

Notice of Removal and accompanying papers with the United States District Court for the Middle District of Pennsylvania. A true and correct copy of the Notice of Removal is attached as Ex. A. A true and correct copy of the accompanying Civil Cover Sheet is attached as Ex. B. A true and correct copy of the payment of the filing fee is attached as Ex. C.



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LLP*

CERTIFICATE OF SERVICE

I, Asha T. Mehrotra, hereby certify that I caused to be served on July 9, 2014 a true and correct copy of the Notice of Having Filed a Notice of Removal by first-class mail upon the following:

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/s/ Asha T. Mehrotra
Asha T. Mehrotra

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GRAHAM B. SPANIER,

Plaintiff,

vs.

LOUIS J. FREEH AND FREEH
SPORKIN & SULLIVAN, LLP,
Defendants.

Case No. _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants Louis J. Freeh and Freeh Sporkin & Sullivan, LLP (“Defendants”), hereby remove this action pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 from the Centre County Court of Common Pleas to the United States District Court for the Middle District of Pennsylvania, and respectfully state as follows:¹

¹ Defendants filed a Complaint for Declaratory Judgment in this Court on July 8, 2014 requesting a declaratory judgment as to the interpretation of the one-year limitation in the federal removal statute, 28 U.S.C. § 1446. *See* Ex. 1, Complaint, *Freeh, et al. v. Spanier*, Case No. 4:14-cv-01310-MEM (M.D. Pa.).

NATURE OF THE ACTION

1. Plaintiff Graham B. Spanier (“Spanier”), the former President of The Pennsylvania State University (“Penn State”), has brought a defamation action against Defendants Louis J. Freeh (“Freeh”) and Freeh Sporkin & Sullivan LLP (“Freeh Sporkin”), in the Pennsylvania Centre County Court of Common Pleas. *See Spanier v. Freeh, et al.*, No. 2013-2707 (Centre Cnty. Court of Common Pleas). Spanier’s action is based on a report issued by Freeh Sporkin in connection with its independent investigation relating to the failure of Penn State personnel to respond and report to the appropriate authorities the sexual abuse of children by former Penn State assistant football coach Gerald A. Sandusky. Sandusky has been convicted of child sexual abuse and is serving a prison sentence.

2. On November 1, 2012, Spanier was charged in the Pennsylvania Dauphin County Court of Common Pleas with endangering the welfare of children, perjury, obstruction of justice, criminal conspiracy, and failure to report sexual assault. *See Commonwealth v. Spanier*, No. CP-22-CR-3615-2013 (Dauphin Cnty. Court of Common Pleas). Timothy Curley, the former athletic director of Penn State, and Gary Schultz, the former Vice President of Penn State, were also each charged with endangering the welfare of children, obstruction of justice, and criminal conspiracy. As of the date of this Notice, the parties are still briefing pre-trial motions and a trial date has not been scheduled.

3. On July 11, 2013, Spanier filed a Writ of Summons against Defendants and Pepper Hamilton LLP in the Centre County Court of Common Pleas. *See* Ex. 2, 7/11/13 Writ of Summons. Subsequently, on September 12, 2013, Spanier filed an Amended Writ of Summons against Defendants and dismissed Pepper Hamilton LLP as a defendant. *See* Ex. 3, 9/12/13 Amended Writ of Summons. In his Writ of Summons, Spanier states that the “Type of Matter,” is “Defamation.” On the corresponding civil cover sheet, Spanier checked the box for a “Slander/Libel/Defamation” case.

4. Shortly after Spanier filed his Amended Writ of Summons, Defendants ruled Spanier to file a complaint by filing a praecipe to file complaint with the prothonotary of the Centre County Court of Common Pleas on September 30, 2013. *See* Ex. 4, 9/30/13 Rule to File Complaint.

5. Instead of complying with the rule and filing a complaint, Spanier filed a motion to stay the state court action—that he himself commenced—until his criminal proceedings are resolved. Defendants opposed the motion to stay and filed a brief setting forth their arguments, namely that Spanier, who did not invoke his Fifth Amendment right, had set forth no reason that he would be prejudiced by the filing of the complaint in his case. However, on February 25, 2014, the trial court entered a stay of Spanier’s case against Defendants until the resolution of the criminal proceedings. *See* Ex. 5, 2/25/14 Opinion and Order.

6. On March 17, 2014, Defendants filed an Emergency Motion for Reconsideration in the trial court, arguing, in relevant part, that Spanier's refusal to file a complaint threatens to jeopardize their right to remove the state court case to a federal forum in light of the one-year statutory limitation on removal, as the limitation has been interpreted by certain federal courts in Pennsylvania. The trial court denied the motion for reconsideration, and held, in relevant part, that there was no prejudice to Defendants' right of removal because it is possible that a federal district court would find an equitable exception to the one-year limitation on removal.

7. On March 25, 2014, Defendants filed an appeal of the trial court's decision to the Superior Court of Pennsylvania, on the basis that it was a collateral order subject to interlocutory appeal. In light of the imminent expiration of the one-year limitation period, Defendants concurrently filed an application for expedited treatment of the appeal, which the Superior Court granted. On appeal, among other arguments, Defendants emphasized the prejudice to their right of removal by the trial court's entry of a prolonged and indefinite stay of Spanier's case. The parties promptly completed the briefing relating to the appeal on May 12, 2014, and the Superior Court heard oral argument on May 21, 2014.

8. On June 30, 2014, the Superior Court issued an opinion, holding that the court did not have jurisdiction to consider the appeal because the trial court's

order did not qualify as an appealable collateral order under Pennsylvania law. In order for the collateral order doctrine to apply, *inter alia*, the claim raised on appeal must be “irreparably lost” if review of the claim is postponed until final judgment of the case. The Superior Court held that because a federal district court may grant Defendants an equitable exception if they file for removal after the one-year limitation expires, the right of removal is not irreparably lost. Specifically, the Superior Court held that Defendants could argue that Spanier has acted in bad faith by trying to engage in forum manipulation by (i) not filing a complaint in this action, even though his counsel has admitted to drafting one, and (ii) by filing a civil suit in federal court against Attorney General Kathleen Kane, which overlaps with Spanier’s pending criminal proceedings.

9. Despite all of Defendants’ efforts to obtain the filing of a complaint in the state court case, the trial court’s entry of the stay remains in place and Spanier’s obligation to file a complaint is stayed until the resolution of the criminal proceeding.

10. This case is removed to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because: (1) the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 and (2) Defendants must file for removal within one year of the filing of the writ of summons pursuant to § 1446(c)(1), as

this provision has been interpreted by some cases in the Middle District of Pennsylvania.

I. THIS COURT HAS SUBJECT-MATTER JURISDICTION PURSUANT TO 28 U.S.C. § 1332 AND § 1441

11. The statutory right of removal under 28 U.S.C. § 1441(a) applies to “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.”

12. This Court has original subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because this is a civil action between a citizen of Pennsylvania (Spanier) and citizens or subjects of foreign states (Freeh and Freeh Sporkin) and the amount in controversy exceeds the sum of \$75,000, exclusive of costs and interest.

A. There Is Complete Diversity Of Citizenship

13. There is complete diversity of citizenship between Spanier, a citizen of Pennsylvania, and Defendants, who are not citizens of Pennsylvania.

14. Spanier is a citizen of Pennsylvania and resides in State College, Pennsylvania.²

² The Court may take judicial notice of materials filed in a court in this District as to the citizenship of Spanier. *See, e.g., Wallace v. Media News Group, Inc.*, No. 13-2079, 2014 WL 2624791, at *1 and n.2 (3d Cir. June 13, 2014). Spanier has filed an action in a court in this District, seeking to enjoin his criminal proceedings. *See Spanier v. Kane*, No. 1:14-cv-00599 (M.D. Pa., filed Mar. 31, 2014) (Kane, J.).
(Cont'd on next page)

15. Because a partnership is not considered a “citizen” of any state for diversity jurisdiction purposes, Freeh Sporkin’s citizenship for diversity jurisdiction purposes is determined by considering the citizenship of each of its partners. *Swiger v. Allegheny Energy Inc.*, 540 F.3d 179, 182-83 (3d Cir. 2008).

16. Freeh is a partner of Freeh Sporkin. No partner of Freeh Sporkin is a citizen of Pennsylvania. Therefore, Freeh Sporkin too is not a citizen of Pennsylvania.

17. Accordingly, there is complete diversity between Plaintiff and Defendants.

B. The Amount In Controversy Exceeds \$75,000

18. The amount in controversy, upon information and belief, exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1446(c).

19. Accordingly, this Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, and the case may be removed pursuant to 28 U.S.C. § 1441.

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In his complaint, Spanier avers that he resides in State College, Pennsylvania. *See* Ex. 6, Compl. ¶ 7.

II. DEFENDANTS HAVE SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

20. This Court is the proper venue for this action because it is the “district and division embracing the place where such action is pending,” *i.e.*, Centre County, Pennsylvania. 28 U.S.C. § 1441(a).

21. No previous application has been made for the relief requested herein.

22. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be served upon Plaintiff, and a copy will be promptly filed with the Centre County Court of Common Pleas. *See Ex. 7, Notice of Having Filed a Notice of Removal.*

23. Defendants’ Notice of Removal is filed pursuant to 28 U.S.C. § 1446(c)(1), as this provision has been interpreted by cases in this District. The federal removal statute provides that, “A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.” 28 U.S.C. § 1446(c)(1).³

³ As set forth in Defendants’ Complaint for declaratory judgment, the plain language of the one-year limitation demonstrates that it is not applicable to the circumstances of this case. However, cases in this District have held otherwise and defendants, in similar circumstances to this case, have been remanded on the basis that their removal action is time barred by the one-year limitation. *See Donato-*
(Cont’d on next page)

24. Cases in the Middle District of Pennsylvania have construed the one-year limitation in Section 1446(c)(1) as commencing from the date that the writ of summons is filed in Pennsylvania state court. *See, e.g., Kowalski v. PBM Logistics, LLC*, No. 4:cv-12-1158, 2012 WL 3890249, at *5 (M.D. Pa. Aug. 6, 2012); *Namey v. Malcom*, 534 F. Supp. 2d 494, 497-98 (M.D. Pa. 2008); *Penn Patio Sunrooms, Inc. v. Ohio Cas. Ins. Co.*, No. 3:08-CV-0120, 2008 WL 919543, at *2 (M.D. Pa. Mar. 31, 2008). Focusing on the language in Section 1446(c)(1) regarding the “commencement of the action,” these cases have noted that under the Pennsylvania Rules of Civil Procedure, an action may be “commenced” by the filing of either a praecipe for a writ of summons or a complaint in Pennsylvania state court. *See Penn Patio*, 2008 WL 919543, at *2 (citing Pa. R. Civ. P. 1007).

