



www.mdbbe.com

Eric N. Anderson
Attorney at Law
Licensed in PA, WV & OH

MEYER ♦ DARRAGH
BUCKLER BEBENEK & ECK, P.L.L.C.

Attorneys-at-Law

U.S. Steel Tower • Suite 4850 • 600 Grant Street • Pittsburgh, PA 15219
Phone: (412) 261-6600 • Fax: (412) 471-2754

Direct Dial: (412) 553-7071
E-mail: eanderson@mdbbe.com

October 5, 2015

Steven J. Engelmyer, Esquire
Kleinbard, LLC
One Liberty Place
46th Floor
1650 Market Street
Philadelphia, PA 19103

Re: Penn State Matter
Our File No.: Engel-119756

Dear Mr. Engelmyer:

At your request, I have undertaken a review of numerous materials you provided me concerning the claims and the settlement of those claims arising out the Jerry Sandusky/Penn State matter. I have reviewed the complete Freeh Report and the individual files of those who settled their claims with Penn State. I have also conducted background research and have reviewed many of the files which I have handled over the past several years. You have asked me to review the individual cases and the accompanying information in order to provide you with my opinion concerning the value of the cases and whether there are certain defenses, and in particular, the statute of limitations defense, which could have been raised in some of the matters.

As way of background, I have been an attorney licensed to practice in the Commonwealth of Pennsylvania since 1973. I am also licensed in the State of Ohio and the State of West Virginia. Our firm has been involved in representing religious institutions, organizations and transportation entities as well as private corporations in matters arising out of claims of sexual abuse for many years, preceding when I started with Meyer Darragh in 1978. I personally have been handling cases involving allegations of sexual abuse for the past 15 years and have represented and continue to represent religious organizations, dioceses, transportation companies and individuals who have become involved in civil matters arising out of claims of sexual abuse. Our firm represented the diocese in *Hutchison v. Luddy*, which a partner of mine tried starting in 1994. That particular case went to the Superior Court on three occasions and to the Supreme Court on two occasions. I was involved in the last stages of that

case when it was in the Superior Court and I was involved in the final settlement of the matter.

I have represented religious institutions and private companies where there have been groups of individuals who have made claims arising out of the alleged abuse by one particular individual as well as groups of claimants arising out of alleged sexual abuse by several individuals who were acting as employees of the organization or corporation. I have settled sexual abuse claims on a group basis as well as an individual basis and continue to do such.

I was representing a client concerning multiple claims of sexual abuse by several different employees in the early 2000 timeframe when the seminal cases of *Meehan v. Archdiocese of Philadelphia*, 870 A.2d, 912 (Pa. super. 2005), petition for allocator denied 584 Pa. 717, 885 A.2d 985 (2005), *Baselice v. Franciscans Friars Assumption, BVM Providence, Inc.*, 879 A.2d 270 (Pa. Super. 2005), and *Lazarski v. Archdiocese of Philadelphia*, 926 A.2d 457 (Pa. Super. 2007) were decided. Those are the three cases which discussed at length the statute of limitations defense in sexual abuse cases. My research has indicated that there have been no appellate cases which have reversed or in any way modified the decisions of the Superior Court in those cases. *Meehan* was decided by the Superior Court in March of 2005 and the plaintiffs petitioned the Supreme Court for allocator which the Supreme Court denied in September of 2005. Re-argument was denied in November of 2005. In *Baselice*, the Superior Court handed down its decision in July of 2005. Finally, *Lazarski* was decided by the Superior Court in July of 2007. Those three cases address the application of the two year statute of limitations. In 2002, the Pennsylvania legislature amended the statute of limitations for individuals entitled to bring a civil action arising out of childhood sexual abuse to 12 years after attaining the age of 18. Although the Pennsylvania judiciary has refused to recognize the doctrine of repressed memory, the legislature tacitly adopted such by extending the statute of limitations for childhood sexual abuse to 12 years once an individual reaches the age of majority.

It has been stated on repeated occasions that in evaluating the defense, the Pennsylvania courts have a strong policy of favoring the strict application of the statute of limitations. See, *E.J.M. v. Archdiocese of Philadelphia*, 424 Pa. Super. 449, 622 A.2d 1388 (1993).

