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## News Story

# Accounting Malpractice, Air Crash Claims Top Lawyers Weekly Verdict And Settlement Survey

By Ertel Berry

Claims that fraudulent audits allowed a Burlington company to hide huge losses in a reinsurance pool led to a \$250 million settlement that topped Lawyers Weekly's survey of the 25 largest verdicts and settlements in 2005.

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The cutoff in the latest survey was \$2.93 million. That's a slight drop from 2004, when the benchmark was \$3.28 million.

Although business misconduct claims led the list — accounting for three of the largest recoveries and four overall — they didn't dominate the roundup as they did in 2003 and 2004, when as many as 10 made the survey.

Products liability took the second spot on the list with a \$26 million wrongful death settlement arising from a 1999

airplane crash near Concord. That's the largest wrongful death settlement ever reported to Lawyers Weekly.

However, for other PI cases the 2005 numbers were roughly the same or lower than in 2004.

- Eight medical malpractice settlements made the top-25 list in 2005, compared to six in 2004. But the number of medmal recoveries over \$3.25 million was the same both years, and the largest medmal settlement reported in 2005 — \$7.5 million — was considerably less than the largest in 2004, which was \$13.5 million.
- In auto negligence, only four recoveries made the survey in 2005 compared to six in 2004. The largest auto negligence recovery, \$4.4 million, was also smaller than in 2004, when the largest was \$7 million.
- An unusual premises liability suit produced the only verdict on the top-25 list when Cumberland County jurors awarded \$3 million over a woman's fall on a hard hospital floor during a mammogram. That verdict was smaller than the only verdict on the 2004 list — \$7.5 million.

In what may be a new trend — given the continuing upsurge in new roads and real estate prices

— condemnation litigation resulted in three recoveries over \$3 million in 2005. No condemnation cases made the cut in 2004.

### **Largest Wrongful Death Recovery**

The largest wrongful death settlement ever reported to Lawyers Weekly is the \$26.05 million recovery in *Estates of David and Ann Drye v. Teledyne Technologies, Inc. et al.*

The case arose on June 14, 1999 when a Cessna 421 crashed near the Concord Mills Mall shortly after takeoff. Among the dead were the founder of a prominent real estate company in Concord and his wife.

"As far as we know, this is one of the largest settlements in any aviation case in the country for the death of a husband and wife, and may be the largest ever," said Kansas City, Mo. attorney Gary C. Robb, a lawyer for the plaintiffs.

In an e-mail to Lawyers Weekly, local counsel Joe Dozier of Charlotte said the case "had the rare combination of massive economic and non-economic damages, aggravated liability and the potential for punitive damages."

According to Dozier, Mr. Drye "was a multi-millionaire real estate executive and president of his own firm, the David Drye Company, the largest privately held real estate company in the southeast United States."

The Dryes survived the initial impact but were burned "beyond recognition" by the ensuing fire, Dozier said.

"They died a terrible death. The medical examiner determined that both died from carbon monoxide poisoning and thermal burning. A Concord police officer who was one of the first on the scene looked into the burning airplane. He saw two bodies holding on to each other. These were Mr. and Mrs. Drye. The medical examiner noted that Mrs. Drye's wedding ring was on her hand, which was intertwined with her husband's hand."

The plaintiffs' theory of the case was that the crash was caused when the plane's right engine failed.

A major obstacle stood in the way of establishing liability on that basis: after investigating the crash for 18 months, the National Transportation Safety Board concluded pilot error was to blame.

"That's a difficult hurdle to overcome," said Robb, whose practice primarily focuses on aviation cases. "So we went back to the drawing board and spent a lot of time with the physical evidence, the engine parts. We did a number of metallurgical studies, including a scanning electron microscope study, at our consulting engineer's lab in Pensacola, Fla. He started looking at a part called a viscous vibration damper.

"In any engine, vibration is the enemy because it increases metal fatigue and essentially makes parts old before their time," said Robb.

To minimize vibration, a damper shaped like a thick doughnut fits on the engine gear.

"When it's weighted down, the gear is less likely to wobble," Robb said. "It's pretty simple from an engineering standpoint."

According to Robb, the plaintiff's expert focused on a part of the engine gear that hadn't been looked at by the NTSB. He concluded the vibration damper was off-center.

"The damper failed, the gear wobbles, metal flakes get into the engine oil and things jam up," said Robb.

