
THE SUPREME COURT OF PENNSYLVANIA

NOS. 12 MAP 2023 & 15 MAP 2023

**RICK SIGER, IN HIS CAPACITY AS ACTING SECRETARY OF THE
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

v.

CITY OF CHESTER

**APPEAL OF: CITY OF CHESTER, MAYOR THADDEUS KIRKLAND
AND CITY COUNCIL OF THE CITY OF CHESTER**

**BRIEF OF AMICUS CURIAE
THE COUNTY OF DELAWARE, PENNSYLVANIA
IN SUPPORT OF APPELLEE, MICHAEL DOWEARY, IN HIS CAPACITY
AS THE RECEIVER FOR THE CITY OF CHESTER**

Appeal from the Orders of the Commonwealth Court Order dated January 31, 2023 & February 14, 2023 at No. 336 MD 2020.

Kandice K. Hull (Pa I.D. 86345)
Robert F. Young (Pa. I.D. No. 55816)
David Unkovic (Pa I.D. No. 31305)
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Attorneys for the County of Delaware, Pennsylvania

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF INTEREST OF AMICUS CURIAE.....	1
II. ARGUMENT	3
III. CONCLUSION	5

TABLE OF CITATIONS

Cases

Marcellus Shale Coal. v. Dep't of Env't Prot., No. 69 MAP 2021, 2023 Pa. LEXIS
524, at 10-12 (Apr. 19, 2023) 7

Statutes

53 P.S. § 1101.704(a)(2) 7
53 P.S. § 11701.101 4, 5, 6, 7, 8
53 P.S. § 11701.706(a)(2) 4

I. STATEMENT OF INTEREST OF AMICUS CURIAE

The County of Delaware (the “County”) is the fifth most populous county in the Commonwealth of Pennsylvania with a population in the 2020 census of 576,830. The County contains forty-nine general purpose municipalities, including twenty-seven boroughs, twenty-one townships and one city – Chester (the “City” or “Chester”). Chester has been a financially distressed municipality since 1995 and has been overseen by the Receiver since 2020.

The fundamental policy of Act 47 of 1987 (53 P.S. § 11701.101), as amended (“Act 47”) is “to foster fiscal integrity of municipalities so they provide for the health, safety and welfare of their citizens **The failure of a municipality to do so is hereby determined to affect adversely the health, safety and welfare not only of the citizens of the municipality but also of other citizens in this Commonwealth.**” Act 47, Section 102(a) (emphasis added). Moreover, under Section 706(a)(3) of Act 47, the receiver possesses the power “[t]o require the distressed municipality or authority to negotiate intergovernmental cooperation agreements between the distressed municipality and other political subdivisions in order to eliminate and avoid deficits, maintain sound budgetary practices and avoid interruption of municipal services.” 53 P.S. § 11701.706(a)(2).

It is a sad fact that oftentimes the second or third class city within a county is the municipal entity that needs the assistance of the Commonwealth supplied

through the Act 47 program. This has been the case for the City of Harrisburg in Dauphin County, the City of Reading in Berks County, the City of Scranton in Lackawanna County, the City of Farrell in Mercer County, the City of Altoona in Blair County, the City of Pittsburgh in Allegheny County, and the City of Johnstown in Cambria County. In all of these cases, the Act 47 process has had a positive effect on the city, and in many cases the city has emerged successfully from Act 47. Delaware County would like such a positive outcome from the Act 47 process in the City of Chester.

Accordingly, the County has significant interests in Receiver's efforts to restore the City's financial viability. For example, the City has a paid police department and a paid fire department. From time-to-time other municipalities in the County rely on the City for police and fire assistance. Healthcare, educational and other institutions in the City also serve residents outside of the City. As such, what happens in the City, including the administration and financial well-being of the City government, has an effect not only on the City residents but also on residents of the County outside of the City. The County of Delaware respectfully submits this Brief Amicus Curiae in support of the Receiver and urges this honorable Court to affirm the Opinion and Order of the Commonwealth Court.

II. ARGUMENT

Of all the municipalities that have been declared distressed under Act 47, only two have had such extraordinary challenges that Chapters 6 and 7 of Act 47 were utilized – Harrisburg and Chester. Under Chapter 6, the Governor declares the existence of a fiscal emergency in the municipality, and under Chapter 7, the Secretary of the Department of Community and Economic Development (“DCED”) nominates a Receiver who is approved by the Commonwealth Court to lead the recovery effort in the municipality. Extraordinary times call for extraordinary action.

