

# Law



*The winning attorneys, left to right, are Ben Rosenberg, Steve Wrobel, Andy Baida and Jim Crossan of Rosenberg | Martin | Greenberg, LLP.*

Lawyers who left Patton Boggs share \$4M in Lockerbie fees

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Two Maryland lawyers can share in the fees from a settlement between Libya and the families devastated by the Lockerbie airplane explosion, even though the lawyers did not participate in that aspect of the litigation.

A win in the Court of Special Appeals Tuesday means former Patton Boggs LLP partners James L. Lekin and James R. Deveney II will get \$3,348,264.23 and \$792,494.08, plus interest, out of the \$12 million in fees Patton Boggs received from the settlement.

At issue was the partnership agreement Lekin and Deveney inked when they joined Patton Boggs in 1991, bringing Lockerbie litigation with them.

An arbitrator ruled that the agreement entitled Lekin and Deveney to share in the proceeds of the Libya suit, filed in 1995, even though both men had left the firm by the time it settled in 2002.

The Court of Special Appeals affirmed.

“I think what the court did in this case was to adopt the correct approach to an arbitration award, which is essentially that there is very, very, very limited review, judicial review, that’s permitted of an arbitration award, and this case did not come close to one of those exceptions,” said Ben Rosenberg of Rosenberg | Martin | Greenberg, LLP, which represented Lekin and Deveney.

## **‘Arising out of’**

Right after the 1988 explosion of Pan Am Flight 103 over Lockerbie, Scotland, Lekin’s

girlfriend, a Pan Am employee, told him the families of the six crew members on board wanted to sue. Lekin, then an attorney at Whiteford, Taylor & Preston LLP, told his boss, who passed the case on to another lawyer there, Read K. McCaffrey. Lekin participated in some aspects of the case.

In 1991, McCaffrey, Lekin and Deveney left Whiteford Taylor to join Patton Boggs' Baltimore office, taking the Pan Am case with them.

The lateral partnership agreement the men signed with Patton Boggs laid out a formula under which they would be paid regarding "litigation arising out of the Pan Am 103 accident."

Lekin left Patton Boggs in 1992 and Deveney left in 1999, while McCaffrey remained at Patton Boggs. Their clients' suit against Pan Am settled in 1995, and the fees for that settlement are not in dispute, according to Tuesday's opinion.

Also in 1995, though, Congress passed a law allowing the families of the Pan Am victims to sue the Libyan government for sponsoring the terrorists who blew up the plane. McCaffrey, using the retainer agreement from the original suit, began to represent the families in a new action against Libya.

That suit settled in 2002, when Libya agreed to pay each of the victims' families \$10 million. Patton Boggs grossed \$12 million in fees from the settlements.

Lekin and Deveney argued that they were entitled to some of the money, since the Libya case, under the vague terms of the partnership agreement, arose out of the Flight 103 disaster. Patton Boggs disagreed, and, as required by the agreement, the dispute went to arbitration.

### **Half the gross**

The arbitrator found in Lekin and Deveney's favor. He noted that the former managing partner of the firm testified that when the partnership agreement was negotiated, there had been discussion of the possibility of someday being able to sue Libya. The arbitrator also noted that McCaffrey's use of the original retainer for the Libya suit was probably meant to keep from the families that Lekin had left, or to keep the clients from considering another law firm for the Libya action.

The arbitrator decided that Lekin, Deveney and McCaffrey together were entitled to half the \$12 million in fees, while the firm was entitled to the other half. In deciding what Lekin and Deveney should get, the arbitrator did not factor out the firm's expenses as required under the partnership agreement formula.

Patton Boggs filed a motion in Montgomery County Circuit Court to vacate or correct the arbitrator's decision, arguing that it was arbitrary and capricious and

disregarded the law. The circuit court affirmed, so the firm appealed.

In Tuesday's opinion, Judge Sally D. Adkins, writing for a three-judge panel, pointed out that the arbitration was done under Washington, D.C., law, which permits a court to vacate an arbitration award under very limited circumstances, such as if the arbitrator "exceeded [his] power."

That exception applies only when the arbitrator decides something the parties did not ask him to decide, which was not the case here, Adkins wrote.

### **Intent and equity vs. formula**

Patton Boggs argued that the arbitrator had disregarded the formula laid out in the original contract when he fashioned the 50-50 split. The court disagreed, holding that the arbitrator had done his best to follow the parties' original intent while factoring in things that had happened since then, such as the partners' departure from the firm and McCaffrey's actions in signing the clients up for the Libya case.

"Faced with evidence that Patton Boggs agreed that some fee-sharing arrangement would continue after Lekin left the firm, and that the firm had secretly used Lekin's contingency fee agreement to sign up the original plaintiffs for the additional litigation, the arbitrator may have just concluded that, under the new circumstances, the result most equitable and most like the parties' original intent, was to divide the fees on the 50/50 basis that was anticipated by the parties when they entered the LPA," Adkins wrote.

Patton Boggs spokesman Brian Hale released a statement from the firm.

"The matter went to arbitration and we thought, and continue to think, the arbitrator wrongly decided the matter," Hale said. "We are obviously disappointed that the court upheld the award, and we are currently studying the opinion and have not decided what, if any, further action to take."

Rosenberg said the decision is a victory for the integrity of arbitration.

"I think this case points out once again that arbitration is an alternative means of resolving disputes, and you don't get two bites of the apple," he said.