



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	Civil Division
)	
and)	Docket No. 2013-2082
)	Discovery Motion
WILLIAM KENNEY and JOSEPH V. ("JAY"))	
PATERNO,)	Counsel of Record:
former football coaches at Pennsylvania State)	Thomas J. Weber
University,)	GOLDBERG KATZMAN, P.C.
Plaintiffs,)	4250 Crums Mill Road, Suite 301
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v.)	Harrisburg, PA 17112
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NATIONAL COLLEGIATE ATHLETIC)	Email: tjw@goldbergekatzman.com
ASSOCIATION ("NCAA");)	
)	Wick Sollers (admitted <i>pro hac vice</i>)
MARK EMMERT, individually and as)	L. Joseph Loveland (admitted <i>pro hac vice</i>)
President of the NCAA;)	Patricia L. Maher (admitted <i>pro hac vice</i>)
)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
and)	KING & SPALDING LLP
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CENTRE COUNTY, PA

PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS RELATED TO REPEAL OF CONSENT DECREE BY DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

INTRODUCTION

Plaintiffs respectfully move this Court for an Order directing Defendant National Collegiate Athletic Association (“the NCAA”) to produce documents responsive to Plaintiffs’ timely request for documents that relate to the repeal, dissolution or superseding treatment of its Consent Decree with the Pennsylvania State University. The NCAA has relied on baseless objections to resist producing responsive documents. For the reasons set forth below, Plaintiffs respectfully request that the Court order the NCAA to produce all responsive documents and a privilege log for any documents withheld on grounds of privilege.

1. Plaintiffs served their Third Set of Requests for Production of Documents on Defendant NCAA on March 28, 2016. Ex. A, Third Request for Production of Documents from Plaintiff Estate of Joseph Paterno to Defendant National Collegiate Athletic Association.
2. The NCAA served its Objections and Responses on April 27, 2016, Ex. B, The National Collegiate Athletic Association’s Response to Plaintiffs’ Third Request for Production of Documents, in which the NCAA objected to all three document requests on various grounds, and asserted that it had no documents responsive to Requests Nos. 1 and 2.
3. The parties conferred by telephone on April 29 regarding the NCAA’s objections and failure to produce any responsive documents. Plaintiffs referred to a meeting agenda the NCAA had previously produced that was responsive to Request No. 1, and the NCAA agreed to search for any additional documents responsive to Request No. 1 and corresponding notes of meetings conducted pursuant to such agendas.

4. The NCAA subsequently produced additional documents responsive to Request No. 1, but maintains that there are no notes of the meetings conducted pursuant to those agendas that would be responsive to Request No. 2.
5. The NCAA objected to Request No. 3 for “all documents that evidence, reflect or refer to consideration of, evaluation of, or the bases for the repeal, dissolution, modification of, or superseding treatment of, the Consent Decree,” on grounds that the request is burdensome, seeks documents that are not relevant and are protected by the attorney-client privilege and as attorney work product. Ex. B at 9.
6. During the April 29 conference, counsel for the NCAA asserted that the requested documents are not relevant because they relate to the repeal of the Consent Decree, which took place after the events at issue in this case. The NCAA also contends that this request came too late in the discovery process to require the NCAA to conduct a search for the responsive documents. And the NCAA objects that the responsive documents would all be privileged, but the NCAA will not list them on a privilege log them because they are “litigation documents” that do not have to be logged. Ex. C, April 29, 2016 letter from P. Maher to S. Gragert.
7. Plaintiffs disagree with all of the NCAA’s reasons for refusing to produce documents responsive to Request No. 3. Plaintiffs’ claims in this action are based on statements in the Consent Decree. In January 2015, the NCAA negotiated and signed an agreement with Pennsylvania State University (“Penn State”) and Senator Jake Corman that involved repeal of the Consent Decree. Ex. D, February 27, 2015 letter from E. Johnson to Hon. John B. Leete, enclosing Settlement Agreement.
8. The repeal of the Consent Decree raises obvious questions concerning whether the

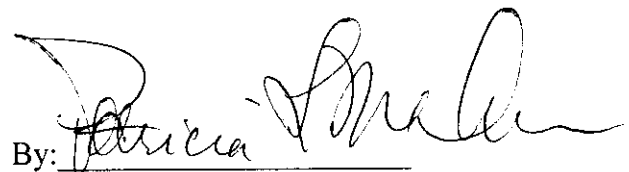
NCAA ever had any lawful basis for imposing the Consent Decree and whether the NCAA knew (or should have known) that the statements made in the Consent Decree were false. Plaintiffs are entitled to inquire about the NCAA's willingness to dissolve the agreement that underlies their claims, while at the same time asserting the truth of the statements in the Consent Decree and its authority to impose it on Penn State.

9. The Court has approved discovery from third parties for information related to the repeal of the Consent Decree over objections from the NCAA and Penn State. *See* Ex. E, March 29, 2016 Opinion and Order, and Ex. F, April 11, 2016 Order of Court.
10. These document requests to the NCAA were timely served and the NCAA's objection that they were too late is baseless, and now moot in light of the 45-day extension of discovery. Ex. G, May 16, 2016 Order.
11. The NCAA has refused to conduct a search for responsive documents, and thus cannot assert that all responsive documents are privileged. Moreover, the repeal of the Consent Decree came about in connection with the settlement of *Corman v. NCAA, et. al.*, which resulted from communications among the NCAA, Penn State and Senator Corman. NCAA documents that reflect those communications and relate to the repeal of the Consent Decree would not be privileged. *See* Ex. D.
12. Because the repeal of the Consent Decree occurred in connection with the resolution of another lawsuit, documents responsive to Request No. 3 are not "litigation documents" in this case. Responsive documents withheld on grounds of privilege should be listed on a privilege log.
13. The occurrence of the repeal after the commencement of this case is not determinative. The NCAA has requested and Plaintiffs have produced extensive

documents related to events after the commencement of this litigation.

WHEREFORE, Plaintiffs respectfully request that the Court grant this Motion to Compel Production of Documents Related to Repeal of the Consent Decree by Defendant National Collegiate Athletic Association, and order the NCAA to produce forthwith all documents responsive to Request No. 3 of the Third Request for Production of Documents, and provide a privilege log for any documents withheld by the NCAA on grounds of privilege.

Dated: May 20, 2016

By: 

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