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GRAHAM B. SPANIER,

Plaintiff,

v.

LOUIS J. FREEH,
FREEH SPORKIN & SULLIVAN, LLP,
AND FREEH GROUP
INTERNATIONAL SOLUTIONS, LLC,

Defendants.

:
:
: COURT OF COMMON PLEAS
:
: OF CENTRE COUNTY

:
:
: No. 2013-2707

DEBRA S. STEINBACHER
PROTHONOTARY
CENTRE COUNTY, PA
2016 MAY 11 PM 3:44

**PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS LOUIS J.
FREEH AND FREEH GROUP INTERNATIONAL SOLUTIONS, LLC'S
PRELIMINARY OBJECTIONS TO PLAINTIFF'S TORTIOUS
INTERFERENCE CLAIM**

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INTRODUCTION

Defendants Louis J. Freeh (“Freeh”) and Freeh Group International Solutions, LLC’s (“FGIS”) preliminary objections to Plaintiff’s claim for tortious interference should be overruled because Defendants have not met their burden of showing that “it appears with certainty that the law permits no recovery under the allegations pleaded.” *Green v. Mizner*, 692 A.2d 169, 172 (Pa. Super. Ct. 1997). Plaintiff has pleaded facts supporting every element of his tortious interference claim, and Defendants fail to demonstrate otherwise. Moreover, Plaintiff’s claim is not time-barred, as Plaintiff filed a complaint asserting his tortious interference claim, and Defendants received notice of the claim, within the applicable statute of limitations. Accordingly, Defendants’ preliminary objections should be overruled.

COUNTERSTATEMENT OF FACTS

I. Freeh, FSS, and FGIS are Retained by Penn State.

In the fall of 2008, the Pennsylvania Attorney General's Office began investigating allegations that former Penn State assistant football coach Jerry Sandusky had sexually abused boys whom he had supervised as an employee of The Second Mile, a youth charity organization that Sandusky founded and managed. (Feb. 10, 2016 Compl., *Spanier v. Freeh, et al.*, No. 2013-2707 (Pa. Commw. Ct. filed Feb. 10, 2016) ¶¶ 68-69, 74.) In November 2011, Sandusky was indicted on multiple charges of sexually abusing minors. (*Id.* ¶ 75.) Also indicted in November 2011 were former Penn State administrators Tim Curley and Gary Schultz, who were alleged to have failed to report a 2001 incident in which Sandusky was allegedly seen sexually abusing an underage boy in the showers at a Penn State athletic facility. (*Id.* ¶ 76.) Although the investigation into Sandusky's activities had spanned multiple years, the Attorney General found no evidence to bring charges against Dr. Spanier in 2011. (*Id.* ¶ 77.)

On November 9, 2011, Dr. Spanier resigned from his position as President of Penn State under the "termination without cause" provision of his contract. (*Id.* ¶¶ 78, 82.) The same day, the Penn State Board of Trustees fired Joe Paterno, the revered, longtime head coach of Penn State's football team. (*Id.* ¶ 84.) The premature and haphazard firing of Coach Paterno created a full-scale media and

public relations disaster for Penn State, with riots erupting on the edge of campus. (*Id.* ¶ 84-85.) The Penn State Board of Trustees knew that it needed to do something to address the growing media frenzy and to vindicate its hasty decision to fire Coach Paterno. (*Id.* ¶ 86)

In November 2011, the Penn State Board of Trustees began considering multiple candidates to conduct an investigation of Penn State’s administrators’ supposed lack of inaction regarding allegations that Sandusky was sexually abusing young boys. (Compl. ¶¶ 86-88.) Ultimately, Freeh and his law firm were chosen specifically because the Board knew Freeh would focus on shaping the media narrative as his “#1 priority.” (*Id.* ¶ 89.) Defendant Louis Freeh, a former FBI Special Agent, Deputy United States Attorney, United States District Court Judge, and Director of the FBI, had for years marketed FSS and its related consulting firm, Freeh Group International Solutions, as able to provide “crisis management solutions” to clients. (*Id.* ¶¶ 55-57.) Freeh’s business model relied upon conducting highly publicized internal “investigations” that were sold to the media as “independent,” but in reality were designed to further his clients’ aims by pointing the blame at specific wrongdoers in order to absolve the corporate client of blame. (*Id.* ¶¶ 57-62.) Even before his work on the much-maligned Penn State “investigation,” Freeh’s prior investigations had repeatedly been criticized for being incomplete, biased, and advocacy-driven. (*Id.* ¶¶ 63-67.)

In November 2011, Freeh and FSS entered into an engagement letter with the Penn State Board of Trustees. (*Id.* ¶ 86.) The engagement letter also named FGIS as a subcontractor for Freeh and FSS’s investigation. (Nov. 18, 2011 Engagement Letter) (Attached hereto as Ex. A.) The letter specifically set forth Penn State’s directive that FSS was to conduct a fact-finding investigation that would result in the release of a public report blaming certain administrators at Penn State for failing to properly respond to reports of Sandusky’s activities. (*Id.*) Specifically, FSS agreed to “perform an independent, full and complete investigation of the recently publicized allegations of sexual abuse at the facilities and the alleged failure of [Penn State] personnel to report such sexual abuse to appropriate police and government authorities.” FSS further agreed to publicize *factual* “findings” identifying “who had knowledge of the allegations of sexual abuse” and criticizing “how those allegations were handled” by Penn State administrators and coaches. (Compl. ¶ 199; *see also* Ex. A.)

