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Bungled Boat Repair Claims Stretch More than a Decade, Results in \$567,000 Award

By David Keller and James E. Mitchell | October 20, 2015

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What began in 2003 as a \$40,000 repair to a yacht will cost Jones Boat Yard in Miami and the boat owner's insurance company almost 12 times that amount. Twelve years after the loss, following a two-week jury trial, James E. Mitchell and D. David Keller of Keller Landsberg PA secured the verdict their client had been waiting for patiently.

In November of that year, Charles Fleck brought his vessel to the boat yard on the Miami River to repair water damage. It sat there for three years. So, he hired the Pathman Lewis firm in 2006 to file a replevin complaint against the boat yard in Miami-Dade Circuit Court.

While the boat was languishing with the repairs incomplete and the vessel deteriorating, Jones Boat Yard collected \$35,643 — the repair bill minus a deductible — from Fleck's insurer, Insurance Co. of North America, without his knowledge or consent. When Fleck complained, INA said it had fulfilled its obligation to him, and Jones Boat Yard sent him a bill for storage and drydock charges.

That began nearly a decade of litigation during which Fleck passed away, his estate became the plaintiff, and the docket ballooned to more than 500 entries. More than one judge presided over a nine-year period, with Circuit Court Judge Beatrice Butchko presiding over the trial in February of this year.

Fleck complained that the boat repairs remained unfinished, but despite ample opportunity, Jones Boat Yard failed to complete the job or return the vessel. So Fleck hired Pathman Lewis to recover possession of the boat. The court issued an Amended Writ of Replevin in early 2007, Fleck reclaimed the boat, and another boat yard completed the unfinished job and repaired the additional damage occasioned by the lengthy delay while the boat sat at Jones Boat Yard.

In late 2007 Fleck hired James Mitchell to recover his damages. (Mitchell is now of counsel at Shmuelly & Willis). Mitchell tried the case, along with D. David Keller of Keller Landsberg. Alvaro Mejer of Mejer Law in Coral Gables represented Jones Boat Yard throughout the case.

INA was added as a defendant in 2008, after it denied Fleck's claim that it had wrongfully paid the policy benefits to Jones Boat Yard without confirming the repairs were complete and without Fleck's knowledge or consent. Marlin Green and Daniel Cruz of Brown Sims in Miami represented INA at trial.

The boat yard responded to the suit by denying liability and filing a \$180,000 counterclaim against Fleck for storage and drydock fees. When the case went to trial this year, the jury found that Fleck did not breach the Work Order and Ship Repair Contract. Thus, he owed the boat yard nothing on its Counterclaim.

The jury returned a verdict for the Fleck Estate both on its claims for breach of contract and conversion against both Jones Boat Yard, and its claim for breach of contract against INA. The court entered judgment for \$175,874.52 against Jones Boat Yard, which included prejudgment interest, and added a judgment of \$20,947.75 for costs.

The court entered a separate judgment against INA on the estate's claim that it paid the boat yard, not Fleck as it should have. The judgments against INA were for \$61,235.88, including pre-judgment interest, and \$8,988.33 in costs.

The litigation did not end there. Keller's firm sought recovery of Fleck's legal fees from both defendants, pursuant to the contract with Jones Boat Yard, and based on Florida Statutes against INA. Both Defendants objected to Fleck's entitlement to recover the fees incurred, and both also disputed the amounts through their experts. In August, after a lengthy evidentiary hearing, the Court awarded fees of \$164,350.50 against Jones Boat Yard, and \$123,447.50 against INA. The defendants were also ordered to share equally in paying the law firm's \$12,000 bill from its fee expert, attorney Joseph A. DeMaria of Fox Rothschild.

Together, the judgments against the two defendants total nearly \$567,000. Both defendants have appealed the Final Judgments, and Jones Boat Yard has also appealed the attorneys' fee award.

UPDATE: About a week or so ago, INA agreed to pay the judgment with interest and forgo an appeal.

David Keller is president and a founding shareholder in the trial firm Keller Landsberg PA. For over 20 years, he has devoted a substantial portion of his practice to defending lawyers and law firms in legal malpractice cases, and counseling law firms on risk management issues. He also has extensive experience with general commercial and insurance litigation.

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