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Escaping a 'Black Hole'?: Pa. Litigants Seek Removal of Opioid Lawsuits From Suburban Court's Program

Pennsylvania's opioid litigation has been coordinated since 2018 in Delaware County. But frustrated plaintiffs want the cases transferred back to where they started: Philadelphia Court of Common Pleas.

By Aleeza Furman | May 17, 2022



Delaware County Court of Common Pleas courthouse in Pennsylvania.

The city of Philadelphia and District Attorney Larry Krasner are asking the state Supreme Court to move their respective suits over the opioid crisis back to their home jurisdiction in order to escape the “black hole of the Delaware County Court,” where Pennsylvania’s opioid litigation has been coordinated since 2018.

The state of Pennsylvania, acting by and through Krasner, and Philadelphia filed an application for extraordinary ([//images.law.com/contrib/content/uploads/documents/402/107520/PhilaApplication-for-Extraordinary-Relief.pdf](https://images.law.com/contrib/content/uploads/documents/402/107520/PhilaApplication-for-Extraordinary-Relief.pdf)) relief May 11 to request that the high court remand Krasner’s suit—one of four designated “Track One” test cases in the Pennsylvania opioid litigation—to the Philadelphia Court of Common Pleas, and lift the stay on and remand four suits that the city filed.

The plaintiffs allege that the Delaware County Court of Common Pleas has mismanaged the litigation and left the District Attorney’s Office’s suit “mired in a directionless desert of unconstrained and abusive discovery.”

According to the application, the Delaware County court held six conferences with counsel since the Pennsylvania cases were coordinated four years ago, has left a significant number of motions outstanding, and extended the discovery deadline four times.

The application says that the Philadelphia DA’s Office and 14 city agencies have spent \$15 million to produce discovery in the case, something it attributes in large part to what it claims is the court’s failure to reign in fact discovery. The plaintiffs characterize much of that discovery as “irrelevant, disproportionate and harmful.”

Delaware County was designated to handle Pennsylvania’s state-level opioid litigation as it was the first county in the state to bring such a suit, which it did in 2017. Of the scores of cases now coordinated in the court, four are serving as “test cases.” In addition to Krasner’s suit, they were filed by Carpenters Health and Welfare Fund of Philadelphia and Vicinity, Delaware County, and Carbon County.

According to the application, Delaware County has twice before denied the DA’s Office’s requests to return the state of Pennsylvania’s case to Philadelphia, where it had initially been filed in 2018.

Lamb McErlane’s Rocco Imperatrice, who serves as liaison counsel for the defendants in the Delaware County opioid litigation, said he thinks the high court is likely to follow that trend.

“It would appear that for judicial economy purposes, the court would most likely be inclined to have the case remain in Delaware County with the three other coordinated cases,” he said.

He said all of the coordinated Track One cases are set to return to their home courts following discovery and that transferring the Philadelphia cases now would be premature.

Were the plaintiffs’ application to succeed, Imperatrice said, “it’s gonna be more difficult for the defendants, and I think frankly it will be more difficult for the remaining plaintiffs.”

Carmen Belefonte of Saltz Mongeluzzi & Bendesky, the plaintiffs’ liaison counsel, did not respond to requests for comment.

Imperatrice said that Delaware County and Judge Barry C. Dozor, who is overseeing the coordinated cases, have maintained a reasonable pace, particularly considering the scale of the litigation.

According to Imperatrice, “It is anticipated that fact discovery may be concluded as early as December of this year,” after which he said the court will move on to other expert discovery and ultimately return the Track One cases to their original jurisdictions.

But the Philadelphia plaintiffs say Delaware County has not put in place mechanisms to limit discovery. "Put plainly," the application said, "as long as the Delaware County Court delays remands pending the conclusion of unidentified discovery, discovery will never end."

Jerry DeSiderato of Dilworth Paxson submitted the application alongside attorneys from Baron & Budd, McLaughlin & Lauricella, Sacks Weston, Sheller P.C., the City of Philadelphia Law Department and the DA's Office. DeSiderato declined to comment on the record.

City Solicitor Diana Cortes declined to comment on the application filing, but wrote in an emailed statement that "as the city has repeatedly stressed, the opioid epidemic mandates that its claims be given a prompt trial date as more people are harmed with each passing day. And as we have also repeatedly stressed, the city believes that claims of this sort should be heard by courts in the local communities that are impacted."

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