the present.

RESPONSE:

Paterno objects to this request on grounds that it is overly broad and calls for production of documents that are not relevant to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections,

Paterno does not object to production of responsive documents that relate to income derived from coaching or that relate in any way to Coach Paterno or his Estate.

REQUEST NO. 4:

All Documents and Communications Concerning actual or potential business ventures opportunities or partnerships.

RESPONSE:

Paterno objects to this request on grounds that is overly broad and calls for production of documents that are not relevant to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Paterno does not object to the production of responsive documents related to business ventures that involve coaching or that relate in any way to Coach Paterno or his Estate.

REQUEST NO. 5:

All Documents and Communications Concerning the actual or contemplated sale of any goods or services from which You, Jay Paterno, Coach Paterno or Coach Paterno's Estate had a possibility of earning revenue, from January 1, 2006 to present.

RESPONSE:

Paterno objects to this request on grounds that it is overly broad and calls for production of documents that are not relevant to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Paterno does not object to the production of responsive documents that relate to the goods or services that involve coaching or that relate in any way to Coach Paterno or his Estate.

REQUEST NO. 6:

All draft and final contracts or agreements that had the possibility of generating income or other money for You, Jay Paterno, Coach Paterno or Coach Paterno's Estate, including, without limitation, licensing contracts and contracts for television appearances, speaking engagements, real estate sales, marketing services, consulting services or public relations services, from January 1, 2006 to present.

RESPONSE:

Paterno objects to this request on grounds that it is overly broad and calls for production of documents that are not relevant to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Paterno does not object to the production of responsive documents of related to agreements that involve coaching or that relate in any way to Coach Paterno or his Estate.

REQUEST NO. 7:

All Communications regarding deliberations or negotiations about, the decision to enter into, the benefits of, or the terms of, any contract or agreement produced in response to Request No. 6.

RESPONSE:

Paterno objects to this request on grounds that it is overly broad and calls for production of documents that are not relevant to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Paterno does not object to the production of responsive documents related to agreements that involve coaching or that relate in any way to Coach Paterno or his Estate.

REQUEST NO. 8:

Documents sufficient to fully demonstrate the monthly and annual sales performance of all merchandise or other goods sold from which You, Jay Paterno, Coach Paterno, or Coach Paterno's Estate has a financial interest, including, without limitation, royalty or licensing payments from January 1, 2006 to present.

RESPONSE:

Paterno objects to this request on grounds that it is overly broad and calls for production of documents that are not relevant to the claims or defenses in this action, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Paterno will produce responsive documents related to business ventures that involve coaching or that relate in any way to Coach Paterno or his Estate.

REQUEST NO. 9 :

All Documents and Communications Concerning naming rights options offered to Jay Paterno, Coach Paterno, or Coach Paterno's Estate from January 1, 2006 to present.

RESPONSE:

Paterno objects to this request on grounds that it is repetitive of requests made to Jay Paterno and Coach Paterno's Estate. Subject to the foregoing objections, Paterno does not object to the production of responsive documents, if any.

REQUEST NO. 10:

All Documents and Communications Concerning "Paterno Legacy Series" beer or Duquesne Brewing Company.

RESPONSE:

Paterno objects to this request on grounds that it is overly broad and calls for production of documents that are not relevant to the claims or defenses in this action, and not reasonably

calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Paterno does not object to the production of responsive documents related to sales or revenue related to Paterno Legacy Series beer or Duquesne Brewing Company.

REQUEST NO. 11:

All Documents discussing the reputation, or popularity of, or public support for the Paterno name, and Coach Paterno, Jay Paterno, any other member of the Paterno Family, or William Kenney.

RESPONSE:

Paterno objects to this request on grounds that it is repetitive of requests made to Jay Paterno and Coach Paterno's Estate. Subject to the foregoing objections, Paterno does not object to the production of responsive documents, if any.