The receivership process worked out well for the City of Harrisburg. Solutions were found for Harrisburg’s problems; the receivership concluded after several years; and Harrisburg is in good financial condition today. The process was complex and hard, and it required the cooperation of many levels of government, including the city, the county and the state, the legislature, the executive and the judiciary, to frame and effectuate the solutions. Delaware County would like to see a similar positive outcome for the City of Chester.

It is no doubt a frustrating experience for the elected officials going through the Act 47 process. The problems are longstanding and numerous municipal governments have been unable to solve them. Those brought in by Act 47 to help, whether it is a recovery coordinator or a receiver, are outsiders. There can be

resistance to being evaluated and told what to do under a recovery plan. But it is important (and statutorily required) for the Act 47 process to be fully supported by the municipality, DCED and the courts. The recovery plan will be the only way the municipality will get back on its feet. The only alternative to a successful Act 47 process is chaos. The Commonwealth cannot allow one of its cities to devolve into chaos.

Judge Ceisler’s factual findings are amply supported by the substantial evidence she cites in her opinion. Similarly, Judge Ceisler’s legal conclusions are amply supported by law. Act 47 specifically contemplates that a recovery plan may provide for “suspending the authority of the elected and appointed officials of the distressed municipality or an authority to exercise power on behalf of the distressed municipality or authority pursuant to law, charter, ordinance, rule or regulation to the extent that the power would interfere with the powers granted to the receiver or the goals of the recovery plan. 53 P.S. § 1101.704(a)(2). This Court recently stated “[i]mportantly, when a legislative branch ‘has directly spoken to the precise question at issue[,]’ that unambiguous intent must be followed by both courts and the agency.” *Marcellus Shale Coal. v. Dep’t of Env’t Prot.*, No. 69 MAP 2021, 2023 Pa. LEXIS 524, at 10-12 (Apr. 19, 2023) (internal citation omitted).

The actions approved by the Commonwealth Court in the amended recovery plan are fundamental to reaching a solution for the City. The existing ways of doing

things with the Mayor giving discretionary powers to councilpersons to administer departments will not solve the problems facing the City. The fiscal emergency will only be solved if the Receiver has the power to push forward solutions as set forth in the recovery plan.

III. CONCLUSION

Delaware County concurs in the various arguments put forward in the Receiver's Brief of Appellee. Accordingly, Delaware County respectfully requests that this Court affirm the Opinion and Order of the Commonwealth Court and allow the Act 47 process to move forward to solve Chester's problems for the benefit of the residents of Chester, of Delaware County and of the Commonwealth as a whole.

McNEES WALLACE & NURICK LLC



By: _____

Kandice K. Hull (Atty I.D. 86345)
Robert F. Young (Pa. I.D. No. 55816)
David Unkovic (Pa I.D. No. 31305)
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Dated: April 27, 2023

Attorneys for the County of Delaware, Pennsylvania

CERTIFICATION PURSUANT TO PA. R.A.P. 531(b)(2)

Undersigned counsel hereby certifies pursuant to Pa. R.A.P. 531(b)(2) that the Authority states that no person or entity other than County of Delaware or its counsel paid for the preparation of this brief, in whole or in part, or authored this brief, in whole or in part.

McNEES WALLACE & NURICK LLC



By: _____

Kandice K. Hull (Atty I.D. 86345)
Robert F. Young (Pa. I.D. No. 55816)
David Unkovic (Pa I.D. No. 31305)
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Attorneys for the County of Delaware, Pennsylvania

Dated: April 27, 2023

CERTIFICATION PURSUANT TO PA. R.A.P. 531(b)(3)

Undersigned counsel hereby certifies pursuant to Pa. R.A.P. 531(b)(3) that the foregoing document contains 1,050 words (exclusive of the caption, the table of contents, the table of authorities, signature block, and the certifications herein) according to the word count feature of undersigned counsel's computer.

McNEES WALLACE & NURICK LLC



By: _____

Kandice K. Hull (Atty I.D. 86345)
Robert F. Young (Pa. I.D. No. 55816)
David Unkovic (Pa I.D. No. 31305)
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Attorneys for the County of Delaware, Pennsylvania

Dated: April 27, 2023

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Brief of Amicus Curiae of the County of Delaware, Pennsylvania in Support of Appellee, Michael Doweary, in his Capacity as the Receiver for the City of Chester upon all counsel of record as provided on the Record of Service accompanying this electronic filing.

McNEES WALLACE & NURICK LLC



By: _____

Kandice K. Hull (Atty I.D. 86345)
Robert F. Young (Pa. I.D. No. 55816)
David Unkovic (Pa I.D. No. 31305)
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Attorneys for the County of Delaware, Pennsylvania

Dated: April 27, 2023