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Spanier Conviction a Likely Blow to Civil Suits Over Freeh Report

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Former Penn State president Graham Spanier was acquitted of the two most serious charges he faced over allegations that he harbored serial child molester Jerry Sandusky, but the guilty verdict on a misdemeanor child endangerment charge will likely kill any chances of recovery in civil suits over fallout from the Sandusky scandal, according to attorneys.

On March 24, a Dauphin County jury found Spanier guilty on the misdemeanor for failing to properly act in the face of reports that Sandusky had molested a child, but also acquitted him of a felony count of child endangerment and a related conspiracy charge. The misdemeanor conviction is punishable by a maximum of five years in prison and a $10,000 fine.

The conviction, according to civil attorneys, is at least in part a validation of the controversial report written by Louis Freeh, often referred to as the "Freeh report," that blamed Spanier and other Penn State officials for failing to stop Sandusky, who in 2012 was found guilty of 45 out of 48 charges related to sexual abuse of children.

The report outlined what Freeh alleged were the failures of the organization to respond to reports of child sexual abuse, and, since being released in July 2012, the document has been central to at least three high-profile civil suits filed in connection to the Sandusky scandal.

Those suits—Spanier v. Freeh, Spanier v. Penn State and Paterno v. National Collegiate Athletic Association—allege either defamation directly from the Freeh report, or that the defendant organizations improperly disseminated or relied on those conclusions.

But in light of the recent conviction, those claims might all be in peril, said Bochetto & Lentz attorney George Bochetto, who focuses in part on defamation lawsuits.

"The gist or the sting of [the Freeh report] statement has now been borne out by a jury in a criminal trial beyond a reasonable doubt. That's going to significantly hinder Spanier's ability to prevail in a defamation suit," Bochetto said. "There's going to be ramifications in the Paterno case, no question about it. The jury's verdict, at least in some respect, bears out the thrust of the Freeh report that there was an institutional failure."

Bochetto noted that, because of Spanier's public position, he faces a heightened burden when it comes to prevailing in a defamation case, and so even if the criminal conviction is ultimately overturned by an appellate court, the verdict will still be a major hurdle for Spanier in the civil case.

"Regardless of whether it is overturned, it is helpful to the defense because the standard is not falsity, it's knowing falsity," Bochetto said. "It loses its knowing, or outrageous falsity feature."

Kline & Specter attorney Thomas R. Kline agreed.

"It's extraordinarily significant. He was criminally convicted of the very thing which he alleged in his lawsuit was defamatory," Kline said. "In libel suits, truth is a defense."

Kline represented victims of Sandusky in civil suits against Penn State, and one of the victims Kline represented was an unnamed witness at Spanier's criminal trial. That witness said he was molested by Sandusky after Spanier and others failed to act on a report in 2001 that Sandusky had showered with a young boy on campus.

Admissibility of Criminal Findings

Whether or not the guilty finding will be admitted into the civil suits

has yet to be determined, given how recent the verdict is. However, according to attorneys, acquittals are usually not allowed to come into civil suits due to the differences in being "not guilty" versus "innocent," but criminal convictions are often admissible and weighty evidence for juries.

However, Pittsburgh civil attorney John Gismondi noted that the admissibility is not always so clear, and attorneys may want to drill down into exactly how each element of the criminal conviction relates to the specific civil claims.

"For example, one of the big debates [in the Spanier case] was whether or not [he knew the 2001 shower] incident was horseplay, or sexual. I'm not sure if that misdemeanor conviction would involve a finding one way or the other on that," Gismondi said. "So it depends on what it is you're trying to use the conviction for."

Montgomery McCracken Walker & Rhoads attorney Jeremy Mishkin, who often represents defendants in complex civil suits, took that notion one step further, and said that, given the fact that Spanier was acquitted and found guilty on very similar charges, the argument could be made that no clear connections could be drawn.

"I could almost see a judge saying we can't speculate about what a jury did and why," Mishkin said. "I can imagine a judge saying, 'I'm not going to allow any of that into evidence.'"

The argument, however, would require some serious "flyspecking by some very smart lawyers," he said.

Dechert attorney Robert C. Heim, who is representing Freeh, said Spanier's civil suit against Freeh was "always a weak case."

"Now it's gotten considerably weaker," he said. "We're looking at the legal consequences and haven't come to a conclusion at this point."

Spanier's attorney, Elizabeth Locke of Clare Locke, as well as a spokeswoman for Penn State, the communications office for the National Collegiate Athletic Association and Thomas Weber of Goldberg Katzman, who is representing the Paterno plaintiffs, did not return messages seeking comment.