Daily Business REVIEW
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JURY VERDICTS
July 14, 2003

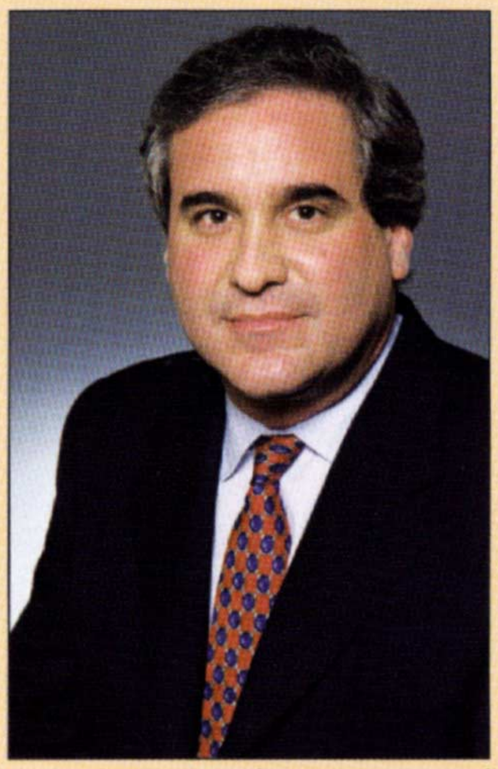
LEARJET CRASH LEADS TO BIG SETTLEMENTS, NEW ROUND OF LAWSUITS

Cases: Marcelo Santos De Souza v. Dwiggins LLC, Case No. 03-06567-CA; Jose Maria Gelsi v. Dwiggins LLC, Case No. 03-06569-CA; Roberto Luiz Catao Martins v. Dwiggins LLC, Case No. 03-06571-CA; Luiz A.D. Ferreira v. Dwiggins LLC, Case No. 03-06568-CA. Miami-Dade Circuit Court.

Plaintiff attorney: Steven C. Marks at Podhurst Orseck Josefsberg Eaton Meadow Olin & Perwin in Miami

Defense attorney: John D. Hoffman at Hoffman & Hoffman, Miami

Judges: Norman S. Gerstein; Ellen L. Leesfield; Gisella Ely Cardonne; Michael B. Chavies



Steven C. Marks represented plaintiffs in suits stemming from the crash of a tobacco company's plane near Sao Paulo, Brazil.

Details: In October 2002, Brazilian executive Luiz A.D. Ferreira took a brand new Learjet 60 that his company had recently purchased for its maiden flight. On board with Ferreira, CEO of Sao Paulo-based tobacco company American Virginia Tabacos, was the general counsel of the tobacco company and two in-house company pilots. Piloting the plane was Telmo Goes, who had experience flying the Learjet 60.

Attempting to land the jet at Santa Cruz airport near Sao Paulo, Goes approached the runway too high and too fast, according to the passengers. As a result, the plane ran off the end of the runway and down an embankment. An American Virginia pilot, Julio Sergio Soares Barbosa, was killed and the other passengers were injured. The Learjet was destroyed.

The injuries to the survivors included broken ribs, a punctured lung, and herniated discs. The other two survivors besides Ferreira were American Virginia general counsel Jose Maria Gelsi and in-house pilot Roberto Luiz Catao Martins. Goes survived the crash but was not party to the litigation.

Following the accident, however, the insurer for the plane, New York-based U.S. Aircraft Insurance Group, denied coverage. It claimed the policy did not apply because, among other things, the pilots named on the insurance policy to fly the aircraft did not have sufficient experience and the plane was to be kept in Florida, not Sao Paulo.

American Virginia responded that USAIG had issued coverage without any limitations, and that the insurer had its facts wrong. It also said that the plane was to be stored in South Florida because that's where American Virginia has offices and Ferreria has a home.

With USAIG refusing to cover the damages, the crash survivors and the estate of the one deceased filed suit in March in Miami-Dade Circuit Court against their employer, American Virginia. The goal was to win a judgment against American Virginia, have American Virginia's rights to sue USAIG assigned to the plaintiffs, then sue the insurer to recover the losses.

The suits, claiming wrongful death and negligence, were filed separately on March 17. There was jurisdiction in Miami-Dade because American Virginia does business in the United States and because the Brazilian company purchased the plane under its Dwiggins LLC subsidiary, which is U.S.-based.

John D. Hoffman, a partner at Hoffman & Hoffman, represented American Virginia. Hoffman did not return calls for comment.

Settlement: Settlements were reached in April; each judge in the four cases granted final judgments. The estate of Barbosa, who is survived by a wife and son, was awarded $14 million. Ferreira was awarded $3 million for compensatory and pain and suffering damages, Gelsi was awarded $5 million, and Martins was awarded $8 million.

On May 14, the plaintiffs filed separate suits in Broward Circuit Court against USAIG claiming breach of contract. It sued in Broward because that is where the insurers agent is located. The insurer is being represented by Don Blackwell, a partner at Anania Bandklayder Blackwell Baumgarten Torricella & Stein in Miami. Blackwell did not return calls for comment.

Marks said the basis of the suits is that it is not customary for USAIG to subsequently include coverage conditions and exclusions that were not negotiated or agreed upon. The case currently is in the discovery phase.

— Matthew Haggman

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