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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAMON L. STUTES,

Plaintiff,

v.

BOCA AVIATION, INC., a corporation,

Defendants.

Case No. **CIV-S-01-1074 FCD GGH**
PLAINTIFF’S TRIAL BRIEF

TRIAL: August 22, 2006

I. INTRODUCTION

This is a general negligence action seeking damages for personal injuries sustained by plaintiff, Damon L. Stutes when the airplane he was a passenger in crashed on June 4, 2000, in Carson City, Nevada.

The 1977 Mooney M20J aircraft involved in the crash was owned and piloted by William C. Hobbs, who had purchased the used airplane several weeks before the crash from Aquila Aviation, Inc. Because the airplane was located in Florida at the time of purchase, Mr. Hobbs contracted with Boca Aviation, Inc. (“Boca”), an airplane service and maintenance provider, to perform a “pre-buy evaluation” on the plane. Mr. Hobbs hired Boca to look at the airplane in order to assist him decide whether or not to purchase the plane. It was agreed that if Boca saw anything that made them uncomfortable, it would stop the inspection to limit costs and Mr. Hobbs could look for another airplane.

1 Boca performed only a cursory inspection of the plane, which did not include the engine's
2 fuel system, but nevertheless concluded that the plane was a "P.O.S." (meaning that it was a piece
3 of s - - t.) Boca never conveyed its conclusion to Mr. Hobbs, but rather, informed him that the
4 plane had minor discrepancies and recommended repairs. Based upon this information, Mr.
5 Hobbs purchased the aircraft, repaired the discrepancies Boca had told him about, and commenced
6 flying the plane. The facts discovered during the FAA investigation of the crash demonstrate that
7 the crash was the result of an interruption in the engine's power caused by a partially clogged fuel
8 injector nozzle. The clog was found to have been caused by products of the long-standing
9 corrosion of aluminum.

10 As a result of the plane crash, Dr. Stutes sustained multiple traumatic injuries to his arms,
11 legs, pelvis, back and head. He was airlifted from the scene of the crash to Washoe Medical
12 Clinic, where emergency life-saving procedures were performed. Dr. Stutes underwent multiple
13 surgeries, as well as extensive rehabilitation. Further surgeries and rehabilitation are still needed.

14 **II. PARTIES**

15 Plaintiff Damon L. Stutes is represented by Ronald H. Wecht and Doris Cheng of Walkup,
16 Melodia, Kelly, Wecht & Schoenberger, and by Richard Young, of the Law Offices of Richard
17 Young.

18 Defendant Boca Aviation, Inc. is represented by Timothy J. Ryan of the law offices of
19 Ryan & Fong.

20 **III. JURISDICTION**

21 Exercise of personal jurisdiction is proper in this case for the reasons stated in the Court's
22 Memorandum and Order (dated December 20, 2001) on Defendant's Motion to Dismiss for Lack
23 of Personal Jurisdiction. This court has original jurisdiction over this civil action according to 28
24 U.S.C. 1332(a)(1), in that it is a civil action wherein the matter in controversy exceeds the sum of
25 \$75,000, exclusive of interest and costs and is between citizens of different states.

26 **IV. FACTUAL BACKGROUND**

27 **A. Boca's Pre-Inspection Evaluation**

28 The airplane involved in the crash, a 1977 Mooney M20J, was owned and piloted by

1 William C. Hobbs, a resident of California. Prior to purchasing the used Mooney aircraft from
2 Aquila Airways, Inc., Mr. Hobbs had conducted a nationwide search before locating the subject
3 airplane in Florida. Mr. Hobbs contracted with Boca Aviation, an authorized representative and
4 certified service facility for Mooney aircrafts, to conduct a pre-buy inspection of the airplane. The
5 aircraft crashed within a few weeks after the pre-buy evaluation and Mr. Hobbs' purchase of the
6 plane.

7 Mr. Hobbs spoke with Boca Aviation's Director of Maintenance, John C. Clegg, about
8 evaluating the Mooney M20J. They spoke in detail about the inspection that Boca would perform
9 for Mr. Hobbs, including the cost and service available:

10 Q. And you say he asked about the cost?

11 A. Yes.

12 Q. What did you tell him?

13 A. I don't know exactly, but I have to assume that I told him the
14 same thing I tell everybody.

15 Q. What was that?

16 A. That it could start here and go, you know, low end, high end.

17 Q. Okay. What was the low end and high end that you told
18 people at that time?

19 A. Just depends on what they wanted to have done. It could be
20 as little as \$250 for compression check, cut the filter open, look the
21 aircraft over and see what we see. If we see anything, you know,
22 that doesn't make us comfortable, stop right there, you know, keep
23 looking for another airplane. Or you can go as far as doing a full
24 blown annual inspection and rip the airplane completely apart and
25 know every nut an bolt in the airplane.

