FACTS

On September 4, 1991, a corporate jet plane crashed into a 4000' mountain ridge more than thirty miles south of the Kota Kinabalu International Airport (KKIA) in Sabah, East Malaysia on the island of Borneo. The plane had been scheduled to land at KKIA for refueling before completing the Tokyo-Jakarta leg of an around-the-world trip that was planned for executives of the Conoco, Inc.[1] ("Conoco"), a wholly owned subsidiary of E. I. du Pont de Nemours and Company ("DuPont"). Onboard the plane were three Conoco Executive Vice Presidents:[2] Colin H. Lee, William K. Dietrich and H. Kent Bowden, and their wives: Brooke, Gayle and Connie; Conoco Managers: James Myers and Ann Parsons[3], and James Myers' wife Linda; and a DuPont-employed flight crew: Pilot Kenneth R. Fox ("Fox"), Copilot Gary G. Johnston and Flight Mechanic Steve P. James. All twelve people onboard the plane died of multiple blunt force injuries that they received in the crash.

DuPont owned the plane and employed the flight crew, however Conoco was the "operator"[4] of the plane and flight crew. DuPont had also delegated to Conoco responsibility for monitoring and maintaining the physical and mental competency of DuPont employees who flew the planes that Conoco operated.

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1 DuPont spun-off Conoco, Inc as a separate public corporation in 1998. In 2002, Conoco merged with Phillips Petroleum Company and renamed the company ConocoPhillips.

2 All Conoco Executive Vice Presidents also held positions as DuPont Vice Presidents.

3 At the time of the crash, both Roger and Ann Parsons were employed in manager-level positions at Conoco headquarters in Houston, Texas.

4 "Operator" is a term of art used by the Federal Aviation Administration (FAA) in the Federal Aviation Regulations (FAR) meaning that Conoco controlled where and when the plane and crew flew. Parsons only discovered that Conoco was the official operator of the plane in 1999, when he obtained a copy of the Malaysian investigation report on the plane crash from Malaysian federal aviation investigators.

DuPont had a $100,000,000 aviation liability policy covering DuPont and Conoco. National Union Fire Insurance of Pittsburgh Pennsylvania ("NUFIPP") was the insurer and the policy was sold to DuPont by AIG Aviation, Inc. Both NUFIPP and AIG Aviation are subsidiaries of American International Group, Inc. ("AIG").

Facts Relating to Immediate Causes of the Plane Crash – Pilot Incompetence

The immediate causes for the plane crash[5] were gross errors by Fox, the pilot. Specifically, Fox failed to obey or, if he did not understand, question the directives of KKIA Air Traffic Control (ATC). Fox failed to enter a holding pattern at the end-point of his Instrument Flight Rules (IFR) flight plan. Fox failed to maintain the vertical and horizontal separation from mountainous terrain prescribed by Visual Flight Rules (VFR). Fox failed to take immediate and extreme evasive action to avoid hitting a mountain. And, Fox lost control of the plane after skimming treetops along the mountain ridge, causing the plane to careen head-on into another ridge.

a. Fox failed to obey ATC directive to slow the plane to approach speed and descend the plane to an altitude that would permit ATC to clear Fox for landing.[6] Instead, Fox flew the plane at more than twice the designated approach speed and

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[5] Controlled Flight Into Terrain (CFIT) is an aviation term-of-art for this kind of accident. CFIT is defined an accident in which the aircraft had no mechanical problems, did not encounter any adverse weather conditions, and did not impact another aircraft, nevertheless the aircraft was flown into the ground while under the control of the pilot. CFIT accidents have been known for more than twenty years to take the largest number of fatalities every year in all sectors of aviation: commercial, corporate and general.

[6] There is evidence that Fox left the cockpit when this directive was received from ATC by the copilot, Johnston, who was not qualified to manipulate the controls of the high performance Gulfstream G-II. Fox departure from the cockpit fro several minutes during this critical phase of flight was a violation of federal regulations. The reason for Fox's leaving the cockpit is not known, but documents in his medical file indicate his absence could be related to either his glucose metabolism disorder – needing something to eat or needing to urinate, or he needed a drink that was available at the back of the plane.

arrived over the airfield more than five minutes early and at an altitude of 15,000 feet – 11,000 feet higher than he was directed to descend.