While performing his “investigation,” Freeh was aware that his client, the Board of Trustees, expected him to ultimately finger Dr. Spanier as being involved in a supposed “cover-up” of Sandusky’s crimes. (Compl. ¶¶ 201-204.) Freeh knew that he needed to vindicate the resignation of Dr. Spanier (officially approved as a “termination without cause”) and the firing of Joe Paterno in a way that justified the Board’s actions and furthered a media narrative that scapegoated a

discrete set of individuals, including Dr. Spanier, for the public relations crisis that Penn State found itself in. (*Id.* ¶ 205.) Through ongoing discussions and meetings with the Board of Trustees and the National Collegiate Athletics Association (“NCAA”), Freeh also knew that the Board and the NCAA expected him to blame the Sandusky scandal on high-level Penn State administrators in order to justify the NCAA’s jurisdiction to punish Penn State — as well as to help Penn State avoid the so-called “death penalty” that could result in the obliteration of Penn State’s revenue-essential football program. (*Id.* ¶¶ 92-102, 206.)

II. Freeh and FGIS Interfere with Dr. Spanier’s Post-Presidency Employment Opportunities.

Following his resignation from the presidency of Penn State, Dr. Spanier sought out, and was sought out for, other employment opportunities. He was frequently in communication with contacts from the national security community with whom he had worked throughout his years as President of Penn State. (*Id.* ¶ 241.) While attending a February 2012 meeting of the National Security Higher Education Advisory Board, Dr. Spanier was approached by a team of high-level government representatives about taking on two coordinated national security assignments that would span his first post-presidential year, and possibly beyond. (*Id.* ¶ 243.) Arrangements were made for Dr. Spanier to serve in a contractual capacity on two significant projects that the U.S. government felt he was uniquely qualified to undertake, and contracts were drawn up. In preparation for this

prospective employment, Dr. Spanier made multiple trips to Washington, D.C. and other locations for planning, training, discussions, and briefing, and Dr. Spanier began to work on two classified projects for the U.S. intelligence community in March 2012. (*Id.* ¶¶ 243-244.)¹

In late April 2012, however, Dr. Spanier's national security work opportunities were suddenly withdrawn. (*Id.* ¶ 245.) At the time, Dr. Spanier did not know why. (*Id.*) However, as a result of a freedom of information request, Dr. Spanier learned in October 2013 that Freeh and FGIS has been communicating with federal officials regarding Dr. Spanier's employment. (*Id.* ¶ 246.) Dr. Spanier learned that in April 2012, Penn State Board members Kenneth Frazier and Ronald Tomalis discussed by email an article in the Patriot News reporting that Dr. Spanier would be "working on a special project for the U.S. government relating to national security." (*Id.* ¶ 248.) Tomalis relayed this information to Freeh, commenting that "someone may not have been doing their homework." (*Id.*) Freeh responded, from his FGIS email account, calling the development "interesting," and informing Tomalis and Frazier that FGIS had "done our job" and notified federal officials of "the latest information" regarding Dr. Spanier. (*Id.* ¶ 249.) Frazier replied, commenting, "Oh brother..." (*Id.*) Freeh's email reflected

¹ Dr. Spanier is willing to provide, under seal and with permission of the relevant agency, further disclosure of the specific sponsors and nature of this classified work.

action taken by Freeh and FGIS to interfere with Dr. Spanier's prospective employment, and those actions resulted in the termination of Dr. Spanier's prospective employment opportunities. (*Id.* ¶¶ 248-251.)

COUNTERSTATEMENT OF THE QUESTIONS INVOLVED

Does Plaintiff's Complaint properly allege facts supporting the elements of a cause of action for tortious interference?

Suggested response: Yes.

Is Plaintiff's claim for tortious interference barred by the applicable statute of limitations?

Suggested response: No.

STANDARD OF REVIEW

On review of preliminary objections, the Court must regard the allegations in the complaint as true and accord the plaintiff all the inferences reasonably deduced therefrom. *Green v. Mizner*, 692 A.2d 169, 172 (Super. Ct. 1997). Preliminary objections testing the legal sufficiency of a complaint can only be sustained if the plaintiff's complaint indicates on its face "that his claim cannot be sustained, and the law will not permit recovery." *Smith v. Wagner*. 588 A.2d 1308, 1311 (Pa. Super. Ct. 1991). When preliminary objections in the nature of a demurrer are filed, there is no burden on the plaintiff to prove the cause of action; rather, "[t]he issue then before the court, and the only issue is, whether the facts in the complaint itself are sufficient to entitle the plaintiff to relief." *Int'l Union of Operating Engineers, Local No. 66, AFL-CIO v. Linesville Constr. Co.*, 457 Pa. 220, 223, 332 A.2d 353, 356 (1974). If there is any doubt whether preliminary objections in the nature of a demurrer should be sustained, all doubt must be resolved in favor of overruling the preliminary objections. *Green*, 692 A.2d at 172.