26 Q. Okay. And what was his response when you gave him that
27 information?

28 A. He opted for the low end.

Q. And did he tell you anything more about what he wanted
done?

A. Not really. You know, I told him what we do in our
preliminary look at the aircraft, and that's, you know, that we would
let him know what we found.

1 Clegg Depo. 36:23 – 37:23 (emphasis added).

2 Clegg knew that Hobbs was looking for “a good airplane, a trouble free airplane.” Id. at
3 62:1-3. Mr. Hobbs provided a list of items to be included in the inspection, including inspection
4 of the engine fuel system for signs of corrosion because he was concerned about possible
5 corrosion because the plane had been stored in the humid climate of South Florida. Boca
6 conducted an inspection of the airplane, but unbeknownst to Hobbs, the inspection did not include
7 the items that Hobbs listed. Boca claims not to have received the list.

8 Nonetheless, Boca’s inspection did include a review of the airplane’s engine and airframe
9 logbooks. Inspection of those logbooks should have revealed that the aircraft had problems in the
10 past with water in the fuel system, and should have alerted Boca that the fuel system needed to be
11 inspected for signs of water problems, including corrosion. Mr. Clegg admitted that Boca did not
12 inspect the fuel system for signs of corrosion.

13 In fact, the inspection was stopped because it was a waste of time to go further. Mr. Clegg
14 testified: “It was for all practical purposes a cursory inspection, walk around of the airplane,
15 looking at and opening, maybe a panel here and there then looking at the engine. Given what we
16 were seeing, it didn’t seem in our mind justified going any further. It seemed like a waste of our
17 time and the customer’s money.” Id. at 61:17-23 (emphasis added). Mr. Clegg further stated that
18 “we stopped because the aircraft needed considerably more work, needed to be looked at in
19 depth.” Id. at 91:22-24.

20 Despite the cursory nature of the inspection conducted by Boca, Mr. Clegg concluded that
21 the aircraft was, in his words, “a p.o.s.” (piece of s - - t). He explained:

22 A. I don’t want to pin it down to a specific person, but nobody
23 [at Boca] felt real good about this aircraft.

24 Q. Okay. And what information did you get, if we can’t pin
25 down to a particular person, as to why people did not feel real good
26 about the aircraft?

27 A. It was just a pretty rough airplane.

28 Q. What does that mean, a rough airplane?

A. It was a POS.

1 Q. Okay. It's a piece of stuff?

2 A. Yeah. Not good stuff.

3 Q. Were there any particular features or characterizations of it
4 that made you come to that conclusion?

5 A. It just – you can walk up to an aircraft and see if it's been
6 ridden hard and put up wet and this one definitely had.

7 Q. What was it that led you to that conclusion?

8 A. I saw it when I came in. I was just, you know, this one's not
9 going to make it, you know.

Id. at 54:3-22 (emphasis added).

10 As part of the inspection, Boca prepared a “discrepancy sheet,” which listed minor
11 problems that required repair. Boca provided the discrepancy sheet to Mr. Hobbs. But the sheet
12 (which was attached as Exhibit 1 to Clegg's deposition) did not indicate any airworthiness
13 problems with the plane and no one told Mr. Hobbs that it was not a good plane.

14 Q. Is there anything on Exhibit 1 that tells you there are
15 airworthiness problems with the plane?

16 A. Not specific. Yes. There are things that would make you
17 want to look further....

This document tells me the airplane needs further inspection.

18 Q. In your opinion the aircraft, from just the bit that you did,
19 was a POS and probably had airworthiness issues and you wouldn't
20 recommend buying the plane, correct?

21 A. That's correct.

22 Q. But as you sit here today, you don't ever recall telling Hobbs
23 that, right?

24 A. Not specifically, no.

25 Q. And you don't know that anyone else from Boca ever told
26 Hobbs that, correct?

27 A. I don't know that for fact, no.

Id. at 80:24 – 81:2; 83:4-16 (emphasis added).

28 Neither he nor anyone else at Boca ever informed Mr. Hobbs of this opinion or told him
that the plane had any problems beyond the need for a few minor repairs. Boca never told Mr.

