

EXPERT REPORT

**SUBMITTED TO: STEVEN J. ENGELMYER, ESQ.
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ONE LIBERTY PLACE, 46TH FLOOR
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**PERTAINING TO: PENNSYLVANIA MANUFACTURERS'
ASSOCIATION INSURANCE COMPANY
V.
THE PENNSYLVANIA STATE UNIVERSITY AND JOHN DOE A**

**CASE NO. 120104126
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

SEPTEMBER 8, 2015

**PREPARED BY: RAYMOND WILLIAMS JR.
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I. Introduction and Summary of Opinion

I was retained as an expert witness by Kleinbard LLC on behalf of its client, Pennsylvania Manufacturers' Association Insurance Company ("PMA"), in connection with a lawsuit pending in the Philadelphia County Court of Common Pleas under the caption Pennsylvania Manufacturers' Association Insurance Company v. The Pennsylvania State University and John Doe A, January Term, 2012, No. 04126. Kleinbard LLC has requested my opinion and analysis concerning The Pennsylvania State University's ("Penn State") failure to disclose certain information to PMA concerning Gerald Sandusky ("Sandusky") as it relates to PMA's underwriting process. In formulating this opinion, I have reviewed the documents identified in the attached Appendix "A."

By way of background, I am a partner at Northport Financial LLC ("Northport Financial"), which is located at 32 North Avenue East, Cranford, NJ 07016. Northport Financial is a consulting firm specializing in insurance and risk management services. I obtained a *Masters in Business Administration in Quantitative Analysis* and a *Bachelor of Arts in History* from Seton Hall University, South Orange, NJ.

Since entering the training program of United States Fidelity & Guarantee Company in 1975, my work experience has been concentrated in commercial account underwriting. Since 1978, I have held various positions with underwriting responsibilities for large account and program business. Management responsibilities have included underwriting operations and related underwriting support operations such as rating and administration. My experience includes desk underwriting or management of departments/divisions dedicated to large, complex commercial accounts and public entities with positions held at Custom Risk Solutions, American Reinsurance, Reliance National, Continental Insurance Companies, and the Home Insurance Companies.

My experience underwriting large accounts has included direct or management responsibilities for Fortune 100 companies, large regional manufacturing and service companies, non-profit and public entities including Institutions of higher learning. For

the last five years, I have managed, on a contract basis, the underwriting operations of a large pool of public entities that includes nineteen colleges in its membership.

In addition, since the establishment of Northport Financial in 2002, I have conducted or participated in more than 100 underwriting audits or due diligence reviews of insurance companies, managing general agents, or other underwriting facilities such as pooling arrangements and risk retention groups. Other Northport assignments have included the review and/or development of underwriting procedures and guidelines and operational reviews of underwriting facilities.

I am currently a licensed producer in New Jersey and hold various non-resident licenses in other states. My compensation for preparing this report is \$310 per hour. A copy of my resume is attached to this report.

By way of summary, it is my opinion, stated to a reasonable degree of professional certainty, that:

- Based on industry practice and my experience, and my review of the documents identified in Appendix "A," Penn State should have timely disclosed to PMA allegations, reports, investigations, and other information concerning Sandusky's inappropriate sexual contact with minors that it had received over the years, including:
 - a report in 1976 by an alleged victim to Penn State Head Football Coach Joseph Paterno;
 - improper sexual contact between Sandusky and a minor in 1987 that was witnessed by Penn State Assistant Football Coach Joseph Sarra;
 - improper sexual contact between Sandusky and a minor in 1988 that was witnessed by Penn State Assistant Football Coach Kevin O'Dea;
 - a report by an alleged victim that was referred to Penn State Athletic Director Jim Tarman in 1988;
 - a report in 1998 by the mother of a young boy filed with the Penn State Police Department interpreted by high level Penn State officials as a possible sexual assault; and

- o improper sexual contact between Sandusky and a minor in 2001 that was witnessed by Penn State Assistant Football Coach Michael McQueary and reported to multiple high level Penn State officials, including Joseph Paterno, Timothy Curley (Athletic Director), Gary C. Schultz (Senior Vice President–Finance and Business), and Graham B. Spanier (University President).
- Based on PMA's conservative underwriting practices and general aversion to providing sexual abuse and molestation coverage, each item of information referenced above was material to PMA's underwriting process, and had any of those items been disclosed, PMA would have refused to issue subsequent policies, included certain endorsements in all policies, or taken other underwriting action to protect itself from any exposure to any claims of that nature.

II. Background

Founded in 1862, Penn State is a sophisticated institution with a broad range of underwriting exposures due, in part, to its twenty-four campuses, 17,000 faculty and staff, and 100,000 students. Its open campus policy encourages community interaction and increases the breadth of public liability exposures.

