

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Centre

County



For Prothonotary Use Only:

Docket No:

2012-2065

FILED FOR RECORD

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:

- ☒ Complaint ☐ Writ of Summons ☐ Petition
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:
Graham B. Spanier

Lead Defendant's Name:
Pennsylvania State University

Are money damages requested? ☐ Yes ☒ No

Dollar Amount Requested: ☐ within arbitration limits
(check one) ☐ outside arbitration limits

Is this a Class Action Suit? ☐ Yes ☒ No

Is this an MDJ Appeal? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Peter F. Vaira / John E. Riley

☐ 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)

- ☐ Intentional
☐ Malicious Prosecution
☐ Motor Vehicle
☐ Nuisance
☐ Premises Liability
☐ Product Liability (does not include mass tort)
☐ Slander/Libel/ Defamation
☐ Other:

CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff
☐ Debt Collection: Credit Card
☐ Debt Collection: Other

☐ Employment Dispute: Discrimination
☐ Employment Dispute: Other

☐ Other:

CIVIL APPEALS

- Administrative Agencies
☐ Board of Assessment
☐ Board of Elections
☐ Dept. of Transportation
☐ Statutory Appeal: Other

☐ Zoning Board
☐ Other:

MASS TORT

- ☐ Asbestos
☐ Tobacco
☐ Toxic Tort - DES
☐ Toxic Tort - Implant
☐ Toxic Waste
☐ Other:

REAL PROPERTY

- ☐ Ejectment
☐ Eminent Domain/Condemnation
☐ Ground Rent
☐ Landlord/Tenant Dispute
☐ Mortgage Foreclosure: Residential
☐ Mortgage Foreclosure: Commercial
☐ Partition
☐ Quiet Title
☐ Other:

MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration
☐ Declaratory Judgment
☐ Mandamus
☐ Non-Domestic Relations
☐ Restraining Order
☐ Quo Warranto
☒ Replevin
☐ Other:

PROFESSIONAL LIABILITY

- ☐ Dental
☐ Legal
☐ Medical
☐ Other Professional:

FILED FOR FILING
RECEIVED
JAN 10 2013
CLERK OF COURT
CENTRE COUNTY, PA

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

GRAHAM B. SPANIER

Plaintiff,

v.

PENNSYLVANIA STATE
UNIVERSITY,

Defendant.

) Docket No. *2012-2065*
)
)
) **COMPLAINT**
)
)
) Filed on behalf of: Plaintiff
)
)
) Counsel of record for this party:
)
) Peter F. Vaira (PA Id. No.17042)
) John E. Riley (PA Id. No. 22504)
) Vaira & Riley
) 1600 Market Street, Suite 2650
) Philadelphia, PA 19103
) 215-751-2700
) 215-751-9420 (facsimile)

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CLERK OF COURT
CENTRE COUNTY, PA

IN THE COURT OF COMMON PLEAS OF
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CIVIL ACTION

GRAHAM B. SPANIER

Plaintiff,

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PENNSYLVANIA STATE
UNIVERSITY,

Defendant.

) Docket No. 2012-2065
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NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

CENTRE COUNTY LAWYERS REFERRAL SERVICE
C/O CENTRE COUNTY
PENNSYLVANIA BAR ASSOCIATION
P.O. BOX 186
HARRISBURG, PA 17108
TELEPHONE: 800-692-7375

[Faint, illegible markings]

Docket No. 2012-2065

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V.

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)
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)

)

The Parties

1. Plaintiff Graham B. Spanier (hereinafter “Dr. Spanier”) is an individual residing in Centre County in the Commonwealth of Pennsylvania.
2. Defendant Pennsylvania State University (hereinafter “Penn State”) is a corporation duly organized and existing under the laws of Pennsylvania with a

principal place of business located at 201 Old Main, University Park, Centre County, Pennsylvania.

Jurisdiction and Venue

3. Venue is proper in Centre County pursuant to Pennsylvania Rules of Civil Procedure 1006, 1072, 1092 and 2179, inasmuch as defendant is located and regularly conducts business in Centre County, Pennsylvania, the cause of action arose in Centre County, Pennsylvania and a transaction or occurrence took place in Centre County, Pennsylvania out of which the cause of action arose.