25. At the same time, the federal removal statute also requires that a notice of removal be filed within 30 days after receipt by the defendant of the “initial pleading.” 28 U.S.C. § 1446(b)(1) (emphasis added). The “initial pleading” has been interpreted to mean the complaint filed in state court, and not merely a summons. *See, e.g., Gladkikh v. Lyle Indus., Inc.*, No. 3CV052402, 2006

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Cook v. State Farm Fire & Cas. Co., No. 3:09-cv-0587, 2009 WL 2169168, at *3 (M.D. Pa. July 20, 2009) (holding that defendant’s removal more than one year after the filing of the writ of summons was time barred by the one-year limitation period, where defendant had ruled plaintiff to file a complaint in state court and the rule was stayed).

WL 266100, at *1–2 (M.D. Pa. Feb. 1, 2006) (citing *Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 222 (3d Cir. 2005)).

26. Accordingly, under the interpretation of Section 1446(c)(1) cited above, Defendants’ failure to remove this action within one year of Spanier’s filing of the writ of summons in state court will result in the loss of their removal right. *See Kowalski*, 2012 WL 3890249, at *5 (remanding removal petition where defendant filed a notice of removal within 30 days of receipt of the complaint but more than one year after the filing of the writ of summons); *Donato-Cook*, 2009 WL 2169168, at *3; *Namey*, 534 F. Supp. 2d at 498 (same); *Penn Patio*, 2008 WL 919543, at *2 (same). But meanwhile, due to the trial court’s grant of Spanier’s own motion to stay this civil case, there is no way that Defendants can compel Spanier to file an “initial pleading” until the resolution of the criminal proceeding.

27. In their steadfast pursuit of their right of removal, Defendants have vigorously sought to compel Spanier to file a complaint through the use of every possible procedural device available to them. Within a week of Spanier’s filing of the Amended Writ of Summons, Defendants filed a rule to compel Spanier to file a complaint. When Spanier refused to file a complaint and instead filed a motion to stay his civil case pending the resolution of his criminal proceedings, Defendants opposed his motion. After the state trial court granted Spanier’s motion to stay, Defendants moved the court to reconsider its ruling. Defendants then filed an

appeal of the trial court's decision and requested expedited treatment of the appeal, in light of the imminent expiration of the one-year limitation period. With the Superior Court's denial of Defendant's appeal for lack of jurisdiction, Defendants have exhausted every avenue to force Spanier to file a complaint in this action.

28. Yet, under the cases cited above, Defendants' right of removal is time barred by the one-year limitation period set out in Section 1446(c)(1) as of July 11, 2014. In light of the uncommon procedural circumstances of this case, it is impossible for Defendants to reconcile the two limitation periods in Sections 1446(b)(1) and 1446(c)(1).

29. Defendants filed a complaint for declaratory judgment in this Court on July 8, 2014, seeking a judgment as to the interpretation of 28 U.S.C. § 1446 that would resolve the uncertainty regarding Defendants' right of removal. But, as certain cases in this District interpret Section 1446(c)(1), without filing this Notice of Removal, Defendants will lose their right of removal.

30. As the one-year anniversary of Spanier's writ of summons expires in only a few days, Defendants have in good faith filed this Notice of Removal pursuant to Section 1446(c)(1), as this provision has been interpreted by cases in this District.

WHEREFORE, Defendants Louis J. Freeh and Freeh Sporkin & Sullivan, LLP hereby remove this action from the Pennsylvania Centre County Court of Common Pleas to this Court pursuant to 28 U.S.C. § 1441.

Dated: July 9, 2014

Respectfully submitted,



Robert C. Heim (Pa. 15758)

Michael L. Kichline (Pa. 62293)

Asha T. Mehrotra (Pa. 315176)

(*pro hac vice* application to be submitted)

William T. McEnroe (Pa. 308821)

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*Attorneys for Defendants Louis J. Freeh and
Freeh Sporkin & Sullivan, LLP*

CERTIFICATE OF SERVICE

I, William T. McEnroe, hereby certify that I caused to be served on July 9, 2014, a true and correct copy of the foregoing Notice of Removal by first-class mail upon the following:

Elizabeth K. Ainslie, Esq.
SCHNADER HARRISON
SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103-7286
Attorney for Plaintiff Graham B. Spanier

/s/ William T. McEnroe

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LOUIS J. FREEH AND FREEH
SPORKIN & SULLIVAN, LLP,
Plaintiffs,

vs.

GRAHAM B. SPANIER,
Defendant.

Case No. _____

COMPLAINT

Plaintiffs Louis J. Freeh and Freeh Sporkin & Sullivan, LLP hereby allege as follows:

NATURE OF THE ACTION

1. Louis J. Freeh (“Freeh”) and Freeh Sporkin & Sullivan, LLP (“Freeh Sporkin,” together with Freeh, “Plaintiffs”) bring this action for declaratory judgment, seeking an interpretation of the one-year limitation in the federal removal statute, 28 U.S.C. § 1446. This declaratory judgment will resolve the uncertainty as to Plaintiffs’ right to remove the case filed by Graham B. Spanier (“Spanier”) against them in the Pennsylvania Centre County Court of Common

Pleas to federal court. Plaintiffs are otherwise entitled to remove the Centre County action to federal court on the basis of diversity jurisdiction. But, notwithstanding Plaintiffs' efforts to compel him to do so, Spanier has refused to file a complaint in the Centre County action and, as a result, Plaintiffs face a confluence of factors that threatens to deprive them of their federal statutory right of removal—most notably conflicting district court authority as to whether the one-year limitation would bar Plaintiffs' right of removal if removal did not occur prior thereto.

2. On July 11, 2013, Spanier filed only a one-page writ of summons against Freeh and Freeh Sporkin in the Centre County action, which under Pennsylvania law, is alone sufficient to initiate an action. When Plaintiffs ruled Spanier to file a complaint, Spanier refused and instead moved to stay his own lawsuit until criminal proceedings, in which he is a defendant, are resolved. The trial court granted Spanier's motion and entered an order staying the case until Spanier's criminal proceeding is resolved.

3. Plaintiffs have employed every procedural device available to them to compel Spanier to file a complaint in the Centre County action, including an appeal to the Superior Court of Pennsylvania. Despite all of Plaintiffs' efforts, however, Spanier's obligation to file a complaint remains stayed. As the one-year limitation in the federal removal statute has been interpreted in certain cases in this

District, this sequence of events in the Centre County action will result in the loss of Plaintiffs' right of removal.

4. The federal removal statute contains a one-year limitation on removal of cases based on diversity jurisdiction, which the majority of cases in this District have held is triggered by the filing of a writ of summons in state court. 28 U.S.C. § 1446(c)(1). At the same time, the federal removal statute provides that a notice of removal shall be filed after the receipt of an "initial pleading," which has been interpreted to mean the complaint filed in state court, and not merely a summons. 28 U.S.C. § 1446(b)(1). Accordingly, as certain cases in this District have interpreted the one-year limitation on removal, Plaintiffs' right of removal will be barred by the one-year limitation on July 11, 2014, long before Spanier even files a complaint on which they can premise removal.

5. However, these interpretations of the one-year limitation period are contrary to the plain language of the removal statute. Under the plain language of 28 U.S.C. § 1446, the one-year limitation applies only where an initial complaint has been filed but is not removable on the basis of diversity jurisdiction. Three Pennsylvania federal courts, including one in this District, have applied the plain language reading of the federal removal statute, thus holding that the one-year limitation does not begin to run when the writ of summons is filed.

6. Plaintiffs have filed this declaratory judgment to resolve the uncertainty surrounding their right of removal. If Plaintiffs wait until Spanier files a complaint to remove the Centre County action—which will be more than a year after he filed the writ of summons—the split in the district court authority puts Plaintiffs at great risk that a court in this District will hold that their right of removal is time barred by the one-year limitation period. Yet this interpretation of the statute flatly contradicts the plain language of the statute itself.

7. Accordingly, Plaintiffs seek a declaratory judgment pursuant to the Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202, that: (i) the one-year limitation period set forth in 28 U.S.C. § 1446(c)(1) does not apply to Freeh and Freeh Sporkin’s right to remove the Centre County action, where Spanier has filed only a writ of summons, or alternatively (ii) if the one-year limitation period does apply, it does not run during the time period that the Centre County action is stayed.

THE PARTIES

8. Louis J. Freeh is a partner of Freeh Sporkin & Sullivan, LLP. Freeh Sporkin is a law firm organized and existing as a District of Columbia limited liability partnership with its principal place of business in Washington, D.C. None of the partners of Freeh Sporkin is a citizen of Pennsylvania.

9. Dr. Graham B. Spanier is a citizen of Pennsylvania and resides in State College, Pennsylvania. Spanier was the President of The Pennsylvania State University (“Penn State”) from 1995 to November 9, 2011.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. § 1331, because this action arises under the laws of the United States, 28 U.S.C. § 1446, and this Court also has subject matter jurisdiction over these claims pursuant to 28 U.S.C. § 1332(a), because the parties are citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs. Under 28 U.S.C. § 2201–2202, a justiciable controversy exists between the parties and a declaratory judgment is necessary to resolve the controversy.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a)(2) in that a substantial part of the events giving rise to the claims occurred in this judicial district.

FACTUAL BACKGROUND

I. Freeh Sporkin Issues A Report In Connection With Its Independent Investigation Of Penn State Personnel

12. On November 21, 2011, Penn State’s Board of Trustees engaged Freeh Sporkin as Special Investigative Counsel to perform an independent, full, and complete investigation of the alleged failure of Penn State personnel to

respond and report to the appropriate authorities the sexual abuse of children by former Penn State assistant football coach Gerald A. Sandusky. Sandusky was convicted on numerous counts of child sexual abuse and is serving a prison sentence.

13. On July 12, 2012, Freeh Sporkin released the “Report of the Special Investigative Counsel Regarding Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky” (the “Report”).

II. Spanier Faces Criminal Proceedings In State Court

14. On November 1, 2012, Spanier was charged in the Pennsylvania Dauphin County Court of Common Pleas with endangering the welfare of children, perjury, obstruction of justice, criminal conspiracy, and failure to report sexual assault. *See Commonwealth v. Spanier*, CP-22-CR-3615-2013 (Dauphin Cnty. Court of Common Pleas). Timothy Curley, the former athletic director of Penn State, and Gary Schultz, the former Vice President of Penn State, were also each charged with endangering the welfare of children, obstruction of justice, and criminal conspiracy. As of the date of this Complaint, the parties are still briefing pre-trial motions and a trial date has not been scheduled in the criminal proceedings.

III. Spanier Files A Lawsuit Against Freeh And Freeh Sporkin In The Centre County Court Of Common Pleas But Refuses To File A Complaint

15. On July 11, 2013, Spanier filed a Writ of Summons against Freeh, Freeh Sporkin, and Pepper Hamilton LLP in the Centre County Court of Common Pleas. *See Spanier v. Freeh, et al.*, No. 2013-2707 (Centre Cnty. Court of Common Pleas). Subsequently, on September 12, 2013, Spanier filed an Amended Writ of Summons against Freeh and Freeh Sporkin and dismissed Pepper Hamilton LLP as a defendant.¹

16. In his Writ of Summons, Spanier stated that the “Type of Matter,” is “Defamation.” On the corresponding civil cover sheet, Spanier checked the box for a “Slander/Libel/Defamation” case. Although Spanier has not filed a complaint in the state court case substantiating his Writ of Summons, his counsel has stated in briefs filed in the trial court that Spanier’s claims are based on statements in the Report that are purportedly defamatory to Spanier. *See Ex. 1, Writ of Summons.*

17. Shortly after Spanier filed his Amended Writ of Summons, Plaintiffs filed a praecipe to file complaint with the prothonotary on September 30, 2013, and a Rule to File Complaint was issued to Spanier on the same day.

