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\$8.15M deal in helicopter fatality case

Settlement new state record for helicopter product-liability case

BY LAURAANN WOOD
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The estate of a veteran helicopter pilot who died after his aircraft crashed in a cornfield has settled its product-liability lawsuit for \$8.15 million.

The settlement is Illinois' highest reported product-liability verdict or settlement involving a helicopter, according to John L. Kirkton of the Jury Verdict Reporter — a division of Law Bulletin Publishing Company.

The agreement was finalized Friday in plaintiff John Russel's case. He sued Italian helicopter manufacturer Agusta S.p.a. and French bearing manufacturer SNFA in 2005 alleging his brother Michael's helicopter spun out of control in January 2003 after one of its drive-shaft bearings failed, which resulted in a fractured drive shaft that prevented the aircraft's tail rotor from functioning.

Michael Russel, who was working for the medical transport company Air Angels at the time, had just refueled his helicopter on the east side of DuPage Airport and announced to a Federal Aviation Administration-controlled radio tower that he intended to head south for an equipment check before turning back to land on a pad on the west side of the airport.

All helicopters are equipped with a transponder that communicates their location roughly every 4.6 seconds with two types of FAA air-traffic radar systems. The primary radar detects the outside of a helicopter, while the secondary radar picks up each aircraft's unique identifying information from its transponder antenna located on the underside of the craft.

Of the final three data points in Russel's flight, which were picked up by O'Hare International Airport radar, the first point shows a detected secondary signal while the second shows only a primary radar detection.

"What that meant to our radar expert very early on in this case was that ... the aircraft had yawed to the right at that point and the bottom of it became sufficiently obscured so that it couldn't detect what it was at O'Hare, other than an object," said Todd A. Smith, a partner at Power, Rogers & Smith P.C. who represented Russel's estate.

The final data point shows a secondary radar detection that depicts the helicopter taking a spin-like turn which was inconsistent with his intended route.

"The only way that could happen is if he made some sort of ... maneuver that turned him back to the southeast, which is not where he was going," Smith said. "So something unusual happened there."

Russel died when his helicopter crashed seconds later into a cornfield about 2 miles south of the runway.

Smith said the radar expert who was retained to testify in the case indicated the helicopter's data plots are consistent with an issue in the aircraft's tail rotor.

Another expert — a former Canadian investigator of air space incidents — also independently determined after reconstructing the wreckage that the incident resulted from tail rotor failure, Smith said.

"It's got a blade on either end of a hub and those blades, although crumple to touch, were not bent in a way you'd expect if they were spinning rapidly at impact," he said. "That tells you that it was basically not rotating in the air because by the time impact occurred, there was no rotation. That means failure of the tail rotor in-flight."

Further inspection of the reconstructed wreckage showed the helicopter's drive shaft —



Todd A. Smith

which spins at 6,000 revolutions per minute — became fractured after the second of seven tail rotor bearings failed.

"Right after that bearing there was a fracture — a separation of the drive shaft at that point. Then there was 13 inches of missing shaft. The rest of the shaft went on back to the tail, all the way to the tail rotor," said Smith, who noted the bearing was one of several points of thorough inspection.

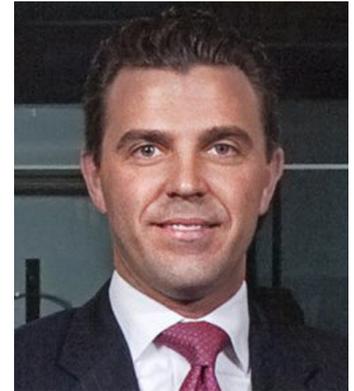
"You could see the balls of it were jammed up together, and with visual and deep, heavy high-powered microscopes, [the expert] was able to pick up skidding on the balls of the bearing, which demonstrated that a couple of them had stopped,"

he said. "If that can't turn, it causes the portion of the drive shaft to be rotating slower than the rest and causes a fracture of the drive shaft."

Agusta and SNFA denied the allegations in Russel's lawsuit, instead contending the incident arose out of pilot error.

John M. Socolow, a partner at Pino & Associates LLP in White Plains, N.Y., who represented Agusta, said his client "vigorously" defended its case and does not believe any evidence existed of a malfunction in either the helicopter or any of its components.

"We would also note that the National Transportation Safety Board determined that the probable cause of the accident was



Brian LaCien

due to the pilot's failure to maintain control of the helicopter while maneuvering, resulting in a controlled-flight-into-terrain type accident," Socolow said. "That is consistent with the dark night, low ceiling and reduced visibility at the time of the accident."

But the idea that Russel — who had logged at least 12,000 hours of helicopter flight through his career — could be the reason his helicopter crashed in only slightly inclement weather was the exact idea his family wanted to fight, Smith said.

"He would be in smoke, in fire areas, in difficult situations and never had anything leading up to this incident" he said. "They knew very well that he was meticulous about safety, but he's not here to defend himself so it was important to them to investigate this and try to figure out what happened."

The case took several trips to higher courts regarding SNFA's fight against personal jurisdiction.

Russel's estate appealed Cook County Circuit Judge Jeffrey Lawrence's decision to grant SNFA's dismissal motion for lack of personal jurisdiction in August 2010. The 1st District Appellate Court initially reversed and remanded the case in March 2011.

SNFA appealed to the Illinois Supreme Court, which then asked the appellate court to

review its decision in light of two U.S. Supreme Court decisions that had come down relatively close to the time this matter was before it.

Finding the two cases only strengthened its position on Russel's case, the 1st District affirmed its decision that December.

SNFA appealed again to the Supreme Court, which then took the case and affirmed the appellate court's ruling in April 2013. The U.S. Supreme Court denied SNFA's petition for certiorari.

Lisa Savitt, a partner in The Axelrod Firm P.C.'s Washington, D.C., office, represented SNFA with SmithAmundsen LLC

partner Brandt R. Madsen.

Through a SmithAmundsen representative, Madsen declined to comment. Savitt could not be reached.

Smith said the parties were able to continue conducting discovery on the case's merits beginning in 2014 and kept working when SNFA reached out about a week ahead of their anticipated Oct. 17 trial date to conduct individual settlement negotiations. That's when SNFA agreed to contribute its \$2.75 million share of the settlement, he said.

The parties were working through motions in limine before Circuit Judge Deborah M.

Dooling when Agusta agreed to contribute its \$5 million share of the settlement, Smith said.

The parties reached the agreement last week during what was their second mediation session with retired Cook County judge Stuart Nudelman of ADR Systems of America LLC, he said. Dooling entered an order Friday approving the settlement.

Smith said the estate also previously settled for \$300,000 with Oakbrook Aviation, which owned the aircraft, and \$105,000 with Los Angeles-based Metro Aviation, a former owner of the helicopter.

He said Russel's family feels like they've gotten justice and is

happy to be able to prove he did nothing wrong to cause the crash.

"The point about his professionalism and his abilities was extremely important to them. It's who he was, so the idea that he failed was just not acceptable to them," he said. "In this case, we were able to show that he didn't fail, and that ... it was a product that failed him."

Johnson & Bell Ltd. shareholder Joseph F. Spitzzeri also represented Agusta.

Power, Rogers & Smith associate Brian LaCien also represented Russel's estate.

The case is *John Russel v. Agusta S.p.a, et al.*, 13 L 12221.