



Nicole T. Melvani

Partner

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McLean, VA – 703.245.9304

Nicole Melvani has a diverse civil litigation practice, with a primary focus on the defense of aviation matters. Nicole also handles complex general liability, medical and dental malpractice, and professional liability claims. She has substantial litigation and courtroom experience in state and federal courts across the United States at the trial and appellate levels.

Nicole's analytical and strategic skills, her proactive approach to handling cases and her commitment to maintaining consistent communication enable her to effectively advocate for beneficial outcomes for her clients while exploring cost-effective resolution opportunities wherever appropriate. Nicole recognizes that both a keen attention to detail and a big-picture mindset are essential to successfully evaluating, litigating and resolving claims.

Prior to joining Wilson Elser, Nicole practiced in Florida and California, where she represented clients in the defense of complex tort litigation, product liability, and medical and dental malpractice actions, including class action litigation.

Aviation & Aerospace

Nicole is an active member of the firm's Aviation defense team and focuses her practice on defending complex aviation matters, including claims and litigation arising from aviation-related personal injury, aircraft crashes, property damage and wrongful death. Nicole represents major commercial airlines, aircraft owners and operators, fixed-base operators and other aviation companies in state and federal courts across the United States. These cases often involve complex legal issues, highly technical issues, and allegations of catastrophic injuries and significant damages.

Professional Liability & Medical Malpractice

Nicole has extensive experience representing medical, dental and other professionals in

Services

- Aviation & Aerospace
- Complex Tort & General Casualty
- Commercial Litigation
- Medical Malpractice & Health Care
- Professional Liability & Services

malpractice litigation and licensing board matters. She has defended doctors, dentists, medical groups, insurance agents and lawyers in state and federal courts, as well as before local agencies.

Complex Tort & General Casualty

Nicole also has extensive experience defending businesses and individuals in a variety of complex general liability matters, including product liability, premises liability, personal injury, transportation and breach of contract claims.

Education

- California Western School of Law (J.D., 2011)
 - magna cum laude; Executive Editor, California Western Law Review
- Florida State University (M.A. International Affairs, 2008)
 - summa cum laude
- Florida State University (B.S. Multinational Business Operations, 2007)
 - summa cum laude
- Florida State University (B.A. International Affairs, 2007)
 - summa cum laude

Bar Admissions

- California
- Florida
- Virginia
- District of Columbia
- Maryland

Court Admissions

- U.S. Court of Appeals, Fourth Circuit
- U.S. District Court, Eastern District of Virginia
- U.S. District Court, Western District of Virginia
- U.S. District Court, Central District of California
- U.S. District Court, Southern District of California
- U.S. District Court, Middle District of Florida
- U.S. District Court, Southern District of Florida

Clerkships

- Honorable Thomas E. Morris, U.S. District Court, Middle District of Florida

- Honorable Monte C. Richardson, U.S. District Court, Middle District of Florida

Professional Affiliations

- Federation of Defense and Corporate Counsel
- Military Spouse J.D. Network
- International Aviation Womens Association

Awards & Honors

- Selected for inclusion in Super Lawyers® Rising Stars™ San Diego, 2021

Client Wins

Grace, Melvani, and Tutone Obtain Dismissal With Prejudice in Aviation Wrongful Death Case

Kathryn Grace (Partner-Charlotte, NC), Nicole Melvani (Partner-McLean, VA), and Thomas Tutone (Associate-McLean, VA) obtained dismissal with prejudice of an aviation matter on behalf of Wilson Elser's client, a student pilot. The case arose out of an airplane crash that resulted in the death of the certified flight instructor, as well as injuries to the client and a teenage passenger. The certified flight instructor's estate filed a wrongful death claim against our client, who was participating in his first day of flight instruction through a university aviation program on the day of the accident. The amended complaint alleged that the student pilot was nervous and unprepared, and caused a stall during takeoff. Kathryn and Nicole successfully argued against this. In particular, the amended complaint failed to state a claim for relief because it did not allege that the client breached any duty owed under Federal Aviation Regulations. Importantly, and in support of an argument for dismissal with prejudice, they also argued the certified flight instructor was the pilot in command and bore ultimate responsibility for the operation of the aircraft at the time of the accident, and for ensuring the student was adequately prepared for the training flight. While this was a tragic accident, the certified flight instructor's estate could not sustain a claim for negligence against her student for failure to state a claim and any amendment would be futile. The Court agreed and dismissed the action against our student pilot client in its entirety, with prejudice.

