

# PSA Ruled Liable for Crash Damage Claims

## Superior Court Judge Puts Chief Blame on Airline

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Pacific Southwest Airlines is liable for any damage claims stemming from last year's midair crash over San Diego which claimed 144 lives, a San Diego County Superior Court judge ruled Tuesday.

In a major setback for the airline, Judge Jack R. Levitt agreed with the family of one of the crash victims that PSA had the primary responsibility for the safety of the 135 passengers on its ill-fated Flight 182.

Levitt dismissed PSA arguments that air-traffic controllers monitoring the flight paths of the PSA jet and a Cessna 172 were to blame for the fiery crash.

The judge's ruling clears the way for a Nov. 5 trial on the amount of damages PSA must pay the relatives of the crash victims, both in the two aircraft and on the ground.

PSA attorney Robert Kern said the airline was "disappointed" with Levitt's ruling and plans to challenge it in the state Court of Appeal.

The decision affects a number of other lawsuits pending against PSA. They have been merged into one action in San Diego County Superior Court to expedite their handling.

The PSA jet collided with the Cessna last Sept. 25 over San Diego killing the flight crews in both planes as well as all of the



passengers and seven persons on the ground in the North Park area.

Until the May 25 air disaster in Chicago which claimed 273 lives, the San Diego crash was the worst in U.S. history.

Shortly after the crash, wrongful death claims against PSA and numerous defendants connected with the aircraft's machinery, maintenance and guidance were filed in several counties in California.

PSA, while not admitting liability, moved quickly to settle more than half of the damage claims filed against the airline before trial.

(The judge's decision is in line with an April 20 ruling by the National Transportation Safety Board that the PSA crew was to blame for the midair disaster)

(The PSA Boeing 727 jet which originated in Sacramento was approaching Lindbergh Field when it collided with the Cessna, carrying a student pilot and his instructor.)

(The NTSB blamed the accident on "the failure of the flight crew of Flight 182 to comply with provisions to maintain visual separation clearance, including the

requirement to inform the controller when they no longer had the other aircraft in sight.")

But Tuesday's decision will apply to all 27 cases now before Levitt, as well as any others which may be filed before Sept. 25, when the statute of limitations goes in effect.

There are other cases on file in various counties that have not yet been coordinated with the San Diego lawsuits, Levitt told The Times. Levitt said those lawsuits will remain in their respective counties as long as settlement talks continue between the plaintiffs and PSA.

Levitt's ruling applies only to PSA, although there are numerous codefendants in the civil suits. Among those are the San Diego Port Authority, which administers Lindbergh Field, San Diego County and the city, Boeing, Gibbs Flying Service (owner of the Cessna), the Federal Aviation Administration and the estates of the two dead pilots.

Motions for summary judgment could be brought before the scheduled Nov. 5 trial by any of the plaintiffs or codefendants, Levitt said.

The codefendants presumably could pursue the legal theory that, since PSA had primary responsibility for the crash, they should not be held liable as secondary parties.

As for PSA, Levitt said his decision reduces the airlines leverage in settlement talks.

The judge said plaintiffs can now look forward to avoiding the expense of a protracted trial on

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## PSA RULED LIABLE FOR CLAIMS IN CRASH

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both liability and damage issues and may be tempted to proceed to court instead of settling.

San Diego attorney Gary Aguirre successfully argued against PSA's position that the air-traffic controllers were to blame.

"(PSA's argument) suggests that the crew and passengers on PSA Flight 182 were sheep" Aguirre said in court documents. "This is only half true.

"The crew were the shep-

herds, the passengers were the sheep. The crew had the primary responsibility for insuring the safety of the passengers on the flight." Aguirre said.

Aguirre said the cockpit recordings showed that the PSA flight crew was warned three times of the approximate location of the Cessna, that it failed to use clearing procedures and "violated the Cessna's right-of-way."

PSA attorney Kern emphasized that Levitt's ruling did not "place sole responsibility" for the crash

on the airline.

Kern said more than half the surviving families have settled claims with PSA, adding that there are about 35 lawsuits remaining to be litigated. Kern said only a few families have not yet "preserved their right" to sue before the statute of limitations takes effect Sept. 25.

In addition there are five lawsuits pending in federal court. They are unaffected by the Superior Court ruling Kern added.

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### Trial set in first of PSA crash cases

A Nov. 29 trial date has been set for the first wrongful death suit in the PSA air crash cases.

Presiding Superior Court Judge William A. Yale assigned the Nov. 29 date to the trial of a suit filed by the surviving widow and children of Lee Harrison Johnson, a La Jolla financial consultant.

Johnson was a passenger aboard PSA Flight 182 which collided Sept. 25 with a Cessna 172. A total of 144 persons were killed in the North Park air tragedy.

Yale's designation of a trial date for the Johnson case came after attorney Gary Aguirre, representing the Johnsons, and Thomas Sharkey, representing PSA, met with Superior Court Judge Louis M. Welsh in a settlement conference.

"We didn't discuss liability only dollars," Welsh said of the settlement effort. "Liability was not conceded, it just wasn't discussed."

Aguirre declined to comment on the settlement discussions or the

trial date selection, but admitted that discussions are continuing between the battery of attorneys representing claimants and PSA over the question of liability.

A summary judgment motion on the question of liability remains scheduled for Friday before Superior Court Judge Jack R. Levitt.

Welsh continued the settlement discussions to Sept. 17 ordering attorneys for both sides to return.

Attorneys for claimants maintain adequate

evidence is available to prove PSA liable for damages, leaving the amount of monetary damages at issue for future trials.

PSA has replied that the primary responsibility for the crash was on air traffic controllers who failed to maintain separation.

Attorneys Aguirre and E. Robert Wallach of San Francisco have responded that placing the blame on the air traffic controllers would assume that the PSA flight crew were "sheep."