



000014NY CCGRP0 201608

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The 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.

) Civil Division
) Docket No. 2013-2082
) PLAINTIFFS' RESPONSE TO NEW
) MATTER OF DEFENDANT MARK
) EMMERT AND AMENDED NEW
) MATTER OF DEFENDANT NCAA
) Filed on Behalf of Plaintiffs
) 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@goldbergekatzman.com
) Wick Sollers (admitted pro hac vice)
) L. Joseph Loveland (admitted pro hac vice)
) Mark A. Jensen (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
) mjensen@kslaw.com
) pmaher@kslaw.com
) aparrish@kslaw.com

FILED ONLINE

2016 OCT 31 AM 10:58

DEBRA C. IMBEL
PROTHONOTARY
CENTRE COUNTY, PA



Ratification (Count I)

180 – 187. In light of the voluntary withdrawal of all claims by former Plaintiff Al Clemens, he is no longer pursuing a claim under Count I, nor seeking relief thereunder. As a result, no response is required to the Defendants’ New Matter set forth in paragraphs 180 – 187.

To the extent a response is required, the allegations of paragraph 180 are admitted. The allegations of paragraphs 181 – 184 purport to quote portions of the Consent Decree, but that document speaks for itself. The allegations of paragraphs 185 – 187 are denied, and Plaintiffs’ allegations of paragraphs 68 – 70 and 92 of the Second Amended Complaint are incorporated herein as though set forth in their entirety.

Consent and/or Absolute Privilege

(Plaintiff Clemens — Counts IV and V)

188 – 191. In light of the voluntary withdrawal of all claims by former Plaintiff Al Clemens, he is no longer pursuing claims under Counts IV and V, nor seeking relief thereunder. As a result, no response is required to the Defendants’ New Matter set forth in paragraphs 188 – 191. In addition, the allegations of paragraph 191 are conclusions of law to which no response is required.

To the extent a response is required, Plaintiffs’ answers to paragraphs 180 – 187 are incorporated herein by reference in response to paragraph 188. The allegations of paragraphs 189 – 190 of Defendants’ New Matter are denied and Plaintiffs’ allegations of paragraphs 66, 68 – 70, and 104 – 105 of the Second Amended Complaint are incorporated herein as though set forth in their entirety. The allegations of paragraph 191 of Defendants’ New Matter are conclusions of law to which no response is required.

Estoppel (Plaintiff Clemens — All Counts)

192 – 193. In light of the voluntary withdrawal of all claims by former Plaintiff Al Clemens, he is no longer pursuing claims under any Count of the Second Amended Complaint, nor seeking relief thereunder. As a result, no response is required to the Defendants' New Matter set forth in paragraphs 192 – 193. In addition, the allegations of paragraph 193 are conclusions of law to which no response is required.

To the extent a response is required, Plaintiffs' answers to paragraphs 180 – 191 are incorporated herein as though fully set forth in their entirety. The allegations of paragraph 193 are denied.

Truth or Substantial Truth (Counts II, III, IV and V)

194. In light of the voluntary withdrawal of all claims by former Plaintiff Al Clemens, he is no longer pursuing claims under Counts IV and V, nor seeking relief thereunder. As a result, no response is required by Plaintiff Clemens to the Defendants' New Matter set forth in paragraphs 192 – 193. The remaining Plaintiffs' answers to paragraphs 180 – 193 are incorporated herein as though fully set forth in their entirety.

195. The allegations of paragraph 195 of Defendants' New Matter are conclusions of law to which no response is required. The assertions in paragraph 195, footnote 2, are also conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that the statements alleged to be defamatory or disparaging were true or substantially true. By way of further answer, Plaintiffs' allegations in paragraphs 1 – 8, 21 – 50, 54 – 80, 84 – 92, 103 – 105, 157 – 158, 166 – 167 and 169 of the Second Amended Complaint are incorporated herein as though fully set forth in their entirety.

### Collateral Estoppel

(Plaintiffs Jay Paterno and William Kenney — Counts II, IV and V)

196. Plaintiffs' answers to paragraphs 180 – 195 are incorporated herein as though fully set forth in their entirety.

197. Plaintiffs Paterno and Kenney admit the allegations of paragraph 197 of Defendants' New Matter.

198. Plaintiffs Paterno and Kenney admit they alleged in other litigation that the statement that “[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors and no one warned the public about him,” was an actionable statement that Penn State knew was “erroneous and based on unreliable and unsubstantiated conclusions made in the Freeh Report,” and that they were part of a small readily identifiable group referenced by that statement.

