

Lockhart crash case clears hurdle in US court

Saturday, 06 March 2010 16:22



By COREY BOUSEN

The families of the victims killed in the Lockhart River air disaster have had another legal victory, with an appeals court in the state of Missouri allowing their legal action for compensation to proceed in the United States.

The families of all but one of the 15 people killed in the Lockhart River crash are seeking compensation from some of the world's biggest corporations on the grounds of product liability, wrongful death and negligence.

On behalf of the victim's families, specialist aviation attorney Floyd Wisner is spearheading legal actions in two US jurisdictions; one in his hometown of Chicago, Illinois, and the other in the state of Missouri.

Both cases have been the subject of appeals from the respective defendants who have claimed that the United States was not the correct jurisdiction for either case to be heard.

The Missouri Court of Appeals this month backed a lower court decision for the case to be heard in the local jurisdiction. The defendant in this case is a Queensland-based partnership that leased the Missouri-based aircraft involved in the crash to its operator, Transair. The Queensland Coroner's report into the Lockhart River tragedy found Transair management to have operated the airline with a poor safety culture.

Last week's victory follows a similar win in Chicago last August, when the Appellate Court of Illinois also rejected the defendant's claims that the case should not be heard in the United States. The Illinois case is the most important of the two actions as it is against a number of aviation industry giants, including: Boeing, Honeywell, Hamilton Sundstrand and M7 Aerospace. (The Missouri case was initially part of the Chicago case, but the complaint was dismissed against the defendant involved due to lack of personal jurisdiction, leading to the second action being launched in Missouri.)

The two appellate court decisions mean that both cases can now proceed to trial in the United States, Patrick Nunan, of Toowoomba-based law firm Cleary & Lee, told Torres News.

Mr Nunan is the legal representative for the five Bamaga families of those killed in the air-crash and is working as co-counsel on the case with Floyd Wisner.

The next step, Mr Nunan said, is for depositions to be taken from the families of those killed in the crash, which will occur in Australia in the near future.

It is expected that both court cases will be heard sometime towards the end of 2010 or the start of 2011, with hearings expected to take around three weeks, he said.

The Chicago legal action is, in part, against Hamilton Sundstrand Corp. and Honeywell International who designed, manufactured and sold the ground proximity warning system (GPWS) that was used in the Fairchild Metroliner aircraft that crashed while on approach to Lockhart River on May 7, 2005, killing the 13 passengers and two pilots aboard. In addition, the families of the victims are seeking damages against Jeppesen Sanderson Inc and the Boeing Company, who designed and sold the navigation charts used by the flight crew.

Mr Nunan said there was a good chance of success in both legal matters.

"We certainly believe we have a good liability case and an excellent case for all of the Australian clients," he said.

Both cases are being heard by Mr Wisner's Wisner Law Firm on a contingency basis, which means that neither he nor Mr Nunan's law firms will get paid unless damages and compensation payments are awarded by the US courts or a settlement is agreed through mediation.

Mr Wisner is very experienced in the field of aviation litigation stemming from air disasters, having litigated in many high-profile cases, including those involving the World Trade Centre Attacks, TWA Flight 800, Egypt Air Flight 990 and Swiss Air Flight 111.

Mr Nunan also specialises in aviation related litigation and successfully represented 18 Indonesian plaintiffs from the 1997

crash of Garuda Airlines Flight 152, with this action also heard in a US court.

As with the Lockhart River case, the Garuda Airlines case was based on the belief that the ground proximity warning system made in the United States by Hamilton Sundstrand and Honeywell had "failed to perform as represented and did not give the pilots a timely warning."

"It was the ground proximity warning system that failed, not the pilots," Mr Nunan said in 2003.

Commenting on the reason for such cases being heard in the United States, Mr Wisner has previously stated: "I think American companies should be held responsible for their conduct all over the world."

The 2005 Lockhart River crash stands out as one of the greatest tragedies to ever affect the NPA communities, with the loss of life of locals Mardie Bowie, 30, Fred Bowie, 25, Helena Woosup, 25, Gordan Kris, 37, and Frank Billy, 21. Others killed included: locally based policewoman Sally Urquhart, Arden Sonter, Paul Norris, Rob Brady, Kenneth Hurst, pilot Brett Hotchkins and co-pilot Tim Downs.

An Australian Transport Safety Bureau report determined pilot error as the primary reason for the air crash, while poor oversight by the Civil Aviation Safety Authority was identified, along with the poor safety culture at Transair.

The report said pilot Brett Hotchkins had a history of flying too fast.

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