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Montgomery County's Lead Paint Lawsuit Sent Back to State Court

A lawsuit filed by Montgomery County over lead-based paint in residential communities has been removed from federal court and sent back to state court where it originated.

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



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U.S. District Judge Nitza Quiñones Alejandro of the Eastern District of Pennsylvania granted Montgomery County's motion to remand its lawsuit against Atlantic Richfield Co. and other

defendants back to the Montgomery County Court of Common Pleas.

Montgomery County alleged that the defendant engaged in an "ongoing public nuisance" by actively proliferating lead-based paint in the community, according to [Alejandro's opinion](#)

(https://images.law.com/contrib/content/uploads/documents/402/43711/show_temp-8.pdf). The defendants argued that the issues presented in the case implicated federal law.

However, the judge said that Montgomery County's lawsuit was devoid of federal claims.

"Notably, plaintiff's amended complaint does not explicitly allege any cause of action arising under federal laws or the United States Constitution, invoke any federal cause of action, or explicitly challenge the constitutionality of a statute or the actions of a federal entity," Alejandro said. "Instead, plaintiff's amended complaint asserts only a state-law declaratory judgment claim for nuisance. Notwithstanding, defendants argue that removal of this action was proper because plaintiff's claim implicates substantial federal issues in that liability turns on the construction and application of federal regulations and/or standards pertaining to lead paint. Defendants' argument is, however, misplaced."

The defendants argued that mention in the complaint of a federal regulation on abatement and the Pennsylvania Lead Certification Act's and its federal definitions of "abatement" therein gave the court jurisdiction.

But Alejandro was unconvinced.

"Mere references in a complaint to federal law and/or regulations or violations of such, however, do not give rise to jurisdiction," she said.

Alejandro also said that the defendants did not argue that there was a federal cause of action in the lawsuit and that their argument that the resolution of any state law claims would involve federal regulations was meritless in terms of keeping the case in federal court.

"This court concludes that this case does not arise under federal law," Alejandro said. "This case simply does not fit within the slim [*Grable & Sons Metal Products v. Darue Engineering and Manufacturing*] category because it does not involve a pure issue of federal law, but rather, will be 'fact-bound and situation-specific.' Moreover, the gravamen of this case does not involve a direct challenge to, or require interpretation of, any allegedly applicable federal statutes, regulations, or actions."

Robert Heim of Dechert represents Atlantic and declined to comment.

David Senoff of First Law Strategy Group represents Montgomery County.

“We are pleased that the court remanded these cases to where we believed they always belonged,” Senoff said. “Local governments are bearing the costs of the damage done by lead paint and that is why local juries should be the ones making the determinations about how best to remediate the ongoing danger to their neighbors’ health.”

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