¹ The Centre County action is removable to federal court on the basis of diversity jurisdiction because there is complete diversity of the parties and the amount in controversy exceeds \$75,000, exclusive of interests and costs. 28 U.S.C. § 1441(a).

18. Instead of complying with the rule and filing a complaint, Spanier filed a motion to stay the Centre County action—that he himself commenced—until the completion of the criminal proceedings. Plaintiffs opposed the motion to stay and filed a brief setting forth their arguments. However, on February 25, 2014, the trial court entered a stay of Spanier’s case until the resolution of the criminal proceedings.

IV. Plaintiffs Used Every Procedural Device Available To Them To Compel Spanier To File A Complaint

19. On March 17, 2014, Plaintiffs filed an Emergency Motion for Reconsideration in the trial court, arguing, in relevant part, that Spanier’s refusal to file a complaint threatens to jeopardize their right to remove the state court case to a federal forum in light of the one-year statutory limitation on removal, as the limitation has been interpreted in certain cases in Pennsylvania federal courts. The trial court denied the motion for reconsideration, and held, in relevant part, that there was no prejudice to Plaintiffs’ right of removal because it is possible that a federal district court would find an equitable exception to the one-year limitation on removal.

20. In an effort to obtain the filing of a complaint in the state court action, on March 25, 2014, Plaintiffs filed an appeal of the trial court’s decision to the Superior Court of Pennsylvania, on the basis that it was a collateral order subject to interlocutory appeal. In light of the imminent expiration of the one-year limitation

period, Plaintiffs concurrently filed an application for expedited treatment of the appeal, which the Superior Court granted. On appeal, among other arguments, Plaintiffs emphasized the prejudice to their right of removal by the trial court's entry of a prolonged and indefinite stay of Spanier's case. The parties promptly completed the briefing relating to the appeal on May 12, 2014, and the Superior Court heard oral argument on May 21, 2014.

21. On June 30, 2014, the Superior Court issued an opinion, holding that the court did not have jurisdiction to consider the appeal because the trial court's order did not qualify as a collateral order doctrine under Pennsylvania law. In order for the collateral order doctrine to apply, *inter alia*, the claim raised on appeal must be "irreparably lost" if review of the claim is postponed until final judgment of the case. The Superior Court held that because a federal district court may grant Plaintiffs an equitable exception if they file for removal after the one-year limitation expires, the right of removal is not irreparably lost. Specifically, the Superior Court noted that Plaintiffs could argue that Spanier has acted in bad faith by trying to engage in forum manipulation by (i) not filing a complaint in this action, even though his counsel has admitted to drafting one, and (ii) filing a civil suit in federal court against Attorney General Kathleen Kane, which overlaps with Spanier's pending criminal proceedings.

22. Despite all of Plaintiffs' efforts to obtain the filing of a complaint in the state court case, the trial court's entry of the stay remains in place and Spanier's obligation to file a complaint is stayed until the resolution of the criminal proceedings. No trial date has been set in Spanier's criminal case.

THE FEDERAL REMOVAL STATUTE

I. The Relevant Provisions Of The Federal Removal Statute

23. 28 U.S.C. § 1446 sets out the "Procedure for removal of civil actions." Sections 1446(b)(1), 1446(b)(3), and 1446(c)(1)—the interpretations of which are central to this lawsuit—provide as follows:²

§ 1446 Procedure for removal of civil actions

(b) Requirements; generally. --

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of *the initial pleading* setting forth the claim for relief upon which such action or proceeding is based.

* * *

² Plaintiffs' right of removal is governed by the recently amended version of Section 1446, cited herein. On December 7, 2011, Congress amended Section 1446 in the Federal Courts Jurisdiction and Venue Clarification Act of 2011, effective January 6, 2012 (the "Amendment"). Although Congress made significant structural changes to the statute, it did not materially change the language of the relevant provisions. Therefore, case law interpreting the previous version of the statute is still instructive.

(3) *Except as provided in subsection (c), if the case stated by the initial pleading is not removable*, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

(c) Requirements; removal based on diversity of citizenship.--(1) A case may not be removed *under subsection (b)(3)* on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

28 U.S.C. § 1446 (emphasis added).

II. The Interpretation Of 28 U.S.C. § 1446 By Federal Courts In Pennsylvania

24. Section 1446(b)(1) provides for a thirty-day limitation period to file a notice of removal. The Third Circuit holds that a writ of summons, contemplated by Pennsylvania law, cannot serve as the “initial pleading that triggers the 30-day removal period for removal” under Section 1446(b)(1). *Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 223 (3d Cir. 2005). Courts in this District have held that the 30-day limitation period in Section 1446(b)(1) is triggered by the receipt of the complaint. *See, e.g., Gladkikh v. Lyle Indus., Inc.*, No. 3CV052402, 2006 WL 266100, at *1–2 (M.D. Pa. Feb. 1, 2006).

25. Section 1446(c)(1) contains a one-year limitation that applies to the removal of cases based on diversity of citizenship. There is a split among the cases in the Middle District of Pennsylvania as to the interpretation of this one-year limitation period.

A. One Court In This District Has Held That The One-Year Limitation Does Not Apply To Cases In Which Only A Writ Of Summons Has Been Filed

26. One case in this District has held that the one-year limitation does not apply to cases in which only a writ of summons has been filed. *Heffran v. State Auto Prop. & Cas. Ins. Co.*, No. 3:13-cv-513, 2013 WL 4041171, at *4 n.3 (M.D. Pa. Aug. 7, 2013) (holding that defendant's removal of a complaint that was filed more than one year after writ of summons was not time barred by the one-year limitation period). The court in *Heffran* concluded that the one-year limitation *only* applies to cases where the initial complaint filed in state court is not removable on the basis of diversity jurisdiction. *Id.* Two other district courts in Pennsylvania have reached the same conclusion. *See Parker Hannifan Corp. v. Fed. Ins. Co.*, No. 13-cv-1456, 2014 WL 2457408, at *6 (W.D. Pa. May 29, 2014); *Sheller, Ludwig & Sheller v. Catalano & Plache, LLC, et al.*, No. 06-cv-3806, 2006 WL 3097837, at *2 (E.D. Pa. Oct. 27, 2006).

27. Based on the plain reading of the statute, these courts hold that the phrase, "If the case stated by the *initial pleading* is not removable," modifies the

provision containing the one-year limitation provision. *See Heffran*, 2013 WL 4041171, at *4 n.3; *Parker*, 2014 WL 2457408, at *6. These courts note that an “initial pleading” means a plaintiff’s complaint. Accordingly, the language providing that a “case may not be removed” on the basis of diversity jurisdiction “more than 1 year after commencement of the action,” applies *only* where an initial complaint does not show a basis for diversity jurisdiction. 28 U.S.C. § 1446(c)(1).

28. In the most recent decision, Chief Judge Conti held that the district court decisions “imposing the one-year time limit on *all* diversity cases whether or not removable by the initial pleading disregard the plain language Section 1446(b) and the court of appeals’ decision in *Sikirica*.” *Parker*, 2014 WL 2457408, at *6.

29. In *Heffran*, the court further noted that the one-year limitation was not intended by Congress to apply when only a writ of summons has been filed in state court. Rather, the “one-year time limit was intended to remedy the anomalous situation where a change in the parties late in the litigation allows a party to remove for the first time.” *Heffran*, 2013 WL 4041171, at *4 n.3 (quoting *Ariel Land Owners, Inc. v. Dring*, 351 F.3d 611, 615 (3d Cir. 2003)).

30. Therefore, in these cases, the courts held that a defendant’s removal of a complaint within 30 days of its receipt was *not* time barred by the one-year limitation, even where the removal was filed more than one year after the filing of

the writ of summons in state court. *See Parker*, 2014 WL 2457408, at *6; *Heffran*, 2013 W 4041171, at *4 n.3; *Sheller*, 2006 WL 3097837, at *2.

B. Certain Cases In This District Hold That The One-Year Limitation Runs From The Filing Of A Writ of Summons

31. Other cases in the Middle District of Pennsylvania have construed the one-year limitation in Section 1446(c)(1) as commencing from the date that the writ of summons is filed in Pennsylvania state court, regardless of whether an “initial pleading” has been filed that is not removable. *See, e.g., Kowalski v. PBM Logistics, LLC*, No. 4:cv-12-1158, 2012 WL 3890249, at *5 (M.D. Pa. Aug. 6, 2012); *Donato-Cook v. State Farm & Cas. Co.*, No. 3:09-cv-0587, 2009 WL 2169168, at *2 (M.D. Pa. July 20, 2009); *Namey v. Malcolm*, 534 F. Supp. 2d 494, 497-98 (M.D. Pa. 2008); *Penn Patio Sunrooms, Inc. v. Ohio Cas. Ins. Co.*, No. 3:08-CV-0120, 2008 WL 919543, at *2 (M.D. Pa. Mar. 31, 2008); *see also Corinthian Marble & Granite v. T.D. Bank*, No. 12-cv-3744, 2013 WL 272757, at *5 (E.D. Pa. Jan. 24, 2013); *Samii v. Allstate Ins. Co.*, No. 10-cv-2408, 2010 WL 3221924, at *1 (E.D. Pa. Aug. 12, 2010).

32. Focusing on the language in Section 1446(c)(1) regarding the “commencement of the action,” these courts have noted that under the Pennsylvania Rules of Civil Procedure, an action may be “commenced” by the filing of either a praecipe for a writ of summons or a complaint in Pennsylvania state court. *See Penn Patio*, 2008 WL 919543, at *2, citing Pa. R. Civ. P. 1007.

33. Therefore, in these cases, the courts held that a defendant's removal of a complaint *was* time barred by the one-year limitation if it was filed more than one year after the filing of the writ of summons in state court. *See, e.g., Kowalski*, 2012 WL 3890249, at *5; *Donato-Cook*, 2009 WL 2169168 at *2.

34. There is a split in district court authority, however, as to whether the one-year limitation runs during the period that a state court case is subject to a stay. One case in this district has held that the one-year limitation runs even while the state court case was stayed. *See Donato-Cook*, 2009 WL 2169168, at *3 (holding that one-year limitation ran during time period that state trial court stayed defendant's rule to file complaint).

35. Another district court in Pennsylvania has held that the one-year limitation does *not* run during the time period that the state court action is stayed. *See Cabibbo v. Einstein/Noah Bagel Partners, L.P.*, 181 F. Supp. 2d 428, 430 (E.D. Pa. 2002) (holding that the one-year limitations period did not run while suit in state court was automatically stayed by bankruptcy proceedings).

