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Delaware County Allowed to Threaten Lawsuits Against Sherwin-Williams Over Lead Paint

"The entirety of plaintiff's complaint reads like a request for an advisory opinion regarding potential affirmative defenses to a state law case that has not yet been, and may never be, filed," U.S. District Judge Nitza I. Quiñones Alejandro wrote.

By P.J. D'Annunzio | October 07, 2019



A federal judge has declined Sherwin-Williams' request to stop Delaware County officials from publicly threatening to sue the paint company to pay for lead paint removal.

U.S. District Judge Nitza I. Quiñones Alejandro of the Eastern District of Pennsylvania granted the county's motion to dismiss Sherwin-Williams' case seeking a declaration that the county's statements on suing Sherwin-Williams violates the company's First Amendment and due process rights.

Sherwin-Williams claimed public filings, statements and media reports show that the county has either retained or is in the process of hiring lawyers to potentially sue Sherwin-Williams in multiple courts throughout Pennsylvania to pay for the inspection and abatement of lead paint in or on private housing and publicly owned buildings and properties, according to Quiñones Alejandro.

Delaware County has yet to actually file a lawsuit, Quiñones Alejandro said. Because Sherwin-Williams suffered no injury, the judge dismissed the case.

"Here, defendants argue, and this court agrees, that plaintiff has not articulated a particularized, concrete injury in fact for purposes of demonstrating an actual case or controversy. Indeed, each of plaintiff's claims for declaratory relief is dependent on some future, contingent act by defendants, i.e., the potential filing of a 'threatened' lawsuit by the county," Quiñones Alejandro said. "Specifically, each count of the complaint seeks a declaration that the county's 'threatened' potential prosecution of its claims will violate plaintiff's various constitutional rights. As such, the purported dispute between plaintiff and defendants 'is contingent upon events that may not occur at all or may occur differently than anticipated.' For this reason, there is no actual case or controversy. Thus, this matter, as pled, is not ripe for review."

She added, "The entirety of plaintiff's complaint reads like a request for an advisory opinion regarding potential affirmative defenses to a state law case that has not yet been, and may never be, filed. Plaintiff has not identified any recognized principle of

law that permits it to anticipatorily immunize itself against potential state court litigation by bringing a case under the [Declaratory Judgment Act].”

Delaware County is represented by David Senoff of First Law Strategy Group.

“This is the right decision on the law and for the taxpayers,” Senoff said in an email.

“Lead paint impacts entire communities and the cost of fixing the problems associated with lead paint should be borne by those who knowingly created the problem by marketing the paint as safe for children, not by the communities whose housing stock is contaminated.”

Charles Moellenberg of Jones Day in Pittsburgh, the lawyer for Sherwin-Williams, did not respond to a request for comment.