Katt and Melvani Obtain Dismissal of Aviation Matter on Forum non Conveniens

William Katt (Partner-Milwaukee, WI) and Nicole Melvani (Partner-McLean, VA) obtained dismissal of an aviation matter filed in Palm Beach County, Florida, on forum non conveniens grounds. The case arose out of an airplane crash in Connecticut, which resulted in multiple claims of death, personal injury, and property damage. Seven individual lawsuits were filed in Connecticut against multiple parties. The aircraft manufacturer settled one of the Connecticut lawsuits and then filed a complaint seeking contribution, indemnification, and equitable subrogation against our client in Florida, where the aircraft owner had its principal place of business, actively seeking to avoid litigating the matter in Connecticut and contesting the existence of personal jurisdiction in the remaining actions. Bill and Nicole filed a Motion to Dismiss for forum non conveniens, arguing that Connecticut was the more appropriate forum. The plaintiff manufacturer opposed the

motion, arguing that it had appropriately filed suit in the aircraft owner's hometown and arguing that the plaintiff's choice of forum is entitled to great deference. The plaintiff manufacturer also argued the Connecticut state court did not have personal jurisdiction over the plaintiff given it was contesting personal jurisdiction in the remaining actions pending there, and argued it would be prejudiced if it was forced to re-file in Connecticut because it could be found to have waived its personal jurisdiction defenses in the other matters. After considering all of the requisite factors, the Court agreed with Bill and Nicole and granted the Motion to Dismiss, entering an Order that substantively mirrored the draft Order they prepared and submitted to the Court. The Court dismissed the matter without prejudice to plaintiff to re-file in Connecticut within a limited period of time.

Katt and Melvani Prevail in Hard-Fought Aviation Case

William Katt (Partner-Milwaukee, WI) with the help of Nicole Melvani (Partner-McLean, VA) secured a significant defense victory on behalf of a aircraft component manufacturer following a multi-week jury trial in an aviation matter in Rhode Island Superior Court. Wilson Elser was called to assume lead and trial counsel role after the case had been pending for several years. The plaintiff alleged our client's bushings, a small part used in aircraft engines, failed to conform to design specifications and that the client falsified material certifications. The plaintiff further alleged the bushings migrated inside aircraft engines during operation, causing engine failure. The FAA issued a safety bulletin, mandating a recall for inspection and replacement of bushings. The plaintiff brought claims for breach of contract and several related claims. The plaintiff sought approximately \$7.5 million in damages plus punitive damages and pre-judgment interest at 12 percent, including approximately \$2.5 million in compensatory damages associated with the recall and another \$5 million in consequential damages associated with settlement payments to third parties, which included a \$4.5 million settlement payment to passengers who were severely injured when their sightseeing helicopter crashed in California due to engine failure. Prior to trial, Wilson Elser secured summary judgment in the client's favor on the indemnification count. The remaining counts were tried to a jury. Although the plaintiffs asked for \$7.5 million from the jury, their settlement demands during trial were significantly more because they claimed 12 percent pre-judgment interest running from at least 2017. The jury found in favor of Wilson Elser's client on all counts except for breach of the implied warranties of merchantability and fitness for particular purpose. The jury awarded the plaintiff less than \$1.5 million in damages, thereby accepting the defense's theory that the California accident did not involve a bushing manufactured by Wilson Elser's client and that the claimed recall damages included unsupported expenses. Because the jury found there was no intentional misrepresentation by the firm's client, the court dismissed the plaintiff's punitive damage claim as a matter of law. The verdict was significantly less than the demands made by the plaintiff during trial. Additionally, throughout the litigation and trial, the plaintiff's primary focus was on the breach of contract and intentional misrepresentation claims, both of which were rejected by the jury.

Katt and Melvani Obtain Unanimous Defense Verdict for Fixed-Base Operator in Aircraft Crash Case

William Katt (Senior Counsel-Milwaukee, WI) and Nicole Melvani (Of Counsel-McLean, VA) with the able assistance of paralegal Rachel Swords, obtained a unanimous defense verdict in favor of Wilson Elser's client in an aviation matter that was tried before a federal jury in the U.S. District Court in Miami, Florida. The case involved a charter aircraft that

crashed into the Atlantic Ocean about five miles from its intended destination in the Bahamas. The passenger and pilot survived and were rescued from the water. The passenger contended he suffered severe and permanent injuries, and filed suit against the pilot, the pilot's employer and Wilson Elser's client, a fixed-base operator (FBO) that fueled the aircraft. The plaintiff contended our client negligently fueled the "wrong" tanks in the aircraft, which caused or contributed to the accident. The jury found zero causal negligence on behalf of the FBO and returned a defense verdict in our client's favor. The jury found the pilot and his employer to be responsible for 80 percent of the plaintiff's injuries and awarded the plaintiff approximately \$2.9 million in damages against the pilot and the charter company. The jury also found the plaintiff to be 20 percent responsible for his own injuries. The jury found the FBO to have zero liability for the accident and the plaintiff's injuries. The jury rendered a unanimous verdict in the FBO's favor within a few hours of closing arguments.

