

PENNSYLVANIA

LawWeekly

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Judges

# Superior Court Hopefuls Talk Caseload, Big Decisions at Forum

BY P.J. D'ANNUNZIO  
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Candidates vying for open seats on the Pennsylvania Superior Court bench gave their thoughts on how to handle the court's immense caseload, as well as opined on significant rulings to come out of the state's courts.

The talk was hosted by the Philadelphia Bar Association on April 18 at its headquarters and was moderated by lawyer Thomas J. Duffy of Duffy + Partners.

The first question put to the candidates: What personal policies would you and your staff put in place to make sure everybody gets a full and complete hearing while balancing the court's caseload?

Most gave answers stressing the importance

of hard work and teamwork between judges and their staff.

Pittsburgh solo lawyer William F. Caye II suggested separating appellate cases into units.

"With small businesses, they should have a smaller program like a commerce court," Caye said.

Beaver County Court of Common Pleas Judge Deborah A. Kunselman said she prioritizes cases from least complex to most, hearing the simpler ones at the beginning of the day so lawyers working on more complex cases have more time during the day to prepare.

Lancaster County District Attorney Craig W. Stedman said his experience in the U.S. Army taught him to seek solutions, not blame, in difficult situations, adding that "the DA's Office is the emergency room of the legal profession," and he is used to a high volume of cases.

Duffy next asked the candidates to explain which court decisions were the most significant in their eyes.

Nearly all of the candidates pointed to decisions regarding mandatory minimums in sentencing or the state Supreme Court's game-changing 2014 products liability ruling in *Tincher v. Omega Flex*.

Interim Superior Court Judge H. Geoffrey Moulton Jr. said, "Every day our court is addressing another case with issues unanswered by *Tincher*."

Philadelphia Family Court Judge Maria C. McLaughlin cited cases involving child custody matters.

Blair County Court of Common Pleas Judge Wade A. Kagarise diverged from the pack in pointing to decisions about arbitration

clauses as they apply to wrongful death and survival actions.

Philadelphia Court of Common Pleas Judge Carolyn H. Nichols mentioned decisions on involuntary blood draws in DUI cases.

Duffy also asked the Superior Court hopefuls if they thought having experience as an appellate lawyer would help them as an appellate judge. All but one answered yes.

Northampton County Court of Common Pleas Judge Emil Giordano said that judging appeals and advocating for clients on appeal are two different things. A judge's only concern, he added, was to follow the letter of the law.

"A cool, calculated review of the law is imperative," he said.

Forum continues on Page 12

Aviation

# Airplane Injury Claim Not Federally Pre-empted, Court Says

BY ZACK NEEDLES  
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A woman's state law claim that she was injured when she was struck in the head by another passenger's suitcase while boarding a Southwest Airlines flight is not pre-empted by the Federal Aviation Act, the Pennsylvania Superior Court has ruled in a case of first impression.

In a published opinion in *Okeke-Henry v. Southwest Airlines*, a three-judge panel unanimously reversed a Philadelphia trial court's ruling granting Southwest Airlines' motion for judgment

on the pleadings and remanded the case for further proceedings.

Philadelphia Court of Common Pleas Judge Linda A. Carpenter had found that plaintiff Chinweifenu Okeke-Henry failed to allege a violation of the standard of care under the FAA.

Carpenter relied on the U.S. Court of Appeals for the Third Circuit's 1999 ruling in *Abdullah v. American Airlines*, in which the federal appeals court found that the FAA's standard of care pre-empted the negligence claims of passengers injured as a result of in-flight turbulence, but did not pre-empt state law remedies.

But Superior Court Judge Victor P. Stabile, writing for the panel, said the Third Circuit more recently determined in the 2010 case *Elassaad v. Independence Air* that the FAA does not pre-empt claims for injuries suffered when the plane has come to a complete stop.

In *Elassaad*, a disabled passenger was injured while departing a plane and the Third Circuit narrowed the scope of its *Abdullah* ruling.

"Although we stated in *Abdullah* ... that the Aviation Act pre-empts 'the entire field of aviation safety' from state regulation, we hold that the 'field of aviation safety' does not include a flight crew's oversight of the disembarkation of passengers once a plane

Airplane continues on Page 12

Inside PLW

People in the News . . . . . 2

Ethics Forum . . . . . 4

Employment Law . . . . . 5

Verdicts & Settlements . . . 7

Insurance Law . . . . . 8

Capitol Report . . . . . 9

Land Use . . . . . 10

Lawyer to Lawyer . . . . . 20

Plus 25 Digests  
starting on page 13

44 Lawsuits for \$13.9 Mil. Ironworker's Explosive Case

Amtrak Derailment Case Settles For \$265 Mil. Fatal Accident Victim \$75 Million

Lawsuits Settle for \$29.7 Mil. Ironworkers' Leg Am

\$227 Million Settlement Deadly Center City \$1

worker's family gets \$11 million after fall from building

1 Juror Prompts \$13 Mil. Settlement

Duck Boat Accident Case Settles For \$17 Million

each in \$13 Mil. Settlement

ion Case \$13 Mil. Settlement

Settlement In Lehigh County or Industrial Accident

Tropicana Collapse Y \$101 Mil. Settlement

\$36 Mil. Agreement R in Montco Apartment

\$17 Million Record Settlement Case Of Man Killed By Crane

Paralyzed After Fall

Secures \$12 Mil. Settlement Who Suffered Traumatic Brain Injury Settles Lawsuit for \$14 Million

\$124M Verdict From Missouri Jury in Case Over Killing

Jury Awards Accident Victim

Pier 34 Lawsuits Settled \$16.3 Million

Ironworker's Explosive Case Settles for \$13.9 Mil.