ARGUMENT

I. Plaintiff's Complaint Sufficiently Alleges the Elements of a Claim for Tortious Interference.

First, Freeh and FGIS argue that Plaintiff's claim for tortious interference is not adequately pleaded because "Spanier devotes just 5 pages and 21 paragraphs [of his Complaint] to the facts surrounding his tortious interference claim." (Mar. 28, 2016 Mem. of Law in Supp. of Preliminary Objections of Louis J. Freeh & Freeh Group Int'l Solutions LLC to Pl.'s Tortious Interference Claim (hereinafter, "Defs.' Mem.") at 6, *Spanier v. Freeh, et al.*, No. 2013-2707 (Pa. Commw. Ct. filed Mar. 28, 2016).) But Pennsylvania law sets no minimum length of pleadings; rather, it requires that "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form." Pa. R. Civ. P. 1019(a). Here, Plaintiff has pleaded facts supporting every element of a claim for tortious interference, and Defendants fail to demonstrate otherwise.

As Defendants note, the elements of a claim for tortious interference under Pennsylvania law are (1) the existence of a contractual or prospective contractual relation between the complainant and a third party; (2) purposeful action on the part of the defendant specifically designed to harm the existing relation, or to prevent the prospective relation from occurring; (3) the absence of a privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of the defendant's conduct. (Defs.' Mem. at 6-7, citing *Al*

Hamilton Contracting Co. v. Cowder, 644 A.2d 188, 191 (Pa. Super. 1994).)

Plaintiff's Complaint alleges facts supporting each of these elements.

Plaintiff alleges that as President of Penn State, he developed longstanding ties with the U.S. national security community. (Compl. ¶ 241.) He alleges that during a February 2012 meeting of the National Security Higher Education Advisory Board, he was approached about taking on two related national security assignments for the federal government that would span his first post-presidential year, and possibly beyond. (*Id.* ¶ 243.) He alleges that arrangements were made for what was to be a contractual engagement, and that in the following weeks he regularly travelled to Washington, D.C. and other locations for planning, trainings, discussions, and briefings in furtherance of this prospective employment. (*Id.*) He further alleges that beginning in March 2012, Dr. Spanier actually began work on two classified projects. (*Id.* ¶ 244.) In late April 2012, these prospective opportunities were suddenly withdrawn. (*Id.* ¶ 245.) Only later would Dr. Spanier learn that Freeh and FGIS took purposeful action to tell federal officials that Dr. Spanier was not fit for the security work he was to undertake, which resulted in the termination of the then-current and prospective business relationships. (*Id.* ¶¶ 250-251.) Dr. Spanier alleges that Freeh and FGIS committed this act intentionally, and that they had no privilege to communicate with federal officials regarding Dr. Spanier's employment. (*Id.* ¶ 329.) Finally, Dr. Spanier alleges that he suffered

economic damages as a result of the loss of this employment opportunity. (*Id.* ¶ 330.)

Defendants attempt to find fault with Plaintiff's Complaint by repeatedly arguing that Dr. Spanier failed to allege facts that he actually did allege. For example, Defendants argue that Dr. Spanier did not identify his prospective employer, (Defs.' Mem. at 8), but the Complaint specifically alleges that he was to be employed by the federal government. (Comp ¶ 327.) Defendants argue that Dr. Spanier did not allege facts from which one could determine that a future contractual relationship was reasonably certain. (Defs.' Mem. at 9-10.) But the Complaint does in fact allege that Dr. Spanier repeatedly travelled to Washington, D.C. for meetings, discussions, and briefings in preparation for his employment. (Compl. ¶ 243.) He further alleges that he actually began work on two national security projects before the employment opportunity was withdrawn. (*Id.* ¶ 244.)

Defendants also argue that the Complaint does not set forth exactly what Freeh said to federal officials, and that it does not allege facts to show that Freeh expressed any more than an "opinion" to federal officials about Dr. Spanier's fitness for his prospective employment. (Defs.' Mem. at 12-13.) Defendants ask too much at this stage, since of course there is no way for Dr. Spanier to know the precise content of conversations he was not a party to. In the context of the 334-paragraph Complaint detailing Defendants' false and deliberate attacks on

Plaintiff, however, the Complaint alleges facts sufficient to support an inference that Freeh intentionally provided false, derogatory information to federal officials. *See Twp. of Derry v. Pa. Dep't of Labor & Indus.*, 940 A.2d 1265, 1268 (Pa. Commw. Ct. 2008) (in reviewing preliminary objections, the court must treat as true all reasonable inferences that may be drawn from the complaint's factual allegations). Defendants' argument that the Complaint fails to allege that Freeh was aware of Dr. Spanier's prospective employment is flatly contradicted by the allegations in Plaintiff's Complaint and the admission in Defendants' Memorandum that prior to the alleged interference, Freeh received an email from a Penn State trustee informing him of Dr. Spanier's prospective national security employment. (Compl. ¶¶ 196, 247-248; Defs.' Mem. at 1.)

Finally, Defendants argue that if Freeh made the statements at issue to federal prosecutors, they are "absolutely privileged." (Defs.' Mem. at 13 (citing *Pawłowski v. Smorto*, 588 A.2d 36, 43 (Pa. Super. 1991)).) However, this "law enforcement" privilege only applies if the statements were made "preliminary to the criminal proceedings" and "for the purpose of convincing the proper authorities to institute criminal proceedings against [the plaintiff]." *Pawłowski*, 588 A.2d at 84. Dr. Spanier has never been charged or threatened with prosecution of any federal crime. Moreover, the Complaint alleges that this was not Freeh's purpose in communicating with federal officials. (Compl. ¶¶ 15, 17.) Instead, the

Complaint alleges that Defendants sought to interfere with Dr. Spanier's national security work for the federal government. (Compl. ¶¶ 14, 250.) Defendants do not claim that Freeh was seeking to instigate federal criminal charges against Dr. Spanier, nor can they for purposes of preliminary objections. *See P.J.S. v. Pa. Ethics Comm'n*, 669 A.2d 1105, 1112 (Pa. Commw. Ct. 1996) (it is improper for the Court to address or resolve factual disputes at the preliminary objections stage). Because the Complaint adequately alleges facts supporting all elements of Plaintiff's claim, Defendants' preliminary objections should be overruled.

