



Ben Present

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Penn State Appeals Venue Decision in Insurance Dispute

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The dispute stems from the first civil suit filed in Philadelphia following allegations that former Penn State assistant football coach Jerry Sandusky abused at least 10 boys over the course of 15 years, allegations that came with 52 criminal charges from the state.

Pennsylvania Manufacturers' Association Insurance Co., the university's insurer, initially sued Penn State in Philadelphia in January, seeking a declaratory judgment limiting defense costs and indemnity for which the university could claim coverage in the civil case — Doe A v. Second Mile .

Penn State followed with its own legal action, alleging PMA breached its contract with the school and acted in bad faith by both initially denying coverage and then following with a lawsuit. It asked for a Centre County jury to decide all matters triable by jury.

A venue dispute ensued, and Penn State lost at the trial level on two occasions. First, Philadelphia Court of Common Pleas Judge Arnold L. New granted the request of PMA to coordinate and transfer the lawsuit to Philadelphia on April 10. Then, another Philadelphia judge denied a request from the university to rope proceedings to Centre County.

It was New's decision that Penn State has appealed to the Superior Court.

After the Wednesday filing, PMA's attorney, Steven Engelman of Philadelphia firm Kleinbard Bell & Brecker, said, "We think the trial court made the correct decision."

Joseph P. Green of Lee Green & Reiter in Bellefonte, Pa., and Jerold Oshinsky, a Los Angeles-based attorney with Jenner & Block, represent the university. Neither returned a call requesting comment.

[Thomas R. Kline](#) of Kline & Specter said the university is facing an uphill battle on appeal.

According to Kline, who is one of Doe A's attorneys, the fact that PMA filed first and filed in Philadelphia was critical, along with the allegations that Sandusky abused Doe A on at least one occasion in Philadelphia.

The acts occurred in Philadelphia and Penn State regularly conducts business in Philadelphia, he said.

"We believe Judge New's opinion will address all of those issues," Kline said, referring to an upcoming opinion from New in support of his decision.

New's reasoning, Kline said, "can only be dislodged if Penn State proves an abuse of discretion."

As a procedural matter, Kline & Specter attorney [Charles "Chip" Becker](#) added, Penn State or a judge may seek to stay the proceedings in Pennsylvania Manufacturers' Association Insurance v. Pennsylvania State University while Penn State takes its appeal of right to the state Superior Court.

The insurance company had argued in its motion to transfer and coordinate that Pennsylvania Rule of Civil Procedure 213.1 allows for the Philadelphia court to move Penn State's action and coordinate it with the insurer's case because PMA filed first and because the two cases are "mirror images" of each other.

Rule 213.1 gives discretion to the court where the first lawsuit was filed as to whether the matters in which there is a "common question of law or fact" should be coordinated.

PMA argued the facts and legal questions were identical.

"Putting wholly aside whether PSU's claims have any merit, which PMA vigorously denies, the claims asserted by PSU in the Centre County action are wholly dependent upon the issues raised by PMA in the Philadelphia action, as even a casual reading of PSU's complaint amply illustrates," PMA said in the motion.

In its own petition for change of venue of PMA's lawsuit, Penn State argued last month that transfer of venue was appropriate on forum non conveniens grounds under Pennsylvania Rule of Civil Procedure 1006(d)(1). It also filed a reply in support of PMA's motion to coordinate and transfer, but argued that proceedings should unfold in Centre County.

But Philadelphia Common Pleas Judge Gary S. Glazer, in a one-page order last month, denied Penn State's request.

Glazer's order came only with a footnote in which the judge said Penn State failed to demonstrate Philadelphia was an "oppressive and vexatious" forum to the university and its witnesses. He also cautioned the university against using nonprecedential memorandum opinions in support of its arguments, as it had in a reply, noting the court was hopeful Penn State, in the future, would follow this "most basic legal principle."

"At best, defendant PSU has merely shown that Philadelphia is an inconvenient forum for some of its witnesses," Glazer said in the footnote. "Mere inconvenience is insufficient to transfer venue."

Penn State has not appealed Glazer's decision.