



NELSON LAW FIRM, P.C.

ATTORNEYS AT LAW

Livingston v. Tiensvold (verdict)

DISTRICT COURT

VERDICT: Defense, vintage aircraft landing damage.

Richard Livingston owned a 1943 taildragger Beech Staggerwing. Melvin Tiensvold was a high-time taildragger pilot with experience in warbirds. Livingston asked Tiensvold (disputed) to fly the Staggerwing to keep it exercised. Livingston added Tiensvold as an insured on the aviation policy and they completed 10 landings together to qualify Tiensvold.

On 6/22/18 Tiensvold operated the Staggerwing when it veered off the runway on landing. He asserted mechanical failure of the right brake. Livingston's widow Billy Sue asserted pilot error. Livingston purchased the salvage from the aviation insurer and began restoration. However, he died in 9/21. Billy Sue sued Tiensvold for the loss of value, claiming she was forced to sell the aircraft in an unfinished condition. She asserted \$125,000 loss of value and an implied contract that required Tiensvold to pay for any loss.

The Hamilton jury found 12-0 that Richard Livingston and Melvin Tiensvold did not enter into a legally binding express contract but that they did enter into a legally binding implied contract but 11-1 that Tiensvold did not breach the contract by failing to perform.

Judge Recht:

- * granted Defendant's motion that the negligence claim was barred by the 3-year statute of limitations.
- * denied Defendant's motion for summary judgment on the alleged oral contract.
- * excluded evidence of the aviation insurer's payment of the agreed value for the hull as well as the NTSB report.
- * prohibited discovery into Plaintiff's payment of restoration expenses through Mountain Helicopter which did not own the aircraft.
- * cut off Defendant's offer-of-proof testimony on excluded evidence, stating outside the presence of the jury: "I don't want to hear it."
- * prohibited Defendant from offering an opinion on tax implications of the aircraft restoration and transfers and the aircraft's value, asserting that he was not qualified to opine on value.
- * allowed Plaintiff to offer opinion on value even though not an owner on the FAA registered title on grounds that it was a marital asset.
- * instructed the jury that a pilot in command owes a duty to prevent damage to an aircraft.

Demand, \$40,000 range; offer, \$15,000. Jury request, \$125,000; jury suggestion, 0. Robert Bell, mediator.

Jury deliberated 3 hours 2nd day.

Livingston v. Tiensvold, DV-41-2022-033-DS, 3/28/23.

Thomas Schoenleben Jr. & Jonathan Motl (Bitterroot Law), Hamilton, for Plaintiff; Randall Nelson (Nelson Law Firm), Billings, for Defendant (Mountain West Farm Bureau Mutual Ins. temporarily defended under a homeowner's policy (with aviation accident exclusion) but was voluntarily released by Tiensvold from defense after mediation).