

[J-225-1998]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

DAUPHIN DEPOSIT BANK AND TRUST	:	No. 27 M.D. Appeal Docket 1998
CO.,	:	
	:	
Appellee	:	Appeal from the Order of Superior Court
	:	entered July 10, 1997 at 667HBG96,
	:	reversing the order entered July 11, 1996
	:	and remanding to the Court of Common
v.	:	Pleas of Cumberland County, Civil
	:	Division, at No. 907 Civil 1994
	:	
RALPH W. HESS, JOAN B. PATTISON	:	698 A.2d 1305 (Pa. Super. 1997)
AND JERED L. HOCK, INDIVIDUALLY	:	
AND ON BEHALF OF ALL OTHERS	:	ARGUED: November 16, 1998
SIMILARLY SITUATED,	:	
	:	
Appellants	:	

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: March 26, 1999

I respectfully disagree with the majority opinion as I believe the Superior Court wrongly reversed the trial court's denial of the class action settlement agreement.

I believe the Superior Court re-weighed the evidence and substituted its judgment for that of the trial court. For example, as enumerated by the majority, the Superior Court disagreed with the trial court's evaluation of the likelihood the class would prevail; the Superior Court also disagreed with the trial court's assessment of factual evidence by giving more weight to the class's proposed testimony than to the bank's already proffered evidence. This re-weighing of the proposed evidence impinges

upon the very essence of the trial court's function as the trial court is in the best position to make credibility determinations.

Moreover, contrary to the Superior Court's interpretation of the trial court's analysis, I find the trial judge correctly applied the Buchanan factors by establishing that the settlement agreement fell within the required range of reasonableness. Therefore, since the Superior Court made its determination by substituting its judgment of the facts for that of the trial court, I would reverse and affirm the trial court's rejection of the settlement.