

2013 PA Super 29

PENNSYLVANIA MANUFACTURERS'
ASSOCIATION INSURANCE COMPANY

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

THE PENNSYLVANIA STATE UNIVERSITY
AND JOHN DOE A

APPEAL OF: THE PENNSYLVANIA STATE
UNIVERSITY

No. 1502 EDA 2012

Appeal from the Order Entered April 11, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 004126 January Term, 2012

BEFORE: LAZARUS, J., OTT, J., and STRASSBURGER, J.*

CONCURRING OPINION BY STRASSBURGER, J. Filed: February 21, 2013

I join the Majority Opinion.

I write separately to elaborate on a few issues in this case of first impression and considerable public interest.

First, our case law does not dictate that we must review this matter with an abuse of discretion standard. While there are many cases holding under Pa.R.C.P. 213.1 that a court's ruling on **whether** to coordinate an action is reviewed on an abuse of discretion standard, to my knowledge there are no appellate cases dealing with **where** to coordinate. I agree

* Retired Senior Judge assigned to the Superior Court.

with the Majority that the issue of where as opposed to whether should be reviewed by the same standard.

I also agree with the Majority's determination to affirm the coordination in Philadelphia County. The Majority highlights a number of factors to consider. I agree with the analysis therein, although I am loathe to place much reliance on the first-to-file argument. The locus of suit should not be determined by a race to the courthouse.

Two other factors deserve mention. One is that John Doe A's counsel is located in Philadelphia. The instant action is not likely to settle unless the underlying action can be settled as well. That will be more likely to happen if all parties in both the coverage action and the underlying action can sit around the same table and negotiate, with or without input from a judge.

Second, it is no secret that because of their connections with Penn State and perhaps the Second Mile, judges in Centre County have recused themselves from cases spawned by Sandusky's conduct. While obviously an out-of-county judge could be assigned to this case should it be coordinated in Centre County, the importation of a judge comes with logistical difficulties - time, staff, courtroom, and the like - that do not exist for an in-county jurist.

When all of the above factors are considered, I reach the same conclusion as the Majority, that Judge New did not abuse his discretion in coordinating these actions in Philadelphia County.