II. Plaintiff's Tortious Interference Claim is not Time-Barred.

Defendants next argue that Plaintiff's claim for tortious interference is time-barred because Plaintiff did not file his Complaint within the applicable statute of limitations. This is incorrect. Plaintiff has pleaded facts establishing that the statute of limitations on his tortious interference claim did not expire until October 2015. (*See* Compl. ¶¶ 246-254; Defs.' Mem. at 19-20.) Plaintiff filed a complaint naming Freeh and FGIS as defendants on the tortious interference claim along with Plaintiff's Memorandum of Law in Support of Motion for Leave to Join Additional Parties on March 18, 2015, and FGIS and its attorneys received notice of the action well within the applicable time limit. Accordingly, Plaintiff has timely asserted his claim for tortious interference against Freeh and FGIS.

Defendants attempt to argue that Plaintiff's filing of a proposed complaint naming FGIS as a Defendant in March 2015 was insufficient to come within the statute of limitations, arguing that the filing of a motion for leave to amend does not toll the statute of limitations. (Defs.' Mem. at 21 (citing *Aivazoglou v. Drever Furnaces*, 613 A.2d 595, 599-600 (Pa. Super. 1992).) However, key to the decision in *Aivazoglou* was the fact that although the plaintiff sought leave to amend to add claims against the new parties within the limitations period, "notice was not given to any of the [parties] sought to be joined as defendants" until after the expiration of the limitations period. *Aivazoglou*, 613 A.2d at 597. Judge Mundy of the Court of Common Pleas explained and confirmed the holding of *Aivazoglou* just a year later in *Morgan v. Harnischfeger Corp.*, No 3929-C, 1993 WL 766113, at *2 (Pa. Ct. Com. Pl. Mar. 5, 1993).² Interpreting *Aivazoglou*, Judge Mundy noted that "[t]he Court, equally emphasized that the *lack of notice* to the aggrieved defendants in *Aivazoglou* was the impetus behind preclusion of plaintiff's claim against them," (emphasis in original) and held:

In our previous opinion and order we clearly noted that by virtue of the complaints filed against and served upon them, each of the additional defendants had received notice, prior to the expiration of the of the statute of limitations, of the plaintiff's cause of action. While the complaints were not filed in strict compliance with the Rules of Civil Procedure, leave of court not being sought prior to the filing, we noted that Pa.R.C.P. 126 empowered us to disregard an error or defect of procedure which does not affect the substantial rights of the parties.

² Copies of all unpublished cases cited herein are attached as Exhibit B.

In our view, since the joined defendants had received notice of the cause of action, and the basis therefor, prior to the expiration of the statute, their substantial rights were not affected.

After a through review of the *Aivazoglou* case, our view has not changed. It is important to note that the court therein reaffirmed that notice to the defendant is one of the underlying purposes for a prescribed statute of limitations.

Id. at *1-2. A similar situation presents itself here. Because the defamation action was stayed until the Court's Jan. 11, 2016 Order, Plaintiff could not simply file a new complaint naming FGIS as a defendant. Instead, Plaintiff filed with the Prothonotary a proposed complaint asserting the tortious interference claim against Freeh and FGIS on March 18, 2015 — more than six months before the expiration of the statute of limitations — and simultaneously served this complaint on Freeh (a principal of FGIS) and FGIS's counsel. Freeh and FGIS do not contend that Plaintiff did not do so, and do not contend that they did not have notice of all allegations supporting the tortious interference claim in March 2015. Accordingly, Defendants' preliminary objections should be overruled.

CONCLUSION

For all of the reasons set forth above, Defendants' preliminary objections should be overruled in their entirety, and Plaintiff's tortious interference claim should be permitted to proceed.

Dated: May 11, 2016

By:



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*ATTORNEYS FOR PLAINTIFF GRAHAM
B. SPANIER*

Exhibit A



PRIVILEGED AND CONFIDENTIAL

November 18, 2011

Steve A. Garban
Chairman, Board of Trustees
and
Paula R. Ammerman
Director, Office of the Board of Trustees
The Pennsylvania State University
205 Old Main
University Park, PA 16802

Re: Engagement to Perform Legal Services

Dear Mr. Garban and Ms. Ammerman:

Investigation Task Force

Task Force

We are pleased that the Board of Trustees of The Pennsylvania State University ("Trustees", "you" or "your"), on behalf of the Special Committee established by the Trustees (the "Special Committee"), has engaged us to represent the Special Committee. This is a new engagement for Freeh Sporkin & Sullivan, LLP ("FSS"). Accordingly, this is to set forth the basic terms upon which FSS has been engaged to represent the Special Committee, including the anticipated scope of our services and billing policies and practices that will apply to the engagement. Although our services are limited at this time to the specific matter described herein, the general terms of this letter will apply to any other matters that FSS may hereafter undertake to handle for the Trustees or the Special Committee.