III. Plaintiffs Have Filed A Complaint For Declaratory Judgment To Resolve The Uncertainty Of Its Right Of Removal To Federal Court

36. As certain cases interpret Section 1446(c)(1), Plaintiffs have lost their statutory right of removal because the one-year limitation period will expire on July 11, 2014, without Spanier filing a complaint in the Centre County action. In stark contrast, as one case in this District has held, the one-year limitation, on its

face, does not apply here. To resolve this uncertainty, Plaintiffs have filed this complaint for declaratory judgment that the plain language of Section 1446 controls and that the one-year limitation period has not been triggered by Spanier's filing of the writ of summons in the Centre County action.

37. Such a declaratory judgment will also be critical to the numerous other defendants that face the uncertainty of whether the one-year limitation period begins to run when a writ of summons is filed. The sheer number of decisions issued by Pennsylvania district courts as to operation of the one-year limitation suggests that a significant number of defendants have been served with a writ of summons but—for one reason or another—did not receive a complaint until more than one year later.

38. Plaintiffs have no other remedy available to them except to seek this declaratory judgment in federal court. Despite exhausting every possible procedural device to obtain a complaint in the Centre County action, Spanier's obligation to file a complaint remains stayed. In fact, the state trial court rejected Plaintiffs' argument that the entry of the stay unduly prejudices their right of removal because there is a "possibility" that a federal court may grant an equitable exception to the one-year limitation. The state appellate court even refused to consider Plaintiffs' appeal, on the basis that Plaintiffs have not actually suffered

the loss of their removal right because a federal court may grant them an equitable exception to the one-year limitation.

39. But neither the state courts nor Plaintiffs can predict how a federal district court may rule. Nor should Plaintiffs be forced to wager their removal right—to which they are otherwise entitled—on how a federal district court may someday rule. It is evident that under the rulings in this District cited above, Plaintiffs' removal of Spanier's complaint—when it is filed—from Centre County to federal court will be time barred by the one-year limitation. Accordingly, a declaratory judgment is imperative to resolving the uncertainty of the interpretation of the one-year limitation.

COUNT ONE: DECLARATORY JUDGMENT

40. Plaintiffs incorporate all of the allegations in paragraphs 1 through 39 above, as if set forth fully herein.

41. Section 1446(b)(3) provides, "Except as provided in subsection (c), if the case stated by the initial pleading is not removable," a notice of removal may be filed within 30 days of receipt by the defendant of an amended pleading, motion, order, or other paper showing the basis for removal. 28 U.S.C. § 1446(b)(3). "Initial pleading" has been interpreted to mean the filing of a plaintiff's complaint in state court.

42. Section 1446(c)(1) provides that “a case may not be removed under subsection (b)(3)” on the basis of diversity jurisdiction “more than 1 year after commencement of the action.” 28 U.S.C. § 1446(c)(1).

43. Based on the plain language of Section 1446(c)(1), the one-year limitation set forth therein applies only to those cases in which the initial complaint is not removable on the basis of diversity of citizenship.

44. Thus, the one-year limitation period does not apply where the plaintiff has filed only a writ of summons in state court.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment on their behalf, declaring that the one-year limitation period set forth in 28 U.S.C. § 1446(c)(1) does not apply to Louis J. Freeh’s and Freeh Sporkin & Sullivan, LLP’s right to remove the state court action captioned, *Spanier v. Freeh, et al.*, No. 2013-2707 (Centre Cnty. Court of Common Pleas) to federal court, where the plaintiff in the state court action, Graham B. Spanier, has filed only a writ of summons.

COUNT TWO: DECLARATORY JUDGMENT

45. Plaintiffs incorporate all of the allegations in paragraphs 1 through 44 above, as if set forth fully herein.

46. On July 11, 2013, Spanier filed a writ of summons in the Centre County action. On September 12, 2013, Spanier filed an Amended Writ of

Summons. On September 30, 2013, Plaintiffs filed a praecipe to file complaint with the prothonotary and a rule to file complaint was issued to Spanier on the same day. In response, Spanier filed a motion to stay the Centre County action pending the resolution of his criminal proceedings.

47. On February 25, 2014, the state trial court granted Spanier's motion and entered an order staying the Centre County action until Spanier's criminal proceedings are resolved.

48. To the extent that the Court holds that the one-year limitation applies to Plaintiffs' right of removal and begins to run from the filing of Spanier's writ of summons, the one-year limitation period should be equitably tolled, as a matter of law, during the time period that the Centre County action is stayed.

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment on their behalf, declaring that if the one-year limitation period set forth in 28 U.S.C. § 1446(c)(1) bars Louis J. Freeh's and Freeh Sporkin & Sullivan, LLP's right to remove the state court action captioned, *Spanier v. Freeh, et al.*, No. 2013-2707 (Centre Cnty. Court of Common Pleas) to federal court, the one-year limitation period does not apply during the time period that the state court action is stayed.

Dated: July 8, 2014

Respectfully submitted,



Robert C. Heim (Pa. 15758)

Michael L. Kichline (Pa. 62293)

Asha T. Mehrotra (Pa. 315176)

(*pro hac vice* application to be submitted)

William T. McEnroe (Pa. 308821)

Cira Centre

2929 Arch Street

Philadelphia, PA 19104-2808

(215) 994-4000 (telephone)

(215) 994-2222 (facsimile)

*Attorneys for Plaintiffs Louis J. Freeh and
Freeh Sporkin & Sullivan, LLP*

EXHIBIT 1



Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

CENTRE County

For Prothonotary Use Only:	2013 JUN 1
Docket No: 2013-2707	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:		3:26
<input type="checkbox"/> Complaint	<input checked="" type="checkbox"/> Writ of Summons	<input type="checkbox"/> Petition
<input type="checkbox"/> Transfer from Another Jurisdiction		<input type="checkbox"/> Declaration of Taking
Lead Plaintiff's Name: GRAHAM B. SPANIER	Lead Defendant's Name: LOUIS J. FREEH	
Are money damages requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Dollar Amount Requested: (check one)	<input type="checkbox"/> within arbitration limits <input checked="" type="checkbox"/> outside arbitration limits
Is this a Class Action Suit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an MDJ Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Name of Plaintiff/Appellant's Attorney: ELIZABETH K. AINSLIE (PA. I.D. NO. 35870)		
<input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)		

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input checked="" type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____	CIVIL APPEALS Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____

Updated 1/1/2011

JURY TRIAL IS DEMANDED. AN ASSESSMENT OF DAMAGES HEARING IS REQUIRED.

Attorneys for Plaintiff Graham B. Spanier

SCHNADER HARRISON SEGAL & LEWIS
LLP
Elizabeth K. Ainslie (Pa. I.D. No. 35870)
eainslie@schnader.com
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
Telephone: (215) 751-2000
Facsimile: (215) 751-2205

GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH, FREEH SPORKIN &
SULLIVAN, LLP, and PEPPER HAMILTON
LLP (as successor by merger to FREEH
SPORKIN & SULLIVAN, LLP),

Defendants.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

No. 2013-2707

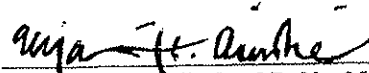
2013 JUL 11 PM 3:25

PRAECIPE TO ISSUE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons to defendants Louis J. Freeh, Freeh Sporkin & Sullivan, LLP, and Pepper Hamilton LLP, as successor by merger to Freeh Sporkin & Sullivan, LLP, in the above-captioned matter.

Respectfully submitted,



Elizabeth K. Ainslie (Pa. I.D. No. 35870)
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
Telephone: 215-751-2000
Facsimile: 215-751-2205

Attorney for Plaintiff Graham B. Spanier

Dated: July 11, 2013

COURT OF COMMON PLEAS

Term, 20 ___ No. 2013-2707

2013 JUL 11 PM 3:26

GRAHAM B. SPANIER

VS.

LOUIS J. FREEH, FREEH SPORKIN &
SULLIVAN, LLP, and PEPPER HAMILTON LLP
(as successor by merger to FREEH SPORKIN &
SULLIVAN, LLP)

SUMMONS

CP-97

Commonwealth of Pennsylvania
Centre County

SUMMONS
CITACION

GRAHAM B. SPANIER

COURT OF COMMON PLEAS

Term, 20_____

No. 2013-2707

vs.

LOUIS J. FREEH, FREEH SPORKIN &
SULLIVAN, LLP, and PEPPER HAMILTON
LLP (as successor by merger to FREEH
SPORKIN & SULLIVAN, LLP)

To⁽¹⁾

LOUIS J. FREEH
100 Bentley Lane
Wilmington, DE 19807

FREEH SPORKIN & SULLIVAN, LLP
2445 M Street NW
Washington, DC 20037

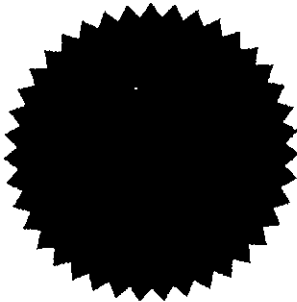
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103

You are notified that the Plaintiff⁽²⁾
Usted esta avisado que el demandante⁽²⁾

GRAHAM B. SPANIER

BY PAPER FILED, THE WITHIN ACTION IS
REISSUED THIS 2nd DAY OF Aug, 2013
Debra C Emmel
PROTHONOTARY

Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.



By Debra C Emmel

Date July 11, 2013

⁽¹⁾ Name(s) of Defendant(s)
⁽²⁾ Name(s) of Plaintiff(s)

Prothonotary

Check Number: 24863
Check Date: Jul 11, 2013

Duplicate
Check Amount: \$134.50

Item to be Paid - Description	Discount Taker	Amount Paid
Spanier, Graham		134.50

Check Number: 24863

Jul 11, 2013

Memo: Spanier

134.50

One Hundred Thirty-Four and 50/100 Dollars

Prothonotary
Centre County Courthouse
Belfonte, PA 16823

Duplicate



JURY TRIAL IS DEMANDED. AN ASSESSMENT OF DAMAGES HEARING IS REQUIRED.

Attorneys for Plaintiff Graham B. Spanier

SCHNADER HARRISON SEGAL & LEWIS
LLP
Elizabeth K. Ainslie (Pa. I.D. No. 35870)
eainslie@schnader.com
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
Telephone: (215) 751-2000
Facsimile: (215) 751-2205

GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH and FREEH SPORKIN &
SULLIVAN, LLP,

Defendants.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

No. 2013-2707

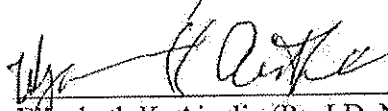
PRAECIPE TO ISSUE AMENDED WRIT OF SUMMONS

FILED FOR RECORD
2013 SEP 12 PH 3:05
DEBRA C. IYEMEL
PROTHONOTARY
CENTRE COUNTY, PA

TO THE PROTHONOTARY:

Kindly issue an Amended Writ of Summons to defendants Louis J. Freeh and Freeh Sporkin & Sullivan, LLP, in the above-captioned matter.

