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Most Effective Lawyers 2011 Class Action Finalist: On a mission: Duo wins hazard pay for airline workers in war zones

David Buckner and Brett von Borke crisscrossed the country to depose government contractors to gain critical financial information.

2011-12-12 12:00:00 AM

David Buckner, Grossman Roth and Brett von Borke, Kozyak Tropin & Throckmorton

A class action case won by two South Florida lawyers on behalf of 175 pilots and flight crew members against Vision Airlines of Las Vegas is a pay dispute that sheds light on the operations of a military support subcontractor.

Although it is better known for its Grand Canyon tourist flights, Vision operates as a subcontractor for the federal government's Air Bridge program, which ferries passengers and supplies to war-torn Iraq, Afghanistan and other hot spots.

From 2005, the charter carrier operated flights, often twice a week, into Baghdad and Kabul. At times the flights took place under dangerous conditions, amid ground and air fire, according to plaintiffs' documents filed as part of the lawsuit. In their complaint, the pilots and crew accused Vision of failing to pay them government-authorized "hazard pay" valued at about \$21 million.

"They took great risks. It took a lot of nerve for these people to do this. They were patriots," David Buckner said.

On Nov. 9, 2010, Buckner and Brett von Borke won a \$4.5 million jury verdict in Las Vegas federal court for the class whose members are scattered around the country.

"It was a relatively intense, but brief trial on the damages and the jury found for the class," Buckner said.

The airline has appealed the judgment on multiple grounds, including the class action status, to the San Francisco-based 9th U.S. Circuit Court of Appeals.

If the plaintiffs prevail, the district court will determine how the award will be split among the pilots and the attorneys.

According to the suit, the Air Bridge program provides standard rates of pay for hazardous duty. This amounts to \$2,500 "for every takeoff and landing at airports in Baghdad and Kabul" for captains, and first officers, and lesser amounts for other crews.

According to the complaint, "Vision received hazard pay from [the main contractor] for its flights to Iraq and

Afghanistan but did not remit any of these payments to its employees."

Las Vegas attorney Harold Gewerter, who represented Vision during the trial, said the airline disputes the hazard pay clause, among other issues.

"There was no payment for hazard pay that was required for the pilots," Gewerter said. "They received a premium pay. What they are asking for is unjust."

Smith Gambrell & Russell of Atlanta is handling the appeal for Vision, according to Gewerter.

Buckner and von Borke worked as a team, trading off on motions, depositions and witnesses at trial and on a counterappeal. Las Vegas attorney Ross Goodman filed the suit and assisted them.

To gain critical financial information, Buckner and von Borke crisscrossed the country to depose government contractors that subcontracted to Vision.

"Vision would give us a document and redact all the words from it. They produced witnesses who said they had no knowledge about flights to war zones in Iraq and Afghanistan," von Borke said.