The defendants denied any liability, arguing among other things that no air crash had ever been caused by a faulty vibration damper.

But Robb said he uncovered a similar crash in England "that occurred exactly the same way.

"Still, liability was a big obstacle to overcome when the government says it happened a different way," said Robb.

Recovering hefty damages from a jury could also present problems, according to Robb. The reason: the Dryes' eight children already stood to inherit \$47 million from their parents.

"The risk was that the jury would penalize the beneficiaries because they had already collected about \$6 million each," said Robb.

In addition, the parties sharply disagreed over the income lost from Mr. Dye's real estate business — the plaintiff's expert projected \$100 million, while the defendant's expert said the loss was only \$4.9 million.

Three days into trial, the defendants offered a total of \$26 million to settle and the plaintiffs accepted.

"Once we got to \$26 million, that was a threshold that our clients felt was appropriate and justice was served," said Robb.

According to Robb, the largest part of the settlement, \$20 million, was paid by the company that manufactured the engine in the Dryes' airplane, while another \$2.8 million was paid by the company that supplied the vibration damper. The remainder of the settlement came from the company that overhauled the engine and a maintenance services facility.

## Top Three Business

### Misconduct Cases

Two of the top three business misconduct recoveries reported in 2005 have connections to cases reported in previous surveys.

- **Accounting fraud.** In *Sompo Japan Insurance Inc. et al v. Deloitte & Touche, LLP*, a group of Japanese insurers obtained an estimated \$250 million settlement with the accounting firm that audited Fortress Re, a now-defunct Burlington reinsurance company that managed a billion-dollar premium pool for the plaintiffs.

Sompo had already recovered \$400 million from Fortress Re on claims that its principals fraudulently concealed liabilities to make the premium pool look more profitable, and diverted millions of dollars to themselves (see Jan. 24, 2005 *Lawyers Weekly*). That settlement topped the list of 2004 recoveries.

In the case making the 2005 survey, Sompo sought damages against Deloitte & Touche, alleging the firm was liable for fraud, unfair trade practices, misrepresentation, and aiding and abetting Fortress Re's breach of fiduciary duties to Sompo.

In a September 2005 article, the *Wall Street Journal* estimated that Deloitte paid the plaintiffs \$250 million to settle the claims.

Greensboro attorney Alan Duncan, a lawyer for Sompo, declined to comment on the settlement, telling *Lawyers Weekly* only that the case had been resolved "to the mutual satisfaction of the parties."

- **"Employee-raiding" case settled on appeal.** In *Sunbelt Rentals, Inc. v. Head & Engquist Equipment, L.L.C. et al*, the defendants agreed to drop a petition to the Supreme Court — and pay the plaintiff \$20.13 million — after the Court of Appeals affirmed a 2003 judgment for the plaintiff in Business Court.

The judgment, which totaled \$16.2 million including attorney's fees and made the survey of 2003 large recoveries, was entered on claims that the plaintiff, an equipment leasing company, bought

a scaffold rental business — then saw it crippled when former officers lured scores of key employees to a competitor.

To resolve the case, the defendants paid the amount of Sunbelt's judgment, plus \$3.93 million in post-judgment interest.

Charlotte attorney William L. Rikard Jr. was the lead attorney for the plaintiffs.

- **Class action in estate-planning scam.** In a class action out of Cumberland County, investors who claimed they were victimized in an estate planning scam recovered \$5.25 million in *Masters et al v. Anthony Allen et al.*

The lawsuit claimed that Allen and a business partner defrauded 120 customers out of \$14 million. Also named in the suit was a General Electric subsidiary that used Allen as a broker.

Allen has since pled guilty to more than 80 counts of embezzlement and obtaining property by false pretenses, according to the plaintiffs' attorney, Coy Brewer Jr. of Fayetteville.

"Aside from the dollars involved, this was an interesting case from a legal standpoint because it involved whether a financial institution was bound by illegal activity by an agent of that institution," Brewer said.

In approving the class action settlement, Superior Court Judge John Jolly tacked on another \$1.25 million in attorneys' fees.

The complete top-25 survey appears in a special supplement in this issue.

— *Questions or comments may be directed to* [Ertel.Berry@nc.lawyersweekly.com](mailto:Ertel.Berry@nc.lawyersweekly.com).

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