Respectfully submitted,



Elizabeth K. Ainslie (Pa. I.D. No. 35870)
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
Telephone: 215-751-2000
Facsimile: 215-751-2205

Attorney for Plaintiff Graham B. Spanier

Dated: September 12, 2013

C.P.07

Commonwealth of Pennsylvania

SUMMONS
CITACION

Centre County

GRAHAM B. SPANIER

COURT OF COMMON PLEAS

_____ Term, 20_____

No. 2013-2707

vs.

LOUIS J. FREEH and FREEH SPORKIN &
SULLIVAN, LLP

To⁽¹⁾

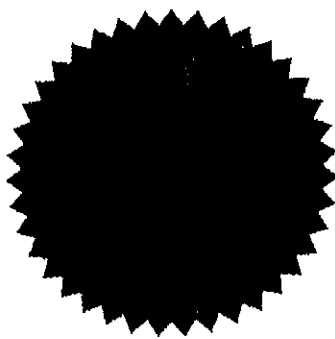
LOUIS J. FREEH
100 Bentley Lane
Wilmington, DE 19807

FREEH SPORKIN & SULLIVAN, LLP
2445 M Street NW
Washington, DC 20037

You are notified that the Plaintiff⁽²⁾
Usted esta avisado que el demandante⁽²⁾

GRAHAM B. SPANIER

Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.



By Debra J. Inman
Prothonotary

Date Sept 12, 2013

⁽¹⁾ Name(s) of Defendant(s)
⁽²⁾ Name(s) of Plaintiff(s)

COURT OF COMMON PLEAS

_____ Term, 20 ____ No. 2013-2707

GRAHAM B. SPANIER

vs.

LOUIS J. FREEH and FRESH SPORKIN &
SULLIVAN, LLP

SUMMONS

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Louis J. Freeh and Freeh Sporkin & Sullivan, LLP</p> <p>(b) County of Residence of First Listed Plaintiff <u>New Castle County, DE</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)</p> <p>Robert C. Heim, Michael L. Kichline, William T. McEnroe, Dechert LLP, 2929 Arch Street, Philadelphia, PA 19104</p>	<p>DEFENDANTS</p> <p>Graham B. Spanier</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p> <p>Elizabeth K. Ainslie, Schnader Harrison Segal & Lewis, LLP, 1600 Market Street, Suite 3600, Philadelphia, PA 19103</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1331, 1332, 2201, 2202

Brief description of cause:
Declaratory Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 07/08/2014

SIGNATURE OF ATTORNEY OF RECORD: Robert C. Heim

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT 2



Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

CENTRE County

For Prothonotary Use Only:	2013 JUL 11 11:03:26
Docket No: 2013-0707	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Writ of Summons <input type="checkbox"/> Petition <input type="checkbox"/> Transfer from Another Jurisdiction <input type="checkbox"/> Declaration of Taking	
Lead Plaintiff's Name: GRAHAM B. SPANIER	Lead Defendant's Name: LOUIS J. FREEH
Are money damages requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Dollar Amount Requested: (check one) <input type="checkbox"/> within arbitration limits <input checked="" type="checkbox"/> outside arbitration limits
Is this a Class Action Suit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an MDJ Appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: ELIZABETH K. AINSLIE (PA. I.D. NO. 35870) <input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort) <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input checked="" type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____	CONTRACT (do not include Judgments) <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other <input type="checkbox"/> Other: _____	CIVIL APPEALS <input type="checkbox"/> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____
MASS TORT <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____	REAL PROPERTY <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____	MISCELLANEOUS <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____

Updated 1/1/2011

**JURY TRIAL IS DEMANDED. AN
ASSESSMENT OF DAMAGES HEARING
IS REQUIRED.**

*Attorneys for Plaintiff Graham B.
Spanier*

SCHNADER HARRISON SEGAL & LEWIS
LLP
Elizabeth K. Ainslie (Pa. I.D. No. 35870)
eainslie@schnader.com
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
Telephone: (215) 751-2000
Facsimile: (215) 751-2205

GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH, FREEH SPORKIN &
SULLIVAN, LLP, and PEPPER HAMILTON
LLP (as successor by merger to FREEH
SPORKIN & SULLIVAN, LLP),

Defendants.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

No. 2013-2707

2013 JUN 11 PM 3:25

PRAECIPE TO ISSUE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons to defendants Louis J. Freeh, Freeh Sporkin & Sullivan, LLP, and Pepper Hamilton LLP, as successor by merger to Freeh Sporkin & Sullivan, LLP, in the above-captioned matter.

Respectfully submitted,



Elizabeth K. Ainslie (Pa. I.D. No. 35870)
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
Telephone: 215-751-2000
Facsimile: 215-751-2205

Attorney for Plaintiff Graham B. Spanier

Dated: July 11, 2013

COURT OF COMMON PLEAS

Term, 20 No. 2015-0707

2013 JUL 11 PM 3:26

GRAHAM B. SPANIER

LOUIS J. FREEH, FREEH SPORKIN &
SULLIVAN, LLP, and PEPPER HAMILTON LLP
(as successor by merger to FREEH SPORKIN &
SULLIVAN, LLP)

vs.

SUMMONS

CP-97

Commonwealth of Pennsylvania

SUMMONS
CITACION

Centre County

GRAHAM B. SPANIER

COURT OF COMMON PLEAS

Term, 20_____

No. 2013-2707

vs.

LOUIS J. FREEH, FREEH SPORKIN &
SULLIVAN, LLP, and PEPPER HAMILTON
LLP (as successor by merger to FREEH
SPORKIN & SULLIVAN, LLP)

To⁽¹⁾

LOUIS J. FREEH
100 Bentley Lane
Wilmington, DE 19807

FREEH SPORKIN & SULLIVAN, LLP
2445 M Street NW
Washington, DC 20037

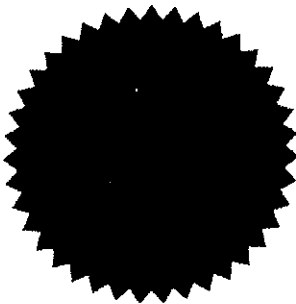
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103

You are notified that the Plaintiff⁽²⁾
Usted esta avisado que el demandante⁽²⁾

GRAHAM B. SPANIER

BY PAPER FILED, THE WITHIN ACTION IS
REISSUED THIS 2nd DAY OF Aug, 2013
Debra C. Emmel
PROTHONOTARY

Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.



By Debra C. Emmel

Date July 11, 2013

⁽¹⁾ Name(s) of Defendant(s)
⁽²⁾ Name(s) of Plaintiff(s)

Item to be Paid - Description	Discount Taker	Amount Paid
Spanier, Graham		134.50

Check Number: 24863
Check Date: Jul 11, 2013

Duplicate
Check Amount: \$134.50

Check Number: 24863

Jul 11, 2013

Memo: Spanier

134.50

One Hundred Thirty-Four and 50/100 Dollars

Prothonotary
Centre County Courthouse
Belleville, PA 16823

Duplicate

EXHIBIT 3



JURY TRIAL IS DEMANDED. AN ASSESSMENT OF DAMAGES HEARING IS REQUIRED.

Attorneys for Plaintiff Graham B. Spanier

SCHNADER HARRISON SEGAL & LEWIS
LLP
Elizabeth K. Ainslie (Pa. I.D. No. 35870)
eainslie@schnader.com
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
Telephone: (215) 751-2000
Facsimile: (215) 751-2205

GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH and FREEH SPORKIN &
SULLIVAN, LLP,

Defendants.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

No. 2013-2707

PRAECIPE TO ISSUE AMENDED WRIT OF SUMMONS

FILED FOR RECORD
2013 SEP 12 PM 3:05
DEBRA C. JIMEL
PROTHONOTARY
CENTRE COUNTY, PA

TO THE PROTHONOTARY:

Kindly issue an Amended Writ of Summons to defendants Louis J. Freeh and Freeh Sporkin & Sullivan, LLP, in the above-captioned matter.

Respectfully submitted,



Elizabeth K. Ainslie (Pa. I.D. No. 35870)
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
Telephone: 215-751-2000
Facsimile: 215-751-2205

Attorney for Plaintiff Graham B. Spanier

Dated: September 12, 2013

CP#

Commonwealth of Pennsylvania

SUMMONS
CITACION

Centre County

GRAHAM B. SPANIER

COURT OF COMMON PLEAS

Term, 20_____

No. 2013-2707

vs.

LOUIS J. FREEH and FREEH SPORKIN &
SULLIVAN, LLP

To⁽¹⁾

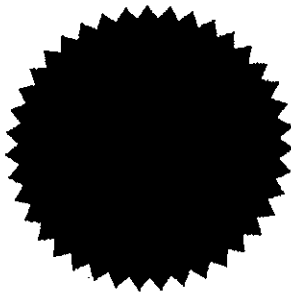
LOUIS J. FREEH
100 Bentley Lane
Wilmington, DE 19807

FREEH SPORKIN & SULLIVAN, LLP
2445 M Street NW
Washington, DC 20037

You are notified that the Plaintiff⁽²⁾
Usted esta avisado que el demandante⁽²⁾

GRAHAM B. SPANIER

Has (have) commenced an action against you.
Ha (han) iniciado una accion en contra suya.



By Debra J. Inman
Prothonotary

Date Sept 12, 2013

⁽¹⁾ Name(s) of Defendant(s)

⁽²⁾ Name(s) of Plaintiff(s)

10-208 (Rev. 8/00)

COURT OF COMMON PLEAS

_____ Term, 20 ____ No. 2013-2787

GRAHAM B. SPANIER

vs.

LOUIS J. FREEH and FREEH SPORKIN &
SULLIVAN, LLP

SUMMONS

EXHIBIT 4



MILLER, KISTLER & CAMPBELL

By: Lisa M. Welsh (Pa. 307382)
720 South Atherton Street, Suite 201
State College, PA 16801-4669
(814) 234-1500 (phone)
(814) 234-1549 (facsimile)

DECHERT LLP

By: Robert C. Heim (Pa. 15758)
Michael L. Kichline (Pa. 62293)
Asha T. Mehrotra (Pa. 315176)
William T. McEnroe (Pa. 308821)

Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-4000 (phone)
(215) 994-2222 (facsimile)

*Attorneys for Defendants Louis J. Freeh and
Freeh Sporkin & Sullivan, LLP*

GRAHAM B. SPANIER

Plaintiff,

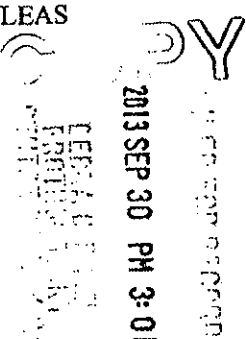
v.

LOUIS J. FREEH and FREEH SPORKIN
& SULLIVAN, LLP,

Defendants.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

NO. 2013-2707



PRAECIPE TO FILE COMPLAINT

TO THE PROTHONOTARY:

Please enter a Rule upon Plaintiff to file a Complaint within 20 days hereof or suffer the entry of a Judgment of Non Pros.

