

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

PENNSYLVANIA MANUFACTURERS' ASSOCIATION INSURANCE COMPANY,	:	JANUARY TERM 2012
	:	
	:	No. 4126
	:	
Plaintiff,	:	COMMERCE PROGRAM
	:	
v.	:	
	:	
THE PENNSYLVANIA STATE UNIVERSITY and JOHN DOE A,	:	
	:	
Defendants.	:	

PROHIBITION
 2012-08-07
 12010412600093

OPINION

New, J.

August 7, 2012

Defendant, the Pennsylvania State University (“PSU”) appeals from this Court’s Order of April 10, 2012, in which the Court granted the Pennsylvania Manufacturers’ Association Insurance Company (“PMA”)’s Motion to coordinate the above-captioned case with the related matter filed by PSU in Centre County and to transfer the coordinated cases to be litigated in Philadelphia County. For the reasons that follow, the Court respectfully requests its decision be affirmed on appeal.

This is a coverage dispute between PSU and its insurer, Pennsylvania Manufacturers’ Association Insurance Company (“PMA”). PSU purchased liability insurance coverage from PMA for several decades. On January 31, 2012, PMA filed this declaratory judgment action in Philadelphia County to determine PSU’s right to a defense and to indemnity in the underlying case, *Doe A v. The Second Mile, et al.*¹ The underlying *Doe* case was filed in Philadelphia County.

¹ November Term, 2011, No. 2968 (Philadelphia County).



On February 15, 2012, PSU filed an action for bad faith and breach of contract against PMA in Centre County to determine coverage for the *Doe* claims as well.² On February 21, 2012, PMA filed a motion to coordinate the two actions and to transfer the later-filed action to Philadelphia County.³ In its response, PSU agreed coordination of the cases was appropriate but objected to the matters being heard in Philadelphia County. On April 10, 2012, this Court granted the motion to coordinate the cases in Philadelphia County.⁴

Although an order transferring venue in a civil action is interlocutory in nature, such an order is appealable as of right.⁵ A trial court's decision to coordinate and/or transfer actions is reviewed for abuse of discretion.⁶

Where the record provides a sufficient basis to justify the order of coordination, no abuse of discretion exists. Whether the appellate court would have reached the same conclusion is immaterial. In exercising its discretion, the trial court should receive guidance not only from the enumerated criteria listed above, but also from the explanatory comment to Rule 213.1(c), which explains that the ultimate determination that the court must make is whether coordination is a fair and efficient method of adjudicating the controversy.⁷

² February Term, 2012, No. 630 (Centre County).

³ On March 12, 2012, Defendant John A. Doe filed a Joinder Motion of PMA's coordination of the actions and transfer of the coordinated actions to Philadelphia County.

⁴ On March 9, 2012, PSU filed a motion to transfer venue pursuant to the doctrine of *forum non conveniens*. On April 20, 2012, Judge Glazer heard and denied the motion by order dated April 20, 2012. An order denying the motion to transfer on the basis of *forum non conveniens* is interlocutory and not immediately appealable. See McGarrity v. Hard Rock Cafe Int'l, (STP), Inc., 76 Pa. D. & C.4th 207, 209 (2005). Thereafter, PSU filed a Motion to Certify Judge Glazer's order of April 20, 2012 for Interlocutory Appeal, which Judge Glazer denied on May 18, 2012.

⁵ Pa. R. App. P. 311(c); Deutschbauer v. Barakat, 814 A.2d 246, 248 (Pa. Super. 2002).

⁶ Wohlsen/Crow v. Pettinato Associated Contractors & Eng'rs, 446 Pa. Super. 215, 220, 666 A.2d 701, 704 (1995).

⁷ Washington v. FedEx Ground Package Sys., 995 A.2d 1271, 1277 (Pa. Super. 2010).

In determining whether coordination is appropriate, and in which location the cases should be coordinated, Pennsylvania Rule of Civil Procedure 213.1(c) provides the following list of factors the trial court should consider:

- (1) whether the common question of fact or law predominating and significant to the litigation;
- (2) the convenience of the parties, witnesses and counsel;
- (3) whether coordination will result in unreasonable delay or expense to a party or otherwise prejudice a party in an action which would be subject to coordination;
- (4) the efficient utilization of judicial facilities and personnel and the just and efficient conduct of the actions;
- (5) the disadvantages of duplicative and inconsistent rulings, orders or judgments;
- (6) the likelihood of settlement of the actions without further litigation should coordination be denied.⁸

In the instant matter, the parties do not dispute that the two PMA/PSU cases should be coordinated. The Court agrees as the questions of law and fact raised in both are almost identical and coordination will conserve judicial resources and provide for an efficient, consistent and just result. Therefore, the sole issue presented is whether the cases should be coordinated in Philadelphia County or in Centre County.

