

The Philadelphia Inquirer

By Jane M. Von Bergen
INQUIRER STAFF WRITER

Plane, paper-mache elk parts, used to impress jury

Two people died when a Cessna P210 crashed in Idaho on Sept. 28, 2005 - so the issues in front of a Philadelphia jury today were important and serious.

But courtrooms have their own sense of theater, sometimes of the absurdist quality, which is why City Hall onlookers noticed a pin-striped-suited lawyer walking down a long corridor carrying a life-sized paper-mache model of a slaughtered elk's hindquarter while a colleague slung a pilot's seat on his shoulder.

Both the elk's leg and the cockpit seat had been removed from an actual airplane, minus the wings and engine, that was sitting on the northwest plaza of City Hall in the kind of clear, heated tent mostly used for parties.

It was all part of an effort to impress jurors in a case filed by the families of the men who died in the plane against its manufacturer and a company in Factoryville, Pa., north of Scranton, that modified the Cessna.

Pilot Alfred Wilsey Jr., 60, and his longtime friend, Richard Ongaro, 62, had just taken off from the Flying B Resort Ranch in Salmon, Idaho when the plane crashed. The two had been on a hunting trip and were returning home to Marin County, Calif.

The families of the two men believe the plane crashed because the pilot's seat slid back unexpectedly and made it impossible for Wilsey to reach foot and hand controls that operate the plane. The attorneys for the plane-builder say that the Cessna was too loaded down with elk carcass, two rifles and other gear from the trip.

The trial is in Philadelphia because Cessna planes are sold here and because the attorney for the families, Arthur Wolk, a nationally known aviation lawyer who himself survived a plane crash, practices law here.

It was Wolk who arranged for the plane to be parked on the plaza in hopes of showing how the seat slid backward.

Workers had tried to get the plane in City Hall's freight elevator, but it was too big, said Joan Schlotterbeck, commissioner of Public Property. So Schlotterbeck approved the exhibit being placed outside City hall. The \$25 fee was paid by Wolk.

In the meantime, people kept asking her what it was there for. It was a budget decision, she joked: "They took my car. And gave me a plane."

Schlotterbeck's plane was actually the plaintiff's exhibit in the Cessna case - not the plane involved in the accident, which was consumed by fire, but a facsimile of it.

"There is no substitute for seeing the real thing if you have it," said Philadelphia attorney [Shanin Specter](#), who tries product-liability cases. "If the real thing isn't available, you use a facsimile."

Soon Specter plans to bring a school bus and a crashed Honda onto the plaza for a case he's trying.

In a 2005 product-liability case that resulted in a multi-million dollar victory for Philadelphia plaintiff attorney Michael Donovan's client, the defendant installed one-fourth of a Kia automobile in the courtroom.

"For a manufacturer, it's very easy and not that costly to make a model and replicate their own product," said Donovan, a partner in Donovan Searles L.L.C.

"For the plaintiff it can cost tens of thousands of dollars," he said. "You have to weigh that against what the claims are."

But the airplane outside City Hall wasn't the only one.

The defense installed its airplane, also wingless, in City Hall courtroom 253.

Other exhibits in the case included a double-bed-sized model of the crash-area terrain, four different pilot seats and at least three additional model planes of various sizes.

The somber reality of the case was boxed up in a shipping crate in the center aisle. The box held the burned-out remains of the plane piloted by Wilsey.

The plane crashed a quarter-mile from the runway after veering left, crossing the Salmon River and hitting the ground tail first. Then, the nose "slammed into the ground," federal aviation records say. The plane flipped over, turned upside down and burst into flames.

The men's families filed a lawsuit in September 2007 against the Cessna Aircraft Co. of Wichita, Kan., and O & N Aircraft Modifications Inc., the Scranton-area company that modified the plane. Also sued was McFarlane Aviation Products Inc. of Kansas, which makes the rails on the floor of the plane that allow the seats to slide up and back so the pilot can get in and out of the plane.

The plaintiffs say the crash was the result of a common design flaw - one that caused Cessna to pay out millions of dollars in punitive damages in a seat-slip case after a crash in Cape May in 1980.

The defense in the Idaho crash denies there was a design flaw, and claims the plane was overweight. There was so much baggage in the plane that "there was little if any room for the [backward] movement of the seat," according to court documents.

Heading the defense team was Ralph Wellington, a partner in Schnader Harrison Segal and Lewis L.P. in Philadelphia.

Hearing the case is Philadelphia Common Pleas Court Judge Marlene Lachman, who chided the attorneys for their contentiousness.

That was after Wellington, who is Cessna's lawyer, described Wolk's exhibit "as a Disney event," and Wolk accused Wellington's team of manipulating the evidence.

In the end, after the lawyers argued all morning about how the exhibit would be presented, jurors spent only about a half-hour in the heated tent. (Someone in the courtroom joked that it had been used for a bar mitzvah the previous night.)

The jurors saw the nose of the plane rise up and down and saw how moving the rudder pedals and the controls changed the direction and flight angle of the plane, dramatizing Wolk's contention that a sliding pilot's seat effects control.

As Specter pointed out, Wolk is probably being paid, as most plaintiffs' attorneys are in this kind of case, on a contingency basis.

"The expense is daunting," Specter said. If Wolk loses, "he's got to eat the cost" of constructing the model.

As for the defense airplane: "When Ralph Wellington defends the case, the cost is absorbed by the insurance carrier or the company," Specter said. "It's not going to be him [that pays] whether he wins the case or not."