REQUEST NO. 12:

All Documents Concerning the book, *Paterno Legacy*, or any other potential or draft book, that concern this litigation, the allegations contained in the Second Amended Complaint, the Freeh Report, FSS, the Consent Decree, the Athletics Integrity Agreement, the NCAA, Coach Paterno's reputation, Sandusky, the Second Mile, the Sandusky grand jury investigation, or Presentment, any person's reaction to the Sandusky scandal (including the media), Graham Spanier, Tim Curley, or Gary Schultz

RESPONSE:

Paterno objects to this request on grounds that it is repetitive of requests made to Jay Paterno and Coach Paterno's Estate. Subject to the foregoing objections, Paterno does not object to the production of responsive documents, if any.

REQUEST NO. 13:

All non-privileged Communications between or among any of the Plaintiffs (including Jay Paterno, Coach Paterno, and George Scott Paterno) concerning this lawsuit, or any and all facts and circumstances related to the allegations in the Second Amended Complaint, including the Consent Decree, the Freeh Report, the reputation of any Plaintiff (including Jay Paterno, Coach Paterno, and George Scott Paterno), Coach Paterno's termination or departure from Penn State, Sandusky, or Rodney Erickson.

RESPONSE:

Paterno objects to this request on grounds that it is repetitive of requests made to Jay Paterno and Coach Paterno's Estate. Subject to the foregoing objections, Paterno does not object to the production of responsive documents, if any.

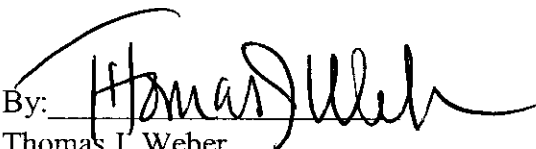
REQUEST NO. 14:

All Documents Concerning the Consent Decree, Sandusky, the Freeh Report, the NCAA, or this litigation.

RESPONSE:

Paterno objects to this request on grounds that it is repetitive of requests made to Jay Paterno and Coach Paterno's Estate. Subject to the foregoing objections, Paterno does not object to the production of responsive documents, if any.

Dated: November 16, 2015

By: 
Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 201
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher

KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Counsel for Plaintiffs

EXHIBIT A

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CENTRE

ESTATE OF JOSEPH PATERNO, ET AL

VS

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION (NCAA), ET AL

File No. 2013-2082

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

TO: BLUE LINE 409 LLC, 305 Holly Ridge Drive, State College, PA 16801
(Name of Person or Entity)

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

at Killian & Gephart, LLP, 218 Pine Street, P.O. Box 886, Harrisburg, PA 17108-0886
(Address)

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: Thomas W. Scott, Esquire
Killian & Gephart, LLP
ADDRESS: 218 Pine Street, PO Box 886
Harrisburg, PA 17108-0886

TELEPHONE: (717) 232-1851

SUPREME COURT ID # 15681

ATTORNEY FOR: National Collegiate Athletic Association

BY THE COURT:



Prothonotary/Clerk, Civil Division

DATE: _____
Seal of the Court

Deputy

EXHIBIT A

DEFINITIONS

1. "You," "your," and "yours" shall refer to Blue Line 409 LLC, and all other persons acting on behalf of Blue Line 409 LLC, including but not limited to, attorneys and their associates, investigators, agents, directors, officers, employees, representatives, and others who may have obtained information for or on behalf of Blue Line 409 LLC.
2. "Plaintiffs" shall mean each of the individuals identified in the caption above, including Jay Paterno and William Kenney, any representative of those individuals, and any representatives of the Estate and Family of Joseph Paterno.
3. "All" or "any" shall mean "each and every."
4. "And" and "or" shall mean either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.
5. "Document" or "documents" is defined as broadly as possible, and is defined to include originals and copies (including all non-identical copies or photocopies) as well as all draft and final versions of, without limitation: (a) All writings of any kind (including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise), including, without limitation, correspondence, notes, statements, transcripts, books, diaries, intra-office communications, notations of any sort of conversations or interviews; (b) All graphic representations of any kind, including, without limitation, photographs, charts,

graphs, plans, drawings, videos, and recordings; and (c) All electronically generated and/or stored correspondence, memoranda, communications, data compilations, or records of any sort.