Melvani and Wilson Obtain Summary Judgment Defeating Cross-Claim For Moped Rental Company

Nicole Melvani (Of Counsel-McLean, VA) and Hariton Wilson (Associate-McLean, VA) obtained summary judgment in the Superior Court of the District of Columbia in favor of Wilson Elser's client, a moped rental service company. The client held a District of Columbia-issued public right-of-way occupancy permit allowing it to park mopeds, available for rent through a mobile app, in designated lanes across the District. The plaintiff alleges that while riding home from work on the rented moped, she encountered potholes on the road in the District, causing her to fall and sustain injuries. The plaintiff sued the District for negligence, alleging a failure to repair and maintain the roadway after receipt of notice regarding the potholes. In addition, the plaintiff alleged negligence and product liability claims against our client. Nicole and Hariton successfully moved to compel the plaintiff's claims against the client to arbitration based on the rental agreement's arbitration provisions. Still, the plaintiff ultimately elected not to pursue the arbitration.

The plaintiff's negligence claim against the District proceeded, with the District filing a cross-claim against the moped rental company seeking indemnification pursuant to provisions in the public right-of-way occupancy permit. In their motion for summary judgment, Nicole and Hariton argued that the indemnification provision does not require the company to indemnify the District for claims arising out of the District's negligence or, in the alternative, that the provision is ambiguous on that issue and as such, is unenforceable. The court agreed with Wilson Elser's analysis and interpretation of the permit's language, finding that whether there was an agreement to indemnify turns on the definition of the phrase "public right-of-way," as used in the agreement. The court concurred that this key phrase is undefined and capable of multiple meanings. The court further determined that the District waived any right to indemnity when it refused to cede control of the defense when tendering the matter, rejecting the District's assertion that it could waive the defense portion of the clause without waiving the right to indemnity. The court found that the provision is not solely for the District's benefit and cannot be waived while retaining the indemnity requirement. Accordingly, the court granted Wilson Elser's motion for summary judgment on behalf of the client.

Grace and Melvani Obtain Fourth Circuit Decision Impacting Claims Involving International Transport

Kathryn Grace (Partner-Charlotte, NC) and Nicole Melvani (Of Counsel-McLean, VA) prevailed in a seminal case before the Fourth Circuit Court of Appeals, obtaining an Order affirming the grant of summary judgment in favor of a private jet charter company. The Court agreed with Kathryn and Nicole that the Montreal Convention, an international treaty that governs the international carriage of cargo by air, preempted the plaintiffs' state law claims. The plaintiffs contracted with our client to transport passengers and cargo from Oregon to Switzerland. At a refueling stop in North Carolina, U.S. Customs and Border Protection agents seized and ultimately destroyed the cargo on the grounds that it contained illegal marijuana. The plaintiffs contended that the product being transported was legal hemp and was wrongfully detained and destroyed by the government. The plaintiffs alleged that the charter company's failure to submit proper customs paperwork resulted in the cargo's detention and destruction, asserting causes of action for negligence, gross negligence, negligent misrepresentation, breach of fiduciary duty, and unfair and deceptive trade practices. The Fourth Circuit agreed with our argument, finding all of the plaintiffs' claims fell within the preemptive scope of the Montreal Convention's provisions and rejecting the plaintiffs' various attempts to characterize the claims as outside of the Convention's scope. The Fourth Circuit's decision will have a significant impact on claims involving international transport.

Lee and Melvani Receive Summary Judgment Ruling in Legal Malpractice Claim

Matthew Lee (Partner-Washington, DC) and Nicole Melvani (Of Counsel, Washington, DC) prevailed on a motion for summary judgment in the U.S. District Court for the Eastern District of Virginia in a legal malpractice against the firm's attorney client. Matt and Nicole argued that the plaintiff – himself a lawyer – was unable, as a matter of law, to prove the “case-within-the-case,” which requires that a legal malpractice plaintiff adduce sufficient evidence proving he would have received a more favorable result in the underlying litigation (in this case the plaintiff was denied a Chapter 7 discharge of his extensive debts due to his having fraudulently transferred his residence to his newlywed wife and himself as tenants by the entirety six months before filing for bankruptcy protection). Even though the prima facie element of causation is an issue ordinarily left for the jury to decide, in this case the Court ruled that reasonable minds could not differ – that plaintiff could not prove a better result, and thus he was unable to prove causation as a matter of law. The plaintiff did not note an appeal of the summary judgment ruling, and that order is now final.