1. Scope of Engagement. FSS has been engaged to serve as independent, external legal counsel to the Special Committee to perform an independent, full and complete investigation of the recently publicized allegations of sexual abuse at the facilities and the alleged failure of The Pennsylvania State University ("PSU") personnel to report such sexual abuse to appropriate police and government authorities. The results of FSS's investigation will be provided in a written report to the Special Committee and other parties as so directed by the Special Committee. The report will contain FSS's findings concerning: i) failures that occurred in the reporting process; ii) the cause for those failures; iii) who had knowledge of the allegations of sexual abuse; and iv) how those allegations were handled by the Trustees, PSU administrators, coaches and other staff. FSS's report also will provide recommendations to the Special Committee and Trustees for actions to be taken to attempt to ensure that those and similar failures do not occur again.

It is understood by FSS, the Trustees and the ~~Special Committee~~^{Task Force} that FSS will act under the sole direction of the ~~Special Committee~~^{Task Force} in performing the services hereunder. It also is understood by FSS, the Trustees and the ~~Special Committee~~^{Task Force} that FSS's investigation will be completed in parallel to, but independent of, any other investigation that is conducted by any policy agencies, governmental authorities or agencies, or other organizations within or outside of (e.g., The Second Mile) PSU, and will not interfere with any such other investigations.

It also is understood by FSS, the Trustees and the ~~Special Committee~~^{Task Force} that during the course of FSS's independent investigation performed hereunder, FSS will immediately report any discovered evidence of criminality to the appropriate law enforcement authorities, and provide notice of such reporting to the ~~Special Committee~~^{Task Force}. If FSS's investigation identifies any victims of sexual crimes or exploitation, FSS will immediately report such information to the appropriate law enforcement authorities, and provide notice of such reporting to the ~~Special Committee~~^{Task Force}.

FSS also will communicate regarding its independent investigation performed hereunder with media, police agencies, governmental authorities and agencies, and any other parties, as directed by the ~~Special Committee~~^{Task Force}. However, it also is understood by FSS, the Trustees and the ~~Special Committee~~^{Task Force} that neither the Trustees nor the ~~Special Committee~~^{Task Force} will interfere with FSS's reporting of evidence of criminality or identities of any victims of sexual crimes or exploitation discovered throughout the course of FSS's independent investigation performed hereunder, as discussed in the paragraph immediately above.

The precise time frame in which FSS's services will be performed cannot presently be determined. However, FSS, the Trustees and the ~~Special Committee~~^{Task Force} all recognize that the investigation must be completed in a thorough manner, but also as expeditiously as possible.

2. Rates. It is anticipated that Louis J. Freeh will be the lead and billing attorney on this engagement. Other FSS, and other non-FSS professionals, will be assigned from time to time to assist in the representation. FSS will charge you for the services provided under the terms of this engagement letter based on the hourly rates of the professionals working on this matter, plus reasonable expenses as described below in the "Disbursements" section of this engagement letter. The hourly rates that will be charged in connection with this matter are as follows: Mr. Freeh -- ██████ USD per hour; other FSS partners -- ██████ USD per hour; investigators and FSS non-partner lawyers -- ██████ USD per hour; and paraprofessional support staff -- ██████ USD per hour. We reassess our hourly rates from time to time and adjustments are made when we believe such adjustments are appropriate. These adjustments may be reflected in the billing rates utilized to determine our charges to you during the course of our engagement. FSS bills in quarter of an hour increments.

3. Disbursements. In addition to fees for our services, we also charge separately for certain costs incurred on the Special Committee's behalf, such as travel related expenses. Our invoices also will include costs incurred on the Special Committee's behalf for services and materials provided by third-party vendors, including but not limited to courier and messenger service, airfreight service, outside copy service, shipping and express mail, filing fees, deposition transcripts, and court reporters. Under certain circumstances, for certain large disbursements, we may either bill you directly or ask you to advance funds outside our normal billing cycle. In addition to the third-party disbursements noted above, other charges that will be reflected on our invoices include the following:

- International calling costs will be charged at the standard provider rates.
- Computerized research costs will be charged at the standard provider rates.
- Office supply costs are not passed on to a client unless a purchase is specifically required for a particular engagement.

We make every effort to include disbursements in the invoice covering the month in which they are incurred. However, there may be occasions when disbursements may not be posted in the billing system until the following month. If the required payment of our invoices is based on the completion of a specific assignment, pursuant to any alternative timing arrangements that have been established and are described in the "Rates" section of this engagement letter, an estimate of unposted disbursements in addition to an estimate of unposted charges for services will be included in our invoice payable at completion.

4. Payment Terms. Generally, our invoices are prepared and forwarded to our clients monthly covering fees and costs incurred for the prior month. Any alternative timing arrangements for invoicing that have been established are described in the "Rates" section of this engagement letter.

Unless stated differently in the "Rates" section of this engagement letter, our invoices for service are due and payable within thirty (30) days of receipt. Clients whose invoices are not paid within this period may have a late charge assessed on their unpaid balance at the rate of 1% per month. The intent of the late charge is to assess on an equitable basis additional costs incurred by FSS in carrying past-due balances.

FSS requires payment at the conclusion of this engagement of all accrued and unpaid fees and disbursements to the extent invoiced, plus such additional amounts of fees and disbursements as shall constitute our reasonable estimate of fees and disbursements incurred or to be incurred by us through the conclusion of this engagement (though such estimate shall not thereafter preclude a final settling of accounts between us when final detailed billing information is available).

