



MASSACHUSETTS

A “TIMELY MATTER”

MICHENZIE & SAWIN GET IT DONE!

MICHENZIE & SAWIN LLC

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BOSTON, MA

Michenzie & Sawin represents a defendant in a Federal Court action in MA in which a workplace product liability action was brought by a worker alleging serious personal injuries. One of the other defendants is a company that performed repairs on the equipment in issue in the litigation. The repair company raised lack of personal jurisdiction as an affirmative defense, but then took no action regarding that claim for over two years. Only a few weeks before the close of discovery did it examine its own employees during their depositions regarding jurisdictional questions, then moved for dismissal of all claims against it due to lack of jurisdiction. The repair company claimed that it did not do business in the state where the case is pending, and therefore sought dismissal. Michenzie & Sawin opposed the motion on the grounds of forfeiture and prevailed.

The Court denied the motion to dismiss, holding that the defense of lack of personal jurisdiction had been forfeited. It noted in detail the extensive participation of counsel for the repair company in the case, including its joining in motions to extend the discovery period, propounding written discovery on all other parties, responding to written discovery requests, serving at least 78 subpoenas and notices of deposition, participating in sixteen depositions and two physical inspections, seeking production of plaintiff’s medical records and serving expert witness disclosures. The Court rejected the excuse by the repair company that it had been unable to bring its motion earlier because it needed information from discovery.

As the court noted, a timely motion would have precipitated the needed jurisdictional discovery. Such conduct over more than two years was held to constitute forfeiture of any personal jurisdiction defense. The Court determined that it did not need to reach the merits of the jurisdiction arguments.



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