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4

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Hit With \$473,000 Jury Award, Firm Settles Malpractice Suit

By Matt Ackermann

Roseland's Brach, Eichler agreed on Wednesday to pay an undisclosed sum to end a Parsippany amusement ride maker's malpractice suit, six days after a jury awarded the former client \$473,146 in compensatory and punitive damages.

The Morris County jury had only considered damages, since Superior Court Judge David Cramp had granted partial summary judgment on the issue of liability in July, *Zamperla Inc. v. Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer and Gladstone*, L-952-95.

The jury awarded Zamperla Inc. of Parsippany \$375,174 in compensatory and punitive damages, \$53,630 in prejudgment interest and \$44,342 in attorneys' fees. Superior Court Judge Bernard Conway signed the final judgment the same day, Dec. 10.

The plaintiff's lawyer, Robert Grundlock Jr., a partner with Princeton's Rubin, Ehrlich & Buckley, and Alan Pralgever, the Brach, Eichler partner who represented the firm, declined to comment on the case, citing a nondisclosure agreement that was part of the settlement.

According to the suit, Zamperla Inc. agreed to sell six amusement rides to

Forest Lane Capitol Corp. of Texas. After delivery, a dispute arose over whether the rides were useable. Forest Lane alleged that it had to repair the rides to make them safe for passengers.

In September 1992, Zamperla retained Arnold Porter, then a partner with Brach, Eichler, who tried to negotiate a settlement with Forest Lane's attorney, Ira Tobolowsky, a partner with Dallas' Tobolowsky & Burk.

In an October 1992 letter, Tobolowsky said that Forest Lane would sue Zamperla unless it were reimbursed \$30,023 for repairs it made on the rides.

According to Zamperla's complaint, Porter did not respond to the letter and Forest Lane filed suit in Texas in November 1992. A judge entered a default judgment on Jan. 7, 1993, against Zamperla for \$113,848, including \$85,000 in punitive damages.

Brach, Eichler answered that Porter and Tobolowsky had an oral agreement to extend the time to respond to the complaint. In a letter dated Jan. 4, 1993, Porter said he needed time to find a Texas attorney to represent Zamperla. Eventually, on June 3, 1993, he retained Robert Tobey, a partner with Dallas' Johnston Tobey.

In July 1993, Forest Lane filed a complaint in Morris County Superior Court to

enforce the Texas default judgment.

Zamperla filed the current malpractice suit in 1995. Its lawyer, Grundlock, says that as a result of Porter's and Brach, Eichler's inaction, Zamperla had to pay \$83,825 more than Forest Lane's initial demand.

Last July, Cramp granted partial summary judgment on liability, finding that no one at Brach, Eichler was licensed to practice in Texas nor did the firm secure a written agreement with Forest Lane to extend the deadline for answering the complaint.

"It is not necessary to analyze in detail the various elements of the breach of the duty of care; rather, it is enough to say that a New Jersey attorney who has a Summons

and Complaint in a Texas lawsuit has either an obligation to know or to learn the Texas law sufficient to insure that a judgment is not entered against his client," Cramp wrote.

The jury awarded Zamperla the amount of the Texas default judgment, \$149,128; \$2,720 in legal fees from the Texas firm of Johnston Tobey; \$8,406 in legal fees for the domestication action; \$33,551 in legal fees for the appeal of the domestication action; and \$181,368 in legal fees and expenses for the malpractice case. Zamperla also received \$53,630 in prejudgment interest and \$44,342 in additional attorneys' fees. ■



COSTLY RAMIFICATIONS:
The plaintiff's lawyer, Robert Grundlock Jr., above, says his client had to pay an extra \$83,825 because of Brach, Eichler's inaction.

PHOTO BY CARMEN NATALE