

CASE STUDY

CASE NAME:

LAYUG. Et al.

_____ v. _____

AAR AIRCRAFT & ENGINE GROUP, INC., an Illinois Corporation, and FLEET BUSINESS CREDIT CORPORATION, a Corporation, f/k/a SANWA BUSINESS CREDIT CORPORATION

NOLAN LAW GROUP CLIENT:

LAYUG

DEFENSE ATTORNEYS:

Lord Bissell Brook Liddel

CASE TYPE:

Aviation Disaster -
Wrongfull Death

CASE FACTS:

On April 19, 2000, Air Philippines Flight 541 left Manila at 05:21 a.m. and was due to land on Samal Island at Davao around 06:45 a.m. At approximately 07:03 a.m., the Boeing 737 slammed into a coconut plantation on Mt. Kalangan, Sitio Camanlangan in Barangay San Isidro, caught fire and disintegrated. 131 passengers and crew died in the accident, making it the largest loss of life from an airline crash in Philippine history.

At the time of the accident, the aircraft was being operated by Air Philippines under a lease agreement with AAR Aircraft & Engine Group (“AAR”) and Fleet Business Credit Corporation (“Fleet”). The plane was a Boeing 737- 200 with Registration Number N50SW. The aircraft was a 22-year-old plane that had been “put out to pasture” by Southwest Airlines only two years earlier.

Air Philippines was an under-funded and unsafe start-up airline. It was incorporated on February 13, 1995 by a wealthy Philippine businessman following deregulation of the Philippine airline industry. Air Philippines did not begin actual flight operations until February 1, 1996 under a temporary certificate. Less than seven months after initiating operations, the Philippine government suspended its operations due to safety concerns following a series of mishaps.



AAR is a company located in Wood Dale Illinois, that specializes in locating, acquiring, and re-selling used aircraft. The company also matches buyers and sellers with specific financial requirements and offers innovative financing solutions, including “lease return”. In 1998, N50SW was purchased by AAR Aircraft & Engine Group, Inc. During the acquisition of N50SW, AAR obtained an independent inspection report to help them ascertain the mechanical viability of the aircraft. According to the AVTRAC inspection report, the future operation of N50SW “would likely be maintenance intensive, with a corresponding increase in maintenance downtime”. The AVTRAC report also recommended that AAR “proceed with caution” if considering acquiring the aircraft. AAR went ahead with the purchase of the antiquated 737 for \$2 million and immediately insured it for \$4 million. After the crash, AAR was able to turn what should have been a loss into a profit.



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Nolan Law Group’s Aviation Litigation Department filed suit on behalf of 47 plaintiffs in August of 2000. The 110 individually-filed, wrongful-death lawsuits were prosecuted in the Circuit Court of Cook County Illinois, against Chicago area companies - AAR Aircraft & Engine Group, Inc. and Fleet Business Credit Corporation. Donald J. Nolan of Nolan Law Group acted as Lead Counsel for all plaintiffs in the cases.

Nolan Law Group initially took the position that AAR and Fleet should never have leased the airplane to Air Philippines, a then under-funded and unsafe start-up airline. In other words, the defendants negligently entrusted the airplane to a company that was not able to operate and maintain it in a safe manner. In April of 1999, the aircraft was sold by AAR to Fleet and then assigned its rights to Fleet under the lease with Air Philippines. Neither AAR nor Fleet ever visited Air Philippines’ place of business. No one from either company ever inspected or audited the airline’s operations, maintenance or training. Required maintenance and training during the term of the lease were never performed, and these companies continued to “turn a blind eye” to the obvious dangers.

Nolan Law Group maintained that this particular aircraft would have been considered “unworthy” by FAA standards and the facts are that FAA standards are only minimum standards and Air Transportation Office (ATO) standards used by the Philippines are actually below FAA standards. AAR was already relying on below minimum standards while brokering the deal. If AAR and Fleet had the plane registered in the U.S. and had it flying in the Philippines, the plane would have had to meet FAA standards and not ATO standards. It was apparent that these two U.S. companies were trying to squeeze every last ounce of profit out of a worn-out aircraft by pawing it off to a third-world country with a lower standard of safety.

Nolan Law Group exposed AAR’s and Fleet’s failure to equip the aircraft with an enhanced ground proximity warning system (EGPWS) and instead provided an outdated GPWS that was unsuitable for the topography of the Philippine terrain. The newer system would have given the pilots an approximate half-minute warning that they were approaching the fateful hill. The outdated system provided the pilots of Flight 541 with only a four-second warning.

In the case of the Air Philippine crash, the fact that the plane was sub-standard was also motivation for an alleged cover-up by the insurer. Four months after the insurance claim was paid, workers paid by the insurance firms were alleged to have destroyed evidence. Depositions indicated that a Lloyds of London agent, employed



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by the insurance carrier for AAR, was involved in the burial of the wreckage. A hole was dug in the ground and aircraft parts were placed in the hole, covered with concrete and covered over with dirt. Counts of spoliation of evidence were added to the subsequent lawsuit.

Additionally, Nolan Law Group handled and won a major victory on the appeal of the judges ruling on the Forum Non Conveniens motion. AAR and Fleet tried several times to have the cases transferred to the Philippines so that they would not have to answer to U.S. law. AAR claimed that Illinois was an inconvenient forum for the litigation and sought to have the litigation transferred to the Philippines under the legal doctrine of forum non conveniens. The appeal resulted in the trial court denying the defendants' request. The trial court's decision of Judge Kathy Flanagan was later affirmed by the Illinois Appellate Court in a published decision - *Ellis v. AAR Parts Trading, Inc.*, 357 Ill. App. 3d 723, 828 N.E.2d 726 (1st Dist. 2004).

One of the many lessons learned from this case is that a company leasing an aircraft has a duty to provide oversight to ensure that these airplanes are adequately equipped, safely maintained and operated by properly trained pilots. Attempting to say "we leased it and relied on the governmental authorities of foreign countries to assure passenger safety" is not sufficient in the United States or Illinois courts. In the future, lessors and owners will need to learn that "oversight" does not mean "overlook."

THE RESULTS:

On November 26, 2007, Nolan Law Group, on behalf of the surviving family members, negotiated a settlement with AAR and Fleet worth \$165 million dollars. The amount is estimated to bring each family approximately \$1.5 million, which is a significant increase compared to the few thousand dollars initially offered.

The impact of this unprecedented case on the legal theories and court decisions involved in the Air Philippines case has potential ramifications for future lawsuits due to the number of aviation-related companies in the U.S. who are conducting business with third-world countries.

If you would like more information, contact Thomas J. Ellis at (312) 630-4000 or tje@nolan-law.com