Steel plant worker's family gets

SALTZ MONGELUZZI  
BARRETT & BENDSKY  
TRIAL LAWYERS  
ONE LIBERTY PLACE

Forum

continued from 1

Next was a question posed to the candidates by the reform group, Pennsylvanians for Modern Courts, which advocates for appointment of judges by the governor. Maida Milone, the leader of the group, asked

whether there should be a limit imposed on judicial campaign contributions. She also asked whether merit selection, rather than elections, would be a better method for filling judicial vacancies.

Not surprisingly, the candidates opposed donation limits. They also stressed the need to be transparent in accepting donations

and to avoid the appearance of impropriety by recusing when necessary in cases where lawyers have contributed to their campaigns.

Most commented that while the election of judges is not a perfect method, merit selection has its flaws too.

Philadelphia Court of Common Pleas Judge Paula A. Patrick said appointments

can lead to a lack of diversity on the bench.

Giordano said, "I think appointments and elections are good and bad. I personally believe an appointment process with a retention election would be the way to go."

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Airplane

continued from 1

has come to a complete stop at its destination," the Third Circuit said.

Stabile, noting that a search "revealed no case in either this court or the Pennsylvania Supreme Court addressing FAA pre-emption of state negligence claims under circumstances even remotely similar to the case before us," said Okeke-Henry's claim was "more akin to that in *Ellassaad* than in *Abdullah*."

Stabile, joined by Judges Kate Ford Elliott and H. Geoffrey Moulton Jr., said there existed "no basis for concluding that the incident occurred in the course of the operation of the aircraft so as to come under the FAA's pre-emption umbrella."

"The Southwest plane had not moved from the gate and was in the boarding process when appellant was struck in the head by a suitcase carried by an unidentified passenger," Stabile said. "Appellant does not suggest that she or the passenger had enlisted the assistance of a flight attendant, that the unidentified passenger was having any difficulty managing his carry-on bag, or even that the passenger was attempting to stow the bag in an overhead bin."

Okeke-Henry's suit alleges Southwest failed to oversee the boarding process, train

and supervise its employees with regard to the boarding process, and ensure the safety of passengers during boarding.

Stabile said that, without the protection of pre-emption, the court could not find that Southwest's right to success in the case was so certain that Okeke-Henry's claim could not proceed.

But Stabile also added in a footnote that Okeke-Henry has conceded that the passenger whose suitcase allegedly struck her was never identified.

"While that fact may ultimately result in appellant's inability to prove her case against Southwest, our standard of review requires that her claims survive a motion for judgment on the pleadings," Stabile said.

Counsel for Okeke-Henry, Timothy R. Hough of Jaffe & Hough in Philadelphia, could not be reached for comment.

Southwest's attorney, J. Denny Shupe of Schnader Harrison Segal & Lewis in Philadelphia, also could not be reached.

The Superior Court's ruling was issued April 13, just days after United Airlines garnered headlines when police forcibly removed a passenger from a flight in Chicago that the company initially said was overbooked.

Aviation lawyers told Legal affiliate The National Law Journal that the passenger,

the act prohibiting a nursing home employee from testifying in a civil action," Stabile said.

Counsel for the plaintiffs, Matthew T. Stone of Wilkes & McHugh in Philadelphia, said he and his client are pleased.

Counsel for Garden Spot, Hugh P. O'Neill III of Thomas, Thomas & Hafer in Harrisburg, could not be reached for comment on the allocatur denial.

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David Dao, likely has a case against United.

Dao has retained Chicago personal injury lawyer Thomas Demetrio, according to media reports.

*(Copies of the 10-page opinion in*

Okeke-Henry v. Southwest Airlines, *PICS* No. 17-0583, are available at <http://at.law.com/PICS>.)

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PENNSYLVANIA BULLETIN

Below is the table of contents of the last issue of the Pennsylvania Bulletin, the official gazette of the Commonwealth. The Bulletin contains notices, regulations and other documents filed with the Legislative Reference Bureau, and supplements to the Pennsylvania Code. Courts are required to take judicial notice of the contents of the Bulletin.

