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Beyond Criminal Cases, Civil Exposure in the Penn State Scandal

The expected civil claims stemming from the actions of former Penn State football coach Jerry Sandusky will derive from institutional failures and reckless negligence at Penn State and at The Second Mile, the youth charity founded by Sandusky.

Leading plaintiffs attorneys on Monday outlined the potential civil liability of the people and institutions stemming from the actions of former Penn State football coach Jerry Sandusky, who has been charged with sexually assaulting children over the course of two decades.

Civil claims will derive from institutional failures and reckless negligence at Penn State and at The Second Mile, the youth charity founded by Sandusky, attorneys say.

"It is a virtual certainty that there will be civil lawsuits filed," says Kline & Specter partner [Shanin Specter](#). "That will begin to happen relatively soon. Penn State and The Second Mile will be defendants, as will [Jerry] Sandusky, [Graham] Spanier, [Joe] Paterno, [Gary] Schultz, [Tim] Curley, and [Mike] McQueary"—university coaches and officials who were named in the grand jury indictment for allegedly having knowledge of the molestation and rape of boys who Sandusky brought on campus.

Specter was contacted by one of the eight alleged victims mentioned in the indictment, the *Philadelphia Business Journal* reported Friday. He has won multi-million dollar settlements against La Salle University, the city of Philadelphia, and various hospitals, among other defendants. Specter declined to say on Monday whether he has been in contact with or is representing any of the alleged victims.

"We see from the top on down massive institutional failure" at Penn State, which in turn creates "massive legal exposure and liability," says Minneapolis-based attorney Jeff Anderson, of Jeff Anderson & Associates, who has been working with survivors of sexual abuse and litigating cases nationwide for 28 years. "The institution is exposed and each of the individuals is exposed for their role in it."

Anderson has been litigating clergy sexual abuse claims against the Archdiocese of Philadelphia for years. He declined to say whether he was representing any of Sandusky's alleged victims. However, he says, "there's no doubt that we've been in contact with a number of folks, and they've been in contact with us, and we're working with every survivor who does contact us to help them and protect them."

The chain of culpability started with Sandusky's November 5 arrest. Curley, Penn State's athletic director, and Schultz, the school's interim senior vice president for finance and business, were charged with perjury for lying to the grand jury. Spanier, the university's president, and football coaching legend Paterno were fired last week. McQueary, an assistant coach who allegedly witness Sandusky rape a boy in the football locker room, has been placed on administrative leave.

Anderson says the intentional acts of sexual abuse gave rise to reckless negligence: "When you have the cover-up and concealment of it, or ignoring danger signals by other officials in the institution, then it becomes a negligent act—that is, failure to protect."

He says the pattern of negligent acts at issue outweigh any kind of special protections—known as sovereign immunity—sometimes afforded to state entities and their employees. "When it comes to conduct that rises to the level of recklessness or indifference to children, as there is here, or what we call egregious conduct, or outrageous conduct, those protections given them fall by the wayside," he says.

Specter concurs that sovereign immunity will not be an impediment to bringing civil suit against Penn State. "There's no sovereign immunity issue," he says.

One potential challenge for plaintiffs will be Pennsylvania's statute of limitations on bringing sexual abuse claims, says Specter. "If you're injured when you're a minor, you have until the age of 20 to file a claim. The legislature expanded that to the age of 30 in child sexual abuse cases, but only provided that extra 10 years where the minor was injured as a result of forcible

compulsion."

There will be a question as to what constitutes "forcible compulsion," Specter says. But both he and Anderson say the statute of limitations can be overcome.

While Anderson says that the outcome of criminal proceedings against any of the parties will not bear on civil litigation, it is not yet known whether civil cases will be stayed until criminal matters are resolved. Specter adds, "That's an open question that will have to be decided by the judge who has the civil cases."

As to the payment of claims in civil litigation, "insurance is always in the picture, and will be," Anderson says. But he adds that it is "too early to say" to what extent insurance will cover the liability at issue. Insurance does not cover intentional acts, though insurance may cover the "negligent acts and reckless acts" that are at issue here, he says.

Specter dismisses the idea that Penn State's bond rating would impact its ability to compensate victims. "Paying those claims is not going to be a huge financial issue for Penn State. They have the assets to pay those claims," he says.

But the payment of compensation "could be an issue" for The Second Mile, whose executive director, Jack Raykovitz, resigned over the weekend. "That turns on how substantial their liability insurance policy is, and how many victims there are," Specter says.

Anderson says the charity does not have enough assets to cover its liability: "The Second Mile has no chance of survival."

On Monday, Penn State's new president, Rodney Erickson, told *Good Morning America* that the university is anticipating civil action and is preparing for it: "We understand that there will be lawsuits filed. We're prepared to do the right thing for all the victims."

Anderson calls this a "positive" statement, but adds that the university's actions will speak louder than words.