In every one of the cases that I reviewed, the individual was aware of the abuse which was being perpetrated, the identity of the perpetrator, and the identity of the employer or entity with which the perpetrator was affiliated. Under Pennsylvania law, neither the discovery rule nor the doctrine of fraudulent concealment would have been a viable exception to the statute of limitation defense. Being that the statute of limitations is a policy which is strongly favored by the Pennsylvania courts and is given strict application, any exception to the rule is extremely limited. *E.J.M. v. Archdiocese of Philadelphia*, supra, 424 Pa. super. 449 at 460, 622 A.2d 1388 at 1394 (1993).

The rationale of the decisions in *Meehan*, *Baselice* and *Lazarski* has not been affected by the extended childhood sexual abuse statute. Therefore, if a lawsuit had not been initiated by the time an individual reached 30 years of age, the statute of limitations under Pennsylvania law would be an absolute defense. The statute is not retroactive so as to revive a claim for which the statute had already expired.

With respect to my analysis of the individual claims, I have analyzed each case based on all of the information which was provided to me. I have provided a summary of the important information pertaining to each claim and then my analysis of the claim and my opinion concerning the settlement value based on my background and experience. Where I believe that the statute of limitations was an affirmative defense, I state such and do not provide an opinion concerning the settlement value of the case because the statute was a complete defense. In my analysis, I consider the strengths and weaknesses of each case. Since all of the cases involve claims for emotional and psychological damages, background information and verification of the claims is essential when determining the settlement value. Some of the comments in the individual summaries are a reflection of my approach to the analysis of the case for settlement purposes. The absence of documentation was an important part of my evaluation. In many of the individual cases, there was no signed affidavit, statement or other means of personal verification of the information which I reviewed. The documentation provided in almost all of the case included a report from Finberg & Rozen. However, the reports were not signed by individual claimants. It appears as though Penn State made little effort, if any, to verify the credibility of the claims of the individuals.

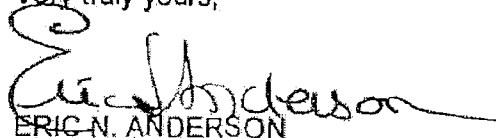
Where documentation was provided, such as medical records and reports, psychological evaluations and therapy records, I gave them due consideration. I also took into consideration the evaluator and the purpose for which the evaluation was performed. Obviously, the analysis of a claim involving sexual abuse is multifaceted and since damages are not empirical, such as in most personal injuries cases, the more information that is available the more complete the analysis.

During the course of my analysis of the individual cases, I had an opportunity to review information concerning Penn State's evaluations. Generally speaking, it appears as though the amounts of the settlement were high and in some cases extremely high. Not having the benefit of knowing what analytical process was employed by the evaluators, I do not know why so many of the cases were settled for such high sums of money. Based on my experience, I believe there was a component of potential punitive damages which factored into Penn State's evaluations. Also present in the analytical process may have been a concern about publicity and a desire to resolve the matters very quickly.

Steven J. Engelmyer, Esquire
Page 4

I only provide what my opinion is concerning the settlement value. My analysis and opinions are based on my background, education, training and experience as a trial attorney and are set forth with a reasonable degree of certainty. If additional information is provided for any particular claim, I would welcome the opportunity to review the additional information and, if appropriate, alter my opinion concerning the value of the particular case.

Very truly yours,



ERIC N. ANDERSON

ENA/emr

ERIC N. ANDERSON
ATTORNEY AT LAW
MEYER, DARRAGH, BUCKLER, BEBENEK & ECK, PLLC
US STEEL TOWER, SUITE 4850
600 GRANT STREET
PITTSBURGH, PA 15219

REPORT OF ERIC N. ANDERSON, ESQUIRE

In Re: Penn State Settlements

October 5, 2015

{P1214259.1}

Case ID: 131103195
Control No.: 15111033

Confidential Settlement Agreement and Release

signed his Confidential Settlement Agreement and Release on March 1, 2014. The amount of the settlement is \$250,000.

Confidential Deposition of John Doe – July 8, 2015

The deposition was taken in the case of PMA v. Pennsylvania State University and John Doe A. which was consolidated with cases entitled Penn State University v. PMA at Civil Action No. 3195 in the Court of Common Pleas of Philadelphia County and the lawsuit entitled Penn State University v. PMA No. 3197 of the November term 2013 in the Court of Common Pleas of Philadelphia County. John Doe was not represented by counsel. On behalf of PMA, Paul Cagney conducted the direct examination. Also present was counsel for Penn State University, Michael John Miguel of the Law Firm Kasowitz, Benson, Torres and Friedman, LLP located in Los Angeles, CA.

John Doe lives in () and he is a landscaper/groundskeeper. He was born on 1981 and is presently 34 years old. John Doe testified that he was abused by Sandusky. John Doe changed his name

John Doe attended High School and participated in activities relating to the Second Mile with friends. Mr. Gagne questioned John Doe based on a letter from John Doe's attorney, Mr. Gagne asked John Doe whether the statement in letter was accurate and John Doe replied yes. One statement is that Sandusky entered the hot tub with John Doe, sat down next to him, put his hand inside John Doe's shorts and rubbed his leg and penis. That incident occurred in 1995 or 1996 when John Doe was in high school. John Doe stated that there were occasions when Sandusky put his arm around John Doe when they were working out and there were numerous occasions when they were at the pond "where he would have me masturbate him." Exactly when that occurred in terms of the hot tub incident was uncertain. There were occasions when Sandusky would take showers with John Doe. However, other people would be in the shower as well. Sandusky gave John Doe shoes, a sweat suit and took him places, such as movies, for ice cream and took him to basketball games at the Bryce Jordan Center and to the Penn State football games on campus. There were sleepovers at a "cabin" and the "mansion" with other Second Mile kids around. John Doe stated that he told his guidance counselor and mentioned to his caseworker what had happened with Sandusky. He did not tell his mother. He told his father in 2011 when everything became public. John Doe stated that he observed other kids molested by Sandusky. They occurred during sleepovers when he would watch Sandusky lay on this one female and grind with her.

When the incident occurred in the hot tub, there were other Second Mile kids in the hot tub. He does not know if anyone saw Sandusky touch his genitals. When that

occurred, [redacted] got out of the hot tub. John Doe refers to a "cabin" where he would have to masturbate Sandusky. John Doe testified that Sandusky would have John Doe masturbate him after he got done with the girl in the room. He observed Sandusky having intercourse with a girl or it looked like he was grinding with her. She did not have any clothes on. The next day John Doe talked to his guidance counselor. This was the day after the incident in the hot tub. John Doe told the guidance counselor at the Second Mile, however, the guidance counselor did not believe him. This was about the same time he told his caseworker. The deposition concluded at the request of John Doe. He no longer wanted to continue the deposition without representation by counsel.

Letter from [redacted] to Amy C. Foerster
at Saul Ewing Dated August 7, 2012

[redacted] states in his correspondence that he represents [redacted] His date of birth is [redacted] 1981. [redacted] was introduced to Sandusky at football games and was brought to some "mansion" for a party in either State College or Bellefonte. Sandusky entered the hot tub with him and put his hand inside [redacted] shorts and rubbed his leg and penis. [redacted] had not spoken to anyone about this until 2011 when everything became public about Sandusky.

Conclusion

The initial claim was made by correspondence from [redacted] dated August 7, 2012. At that time, [redacted] was 31 years old. The statute of limitations on his claim would have expired on [redacted] 2001, before the minor's sexual assault statute of limitations was amended and went into effect. The statute of limitations was a complete defense to the claim of [redacted]

There is no question that [redacted] knew that he was abused, he knew who his abuser was and he knew Sandusky's affiliation was with the Second Mile Program and Penn State University. Therefore, the discovery rule or the doctrine of fraudulent concealment would not be available to [redacted] to avoid the application of the statute of limitations as a complete defense to his claim.

Confidential Settlement Agreement and Release

signed his Confidential Settlement Agreement and Release on August 28, 2013 for the amount of \$5,500,000.

Confidential Intake Questionnaire Feinberg & Rozen Claims Resolution Process

was born on 1987 and will turn 30 years old on 2017. He presently resides in . He claims that he suffered several incidents of sexual abuse by Sandusky. The abuse includes multiple instances of genital contact, and forced oral sex, at Sandusky's house, in Sandusky's car and in a swimming pool at Penn State University. There are no witnesses that are identified however, it is reported that an individual by the name of foster mother at the time of the incident, may have information concerning the abuse. provided specific and graphic testimony at the time of the criminal trial and Sandusky was convicted of the crimes of involuntary deviate sexual intercourse, indecent assault and unlawful contact with minors, corruption of minors and endangering the welfare of children with respect to Sandusky's contact with Mr. Rittmeyer.

s identified in the proceedings as Victim foster mother corroborated his testimony and she also testified at the trial. came into contact with Sandusky through the Second Mile program in which he participated as a result of "low self-esteem." Sandusky gave gifts, including Penn State memorabilia and took him to Penn State football games. Mr. was 12 or 13 years old when Sandusky began sexually abusing him. The abuse allegedly began after the Spring of 1998, when Sandusky was discovered having improper relationships with minor boys in the shower and the abuse continued until late 1999 or early 2000. The abuse occurred in Sandusky's basement where was forced to perform oral sex on Sandusky and Sandusky performed oral sex on Mr. Sandusky stimulated Mr. anus and masturbated with Mr. In the pool at Penn State University, Sandusky fondled Mr. genitals. Sandusky also fondled Mr. when in Sandusky's vehicle. Mr. was afraid to reveal the abuse because of fear for personal, social and reputational and professional consequences.

It is stated in the Feinberg report that has tried to lead a normal life but is tortured and haunted by the years of abuse he suffered. That would be for approximately three years. It is stated that continues to suffer from physical, psychological and emotional harm, including a loss of the ability to trust people and to form intimate relationships. It is also stated that has suffered diminution in his earning capacity including losing the opportunity to attend college. He is presently employed as a or a company. He has suffered

from problems relating to drug and alcohol abuse which lead to criminal activity and that has had an impact on his employability.

Contained in the materials is a letter from _____ to _____ dated June 28, 2013. Presumably _____ is _____ attorney. _____ performed a psychiatric evaluation of Mr. _____ at the request of counsel. The purpose of the evaluation was to determine if Mr. _____ suffers from any psychiatric illness or emotional condition and if so, to what extent it is related to the abuse. It is opinion that _____ suffers from psychiatric/emotional conditions directly related to his sexual abuse and his condition is permanent. It is noted by _____ that this is a preliminary report and he will spend more time reviewing records.

It is reported that _____ met Sandusky in 1997 at the Second Mile camp. The first instance of abuse took place at the Sandusky residence in about 1998. On that occasion, Sandusky would wrestle with _____ and then pull down his shorts and performed oral sex on _____. There was a second occasion where the same thing happened. This same scenario was repeated on numerous occasions. When they were in Sandusky's automobile, Sandusky would place his hand on _____ leg and then eventually in _____ pants and fondle him. It is reported that _____ and Sandusky engaged in mutual oral sex on each other perhaps 10 or more times. It was in approximately 2000 that _____ told his foster mother he did not want to go to the Second Mile camp and he did not want to see Sandusky.

_____ was embarrassed and frightened to speak to the grand jury but he did such. It was also very difficult for him to testify in the criminal trial.

_____ reports that _____ life was completely changed and _____ claims that he became rebellious and later turned to drugs around the age of 15. _____ stated that he does not know his biological father and apparently has been in foster homes. He also lived with his _____ on occasion. In school he repeated the _____ grade and left school in the _____ grade, however, he did receive his GED. _____ has a number of criminal convictions. He is now married and has a young child _____. _____ has worked as an _____ technician and cleaning industrial and business locations. However, he is presently unemployed. Mr. _____ reports that he is suffering from depression and anxiety. He has had trouble sleeping, and experiences nightmares as a result of his contact with Sandusky. He has had flashback experiences and admits to being cranky and irritable. He appears to be one of average intelligence although he may have a learning disability. He has problems concentrating and paying attention which _____ believes are longstanding but worsened by depression. The diagnosis provided by _____ is post-traumatic stress disorder, severe, and he is experiencing moderate to severe impairment in social and occupational functioning. The abuse which Mr. _____ suffered at the hands of Sandusky make him angry, rebellious and resistant to authority. It led to drug use for purposes of avoiding intrusive thoughts and flashbacks, nightmares and anxiety. The

drug use lead to criminal behavior and ultimately a sentence to jail. He has a record as a felon. His feelings and emotional state are going to be with him forever. Mr. story and his psychological and emotional injuries are consistent with victims of sexual abuse.

Transcript of

Trial Testimony

The transcript corroborates the version of the events set forth in the Feinberg Report. was witness and identified as victim

Conclusion

claims were not barred by the statute of limitations. There is very little corroborating evidence of version of the events. He did testify at the criminal trial and before the grand jury. The corroboration of his testimony would be the jury verdict which found Sandusky guilty of involuntary deviate sexual intercourse, two separate accounts, indecent assault, unlawful contact with minors, corruption of minors and endangering the welfare of children. There is little documentation concerning emotional trauma and his psychological and emotional injuries. The report of was prepared at the request of ; counsel and I only saw N on one occasion came from a troubled background and apparently had some emotional and behavioral problems before he ever met Sandusky. It would be important to have more information concerning the damage aspect of N's claim. However, based on the abuse which sustained, and the limited information concerning the damage aspect of his claims, I believe that the settlement value of his case is approximately \$2 million dollars.