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Sandusky case portends civil liability for PSU

The grand jury report that describes Jerry Sandusky's alleged sexual abuse of eight young boys also provides a rough outline of the civil lawsuits Penn State University and its implicated officials are sure to face, legal experts say.

And while those claims will carry the potential for millions of dollars in financial hardship for Penn State, the university's leaders will have to decide between vigorously defending themselves or settling out of court to make the victims whole, attorneys said.

"I see years of litigation. I see lots of lawsuits," said Robert E. Goldman of Bucks County, a former federal prosecutor now in private practice. "The question is whether the college will want to put this behind them or dig trenches and take an adversarial role with their victims."

That decision is likely to have an effect on how prospective students and the taxpayers who help fund Penn State perceive the university, Goldman said. Interim President Rodney Erickson indicated Monday the university would take responsibility for the harm Sandusky caused.

"We understand there will be lawsuits that will be filed and we're certainly prepared to do the right thing for all of the victims," Erickson said Monday on ABC News. A Penn State spokeswoman said she could not elaborate on Erickson's statement.

Sandusky, 67, faces 40 counts of sexual abuse of children for allegedly molesting boys he met through The Second Mile, a nonprofit group Sandusky started in 1977 to provide opportunities for disadvantaged youngsters.

Although Sandusky retired as an assistant football coach in 1999, he retained access to the football program's training facilities and allegedly assaulted some of the boys in the showers and locker rooms there, according to the grand jury report.

Penn State's potential liability, and that of the university officials implicated in an alleged cover-up, would likely stem from their apparent failure to do anything to stop the abuse, Goldman said.

Assistant coach Mike McQueary, former President Graham Spanier and Sandusky each could be held liable for a number of violations of civil law, said [Shanin Specter](#), a Philadelphia plaintiffs attorney. McQueary told the grand jury he saw Sandusky raping a 10-year-old boy in the Lasch Football Building showers. Spanier testified he approved of former athletic director Tim Curley's handling of McQueary's allegation.

As a state-related university, Penn State has an unusual legal status, said Benjamin Lichtman, an Allentown attorney who represented former Nittany Lions running back Austin Scott in his civil rights lawsuit against the university, claiming he was falsely accused of rape by university police.

Courts have held that state-related universities in Pennsylvania are subject to lawsuits under the federal law that allows people to sue for violations of their civil rights, like life and liberty and bodily integrity.

In a 1978 case, the federal court for the Middle District of Pennsylvania found Penn State is liable for civil rights violations because, among other things, the governor is a de facto member of the board of trustees, six other members of the board are appointed by the governor and the state has provided a substantial portion of the university's budget since 1863.

At the same time, Penn State is not a state agency, so it doesn't benefit from the protection against lawsuits given to the states under the sovereign immunity provision of the Constitution's 11th Amendment, Lichtman said.

"The good news for potential plaintiffs suing Penn State is that, in a legal sense, they get the best of both worlds," Lichtman said.

If the alleged victims decide to forgo civil rights claims, the suit could be filed in Centre County Court. But that would introduce an uncertainty at trial that most lawyers would take steps to avoid, Goldman said.

Jurors in Centre County might have such a strong allegiance to Penn State and its football

program that they would be reluctant to cause it further harm. And juries in politically conservative rural parts of Pennsylvania have a reputation for siding against plaintiffs and returning smaller verdicts, Goldman said.

A trial in the U.S. District Court for the Middle District of Pennsylvania would likely be held in Scranton or Harrisburg and would draw jurors from 33 counties, Goldman said.

Specter, who said his firm has been contacted by one of Sandusky's alleged victims but does not represent him, said the boys can potentially sue under laws other than the Civil Rights Act.

The alleged victims could claim a long list of common law torts including assault and battery, failure to report a crime, conspiracy, negligent concealment and failure to supervise employees.

But they will face challenges in making their cases, Specter said, comparing the Penn State scenario to the clergy abuse cases that have unfolded around the country.

"There is already a lot of finger-pointing among that group of men," Specter said. "The further up the line you go, the less people say they were told."

Specter noted that the grand jury report discusses McQueary's graphic testimony about what he heard and saw in the showers — Sandusky with a boy pinned against the wall. Curley testified McQueary reported only "inappropriate conduct" that made him uncomfortable.

"The traditional way of getting to the bottom of what happened here is to take everybody and put them under oath and that's what's going to be done," Specter said.

Whether that will happen before the resolution of the criminal charges against Sandusky, Curley and former Vice President Gary Schultz is unclear. Specter said he expects lawsuits to be filed soon, but judges in the civil cases will decide whether the lawsuits can proceed while criminal charges are pending.

Another factor complicating the alleged victims' lawsuits is the statute of limitations, which requires lawsuits to be filed within a set time period to ensure defendants aren't forced to defend lawsuits after evidence is lost, memories have faded and witnesses have died.

In most cases, the statute of limitations is two years, but the Pennsylvania Legislature in 2002

amended the law with regard to juvenile sexual abuse claims. People who say they were abused as children now have until their 30th birthday to file a lawsuit as long as they didn't turn 20 before the amendment was passed.

The oldest alleged Sandusky victim is 27, but to benefit from the extended limitations period, a victim must prove that the sexual contact was forcible.

While Specter said that may be a challenge for some of Sandusky's alleged victims, Diane Moyer, legal director of the Pennsylvania Coalition Against Rape, said a mere threat against a juvenile victim can be used to prove compulsion.

"It's not as limiting as it appears at first blush," Moyer said.