4. The Defendant is subject to personal jurisdiction in Pennsylvania as it has significant contacts with and regularly conducts and transacts business in Pennsylvania.

Background

5. Dr. Spanier was president of Penn State between September 1, 1995 and November 9, 2011.

6. On November 9, 2011, Dr. Spanier offered his resignation to the Board of Trustees of Penn State, so as to allow the Board of Trustees to have a free hand in investigating certain allegations of sexual misconduct relating to former Penn State coach Jerry Sandusky. The Trustees accepted Dr. Spanier's offer, and he resigned under the "termination without cause" provision of his contract. Dr. Spanier continues as a professor at Penn State to this date.

7. Previously, on March 22, 2011, Dr. Spanier had met with representatives of the Pennsylvania Attorney General and answered questions about Mr. Sandusky and Penn State.

8. Following that interview, on April 13, 2011, Dr. Spanier voluntarily and without subpoena appeared before the investigating grand jury in Harrisburg, Pennsylvania, and answered many questions under oath as to his recollection of reports from roughly a decade or more in the past, including one in which it had previously been alleged that Mr. Sandusky had showered with a youth while on the Penn State campus.

9. Dr. Spanier had reviewed no documents before testifying before the investigating grand jury. He had been informed that no emails or other communications from the relevant time period could be obtained for his review, inasmuch as a new email system installed in 2004 at Penn State had eliminated email records prior to 2004.

10. In that grand jury appearance, Dr. Spanier was accompanied by Penn State counsel, whom he believed was representing his interests in the proceedings. However, that counsel later (in 2012) took the position that she, in fact, was representing only the interests of Penn State.

11. Dr. Spanier answered the questions put to him in the grand jury to the best of his recollection and belief.

12. Since that date, defendant Penn State has engaged the Freeh Group International Solutions to investigate and report on many matters relating to and arising out of the Sandusky allegations.

13. Dr. Spanier has at all times desired to speak with the Freeh firm and assist the investigation.

14. In recent months, Dr. Spanier learned that at least some emails that pre-dated 2004 were indeed retrievable and had been retrieved. The one condition that Dr. Spanier and his counsel have placed upon any such interview or interviews with the Freeh firm is that Penn State provide him with access to communications in the University's possession, which he received or generated or had knowledge of during the period 1998-2004.

15. It was and is his belief that access to these emails would refresh his recollection significantly and allow him to assist the University fully in its investigation.

16. It is estimated that as president of Penn State, Dr. Spanier received more than 25,000 emails per year on average. During the 1998-2004 time frame, Dr. Spanier would have received more than 2,000 emails per month.

17. Plaintiff's counsel has nevertheless asked to review only those communications that may be relevant to the Freeh Group investigation, and it has

never been suggested by the university that delivery of such communications would be at all difficult.

18. On several occasions, Dr. Spanier's counsel has requested that Penn State turn over the materials now demanded, so as to allow Dr. Spanier to become sufficiently prepared to assist Mr. Freeh's firm's investigation. Copies of Dr. Spanier's counsel's letters are attached hereto as Exhibits A and B.

19. The response by counsel on behalf of Penn State was that, although Penn State would itself be willing to transmit the material, Penn State is refusing to make the material available to Dr. Spanier at the direction and request of the Attorney General of the Commonwealth of Pennsylvania. The decision to refuse access to the material was made, on information and belief, by Penn State's general counsel acting under the supervision of the Board of Trustees. A copy of Penn State's counsel's response is attached as Exhibit C.

20. The Attorney General of the Commonwealth of Pennsylvania has no legal right to insist that Penn State comply with this request, and Penn State does not take the position that it is under any legal compulsion not to make Dr. Spanier's own email correspondence available to him.

Count One: Replevin

21. The allegations contained in paragraph 1 through 20 are incorporated herein by reference.

22. Dr. Spanier has a property interest of incalculable value in the body of email correspondence he generated and received while acting in his official capacity as president of Penn State between 1998 and 2004.

