FLIGHT-WATCH

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AIRLINE'S ASAP REPORTS ARE DISCOVERABLE SAYS DISTRICT COURT

The case arose out of the attempt of an air carrier flight crew to depart from the wrong runway. The aircraft crashed. One of the passengers brought an action against the airline for negligence and attempted to obtain discovery of ASAP reports filed by the pilots with the airline identifying safety hazards or infractions. Among the data contained in the ASAP reports was information about runway incursions and runway events. For that reason, the plaintiff took the position that the contents of the ASAP reports were relevant and discoverable.

The airline filed a motion for protective order alleging that the ASAP reports could not be discovered. The motion was heard by a Federal magistrate who was dealing with discovery issues rather than a Federal District Court judge. The magistrate judge found that the ASAP reports were discoverable and were not protected or privileged. The airline then took the matter up with the Federal District Court judge. The judge found that the airline had not carried its burden of proof and shown that the decision of the magistrate judge requiring disclosure of the ASAP reports was a clearly erroneous decision. The airline argued that if ASAP reports can be discovered in civil litigation, then the program will "wither and die." The Federal District Court judge told the airline that it should make its policy arguments to the Federal Aviation Administration or to the United States Congress. This is true because the FAA has authorized disclosure of ASAP data in air carrier negligence cases. The airline argued that 14 C.F.R. Part 193 protected disclosure of the ASAP reports, but the Federal District Court judge found that those protections only applied to Federal Agencies in the event ASAP report data is sought to be disclosed to the public. In this particular case, the contents of the ASAP data would not be publicly disclosed, since a confidentiality order had been entered preventing disclosure of the information to the public.

Insofar as the author knows, this is a case of first impression, the author being unaware of any situations where ASAP reports have previously been disclosed in civil litigation. If any of the readers of Flightwatch are aware of a previous case involving this issue, please contact the author.

Air Crash at Lexington, Ky., Aug. 27, 2006, 545 F.Supp. 2d 618 (E.D. Ky. 2008).

Photo courtesy of Trey Carroll

AIR SHOW CRASH IS TROUBLESOME FOR AIR SHOW PROMOTERS, PRODUCERS AND INSURANCE COMPANIES

The case involved a 38 year-old pilot who crashed his experimental aircraft after stalling it on takeoff. He crashed on the runway and the aircraft quickly caught fire. Bystanders attempted to put out the fire with fire extinguishers, but the pilot could not be freed from the aircraft. Apparently, volunteer firefighters arrived within five minutes after the crash, but by the time they arrived and turned on the water hoses, the pilot was engulfed in flames. The pilot was survived by his wife and five children. Although he was retired, the pilot worked as a software consultant and had earned $100,000.00 in the six months prior to his death. He estimated loss of future income was valued at $5.2 million.

The wife of the deceased pilot sued the Experimental Aircraft Association chapter which hosted the event as well as its parent organization (EAA). In the action, the widow claimed there was negligence in (1) failing to adequately respond to the accident, (2) failing to provide safe and adequate fire, rescue and emergency response services, and (3) failing to provide a properly-trained fire crew with adequate equipment. The EAA and EAA chapter sponsoring the event claimed that the pilot was responsible for his own death because he stalled his aircraft and departed control to flight.

Photo courtesy of Trey Carroll

The jury found for the widow and apportioned liability at 45% for the sponsoring EAA chapter, 40% for the EAA, and 15% for a non-party. The jury awarded the widow $10.5 million including $3 million for economic loss, and $1.5 million for loss of consortium, together with $600,000.00 for each of the deceased pilot's five children. Because a non-party with 15% liability was not available to respond to the damages, the verdict was reduced to $8.93 million.

The case involved some notable experts. The experts for the plaintiff were Lowell Bassett, economics, Seattle, Washington; and James Nilo, airport rescue and firefighting, Richmond, Virginia. The experts for the defendants included Don Sommer, aviation and aircraft operations, Broomfield, Colorado; William Skilling, economics, Seattle, Washington; and William Partin, economics, Bellevue, Washington.

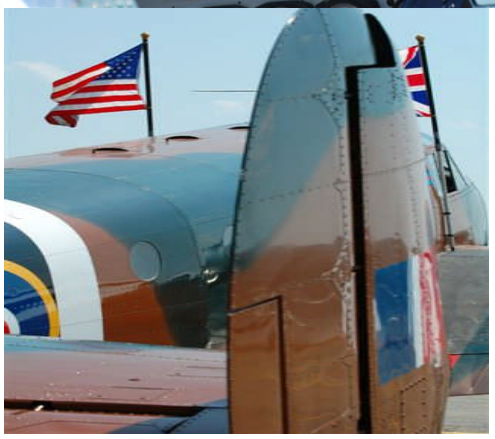
Estate of Corbitt v. Experimental Aircraft Assn., Washington, Snohomish County Superior Court., No. 03-2-05008-1, Jan. 9, 2007.

COMMUTER AIRCRAFT CRASH ONE MILE SHORT OF RUNWAY

The case involved the crash of a commuter aircraft attempting to land during low visibility. The aircraft struck some trees crashing one mile short of the runway. The plaintiff, Dr. Krogh was a professor of Osteopathic Medicine who incurred between $100,000.00 and $200,000.00 in past medical bills, and the amount of his future medical bills was not specified. He was diagnosed and evaluated with a 24% disability rating by Worker's Compensation and claimed lost wages which were not specified as to amount.

The Plaintiff contended that the pilots (who with eleven passengers) died in the aircraft crash violated the "sterile cockpit rule" under Federal Aviation Rules 121.542 and 135.100. It was further asserted that the pilots were likely fatigued due to their lengthy flight schedule before the crash. The Defendants denied any liability, but the case settled for a confidential amount. The Plaintiff was represented by Jerome Skinner, Esq. and Orla Brady, Esq. of Nolan Law Group in Chicago, Illinois.

Krogh v. Corp. Airlines, Inc., U.S. Dist. Ct., E.D. Mo., No. 4:05-cv-00729, Oct. 17, 2006.



Dixie Wing SBD-5

Dixie Wing C-45

DVT-INDUCED STROKE/ SETTLEMENT

Ms. Menditto was a 69 year old woman who felt dizzy and experienced numbness and pain while attempting to disembark a flight. She also had paralysis on the right side of her face. She sought help from the airline crew, and she was told to sit down while the crew called for emergency transportation. The process of disembarking the aircraft continued.

After several minutes, paramedics arrived to assist the woman who is now aphasic. Ms. Menditto claimed the crew failed to tell the paramedics about her symptoms. She further claimed that as a result of the failure of the crew, the emergency personnel who attended her could not tell the emergency physician at the hospital the full extent of her symptoms. She further claimed that had the doctor been given an accurate medical history, then he could have given her medication that would have ameliorated the effects of her deep vein thrombosis-induced stroke. Ms. Menditto suffered permanent partial paralysis and spent about $50,000.00 in medical expenses.

She sued the airline under Article 17 of the Warsaw Convention, 49 U.S.C. §1502 (note) alleging that she was the victim of an "accident" and that the accident caused her injury. She argued that her medical problem was an unexpected event and was therefore an "accident" under the Warsaw Convention.

The airline contended that there was no "accident" under the Warsaw Convention because the deep vein thrombosis-induced stroke was internal, and it was not external to the plaintiff. The airline also claimed there was no accident because nothing abnormal or unexpected occurred during the flight that would have caused the stroke.

The case was settled for $75,000.00.

Menditto v. British Airways, PLC., U.S. Dist. Ct., N.D. Cal., No. 3:04-cv-04896, Apr. 12, 2007.

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