

Sydney Pen Club

Advantage Partnership Lawyers

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This Month:

Expert Witness?

Disqualified!

Excel Jet Ltd. V. United States

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Expert Witness? Disqualified!

In a case heard by a Colorado federal judge a potential expert witness was disqualified for the defence in a suit over the crash of a prototype plane. It was found that the expert had a prior confidential relationship with the plaintiff.

Excel Jet brought forward the case against the US federal government under the Federal Tort Claims Act. Excel Jet asserted that air traffic controllers failed to follow Federal Aviation Administration procedures relating to wake turbulence and flight separation.

Excel Jet contacted the Greene, believed to be a leading a leading expert in wake turbulence, to serve as an expert in its suit against the United States.

Reportedly, Greene and Excel Jet engaged in a series of communications to engage him as an expert and told him confidential information about the accident in the case.

Shortly before a meeting in January 2008, Greene terminated his engagement with Excel Jet. About two weeks later Excel Jet learned that the United States had engaged Greene as an expert witness concerning wake turbulence.

The magistrate, Judge Boland disqualified Greene as an expert because of his prior relationship with Excel Jet.

The judge held that Excel Jet ‘made a clear and unmistakable its intention to establish a confidential relationship with Greene and confirmed that intention in writing.’

Greene asserted that he was not aware of the litigation until several months after Excel Jet had contacted him. The judge was not persuaded by Greene’s assertion.

Excel Jet disclosed confidential information to Greene which strongly supported the argument for disqualification, Judge Boland held.



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