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Penn State and Sandusky, An Update

[Penn State and Sandusky, An Update](#)

By Michael Mattioni, Esq. and Josh Kobylarz, Esq.

Despite Jerry Sandusky's conviction in 2012, issues stemming from the scandal still loom between the National Collegiate Athletic Association (NCAA) and Penn State University. When the scandal first surfaced, a team headed by former FBI Director Louis Freeh investigated the University's conduct during the scandal. Freeh and his team produced a scathing report, known as the "Freeh Report," that stated various Penn State officials allowed Sandusky's actions to persist over many years. In 2012, shortly after the Freeh Report was released, Penn State and the NCAA entered into a consent decree.



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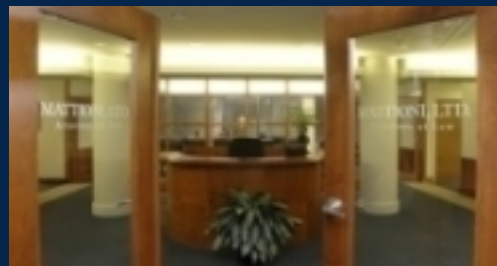
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The consent decree allowed the NCAA and Penn State to agree to the events that transpired during Sandusky's tenure without further investigation. The decree adopted the Freeh Report's findings. It also allowed the NCAA to sanction Penn State for its involvement in covering up or otherwise allowing Sandusky's actions to persist. Some of the sanctions against Penn State included a four-year bowl ban for the football team, loss of football scholarships, removal of 112 football team wins (which, in turn, stripped Joe Paterno of his title as the winningest coach in NCAA Division-I football history), and a \$60 million fine. Now, state Senator Jake Corman and state Treasurer Rob McCord are challenging the consent decree's validity.

The challenge began after Governor Corbett passed the Pennsylvania Higher Education Endowment Act in February 2013. The Act requires monetary penalties against higher education institutions, like consent decree fine, to be used in Pennsylvania. A dispute arose over whether Penn State's \$60 million fine was subject to the Act. The Act was upheld and the NCAA agreed to place the money into the Act's trust fund. At this point, the issue appeared resolved. However, while resolving this issue, the Commonwealth Court raised the issue of the consent decree's validity.

When the consent decree was completed, many questioned the NCAA's authority to enter the agreement. Many also questioned if Penn State truly had a choice when it entered the agreement. Senator Corman and Treasurer McCord now claim Penn State was under duress when it entered the consent



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decree.

Duress exists when one party to an agreement does not have a meaningful choice. For example, you hire a contractor to replace your roof. A contract is signed to replace your roof for \$5,000. The contractor begins work and tears off the existing roof. Half way through replacing the roof, the contractor tells you to pay him \$10,000 or he won't finish the job. In theory, you have two choices: pay the \$10,000 or only have half a roof over your house. In reality, you have no meaningful choice because you need a roof on your house, so you agree to pay the contractor \$10,000. Your agreement to pay the contractor \$10,000 would not be binding.

In this case, Senator Corman and Treasurer McCord claim Penn State had no choice but to enter into the consent decree. They argue Penn State's two choices were: enter the consent decree or let the NCAA conduct its own investigation that will result in more severe penalties, potentially the "death penalty." The death penalty is the highest sanction ever handed down by the NCAA. It has only been handed down once, to Southern Methodist University. The death penalty forces a University to shut down its sports program for at least two years. Southern Methodist received the death penalty after years of persuading high school football players to join its program using money and other benefits. The football program was shut down for two years and still has not recovered.

The validity of the consent decree is important because it may mean Penn State is not responsible for paying the \$60 million monetary penalty. Senator Corman and Treasurer McCord claim just that and request that the

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money already paid by the University be returned. The NCAA, on the other hand, argues the consent decree's validity was never questioned until the Commonwealth Court raised the issue on its own. Therefore, the NCAA asserts it should not be addressed.

In a recent decision, Judge Anne E. Covey denied the NCAA's motion to invalidate any challenge to the consent decree based on duress. Judge Covey denied the request and the matter would proceed to trial. Trial was set to begin January 6, 2015 and expected to last five days. By the end, another part of the Sandusky scandal should finally be resolved.

This article does not provide advice, just general information regarding the Jerry Sandusky case.



[Penn State, Sandusky and the NCAA; Final Resolution](#)

By Michael Mattioni, Esq. and Josh Kobylarz, Esq.

In the above article, Penn State University and the National Collegiate Athletic Association (NCAA) were set for trial in early January. The issue for trial was whether the consent decree between Penn State and the NCAA was valid. Penn State's liability for the \$60 million penalty handed down by the NCAA as part of the consent decree was the primary concern. However, the two sides reached a proposed settlement agreement on Friday, January 16, 2015 ending the dispute.



