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## Attorneys See Tough Job for Feinberg in PSU Case

BY BEN PRESENT

*Of the Legal Staff*

If Ken Feinberg wants to add “quickly and successfully settled Penn State claims on the Sandusky sex-abuse scandal” to his resume, he’s going to have to think outside the box.

That was the point made by attorneys for several of the men suing the university for its handling of the sex-abuse allegations against its former defensive coordinator and convicted child rapist, Jerry Sandusky. The plaintiffs attorneys said there’s simply no precedential guidance for a case where top administrators who knew of allegations against a staff member but let the claims stop at their desks for years while the abuse persisted, as alleged, in neighboring corners of the university.

Penn State announced last week it would be bringing on Feinberg and his partner Michael K. Rozen — who worked on the 9/11 victim fund, settlements related to the BP Deepwater Horizon oil spill, and other massive victim compensation plans — to “facilitate the possible settlement” of outstanding litigation related to claims of sex abuse by Sandusky.



**KLINE**

Sandusky, the former Penn State assistant football coach convicted of 45 counts of child sex abuse in June, awaits a near-certain effective life sentence scheduled to be handed down next month.

If there’s no case like Penn State’s, there’s no settlement amount to guide it, plaintiffs lawyers said.

“If Penn State is going to evaluate this under conventional values, I don’t think [the claims] will ever get resolved,” said Slade McLaughlin, who represents a man known in court papers as Victim 1.

McLaughlin cited what he called the “outrage factor” and the prevalence of the abuse in distinguishing his client’s claim.

If the Penn State legal team says: “Let’s canvass the country and see where they’ve



**ROTHWEILER**

settled — If that’s the position they take, I don’t think [the university] will be well received by our client.”

Thomas R. Kline, who is representing a man known as Victim 5, agreed.

“In order to resolve these claims, Penn State, through Feinberg, of necessity is going to need to think outside of what they perceive as historical values of these claims given the nature of the misconduct and the gravity of the claims,” Kline said. “There is no cookie-cutter approach that can be used to settle the claims. I don’t view conventional mediation as a tool to settle the claims.”

And, as the attorneys pointed out, mediation was not the proper term as Penn State unilaterally brought on Feinberg and Rozen to facilitate discussions.

With that out of the way, the attorneys were unanimous in welcoming the team’s breadth of experience and reputation for settling things sooner rather than later. They all said the hiring of Feinberg and Rozen was a step in the right direction.

One Philadelphia plaintiffs attorney who is not representing any of Sandusky’s accusers

*PSU continues on 8*

# PSU

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said Feinberg would be fair to the victims but would not be intimidated by the impressive legal resumes at the other end of the table.

"He is a national name, from that standpoint, from a public relations standpoint, that bodes in Penn State's favor," said Ken Rothweiler, of Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck. "It gives the impression that Penn State wants to get this over with in a way that doesn't shortchange the victims."

If you're representing a victim and want to settle, Rothweiler added, your strategy doesn't change.

"If you want to settle, and you got a guy like Feinberg coming on board, it probably will boost your chances because Feinberg gets things done."

That said, Rothweiler described the veteran mediator as a "hard-knuckle guy" who is "not going to get pushed around by anybody."

## A CASE-BY-CASE BASIS

The Penn State case is different from, for example, the 9/11 settlements because the university has said it would not be setting up a victim fund. That is, there will be no set pool of money from which plaintiffs will cash out. Rather, the cases are likely to be addressed on a case-by-case basis.

Feinberg, who could not be reached for comment, said that himself.

In a press release through the university, Feinberg confirmed there would not be a fund, adding the legal team has "no binding authority to compel a settlement."

"We will merely facilitate the effort and only in those cases where individuals and their lawyers are so inclined. Having managed similar cases in the past we are confident we can help all parties involved in this matter and are pleased to have been selected for such an important role," Feinberg said in

the statement.

Philadelphia plaintiffs attorney Matthew Casey, who is part of a legal team that represents at least six claimants with possible actions against the school, said it would be a "terrible mistake" to set up a fund.

"The devil will be in the details of the approach they intend to take," Casey said.

The news of Feinberg's hiring also came with a timeframe, which most of the attorneys greeted with cautious optimism. In the same press release, the university said it hopes to resolve all outstanding claims by the year's end.

Joel Feller, of Ross Feller Casey, said the end of the year would be a realistic timeframe.

"But the proof will be in the pudding," Feller said. "There's a lot of work to do."

Feller is working with Casey on a legal team that also includes Justine F. Andronici and Andrew Shubin of State College.

But some were circumspect of the timeline.

McLaughlin and his partner, Paul Lauricella, both welcomed Penn State's announcement on June 22, the night of Sandusky's verdict, that claims would be settled "privately, expeditiously and fairly."

"I was a little bit disappointed there had not been some more expedient action after Penn State announced that within an hour of the Sandusky verdict," McLaughlin said.

Lauricella added, "You've got to be mindful of the old Reagan adage, 'trust but verify.'"

So far, there have been at least four lawsuits filed, but that number is far from an indicator of the possible docket numbers with Penn State University listed as the defendant.

## TO DISCLOSE OR NOT TO DISCLOSE

In addition to the highly-scrutinized issue of zeros before the decimal point, confidentiality would also be a likely topic of discussion between the plaintiffs attorneys, university counsel, and Feinberg and Rozen.

The plaintiffs attorneys interviewed said they were in favor of transparency with the

notion of holding the university accountable in mind. But, in the end, compensating their clients reigned paramount.

For Kline, there may be room for compromise.

"That's an interesting question," he said of the confidentiality issue. "I think there will be, at the end of the day, pressure for Penn State to acknowledge overall amounts that have been paid."

But he added that "there may be valid reasons why individual settlements may end up confidential."

Like the settlement numbers, Casey said confidentiality would have to come on a case-by-case basis.

"As a general proposition, more information is better than less and the public has a right to know what's happening with these cases," Casey said.

But he added: "We have several clients and it's hard to speak collectively as to how each of them may feel about that."

Asked if confidentiality would be a sticking point for the university, Rothweiler said: "Oh God absolutely."

Considering the national scrutiny and the prospect of a sympathetic jury, Rothweiler said the plaintiffs' attorneys had the upper hand. At the end of the day though, if Rothweiler were representing an accuser and the university were willing to sign off on his demand, with a confidentiality stipulation, Rothweiler said he'd take it.

That is, unless the client and his family insisted upon it, he said.

A number of defense attorneys, both local and from out of state, either declined comment or did not return a call from *The Legal* for this story.

A university spokesperson did not return a request for comment. The university's lead attorney, James A. Keller of Saul Ewing, was on trial and was not available.

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