

**H****Briefs and Other Related Documents**

Commonwealth Court of Pennsylvania.  
POLYDYNE, INC., Appellant,

v.

CITY OF PHILADELPHIA, Philadelphia Water  
Department and Wayne Laraway.

Argued March 13, 2002.

Decided April 4, 2002.

As Amended April 30, 2002.

Bidder sought a permanent injunction enjoining city's award of a public contract to competitor. The Court of Common Pleas, Philadelphia County, No. 3678 February Term 2001, [McInerney, J.](#), denied bidder's request. Bidder appealed. The Commonwealth Court, No. 2454 C.D. 2001, [Leadbetter, J.](#), held that competitor was indispensable party to action.

Vacated and remanded.

West Headnotes

**[1] Parties** 79  
[287k79 Most Cited Cases](#)

**[1] Parties** 82  
[287k82 Most Cited Cases](#)

The failure to join an indispensable party to a lawsuit deprives the court of subject matter jurisdiction.

**[2] Parties** 80(1)  
[287k80\(1\) Most Cited Cases](#)

**[2] Parties** 84(1)  
[287k84\(1\) Most Cited Cases](#)

Whether a court lacks jurisdiction due to the failure to join an indispensable party may be raised at any time or sua sponte.

**[3] Parties** 18  
[287k18 Most Cited Cases](#)

**[3] Parties** 29  
[287k29 Most Cited Cases](#)

A party is deemed to be "indispensable" when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.

**[4] Parties** 18  
[287k18 Most Cited Cases](#)

**[4] Parties** 29  
[287k29 Most Cited Cases](#)

The criteria to be considered in determining whether an absent party is indispensable are: (1) whether absent parties have a right or interest related to the claim; (2) if so, the nature of the right or interest; (3) whether that right or interest is essential to the merits of the issue; and (4) whether justice can be afforded without violating due process rights of absent parties.

**[5] Injunction** 114(3)  
[212k114\(3\) Most Cited Cases](#)

Competitor was indispensable party in bidder's action against city for permanent injunction against city awarding contract to competitor, and thus trial court lacked jurisdiction to proceed without competitor, despite contention that competitor's rights would be adequately protected because city was advocating for upholding of contract with competitor; city's duty was to its citizens and taxpayers, not its contract partners.

\*495 [Frank R. Emmerich, Jr.](#), Philadelphia, for appellant.

[Mark R. Zecca](#), Philadelphia, for appellees.

Before [LEADBETTER, J.](#), [SIMPSON, J.](#), and [MIRARCHI, Jr.](#), Senior Judge.

OPINION BY Judge [LEADBETTER.](#)

Polydyne, Inc. appeals from the final decree in equity of the Court of Common Pleas of Philadelphia, First Judicial District of Pennsylvania, denying Polydyne's request for a permanent injunction enjoining the City of Philadelphia's award of a public contract to Cytec Industries, Inc. [\[FNI\]](#) \*496 On appeal, Polydyne alleges, among other things, that (1) the competitive bidding process was compromised because Wayne Laraway, the technical consultant hired by the City to assist in conducting pre-bid polymer trials and in evaluating the resulting data, had a conflict of interest in that he was a former

**(Cite as: 795 A.2d 495)**

employee of and owned in excess of \$200,000 of stock in Cytec, the successful bidder, and (2) the manner in which bids were to be economically evaluated was changed without permitting the bidders to submit a new bid based upon the new formula for evaluation. While these contentions raise serious concerns regarding the integrity of the competitive bidding process at issue, we cannot reach the substantial public policy question at the heart of this controversy because of a jurisdictional defect.

**[FN1]** The contract was for the purchase of polymers, which the City's Water Department uses to treat and process solid waste. Polydyne, who provided polymers to the City under the prior contract, was one of four polymer manufacturers bidding on the contract.