/s/ Robert C. Heim
Robert C. Heim (Pa. 15758)
Michael L. Kichline (Pa. 62293)
Asha T. Mehrotra (Pa. 315176)
William T. McEnroe (Pa. 308821)
DECHERT LLP
Cira Centre

2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-4000 (phone)
(215) 994-2222 (facsimile)

Lisa M. Welsh (Pa. 307382)
Miller, Kistler & Campbell
720 South Atherton Street, Suite 201
State College, PA 16801-4669
(814) 234-1500 (phone)
(814) 234-1549 (facsimile)

*Attorneys for Defendants Louis J. Freeh and
Freeh Sporkin & Sullivan, LLP*

MILLER, KISTLER & CAMPBELL

By: Lisa M. Welsh (Pa. 307382)
720 South Atherton Street, Suite 201
State College, PA 16801-4669
(814) 234-1500 (phone)
(814) 234-1549 (facsimile)

DECHERT LLP

By: Robert C. Heim (Pa. 15758)
Michael L. Kichline (Pa. 62293)
Asha T. Mehrotra (Pa. 315176)
William T. McEnroe (Pa. 308821)

Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
(215) 994-4000 (phone)
(215) 994-2222 (facsimile)

*Attorneys for Defendants Louis J. Freeh and
Freeh Sporkin & Sullivan, LLP*

GRAHAM B. SPANIER

Plaintiff,

v.

LOUIS J. FREEH and FREEH SPORKIN
& SULLIVAN, LLP,

Defendants.

COURT OF COMMON PLEAS
OF CENTRE COUNTY

NO. 2013-2707

RULE TO FILE COMPLAINT

AND NOW, this 30 day of Sept, 2013, a Rule is hereby granted upon plaintiff
to file a Complaint herein with 20 days after service hereof or suffer the entry of a Judgment of
Non Pros.

Debra C. Inemel
Prothonotary

CERTIFICATE OF SERVICE

I, Asha T. Mehrotra, hereby certify that I caused to be served on September 30, 2013 a true and correct copy of the Praecipe to File Complaint by first-class mail upon the following:

Elizabeth K. Ainslie, Esq.
SCHNADER HARRISON
SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103-7286
Attorney for Plaintiff

/s/ Asha T. Mehrotra
Asha T. Mehrotra

EXHIBIT 5

Anslie
Heim
Kichline
Mehrotra
McEnroe
Welsh



**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW**

GRAHAM B. SPANIER,)
Plaintiff,)
v.)
LOUIS J. FREEH and FREEH SPORKIN,)
& SULLIVAN, LLP,)
Defendants.)

No. 2013-2707

Attorney for Plaintiff:
Attorneys for Defendants:

Elizabeth K. Anslie, Esquire
Robert C. Heim, Esquire
Michael L. Kichline, Esquire
Asha T. Mehrotra, Esquire
William T. McEnroe, Esquire
Lisa M. Welsh, Esquire

2014 FEB 25 PM 4:19

OPINION AND ORDER

Presently before the Court is a Motion to Stay Civil Proceedings filed by Graham B. Spanier (hereinafter "Plaintiff"). Argument was held on Plaintiff's Motion on January 7, 2014 and each party submitted filings in support of their position. Upon review of the documents and argument submitted by each party, Plaintiff's Motion to Stay Civil Proceedings is hereby **GRANTED.**

Background

On July 11, 2013, Plaintiff filed a Praecipe for a Writ of Summons to initiate a defamation action against Louis J. Freeh, Freeh Sporkin & Sullivan, LLP (hereinafter "Defendants") and Pepper Hamilton, LLP (as successor by merger to Freeh Sporkin & Sullivan, LLP.) A writ was issued on the same day and reissued by request of Plaintiff on August 2, 2013. An amended writ was issued on September 12, 2013, dropping Pepper Hamilton, LLP from the instant action.

O RD S

Defendants filed a Praecipe to File Complaint on September 30, 2013, and a Rule was issued the same day. On October 18, 2013, Plaintiff filed a Motion to Stay Civil Proceedings, requesting a stay in the above-captioned action until the ongoing criminal action against him in Dauphin County is resolved. Argument was held on Plaintiff's Motion on January 7, 2014 and each party submitted filings in support of their position.

Discussion

Stays in civil actions pending the resolution of ongoing criminal actions are governed by a six-factor balancing test. The factors a court must weigh are as follows: 1) extent of overlap between the cases; 2) status of the case; 3) interest in proceeding expeditiously weighed against prejudice caused by delay; 4) private interests of and burden on the defendant; 5) interests of the Court; and 6) public interest. *See In Re: Adelpia Communications Securities Litigation*, 2003 WL 22358819 (E.D. Pa. 2003); *Anderson v. Scott*, 2011 WL 10795429 (C.P. Lawrence 2011). This test “[safeguards] an individual’s Fifth Amendment privilege against any unnecessary privilege that befalls the other party as a result.” *Anderson* at *1. Accordingly, if possible, a Court should “accommodate a party’s Fifth Amendment interests” if it can do so without placing the opposing party at a disadvantage. *Id.* The Court will address each factor in turn.

I. Extent of Overlap

The first factor this Court must consider is the extent to which the issues in the criminal and civil cases overlap. Plaintiff has been charged in Dauphin County with endangering the welfare of children, perjury, obstruction of justice, criminal conspiracy, and failure to report sexual assault. The document authored and released by Defendants on which Plaintiff partially bases his claim (hereinafter “the Freeh Report”) concluded Plaintiff and several other university employees were complicit in concealing the activities of Gerald Sandusky from the Board of

Trustees, the University community, and authorities. The Freeh Report further concluded that Plaintiff and other university employees, by their nonfeasance, failed to protect against a child sexual predator and permitted him to operate unchecked for more than a decade after learning of the incident which occurred in the Lasch Building in 2001. These are, in essence, the same allegations supporting the charges filed against Plaintiff in Dauphin County—that Plaintiff intentionally concealed Sandusky’s child abuse.

Defendants cite a decision by the Honorable Thomas G. Gavin, specially presiding over *McQueary v. Pennsylvania State University* (Centre County Docket Number 2012-1804), in which Judge Gavin denied the Pennsylvania State University’s motion for stay pending the resolution of the criminal charges pending against Plaintiff, Timothy M. Curley, and Gary C. Schultz. However, the instant case is distinguishable. In *McQueary*, the speech which is the alleged basis of the defamation count (i.e., a statement by Plaintiff in support of Curley and Schultz) is not related to the criminal charges filed against Plaintiff, Curley, or Schultz. Conversely, the allegedly defamatory statements in the Freeh Report are very similar to the basis of the charges filed against Plaintiff, and the outcome of the criminal case may affect the case *sub judice*.

The Court finds this factor weighs in favor of granting Plaintiff’s Motion.

II. Status of Criminal Case

The second factor this Court must consider in determining whether to grant a stay is the status of the criminal case, including whether the Plaintiff has been indicted. “A court is most likely to grant a stay of civil proceedings where an indictment has been returned.” *Anderson*, 2011 WL 10795429 at *2, citing *State Farm Mutual Auto Insurance Co. v. Bechham-Easely*, 2002 WL 31111766 (E.D. Pa. 2002).

The Dauphin County District Attorney has formally charged Plaintiff with endangering the welfare of children, perjury, obstruction of justice, criminal conspiracy, and failure to report sexual assault. Curley and Schultz have also been formally charged. There is a substantial risk, therefore, that any or all of these individuals could invoke their Fifth Amendment rights during the civil action and refuse to participate in the discovery process. This would then subject Plaintiff to the negative inferences that a jury is permitted to draw from the assertion of a witness's right against self-incrimination.

It is anticipated that Plaintiff's criminal trial will be held sometime this year. Should the civil case proceed prior to the resolution of the criminal trial and should Plaintiff decline to assert his Fifth Amendment rights, any testimony he offered could be used against him in his criminal trial. Further, any evidence offered in the civil case would also be relevant to the criminal case, including anything stated in Plaintiff's complaint, which requires a sworn verification. Thus, Plaintiff may be at risk of exposing himself to criminal liability by proceeding. Conversely, should Plaintiff choose to refrain from testifying, from including certain allegations in his complaint, or from presenting certain evidence in his pursuit of the civil case, an underdeveloped and incomplete record may result. *See Anderson*, 2011 WL 10795429.

The Court finds this factor weighs in favor of granting Plaintiff's Motion.

III. Non-Moving Party's Interest in Proceeding Expeditiously Weighed Against Prejudice Caused by Delay

In this case, Plaintiff has requested a stay in the civil case he initiated. Therefore, the analysis of the factor that would normally balance the plaintiff's interest as the non-moving party in proceeding expeditiously against the prejudice caused by a delay is slightly different, as this Court must balance Defendants' interest in proceeding expeditiously in this case against the prejudice caused to Defendants by any delay.

Defendants argue granting the stay would prejudice them as they will not have access to Plaintiff's complaint to form a basis for Plaintiff's defamation action, witnesses may forget pertinent facts if the Court does not proceed expeditiously, and allowing the allegations against them to remain unanswered is severely damaging to their reputation. The Court acknowledges there is generally a policy in Pennsylvania to permit defendants in defamation cases to make an investigation of claims made against them while the evidence is still fresh in the mind of witnesses. *Evans v. Philadelphia Newspapers*, 601 A.2d 330, 333 (Pa.Super. 1991). In this particular matter, however, it is not likely that prospective witnesses will forget important details. The events giving rise to the instant litigation were highly publicized and it is quite unlikely those involved will forget details to such a degree that would warrant the denial of a stay.

Further, resolution of the criminal action may eliminate the necessity of litigating certain issues in the civil case due to the close relation of the nature of the allegations in each case and could potentially encourage settlement or withdrawal of some or all of the claims, outcomes that could be beneficial to Defendants.

Finally, due to the requirements of the Speedy Trial Act, the burden of waiting to dispense with the civil claim on Defendants is lessened.

The Court finds this factor does not weigh significantly in favor of denying a stay.

IV. Private Interests of and Burden on Moving Party

As with the preceding factor, the Court's analysis must necessarily differ, as Plaintiff is the moving party. The Court must balance the private interests of Plaintiff in having the stay granted against the burden on him should the Court deny the stay.

As discussed above, should this Court deny Plaintiff's request for a stay, Plaintiff will bear the burden of having to litigate his defamation claim and defend himself in the Dauphin

County criminal action. In addition to incurring additional expenses in litigating the two actions concurrently, Plaintiff may have to choose between testifying and waiving his Fifth Amendment right against self-incrimination or invoking his Fifth Amendment rights and not testifying in his civil suit, which could place him at a disadvantage in one or both proceedings. *See Cotter v. State Civil Serv. Comm'n*, 297 A.2d 176 (Pa.Cmwlth. 1972) (holding continuance should have been granted where criminal charges were pending against appellant, as “to do otherwise forced the appellant to choose unnecessarily to refrain from testifying in his own defense, and this resulted in an undeveloped and incomplete record.”) Further, even the simple act of filing a complaint, which must contain a verification sworn under penalty of law, could potentially place Plaintiff at a disadvantage in his criminal proceedings by exposing him to criminal liability. Conversely, should Plaintiff choose to exclude certain statements from his complaint, he may potentially be placed at a disadvantage in the civil suit.