Stephen Galati was a panelist at the **Latin America 2015: Economic Business and Trade Forecast Forum** held on January 21, 2015 at the Hyatt at the Bellevue in Philadelphia. The forum was sponsored by the Chilean and American Chamber of Commerce of Greater Philadelphia. Mr. Galati spoke on compliance requirements for importers, shippers, and carriers under the recently enacted Food Safety Modernization Act, as well as the Act's impact on imports of fruit and produce from Latin America.

Specifically regarding the trade relationship between the United States and Chile, there is a \$7 billion dollar surplus of trade from the U.S. to Chile. Chile has moved from the 35th largest ranked U.S. trade partner to the 19th largest. Since 1994 Mexico has experienced an increase from \$80 billion

The sanctions handed down by the NCAA in the wake of the Jerry Sandusky scandal included a four year postseason ban on the football program (meaning the football team could not play in any “bowl” games), suspension of scholarships, a fine of \$60 million, and vacating the football team’s wins for the years 1998 through 2011. The removal of the football team’s wins from 1998 through 2011 resulted in Joe Paterno losing his spot as college football’s winningest coach. While most of those penalties were no longer an issue because the scholarships were reinstated and the football team regained postseason eligibility, legitimacy of the \$60 million fine and vacation of wins were still disputed, as was the legitimacy of the actions taken by the NCAA.

The trial was bound to be interesting. On the one hand, the validity of the consent decree was not an issue in the original case but was raised by the Commonwealth Court *sua sponte* (or, on its own). Thus, the NCAA had a strong argument that the matter was not properly before the court. On the other hand, during investigation of the issue, emails revealed that the NCAA tried to “bluff” Penn State into accepting the sanctions and that the NCAA worked with Louis Freeh as he compiled the Freeh Report—a scathing report on Penn State’s actions during Sandusky’s tenure as defensive coordinator for the football team and on which the consent decree was primarily based. However, settlement means the battle should no longer be necessary.

As part of the settlement agreement, Joe Paterno and the football team’s wins for the years 1998 through 2011 have been reinstated, once again making Joe Paterno the winningest football coach. Additionally, Penn State has agreed to commit \$60 million to activities and programs

in trade to \$500 billion. As many as six billion jobs in the U.S. depend on the country’s trade with Mexico.

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for the prevention of child sexual abuse and the treatment of victims of child sexual abuse in Pennsylvania. Additionally, Penn State acknowledges the NCAA's legitimate good faith interest and concern regarding the Jerry Sandusky scandal and, presumably, enforcing the consent decree.

For now, it seems, the matter is settled. Penn State, at least partially, restores the face of its football program's image, the NCAA faces no consequences regarding the questionable consent decree, and the \$60 million in controversy will be used to aid victims of similar abuse in Pennsylvania. Hopefully, when the settlement becomes official, all parties can move on.

This article is a recap of issues that have been in the news recently. It does not provide legal advice. Anyone with questions regarding this matter should contact the appropriate professional.

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The Implied Warranty of Habitability and New Construction

[The Implied Warranty of Habitability and New Construction](#)

By Michael Mattioni, Esquire

Does the purchaser of a home have a claim against the builder for construction defects if the purchaser did not purchase the home directly from the builder? The Pennsylvania Supreme Court decided this issue on August 18, 2014.

The Pennsylvania Supreme Court on August 18, 2014, reversed a decision of the Superior Court and held that a purchaser of a home can only sue the builder for breach of the implied warranty of habitability if the purchaser had privity of contract with the builder. This means that the purchaser must have purchased the house directly from the builder. See *Conway v. The Cutler Group*, No. 80 MAP 2013 (Pa. 2014).

In *Conway*, The Cutler Group built a home and sold it to Fields. Fields sold the home after living in it for 3 years. The Conways, after living in the home for about two years discovered water infiltration and other construction defects. They filed a claim against The

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Cutler Group alleging a breach of the implied warranty of habitability in the construction of the home. The trial court dismissed the claim because the Conways did not purchase the property from The Cutler Group. The Superior Court reversed, and on August 18, 2014, the Supreme Court reversed the Superior Court and denied the claim.

The Supreme Court reviewed similar cases in many states before deciding that the breach of the implied warranty of habitability would only be a valid claim for the purchasers of the home from the builder. This was clearly a difficult decision for the Court, which stated that any extension of the implied warranty of habitability to any party other than the original buyer was a policy decision best left to the legislature.

The bottom line is that purchasers of homes, even new homes, are unable to look to the builder to cure defects, unless they purchased the home directly from the builder.

This article provides some information about the implied warranty of habitability and how it impacts new construction in Pennsylvania. Anyone with any questions about how the implied warranty of habitability is applied to new construction should contact an attorney as each situation is different.

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