

SUPERIOR COURT OF ARIZONA
COUNTY OF COCHISE
DATE: April 27, 2000

FILED
Time _____ M
APR 27 2000

DENISE I. LUNDIN
CLERK SUPERIOR COURT
DEPUTY

APPEALS
BONDS RETURN/FORFEITURE
PROBATION/FINE/RESTITUTION
CHANGE OF VENUE
JURY PEECE
ATTORNEY: APT & CLERK
SUPPORT
DIVISION

X MARKED 4-27-00

CASE: MARISSA L. JENKINS, surviving spouse of Kevin L. Jenkins, individually and as Personal Representative of the Estate of Kevin L. Jenkins; for herself and on behalf of MATTHEW JENKINS and KELLY JENKINS, surviving minor children of KEVIN L. JENKINS; DAVID SCOTT PETERSON, as Personal Representative of the Estate of John D. Peterson, on behalf of DOUGLAS R. PETERSON, surviving parent of John D. Peterson and IAN T. PETERSON, surviving child of John D. Peterson, deceased, Plaintiffs,

vs.

BELL HELICOPTER TEXTRON, a Delaware corporation; and IMPERIAL TOOL AND MANUFACTURING, INC., a Texas corporation, Defendants.

MINUTE ENTRY ACTION: RECONSIDERATION, AND DECISION

CASE NO: CV97000397

IN CHAMBERS:

JUDGE: HONORABLE MATTHEW W. BOROWIEC
DIVISION: ONE

DENISE I. LUNDIN, CLERK
by Stephanie L. Williams 04/27/00, Deputy
Docketed by _____

IN CHAMBERS:

This court decided by minute entry of April 21, 2000, that defendant Bell Helicopter knew or should have known of the falsity of its own expert's credentials, and granted a new trial without sanctions.

The quality of Mr. Wilken's testimony in the post-trial evidentiary hearing in juxtaposition to his testimony presented at trial was strikingly in contrast. On the trial he testified with an authority and confidence that brought credibility to his every opinion. In his post-trial testimony, he testified with considerably less assurance, and incredibility, that if he was not in the Massachusetts Army National Guard, that he thought he was, or essentially was a member. As stated in the previous minute entry, his opinion testimony went to the critical issues, and clearly was very persuasive.

This court opined that defendant Bell Helicopter knew or should have known of the falsity of its expert's credentials, but could not conclude that Bell in fact knew. This court has been persuaded by plaintiffs' motion for reconsideration that "should have known" warrants sanctions. A party cannot avoid its responsibilities by hiding behind contractual arrangements common in the insurance defense business. That which is known by its insurers, lawyers, or expert witnesses is known by it. It is, after all, that party's case and not that of its agents.

There is a sense of basic unfairness in a case where a defendant of great corporate means through its agents can perpetrate a fraud upon the court and jury by presenting perjured testimony which contributed to a defense verdict, shift blame to its agents and not have to account for the great time and cost expended by the other party. Sanctions are warranted.

Great amounts of time and effort were expended by plaintiffs' lawyers in the preparation and trial of this case. The motion for new trial having been granted, much time will again have to be expended, in review and re-examination of issues, witnesses, exhibits and arguments, essentially a re-preparation for trial, occasioned by the defective and unfair first trial. The second trial is a new ball game, presumably requiring as much time and effort as the first.

It is **ORDERED** as follows:

1. As previously ordered, the motion for new trial is **GRANTED**.
2. The motion for sanctions is **GRANTED**. Defendant shall pay to plaintiffs' lawyers the reasonable charges for their time expended on this case, supported by affidavits filed with their motion for new trial, and determined, in the amount of \$583,578.67, and shall reimburse plaintiffs for their costs expended in the preparation and presentation of this case. As this judge's retirement is imminent, another judge will have to resolve any disputes in the determination of the amount of costs.



Judge of the Superior Court

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