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WEEKLY

Fatal plane crash trial ends in \$48M verdict

Franklin County jury returns year's largest verdict, awards big punitives over bad blade



Gary Robb

A jury in Franklin County returned a \$48 million verdict in a fatal plane crash suit, including a \$28 million punitive award after the jury heard that an after-market parts dealer used a substandard alloy to make the plane's blade.

"As a result of this verdict, we hope that the company will immediately take this defective part off the market," said lead plaintiffs' attorney Gary Robb, of Robb & Robb in Kansas City.

The verdict is the largest in Missouri so far this year, according to a review of Missouri Lawyers Weekly's V&S Search database. Robb said it's among the largest verdicts involving a plane crash in state history.

The litigation stems from a plane crash near Sullivan, about 70 miles southwest of St. Louis, after it experienced engine failure. The group was planning to sky-dive. Six of the eight people aboard died in the crash.

The jury first awarded \$20 million in actual damages, which amounts to \$4 million for each of five families of people who died in the 2006 crash, including the pilot. After hearing further testimony, the jury awarded another \$28 million in punitive damages on April 28.

"They feel they can have joy again, they feel justice was done," Robb said of the families who sued.

The family of the other person who died in the crash, skydiving instructor David Paternoster, 35, of Claycomo, filed a separate lawsuit in federal court in St. Louis. That case is pending, though the family has settled with two defendants for a total of \$35,000. The claims against Doncasters Inc. are active.

Two others aboard the plane were injured but survived the crash. One of them died about three years ago, but his family continued with the lawsuit. Those cases settled shortly before the trial began for \$3.1 million and \$2.6 million, attorneys said.

The verdict is against defendant Doncasters, which made a part of the airplane engine, a compressor turbine blade, that the plaintiffs argued was defective. Several other defendants were dismissed from the case earlier. Robb said he simply dropped most other defendants, but

he reached modest settlements, of \$10,000 - \$25,000, with a few.

During the three-week trial, the families of the crash victims sat just behind their lawyers, holding hands and supporting each other, despite being relative strangers before the crash.

The jury heard from an expert on Federal Aviation Administration regulations during the punitive damages phase of trial. William R. Twa Jr. told jurors the company didn't follow FAA rules regarding the engine part. The defense tried to attack Twa's qualifications, saying he wasn't experienced with the engine involved in this crash.

According to court documents, the airplane began to have engine problems shortly after takeoff. A witness reported seeing the aircraft's right engine burst into flames. The plane descended, struck a utility pole and landed nose-first in a tree.

"Some of the most compelling evidence was the fact that Doncasters improperly substituted the required metal alloy in this part, which they knew did not meet the engine manufacturer's specified design criteria," Robb said.

The company also couldn't provide raw data to back up the results of its FAA-required testing, he said.

Doncasters then sold the blade for half of the cost that the original manufacturer sold it for, he said.

"The jury also heard testimony that the employee who originally selected the substitute alloy had no engineering education, training or experience, but merely 'asked around' for suggestions," Robb said.

Lead defense attorney Larry Kaplan, of Kaplan, Massullo & Andrews in Chicago, declined to comment while the trial was ongoing. He didn't return phone and email messages seeking comment after the verdict. Nor did local counsel Gary Mayes, of Thompson Coburn in St. Louis.

In general, the defense argued the crash was due to improper maintenance and that the blade in question had FAA approval, plaintiffs' attorneys explained. But plaintiffs countered with evidence that the part failed in testing and that the company misled the FAA.

The blade broke, plaintiffs argued, because it couldn't withstand the heat and pressure in that engine. Plaintiffs also offered evidence during the punitive phase that Doncasters knew of eight similar engine failure incidents after the blade broke, Robb said.

Attorney Randy James, of James Legal Services in Lee's Summit, represented the pilot's father in a wrongful death claim against Doncasters but also defended Scott Cowan's actions against allegations of pilot error. Yet after the other plaintiffs' pilot expert testified that Cowan did most things right, James said, the judge dismissed the other plaintiffs' claims against the estate and Doncasters dropped its pilot error arguments.

"The reason that Mr. Cowan ultimately decided to join the litigation was because he wanted to seek vindication for his son," James said.

James also said the verdict shows plaintiff attorneys with serious cases shouldn't fear juries in conservative venues.

"Conservative folks very much believe in the concept of taking responsibility for your own actions," he said. "It does not appreciate when they see very strong evidence of a company like Doncasters who refuses to take that responsibility, and I think that's what's reflected in the verdict."

Under Missouri law, punitive damage awards must be no more than five times the actual damages, but the awards in this case are well under that threshold. If the verdict ultimately stands, half of the punitive award, after attorneys' fees and expenses, by law will be directed to the state, partially for a fund used to compensate tort victims who win in court but are unable to collect money from the defendants.

The families involved in the Franklin County trial were the survivors of:

- Melissa Berridge, 38, of St. Louis
- Robert Cook, 22, of Rolla
- Scott Cowan, 42, of St. Louis, the pilot.
- Victoria Delacroix, 22, of London, England
- Rob Walsh, 44, of St. Louis.

— Kelly Wiese



Anita Robb



Steven Kuenzel

\$48 million verdict

WRONGFUL DEATH

- **Court:** Franklin County Circuit Court
- **Case Number/Date:** 06AB-CC00233/April 28, 2011
- **Judge:** Gael Wood
- **Plaintiffs' Experts:** Richard McSwain, Pensacola, Fla. (aircraft metallurgy); Donald Sommer, Broomfield, Colo. (aircraft accident failure analysis); Jack Lipscomb, Huddleston, Va. (accident reconstruction); Arthur "Lee" Coffman, Amarillo, Texas (maintenance); Marc Frutcher, Greenville, S.C. (glotting); David Hoepfner, Salt Lake City (aircraft design engineering); William R. Twa Jr., Saginaw, Texas (Federal Aviation Administration certification); Dr. Carlos Diaz, Pensacola, Fla. (pre-impact terror); John Ward, Prairie Village, Kan. (forensic economics)
- **Defendant's Experts:** Dale Alexander, Chicago (metallurgy); Christopher Andrews, Dallas (aircraft maintenance)
- **Special Damages:** \$28 million in punitive damages
- **Last Pretrial Demand:** \$30 million (\$6 million for each of the five plaintiff families)
- **Last Pretrial Offer:** \$6.4 million (\$1.6 million for the four passengers involved in the trial)
- **Insurer:** AIG (\$250 million omnibus policy)
- **Captions:** Susan Delacroix v. Doncasters Inc. (consolidated for trial with Barbara Berridge, Mark Cook and Annette Bachand, Joan Walsh and James Cowan cases)
- **Plaintiffs' Attorneys:** Gary Robb and Anita Robb, Robb & Robb, Kansas City; Steven Kuenzel, Edelkamp Kuenzel, Washington, MO; Randy James, James Legal Services, Lee's Summit, Mo; Cowan
- **Defendant's Attorneys:** Larry Kaplan, Thomas Sokol and Paul Keenleyside, Kaplan, Massullo & Andrews, Chicago; Gary Mayes and Jill Johnson, Thompson Coburn, St. Louis; Matthew Becker, Union