

# Atlanta, Philadelphia Battle for Airline Suits

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(Cont'd)

parties in interest in this case are lawyers aren't they?"

When Berman tried to respond that the real parties in interest were the millions of purchasers of airline tickets, Schnacke interrupted again.

"And if they're lucky," the judge said, "they'll each get a dollar and 35 cents. All I'm saying is don't talk about the interest of the parties. We know perfectly well it's the interest of the lawyers.

## Club Philadelphia

Then Berman got to the crux of the matter for the lawyers favoring Atlanta.

"Philadelphia has long been known as a closed antitrust bar," the California lawyer said. In the Atlanta cases, Berman asserted, "people from all over the United States have cooperated and shared the work." In clubby Philadelphia, however, he continued, "Nobody asked me my input on behalf of the 30 million citizens of California I hope to represent."

As Nast aptly had observed before the hearing began, "I think these people chose Atlanta for reasons that have nothing to do with Atlanta as opposed to them not wanting to be in Philadelphia."

And the not wanting to be in Philadelphia apparently stems from concerns about the bar, not the bench.

Berman asserts that Ditter, like Shoob, is known as a plaintiffs judge, and Opperman insists that

Shoob's appeal stems solely from his willingness to grab the case and run with it—a virtue that has also been ascribed, by others, to Ditter.

Furthermore, the Atlanta contingent is at its most self-righteous when it describes the supposedly superior pre-trial order that has been negotiated with the airlines before Judge Shoob. Carr says it does more for document preservation and production than the Philadelphia plaintiffs' order under Judge Ditter.

Atlanta proponent Opperman also points with disdain to the Philadelphia order's allowance for dividing discovery on the issues of class action requirements and the merits of the underlying claims. "Defendants always insist on bifurcated discovery," the Minneapolis lawyer says. "They can buy themselves a year by fighting over what's a class issue and what's merits."

Nast admits that her pre-trial order permits bifurcated discovery, but she insists that class and merits investigations will proceed simultaneously. Indeed, the Philadelphia team has made much of the defendants' recent agreement to give them the same records that will be produced in Atlanta.

Atlanta supporters finally contend that Philadelphia always has gotten more than its share of multidistrict cases.

According to Carr, from the establishment of the multidistrict panel in 1968 through June of last year, 714 cases have been assigned to Philadelphia and only 30 to Atlanta. As of last summer, the Atlanta lawyer continues, there were

68 multidistrict cases pending in Philadelphia and none in Atlanta.

Carr believes those numbers add weight to the argument that the airline cases should go South. "Anyone that assumes the District Court in Atlanta is incapable of handling complex cases," he says, "is just wrong."

## Logistical Lament

The panel is expected to rule within 30 to 60 days. Meanwhile, the Northern District of Georgia is bracing to catch the case if it comes Atlanta's way.

Shoob says he has never had a civil case that would compare to the airline suits in size, but he seems intrigued by the prospect of taking it on.

"This could be a very substantial, lengthy and complex case," the judge says. "It would just be a lot of extra work, but it would be an interesting case."

And the size of the litigation admittedly would present new administrative challenges for District Clerk Luther D. Thomas, too.

In particular, Thomas is concerned about all the calls and letters his office would have to handle once virtually everyone in the country becomes a plaintiff.

"We're all looking for a windfall," the clerk observes, "but generally the legal process is a lot slower than people expect."

Should Philadelphia win out, says Thomas with a slow grin, "It wouldn't bother me."