90 PEOPLE ATTEND CLE PROGRAM PROVIDED IN SCRANTON

The PBA Federal Practice Committee partnered with the Middle District of the Pennsylvania Chapter of the Federal Bar Association to present a CLE program entitled, “Civil and Criminal Pretrial Evidentiary Hearings: The Basics and Beyond.”

Approximately 90 people attended the program held at the William J. Nealon Federal Building and U.S. Courthouse in Scranton, PA. “We had a wonderful turnout for this program and are very fortunate to have our Middle District judges and Judge Fisher participate in our continuing legal education programs,” shared Attorney Bridget Montgomery, PBA Federal Practice Committee member, who also served as a course planner and moderator for this program. “Fostering positive, quality educational and networking exchanges between the bench and bar in local venues, such as Scranton, are exactly the type of services we need to provide for our members. I am pleased to give my time to be part of these important programs,” Hon. D. Michael Fisher, PBA Federal Practice Committee Chair.

HELPING YOUNG LAWYERS: TIPS & TRAPS IN FEDERAL PRACTICE

The PBA Federal Practice Committee presented the always popular CLE program, “Tips and Traps in Federal Practice” during the Young Lawyers Division Summer Meeting at the Toftrees Resort and Conference Center in State College. Approximately 75 lawyers attended.

Do you have ideas for a CLE program in your area? Let the Chair know if you would like us to host a local CLE program in your area, either independently or jointly with your local bar. We are prepared to present our “Tips and Traps” program and are exploring other program topics. The committee is interested in providing educational programs wherever interest exists.
THE IMPACT OF THE 2012 U.S. SUPREME COURT TERM

On May 29, the PBA Federal Practice Committee presented a CLE program on “The Impact of the 2012 U.S. Supreme Court Term.” The program was a joint effort of the PBA Federal Practice Committee, PA Bar Institute and Montgomery Bar Association. More than 50 attorneys attended the program and reception that followed.


Summaries of the most interesting federal practice precedential opinions issued by the United States Court of Appeals for the Third Circuit from April through June, 2013.


The court was asked to determine whether this case was a class action that belonged in federal court under the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (“CAFA”). Erie Insurance Exchange (“Exchange”) filed suit against its attorney-in-fact, Erie Indemnity Co. (“Indemnity”), in Pennsylvania state court, alleging that Indemnity misappropriated over $300 million in fees that belonged to Exchange. The complaint was filed for Exchange “by” certain of its members as trustees ad litem, and by those members “on behalf of” all other members. Contending that the words “on behalf of” converted this case into a class action, Indemnity removed this case to federal court but the District Court remanded this case to state court on Exchange’s motion.

Because this case was brought under state rules that bore no resemblance to Federal Rule of Civil Procedure 23 in that they allowed for suits by entities, not a conglomerate of individuals, the court concluded that it did not meet the statutory definition of “class action,” and therefore affirmed the District Court.

JOHNSON V. SMITHKLINE BEECHAM CORP., NOS. 12-2561/2562/2563/2564/2565, --- F.3D ---, 2013 U.S. APP. LEXIS 11501 (3D CIR. JUNE 7, 2013)  (AMBRO, J., CONCURRING IN PART AND CONCURRING IN JUDGMENT)

Plaintiffs Glenda Johnson and Steven Lucier appealed an order of the District Court denying their motion to remand the action to Pennsylvania state court. They contended that the District Court lacked subject matter jurisdiction over their claims because the parties did not have complete diversity of citizenship.

The court concluded that the District Court rightly held that GSK LLC and GSK Holdings were both citizens of Delaware, that SmithKline Beecham was a nominal party, and that Avantor was a citizen of New Jersey at the time the case was removed. The District Court thus had original jurisdiction over the matter as the parties satisfied the diversity requirement, making removal proper.
A request for attorney’s fees should not result in a second major litigation.” Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). Regrettably, requests for attorney’s fees in this protracted environmental clean-up case resulted not only in a second major litigation, but a third as well. An earlier multi-million dollar fee award previously brought before the court was vacated and remanded for additional review by the District Court. Interfaith Cmty. Org. v. Honeywell Int’l, Inc. (“ICO II”), 426 F.3d 694 (3d Cir. 2005). This latest appeal called upon the court to decide whether offers of judgment pursuant to Federal Rule of Civil Procedure 68 may be made in the context of attorney’s fee disputes under the fee-shifting provisions of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq., whether Rule 68 generally applies to proceedings after judgment has been rendered on liability, and whether the fee award was excessive.

