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AM LAW LITIGATION DAILYLitigators of the Week: Defending Boeing  
From Fraud Claims Brought by Polish  
Airline Over 737 Max Leases

By William K. Pao

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**O**ur Litigators of the Week are **Mike Paisner** and **Harry Schneider Jr.** of **Perkins Coie**, who defended The Boeing Co. from fraud claims brought by LOT Polish Airlines in the wake of two high profile crashes that grounded the 737 Max for nearly two years.

LOT claimed that Boeing made false representations and incomplete disclosures about existing problems and risks with the 737 Max and pilot-training requirements for the aircraft in the run-up to leases the airline signed in 2016 and 2018 for a total of 15 of the Boeing planes. The airline was seeking more than \$150 million in damages.

After a two-week trial in Seattle federal court, last week, jurors found that LOT had not proven its claims of fraudulent misrepresentations or omissions

**Lit Daily: What was at stake for Boeing here?**

Mike Paisner: This was an important case for Boeing, both financially and reputationally.



Courtesy photos

**Mike Paisner, left, and Harry Schneider Jr., right, with Perkins Coie.**

**How did this matter come to you and the firm?**

Harry Schneider: Perkins Coie has a long-standing and close relationship with Boeing. Our law firm incorporated Boeing in 1916, and we have been privileged to represent Boeing over the last 110 years.

Paisner: That said, Boeing has its choice of any law firm in the world, and we do not take it for granted that it will be Perkins Coie on any particular case. We try to earn the right to

represent Boeing, each and every case. We were grateful and fortunate to be selected to represent Boeing in what our trial judge described as “this consequential case.”

**Who was on the team and how did you divide the work?**

Paisner: We divided the stand-up trial work between Harry and me and two former Perkins Coie partners—**Chris Ledford** and **Rike Connelly**— who were on the case for many years before they joined **McGuireWoods** several months ago. Harry was our lead trial lawyer and handled jury selection, opening statement and closing argument, as well as cross-examination of LOT’s former CEO and direct examinations of our damages expert and the 737 MAX Program Director. I handled most of the motions and jury instructions, the direct examinations of the 737 MAX Chief Engineer and our internal Boeing technical expert, as well as the cross-examination of LOT’s damages expert. But all four of us examined witnesses, divided fairly equally. The Boeing in-house lawyers were also a critical part of our effort. They are the best in the business, and they were closely involved in every strategic decision and most of the tactical ones.

**You were able to narrow this case down to what the judge called “fairly simple” questions of “Was there fraud or not?” and “If so, what are the damages?” for trial. What did it take to hone this case down to those issues?**

Paisner: This case started out much broader than just fraud claims. Our first task was narrowing the case and isolating those claims, which we achieved through dispositive pretrial motions practice. Then, in every subsequent filing and argument, we sought to keep the focus

on the actual claims at issue and the necessary elements and higher standard of proof for fraud while making clear which issues were irrelevant and not for the jury’s determination.

**You emphasized that Boeing personnel genuinely believed the program was on track at the time the lease deals with LOT were coming together. How did you make that argument credible to jurors in a hindsight-heavy case?**

Paisner: We did not have to “make it” credible because it was true. And it was supported mightily by the powerful first-hand testimony of the Boeing witnesses and the substantial underlying contemporaneous documentation. Throughout the trial, we sought to bring the testimony and documentation together in a mutually reinforcing fashion, one confirming and ratifying the other. Documents without testimony can be abstract. Testimony without documentation can lack credibility. Together, each is more persuasive—the whole is greater than the sum of the parts.

**How central was the fact that LOT continued leasing MAX aircraft to your defense?**

Paisner: Harry gets credit for that insight, which packs a powerful common-sense appeal. If you really believed the supplier of a safety-critical product had defrauded you about a matter relating to safety, would you keep doing business with that party? The question answers itself. The night before trial started, my wife told me that was our best argument, and I always listen to my wife. The next morning, Harry told the jury that after claiming that it had been defrauded, LOT expanded its fleet from 5 to 30 MAX Airplanes. And they were all flying every day the jury sat in the trial. This was also a theme that he re-emphasized powerfully in closing.

**How did you deal with internal documents that plaintiffs framed as red flags without letting them come across as admissions of wrongdoing?**

Paisner: We explained what is true, which is that in an engineering company that makes some of the most complex machines on earth, asking questions and raising concerns during development is a virtue not a vice. You want your technical people speaking candidly and expressing independent views—always asking whether your assumptions are valid and whether enough testing has been done. Our witnesses explained this point in a very compelling way, and it appears to have resonated with the jury.

**How did you translate highly technical development decisions into something jurors saw as ordinary and reasonable rather than suspicious?**

Schneider: Boeing has an incredibly robust and thorough design and testing process.

Paisner: No one who understands how that process operates can fail to be impressed by it—and by the diligence and thoroughness of the Boeing engineers and pilots who implement it.

**In a case like this, where you're making the case that there was no fraud, how do you decide how much time and effort to spend engaging with the plaintiff's damages case?**

Schneider: After Mike's cross-examination of their damages expert and the testimony of our

damages expert, there was no need to spend much time on damages in closing.

Paisner: All we had to do in closing is say to the jury: You heard their testimony, and you can judge and compare for yourself their credibility, their credentials and the persuasiveness of their testimony. And that allowed Harry to keep the focus on liability.

**What can others defending large corporate defendants against fraud claims involving complex, technical issues take from how you handled this case?**

Schneider: Do not shy away from the technical aspects of the case and do not underestimate the ability of a jury to absorb technical subject matter if it is presented clearly and effectively, through credible witnesses and robust documentation.

**What will you remember most about this matter?**

Schneider: Teamwork. The importance of teamwork.

Paisner: We had a great team and a client who supported us—and whose internal lawyers provided great input all along the way. And the supporting Perkins Coie lawyers—**Matt Koerner, Josh Patashnik, Marten King, Stephanie Olson, Anna Ellison, Hosanna Negash, Jeffrey Capelouto and Addison Bennett**—and the paralegals and staff were terrific, undaunted and delivered everything that made possible what we were able to accomplish at trial.