

PLENTYWOOD AIRPLANE DEATH CASE:

The Judge in his case was James Sorte. I don't remember the name of the Plaintiff's attorney, but he was big and rotund. The case was filed in State District Court at Plentywood, which is located in the far North East part of the State, and you don't usually go there for fun. Most everybody there drove pickup trucks and when parked overnight downtown during the winter, they left the motor running so they could start up in the morning.

The case involved a grocer in Plentywood. He owned a Piper Cub and wanted to fly to Minot, North Dakota for a convention. He took a friend with him, whose estate was Plaintiff in the case. When they were done with their business in Minot and ready to fly back, the weather had grown worse, and clouds formed to the West. The pilot only had a VFR (visual flight regulations) rating but decided he could make it back regardless of the weather. Instinctively you tend to fly an airplane "by the seat of your pants", i.e. feeling the weight of your body on your butt means that you are flying straight and level. Unfortunately this same feeling arises when the plane is flying in an arc path, where centrifugal force is outward and it results in a butt feeling much like when you are flying level. Instrument rated pilots learn to look at the dashboard instruments as to the plane's attitude, rather than how it feels on your butt. In this case, our pilot and his passenger were last seen flying through the cloud layer, straight down into the ground, and to their death. The lawsuit was brought by the passenger's estate against the pilot's estate.

At that time we rarely mediated or arbitrated cases. The insurance companies in many such cases thought that if they try the case they had a chance of winning or at least holding down the damages.

I was authorized to engage the services of an attorney in Sidney who knew the local populace and could help me pick the jury. He was a great guy, and I first visited him at his office, which looked very much like a home, not an office. Among other residential objects he had a piano, with paper clips on the strings so it would sound honky tonky. He played the piano well. On the way out of town to Plentywood he brought me to his house, and I learned there why his office looked like a home. His wife had placed plastic runners on the floors throughout the

house, and all of the furniture had plastic covers. Then I met his wife and understood why his office looked like a home.

The case took place a couple of weeks before Christmas. The Plaintiff's lawyer was a close personal friend of the Judge and each morning of the trial I witnessed the Judge straightening up the lawyers tie and removing food that had spilled on his suit, to make him as presentable to the jury as possible. The case ran over the weekend. It was a lonesome time for me, with my family back home getting ready for the holiday season while I was at the end of the earth trying this case. We picked the jury and the evidentiary part of the trial took us to the weekend. This is the "only in Montana" thing that I was telling you about....the Judge took me to dinner over the weekend. Regardless of the outcome of the case, this was a real Montana gesture.

My euphoria was short-lived, because later the next week, at the conclusion of the Defendant's case, Judge Sorte Directed the Verdict in favor of the Plaintiff and against my client. I don't remember what the damage verdict was, but recall it was at the lower end of possibilities.

A couple of days later, after the Verdict, the Plaintiff's attorney filed a second, duplicate death case against my client (for the same accident), in the adjacent District Court at Wolf Point. You need to know something about death case damages to understand this. One theory is from the view point of the deceased Plaintiff's estate: what earnings, benefits, etc. would that decedent have enjoyed but for being killed. The second remedy is from the surviving family's viewpoint, i.e. their loss of support, comfort, etc. The law and the practice intends that these theories of recovery be presented in one case, for one tort. The remedy of trying the second case to a conclusion and then appealing to the Montana Supreme Court, would be expensive and wasteful. So, I dug up a seldom used remedy. I filed with the Supreme Court a Writ of Supervisory Control whereby the lower court can be corrected when they step out of line. In this case, at the Supreme Court's Order, the Wolf Point case was dismissed.

Despite the circuitous route to justice, this case ended up with an acceptable outcome for all parties.