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ATTORNEYS AT LAW

PRODUCTS LIABILITY PRACTICE GROUP FLORIDA CASE OF THE MONTH

Schwartz v. Millon Air, Inc.,
2003 WL 21911228 (11th Cir. August 12, 2003)

SANCTIONS LIFTED AGAINST ATTORNEYS WHO BROUGHT BOGUS AIR CRASH CLAIMS

The Eleventh Circuit Court of Appeals overturned a \$63,245 sanction against two plaintiff's attorneys who brought a bogus claim relating to a 1996 airplane crash in Ecuador. The Eleventh Circuit held that the attorneys had reasonably relied on the investigation and representations made by an Ecuadorian attorney and therefore should not have been sanctioned under 28 U.S.C. § 1927 and Fla. Stat. § 57.105.

In October 1996, a cargo plane owned and operated by Millon Air, a Florida corporation, crashed in Manta, Ecuador shortly after takeoff. Approximately 30 local residents on the ground, in addition to the plane's passengers and crew, were killed. In April 1997, U.S. lawyers Newton Schwartz and Benton Musslewhite filed cases in the Southern District of Florida on behalf of the daughter of a ground victim supposedly killed in the crash and on behalf of a victim allegedly burned also while on the ground. Schwartz and Musslewhite received these cases, along with 217 other air crash claims, from Richard Briones, an Ecuadorian attorney. Briones conducted the factual investigation and provided Schwartz and Musslewhite with photographs and medical records.

While reviewing the photographs of the burn victim, Schwartz was "struck by what appeared to be a remarkable recovery." According to published reports, the victim's burns "were better healed than Schwartz would have expected." When Schwartz checked with Briones, Briones assured him that the victim was indeed injured during the plane crash. Musslewhite then traveled to Ecuador for settlement discussions and was advised by Millon Air's attorney that some of the claims appeared meritless and fraudulent. Millon Air's attorney did not specify which claims. Eventually Millon Air proved that the burn victim's injuries had occurred a year before the crash and that the other plaintiff had falsified her mother's medical records to make it appear as though she had died from the crash when in fact she had been admitted to the hospital two days prior. The district court granted Millon Air's motion for sanctions against Schwartz and Musslewhite in the amount of \$63,245.

The Eleventh Circuit reversed. First, the Court held that to warrant sanctions under 28 U.S.C. § 1927 an attorney "must engage in unreasonable *and* vexatious conduct" that is "tantamount to bad faith." The record failed to establish that Schwartz and Musslewhite acted in bad faith, the Court surmised. Instead, because this case involved special circumstances (i.e. great distance across international borders, foreign languages and cultures), it was not unreasonable for Schwartz and Musslewhite to rely on the representations of Briones, especially when there was no reason to believe Briones was unworthy of belief. Second, as to Fla. Stat. § 57.105, the Court found that "[a]gain the touchstone is whether the lawyer acted in 'good faith' ". Given that no one contended Schwartz and Musslewhite knew of the fraud, coupled with the special circumstances involved in this case, it was reasonable for Schwartz and Musslewhite to rely on the representations of Briones. Thus, the Eleventh Circuit concluded sanctions were not warranted under 28 U.S.C. § 1927 and Fla. Stat. § 57.105.

Comments: The Eleventh Circuit allowed its fear of creating a "substantial bar to foreign nationals being able to litigate claims in American courts" to drive it to reverse the district court's sanctions on Schwartz and Musslewhite. The Court reversed the sanctions in spite of the fact that Schwartz and Musslewhite failed to act on information that some of their claims might have been based on faulty information. Moreover, neither Schwartz nor Musslewhite ever conducted any pre-complaint investigation; instead, they completely relied on the Ecuadorian investigators and referring attorney.

As the Court had to acknowledge, Schwartz and Musslewhite “could have done more and better.” The Court’s opinion, as some commentators have suggested, may have the deleterious effect of allowing other attorneys handling international cases to conduct themselves in a manner that would otherwise not be acceptable in domestic cases.

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