During this engagement, the Trustees and the ~~Special Committee~~^{Task Force} may request from us an estimate of fees and/or costs that we anticipate incurring on the ~~Special Committee's~~^{Task Force's} behalf. While we may provide an estimate for your or the ~~Special Committee's~~^{Task Force's} general planning purposes, our estimate is only a preliminary approximation based on facts that are currently available and the currently anticipated level of work required to complete the engagement. In no event is an estimate to be construed as a commitment of FSS to render services at a minimum or maximum cost.

Unless otherwise agreed, our invoice will be presented in our standard format. If this format is not sufficient for your needs, we will work with you to find one that is. FSS will review individually any requests to use a third party vendor for electronic billing. Depending on the vendor requested, we might provide alternative recommendations in order to insure that electronic billing through a third party is both practical and efficient. All charges related to using a third party vendor for this purpose, including initial start-up costs and maintenance fees, will be payable by the Trustees directly.

Where required, your billing statement may include applicable international taxes such as VAT, GST, and consumption tax, etc.

Upon request, we will forward our billing statements to a third party designated by you who is assuming payment responsibility for your or the ~~Special Committee's~~^{Task Force's} legal expenses, e.g., an insurance carrier who holds your liability coverage. In the event that timely payment is not received from the third party, we will look to the Trustees for payment of our legal fees and costs and you agree that you are responsible for prompt payment in that event.

All payments should be sent directly to: 3711 Kennett Pike, Suit 130, Wilmington, Delaware 19807. If you choose to pay by wire transfer, wire transfer instructions are as follows:

Account Holder: Freeh Sporkin & Sullivan, LLP

Bank:

Account No.:

ABA/Routing No.:
(For Domestic Payments)

SWIFT Code:
(For International Payments)

The billing attorney assigned to this matter will review your billing statement before it is sent to you and make any adjustments he or she views as appropriate. If you have

any questions concerning any invoice item, please do not hesitate to contact the billing attorney.

5. Retention of Third Parties. We may determine that it is necessary to involve third parties to assist us in performing services in connection with this engagement. If that determination is made, we will notify the ~~Special Committee~~^{Task Force} promptly to discuss the proposed third parties, the expected scope of the services to be provided by the third parties and the related fees and costs expected to be charged by those third parties. FSS will consult with the ~~Special Committee~~^{Task Force} about any changes to the third parties' scope of services or related fees and costs that may occur throughout the course of this engagement.

For the purpose of providing legal services to the ~~Special Committee~~^{Task Force}, FSS will retain Freeh Group International Solutions, LLC ("FGIS") to assist in this engagement. It should be noted that Louis J. Freeh is a partner and member in FSS and FGIS, respectively, and has a controlling interest in both. FSS is a law firm and FGIS is a separate investigative and consulting group.

As described in the "Disbursements" section of this engagement letter, our invoices will include fees and costs incurred on the ~~Special Committee~~^{Task Force}'s behalf for services and materials provided by third parties, unless stated otherwise in the "Rates" section of this engagement letter, or in a separate writing signed by FSS and the Trustees.

6. Confidentiality and Responding to Subpoenas and Other Requests for Information. The work and advice which is provided to the ~~Special Committee~~^{Task Force} under this engagement by FSS, and any third party working on behalf of FSS to perform services in connection with this engagement, is subject to the confidentiality and privilege protection of the attorney-client and attorney work product privileges, unless appropriately waived by the parties or otherwise determined by law. In the event that FSS, or any third party working on behalf of FSS to perform services in connection with this engagement, is required to respond to a subpoena or other formal request from a third party or a governmental agency for our records or other information relating to services we have performed for the ~~Special Committee~~^{Task Force}, or to testify by deposition or otherwise concerning such services, to the extent permitted by law, we will provide you and the ~~Special Committee~~^{Task Force} notice of such a request and give you and the ~~Special Committee~~^{Task Force} a reasonable opportunity to object to such disclosure or testimony. It is understood that you will reimburse us for our time and expense incurred in responding to any such demand, including, but not limited to, time and expense incurred in search and photocopying costs, reviewing documents, appearing at depositions or hearings, and otherwise litigating issues raised by the request.
7. General Responsibilities of Attorney and Client. FSS will provide the above-described legal services for the ~~Special Committee~~^{Task Force}'s benefit, for which the Trustees will be billed in the manner set forth above. We will keep the ~~Special Committee~~^{Task Force}

apprised of developments as necessary to perform our services and will consult with the ~~Special Committee~~ ^{Task Force} as necessary to ensure the timely, effective and efficient completion of our work. However, although we will make every reasonable effort to do so, we cannot guarantee that we will be able to provide specific results and the Trustees and the ~~Special Committee~~ ^{Task Force} acknowledge that FSS does not promise any result.

We understand that the ~~Special Committee~~ ^{Task Force} will provide us with such factual information and documents as we require to perform the services, will make any business or technical decisions and determinations as are appropriate to facilitate the completion of our services, and will remit payment of our invoices when due, pursuant to the terms of this engagement letter.

Moreover in connection with any investigation, civil or criminal action, administrative proceeding or any other action arising out of this matter, the Trustees have agreed to indemnify FSS, its partners, employees, agents and third-party vendors who have provided or are providing services in connection with this engagement, for all costs, expenses, attorney's fees (to be paid as accrued and billed) and judgements, including any amounts paid in settlement of any claims. This obligation shall survive the termination of this engagement.

