Business Insurance

Jul. 15, 2012

Penn State scandal investigation findings to impact settlements

By Mike Tsikoudakis

STATE COLLEGE, Pa.—An independent investigation concluding top officials at Pennsylvania State University did nothing to investigate child sexual abuse allegations for 14 years is likely to make it more difficult and costly to reach settlements of the cases, experts say.

According to the report issued last week, Penn State did not have a process or structure to regularly receive reports on potential risks and failed in its duty to make inquiries into allegations of sexual abuse by former assistant football coach Gerald A. Sandusky.

A special investigations task force of Penn State's board of trustees in November commissioned Louis Freeh, a former federal judge and former FBI director, and his law firm to conduct the investigation.

Mr. Freeh's investigation found that former Penn State President Graham Spanier, former Athletic Director Tim Curly, former VP of Finance and Business Gary Schultz and the late Joe Paterno, Penn State's former football coach, failed to conduct any investigation of the allegations against Mr. Sandusky.

"Our most saddening and sobering finding is the total disregard for the safety and welfare of Sandusky's child victims by the most senior leaders at Penn State," Mr. Freeh said in a statement. "The most powerful men at Penn State failed to take any steps for 14 years to protect the children who Sandusky victimized."

Thomas D. Russell, professor of law at the University of Denver Sturm College of Law, said potential liabilities for covering up the abuse may be seen as being an intentional act rather than just negligence and could be characterized as a civil conspiracy, which can result in higher claim amounts and even punitive claims.

"The price of the settlement has gone up," Mr. Russell said. "Having a former director of the FBI lay out evidence of the complicity of university officials from the president on down in the scandal certainly makes the claims of those injured more valuable."

Larry Jackson, partner in the complex liability practice group at Nelson Levine de Luca & Hamilton L.L.C. in Blue Bell, Pa., said Mr. Freeh's report could embolden plaintiffs' attorneys.

"The report only supports what people in the public were thinking may have been the case," he said. "In addition to emboldening the plaintiffs' attorney, it could make it more difficult to resolve cases with the family members of the children involved.

“In the context of civil litigation, I would certainly believe that it couldn't be positive for the university in terms of how they would fare in connection to these lawsuits,” Mr. Jackson said.

The 267-page report suggests that if emails sent and received among senior officials regarding Mr. Sandusky's conduct were reviewed by Penn State's risk management department, it may have taken steps to mitigate Mr. Sandusky's conduct.

“A risk management review might have resulted in the university providing contractual notice to its insurers about the incident, imposition of a general ban on the presence of children in the Lasch Building or other limitations on Sandusky's activities,” investigators wrote in the report.

In addition, the scandal at Penn State has put tremendous pressure on risk managers at other colleges and universities, said Bill Waldorf, president of the Huntington, N.Y.-based insurance brokerage Waldorf & Associates.

“Pressures are being put on these risk managers or controllers, whether it be by the board of trustees or just simply by the public, to try to implement certain procedures and policies to ensure the safety of the children and populations that they're serving,” Mr. Waldorf said.

Those could include a greater focus on employee screening, background checks, advanced training sessions on reporting abuse, and a centralized risk management department to which various departments report regularly, he said.