1 Hobbs that they stopped the inspection because it was a waste of time. In a telephone
2 conversation with Mr. Hobbs following the inspection, Mr. Clegg informed him that it was in fact
3 a good airplane.

4 Mr. Clegg also signed the work order, authorizing the plane to be returned to service. This
5 work order was later provided to Mr. Hobbs. The work order listed a few minor discrepancies and
6 repairs that were needed, but made no mention of a need for further extensive inspection, and did
7 not provide a substantive list of all of the items that Boca had in fact inspected.

8 Based on the benign pre-buy evaluation report communicated to Mr. Hobbs, he purchased
9 the airplane, had the prior owner perform the minor repairs identified in the work order, and
10 commenced flying the airplane.

11 **B. The Airplane Crash on June 3, 2000.**

12 On June 4, 2000, the weather was clear and warm. Mr. Hobbs flew from Cameron Air
13 Park to Carson City with his wife, Kathleen Evans. They were to meet with plaintiff Damon
14 Stutes to take Dr. Stutes and his friend (Catherine Armstrong) on a flight around the desert south
15 of Carson City.

16 Mr. Hobbs and Dr. Stutes planned the flight in the weeks before the crash. Conscientious
17 about the weight limitations and the high altitude environment of Carson City airport, Mr. Hobbs
18 obtained the weights of Dr. Stutes and Catherine Armstrong, and added them to the weights from
19 Kathleen Evans and himself. Because there were four people aboard the aircraft, he loaded less
20 than a full tank of fuel so that the aircraft would be below the weight limit for takeoff from Carson
21 City.

22 While at Carson City, Mr. Hobbs showed Dr. Stutes the various aircraft instruments and
23 discussed the parameters of the flight. They discussed the importance of being within the proper
24 weight and further discussed the impact of density altitude on engine performance. Mr. Hobbs
25 was careful to make sure that the airplane was within appropriate weight limitations and had
26 ample runway for a safe take off. When Dr. Stutes questioned Mr. Hobbs about how he knew that
27 the density altitude calculation was correct, Mr. Hobbs said that he could demonstrate it. He then
28 made a simulated takeoff and actually lifted off slightly. He set the airplane back down and taxied

1 back to the takeoff end of the runway for takeoff. He pointed out to Dr. Stutes that the airplane
2 had performed as expected for the density altitude. Mr. Hobbs did not sense any problems with
3 the plane during the simulated takeoff.

4 On the actual takeoff, everything was going according to expectations until after the
5 aircraft lifted into the air. After takeoff, Hobbs raised the landing gear and the flaps and
6 established a good rate of climb. The sound of the engine then became somewhat different. The
7 rate of climb decreased and turned into a descent. The aircraft was unable to maintain altitude,
8 and Hobbs did his best in selecting a location for a crash landing. He judged that he would not be
9 able to fly the plane around and land back on the runway at Carson City, and that the terrain
10 beyond the runway provided no flat or unobstructed areas on which he could safely land the
11 aircraft.

12 Mr. Hobbs did the only thing he could think of in the few seconds he had before the plane
13 impacted the ground. He slowed the aircraft as much as possible and forced the left wing of the
14 airplane into the ground, causing the airplane to cartwheel. This action avoided a head on
15 collision with the ground, which would have likely resulted in the deaths of everyone on board.
16 Everyone survived, albeit with serious injuries.

17 **C. FAA Investigation of the Cause of the Plane Crash.**

18 The accident was investigated by agents of the Federal Aviation Administration. Their
19 inspection of the engine revealed a partially clogged fuel injector nozzle and evidence of water
20 and corrosion within the aircraft fuel system. Subsequent examination of the wreckage confirms
21 that there was extensive evidence of water and corrosion throughout the aircraft fuel system and
22 that the material clogging the injector nozzle consisted of corrosion products of aluminum. The
23 evidence clearly shows that the airplane experienced a sudden partial loss of power shortly after
24 takeoff, and that the loss of power was the result of a partially clogged fuel injector nozzle.
25 Without full power available, the aircraft was unable to climb or maintain altitude.

26 **V. LEGAL ISSUES**

27 **A. Plaintiff's Claims**

28 Plaintiff proceeds on a claim for general negligence on the part of Boca Aviation, Inc.

1 This is a straightforward case, seeking to hold Boca responsible for the injuries and damages
2 resulting from Boca's failure to inform Hobbs that the aircraft was a p.o.s. and that it was not the
3 good aircraft Hobbs was seeking.