8. Waiver of Future Conflicts. Our agreement to represent the ~~Special Committee~~ ^{Task Force} is conditioned upon our mutual understanding that FSS is free to represent any clients (including your adversaries) and to take positions adverse to either you or an affiliate in any matters (whether involving the same substantive areas of law for which you have retained us on behalf of the ~~Special Committee~~ ^{Task Force} or some other unrelated areas, and whether involving business transactions, counseling, litigation or otherwise), which do not involve the same factual and legal issues as matters for which you have retained us on behalf of the ~~Special Committee~~ ^{Task Force} or may hereafter retain us. In this connection, you and the ~~Special Committee~~ ^{Task Force} should be aware that we provide services on a wide variety of legal subjects, to a number of clients, some of whom are or may in the future operate in the same areas of business in which you are operating or may operate. Subject to our ethical and professional obligations, we reserve the right to withdraw from representing the ~~Special Committee~~ ^{Task Force} should we determine that a conflict of interest has developed for us.
9. Engagement Limited to Identified Client. This will also confirm that, unless we otherwise agree in writing, our engagement is solely related to the ~~Special Committee~~ ^{Task Force} established by The Pennsylvania State University Board of Trustees and the specific matter described above. By entering into this engagement, we do not represent any individuals or entities not named as clients herein, nor do we represent any owner, officer, director, founder, manager, general or limited partner, employee, member, shareholder or other constituent of any entity named as a client in this letter, in their individual capacities or with respect to their individual affairs.

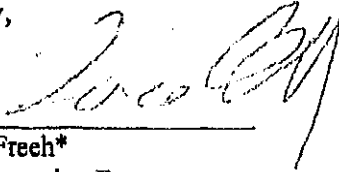
10. Termination. Our engagement may be terminated at any time by FSS or the ~~Special Committee~~^{Task Force} upon written notice and, with respect to FSS, subject to our ethical and professional obligations. In addition to other reasons, the Trustees and the ~~Special Committee~~^{Task Force} agree that FSS may terminate its legal services and withdraw from this engagement in the event our invoices are not paid in a timely manner, pursuant to the terms of this engagement letter. Upon termination, all fees and expenses due and owing shall be paid promptly. Your and the ~~Special Committee~~^{Task Force}'s acceptance of this engagement letter constitutes your and the ~~Special Committee~~^{Task Force}'s understanding of, and consent to, the particular terms, conditions, and disclosure herein.

11. Client Files. In the course of our representation of the ~~Special Committee~~^{Task Force}, we will maintain a file containing, for example, correspondence, pleadings, agreements, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary for the ~~Special Committee~~^{Task Force}'s representation ("Client File"). We may also place in such file documents containing our attorney work product, mental impressions or notes, drafts of documents, and internal accounting records ("Work Product"). The ~~Special Committee~~^{Task Force} is entitled upon written request to take possession of its Client File, subject to our right to make copies of any files delivered to the ~~Special Committee~~^{Task Force}. The Trustees and the ~~Special Committee~~^{Task Force} agree that the Work Product is and shall remain our property. Under our document retention policy, we normally destroy files ten years after a matter is closed, unless other arrangements are made with the client.

FSS, of course, is delighted to be asked to provide legal services to the ~~Special Committee~~^{Task Force}, and we are looking forward to working with the ~~Special Committee~~^{Task Force} on this engagement. While ordinarily we might prefer to choose a less formal method of confirming the terms of our engagement than a written statement such as this, it has been our experience that a letter such as this is useful both to FSS and to the client. Moreover, in certain instances, FSS is required by law to memorialize these matters in writing. In any event, we would request that the Trustees and the ~~Special Committee~~^{Task Force} review this letter and, if it comports with your and the ~~Special Committee~~^{Task Force}'s understanding of our respective responsibilities, so indicate by returning a signed copy to me at your earliest convenience so as not to impede the commencement of work on behalf of the ~~Special Committee~~^{Task Force}. If you or the ~~Special Committee~~^{Task Force} have any questions concerning this engagement letter, or should the ~~Special Committee~~^{Task Force} ever wish to discuss any matter relating to our legal representation, please do not hesitate to call me directly, or to speak to one of our other attorneys who is familiar with the engagement.

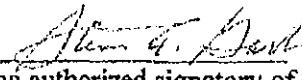
Task Force
Task Force
Task Force
Again, we look forward to serving the ~~Special Committee~~ and thank the Special-
~~Committee~~ and the Trustees for looking to FSS to assist the ~~Special Committee~~ in this matter.

Sincerely,



Louis J. Freeh*
Senior Managing Partner
Freeh Sporkin & Sullivan, LLP

APPROVED AND AGREED TO ON BEHALF OF
The Board of Trustees of The Pennsylvania State University:

By: 
an authorized signatory of The Board of Trustees of The Pennsylvania State University

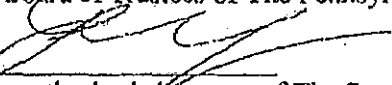
Printed Name: Steve A. Garban

Title: Chair, Board of Trustees
The Pennsylvania State University

Date: 12/2/11

Investigation Task Force

APPROVED AND AGREED TO ON BEHALF OF
The ~~Special Committee~~ established by
The Board of Trustees of The Pennsylvania State University:

By: 
an authorized signatory of The ~~Special Committee~~ established by
The Board of Trustees of The Pennsylvania State University

Printed Name: K.C. Frazier

Title: Chair, Special Investigations Task Force

Date: 12/2/11

* Licensed to practice law in New York, New Jersey and Washington, DC only.

