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November 1, 2013

DHC- 6 Twin Otter Crash Which Killed Group of Skydivers Settles for $52.5 Million

Shortly after a DHC-6 Twin Otter departed Sullivan Regional Airport in Sullivan, Missouri, on a skydiving mission, witnesses on the ground observed the right engine burst into flames. Only moments later the Twin Otter crashed. Four of the five passengers and the pilot (an American Eagle pilot and co-owner of Quantum Leap Skydiving) perished. One of the four passengers, counselor at a summer camp for disabled children, was a first-time skydiver. The other three passengers, the compliance director for Senator Clair McCaskill's reelection campaign, a university engineering student and a freelance photographer/certified skydiving instructor, were veteran skydivers.

According to plaintiffs, represented by Gary C. Robb and Anita Porte Robb of Robb & Robb LLC in Kansas City, Missouri, compressor turbine blades manufactured by London-based aircraft engine parts manufacturer Doncasters, Inc., failed and caused the crash. Plaintiffs claimed that Doncasters improperly substituted a different metal alloy for the part than that specified by Pratt & Whitney. The material actually utilized, plaintiffs alleged, was not sufficient to withstand the operating environment for that particular engine. Plaintiffs further claimed that Doncasters sold the part for half of its normal cost. At trial plaintiffs presented evidence that Doncasters knew of eight other engine failures due to fracture of the same part. Plaintiffs sought damages for pre-impact terror of some fifty-two seconds duration. Plaintiffs also sought punitive damages. The presented testimony from an FAA certification officer that Doncasters hid key documents showing that the turbine blade failed required performance tests and that the company misled and misrepresented other critical data to the FAA.

The defense denied fault and claimed that the crash was the result of improper maintenance and the failure of a bolt. According to the defense, the blade met all FAA certification standards.

The jury returned a verdict in favor of plaintiffs for $20 million in compensatory damages and $28 million in punitive damages. The trial court subsequently granted judgment n.o.v. with respect to the punitive damage award finding that no submissable case had been presented. Cross-appeals were taken.

A divided intermediate appeals court affirmed the action of the trial court on January 15 of this year. Although the court unanimously affirmed the $4 million compensatory damage awards to each of the five estates, a majority of the court rejected plaintiff's claim that the trial court erred in striking the punitive damage award. Pointing to the expert testimony adduced by plaintiff, the majority's view was that such testimony established that the blades never passed endurance tests in the model 20 engine so that, according to those

witnesses, Doncasters should have known that the blades were defective when they were sold for use in the subject engine in 1996. However, the majority quickly continued, plaintiffs also adduced testimony from Doncasters' corporate representative that the blades were FAA-certified when Doncasters acquired Turbo Products (the predecessor manufacturer) and that Doncasters did not learn of a problem with the materials until 2001. Under *School District of City of Independence v. U.S. Gypsum*, 750 S.W.2d 442 (Mo.App. 1988), the majority found, no Missouri case has permitted submission of a punitive damages claim in a strict products liability case on the theory that the defendant *should have known* of a dangerous defect in its product. What was required, the majority ruled, was proof of actual knowledge of a defect.

The partial dissent took the view that a submissible case had been established by proof that the blades never passed a 150-hour endurance test in a PT6A-20 engine and that the blades failed two tests prior to their manufacture for use in a PT6A-20 engine.

On May 14 that partial dissent became the majority opinion as the full Eastern District Court of Appeals reversed the trial court by a 9-3 vote. According to the majority, plaintiffs had shown with "convincing clarity" that Doncasters knew of the defect. The three judge dissent, written by the author of the panel decision, took the position that the nature of the evidence upon which plaintiffs relied was speculative. In a footnote, the dissent acknowledged an "obvious tension" between the applicable standards of review: i.e, an appeals court will generally uphold a verdict so long as there is some evidence to support it. In this case, the dissent asserted, proof of a defendant's actual knowledge required a more specific standard – clear and convincing evidence.

The parties settled for a total of $52.5 million ($10.5 million per decedent) and stipulations of dismissal were filed last week. The settlement was funded by Doncasters Inc., the aircraft replacement parts manufacturer headquarter in London, England.