Boca Aviation v. Proskauer Rose

Boca Aviation was a fixed-base operator providing a broad range of aeronautical services at the Boca Raton Airport in Florida. A fixed-base operator is the primary provider of services to aircraft and other operators located at an airport. There are currently over 3,000 fixed-base operators in the United States. Boca Aviation is highly regarded within its industry, having recently been selected as the 13th best fixed-base operation in the United States. It was also named the fourth best fixed-base chain operation by the 2010 Professional Pilot Survey.

In 1997, Boca Aviation engaged the law firm of Proskauer Rose to represent them in the drafting and negotiation of a lease intended to expand the company's fixed-base operation at the airport. The head of Proskauer Rose's real estate department in Boca Raton was Christopher Wheeler. Unfortunately, serious errors in the legal services provided to Boca Aviation by Mr. Wheeler and Proskauer Rose resulted in the loss of Boca Aviation's lease rights to one of its competitors. The legal errors resulted in the loss of future profits for the 28 years that remained on Boca Aviation's original lease.

Boca Aviation sought representation by Steven Katzman and Craig Rubinstein of Katzman, Wasserman, Bennardini and Rubinstein, Boca Raton, Florida, who were joined by SDSBS attorney **Jack Scarola**. Together, they filed a legal malpractice lawsuit against Mr. Wheeler and Proskauer Rose. Mr. Wheeler resigned his position with Proskauer Rose shortly before trial began in May 2010.

Following a six-week trial, the six-person jury was unable to reach a unanimous decision after three days of deliberations. On June 11, 2010, the judge declared a mistrial. The judge then queried the jurors for their individual advisory verdicts (non-binding decisions), and four of the six jurors reported that they would have found defendant Proskauer Rose liable for the negligent advice given in the commercial real estate transaction, and for breach of the fiduciary duty owed to their client, Boca Aviation. In closing arguments, plaintiff's attorneys had revised their claim for lost profits to $60.1 million to reflect the year 2000 values, and added $3.6 million in legal fees and other costs. According to the four jurors' advisory verdicts, they would have found damages due Boca Aviation at just under $64 million, every penny of damages claimed by the plaintiff's attorneys in closing argument.

The jury's inability to reach a unanimous verdict means that the case will now be retried, probably early next year. ◆

Disregard of Physical Therapy Evaluation Results in Neurological Impairment

(Continued from page three.)

This is the second case at SDSBS where the examination evaluations of physical therapists were significant with regard to alerting medical personnel about severe complications in a hospitalized patient. Physical therapists are an important part of a medical treatment team, and their evaluations are a significant part of patient care.

> *Many medical malpractice cases involve the issue of timing. The physical therapy notes were not reported, they were not reviewed, and appropriate timely action was not taken.*

The patient and his family sought representation by SDSBS attorneys **Earl Denney** and **Chris Searcy** in a civil action filed against the hospital and medical personnel for medical malpractice. Many medical malpractice cases involve the issue of timing. In this instance, the window of time would be between the earliest possible time that surgery could be performed on the patient, and the last hour beyond which there would have been no difference in the patient's outcome. The earliest possible time for emergency surgery would have occurred when the physical therapist's notes on the critical condition of the patient were reported by the physical therapist to nurses and physicians, who would have reviewed the condition and taken appropriate and emergent action. The physical therapy notes were not reported, they were not reviewed, and appropriate timely action was not taken. ◆