

## [Products Liability Law Daily Wrap Up, DAMAGES—AIRCRAFT AND WATERCRAFT—E.D. Pa.: Aircraft engine maker owes delay damages to plane crash victim’s survivors, \(Sept. 11, 2017\)](#)

Products Liability Law Daily Wrap Up

[Click to open document in a browser](#)

By Georgia D. Koutouzos, J.D.

A little more than a week after ruling that a jury’s \$2.8-million damages award in favor of the widow and minor child of a U.S. Forest Service employee who died in an airplane crash was able to withstand yet another in a string of challenges by the manufacturer of the aircraft’s engine, a Pennsylvania federal court granted almost \$444,000 in delay damages favoring the deceased man’s survivors. The engine maker offered no proof nor any details whatsoever as to what the survivors’ demand or settlement posture had been or why it found that posture to be unreasonable such that delay damages had to be denied or reduced, the court held ([Snider v. Sterling Airways, Inc.](#), September 7, 2017, Joyner, J).

A single-engine Cessna aircraft crashed following a total engine failure as the plane was preparing to land, killing the pilot and his two passengers, both of whom were U.S. Forest Service employees who had been conducting an aerial deforestation survey. The flight was conducted pursuant to a charter contract between the Forest Service and the plane’s owner, Sterling Airways, Inc. The ill-fated aircraft had been manufactured in 1973 and was equipped with a Continental Motors, Inc. engine that had been last overhauled in 2004. The estates of the three decedents filed suits against Sterling and Continental, alleging claims for negligence, gross negligence, recklessness, and/or strict liability on the part of the defendants in, among other things, the manufacturing, maintenance, and operation of the aircraft, its engine, and its component parts. Two of the suits settled prior to trial but the third—on behalf of one of the deceased Forest Service employees—went to trial.

The jury returned a nearly \$2.8-million verdict for the deceased man’s representatives and against Continental Motors only [see *Products Liability Law Daily’s* February 24, 2017 [analysis](#)]. Although the aircraft owner was found to have breached its contract with the Forest Service and to have been negligent, the jury determined that the owner’s negligence and breach were not actual causes of the accident. Thereafter, the court denied the engine maker’s motion for judgment as a matter of law [see *Products Liability Law Daily’s* June 30, 2017 [analysis](#)]. Most recently, the trial court denied Continental’s motion for a new trial, concluding that the evidence presented at trial had been more than sufficient to support the jury’s conclusion that the accident was caused by the inadequate hardness of an exhaust valve guide that had been installed in one of the engine’s cylinders. In addition, the manufacturer’s objections to the court’s evidentiary rulings and jury instructions failed, as did its assertion that the evidence at trial showed that the aircraft owner’s maintenance deficiencies were the cause of the accident [see *Products Liability Law Daily’s* September 7, 2017 [analysis](#)].

Thereafter, the decedent’s survivors moved for the entry of delay damages pursuant to applicable Pennsylvania procedural law (Pa. R. C.P. 238), which Continental opposed, asserting that the motion either should be denied in its entirety or, alternatively, that a significantly lower amount of delay damages should be awarded.

**Availability of delay damages.** Pennsylvania permits delay damages to be awarded after one year has elapsed from the filing of the complaint through the date on which the jury returned its verdict, excluding: (1) the time period following which a settlement offer has been made; and (2) those time periods during which the plaintiff caused delay of the trial. In making a decision on the entitlement to delay damages, the court must consider the length of time between the starting date and the verdict, the parties’ respective responsibilities in requesting continuances, the parties’ compliance with rules of discovery, the respective responsibilities for delay necessitated by the joinder of additional parties, and other pertinent factors such as the reasonableness of the parties.

In determining whether a party's decision regarding settlement of a case is unreasonable or in bad faith, the court also must consider: (1) strengths and weaknesses of all the evidence—including evidence of liability to be presented on both sides; (2) the anticipated range of the verdict; (3) the relative appearance, persuasiveness, and appeal of the plaintiff, defendant and various witnesses; (4) whether the plaintiff has engaged in reasonable negotiations; and (5) the amount of any offers compared to the jury award.

In the case at bar, the deceased man's survivors initially filed their complaint against the defendants in the Court of Common Pleas of Philadelphia County on May 31, 2012, after which Continental promptly removed the case to federal court on June 1, 2012, prior to service of process. For purposes of the motion for delay damages, the parties agreed that June 1, 2012, was the date upon which process originally was served such that the time for commencing accrual of delay damages was June 1, 2013. Therefore, the period of time for which delay damages could be assessed was the nearly four years between June 1, 2013, and February 16, 2017 (the date of the jury's verdict), with the exception of any periods of time for which delay might be attributed to the plaintiffs.

**Parties' conduct.** According to the decedent's survivors, there were no periods of time during which the accumulation of delay damages could be tolled. However, the engine maker countered that because the plaintiffs' initial settlement demand was unreasonable, they should be limited to collecting delay damages for the time frame between the date of service and the date on which they ostensibly articulated their settlement posture at the first mediation on December 8, 2014.

Putting aside the irrelevancy of the survivors' allegedly unreasonable settlement demand, the engine manufacturer offered neither proof nor any details whatsoever as to what the plaintiffs' demand or settlement "posture" was or why it found that posture to be unreasonable. While it certainly could be said that the survivors' initial \$15-million settlement demand was unreasonable, it was not so outrageous as to have stopped Continental Motors from all further settlement conversations. Clearly, it was intended to be a starting point for discussion.

Furthermore, in reviewing the docket and history of the case, no instances could be found in which the plaintiffs could properly be charged with delaying the trial. The litigation was a somewhat complex matter involving extensive discovery—including several inspections of the aircraft, extensive written discovery, and multiple depositions of fact and expert witnesses who were located throughout the country. At various points, the case had been consolidated with one of the other of the three lawsuits arising out of the tragic accident; necessitating the coordination of the schedules of additional attorneys.

Consequently, no other conclusion could be reached but that, based on the record, there were no periods of delay that could be ascribed to the plaintiffs. Accordingly, the decedent's survivors were entitled to delay damages in the aggregate amount of \$443,550.51.

The case is No. [13-CV-2949](#).

Attorneys: Allison B. Williams (Steptoe & Johnson PLLC) for Elizabeth C. Snider. Jeffrey W. Moryan (Connell Foley LLP) for Sterling Airways, Inc. Leigh Woodruff (Skinner Law Group) and Laurie Alberts Salita (Jacobs Law Group PC) for Continental Motors, Inc.

Companies: Sterling Airways, Inc.; Continental Motors, Inc.

Cases: CourtDecisions DamagesNews AircraftWatercraftNews PennsylvaniaNews