

White and Williams Client Prevails in Malpractice Suit

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Despite agreeing that a former Flamm Walton PC and current Astor Weiss Kaplan & Mandel LLP partner may have botched an \$18 million suit against MCI WorldCom (MCI), a Pennsylvania state judge has concluded that a defunct telecommunications company waited too long to sue over the alleged malpractice.

A Philadelphia County judge credited allegations that Astor Weiss partner W. Mark Mullineaux may have failed to adequately plead that MCI stole tens of thousands of customers from Communications Network International Ltd. (CNI), but said that a four-year statute of limitations on malpractice claims against the attorney had started to run after a bankruptcy judge threw out its claims in March 2006.

CNI's legal issues with MCI date to a contract it signed in the late 1990s to route its long-distance telephone customers through the telecom giant on the promise that CNI could piggyback on MCI's national tariff rates. MCI filed suit against CNI in February 2001 over what it said were unpaid debts from the tariffs and other charges. Mullineaux, hired by CNI to handle the litigation, fired back with counterclaims accusing MCI of stealing tens of thousands of CNI's customers without their consent — a practice known as slamming — fraud and breach of contract. The claims were eventually handled by a bankruptcy judge as part of Chapter 11 proceedings for MCI. The bankruptcy court threw out CNI's slamming claims in a 2006 opinion, which said they had been properly pled.

CNI claimed in its December 2014 malpractice case that Mullineaux pinned the loss entirely on the filed rate doctrine as he talked company executives through the ruling. Instead, the company claims, the attorney led CNI through a "quixotic charade" challenging the filed rate doctrine in a string of unsuccessful appeals before a New York district judge and the Second Circuit.

During the course of the litigation, Mullineaux moved from RatnerPrestia, which was named in CNI's original case but was ultimately dismissed from the litigation, to Flamm Walton and ultimately to Astor Weiss, where he remains today.

While CNI claimed that the statute of limitations on the claim was tolled by Mullineaux's misleading statements about the bankruptcy court's ruling, Judge McInerney said it was ultimately up to the company to exercise diligence to make sure it had been adequately represented.

Flamm Walton was represented by Bob Devine, Victor Zarrilli and Alison Russell.

