

Bern firm, shut out of opioid litigation spot, says lead lawyers don't represent enough of Pennsylvania

MEDICAL

By John O'Brien | Jun 22, 2018

MEDIA – After not being picked to a coveted leadership role in Pennsylvania's opioid litigation, a Conshohocken plaintiffs firm is pleading with a Delaware County judge to reconsider.



Delaware County Court of Common Pleas

MEDIA – After not being picked to a coveted leadership role in Pennsylvania's opioid litigation, a Conshohocken plaintiffs firm is pleading with a Delaware County judge to reconsider.

On June, Marc J. Bern & Partners filed a motion to vacate Judge Charles Burr's recent order that appointed three law firms as co-lead counsel in the consolidated opioid case, which is made up of more than 30 lawsuits filed around the state by various counties and unions that hired private lawyers.

The Bern firm is representing a large group of counties that is blaming certain prescription opioid manufacturers and distributors over their alleged roles in the nation's addiction crisis.

The firm says Burr's order was entered without considering the effect the appointments would have on Pennsylvania residents – only 21% are represented by the attorneys appointed co-lead counsel. That figure would jump to more than 50% if the Bern firm is added, it says.



Cappelli

“(T)he court’s order will result in a severe lack of representation of the interests of the majority of Plaintiffs in the Pennsylvania Coordinated Proceedings and their millions of residents,” Bern attorneys Joseph Cappelli and Carmen De Gisi wrote.

“More importantly, it will result in a leadership structure consisting of federal MDL counsel Simmons Hanly Conroy LLC and will be inherently biased toward the interests of Plaintiff Delaware County.”

The firms benefiting from Burr's order are Simmons Hanly Conroy of New York City, Berger & Montague of Philadelphia and Pogust Braslow & Millrood of Conshohocken.

Delaware County's attorney, Carmen Belefonte of Saltz Mongeluzzi Barrett & Bendesky in Media, was named liaison counsel. Delaware County was the first to file an opioid case in a Pennsylvania state court, and the plan is to have all state cases heard there.

In Cleveland is a multidistrict litigation proceeding that has brought together all opioid cases currently in federal court. The Simmons firm is [also co-lead counsel](#) there.

The named lead counsel in Pennsylvania represent many of the plaintiffs. Simmons Hanly is working for Delaware County and several unions that have filed suit, and Pogust Braslow joins it in most of those cases.

Berger & Montague, meanwhile, is representing the City of Philadelphia.

The Bern firm is representing the counties of Armstrong, Beaver, Bradford, Cambria, Carbon, Clarion, Green, Fayette, Lackawanna, Lawrence, Washington and Westmoreland, as well as Bensalem Township.

Robert Peirce & Associates of Pittsburgh is working with Bern on those cases.

Hundreds, possibly thousands, of cases around the country accuse companies that manufactured prescription opioids of downplaying the risk of addiction, causing the country's current drug crisis. Plaintiffs are seeking to recoup costs associated with the problem.

Major defendants are manufacturers like Johnson & Johnson, Purdue Pharma, Cephalon, Teva, Actavis, Endo Pharmaceuticals and Insys Therapeutics. Distributors are also being accused of a role, and recently a group of national pharmacies [asked to be dismissed](#) from the MDL.

Recently, a New York state judge [denied dismissal requests](#) made by manufacturers, allowing lawsuits by counties in that state to proceed.

The Bern firm isn't the only player [not happy](#) with Burr's decision. Lawyers representing Lehigh County have appealed the order after arguing previously that its case should stay in its home court and not be transferred to a consolidated proceeding.

Now that lawyers other than the Ambler firm Haviland Hughes are in charge of leading the case, the county has been deprived of the right to choose its own counsel, the county says.

From the Pennsylvania Record: Reach editor John O'Brien at john.obrien@therecordinc.com.