6. "Communication(s)" means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, ideas or transmission or exchange of data or other information to another person, whether orally, person-to-person, in a group, by telephone, letter, personal delivery, telex, facsimile, or any other process, electric, electronic or otherwise.
7. "Concerning" shall mean, without limitation, comprising, containing, embodying, referring to, relating to, regarding, alluding to, responding to, in connection with, commenting on, in response to, about, announcing, explaining, discussing, showing, describing, studying, supporting, reflecting, analyzing, or constituting.
8. "Person" shall mean any natural person or any business, legal or governmental entity, or association.
9. The "NCAA" shall mean the National Collegiate Athletic Association.
10. "Defendants" shall mean the NCAA, Mark Emmert, Edward Ray, and the Pennsylvania State University.
11. "Penn State" shall mean The Pennsylvania State University.
12. The "Paterno Family" shall refer to the family of Joseph Paterno, the decedent represented in this Action by George Scott Paterno, including but not limited to Joseph V. Paterno, Sue Paterno, George Scott Paterno, Joseph V. ("Jay") Paterno, Jr., David Paterno, Diana Lynne Paterno-Giegerich, and Mary Kay Paterno Hort.
13. "FSS" shall mean the firm of Freeh, Sporkin & Sullivan LLP.

14. "Jay Paterno" shall mean Joseph V. ("Jay") Paterno, Jr.
15. "Coach Paterno" shall mean the late former Penn State head football coach, Joseph Paterno.
16. "Sandusky" shall mean former Penn State assistant football coach, Gerald Sandusky.
17. The "Freeh Report" shall mean the July 12, 2012 Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky, prepared by FSS.
18. The "Consent Decree" shall mean the July 23, 2012 Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University.
19. The "Athletics Integrity Agreement" shall mean the August 2012 Athletics Integrity Agreement Between the National Collegiate Athletic Association and the Big Ten Conference, and the Pennsylvania State University.
20. "Second Amended Complaint" shall mean the Second Amended Complaint filed in the above-captioned matter on October 13, 2014.

INSTRUCTIONS

1. In accordance with the Pennsylvania Rules of Civil Procedure, in producing the requested Documents, furnish all Documents in Your actual or constructive possession, custody, or control including, without limitation, those Documents in the custody of any advisors, attorneys, investigators, agents, associates, representatives, and other person(s) or entities acting or purporting to act on Your behalf.
2. Documents shall be produced in the manner in which they are maintained in the ordinary course of business or shall be organized and labeled with a designation of the

request for production to which they respond and produced along with any file folders or other bindings in which such Documents were found.

3. These Requests shall be deemed to be continuing in nature. If at any time additional responsive Documents come into Your possession, custody or control, then the responses to these Requests shall be promptly supplemented.
4. Any Document or portion of any Document withheld from production based on a claim of privilege shall be identified by (1) the type of Document, (2) the general subject matter of the Document, (3) the date of the Document, and (4) such other information as is sufficient to identify the Document including the author of the Document, the addressee(s) and any copyee(s) or other recipients of the Document, and, where not apparent, the relationship of the author and addressee(s) and copyee(s) to each other. The nature of each claim of privilege shall be set forth.
 - a. Notwithstanding the assertion of any objection, any requested Document that contains non-objectionable information responsive to this Request should be produced, but that portion of the Document for which the objection is asserted may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.
5. Any request for "Communications" shall be construed to include written or tangible Communications, as well as Documents referencing or reflecting oral or person-to-person Communications.
6. The fact that another witness or that a party produces a Document or the availability or production of similar or identical Documents from another source does not relieve You of Your obligation to produce Your copy of the same Document, even if the two

Documents are identical.