In addition, both Curley and Schultz have also been formally charged in Dauphin County with the same crimes as Plaintiff. As discussed above, there is a likely possibility that they will assert their Fifth Amendment rights should Plaintiff or Defendants attempt to depose them or subpoena them to testify at trial. Again, this would result in an incomplete and underdeveloped record.

The Court finds this factor weighs in favor of granting Plaintiff's Motion.

V. Interests of Court

The Court has an interest in expeditiously resolving the cases that come before it. However, the Court also has a strong interest in judicial efficiency. Due to the significant overlap between the case *sub judice* and the criminal case in Dauphin County, resolution of the criminal action may encourage settlement, or may eliminate the necessity of litigating certain

issues in the civil case, which would promote judicial economy.

VI. Public Interest

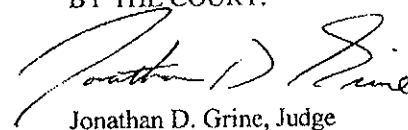
The Court finds that granting Plaintiff's Motion will neither benefit nor hurt the public interest. Although a civil litigant has an interest in the prompt disposition of his or her private claims, the public has a greater interest in the enforcement of the law in criminal cases. *Kaiser v. Stewart*, 1997 WL 66186 (E.D.Pa. 1997).

For the reasons discussed above, Plaintiff's Motion for Stay is **GRANTED**. Accordingly, the following is entered:

ORDER

AND NOW, this 25th day of February, 2014, after hearing and review of the documents submitted by both parties, the Motion for Stay filed by Plaintiff is hereby **GRANTED**.

BY THE COURT:



Jonathan D. Grine, Judge

EXHIBIT 6

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Graham B. Spanier

(b) County of Residence of First Listed Plaintiff Centre County
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Elizabeth K. Ainslie, Schnader Harrison Segal & Lewis LLP
 1600 Market Street, Suite 3600, Philadelphia, PA 19103, 215-751-2000

DEFENDANTS
 Kathleen G. Kane

County of Residence of First Listed Defendant Dauphin County
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claim Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1343
 Brief description of cause:
Federal injunction of criminal prosecution pending in Dauphin County, Pennsylvania

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Hon. Todd A. Hoover, Dauphin Cty., PA DOCKET NUMBER CP-22-CR-3615-2013

DATE 3/31/14 SIGNATURE OF ATTORNEY OF RECORD [Signature]
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GRAHAM B. SPANIER,	:	
	:	
Plaintiff,	:	Civil Action No.
	:	
v.	:	
	:	
KATHLEEN G. KANE, in her	:	
capacity as Attorney General of the	:	
Commonwealth of Pennsylvania,	:	
	:	
Defendant.	:	

COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Graham B. Spanier asks this Court to enjoin the prosecution captioned as *Commonwealth v. Graham B. Spanier*, No. CP-22-CR-3615-2013, currently pending in the Court of Common Pleas of Dauphin County, Pennsylvania.

2. Spanier asks this Court to enjoin the prosecution because it was undertaken in bad faith and without a reasonable expectation of obtaining a valid conviction, and because it violated and continues to violate his constitutional right to due process of law.

3. This prosecution, involving allegations that Spanier covered up sex abuse committed by Gerald Sandusky, a retired Pennsylvania State University coach, was undertaken in bad faith by Frank Fina, former Chief Deputy Attorney General of the Criminal Prosecutions Section of the Pennsylvania Attorney General's Office.

4. In summary,

- a. Under color of law, Fina caused Spanier to be charged with perjury, obstruction of justice, failure to report child abuse, conspiracy and endangering the welfare of a child;
- b. The perjury charge is the linchpin of the prosecution; it provided Fina with a mechanism to use the allegedly perjurious testimony not only to claim perjury but also to claim obstruction of justice through that testimony; moreover, Fina used Spanier's testimony in April 2011 as an alleged overt act in an attempt to resuscitate otherwise extinguished charges based on an incident that had occurred more than a decade earlier;
- c. The perjury charge itself was based almost entirely on the testimony of attorney Cynthia Baldwin in October 2012;

- d. Baldwin had herself been a subject of the grand jury investigation;
- e. Baldwin had also acted as Spanier's lawyer in connection with this investigation;
- f. Just before Baldwin testified against Spanier in the grand jury in October 2012, Fina represented to the supervising grand jury judge that he would limit his questioning of Baldwin so as to avoid issues of attorney-client privilege;
- g. When Fina actually questioned Baldwin in the grand jury, however, he disregarded his pledge to the Court and, instead, questioned Baldwin extensively about privileged conversations she allegedly had with Spanier;
- h. The Spanier testimony that Fina used as the basis of the perjury charge had been given by Spanier over 18 months earlier, in April 2011, to a different grand jury;
- i. In the grand jury at that time, Fina had asked Spanier at the outset if he was represented by counsel, and Spanier answered Yes, and identified Baldwin as his lawyer;
- j. Fina had, just minutes before and outside Spanier's presence, heard Baldwin tell the supervising grand jury judge that she did

not represent Spanier in that forum, only the university; but when Spanier in the grand jury identified Baldwin as his lawyer, Fina said nothing to correct Spanier's statement and thereby to alert Spanier to the fact that Baldwin was not serving as his lawyer, but instead continued his questioning of Spanier;

- k. Fina thus deliberately obtained uncounselled testimony from Spanier;
- l. The perjury charge that Fina based on that testimony is thus based on Fina's deception, both of Spanier and of the supervising grand jury judge, and on Fina's blatant violation of Spanier's attorney-client privilege;
- m. The infected perjury charge being the linchpin of all of the charges that Fina brought against Spanier, all of the charges are likewise infected by Fina's bad faith.

5. Fina had no realistic expectation of obtaining a valid conviction on the old charges (failure to report child abuse and endangering the welfare of a child). Not only did those charges have no merit,¹ they were barred by the applicable

¹ Fina's prosecution theory revolved around two incidents, one from 1998 (which had been fully investigated and closed by law enforcement) and one

... *Continued*

statutes of limitations and did not legally apply to individuals in Spanier's position.

6. Fina had no realistic expectation of obtaining a valid conviction on the perjury and obstruction of justice charges either, because, even if he succeeded in obtaining a verdict from a jury on the thin and ambiguous evidence he had,² he could not, in light of the constitutional and legal violations outlined herein, obtain a valid conviction on those charges.

Continued from previous page

from 2001 (which also involved Sandusky showering with a boy from The Second Mile). As to the 1998 incident, Fina had two emails on which Spanier was only copied; neither mentioned "child abuse" or even "Sandusky"; and the second of the emails said that the matter had been investigated and no criminal wrongdoing found. Moreover, it is not clear that Spanier ever saw these emails. As to the 2001 incident, Fina had just one, three-part email exchange in which Spanier and his colleagues Gary Schultz and Timothy Curley discussed the proper resolution, for the time being, of the Sandusky incident; this resolution did not involve calling in law enforcement. There is nothing in that exchange to contradict Spanier's repeated statements that he understood this incident to involve "horseplay" rather than child abuse, and as Fina well knew, there was no witness to testify otherwise. That single exchange also offers no support to Fina's alleged "conspiracy of silence"; to the contrary, in the emails Spanier and the other administrators specifically discussed revealing what they knew about the 2001 incident to The Second Mile, which was Sandusky's employer and the boy's caregiver.

² Fina's prosecution theory on these charges rests almost entirely on the emails described in footnote 1 together with Baldwin's conclusory testimony about what Spanier allegedly "knew" when he testified in the grand jury.

THE PARTIES

7. Spanier is a citizen of the United States who resides in State College, in the Middle District of Pennsylvania. Until November 2011, he was President of Penn State.

8. Defendant Kathleen G. Kane is the Attorney General of Pennsylvania, and as such is chief prosecutorial officer in the criminal case against Dr. Spanier. Kane was not Fina's supervisor at the time of the acts and omissions complained of herein and is a named defendant for purposes of injunctive relief only.

JURISDICTION AND VENUE

9. Jurisdiction is invoked on the basis of 28 U.S.C. §§ 1343(3) and 1343(4), in that this cause of action is based on 42 U.S.C. §§1983 and 1985 and under the Constitution of the United States.

10. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in this District.

FACTS

11. At all material times, Penn State was one of the largest and most comprehensive universities in the United States. Penn State operates in more than

140 locations, with 24 campuses, more than 97,000 students and approximately 47,000 employees. It was founded in 1855 and has enjoyed a worldwide reputation for academic excellence.

12. Between 1995 and 2011, Spanier was President of Penn State and was widely respected in that capacity.

13. Penn State was not only a national leader in academics, it was and is a national leader in a broad range of intercollegiate athletics.

14. Between 1966 and November 2011, the head coach of the Penn State football program was Joseph V. Paterno. Paterno had led Penn State football teams to many championships and was revered by many people, especially those associated with Penn State. He died in January 2012.

15. Jerry Sandusky held various positions within the Penn State football program, ultimately becoming defensive coordinator. He retired in 1999.

16. Sandusky was also the founder of The Second Mile, an organization devoted to the social development of disadvantaged youth.

17. On information and belief, sometime in 2009 the Pennsylvania Attorney General's Office began investigating allegations that Sandusky had sexually abused young men and boys under his Second Mile supervision.

18. On information and belief, Fina was one of the principal prosecutors involved in this investigation almost from its inception.

19. When Fina subpoenaed Spanier to appear before the grand jury, Fina had already interviewed Spanier fully. Fina had no evidentiary basis to believe that Spanier was criminally culpable or that Spanier had information that would further the investigation.

20. Spanier testified before the grand jury on April 13, 2011. Baldwin accompanied Spanier to his grand jury appearance, purporting to be his legal counsel for purposes of his grand jury testimony.

21. In proceedings just before Spanier's grand jury testimony, but outside of Spanier's presence, Fina told Judge Barry F. Feudale, the supervising grand jury judge, that Spanier, Schultz and Curley had become subjects of the grand jury investigation, as the Office of Attorney General was pursuing the theory that the three had covered up their knowledge of allegations against Sandusky. *See* 4/13/2011 Proceedings Transcript (attached as Exhibit A) at 7-13. Spanier had never been told that he was a subject of the grand jury investigation.

22. Fina was aware that Baldwin had also appeared in the grand jury as purported legal counsel for Gary Schultz and Timothy Curley in January 2011.

23. In the proceedings just before Spanier's grand jury testimony but outside of Spanier's presence, Baldwin stated that she represented Penn State "solely." Fina was present when Baldwin made that statement. *See* Ex. A at 28 ("MS. BALDWIN: '**Yes, I represent the university solely.**'" (Emphasis added)).