The court reversed the District Court’s ruling that Rule 68 offers of judgment are inapplicable in the context of environmental citizen suits brought under RCRA, held more broadly that Rule 68 offers of judgment apply to disputes over attorney’s fees after liability has been determined, reinstated the previously made offers of judgment, affirmed the District Court’s departure from the forum-rate rule because review of that issue was barred by collateral estoppel, affirmed the District Court’s application of the LSI-updated Laffey Matrix, vacated the fee award, and remanded the case for further proceedings.

GUIDOTTI V. LEGAL HELPERS DEBT RESOLUTION, L.L.C., NO. 12-1170, --- F.3D ---, 2013 U.S. APP. LEXIS 10642 (3D CIR. MAY 28, 2013)

Dawn Guidotti contracted with several parties to help her negotiate a settlement of her consumer debt. She then filed this putative class action against them, claiming that people had been defrauded. The District Court granted a motion to compel arbitration as to the claims against most of the defendants, but it denied the motion as it pertained to Rocky Mountain Bank and Trust (“RMBT”) and Global Client Solutions (“Global”) (collectively, the “Appellants”). With respect to those two defendants, the Court held that the pleadings and certain evidence adduced by Guidotti were sufficient to demonstrate that there had been no meeting of the minds on an agreement to arbitrate and that Guidotti’s claims against them were therefore not subject to arbitration.

The court reversed, holding that the motion was wrongly denied without first allowing limited discovery and then entertaining the motion under a summary judgment standard. If, after presentation of the evidence uncovered during discovery, a genuine dispute of material fact remained, the District Court then should have submitted to a jury (if either party demanded one) the factual question of whether Guidotti was aware of the arbitration clause in the Account Agreement at the time she signed and submitted the SPAA.


This was an appeal by St. Croix Renaissance Group, L.L.L.P. (“SCRG”) seeking leave under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1453(c)(1), to appeal an order of the District Court remanding a civil action to the Superior Court of the Virgin Islands. The court granted SCRG’s request and concluded that the civil action was not a removable “mass action” under CAFA, thereby affirming the District Court.
LASSITER V. CITY OF PHILA., 716 F.3D 53 (3D CIR. 2013)

Robert Lassiter appealed the District Court’s grant of defendants’ motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). The court affirmed, holding that the District Court had broad pretrial management authority under Federal Rule of Civil Procedure 16. Because Lassiter was given the opportunity to respond to the issue presented, the court rejected Lassiter’s contention that the District Court improperly raised its concern about the statute of limitations during the initial pretrial conference.

W. RUN STUDENT HOUS. ASSOC’S., LLC V. HUNTINGTON NAT’L BANK, 712 F.3D 165 (3D CIR. 2013)

West Run Student Housing Associates, LLC (“West Run”), Mt. Tabor Village, LLC (“Mt. Tabor”), and Campus View JMU, LLC (“Campus View”) (collectively, “Plaintiffs”) appealed the District Court’s dismissal of their amended complaint against Huntington National Bank. This lawsuit arose from three commercial real estate development projects for student housing at West Virginia University (the “West Run Project”), Virginia Tech (the “Mt. Tabor Project”), and James Madison University (the “Campus View Project”). The same group of individuals (“Sponsors”) sponsored each project. On appeal, plaintiffs argued, in part, that the District Court erred when it concluded that Huntington had no duty to West Run to refrain from financing Copper Beech and by deeming the unit pre-sale numbers listed in the superseded original complaint to be binding judicial admissions.

The court rejected West Run’s argument that an implied duty of good faith and fair dealing existed external to its contract with Huntington, since Pennsylvania courts have rejected such attempts to rewrite a contract. But the court agreed that under Federal Rule of Civil Procedure 15(a), the District Court erred by deeming pre-sale numbers in the original complaint to be binding judicial admissions, notwithstanding the fact that the original complaint had been superseded by an amended complaint. The court noted, however, that the District Court could have looked beyond the amended complaint to the pre-sale numbers contained in the original complaint if it had converted Huntington’s motion to dismiss into a motion for summary judgment.

RESOURCES

Pennsylvania Bar Association  www.pabar.org

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Federal Judicial Center  
http://www.fjc.gov/federal/courts.nsf

U.S. District Court for the Middle District of Pennsylvania  
http://www.pamd.uscourts.gov/

U.S. District Court, Eastern District of Pennsylvania  
http://www.paed.uscourts.gov/

U.S. District Court Western District Pennsylvania  
http://www.pawd.uscourts.gov/

SAVE THE DATES

November 21, 2013  
PBA Committee & Section Day  
Holiday Inn East, Harrisburg, PA

Jan 29-Feb 2, 2014  
PBA Midyear Meeting  
Frenchman’s Reef & Morningstar  
Marriott Beach Resort  
St. Thomas, US Virgin Islands