7. Any Document that cannot be produced in full shall be produced to the fullest extent possible.
8. Each paragraph, subparagraph, clause and word herein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.
9. Except as specifically provided herein, words imparting the singular shall include the plural and vice versa, where appropriate.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

Your articles of incorporation, certificates of formation, charters, bylaws, operating agreements and other such corporate formation Documents.

REQUEST NO. 2:

Documents sufficient to identify all persons and/or entities having an ownership interest or other financial interest in Your assets or income.

REQUEST NO. 3:

Your financial statements, federal and state income tax returns, and any other statement or record of income You received from January 1, 2006 to the present.

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All Documents and Communications Concerning actual or potential business ventures, opportunities, or partnerships.

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REQUEST NO. 6:

All draft and final contracts or agreements that had the possibility of generating revenue or other money for You, Jay Paterno, Coach Paterno, or Coach Paterno's Estate, including, without limitation, licensing contracts and contracts for television appearances, speaking engagements, real estate sales, marketing services, consulting services, or public relations services, from January 1, 2006 to present.

REQUEST NO. 7:

All Communications Concerning deliberations or negotiations about, the decision to enter into, the benefits of, or the terms of, any contract or agreement produced in response to Request No. 6.

REQUEST NO. 8:

Documents sufficient to fully demonstrate the monthly and annual sales performance of all merchandise or other goods or services sold in which You, Jay Paterno, Coach Paterno, or Coach Paterno's Estate has a financial interest, including, without limitation, royalty or licensing payments, from January 1, 2006 to present.

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All Documents and Communications discussing the reputation or popularity of, or public support for, the Paterno name, Coach Paterno, Jay Paterno, any other member of the Paterno Family, or William Kenney.

REQUEST NO. 12:

All Documents Concerning the book, *Paterno Legacy*, or any other potential or draft book, that Concern this litigation, the allegations contained in the Second Amended Complaint, the Freeh Report, FSS, the Consent Decree, the Athletics Integrity Agreement, the NCAA,

Coach Paterno's reputation, Jay Paterno's reputation, Sandusky, the Second Mile, the Sandusky grand jury investigation or Presentment, any person's reaction to the Sandusky scandal (including the media), Graham Spanier, Tim Curley, or Gary Schultz.

REQUEST NO. 13:

All non-privileged Communications between or among any of the Plaintiffs (including Jay Paterno, Coach Paterno, and George Scott Paterno) Concerning this lawsuit, or any and all facts or circumstances related to the allegations in the Second Amended Complaint, including the Consent Decree, the Freeh Report, the reputation of any Plaintiff (including Jay Paterno, Coach Paterno, and George Scott Paterno), Coach Paterno's termination or departure from Penn State, Sandusky, or Rodney Erickson.

REQUEST NO. 14:

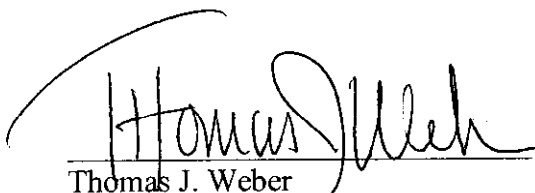
All Documents Concerning the Consent Decree, Sandusky, the Freeh Report, the NCAA, or this litigation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing OBJECTIONS BY PLAINTIFF JOSEPH V. ("JAY") PATERNO TO SUBPOENA PURSUANT TO RULE 4009.21 was served this 16th day of November, 2015 by first class mail and email to the following:

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

Everett C. Johnson, Jr.
Brian E. Kowalski
Sarah Gragert
Latham & Watkins LLP
555-11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
Email: everett.johnson@lw.com
brian.kowalski@lw.com
sarah.gragert@lw.com



Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112

Wick Sollers
L. Joseph Loveland
Ashley C. Parrish
Patricia L. Maher
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs