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Judge Nixes PSU's Appeal in Sandusky Settlement Coverage Row

Max Mitchell, The Legal Intelligencer

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A Philadelphia judge has denied Penn State's bid to immediately appeal a recent decision that barred it from receiving coverage for much of the settlement payments it made to alleged victims of convicted serial child molester Jerry Sandusky.

Philadelphia Court of Common Pleas Judge Gary Glazer issued an order Thursday in *Pennsylvania Manufacturers' Association Insurance v. Pennsylvania State University* denying Penn State's request to seek an immediate appeal of his prior holding that the school would not receive coverage for much of the abuse that formed the basis of a \$60 million settlement the school entered into in 2013.

Penn State requested the immediate appeal in early June, arguing that there were substantial grounds for a difference of opinion, but Glazer said the school's arguments misrepresented the crux of his ruling.

"This court was not asked to, and did not, decide whether PSU should be held tortiously liable for Sandusky's crimes or not. Instead, this court had to make its coverage decision in the liability vacuum created by PSU's settlement with Sandusky's victims," Glazer said. "The court does not see how there could be substantially different opinions regarding what is, candidly, a fairly pedestrian coverage decision."

The arguments Penn State wanted the state Superior Court to address on appeal focused on Glazer's interpretation of an abuse and molestation exclusion in policies between 1992 and 1999, which Glazer said should bar coverage for Sandusky's conduct during that time.

Glazer had said the exclusion's language clearly applied to situations in which Sandusky abused children on campus and at away games. Glazer said the argument that Sandusky was not acting in the scope of his employment when he abused children "would render the exclusion meaningless in every instance of abuse."

"By cloaking him with a title that enabled him to perpetrate his crimes, PSU must assume some responsibility for what he did both on and off campus," Glazer said in his prior ruling. "Since some bodily injury suffered by all his victims arose out of such negligence by PSU, Section (b) of the abuse and molestation exclusion bars insurance coverage for those claims."

Penn State's motion seeking immediate appeal, which Patrick J. Wolfe Jr. of Narducci, Moore, Fleisher, Roeberg & Wolfe filed, contended Glazer's ruling went against general insurance interpretation principals.

Specifically, Penn State argued that the abuse and molestation exclusion said employees were insured only when acting in the scope of their employment, but Glazer's ruling went against that clear language when he said that, even though Sandusky was "obviously" not acting within his job definition when he molested children, Penn State still needed to assume some responsibility.

Glazer, however, said he was not considering liability issues, and said that, under the policies, the school would not be covered for any settlements it entered into without being legally obligated to.

He also said there are several issues that the court has yet to address, and rejected Penn State's reasoning that an immediate appeal should be granted because a reversal by the Superior Court would position the school for a complete recovery of the money.

"The same argument can be made about almost every ruling at every stage in every case," Glazer said. "This court will not impose upon the appellate court at this juncture by certifying the abuse and molestation exclusion issues for immediate interlocutory appeal."

Kleinbard LLC attorney Steven J. Engelmyer, who is representing Pennsylvania Manufacturers' Association Insurance, declined to comment, and Penn State did not return a message seeking comment.

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