

"By Dan Packel

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Sandusky Insurance Row Is In Wrong Venue, Penn State Says

Pennsylvania State University told a skeptical state appeals panel Wednesday that an insurance feud over the child molestation scandal involving former football coach Jerry Sandusky should be moved out of Philadelphia, claiming the university's insurer had "surreptitiously" filed a suit to dodge coverage.

While both Penn State and Pennsylvania Manufacturers Association Insurance Co. agree that two suits over coverage for the Sandusky litigation should be coordinated, they disagree on the proper venue for the proceedings, with the university seeking to move the case to Centre County, the home of its main campus.

The university focused its arguments before the appeals court on the alleged illegitimacy of the insurer's efforts to escape responsibility, claiming that as a public policy issue, the insurer should not be rewarded with its choice of venue.

"This is a case in which the insurer should not be allowed to tell the policyholder that it's going to cover the indemnity and then turn around and file an anticipatory declaratory judgment," said Jerold Oshinsky of Jenner & Block LLP, who represents the school. "There is no support for that tactic."

Penn State is appealing April decision by Philadelphia County Court of Common Pleas Judge Arnold New, who noted in an opinion published in August that since the first-filed suit and the underlying suit were filed in Philadelphia, the indemnity litigation should move forward there as well.

In response to a question by Superior Court Judge Anne Lazarus over how Judge New had allegedly abused his discretion in the ruling, Oshinsky responded that Judge New had exercised no discretion whatsoever.

The panel appeared unconvinced, however. "I don't understand why you think we can prevent people from filing lawsuits," Judge Paula Francisco Ott said.

Oshinsky also returned to arguments made earlier in the litigation, in which Penn State emphasized that the case belonged in Centre County for the convenience of several key witnesses.

But the judges noted that even if the case proceeded in Philadelphia, discovery could take place in Centre County. They also questioned the value of hearing the case in Centre County, noting that the county's judges had already recused themselves in criminal cases surrounding Sandusky's actions. In the event of recusals, bringing in an outside judge would further delay the proceedings.

Chip Becker of Kline & Specter PC, who represents Sandusky victim John Doe A, also noted that the recusals in Centre County were not limited to the criminal division and had also taken place in the county's Orphans' Court, emphasizing that they were likely to extend to civil cases as well.

Responding for the insurer, Steven Engelmayer of Kleinbard Bell & Brecker LLP argued that Penn State hadn't focused on the issue of the anticipatory declaratory judgment action in its earlier arguments and briefs, adding that there was nothing in the record to support the university's claims that the action was "surreptitious."

He also emphasized that Judge New had been correct when he determined the case should stay in Philadelphia, pointing to the judge's recognition that the underlying suit was filed there and that the court's Commerce Court program was specifically designed for this type of case.

"It's a distance of 200 miles in a case that's been in Commerce Court with discovery about to end," Engelmayer said. "This is not a record that supports abuse of discretion."

The insurer is represented by Steven Engelmyer, Eric Shreiner and Paul Gagne of Kleinbard Bell & Brecker LLP.

Penn State is represented by Jerold Oshinsky, Matthew Riley and Linda Kornfeld of Jenner & Block LLP and Joseph Green of Lee Green & Reiter Inc.

John Doe A is represented by Jeffrey Anderson of Jeff Anderson & Associates, Thomas Kline, Charles Becker, Michael Trunk and David Williams of Kline & Specter PC, Jeffrey Fritz of Soloff & Zervanos PC, and Marci Hamilton.

The case is Pennsylvania Manufacturers Association Insurance Co. v. The Pennsylvania State University et al., case number 1502 EDA 2012, in the Superior Court of Pennsylvania.