

A REPORT TO CLIENTS & ATTORNEYS  
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# OF COUNSEL

## Florida Jury Finds Aviation Services Giant Liable for \$4.3 Million

Commercial Consultants, LLC, was awarded \$3.5 million in a complex commercial case against BBA U.S. Holdings, Inc. and its subsidiary, Signature Flight Support Corporation. Despite the legal complexity of the case, the jury in Orlando Circuit Court took only 90 minutes to rule in favor of the plaintiff on all of its claims.

In 2005, Signature entered into a contract with Commercial Consultants to provide consulting services to assist Signature in acquiring Executive Beechcraft, a group of four Kansas City Fixed Base Operations (FBOs) providing fuel and storage facilities for private aircraft. Commercial Consultants had successfully provided similar services to Signature since 2003.

According to the contract, Commercial Consultants was to receive 3% of the purchase price if Signature was successful in the acquisition. The law suit contended that Signature's parent company, BBA U.S., acquired Executive Beechcraft, rather than Signature, in an attempt to avoid Signature's fee obligation. The purchase price was \$72.5 million.

This case is of significant interest to the aviation industry. BBA U.S. and Signature are part of BBA Aviation plc,



a British conglomerate of aviation-related operations. Signature is the largest owner of FBOs in the world.

"The fact that our client succeeded as an aviation consultant in the face of a disabling, degenerative disease makes this a particularly satisfying victory," said **Jack Scarola**, who, with **William King**, represented Commercial Consultants. "That said, we hope and trust that anyone with so strong and important a case would have obtained the same swift justice this jury provided," Scarola said.

"Executive Beechcraft was a family-owned operation that, like many closely-held businesses, does not readily trust acquisition overtures from corporate conglomerates," added Mr. Scarola. "It's ironic that Signature and BBA U.S. trusted Commercial Consultants enough to overcome those suspicions while ultimately deciding to deny the company its rightful claim." Post-judgment interest and an award of over \$500,000 in attorneys' fees increased the defendants' liability to approximately \$4.3 million. ♦

## An Advertised 'Stroke Hospital' Proves To Be No Such Thing

Strokes can be as deadly as heart attacks, and they need to be treated like the emergencies they are. They often occur after major surgery, and particularly after orthopedic surgery. It is critically important for hospital personnel, particularly nurses, to recognize the signs of a stroke and immediately contact a doctor if they suspect a stroke is underway. Unfortunately for 79-year-old Cathy Crawford (name changed to protect confidentiality) the hospital she chose for hip replacement surgery – a hospital which advertised itself as a "designated primary stroke center" – completely

failed to recognize the post-surgical stroke that eventually caused her death.

Cathy was a loving wife, mother and grandmother. She was in great shape physically, except for a hip which had simply worn out. Like thousands of people her age, she decided to have a hip replacement. Surgery went smoothly and she awoke about as comfortable as could be expected. The following morning, she was alert and cheerful, joking with her surgeon's physician's assistant. Several hours later, however, her condition began to deteriorate. Her physical therapist noticed the change and alerted the hospital nurses, who ignored him and did nothing. As the day progressed, another therapist came to visit Cathy and could not arouse her. He became alarmed and, he too, notified the hospital nurses, and, again, no action was taken. *(Continued on page four.)*

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*(Continued from page one.)*

Medical authorities refer to a "golden window" for strokes – that period of time, six hours following the onset, in which treatment of the damage caused by the stroke may be successful. In Cathy's situation, it was not until the "golden window" had opened and closed that the hospital's nurses contacted anybody. At this point, however, the stroke had caused such severe brain damage that Cathy was essentially untreatable. She went into organ failure and died a short time thereafter.

The Crawford family was furious that a "designated stroke hospital" would allow this to happen. The family sought a law firm and an attorney with trial muscle who could bring some justice into their lives to help relieve their loss. The Crawford family asked senior partner **Greg Barnhart** to bring a case against the hospital.

The hospital fought back, arguing that the stroke was so severe there was nothing that could have been done. They contended that any procedures that involved entering blocked veins or arteries were considered unreliable and Cathy would have died anyway. Finally, the hospital argued, the caps on the damage statute limiting damages for grief, bereavement, pain, and suffering in malpractice cases would apply, severely limiting the amount that could be recovered by the Crawfords.

Both Mr. Barnhart and his client independently filed complaints against the hospital with the Florida Agency for Health Care Administration. The Agency found the hospital to be negligent. Specifically, it found that the nurse did not follow the hospital's Physician Notification Policy, that she failed to notify the doctor immediately when a change in the patient's condition was observed, and that she failed to perform a neurological assessment when told by the physical therapist that there was a change in the patient's condition. So fundamentally wrong was this nurse's behavior that the reviewing doctor for the Agency wrote, "definite changes in patient's status were not acted upon. This was an egregious error in clinical assessment."

The hospital's attorneys continued to assert that whatever the nurse did or did not do, nothing would have changed the outcome because the stroke was so severe. According to the defense, Mr. Barnhart and the Crawford family would have to show that, had the stroke been properly recognized, it could have been treated.

In response to the defendant's arguments regarding the cap on damages, Mr. Barnhart maintained throughout the case that the cap on human damages in medical malpractice wrongful death cases was unconstitutional because it denied due process of law to senior citizens and non-working women and children, thus denying these persons full equal protection under the Florida constitution.

Shortly before trial, the parties reached a settlement of \$800,000 for the Crawford family. ♦

Review of the facility's Policy on Provision of Patient Care revealed that the patient must be assessed when there is a significant change in condition.

The facility's Director of Nursing Practice and Clinical Excellence stated that the RN assumed the MSO4 caused the patient to become lethargic;

... she did not follow the facility's Physician Notification Policy, and failed to notify the physician immediately when a change was observed... **did not notify the charge nurse until 4 p.m. ...and did not perform a neurological assessment.**

-- excerpt from an interview with the Florida Agency for Health Care Administration