4 The basis for general negligence claims in California is embodied in section 1714(a) of the
5 California Civil Code. As articulated in *Rowland v. Christian* (1968) 69 C.2d 108, 112, section
6 1714 mandates that "[a]ll persons are required to use ordinary care to prevent others from being
7 injured as a result of their conduct." The governing California jury instruction (CACI 401) states:

8 "Negligence is the failure to use reasonable care to prevent harm to
9 oneself or to others. A person can be negligent by acting or by
10 failing to act. A person is negligent if he or she does something that
11 a reasonably careful person would not do in the same situation or
12 fails to do something that a reasonably careful person would do in
13 the same situation."

14 Defendant Boca failed to perform an adequate inspection of the plane and to communicate
15 critical safety defects as agreed upon between Hobbs and Clegg. Mr. Clegg knew that Hobbs was
16 looking for a good, trouble free airplane, and that Boca was hired to assist Mr. Hobbs in deciding
17 whether to purchase the Mooney. Defendant Boca stopped the inspection because it knew that
18 which was unknown to the Mr. Hobbs – the Mooney was not a good plane; it was a "piece of
19 s__t." The logbooks indicated that the airplane had significant corrosion in the engine fuel system
20 that would make the aircraft unsafe. Defendant Boca failed to satisfy the purpose of the pre-buy
21 evaluation – identify the corrosion in the engine fuel system that made the aircraft unsafe and
22 inform Mr. Hobbs that the airplane was neither good nor trouble free so that he could continue
23 looking for another airplane.

24 Mr. Clegg acknowledges that he would have recommended against purchasing the airplane
25 and that information should have been communicated to Mr. Hobbs. In this situation, a
26 reasonably careful person hired to perform a "pre-buy evaluation" should have discovered the
27 corrosion in the fuel system, informed Mr. Hobbs that Boca stopped the inspection because it
28 concluded that the plane was unsafe, and provided its opinion that the plane was not going to
make it. Had Boca communicated its true evaluation of the Mooney, Mr. Hobbs would not have
purchased the airplane that caused Mr. Stutes' injuries.

1 As a result of Boca's negligence, Mr. Hobbs purchased the aircraft and commenced flying
2 it with his close friends on board as passengers. Dr. Stutes sustained significant life altering
3 injuries when the aircraft crashed.

4 **B. Defendant Boca Has the Burden of Proof As to Its Affirmative Defenses.**

5 Defendant Boca denies that it was negligent in connection with the "pre-buy evaluation"
6 and also contends that Mr. Hobbs' later conduct caused plaintiff's injuries and damages.
7 Specifically, defendant claims that Mr. Hobbs was negligent in the operation of the Mooney and
8 that Mr. Hobbs was the legal cause of plaintiff's injuries and damages. Because defendant is
9 asserting the affirmative defense of a superseding cause, it has the burden of proving Mr. Hobbs'
10 negligence. The jury instruction for complete affirmative defense should be given.¹

11 Evidence of this defense also permits the jury to find that Boca and Hobbs concurrently
12 caused plaintiff's injuries. Indeed, defendant seeks an instruction for the apportionment of
13 responsibility and defendant's proposed special verdict form seeks allocation of fault between
14 Boca and Hobbs. It is, therefore, appropriate to instruct on multiple causes.²

15 **VI. DAMAGES**

16 Dr. Stutes was airlifted from the scene of the crash to Washoe Medical Center. He
17 suffered multiple injuries, including a severe head injury. The emergency physician, Dr. Gary
18 Gansert, describes Dr. Stutes as flailing, writhing, incoherent and uncontrollable. He presented
19 with a pulse of 126 and respiratory rate of 30. He was screaming incoherently and had an obvious

20 ¹ The Ninth Circuit Model Civil Jury Instruction 5.3 on complete affirmative defense states:

21 On any claim, if you find that each of the elements on which the
22 plaintiff has the burden of proof has been proved, your verdict
23 should be for the plaintiff on that claim, unless you also find that the
defendant has proved an affirmative defense, in which event your
verdict should be for the defendant.

24 ² The California Civil Jury Instruction, CACI 431 on multiple causes states:

25 A person's negligence may combine with another factor to cause
26 harm. If you find that Boca's negligence was a substantial factor in
27 causing harm to Damon Stutes, then Boca Aviation, Inc. is
responsible for the harm. Boca Aviation, Inc. cannot avoid
28 responsibility just because some other person, condition, or event
was also a substantial factor in causing Damon Stutes' harm.