b. Fox failed to obey an ATC directive to descend the plane in the holding pattern over the airfield. Instead, Fox flew over and past the airfield. A radio navigation beacon (Very-high-frequency Omni-directional Range -- VOR), call sign "VJN", that is located at the airfield was the terminal point on Fox's IFR flight plan for his flight to KKIA. When Fox failed obey the ATC directive to descend the plane over the airfield and flew past his last ATC clearance limit, as a matter of aviation regulations, Fox assumed total responsibility for seeing and avoiding all hazards – Fox had begun piloting the plane pursuant to VFR.

c. Fox failed to follow an ATC directive to "…descend south of the airfield…"[7] that he received after flying past the airfield and beginning VFR flight. Instead, Fox flew the plane for more than nine minutes on a heading, not a course, of 180º from where he had flown the plane when he received the ATC directive, more than eight nautical miles south-south-west of the airfield.[8]

d. Fox failed to immediately react to the copilot's warning that they were "…getting pretty close to the hills here." Instead, Fox, continued his descent into the

[7] The directive "…descend south of the airfield…" is an appropriate VFR directive, meaning to descend in a holding pattern in the southern octant from the airfield. The directive "…descend south of the airfield…" is not an appropriate IFR directive, because it does not specify a direction relative to a specific IFR navigation beacon, such as the VJN VOR. Furthermore, IFR directives specify direction in terms of a radial direction in degrees from the IFR navigation beacon, not in vague terms of south, southeast, etc.

[8] If Fox was unclear or did not understand the ATC directives, it is solely his responsibility as pilot-in-command to demand that ATC repeat and clarify the directives. In this instance, Fox should have known that the ATC directive "…descend south of the airfield…" was an inappropriate IFR directive, and he should have immediately asked for ATC clarification of its directive. Rather than seeking clarification, Fox continued to maneuver the plane in accordance with invalid IFR directives.

mountainous terrain for more than a minute after the danger was brought to his attention.

e. Fox failed to take immediate and extreme evasive action when he saw a mountain directly in his flight path. Instead, Fox attempted a gentle climb to higher altitude, apparently trying to simultaneously avoid the mountain and later questions by the executives he was flying about why Fox needed to take the extreme action.

f. Fox failed to maintain control of the plane as it skimmed the tops of trees along a mountain ridge. Instead, Fox lost control of the plane and plane careened over the ridge, crashing approximately ten seconds later into the side of another ridge more than five hundred yards away. (No physical evidence was unearthed showing that the passengers were unconscious or dead during this phase of the plane crash.)

Facts Relating to Underlying Causes of the Plane Crash – Gross Mismanagement

DuPont and Conoco merged in 1981, but maintained separate aviation operations until 1989, when DuPont transferred ownership of all DuPont planes and the employment of all DuPont pilots to Conoco. Soon after this reorganization, several pilots based at Conoco Aviation operations in Wilmington, Delaware began to complain that their managers were ordering inexperienced and/or untrained pilots to fly unsafe trips. One senior pilot and check pilot, Frank I. Cardamone Jr., became a spokesman for the Wilmington pilots who feared loosing their lives if nothing was done or loosing their jobs if they voiced their complaints to their management.

Cardamone began speaking and writing to DuPont officers who he had met during his thirty years of service to the company about numerous instances of unsafe

piloting practices that he had witnessed, or that he had been told about by other pilots. The most serious problem that Cardamone saw was that Conoco Aviation chief pilots who had been installed by Conoco President and DuPont Executive Vice President Constantine S. Nicandros endorsed the dangerous practices and even took punitive action against pilots who complained about their negligent pilot management practices. In fact, Cardamone was forced to retire early after he was threatened with being fired and loosing his retirement benefits.

Throughout 1990 and 1991, the close-knit group of the working, retired and fired Conoco Aviation pilots in Wilmington, including Cardamone, continued to meet every month to discuss their work and family lives. The Wilmington pilots continued to rely on Cardamone to voice their concerns because Cardamone now had nothing to lose and he had long-standing relationships with several of DuPont's senior officers, including DuPont Chairman of the Board and Chief Executive Officer Edgar S. Woolard Jr.[9]

In late 1990 and early 1991, as part of a major company-wide reorganization, DuPont reorganized its corporate aviation operations. The "Conoco Aviation" was rename "DuPont Aviation" and placed in the Materials, Logistics and Services (ML&S) division of DuPont. Woolard personally appointed a retired Marine Corps lieutenant general, Frank E. Petersen Jr. ("Petersen"), to fill a newly created administrative position titled DuPont Aviation Director. However, Woolard left executive oversight responsibility for DuPont Aviation and Petersen to Nicandros, who had had executive oversight responsibility for the Conoco Aviation.

