

# P E N N S Y L V A N I A LAW WEEKLY

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ALM

## Judiciary

### Lamb Tapped to Lead Judicial Discipline Court

BY PETER HALL  
Of the Law Weekly

West Chester, Pa., attorney William H. Lamb has been elected to a one-year term as president judge of the Pennsylvania Court of Judicial Discipline.

Lamb, of Lamb McErlane in West Chester, was appointed by Gov. Edward G. Rendell to the court in 2004 and is the first former state Supreme Court justice to serve on



Lamb

the eight-member panel. He succeeds Robert L. Capoferri as president judge. The Court of Judicial Discipline was established in 1991 when the Pennsylvania

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## Civil Practice

### Records Disarray Clouded

### Assessment of Damages

Appeals court calls for new trial to revisit \$100 million award

BY ASHER HAWKINS  
Of the Law Weekly

An en banc Superior Court panel has ordered a new trial in a case in which a western Pennsylvania trial judge awarded \$102.7 million in 2003 to one of the owners of a property company identified as being at the center of a mid-1980s Ponzi scheme.

On the losing side of the verdict was Ernst & Young, a predecessor of which had been hired to help reorganize the property company and a group of related entities for the purposes of federal bankruptcy proceedings in the late 1980s.

According to statewide verdict data maintained by ALM, publisher of *Pennsylvania Law Weekly*, the award was the highest handed down a Pennsylvania trial court at least between the years 2003 and 2006.

In reversing Butler County Common

Pleas Judge S. Michael Yeager, the panel in *Reilly v. Ernst & Young*, PICS Case No. 07-1104 (Pa. Super. July 18, 2007) Panella, J.; Bender, J. concurring (19 pages) appeared to scold another judge from that county for effectively sanctioning Ernst & Young by ruling that the company had, following at least two procedural gaffes, admitted to assertions put forward by the plaintiffs.



Panella

According to attorneys involved in the case, the pre-trial judge in *Reilly* was Butler County Common Pleas Senior Judge John H. Brydon.

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Samuel C. Stretton says that discipline by consent isn't working, and offers a suggestion to improve matters.

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Lisa D. Eldridge examines the pitfalls of dismissing workers who are on light-duty assignments.

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A federal appeals court may have missed a tackle in ruling that football fans automatically consent to pat-down searches at stadium gates, Howard J. Bashman writes.

**PAGE D1** **Digests**  
The sum and substance of 35 recent decisions from tribunals across Pennsylvania, including trial courts in Beaver, Bucks and Lawrence counties.

## KEY DIGESTS

### Torts .....D4

Asbestos manufacturer waived its claim that plaintiff's verdict should be molded to reflect funds received from the Manville Personal Injury Settlement Trust because it did not seek verification of receipt of such funds. *Bugash v. Allen Refractories Co.*

### Government .....D5

Given the plain language of section 606(c) of the Second Class Township Code, the township's board of supervisors lacked the statutory authority to confer health insurance benefits upon themselves and their spouses after they retired. *White Deer Twp. v. Napp.*

### Civil Practice .....D7

Where a class action was settled for \$93 million, an award of attorney fees of \$21.4 million was reasonable. *In re Cigna Corp. Securities Litig.*

## Municipal Law

### Flag Day Hours Cost Adult Store Its License

County court upholds township licensing ordinance after latest challenge

BY RACHEL HERON  
For the Law Weekly

Lawrence County Court of Common Pleas judge ruled that opening on Flag Day will cost an adult entertainment store its license for one year in the latest of the store's legal tussles with local law enforcement.

In *Boron v. Pulaski Township Board of Supervisors*, PICS Case No. 07-1139 (C.P. Lawrence, July 10, 2007) Motto, D. (7 pages), President Judge Dominick Motto denied Adultland XXX owner Eric Boron's appeal to reverse Pulaski Township's one-year revocation of the store's sexually-oriented business license.

At a Sept. 6, Board of Supervisors hearing, the township revoked the license because the store's Flag Day, 2006 hours were a violation of Pulaski Township Ordinance No. 2000-5-22, Section 18, which prohibits sexually-oriented businesses from opening on state recognized holidays.

Plaintiff's lawyer Joseph T. Moran said that Adultland, whose previous complaints

against Pulaski Township have been appealed all the way to Pennsylvania Supreme Court, has a unique position in the township.

"It's the only 'adult' business that I'm aware of," said Moran of Adultland's Pulaski township location. "It might be understood that it draws attention."

Adultland's two latest complaints on appeal touched on earlier legal scuffles with the township. The store's holiday hours were at the heart of both.

The first complaint against the license revocation, dismissed by the judge, protested Pulaski Township's citation of a 2005 first offense in which Adultland opened on Columbus Day, also a state holiday. Boron held that using the Columbus Day incident as a first offense violated a previous settlement between the parties, in which Adultland agreed to close for 30 days if the incident was not used against them again.

According to Bernard P. Matthews, Jr., counsel for the Northwest Lawrence County Regional Police Department, acknowledging the Columbus Day offense

in the Flag Day case allowed the township to invoke the second offense punishment of a one-year loss of license, rather than the 30-day revocation warranted by a first offense.

Boron and Adultland did not present evidence regarding the prior settlement at the Board of Supervisors hearing. Moran, who got the case on appeal, said that he tried to get evidence regarding the agreement admitted after discovering a township meeting record acknowledging the existence of such a settlement. Moran said that he did not have any record that Boron or his prior counsel had been aware of the meeting record.

Judge Motto denied the motion to present additional evidence, and wrote in his opinion that the alleged unconstitutional vagueness of Pulaski's sexually orientated business ordinance—Boron's other complaint on appeal—was "[t]he sole issue to be decided by this Court."

Adultland had already challenged the constitutionality of Pulaski Township's

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# Lamb

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Constitution was amended to deal with matters of discipline for judges and district justices in Pennsylvania.

Matters before the Court may involve infractions related to either the judge's professional or personal conduct. If the Judicial Conduct Board decides to file charges against a judge, the Court of Judicial Discipline hears the case and decides what sanctions will be

brought against the judge. A defendant judge can appeal to the State Supreme Court.

Lamb was appointed to the state Supreme Court in 2003 to fill a vacancy created by former Chief Justice Stephen A. Zappala's retirement. Lamb also served as head of the state Client Security Fund.

"One of the things we concentrated on was getting the message out to the public that the Client Security Fund is out there," Lamb said. "Here, I think our biggest role here is to educate the judges."

Lamb said the vast majority of cases before the court involve judges who neglect proce-

dures and magisterial district judges, who often have backgrounds outside the legal profession.

"The last thing we want to do is end up in a situation where we are sanctioning a judge," Lamb said. "One of the things we try to do is provide an education process."

The court's educational efforts include presentations to the state Trial Judges' Conference, Lamb said.

"The members of our court are all volunteers and they serve without compensation," Lamb said. "It's an incredible group of people to know that they are doing that without get-

ting anything in return."

Members of the court unanimously elected Lamb to the president judge post.

Lamb is active on several state judicial committees in areas including medical malpractice mediation and alternative dispute resolution. He also serves on the President's Advisory Committee on the Arts, an advisory board of the John F. Kennedy Center for the Performing Arts in Washington, D.C., and on the Pennsylvania Elections Reform Task Force. He is a graduate of Duke University and the University of Pennsylvania Law School. Lamb directs his firm's post-trial and