FLIGHT-WATCH

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FA-18E Super Hornet in front of Mt. Fuji, Japan

ATC NEGLIGENCE FOR VFR AIRCRAFT THAT HIT A MOUNTAIN

The pilot was flying at night under visual flight rules on a heading of 230 degrees. ATC suggested he turn left 10 degrees to a heading of 220 degrees. The pilot's aircraft struck a mountain.

The pilot's wife, on behalf of his estate and minor children, and the pilot's adult children sued the Federal Aviation Administration ("FAA") under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, *et seq*. The plaintiffs maintained that the pilot was given wrong instructions by ATC. They contended that had he maintained his heading of 230 degrees, he would not have hit the mountain. The FAA maintained that it had no liability, since the pilot was operating under VFR and was responsible for his own terrain avoidance.

The pilot was a lawyer and investor who earned an average of $250,000 per year. The case was settled by mediation for $437,500.

The experts for the plaintiff were: (1) Richard P. Burges, Air Traffic Control (Ft. Worth, Texas); (2) A.V. Llorente, Aviation Accident Reconstrution/Piloting (Henderson, Nevada); (3) Gregory L. Tom, Optometry (San Mateo, California); and (4) Daniel Vincill, Economics (Oakland, California). The experts for the defendant were: (1) Joseph Beaudoin, Air Traffic Controll (Winchester, Virginia); (2) Warren V. DeHaan, Optometry (Boulder, Colorado); (3) Kenneth Orloff, Aviation Accident Reconstruction/Piloting (Groveland, California); and (4) Gerald Udinsky, Economics (Berkeley, California).

Turner v. Federal Aviation Administration, United States District Court for the Northern District of California, Case No. C-03-5756CRB (May 5, 2005).

ECONOMIC LOSS DOCTRINE – HELICOPTER MANUFACTURER DID NOT OWE A DUTY TO THE AIRCRAFT MANAGEMENT COMPANY

The case involved the crash of a helicopter in which five people were killed. A company providing management services to the helicopter sued the helicopter manufacturer for

damages. The helicopter manufacture moved for summary judgment, claiming that neither the management company nor its economic damages were sufficiently foreseeable to make the management company part of an identifiable class to which the helicopter manufacturer owed a duty. There is case law that stands for the proposition that a defendant owes a duty of care to take reasonable measures to avoid causing economic damages to entities that are part of an identifiable class it knows or should know are likely to suffer damages as a result of its conduct. With regard to an identifiable class, that is one in which the type of entities comprising the class, the predictability of their presence, the approximate number of entities in the class, and the type of economic damages disrupted are foreseeable.

Alan Armstrong and a P-40

A United States District Court granted summary judgment to the helicopter manufacturer, and the Third Circuit Court of Appeals affirmed, reasoning that the economic losses were not foreseeable, nor was the aircraft management company part of an identifiable class to which the helicopter manufacturer owed a duty.

Paramount Aviation Co. v. Gruppo Agusta, 124 Fed. Appx. 85 (Third Cir. 2005).

Alan Armstrong is engaged in the general practice of law with an emphasis in the following areas:

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