

## Widow's suit over plane crash allowed to proceed

By Marc Karlinsky  
Law Bulletin staff writer

A state appeals panel has cleared the way for the widow of a man killed in a 2006 plane crash in the northwest suburbs to sue the estates and businesses run by the plane's owners.

In a 57-page opinion, 1st District Appellate Justice [James Fitzgerald Smith](#) wrote that the plaintiff's allegations that the plane was negligently entrusted to an inexperienced pilot were sufficient to survive motions to dismiss.

A series of lawsuits were filed in 2006 after a Cessna 421B aircraft crashed that January near Palwaukee Municipal Airport, since renamed Chicago Executive Airport, killing the four men aboard.

Two of the men, Scott Garland and Mark Turek, were employees of Morgan Stanley & Co., traveling to Kansas for a business meeting. With them was a client, Michael Waugh.

The fourth person on the plane was Kenneth Knudson, the founder and owner of Sybaris Club International Inc. — a chain of hotels with in-suite pools and hot tubs.

Knudson was also one of two shareholders in HK Golden Eagle Inc., the plane's corporate owner. The second shareholder, Howard Levinson, was not on board.

In addition to flying for business, Turek was interested in becoming a part-owner of the plane. He was a licensed pilot with experience in a smaller plane and had a few hours training on the Cessna when at the controls the night of the crash.

Among the lawsuits filed in Cook County Circuit Court was one filed by Jennifer Garland, Garland's widow. She alleged Levinson was negligent in entrusting the plane to Turek's command when he was not qualified to fly the plane.

She also named Knudson's estate, alleging both negligent entrustment and negligent supervision — that Knudson, while on the plane, should have properly supervised Turek in the cockpit.

In counts against HK Golden Eagle, Garland alleged the corporation was vicariously liable for Levinson and Knudson. And she alleged the plane was flying for Sybaris business as a de facto company-owned plane, and therefore the company was liable.

In July 2010, Circuit Judge [Irwin J. Solganick](#) dismissed the case.

On appeal, the panel reviewed the case under Section 2-619. Under such motions to dismiss, defendants admit to a complaint's sufficiency but assert the claims are still defeated by other means.

To prove negligent entrustment, Smith wrote, Garland must show that the defendants gave Turek permission to use the plane when they knew or should have known it would likely be used in a dangerous or harmful way.

"Like an automobile, an airplane is not inherently dangerous, but may become so if operated by a pilot who is incompetent, inexperienced or reckless," he wrote.

The panel found that issues of material fact exist in the case — specifically, Garland's allegation that Levinson was aware of Turek's inexperience flying the Cessna, despite vast experience in other types of planes.

Levinson was not required to investigate Turek's qualifications, Smith wrote. Rather, he would have a duty to inquire further if he had a reason to know Turek may be incompetent or reckless.

Smith wrote that it's impossible to know what happened in the plane the moments before the crash, but the risks of an inexperienced pilot on a wintry night are foreseeable enough that the allegations should be brought to trial.

Under the same cloud of mystery regarding the events on the plane, the panel affirmed the dismissal of negligent supervision counts against the Knudson estate.

The panel also ruled that the trial court prematurely dismissed claims that the plane was on Sybaris business.

"We think this factual scenario is not appropriate for a motion to dismiss," Smith wrote.

“Construing all evidence and reasonable inferences in plaintiff’s favor, as we must on a motion to dismiss, whether and to what extent Knudson was traveling on Sybaris business remains a question of fact, which should be presented to the trier of fact.”

Because the case reopened claims against Knudson and Levinson, it also reversed the dismissal of claims of HK Golden Eagle’s vicarious liability.

“The facts of this case show that HK knew or could have known by the exercise of due diligence, that Turek was not legally qualified to function as the Pilot in Command,” Smith wrote.

“More than sufficient facts show that not only was Turek inexperienced flying a Cessna 421B in these conditions, but Turek’s piloting capabilities were critiqued in various ways by Knudson and Levinson prior to the subject flight.”

The panel reversed the circuit court’s decisions as to negligent entrustment against Levinson and the Knudson estate, vicarious liability against Sybaris and vicarious liability against HK Golden Eagle. It affirmed the other aspects of the case.

Justices [Nathaniel Howse Jr.](#) and [Bill Taylor](#) concurred in the opinion, published Thursday. The case was originally released as an unpublished order last month.

The attorneys involved in the case said the court withdrew its Rule 23 order and published the ruling on its own accord.

Garland is represented in the case by [Richard F. Burke Jr.](#) and [Robert P. Sheridan](#) of Clifford Law Offices. Burke said they are pleased with the decision.

Knudson is represented by [Alan L. Farkas](#) and [Michael S. McGrory](#) of SmithAmundsen LLC.

In a statement, McGrory expressed concern the ruling changes longstanding state law.

“The appellate court’s ruling has far-reaching implications for those who loan a car to a friend, a parent who lets a child take the family car, people who entrust their car to a valet service, car rental agencies, airplane rental agencies — really, anyone who ever loans any piece of equipment to another,” he wrote.

Levinson is represented by [William F. DeYoung](#) and [Loretto M. Kennedy](#) of Chuhak & Tecson P.C.

Any critiques of Turek’s flying skills were uncovered only after extensive research by the plaintiff, DeYoung said, and would not have been readily obvious to his client, who knew Turek as a competent pilot.

“You need something to make you look further,” he said.

HK Golden Eagle is represented by [Joseph A. Bosco](#) and [Paris B. Glazer](#) of LaRose & Bosco Ltd. They could not be reached for comment.

Sybaris is represented by [John Scott Hoff](#) and [Timothy J. O’Connell](#) of Hoff Law Group. They could not be reached for comment.

The case is *Jennifer E. Garland v. Sybaris Club International, Inc., et al.*, 2014 IL App (1st) 112615.