23. The emails are in Penn State's possession on Penn State's servers, and Penn State has refused to allow Dr. Spanier to access them.

WHEREFORE, the plaintiff Graham Spanier hereby demands that this Court enter an Order in the nature of Replevin directing defendant Pennsylvania State University to give plaintiff a copy of any email correspondence relevant to the Freeh Group investigation that it has in its possession and that plaintiff generated or received between the years 1998 and 2004; and to grant such other and further relief as this Court shall deem just and proper.

Count Two: Mandamus

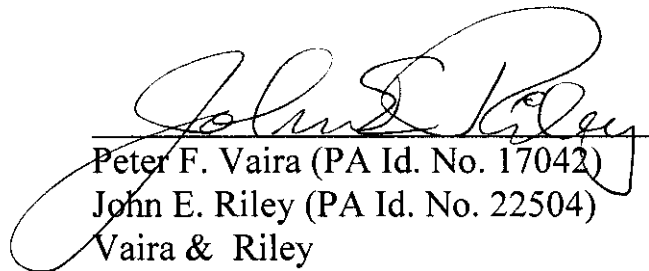
24. The allegations contained in paragraph 1 through 23 are incorporated herein by reference.

25. Penn State, by taking the position that it would willingly turn over Dr. Spanier's email record to him if it were not for the direction of the Pennsylvania Attorney General, has in effect agreed to an amicable action of mandamus under Pennsylvania Rule of Civil Procedure 1093(2).

26. Unless Penn State turns over the email record, Dr. Spanier will be deprived of the ability to give the Freeh firm his most accurate recollections.

27. Dr. Spanier has no other adequate remedy at law.

WHEREFORE, the plaintiff Graham Spanier hereby demands that this Court enter an Order of Mandamus directing defendant to give plaintiff a copy of any email correspondence relevant to the Freeh Group investigation that it has in its possession and that plaintiff generated or received between the years 1998 and 2004; and to grant such other and further relief as this Court shall deem just and proper.



Peter F. Vaira (PA Id. No. 17042)
John E. Riley (PA Id. No. 22504)
Vaira & Riley
1600 Market Street, Suite 2650
Philadelphia, PA 19103
215-751-2700
215- 751-9420 (facsimile)

EXHIBIT A

VAIRA & RILEY

A PROFESSIONAL CORPORATION

1600 Market Street, Suite 2650
Philadelphia, PA 19103

Telephone (215) 751-2700
Facsimile (215) 751-9420
E-mail j.riley@vairariley.com
Website vairariley.com

John E. Riley

April 18, 2012

VIA EMAIL

Frank T. Guadagnino, Esquire
Reed Smith
225 Fifth Avenue
Pittsburgh, PA 15222

Dear Frank:

As you know we represent Dr. Graham Spanier. We have been working with Mike Mustokoff at Duane Morris to obtain certain of Dr. Spanier's documents during his tenure as President of PSU in order to properly prepare and represent Dr. Spanier's interests.

Dr. Spanier has been contacted by representatives of the Louis Freeh group which is conducting an extensive review of Penn State's operations over the past 15 years. Dr. Spanier was the University President for the past 16 years. He will surely be asked numerous questions about the operations, practices, and personnel of the university during that period of time. We are aware that there are Dr. Spanier's emails from before 2004 in the University's possession (prior to 2004). We were waiting to receive them from Mike Mustokoff. Late last week, Mike Mustokoff told us that he received instructions forbidding him to provide us those documents.

We called yesterday to speak with you about the matter but only got through to voicemail. Hopefully, this instruction to Mike Mustokoff can be reversed. It is clearly not in the University's interests to withhold documents from Dr. Spanier and, thereby, prevent him from being properly prepared. This is especially so when dealing with events which may have occurred over 10 years ago and, in Dr. Spanier's case, well over 10,000 emails ago and thousands of meetings ago.

Conversely, we see no countervailing benefit to PSU from withholding the documents. We understand that these documents have been produced to the Attorney General of Pennsylvania, the U.S. Attorney for the Middle District, and to the Louis Freeh Group's attorneys/investigators. Obviously, there is no privilege that attaches to these documents if they have been shared so thoroughly and freely with others.

