

JURY VERDICTS

MONDAY, February 21 2006

PILOT'S WIDOW SETTLES FOR \$4M BEFORE JURY'S \$10M AWARD

Case: Valerie Leung, personal representative of the estate of Derek Anthony Leung v. Certified Engines Unlimited Inc.

Case No.: Miami-Dade Circuit Court, 2000-18926-CA-01

Description: Negligence

Judge: Michael Genden

Trial date: Feb. 6, 2006

Filing date: Aug. 4, 2000

Plaintiff attorneys: Steven C. Marks and Ricardo Martinez-Cid, Podhurst Orseck in Miami.

Defense attorneys: John M. Murray, Murray Marin & Herman in Tampa, and David Herman, Murray Marin & Herman in Coral Gables

Details: In 1998, Derek Leung, a Canadian who ran a commercial air charter service in Guyana, was flying a single-engine Cessna 206 with his employee, Wazim Sattaur, when the plane's engine sputtered. Before Leung could complete an emergency landing, the engine shut down and the plane crashed, killing both Leung and Sattaur.

Three years earlier, the plane's engine had been shipped from Guyana to Certified Engines' repair facility in Opa-locka for work, and two cylinders were replaced. Prior to the crash, over a three-year period, the plane had flown with no problems for hundreds of hours. Leung's widow sued Certified Engines, claiming that the company was negligent in the engine repair.

Plaintiff case: The plaintiff contended that Certified had installed a cracked engine cylinder in the plane while it was under repair. During the three years prior to the crash, the plaintiff contended, the crack grew until it ultimately caused the engine failure and the crash.

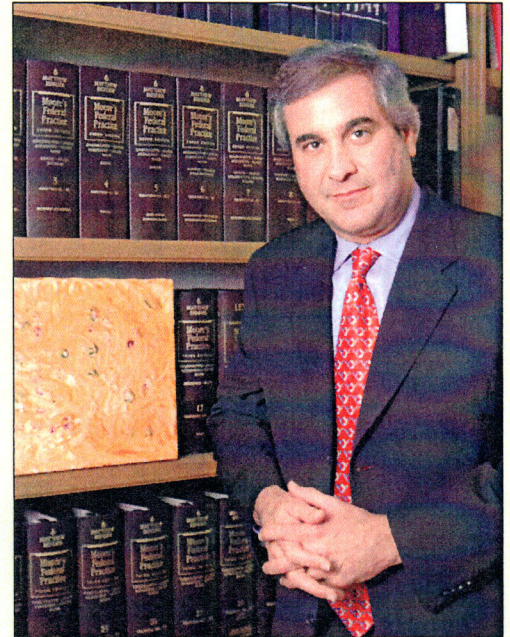
Marks also argued that there were missing records and suspicious behavior

on the part of Certified. According to Marks, the defense claimed a tornado that swept through Opa-locka had wiped out all records relating to Leung's plane. But Marks said in an interview that in another case his firm has involving Certified, the company was able to produce records from the same time period.

Defense case: The defense relied heavily on the fact that the plane had flown for three years and more than 700 hours after the engine overhaul and before the crash. In addition, the defense disputed the existence of a crack in the engine. "We showed that there was no crack in the engine when my client had it, and even if a crack was there, my client could not have discovered it," Murray said.

Key factors: Marks said the records issue helped swing the jury. "We were not able to prove that the records were destroyed, but it did raise some suspicions," he said. "I think it helped us tremendously that they could never explain why these records were missing, yet they had [the records from the other case], which were kept in the same place at the same time." Marks also noted that the defense's main expert dropped out at the last minute, and the company had to rely on a backup expert.

Outcome: After a six-day trial, a six-member jury deliberated for four hours and awarded \$10 million in noneconomic damages. But prior to the verdict, the plaintiff and defense had entered into a high-low agreement, capping the award at \$4 million. Certified Engines' liability coverage has a policy limit of \$4.8 million. Since Certified, not the insurance



Steven C. Marks won a \$4 million award for the widow of a man killed in a plane crash.

company, had refused to settle the case before trial, the plaintiff would not have been able to go after the insurer for bad faith to recover damages in excess of the policy limit.

Comments: "In essence, [Certified's refusal to settle] ruined our bad faith case," Marks said. "Rather than own a bunch of tools in a warehouse, we went into a high-low agreement. From the family's perspective, it brought finality and certainty."

Murray looked at the settlement in a different light. "I think the plaintiffs were equally convinced of our position, because they entered the high-low settlement," he said.

Murray also noted that Leung's disabled young adult son sat in the courtroom the entire time in front of the jury. "In my judgment this was a sympathy-driven jury," he said. ♦