**[1][2][3][4]** Preliminarily, we note that the failure to join an indispensable party to a lawsuit deprives the court of subject matter jurisdiction. *Pennsylvania Game Comm'n v. K.D. Lumber Co., Inc.*, 654 A.2d 6, 9 (Pa.Cmwlth.1994). See also *O'Hare, III v. County of Northampton*, 782 A.2d 7, 13 (Pa.Cmwlth.2001). Whether a court lacks jurisdiction due to the failure to join an indispensable party may be raised at any time or *sua sponte*. *O'Hare*, 782 A.2d at 13. A party is deemed to be indispensable when "his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights." *Vernon Township Water Auth. v. Vernon Township*, 734 A.2d 935, 938 n. 6 (Pa.Cmwlth.1999). See also *Montella v. Berkheimer Assoc.*, 690 A.2d 802, 803 (Pa.Cmwlth.1997). **[FN2]**

**[FN2]** In *Montella*, this court set forth the criteria to be considered in determining whether an absent party is indispensable:

1. Do absent parties have a right or interest related to the claim?
  2. If so, what is the nature of the right or interest?
  3. Is that right or interest essential to the merits of the issue?
  4. Can justice be afforded without violating due process rights of absent parties?
- 690 A.2d at 803.

**[5]** In the present case, the City argued before common pleas that Cytec was indispensable to the action. Common pleas disagreed, however, concluding that since the City would be advocating in favor of upholding the contract awarded to Cytec, Cytec's rights would be adequately protected. This

was error. While the governmental entity awarding a bid may ordinarily be expected to wish to avoid having its contract upset, it is far from certain that in the crucible of litigation it will always zealously defend the interests of the prevailing bidder. Indeed, in some situations, it should not do so, for its duty is to its citizens and taxpayers, not its contract partners.

In *Zurenda v. Commonwealth*, 46 Pa.Cmwlth. 67, 405 A.2d 1124 (1979), a disappointed bidder on a public contract filed an equitable action in this court seeking to enjoin the award of the contract to Interstate Manufacturing and Leasing Company, the successful bidder. The Department of Community Affairs filed preliminary objections, which sought, among other things, to dismiss the complaint due to the failure to join Interstate, an indispensable party. This court agreed that the successful bidder was an indispensable party and dismissed the action with leave to plead over, joining Interstate. **[FN3]**

**[FN3]** At oral argument, counsel noted that this court has on occasion decided bid challenges where the winning bidder was not, in fact, a party to the action. While we agree that we should have noticed, *sua sponte*, the jurisdictional defect, the absence of the prevailing bidder was not raised or considered in those cases. Thus, they provide no precedential authority on the issue.

\*497 Similarly, Cytec, the successful bidder to which the contract was awarded, was an indispensable party to the underlying action and, therefore, common pleas lacked jurisdiction to proceed without Cytec as a party. Consequently, common pleas' final decree is vacated, and the case remanded for further proceedings.

#### **ORDER**

AND NOW, this 4th day of April, 2002, the order of the Court of Common Pleas of Philadelphia, First Judicial District, in the above captioned matter is VACATED and the case REMANDED for further proceedings.

Jurisdiction relinquished.

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**Briefs and Other Related Documents** ([Back to top](#))

• [2002 WL 32620562](#) (Appellate Brief) Appellant's Reply Brief to Appellee City of Philadelphia's Brief

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(Mar. 06, 2002)Original Image of this Document  
(PDF)

• [2002 WL 32620564](#) (Appellate Brief) Appellant's  
Reply Brief to Appellee Wayne Laraway's Brief  
(Mar. 04, 2002)Original Image of this Document  
with Appendix (PDF)

• [2002 WL 32620561](#) (Appellate Brief) Brief for the  
City of Philadelphia, Appellee (Feb. 22,  
2002)Original Image of this Document with  
Appendix (PDF)

• [2002 WL 32620559](#) (Appellate Brief) Brief for  
Appellee, Wayne Laraway (Feb. 13, 2002)Original  
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• [2001 WL 34757388](#) (Appellate Brief) Brief for  
Appellant (Dec. 10, 2001)Original Image of this  
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