1 and serious dislocated left ankle. He required an immediate airway and sedation, which was
2 carried out by the emergency room physician and the surgeon, Robert Watson. The intubation
3 was impeded by swelling in the larynx, and plaintiff vomited copious amounts of foods and fluid.
4 His treating physicians performed an emergency cricothyrotomy to create an airway.

5 Upon successful creation of the airway, his physicians observed that his left foot was
6 grossly dislocated and cyanotic due to poor circulation and lack of oxygen. The doctors
7 performed a closed reduction in order to improve vascular circulation of the foot. The left ankle
8 was not completely reduced, but had good capillary refill after the closed reduction. Dr. Stutes
9 was then taken to surgery. The initial surgery was to repair the left ankle dislocation.

10 The emergency diagnoses included severe head injury with concussion, severe left ankle
11 dislocation and probable fractured larynx. Physical examination of Dr. Stutes following the crash
12 revealed that he had sustained additional injuries, including a full thickness laceration above the
13 right eye, a closed chest injury with aortic compromise, and aspiration requiring emergency
14 airway placement. He had lacerations and abrasions to his right hand and a full thickness soft
15 tissue injury to his left knee, as well as the dislocation of the ankle.

16 Dr. Stutes was followed by numerous specialists, including neurosurgical specialists for
17 the head injury and possible spine injuries. An orthopedic physician, Dr. Preston, followed him
18 for various orthopedic injuries, including a left superior ramus fracture that was fortunately
19 nondisplaced. He had fractures at the superior endplates of L2 and L3, as well as a fracture of his
20 left index finger.

21 A rehabilitation medical consultant, Dr. Hill, also followed plaintiff. Dr. Hill describes
22 the fracture dislocation of the left hand as a fracture dislocation. This was surgically repaired.
23 This consultation took place ten days post accident, and even at that time, Dr. Stutes was not able
24 to tell the exact date. He had short term memory deficit. The physiatrist assisted him with an
25 early rehabilitation program.

26 Dr. Stutes was discharged on June 15, 2000, to his home where home health visiting
27 nurses and physical therapy services continued his care. He was able to get around with a tall
28 front wheel walker. His mother had flown in and was available to stay in his home and help care

1 for plaintiff.

2 By July 18, 2000, Dr. Stutes was continuing to use crutches. He continued to have knee
3 pain with moderate swelling. Test and examinations of the knee demonstrated that there were torn
4 medial and lateral menisci, as well as a partially torn anterior cruciate ligament. Dr. Stutes opted
5 to have repair of that by Dr. Keith Swanson, M.D. Dr. Stutes had a good result with his left knee.
6 However, he is at risk to develop post traumatic knee arthritis because of the extensive amount of
7 tissue removed from the lateral meniscus.

8 Dr. Stutes described his own recovery as being one of severe pain (10 on a scale of 1 to 10
9 every day) until November 2000. Presently, on a good day, his pain is a 2 on that same scale.
10 Depending on activities and other occurrences, he experiences pain up to a 7 or 8 about once a
11 week. His average pain level is 3-4 on the ten scale.

12 As a result of his injuries, Dr. Stutes has significantly reduced his activities. Before his
13 injuries, controlled his diabetes by swimming on a daily basis. In spite of aggressive conditioning,
14 he has not been able to return to his former level of swimming. He now swims about 50 percent
15 less. If he tries to swim as he did before, he suffers severe back spasms which take 2-3 days to
16 recover.

17 For recreation, Dr. Stutes and Hobbs used to take three or four trips to the desert every
18 summer for motorcycle riding. He has not been able to take even one trip since the airplane crash.
19 He has also given up welding, which he used to do as a hobby. He can now only weld about half
20 as much as previously because the pain becomes overwhelming. Similarly, yard work and other
21 household chores are hampered by pain.

22 Dr. Stutes was not able to work for approximately seven weeks immediately after the
23 accident. He was also off work for two weeks for knee surgery related to the crash injuries. His
24 ability to work has not been affected, despite persistent back pain.

25 Dr. Stutes is claiming past and future economic and non-economic damages to compensate
26 him for his injuries and losses resulting from the airplane crash on June 4, 2000.

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Dated: August 8, 2006

WALKUP, MELODIA, KELLY,
LECHT & SCHOENBERGER

/s/ DORIS CHENG
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Attorney for Plaintiffs