EXHIBIT A

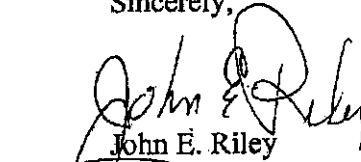
Frank T. Guadagnino, Esquire
April 18, 2012
Page 2

These documents are essential for our client's proper preparation. They should have been obtained by competent counsel and reviewed with Dr. Spanier even prior to his grand jury appearance last April. To intentionally withhold them from him at this stage is simply not well founded in legal practice or common sense. It smacks of game playing and would constitute fundamental unfairness and prejudice to Dr. Spanier.

Dr. Spanier has always strived to legitimately place the University's best interest as a top priority. Our access to these documents should be consistent with the best interests of the University. There certainly can be no downside to providing him documents to which he was privy during his tenure as University President.

Kindly contact us at your earliest convenience so we may discuss this issue. We believe that these documents should properly be provided to us without significant delay.

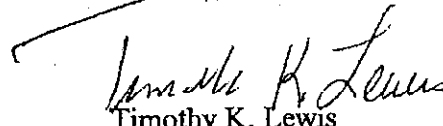
Sincerely,



John E. Riley



Peter E. Vaira



Timothy K. Lewis
Schnader Harrison Segal & Lewis LLP
The Victor Building
750 9th Street, NW, Suite 550
Washington, DC 20001-4534

JER/slc

EXHIBIT B

VAIRA & RILEY

A PROFESSIONAL CORPORATION

1600 Market Street, Suite 2650
Philadelphia, PA 19103

Telephone (215) 751-2700
Facsimile (215) 751-9420
E-mail p.vaira@vairariley.com
Website vairariley.com

Peter F. Vaira*

*also admitted in Illinois
and District of Columbia

April 25, 2012

VIA EMAIL

Louis J. Freeh, Esquire
Freeh Group International Solutions
3711 Kennett Pike, Suite 130
Wilmington, DE 19807-2156

Dear Judge Freeh:

We represent Dr. Spanier who, as you know, was the President of Penn State University from 1995 to November, 2011. We have been in contact with Greg Paw about scheduling an interview for Dr. Spanier in connection with the investigation your firm is conducting at Penn State University. Dr. Spanier has been eagerly awaiting the opportunity to be interviewed. As we have advised Greg Paw, we need to have access to documents relevant to Dr. Spanier's 16 years tenure as University President to permit him to be properly prepared and refresh his recollection of events occurring up to 16-17 years ago.

We have been working for some time over the past six to eight weeks with Mike Mustokoff and Dan Walworth of Duane Morris, the firm designated to handle document issues for PSU. As we had advised Greg Paw on more than one occasion, we seemed to be making strides to obtain the documents necessary to prepare Dr. Spanier for an interview. However, recently we have been notified of an obstacle which prevents us from obtaining documents and, thereby, prevents us from proceeding to an interview with you and your representatives. We had been advised a few weeks ago by Mike Mustokoff that PSU was in possession of certain documents, namely, emails prior to 2004 going back to 1998, which we would be able to obtain from him in due course when he received them. After two or three contacts with Mike's office about possible production of those documents in a short time period, last week Mike Mustokoff told us he was instructed he was forbidden to turnover those documents to us.

We attempted to overcome this instruction by raising this issue with Frank Guadagnino, the attorney from Reed Smith charged with representing the PSU on a multitude of issues and the attorney to whom Mike Mustokoff directed us to seek recourse. We sent a letter dated April 18, 2012, a copy of which is attached hereto, to Frank to reconsider the position by PSU and allow us the necessary documents to permit us to properly prepare Dr. Spanier for, *inter alia*, an

EXHIBIT B

interview with you. Unfortunately, on April 20, 2012, we received a responsive letter (a copy of which is attached hereto) from Frank which advised us the University felt constrained to abide by a request of the Pennsylvania Attorney General to not produce these documents to us, even though they have been shared with your firm, the U.S. Attorney in the Middle District, the Pennsylvania Attorney General and others within the University community.

