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Pa. AG, City DAs Spar In Court Over Opioid Suit Release

By **Matthew Santoni**

Law360 (October 12, 2022, 6:29 PM EDT) -- The district attorneys serving Pennsylvania's two largest cities argued to an appellate court Wednesday that Attorney General Josh Shapiro lacked the authority to release their consumer protection claims against four opioid manufacturers and distributors as part of a \$26 billion multistate settlement.

A representative for Philadelphia District Attorney Larry Krasner and Allegheny County District Attorney Stephen Zappala told the en banc Commonwealth Court during oral arguments that they had spent years of work and millions of dollars on their opioid lawsuits. Since Shapiro's office never joined or intervened in them, he could not come in and undercut their claims under the state's Unfair Trade Practices and Consumer Protection Law by signing a separate settlement on behalf of the state.

"The AG never sought to intervene, even though he knew they were 'in the name of the Commonwealth' actions. Instead the AG waited all this time, and then reportedly settled the DAs' claims," said Catherine Dorsey of Baron & Budd PC, arguing for both district attorneys Wednesday. "No authority gives him the right to settle another plaintiff's civil action."

Krasner and Zappala sought a declaration from the court that Shapiro couldn't end the lawsuits they had brought against the opioid companies on their own, seeking civil penalties and to recoup some of their respective governments' costs related to the opioid crisis.

First, the **Philadelphia district attorney**, then the Pittsburgh-based **Allegheny County district attorney** had filed suits against the attorney general in the summer of 2021, claiming that the settlement Shapiro and six other state attorneys general **had announced that July** fell short of what they thought their jurisdictions were owed.

The Commonwealth Court initially **rejected the suits as unripe** in February, since counties and cities were still deciding whether to sign on to the deal. Ultimately, enough entities joined to **make the settlement final** — including the **governments of Philadelphia and Allegheny County** — so the district attorneys revived their suit against Shapiro.

Even though the governments they served had agreed to the settlement, Dorsey said the district attorneys had brought their consumer protection claims in their own capacities and could move ahead without seeking approval of Philadelphia or Allegheny County. Any money they would hypothetically recover if they won their case or entered separate settlements would go into special opioid funds, not the state's general fund or the district attorneys' coffers, she said.

Stephen Kovatis, representing the Attorney General's Office, said Shapiro was the state's top law enforcement officer and had the power to take over cases that had been brought in the name of the state, like the district attorneys' suits.

He said the settlement money — approximately \$1 billion of which will go to Pennsylvania to support addiction treatment, education and prevention — was the kind of outcome the district attorneys' suits were seeking.

"The consumer protection law is not about seeking something for yourself, it's protecting the public interest in the name of the Commonwealth," Kovatis said. "This is the relief that they're seeking, that's now been obtained by the attorney general."

Judge Michael H. Wojcik asked questions about where the settlement money would go from the attorney general's deal compared to where it might go if obtained by the district attorneys, while Judge Stacy Wallace pressed Kovatis for why Shapiro's office hadn't stepped into Krasner or Zappala's cases.

Kovatis said the district attorneys had been invited to join the settlement discussions with Johnson & Johnson, AmerisourceBergen Corp., Cardinal Health Inc. and McKesson Corp., but Dorsey said that had not been true.

Christian Pistilli of Covington & Burling LLP, representing the drug companies, argued that the doctrine of res judicata barred the district attorneys from continuing their fight with the same parties that had reached a settlement over the same issues. By signing on to the settlement, the City of Philadelphia and Allegheny County had agreed to give up any additional penalties or disgorgement of profits related to the opioid crisis, so there was no more relief the district attorneys could get.

"There's simply no one left for them to represent," Pistilli said.

The Commonwealth Court took Wednesday's arguments under advisement.

Krasner and Zappala are represented by Silvio Trentalange, Jerry R. DeSiderato and Timothy J. Ford of Dilworth Paxon LLP, David Kairys of Temple Law School, Stanford Ponson, Catherine H. Dorsey and Jennifer F. Connolly of Baron & Budd PC, Andrew B. Sacks and John K. Weston of Sacks Weston LLC, Charles J. Porter, Joseph G. Heminger and William G. Brucker of Brucker & Porter, Gregory B. Heller of McLaughlin & Lauricella PC and Stephen A. Sheller of Sheller PC.

Shapiro is represented by Neil Mara, James A. Donahue III, Stephen R. Kovatis and Karen M. Romano of the Pennsylvania Attorney General's Office.

The drug companies are represented by Charles C. Lifland and Shara C. Venezia-Walerstein of O'Melveny & Myers LLP, Abraham J. Rein and Jodi S. Wilenzik of Post & Schell PC, Neil K. Roman and Christian J. Pistilli of Covington & Burling LLP, Elaine Golin and Yosef G. Schaffel of Wachtell Lipton Rosen & Katz and Louis W. Schack and Shannon E. McClure of Reed Smith LLP.

The case is The Commonwealth of Pennsylvania by and through the Philadelphia District Attorney Larry Krasner et al. v. Attorney General of the Commonwealth of Pennsylvania et al., case number 283 MD 2022, in the Commonwealth Court of Pennsylvania.

--Editing by Alex Hubbard.