199. Plaintiffs Paterno and Kenney admit they alleged that the statement that “[s]ome coaches, administrators and football program staff members ignored the red flags of Sandusky’s behaviors and no one warned the public about him,” in addition to other acts by Penn State related to their termination and the Consent Decree, caused them financial harm and future lost employment opportunities, and that they asserted claims against Penn State under 42 U.S.C. §1983 based on those actions by Penn State.

200. Plaintiffs Paterno and Kenney admit the federal court dismissed their Section 1983 claims with prejudice. The remaining allegations of paragraph 200 of Defendants' New Matter are legal conclusions to which no response is required. To the extent a response is required, Plaintiffs deny that the federal court made a legal ruling regarding the “[s]ome coaches

. . .” statement, and further deny that the federal court’s comments about that statement were essential to the decision to dismiss the Section 1983 claims.

201. Plaintiffs Paterno and Kenney admit that the “[s]ome coaches . . .” statement concerned them. The remaining allegations of paragraph 201 of Defendants’ New Matter are conclusions of law to which no response is required.

202. The allegations of paragraph 202 of Defendants’ New Matter are conclusions of law to which no response is required. To the extent a response is required, it is specifically denied that Plaintiffs Paterno and Kenney are collaterally estopped from asserting that the “[s]ome coaches . . .” statement referred to them.

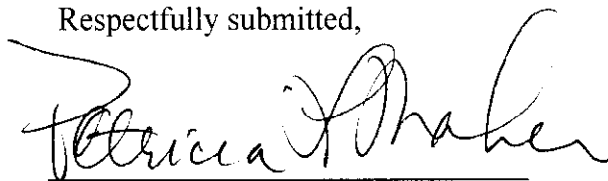
203. The allegations of paragraph 203 of Defendants’ New Matter are conclusions of law to which no response is required.

204. The allegations of paragraph 204 of Defendants’ New Matter are conclusions of law to which no response is required.

205. The allegations of paragraph 205 of Defendants’ New Matter are conclusions of law to which no response is required.

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor and against Defendants NCAA and Emmert.

Respectfully submitted,



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](mailto:tjw@goldbergkatzman.com)

Wick Sollers (admitted *pro hac vice*)  
L. Joseph Loveland (admitted *pro hac vice*)  
Mark A. Jensen (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](mailto:wsollers@kslaw.com)  
[jloveland@kslaw.com](mailto:jloveland@kslaw.com)  
[mjensen@kslaw.com](mailto:mjensen@kslaw.com)  
[pmaher@kslaw.com](mailto:pmaher@kslaw.com)  
[aparrish@kslaw.com](mailto:aparrish@kslaw.com)

Dated: October 28, 2016

*Counsel for Plaintiffs*

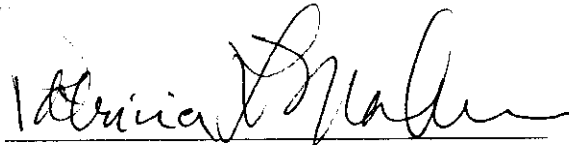
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT EMMERT'S NEW MATTER AND DEFENDANT NCAA's AMENDED NEW MATTER** was served this 28<sup>th</sup> day of October, 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](mailto:tscott@killiangephart.com)

Michael M. Sheetz  
Timothy W. Cook  
Cooley, LLP  
500 Boylston Street, 14<sup>th</sup> Fl.  
Boston, MA 02116-3736  
Email: [msheetz@cooley.com](mailto:msheetz@cooley.com)  
[tcook@cooley.com](mailto:tcook@cooley.com)

Everett C. Johnson, Jr.  
Brian Kowalski  
Sarah Gragert  
Latham & Watkins LLP  
555-11<sup>th</sup> Street, N.W.  
Suite 1000  
Washington, D.C. 20004-1304  
Email: [everett.johnson@lw.com](mailto:everett.johnson@lw.com)  
[brian.kowalski@lw.com](mailto:brian.kowalski@lw.com)  
[sarah.gragert@lw.com](mailto: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  
Mark A. Jensen  
Patricia L. Maher  
Ashley C. Parrish  
KING & SPALDING LLP  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006  
Telephone: (202) 737-0500

*Counsel for Plaintiffs*