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AIR CRASH NEAR PALEMBANG, INDONESIA

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$43.6 Million Awarded in Silk Air Crash Cases

***Bee v. Parker Hannifin Corp. et al.*, No. BC 202587, *verdict returned* (Cal. Super. Ct., Los Angeles County July 6, 2004).**

A state court jury in California has found Parker Hannifin Corp. liable for the 1997 crash of a Silk Air jet in Indonesia and awarded $43.6 million in damages to the families of three victims. Parker Hannifin had argued that the pilot intentionally crashed the plane.

The Boeing 737-300, en route from Jakarta, Indonesia, to Singapore, was carrying passengers from 14 countries, including 46 from Singapore, 23 from Indonesia and five from the United States.

Cruising at 35,000 feet, the jet suddenly rolled right and descended, striking a river less than a minute later. Parts of the aircraft were embedded 15 feet beneath the river bottom. All 104 persons on board were killed; the remains of only six passengers could be identified (see *Aviation LR*, Vol. 20, Iss. 23).

An investigation by the Indonesian government, assisted by the National Transportation Safety Board, Boeing Co. and Parker Hannifin, revealed that the cockpit voice recorder stopped 10 minutes before the crash and the flight data recorder four minutes prior.

The plaintiffs argued in Los Angeles County Superior Court that an uncommanded rudder deflection at a high rate of speed caused the aircraft to go into a quick roll from which the flight crew could not recover.

Examination of the Parker Hannifin power control unit revealed metallurgical anomalies including evidence supporting the jammed-rudder theory, the plaintiffs maintained.

Expert witnesses for the plaintiffs were Don Sommer of Bloomfield, Colo., on accident reconstruction; Robert Cauble of Greenwood, Ind., on radar; Maximiliaan Vermij of Ontario, Canada, on flight data recorders; Kenneth Center of Boulder, Colo., on computer animation and aerodynamics; Donald Kennedy of Kihei, Hawaii, on aerodynamics and flight-path reconstruction; Paul Dow of Lakewood, Ill., on piloting issues; Richard McSwain of Pensacola, Fla., on metallurgy; and John Swiger of San Antonio on economic issues.

Defense Contentions

Parker Hannifin argued that the crash resulted from the intentional actions of the flight crew or negligence in failing to recognize and timely respond to the alleged rudder deflection. The company said the two Silk Air pilots had been trained on an emergency procedure to handle such an event.

Parker Hannifin also maintained that the neutral position of the control unit servo-slides following the crash proved there had been no rudder deflection. It said the missing information from the cockpit voice recorder and flight data recorder were the result of intentional disabling by one or both of the pilots.

The defendant submitted evidence that the captain had experienced recent personal problems and had been demoted due to an incident involving the disabling of a cockpit voice recorder.

Expert witnesses for Parker Hannifin were Gary Fowler of Gardenia, Calif., on metallurgy; Michael Marx of Springfield, Va., a former NTSB representative involved in post-crash examinations; John Plaskis of New York, a former Federal Aviation Administration representative, on certification and probabilities; Duncan Schofield of Redmond, Wash., on flight data recorder systems; John Nance of Tacoma, Wash., on piloting issues; Robert Kedlac of Los Angeles on aerodynamics and flight-path reconstruction; and George Miller of Los Angeles on economic issues.

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Pursuant to federal law, the trial court excluded from evidence any opinions from investigative agencies that referenced suicide as a probable cause for the crash.

As Parker Hannifin requested, Silk Air and Boeing appeared on the verdict form for the purpose of the allocation of fault. The 12-person jury found Parker Hannifin 100 percent liable on strict liability and negligence.

Damages

Three cases were tried for damages.

The first involved the death of 43-year-old Kenneth Wilson, who left a wife of 19 years and two daughters, 17 and 14 years old at the time of the crash.

The jury awarded $4.5 million in economic damages to the family, $6 million in non-economic damages to Wilson's widow and $3 million in non-economic damages to each daughter.

The second case involved the death of 41-year-old Soen Lay Heng, who was married with three children ages 12, 10 and 6 at the time of the crash. The jury awarded his widow economic damages of $5.5 million and non-economic damages of $6 million, and $3 million in non-economic damages to each child.

The final case involved the death of Merleen Tan Peck Jiang, a single 28-year-old woman earning $55,000. Her parents were awarded $600,000 in economic damages and $3 million each in non-economic damages.

The remaining 29 cases will receive the benefit of the liability finding and will have separate damages trials. There are more than 50 other cases pending in Seattle federal court, in a multidistrict proceeding.

The MDL plaintiffs could seek the benefit of the state court verdict, but Parker Hannifin will likely argue that because those plaintiffs pursued a different theory of liability, they will not be able to successfully argue collateral estoppel.

The families were represented by Steven C. Marks of Podhurst Orseck PA in Miami and by Walter J. Lack and Kenneth L. Crowder of Engstrom, Lipscomb & Lack in Los Angeles.

Parker Hannifin was represented by William O'Connor and Mitchel Kallet of Kern & Wooley in Los Angeles.

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