The Court must, in choosing a forum, consider whether PMA's choice of forum in Philadelphia County would result in unreasonable delay, expense or prejudice to either party. Here, PMA's Philadelphia action was the first-filed action. Additionally, the underlying action in this matter was filed in Philadelphia, where some of the claims arose, and will be litigated in Philadelphia. These facts make Philadelphia a proper forum for the PMA/PSU lawsuits to be litigated.⁹ Moreover, the Philadelphia Commerce Program, in which this action was filed, is a specialized program with the ability to handle this commercial coverage action efficiently.

⁸ Pa. R. Civ. P. 213.1(c)

⁹ See Pa. R. Civ. P. 2179 (a) (“[A] personal action against a corporation or similar entity may be brought in . . . (3) the county where the cause of action arose; (4) a county where a transaction or occurrence took place out of which the cause of action arose . . .”).

Preliminarily, it should be noted PSU's argument that coordination in Philadelphia is oppressive and vexatious because such coordination would require PSU's witnesses to travel is misplaced. It is well established the oppressive and vexatious standard is inapplicable to coordination motions "[b]ecause a Rule 213.1 transfer serves different purposes than a change of venue due to *forum non conveniens*, [thus] the convenience of all parties or witnesses is not a prerequisite to such a transfer."¹⁰ Contrary to PSU's contention, the trial court's decision to coordinate is reviewed under an abuse of discretion standard.¹¹

Rule 213.1 does, however, list the convenience of the parties, witnesses and counsel as one of the factors the trial court must consider in determining coordination motions. Regarding this factor, PSU's argument Centre County would be more convenient to its witnesses and PMA has failed to identify any witnesses whose convenience supports a trial in Philadelphia is insufficient in light of Rule 213.1(c)(2) and the other factors. PMA does allege it has witnesses in Philadelphia. Furthermore, PSU's mentioned witnesses are professionals and/or employees of PSU, who can expect to be compensated for their time and inconvenience involved in travel to Philadelphia.¹² Additionally, PSU's counsel is from Los Angeles, California and Chicago, Illinois so travel to Philadelphia, which has a larger airport, should prove to be more convenient for them. PMA's counsel is located very near to Philadelphia County.¹³ As the two competing forums are 200 miles apart, some inconvenience is inevitable no matter where the cases are coordinated.

¹⁰ Lincoln General Ins. Co. v. Donahue, 151 Pa. Commw. 297, 306, 616 A.2d 1076, 1080 (1992).

¹¹ Wohlsen/Crow, 446 Pa. Super. at 220, 666 A.2d at 704.

¹² See Walls v. Phoenix Ins. Co., 979 A.2d 847, 853 (Pa. Super. 2009).

¹³ See Wohlsen/Crow v. Pettinato Associated Contractors & Eng'rs, 446 Pa. Super. 215, 220, 666 A.2d 701, 704 (1995). The Court notes that the convenience of counsel is also something the trial court may consider, within the totality of the circumstances analysis. *Id.*

Next, PSU's claim that the case filed in Centre County has more causes of action than the earlier-filed case is irrelevant to the Court's analysis. The claims in that action share common questions of law and fact with the claims at issue in the Philadelphia County action. As such, all such claims can be appropriately handled in Philadelphia.

This Court, having considered the totality of the circumstances, the factors enumerated in Pa. R.C.P. 213.1(c) and the explanatory comment, reached the conclusion that coordination was proper and Philadelphia was the most appropriate venue. As discussed above, the Court considered the first coverage action was filed in Philadelphia; the underlying personal injury action is in Philadelphia; Philadelphia is a more convenient location for PMA, all attorneys and several witnesses; and the Commerce Court of Philadelphia is a specialized program established to handle these types of cases. For these reasons, the Court found Philadelphia has the ability to provide a fair and efficient method of adjudicating the controversy. Accordingly, the coordination of these actions in Philadelphia was not an abuse of discretion, and the Court respectfully requests that its Order be affirmed on appeal.

BY THE COURT:



ARNOLD L. NEW, J.