

## Judge Gives Insights Into Employment Law at Federal Level

By Annie Kernicky

IT IS A RARE OCCASION TO GET INSIGHTS INTO CURRENT trends, discovery issues, motions for summary judgment or trials specific to labor and employment cases at the federal court level. Members of the Philadelphia Bar Association's Labor and Employment Law Committee got that opportunity when Hon. Wendy Beetlestone, U.S. District Court for the Eastern District of Pennsylvania, gave those insights and more at the Committee's July 15 meeting.

Judge Beetlestone first explained the progression of an employment discrimination case from her side of the bench. Initially, she receives an ECF notification that a new case has been filed. Then she reads the complaint briefly to get an idea of what type of case it is, i.e. if it is legally or factually complex, has a unique fact pattern, or new legal issues. Once all defendants are represented, she will then send out a Rule 16 Notice ordering discovery to begin immediately, and not after the Rule 16 conference. Judge Beetlestone said she would expect discovery to proceed, even if a motion to dismiss was pending, and that her starting point on a discovery period is 90 days.

At the Rule 16 pretrial conference Judge Beetlestone asks each party to tell its side of the story. Once a factual discussion has ended, Judge Beetlestone noted that it is usually clear to her if a motion to dismiss or summary

judgment motion will dispose of the case. At this stage, she will also try to settle the case herself, if it is a jury case, and also ask the parties if it would be helpful to refer the matter to her Magistrate Judge. After the Rule 16 conference, Judge Beetlestone usually will not engage in settlement discussions, but emphasized that the parties can always return to the Magistrate Judge.

If there is a discovery dispute, Judge Beetlestone prefers not to have a motion filed, initially. Instead, she asks the moving party to write a letter to the court, and within two days she will schedule a telephone call to discuss and attempt to resolve the discovery issue. If the call is not successful, then she will ask for written motions.

Next, at the summary judgment phase, Judge Beetlestone requires a joint appendix and the moving party to provide an undisputed statement of facts, to which the nonmoving party must respond by admitting or denying each fact. Each fact that is admitted will go into her opinion, she explained. The day that Judge Beetlestone signs a summary judgment order and opinion, she will set a date for trial.

Judge Beetlestone then discussed various statistics of employment cases in the Eastern District of Pennsylvania over the past decade, that she said she had gathered specifically for this presentation. She noted that in the last 10 years there have been 4,729 cases opened that are des-



Photo by Thomas E. Rogers

Sarah R. Lavelle, co-chair, Labor and Employment Law Committee (left), with Hon. Wendy Beetlestone, U.S. District Court for the Eastern District of Pennsylvania, at the Committee's meeting on July 15.

igned "employment discrimination" by either the clerk or the plaintiff. She explained that this breaks down to approximately 56 percent "general" (a catch-all category that included various types of employment claims), 20 percent age, 15 percent race, 8 percent sex, and 2 percent disability discrimination cases. Out of the more than 4,000 employment discrimination cases opened in the last 10 years, almost 72 percent of the cases settled before trial and only 3.4 percent have actually gone to trial, aver-

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## Selling Your Business in a Volatile Market

By Mary E. Ashenbrenner



HOW MUCH SHOULD STOCK MARKET volatility affect your decision to sell your business? Quite a bit—but perhaps not for the obvious reasons. The environment for equities is not likely to play as great a role in the actual sale of your business as it is in what you are going to do with the proceeds. For this month's interview, I sat down with Relationship Strategist Bill Whitmore of the PNC Wealth Management® Blue Bell office to clarify some of the financial issues related to selling your business.

**Mary Ashenbrenner (MA):** What is your advice to the entrepreneur who is just starting to think about selling his or her business?

**Bill Whitmore (BW):** The first question the entrepreneur needs to answer is, "Why am I selling my business?" Some entrepreneurs tend to exit their firms based on how the markets and their industry are performing—essentially, trying to time the markets. While price is important, it should not be the main reason for getting out of business. You need a "why." For example, are you preparing to retire? Do you want to go into a different type of business? Does your family or organization not hold a logical successor? Understanding the "why" can help you determine whether you need to sell against an uneven market backdrop, or if you can wait.

**MA:** What is the main reason business owners decide to sell?

**BW:** Many business owners sell in order to retire. Essentially, they are preparing to shut off the engine that has generated their income for decades and move to deriving the majority of their income from investments. That shift would be difficult at any time, but especially when the market is more volatile. A business owner has typically had a high degree of control over

the activities that influence their finances. By comparison, depending on investment income that is subject to market activity for your financial future can leave you feeling vulnerable.

**MA:** What can the business owner do to help mitigate that risk?

**BW:** Preparing a well-diversified investment plan designed to help manage these shifts is an appropriate way to take charge.

**MA:** How can entrepreneurs prepare investment plans unless they know what they are preparing for?

**BW:** Effectively designing your investment strategy hinges on understanding what you will do after you have sold. You have to know what is next to effectively prepare for your future. Some questions to think about include: Can you live on the proceeds from the sale of your business? Are you going to work for the new owner or retire? Or would you prefer to continue the status quo until the value of your business increases or investment conditions change?

**MA:** What are the tax implications of selling one's business?

**BW:** Selling your business is a significant taxable event, and how you choose to receive the proceeds from its sale can affect how you are taxed now and in the future. People who are selling a business,

especially those who will be subject to an estate tax, may want to take advantage of opportunities to transfer wealth to multiple generations. Usually, that requires specialized knowledge, and entrepreneurs hire professionals who can advise them on the tax implications of each element of the deal.

**MA:** How do I know what my business is worth?

**BW:** While valuation should not be the controlling factor in the decision to sell, you can not go into a sale without knowing what your company is worth; that is going to drive how you negotiate the sale. Fortunately, the stock market and the market for closely held, non-public businesses are largely decoupled in many respects. That is, the value of a small business will not necessarily rise and fall with the market indices. But, you do need to understand how prevailing market conditions could influence your business's perceived value to a buyer. Some entrepreneurs hire a valuation firm that knows their industry to get a current number.

The good news is, you do not have to solve this puzzle by yourself, especially when it relates to your personal finances. Professional advisors can help you develop a comprehensive plan that is focused on helping you managing your taxes and preserving your assets, so you feel more prepared to make a decision, regardless of market activity.

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### JUDGE RIZZO PORTRAIT UNVEILING



Photo by Thomas E. Rogers

Chancellor Gaetan J. Alfano spoke at the portrait unveiling of Hon. Annette M. Rizzo (Ret.) at City Hall on June 14. Judge Rizzo was Chancellor Alfano's legal intern in the Philadelphia District Attorney's Office while she was in law school.

Left: Chancellor Alfano and Judge Rizzo at the portrait unveiling on June 14.

### Beetlestone

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aging approximately 14 trials per year.

Out of the 144 employment discrimination trials held in the last ten years, 57 percent were found in favor of the defendant, 22 percent in favor of the plaintiff, 17 percent were dismissed, and 4 percent partially in favor of each side. Out of the 33 judgments in favor of plaintiffs, there was a total of \$13,958,964 awarded to plaintiffs, Judge Beetlestone said. Exclud-

ing two extraordinarily large judgments in those years, the average judgment is \$211,501, and the range of judgments has been \$541 to \$750,000 for plaintiffs. These numbers, she said, are solely from the verdict sheet, and are excluding attorneys' fees.

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