PMA traces its roots back to 1915. Over the last 100 years, PMA has grown to become a broad based risk management company licensed and admitted in fifty states.

PMA insured Penn State for years.

A. PMA's Risk Appetite for Abuse and Molestation Coverage

PMA is a conservative insurance company, particularly when it comes to the large account underwriting market. PMA is a member of the Insurance Services Office ("ISO"), an industry organization that uses statistical data collected from its members to provide services, promulgate rates, and design forms on behalf of its membership. While insuring Penn State, PMA utilized standard ISO-based General Liability policies that it modified with manuscript endorsement wording to provide specific coverage for

Penn State's operations. Within PMA, the use of manuscript endorsements was a well-controlled and highly regulated process.

PMA's status as a conservative insurance company is reinforced by its use of highly regulated underwriting processes, which are detailed in PMA's Underwriting Manual. PMA further controls the underwriting process by using clearly defined grants of underwriting authority for its underwriters, and a referral process for dealing with issues that exceed an underwriter's authority. PMA thereby utilizes procedures designed to ensure that underwriting issues are addressed by PMA staff possessing the appropriate skill, experience, and knowledge.

PMA's conservative approach to insurance underwriting also is evident from its attitude towards sexual abuse and molestation coverage. As reflected in the testimony of multiple PMA employees and various PMA documents, including a Technical Bulletin dated November 15, 1996, PMA was not an aggressive market for such coverage and it would not actively solicit such business. Rather, it would only consider offering abuse and molestation coverage when specifically requested by the insured. Even then, such requests were subject to strict underwriting criteria that considered, among other things:

- Whether any allegations of abuse/molestation have been made against the insured in the past; and
- Whether the insured has a written program for training employees to: (1) recognize the signs and symptoms exhibited by victims of abuse/molestation; and (2) report incidents, suspicions, visible bruises, or other injuries.

The second criterion was especially stringent; without an acceptable written program for training employees in those areas, the risk would not be eligible for coverage.

B. The Renewal Process

Generally, industry practice in large account underwriting utilizes annual policy periods. The renewal process is the annual event whereby an insured submits information to the insurance company relating to the insured's operations, exposures, controls, loss experience, and other relevant data essential to the underwriting process. The

insurance company relies upon the submission to complete the underwriting process and prepare an appropriate insurance proposal. If the proposal is accepted, an insurance policy is issued that represents the agreement between the insured and the insurance company.

Each year PMA insured Penn State, the parties would participate in a renewal process that would culminate in a submission from Penn State, a proposal from PMA, and a policy evidencing the agreement to extend the relationship for another year. Although a policy would officially be renewed in March, the renewal process typically started in October, at which time Penn State would begin submitting information to PMA for use in the underwriting process.

As part of its underwriting process, PMA would review Penn State's reported exposures and losses, as well as Penn State's efforts to address exposures and mitigate loss activity. Ultimately, PMA relied on Penn State not only to report data, but also to effectively implement the policies and controls it represented as having established.

III. Incidents of Improper Sexual Contact Between Sandusky and Minors

Over the course of Penn State and PMA's business relationship, the parties went through the renewal process numerous times. During that time, Penn State never informed PMA about any incidents or allegations of sexual abuse involving Sandusky and minors. Accordingly, Penn State failed to disclose the following:

- a report in 1976 by an alleged victim to Penn State Head Football Coach Joseph Paterno;
- improper sexual contact between Sandusky and a minor in 1987 that was witnessed by Penn State Assistant Football Coach Joseph Sarra;
- improper sexual contact between Sandusky and a minor in 1988 that was witnessed by Penn State Assistant Football Coach Kevin O'Dea;
- a report by an alleged victim that was referred to Penn State Athletic Director Jim Tarman in 1988;

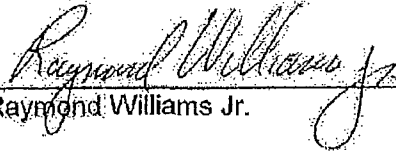
- a report in 1998 by the mother of a young boy filed with the Penn State Police Department interpreted by high level Penn State officials as a possible sexual assault; and
- improper sexual contact between Sandusky and a minor in 2001 that was witnessed by Penn State Assistant Football Coach Michael McQueary and reported to multiple high level Penn State officials, including Joseph Paterno, Timothy Curley (Athletic Director), Gary C. Schultz (Senior Vice President-Finance and Business), and Graham B. Spanier (University President).

Based upon my experience with and knowledge of the large account underwriting industry, it is generally expected that a report of any of these incidents would have triggered underwriting action at most insurance companies. Depending on the company, an insurer may choose to address the issue in a number of ways, including but not limited to, excluding coverage, excluding the operations, establishing strict underwriting criteria, or cancelling the account.