Contents

PENNSYLVANIA BULLETIN, VOL. 47, NO. 15, APRIL 15, 2017

<b>THE COURTS</b> <b>DISCIPLINARY BOARD OF THE SUPREME COURT</b> Notice of disbarment..... 2188 <b>JUDICIAL CONDUCT</b> Amendment of Rule 2.3 of the Code of Judicial Conduct; No. 483 judicial administration doc..... 2181 <b>JUDICIAL SYSTEM GENERAL PROVISIONS</b> Extension of public comment period; proposed amendments to Pennsylvania Rule of Professional Conduct 1.15 regarding the disposition of unclaimed or unidentified funds in Pennsylvania IOLTA trust accounts ..... 2181 <b>LOCAL COURT RULES</b> <b>Carbon County</b> Veterans treatment court dispositions program (VTC)—administrative fee; CP-13-AD-0000003-2017 ..... 2187 <b>Centre County</b> Local rule—4009 court reporting and transcripts—fees and procedures; doc. No. 2017-0002 civil misc..... 2187 Local rule—4009 court reporting and transcripts—fees and procedures; No. 2017-0002 civil misc. .... 2188 <b>Dauphin County</b> Accelerated rehabilitation disposition (ARD) reapplication fee; AO-05-2017; 0010-05-MD-2017 ..... 2188 <b>RULES OF CIVIL PROCEDURE</b> Proposed amendment of Pa.R.C.P. No. 1915.11-1 and new Rules Pa.R.C.P. Nos. 1915.22 and 1915.23 ... 2181	<b>DEPARTMENT OF REVENUE</b> <b>Notices</b> Pennsylvania \$100,000 Club instant lottery game 1277 ..... 2256 Pennsylvania 5 Star Crossword instant lottery game 1278 ..... 2259 Pennsylvania 50 Buck\$ instant lottery game 1279 .. 2261 Pennsylvania Millionaire instant lottery game 1276. 2263 Pennsylvania Quick Cash instant lottery game 1280 ..... 2266 <b>DEPARTMENT OF TRANSPORTATION</b> <b>Notices</b> Proposed disadvantaged business enterprise public consultation forums; Federal Highway Administration and Federal Transit Administration methodology and goals for Federal fiscal years 2018—2020 ..... 2269 Transportation Advisory Committee meeting..... 2269 <b>FISH AND BOAT COMMISSION</b> <b>Notices</b> Lake Erie commercial fishing—2017 ..... 2269 Lake Erie creel limits for walleye and yellow perch—2017 ..... 2270 <b>INSURANCE DEPARTMENT</b> <b>Notices</b> Alleged violation of insurance laws; Mark Bleier; doc. No. SC17-03-004 ..... 2270 Application for approval to acquire control of Provider Partners Health Plan of Pennsylvania, Inc. .... 2270 Capital Advantage Assurance Company, Inc. (CABC-130954662); small group off exchange; rate filing; correction ..... 2270 Export list of insurance coverages; request for comments ..... 2271 Keystone Health Plan East, Inc. (INAC-130959307); small group on and off exchange; rate filing ..... 2271 Pennsylvania Life & Health Insurance Guaranty Association (SERFF # LTCG-130970630); rate increase filing for several Penn Treaty Network America LTC forms ..... 2271 QCC Insurance Company (INAC-130959332); small group on and off exchange; rate filing ..... 2272 Review procedure hearings; cancellation or refusal of insurance (2 documents) ..... 2272 Review procedure hearings under the Unfair Insurance Practices Act ..... 2273 <b>LEGISLATIVE REFERENCE BUREAU</b> <b>Notices</b> Documents filed but not published ..... 2273 <b>PENNSYLVANIA GAMING CONTROL BOARD</b> <b>Notices</b> List of applicants and licensees ..... 2273 <b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b> <b>Notices</b> Service of notice of motor carrier applications..... 2300 Transfer indirect control ..... 2301 Water service..... 2301 <b>PHILADELPHIA PARKING AUTHORITY</b> <b>Notices</b> Authorization of wheelchair accessible taxicab medallions; doc. No. 17-003 ..... 2301 Service of notice of motor carrier application in the City of Philadelphia..... 2302 <b>PHILADELPHIA REGIONAL PORT AUTHORITY</b> <b>Notices</b> Request for bids ..... 2303 <b>STATE BOARD OF OSTEOPATHIC MEDICINE</b> <b>Notices</b> Bureau of Professional and Occupational Affairs v. Chuma Gibson Osuji, DO; doc. No. 2393-53-16.... 2303 <b>STATE EMPLOYEES' RETIREMENT BOARD</b> <b>Notices</b> Hearing scheduled ..... 2303
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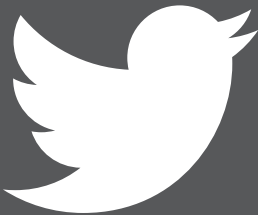
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Elder Abuse

continued from 6

second, the plaintiffs in *V.B.T.* acknowledged that the information they sought was privileged under the Child Protective Services Law but argued that their interest in moving forward with their negligence suit outweighed the agency's interest in confidentiality.

"Instantly, the Lancaster County Office of Aging is not a party, and we find nothing in



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