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Federal Court Dismisses Pennsylvania Governor's Lawsuit Against NCAA

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Original Complaint

On January 2, 2013, Pennsylvania Governor Thomas Corbett, Jr. filed a 43-page, single cause of action complaint against the NCAA in the



Middle District of Pennsylvania seeking to permanently enjoin the NCAA from imposing its sanctions against Pennsylvania State University arising out of the Jerry Sandusky matter.

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Purportedly claiming violations of the Sherman Antitrust Act by the NCAA's "arbitrary and capricious application of their enforcement power for the purpose of crippling Penn State football, thereby harming citizens of the Commonwealth who benefit from a successful football program at Penn State," the complaint was substantially devoted to political rhetoric and attacks on the NCAA and its President who, it was plead,

punished Penn State for "the opportunity to gain leverage in the court of public opinion, boost the reputation and power of the NCAA's president, enhance the competitive position of certain NCAA members, and weaken a fellow competitor."

NCAA's Motion to Dismiss

On February 6, 2013, the NCAA filed a FRCP 12(b)(6) motion to dismiss Corbett's lawsuit. The NCAA argued that the lawsuit should be dismissed for at least four independent reasons: First, the NCAA's regulation of college sports is subject to antitrust scrutiny only if it directly regulates economic activity, like television contracts or the salary of coaches. Enforcement of rules relating to program integrity and eligibility for competition is not regulation of commerce, and is outside the scope of the Sherman Act. Second, even if the antitrust laws were applicable to the present matter, the NCAA argued that the complaint failed to state a claim because the ethical standards enforced by the NCAA are part of what makes college athletics unique and distinctive. Third, the complaint failed to allege harm to economic competition in the three markets it identified, namely, higher

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education, athletic apparel and football recruits. Finally, the NCAA argued that the lawsuit was not brought by anyone who had an antitrust injury or standing to sue.

Court Dismissal of Action

The thrust of Judge Yvette Kane's reasons for granting the NCAA's motion to dismiss can be summed up in the following from her June 6, 2013 Memorandum:

- "Each of Defendant's [NCAA] arguments is strong enough to render [Corbett's] actions under antitrust law a Hail Mary pass....these arguments are well-founded in the law and require that [Corbett's] complaint be dismissed."

The threshold question for the Court was whether the alleged NCAA conspiracy to render Penn State's football program less competitive by sanctioning the school constitutes commercial activity under established law, or whether it avoids antitrust scrutiny because it is a legitimate enforcement action relating to amateurism and fair play. The Court reasoned that "not only do [Corbett's] allegations of ulterior motive lack the factual enhancement that would allow the Court to accept them as plausible...the Court is still faced with a more pressing problem: the complaint is fundamentally lacking in allegations

that [the NCAA's] alleged ulterior motive hid a commercial purpose." The Court then determined (i) that the complaint failed to support any factual allegations that the NCAA engaged in concerted action as required by the Sherman Act, (ii) that, even if concerted action was found, the complaint failed to sufficiently allege any anticompetitive effects in the relevant markets identified in the complaint under a rule of reason analysis, and (iii) that the complaint failed to allege any anticompetitive harm to the natural citizens of the State of Pennsylvania as a result of reduced competition in the markets identified in the complaint. Rather, the court stated, the complaint merely alleged derivative injury to Pennsylvanians as a result of Penn State's football program becoming less competitive. In sum, the Court stated that "[Corbett's] complaint fails on all prongs: it fails to allege commercial activity subject to the Sherman Act; it fails to allege that [NCAA's] activity constituted a violation of Section 1 of the Sherman Act; and, it fails to allege that Plaintiff suffered an antitrust injury." Accordingly, Corbett's complaint was dismissed in its entirety.

As of June 12, 2013, there was no word whether Governor Corbett would appeal the Court's decision to the U.S. Third Circuit Court of Appeals.