As frustrated as we feel with the University's position, we wish to advise that we simply cannot agree to an interview without the necessary documents we know are in existence and which are essential to properly prepare our client. We know you share with us a substantial background in law enforcement and in white collar matters. We are confident that you will readily agree that we cannot have our client submit to an interview without having access to relevant documents. We cannot repeat the episode from last year in which our client was permitted to be interviewed by the Attorney General's office and, later, appear in front of a grand jury with absolutely no preparation, including no review of any relevant documents.

We are also addressing this issue with you in the hopes that you, in your position of independently reviewing matters occurring during Dr. Spanier's tenure as President for the University, may be able to influence the University to change its position with respect to permitting us access to documents. We all know there is no legal authority for a prosecutor to forbid the sharing of documents such as these. Conversely, there is a minimal (we believe zero) risk that providing us access to these documents could realistically "compromise" an investigation.¹ We, on behalf of our client and his sincere interest in being interviewed as part of your investigation, request any assistance you may be able to provide to have the requisite documents necessary for our preparation to be released to us.

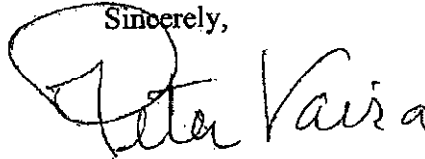
Any assistance or guidance you and your firm may be able to provide would be greatly appreciated. Unfortunately, the most recent decision by the University to forbid us access to relevant documents has a very unfortunate impact on our client's ability to be interviewed until such decision is reversed and we can gain access to the documents.

¹ On the issue of "compromising an investigation", certainly we cannot destroy or alter the documents. Further, it would not be in our interest to further disseminate them to anyone else and, if necessary, we would be willing to enter into a confidentiality agreement to that effect.

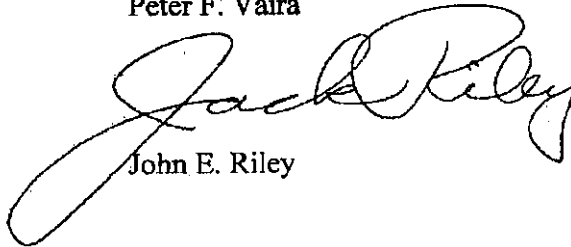
Louis J. Freeh, Esquire
April 25, 2012
Page 3

We would welcome the opportunity to meet and discuss this issue further with you if you feel any progress can be made to enable us to obtain documents. You may contact us at any time.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter Vaira".

Peter F. Vaira

A handwritten signature in cursive script, appearing to read "John E. Riley".

John E. Riley

JER/tb
Enclosures

cc: Gregory A. Paw, Esquire (w/enc)

EXHIBIT C

Frank T. Guadagnino
Direct Phone: +1 412 288 3236
Email: fguadagnino@reedsmith.com

Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222-2716
+1 412 288 3131
Fax +1 412 288 3083
reedsmith.com

April 20, 2012

Peter F. Vaira, Esquire
Vaira and Riley, P.C.
Suite 2650
1600 Market Street
Philadelphia PA 19103

Dear Peter:

I have read your letter several times, considered it carefully and discussed it with Mike. After careful consideration, we cannot allow you to see the documents which you have requested.

Please understand the difficult position in which we find ourselves. We have received an explicit instruction from the Deputy Attorney General not to share the requested information for fear of compromising the Commonwealth's ongoing investigation.

Given that instruction and the sensitivity of the University's position, we see ourselves as having no choice but to accede to the Deputy Attorney General's instruction.

At page 2 of your letter, you imply that the documents that you have requested should have been provided to Dr. Spanier prior to his Grand Jury appearance last April. We can assure you that those same documents were only discovered within the last several weeks and were, therefore, unavailable at that time.

We regret that we cannot be more helpful to Dr. Spanier at this time.

Very truly yours,


Frank T. Guadagnino

FTG:ac

EXHIBIT C

BLANK

VERIFICATION

I verify that the statements made in the within Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

Date: 5/24/12

Graham Spanier
Graham Spanier