Exhibit B

1993 WL 766113 (Pa.Com.Pl.)
Court of Common Pleas of
Pennsylvania, Luzerne County.

Morgan
v.
Harnischfeger Corporation

No. 3929-C of 1990.

|
March 5, 1993

Attorneys and Law Firms

Neil T. O'Donnell, John M. Elliott, and Thomas J. Elliott, for plaintiffs.

Harry V. Cardoni, for defendant Roadway Safety Inc.

Joseph A. McGinley, for defendant Kobe Steel Ltd.

Ralph J. Johnston Sr., for defendant L.B. Smith Inc.

Chester C. Corse, for defendant Penn East Corp.

Opinion

MUNDY, J.

*1 This matter returns to the court on the petition for reconsideration of the order of this court dated September 28, 1992, filed by the defendants, L.B. Smith Inc., Kobe Steel Ltd, Century II Inc., Penn East Corporation, Roadway Safety Inc., and Michael Baker Inc.

The defendants' petition for reconsideration centers on the recent holding of our Superior Court in *Aivazoglou v. Drever Furnaces*, 418 Pa. Super. 111, 613 A.2d 595 (1992).

The Superior Court in *Aivazoglou* held that the filing of a petition for leave to join additional defendants is not effective to toll the expiration of a statute of limitations **177 in the underlying action for personal injuries against the joined defendants.

The defendants cite *Aivazoglou* in the present case and argue that the plaintiffs' failure to seek leave of this court join them as defendants, prior to the expiration

of the statute of limitations, precludes their joinder in this cause of action.

In our previous opinion and order we clearly noted that by virtue of the complaints filed against and served upon them, each of the additional defendants had received notice, prior to the expiration of the statute of limitations, of the plaintiffs' cause of action. While the complaints filed were not in strict compliance with the Rules of Civil Procedure, leave of court not being sought prior to the filing, we noted that Pa.R.C.P. 126 empowered us to disregard an error or defect of procedure which does not affect the substantial rights of the parties.

In our view, since the joined defendants had received notice of the cause of action, and the basis therefor, prior to the expiration of the statute, their substantial rights were not affected.

After a thorough review of the *Aivazoglou* case, our view has not changed. It is important to note that the court therein reaffirmed that notice to the defendant is one of the underlying purposes for a prescribed statute of limitations.

"The Pennsylvania Supreme Court has repeatedly emphasized the important purposes which are served by statutes of limitation. They not only serve to give prompt notice to defendants that claims are being made against them, but they prevent stale claims and thus promote **178 finality and stability..." (citations omitted) *Id.* at 114, 613 A.2d at 597.

*2 The court, equally emphasized that the *lack of notice* to the aggrieved defendants in *Aivazoglou* was the impetus behind preclusion of the plaintiff's claim against them:

"The plaintiffs knew well before the running of the statute of limitations that claims could be asserted against additional manufacturers of asbestos. They could have commenced an action against the additional manufacturers of asbestos--and thereby tolled the statute of limitations--in any one of three means provided for commencement of an action by the Rules of Civil Procedure. They could have commenced an action by filing (1) a praecipe for writ of summons; (2) a complaint, or (3) an agreement for amicable action....

If they had done so, the defendants would have been duly served and would have received prompt notice that they had been sued." (footnote omitted) (citation omitted) *Id.* at 116, 613 A.2d at 598.

In the case at bar the plaintiffs complied with the directives of the rule cited by the *Aivazoglou* court (Pa.R.C.P. 1007). Having commenced the action plaintiffs filed a complaint, on the defendants prior to the expiration of the statute, albeit without leave of court and in violation of the procedural rules. Notwithstanding the procedural violation, however, it is without question that the objecting defendants received notice that a cause of action had been commenced against them, and the basis for that cause of action, prior to the expiration of the statute.

Therefore, we reiterate our first holding that the procedural error brought about by the failure to seek leave of this court prior to joining the additional defendants is not an adequate basis for shielding them from potential **179 liability for their alleged negligent actions where the defendants had formal

notice of the basis for the claim prior to the expiration of the statute.

Accordingly, this court enters the following:

ORDER

It is hereby ordered, adjudged and decreed as follows:

- (1) The petition for reconsideration filed by the defendants, L.B. Smith Inc., Kobe Steel Ltd., Century II Inc., Penn East Corporation, Roadway Safety Inc., and Michael Baker Inc., is denied and dismissed; and
- (2) The prothonotary is directed to mail notice of entry of this order to all counsel of record pursuant to Pa.R.C.P. 236.

All Citations

1993 WL 766113, 21 Pa. D. & C.4th 176

CERTIFICATE OF SERVICE

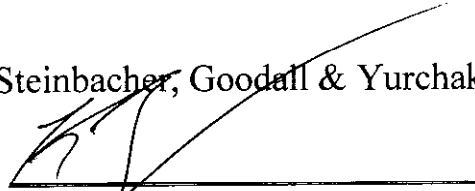
I hereby certify that a true and correct copy of the foregoing was served on the below counsel of record on May 11, 2016.

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Steinbacher, Goodall & Yurchak, P.C.

Dated: May 11, 2016

By: 
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