24. Shortly thereafter, when Judge Feudale was advising Spanier of his rights as a witness before the grand jury, the Judge referred to Baldwin as Spanier's counsel. Fina was present and heard this, but Fina said nothing to correct the Judge's statement. *See* Ex. A at 30-31 ("JUDGE FEUDALE:... 'You may at any time discuss your testimony with **your lawyer**... [Y]ou have the right to stop the questioning and appear before me, either alone or, of course, in this case with **your counsel**...'") (Emphasis added)).

25. Fina encouraged Spanier in his belief that Baldwin was serving as his counsel. In front of the grand jury, Fina asked Spanier to identify his attorney. When Spanier identified Baldwin as his legal counsel, Fina said not a word. *See* 4/13/2011 Testimony Transcript (attached as Exhibit B) at 3 ("BY MR. FINA: ... 'Q. Sir, you're represented by counsel today? A. Yes. **Q. Could you just identify counsel? A. Cynthia Baldwin, sitting behind me.** Q. Thank you, sir.'") (Emphasis added)).

26. Nor did Fina object when Baldwin interjected during Spanier's

testimony as if she were his attorney. *See* Ex. B at 9 (“MS. BALDWIN: ‘Excuse me, Mr. Fina. Just a moment. MR. FINA: Yes. THE WITNESS: Justice Baldwin was pointing out that maybe I should clarify one thing...”).

27. Spanier thus reasonably believed that Baldwin was acting as his lawyer and on his behalf in the grand jury.

28. After testifying before the grand jury in April 2011, Spanier heard nothing from Fina or any of his colleagues.

29. In August 2012, undersigned counsel, who had been retained in the aftermath of Spanier’s departure from Penn State, wrote to the Attorney General’s Office and offered to present Spanier for questioning about his grand jury testimony provided he were given a copy of his grand jury transcript. Neither Fina nor anyone else associated with the Attorney General’s Office responded in any way to this offer on Spanier’s behalf.

30. On or about October 19, 2012, Fina elicited a statement from Baldwin, by that time represented by a criminal defense lawyer of her own, of what she might testify to on the prosecution’s behalf if charges were brought against Spanier. *See* 10/19/12 Letter from Fina to DeMonaco (attached as Exhibit E).

31. On October 22, 2012, Fina appeared again before Judge Feudale and, in the presence of Baldwin's criminal defense lawyer, outside counsel for Penn State and others, told Judge Feudale that he intended to put Baldwin before the grand jury. Fina and others told Judge Feudale that serious issues of attorney-client privilege had been raised by Curley and Schultz, who had been charged in connection with the Sandusky investigation, and "perhaps Spanier," who had not been charged. Fina told Judge Feudale that he would come back later for a ruling on these difficult issues, and on the basis of that representation, Judge Feudale approved Fina's use of Baldwin as a grand jury witness solely on the narrow issue of Penn State's response to subpoenas and Orders of Court. *See* 10/22/12 Transcript (attached as Exhibit C) at 2-14 ("**JUDGE FEUDALE: '...Based on the stipulation, I'm satisfied that the testimony can go forward without any inappropriate inferences to be drawn because I don't think that the concern that they may have impacts the investigative role with regard to Sandusky and the response of the Office General Counsel to the various subpoenas and Orders of Court and that is the narrow focus of the testimony. MR. FINA: Yes, Your Honor.'**" (Emphasis added)).

32. On October 26, 2012, Baldwin testified before the grand jury. Instead of maintaining the narrow focus prescribed by Judge Feudale, Fina questioned Baldwin extensively about privileged conversations she claimed to have had with

Spanier in the context of her advising him about the grand jury and its investigation. See 10/26/2012 Transcript (attached as Exhibit D) at 22, 27, 32, 52, 54, 60. (E.g., page 22: “Q. Okay. Now, **tell us, if you would, about your discussions with Spanier** before that interview [with the Office of Attorney General]. I’m specifically interested in, you know, what anticipation of questions he would have going into that interview.” Emphasis added.)

33. On information and belief, Fina never went back to Judge Feudale for a ruling on Baldwin’s attorney-client relationship with Spanier, Curley and Schultz and whether it was legally permissible for Fina to question Baldwin about her communications with Spanier.

34. Neither the charges nor the presentment that accompanied them made reference to any evidence demonstrating a motive to mislead the grand jury or to obstruct justice in any way.

35. On November 1, 2012, less than a week after Baldwin testified, Fina filed a criminal complaint against Spanier charging him with: (1) Perjury, a violation of 18 PA. C.S. § 4902 and a felony of the third degree; (2) Endangering Welfare of Children, a violation of 18 PA. C.S. § 4304, a felony of the third degree (two counts); (3) Obstructing Administration of Law or Other Governmental Function, a violation of 18 PA. C.S. § 5101 and a misdemeanor of the second degree; (4)

Criminal Conspiracy (to Commit Obstructing Administration of Law or Other Governmental Function), a violation of 18 PA. C.S. § 903 and a misdemeanor of the second degree; (5) Failure to Report, a violation of 23 PA. C.S. § 6319, a summary offense; (6) Criminal Conspiracy (to Commit Perjury), a violation of 18 PA. C.S. § 903 and a felony of the third degree; and (7) Criminal Conspiracy (to Commit Endangering Welfare of Children), a violation of 18 PA. C.S. § 903 and a felony of the third degree.

36. Fina's boss, then-Attorney General Linda Kelly, held a widely-publicized press conference to announce the charges against Spanier. She accused Spanier, among other things, of being a part of a "conspiracy of silence." Fina allowed Kelly to make these statements despite knowing that there was no evidence whatsoever of any "conspiracy of silence." In fact, Fina knew the prosecution's only substantive witness, Michael McQueary, had explicitly told the Office of Attorney General—and indeed had testified under oath—that no one had ever told him not to tell anyone what he had observed in February 2001; Fina also knew that, in the single email exchange on which the Commonwealth relied, Spanier and the other Penn State administrators specifically discussed telling others about the 2001 incident. He also knew that they did in fact report it to others.

37. Fina chose to charge three individuals associated with Penn State (Schultz, Curley and later Spanier) but no one associated with The Second Mile, even though in 2001: (1) Sandusky worked for The Second Mile and not for Penn State; (2) unlike Penn State, The Second Mile had supervisory responsibility for the boys who were abused by Sandusky; and (3) the head of The Second Mile heard the same description of the incident that Spanier did. Fina chose to charge Spanier, who Fina knew had no connection whatsoever with The Second Mile, with endangering the welfare of The Second Mile boys, but not to charge anyone connected with The Second Mile, who directly supervised them.

**COUNT ONE – VIOLATION OF FOURTEENTH AMENDMENT
RIGHTS PROTECTED UNDER 42 U.S.C. § 1983**

38. Spanier incorporates all of the allegations set forth in the preceding paragraphs as if fully set forth and restated herein.

39. At all relevant times, Fina was acting deliberately and under the color of the law of the Commonwealth of Pennsylvania.

40. The Due Process Clause of the Fourteenth Amendment of the United States Constitution protects against prosecutions brought in bad faith without a reasonable expectation of obtaining a valid conviction.

41. The case against Spanier was brought in bad faith.

42. Fina had no reasonable expectation of obtaining a valid conviction on any of the charges against Spanier.

43. Spanier has suffered and will continue to suffer irreparable harm if the Commonwealth is not enjoined from pursuing the criminal prosecution captioned as *Commonwealth v. Graham B. Spanier*, No. CP-22-CR-3615-2013.

RELIEF SOUGHT BY PLAINTIFF

44. WHEREFORE, Spanier respectfully requests that this Court preliminarily and permanently enjoin the criminal prosecution captioned as *Commonwealth v. Graham B. Spanier*, No. CP-22-CR-3615-2013, currently pending in Dauphin County.

/s/ Elizabeth K. Ainslie

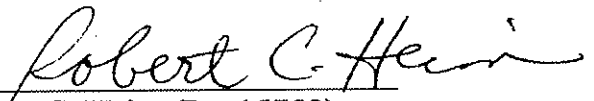
Timothy K. Lewis (PA Id. No. 32199)
Elizabeth K. Ainslie (PA Id. No. 35870)
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103
(215) 751-2000
(215) 751-2205 (fax)

Attorneys for Plaintiff Graham B. Spanier

Dated: March 31, 2014

EXHIBIT 7

Notice of Removal and accompanying papers with the United States District Court for the Middle District of Pennsylvania. A true and correct copy of the Notice of Removal is attached as Ex. A. A true and correct copy of the accompanying Civil Cover Sheet is attached as Ex. B. A true and correct copy of the payment of the filing fee is attached as Ex. C.



Robert C. Heim (Pa. 15758)
Michael L. Kichline (Pa. 62293)
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*Attorneys for Defendants Louis J.
Freeh and Freeh Sporkin & Sullivan,
LLP*

CERTIFICATE OF SERVICE

I, Asha T. Mehrotra, hereby certify that I caused to be served on July 9, 2014 a true and correct copy of the Notice of Having Filed a Notice of Removal by first-class mail upon the following:

Elizabeth K. Ainslie, Esq.
SCHNADER HARRISON
SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103-7286
Attorney for Plaintiff

/s/ Asha T. Mehrotra
Asha T. Mehrotra

EXHIBIT B

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Graham B. Spanier

DEFENDANTS
Louis J. Freeh and Freeh Sporkin & Sullivan, LLP

(b) County of Residence of First Listed Plaintiff Centre County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Elizabeth K. Anslie, Schnader Harrison Segal & Lewis LLP, 1600 Market Street, Suite 3600, Philadelphia, PA 19103

Attorneys (If Known)
Robert C. Heim, Michael L. Kichline, William T. McEnroe, Dechert LLP, 2929 Arch Street, Philadelphia, PA 19104

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like Insurance, Personal Injury, Property Rights, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332, 1441, 1446
Brief description of cause:
Diversity of Citizenship Removal

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See Instructions): JUDGE Malachy E. Mannion DOCKET NUMBER 4:14-cv-01310-MEM

DATE 7/9/14

SIGNATURE OF ATTORNEY OF RECORD

Robert C. Heim

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

EXHIBIT C

Mehrotra, Asha

From: paygovadmin@mail.doc.twai.gov
Sent: Wednesday, July 09, 2014 3:43 PM
To: Mehrotra, Asha
Subject: Pay.gov Payment Confirmation: PAMD CM ECF

Your payment has been submitted to Pay.gov and the details are below. If you have any questions or you wish to cancel this payment, please contact Janet Wentovich at (570) 207-5625.

Application Name: PAMD CM ECF
Pay.gov Tracking ID: 25GJ57PS
Agency Tracking ID: 0314-3154512
Transaction Type: Sale
Transaction Date: Jul 9, 2014 3:42:33 PM

Account Holder Name: Asha Mehrotra
Transaction Amount: \$400.00
Billing Address: Cira Centre
Billing Address 2: 2929 Arch Street
State/Province: PA
Zip/Postal Code: 19104-2857
Country: USA
Card Type: AmericanExpress
Card Number: *****1005

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.