In light of PMA's conservative underwriting practices and general aversion to providing sexual abuse and molestation coverage, it is my opinion that if any of these incidents had been reported to PMA on a timely basis, the exposure and loss potential would have been analyzed and addressed as part of the underwriting process. As a result, PMA would have refused to issue subsequent policies, made sure to include clear exclusions in all policies, or taken other underwriting action to protect itself from any exposure to any claims of that nature.

Regardless of the action that PMA would have taken, Penn State should have notified PMA of the incidents involving Sandusky on a timely basis. Penn State did not do that. Similarly, the incidents were never reported to Penn State's Risk Management Office, despite testimony from several Penn State witnesses that such incidents should have been reported to the department pursuant to policies and procedures established by Penn State. Penn State's failure to follow the policies and procedures it represented to PMA during the underwriting process were maintained by Penn State and to report these incidents to PMA materially undermined the underwriting process.

The foregoing represents my opinions stated to a reasonable degree of professional certainty based upon my experience with and knowledge of the insurance industry and the records I have reviewed.


Raymond Williams Jr.

Appendix "A"

Litigation Materials

1983 Policy

1985 Policy

1991 Policy

1992 Policy, Abuse or Molestation Exclusion (PMA010631–PMA010633)

1992 Policy, Duties in the Event of Occurrence (PMA010585–PMA010586,
PMA010593, PMA010598–PMA010601)

1996-1997 Loss Run Report (PMA060840–PMA060870)

1998 Policy, Duties in the Event of Occurrence (PMA006440–PMA006441,
PMA006453)

1999 Policy

2004 Policy

2005 Policy

Policy Underwriting documents (PMA010571–PMA010894)

PMA Underwriting Manual documents (PMA101381–PMA101548)

Technical Bulletin dated November 15, 1996 with Accompanying Forms (PMA101549–
101571)

Penn State Policy AD39 and Related E-mails (Exhibit 6 to Michael Klein Deposition
Transcript)

Penn State Policy SY05 (PSU_Freeh 04380–PSU_Freeh 04381)

Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky dated July 12, 2012

Confidential Intake Questionnaire (Exhibit 137 to John Doe 75 Deposition Transcript)

Deposition Transcript of John Doe 75 (9/29/14)

Deposition Transcript of John Doe 101 (11/21/14)

Deposition Transcript of John Doe 102 (11/21/14)

Deposition Transcript of John Doe 150 (10/13/14)

Deposition Transcript of Dennis Bogaczyk (6/12/14)

Deposition Transcript of Meghan Buck (6/8/15)

Deposition Transcript of David Emerick (4/1/14)

Deposition Transcript of Margaret Janowiak (5/15/14)

Deposition Transcript Michael Klein (1/15/14)

Deposition Transcript of Gary Langsdale (5/30/14)

Deposition Transcript of Michael Maguire (3/25/14)

Deposition Transcript of Raymond Rocchio (6/4/15)

Deposition Transcript of David Smith (10/29/14)

Deposition Transcript of David Smith (11/20/14)

Deposition Transcript of David Snowe (3/21/14)

Deposition Transcript of Graham Spanier (5/29/15)

Deposition Transcript of Michael Stephens (2/10/15)

Deposition Transcript of Kenneth Williams (1/16/14)

Transcript of Joseph Paterno Grand Jury Testimony (1/12/11)

Transcript of Graham Spanier Grand Jury Testimony (4/13/11)

Transcript of Preliminary Hearing in Criminal Proceedings against Timothy Curley and Gary Schultz (12/16/11)

Transcript of Trial in Criminal Proceedings against Gerald Sandusky (6/12/12)

Transcript of Trial in Criminal Proceedings against Gerald Sandusky (6/13/12)

Reference Materials

Alliance of American Insurers, Policy Kit for Insurance Professionals (1997-98 ed.)

American Institute for Chartered Property Casualty Underwriters & Insurance Institute of America, *The CPCU Handbook of Insurance Policies* (6th ed. 2005)

Malecki, S. & Flitner, A., *Commercial General Liability* (3d ed. 1990)

Pentz, M. & Evans, J., *Obligations of Insurer and Policyholder* (2010)

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SUMMARY

Executive with extensive experience managing commercial underwriting facilities for both traditional and alternative risk facilities. Often operated in dual capacity of managing line underwriting operations, while assuming home office responsibilities such as product development, creation of pricing and underwriting tools, and liaison to finance and actuarial operations. Strong track record with clients and producers.