[9] Woolard had told Cardamone years before he had risen to the top of the company, that if Cardamone saw problems that lower management was not fixing, Cardamone should bring the problems to Woolard's attention.

Although the companies' aviation operations were renamed, and the ownership of the planes and the employment of the pilots transferred from Conoco to DuPont, Nicandros wanted Conoco to retain operational control over the planes and pilots that Conoco executives used.

In early 1991, soon after Petersen was named DuPont Aviation Director, Cardamone meet with Petersen to voice the Wilmington pilots' safety concerns. Petersen did nothing to address the problems that Cardamone brought to his attention, believing that Cardamone was "…an absolute fucking kook."[10] Finally, less than a month before the plane crash in Malaysia, Cardamone wrote to Woolard again stating that if Woolard did nothing to correct the problems "…people would die".

Facts Relating to Underlying Causes of the Plane Crash – Fox's Alcoholism

Each August Conoco sent Fox to Allen Duane Catterson, MD ("Catterson") with the Kelsey-Seybold Clinic ("KSC")[11] in Houston for his mandatory medical examinations. The examinations were mandated by (1) the Federal Aviation Administration (FAA) through its Federal Aviation Regulations (FAR), and (2) DuPont and Conoco[12] policies regarding employees and contractors involved in transportation related operations.

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[10] Oral Deposition of FRANK EMMANUEL PETERSEN JR. August 3, 1999, Linthicum Heights, Maryland, p. 110.

[11] Conoco had a long-existing contract with KSC to perform these examinations on all pilots that were based in Houston who flew the planes that Conoco operated to transport its senior executives.

[12] Each year after DuPont reorganized DuPont and Conoco aviation operations under the DuPont Aviation Department, Fox was required to sign two releases for his medical records: one for DuPont, Fox's employer; and one for Conoco, who was operator of the planes that Fox flew. Some time after the reorganization, DuPont designated the Conoco Medical Department as custodian of the medical records for all DuPont pilots.

The examinations followed two separate protocols. The FAA protocol, specified by the FAA Flight Surgeon, determined if Fox met the mental and physical competency standards required to hold a current FAA medical certificate -- one of requirements for continuing to hold a current FAA pilot's license. The FAA protocol had to be performed a specialized physician who was designated by the FAA Flight Surgeon, called an Aviation Medical Examiner (AME).[13] The Conoco protocol, specified by the Conoco Medical Department, determined if Fox had the mental and physical competency to pilot the planes that Conoco operated to transport Conoco employees. Conoco required that this protocol be performed by a designee of Director of Conoco Medical Department Larry Anglin, MD ("Anglin").[14]

In his examinations of Fox in August 1990, Catterson discovered that Fox's blood triglyceride levels were 264 mg/ml, much higher than they had been in previous years. Because Fox's blood triglyceride levels had been abnormally high in previous years and had now dramatically increased,[15] in his August 1990 narrative report on Fox's health Catterson recommended that Fox schedule a glucose challenge test before his next examinations in August 1991. In the narrative report, Catterson told Fox and Conoco that the purpose of the test was to determine if the abnormally high and increasing

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[13] Although, KSC had at least two other AME physicians on its staff, Fox had seen only Catterson for at least the previous five years.

[14] Conoco had a long existing contract with KSC to perform these examinations on all pilots based in Houston flying planes Conoco operated to transport its executives. Although, KSC had at least two other AME physicians on its staff, Fox had seen only Catterson for at least the previous five years.

[15] The upper limit on blood triglyceride levels for Fox would have been 160 mg/ml. Catterson observed the following blood triglyceride levels for in Fox from 1987 to 1990:
1987 – 224 mg/ml, 1988 – 228 mg/ml, 1989 – 194 mg/ml, and 1990 – 264 mg/ml.

triglyceride levels were a symptom of an underlying glucose metabolism disorder.[16] (Neither Fox nor Conoco ever produced evidence showing that Fox or Conoco followed Catterson's recommendation.)