PROFESSIONAL EXPERIENCE

Northport Financial, LLC, Cranford, NJ

Jan. 2002 – Present

Manager – Member

Manager-Member of facility that provides insurance and risk management services. Clients include insurance companies, reinsurance companies, risk management departments of large corporations and risk retention groups. Current and completed activities include underwriting audits; due diligence reviews, development of guidelines and procedures; archaeological studies of prior contracts and insurance coverages; underwriting services on a contract basis.

Custom Risk Solutions LLC, Princeton, NJ

Nov. 1999 – Nov. 2001

Senior Vice President – MACRO and Group Departments

Managed the production, underwriting, and servicing of both large risk and multiple insured clients for individualized alternative risk solutions. Integrated the delivery of insurance products and related services of our investing partners' insurance and reinsurance mechanisms with other unbundled services. CRS GWP of \$103.0 million in 2000 which was first full year of operation.

Harbor Underwriters Inc., Hoboken, NJ

Aug. 1998 – Nov. 1999

Senior Vice President & Chief Underwriting Officer

Developed and managed northeast agency operations, Harbor Atlantic Underwriters, developing new business initiatives. Operated as corporate resource for underwriting strategies; development of underwriting guidelines, procedures, and pricing tools; conducted audits of existing operations and potential acquisitions.

Am Re Managers, Inc., American Reinsurance, Princeton, NJ

Jan. 1996 – Aug. 1998

Vice President – Client Support Group – Insurance Operations

(Dec. 1996-Aug. 1998)

Managed staff of senior insurance executives in the coordination of the underwriting and servicing of insurance solutions with all Am Re Client Groups that utilized American Alternative Insurance Corporation. Also retained responsibility for direct production and underwriting activity. AAIC 1992 GWP \$148.0 million.

*Vice President – Product Development & Regional Underwriting
for Insurance Operations*

(Jan. 1996-Dec. 1996)

Responsible for direct underwriting and production of alternative risk initiatives; for coordinating underwriting and delivery of insurance related solutions for Am Re Managers Client Groups. Worked with various support facilities on the development of insurance-based products and tools.

Reliance National, New York, NY**Oct. 1987 – Nov. 1995***Senior Vice President – Transportation Division**(Oct. 1993 – Nov. 1995)*

Managed Divisional results for book of business with products for trucks, buses, limos, dealers and Non-Standard Auto. Re-directed Divisional resources to develop long-term profitable products DWP \$95.0 million.

*First Vice President – National Risk**(Jan. 1993 – Sept. 1993)*

Managed the Midwest Department. Responsible for underwriting and production of large primary casualty accounts. DWP \$93.0 million.

*Vice President – National Accounts**(Oct. 1987 – Dec. 1992)*

Managed the Midwest-Northeast Department. Responsible for the underwriting and production of large primary casualty accounts. DWP \$60.0 million.

Continental Insurance Companies, New York, NY**Oct. 1978 – Oct. 1987***Assistant Vice President – Special Risk Branch Manager**(May 1986 – Oct. 1987)*

Managed the Special Risk book of business in the Eastern Region. The Branch's staff of thirty underwrote, produced and serviced large casualty accounts. Annual premium exceeded \$125.0 million.

*Assistant Vice President – Director of Underwriting & Production**(Oct. 1983 – May 1986)*

Home Office underwriting officer – countrywide responsibility for all referrals exceeding branch authority. Managed staff of senior underwriters who approved referrals and monitored branch implementation of policies and procedures. Conducted underwriting audits and other staff functions.

*Senior Risk Analyst – Special Risk**(July 1980 – Oct. 1983)*

Home Office underwriter. Reviewed and approved referrals from assigned branches. Monitored branch implementation of policies, programs and procedures.

*Risk Planner/Team Leader – Special Risk**(Oct. 1978 – July 1980)*

Large account underwriter/supervisor responsible for underwriting, producing and servicing specific accounts.

The Home Insurance Companies, New York, NY**July 1977 – Oct. 1978***Account Specialist**(March 1978 – Oct. 1978)*

Large casualty account underwriter responsible for underwriting, producing, and servicing major commercial casualty accounts in the New York Branch.

*Assistant Financial Analyst – Insurance Operations Staff**(July 1977 – March 1978)*

Prepared written analysis of monthly production and profitability of product market segments; reviewed monthly field office variance reports, annual forecasts and budget. Assigned to special projects.

United States Fidelity and Guaranty Company, Orange, NJ**Nov. 1975 – July 1977**

Completed intensive underwriting trainee program and promoted to casualty underwriter to manage business from assigned agents.

EDUCATION

Masters in Business Administration; Quantitative Analysis
Seton Hall Graduate Business School, South Orange, NJ (1977)

Bachelor of Arts, History
Seton Hall University, South Orange, NJ (1973)