On August 7, 1991, Conoco sent Fox to Catterson again for the examinations. When Catterson reviewed the test results few days after Fox's visit, he discovered that Fox's blood triglyceride levels had risen to an alarming 315 mg/ml. Catterson also discovered that Fox had abnormally high levels of two liver enzymes in his blood. Catterson knew that the measurement of abnormally high levels of these enzymes in Fox's blood was symptomatic of damage to Fox's liver.

Catterson immediately called Fox to find out Fox's alcohol consumption habits.[17] In the telephone conversation, Fox admitted to Catterson that he had engaged in a weekend of heavy beer drinking a few days before the blood test. However, Catterson told Fox that in his opinion the liver damage indicated by the abnormally high levels of the two liver enzymes and the abnormally high and accelerating triglyceride levels that were measured in Fox's blood over the previous four years could not have been caused by one weekend of heavy beer drinking. Catterson told Fox that the tests indicated that Fox had engaged in several years of heavy alcohol consumption.

Catterson documented his concerns about Fox's excessive alcohol consumption in an August 14, 1991, narrative report that recounted the telephone conversation he had with Fox a few days before. Pursuant to the Conoco protocol, the Catterson's narrative report was sent to Fox and copied to the Conoco Medical Department.

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[16] The most common "glucose metabolism disorder" is diabetes, and diabetes would disqualify a pilot from holding the FAA medical certificate Fox needed to be a professional pilot.

[17] On the health questionnaire that was part of the Conoco protocol, Fox failed to disclose his average daily consumption of alcohol. However, on the same questionnaire for at least five years, Fox had revealed that his father had died from "alcoholism".

The 1991 FAR defined "alcoholism" as the consumption of alcohol in an amount that caused any measurable damage to an organ of the body.[18] Hence, Catterson's diagnosis that Fox's liver damage was caused by excessive alcohol consumption was, as a matter of law,[19] a diagnosis that Fox suffered from alcoholism.

The FAA protocol requires an AME like Catterson to immediately report pilot alcoholism to the FAA.[20] The Conoco protocol that Catterson performed, pursuant to a contract between Conoco and KSC, required that KSC provide all medical records[21] on Fox to the Conoco Medical Department[22] and report Fox's alcoholism to his supervisors, DuPont Aviation Chief Pilot Jesse M. McNown or Assistant Chief Pilot Donald W. Peck.

Although, no evidence has been unearthed that Catterson carried out his responsibilities under these protocols before the plane crash, DuPont, Fox's employer, and Conoco, Fox's operator, had obtained actual notice of Fox's alcoholism through Catterson's August 14, 1991, narrative report.[23]

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18 *See* 1991 Federal Aviation Regulation §67.13 (d) (1) (i) (c).

19 FAR promulgated by the FAA have the force and effect of federal law.

20 The FAA revokes the medical certification of pilots who suffer from alcoholism until they can prove that they have abstained from alcohol consumption for one year.

21 Each year, as a condition for his employment Fox was required to sign two medial release forms, one for DuPont and one for Conoco. The releases allowed Catterson, pursuant to the Conoco-KSC contract, to forward Fox's medical records to DuPont and Conoco.

22 Although Catterson never used the term "alcoholism" in the narrative report to sent to the Conoco Medical Department, the Conoco Medical Department was staffed by physicians certified by the Board of Occupational and Industrial Medicine who were responsible for reviewing Fox's examination results and determining if Fox had a job disqualifying physical or mental disability. These specialized physicians were familiar with federal regulations governing the physical and mental health standards required of employees engaged in safety-critical transportation operations, including the FAA FAR.

23 DuPont (the master) delegated all responsibility for monitoring and maintaining the mental and physical competency of Fox to Conoco (the servant). Conoco (the master) contracted Catterson (the servant) to examine Fox and report the result to Conoco. Hence, Catterson's (the servant's) knowledge of Fox's alcoholism is imputed to Conoco (the master), and Conoco's (the servant's) knowledge of Fox's alcoholism is imputed to DuPont (the master).

Facts Relating to Fraud Conspiracy – DuPont, Conoco and AEA

Fox departed Houston on August 29, 1991.

Fox arrived in Tokyo on August 31, 1991.

Fox departed Tokyo 9:57 am Tokyo time, on September 4, 1991, and contacted Kota Kinabalu International Airport (KKIA) Air Traffic Control (ATC) to announce his approach to the airfield at approximately 1:45 pm Kota Kinabalu time.[24]

Approximately a half hour after Fox failed to respond to ATC questions at 2:17 pm Kota Kinabalu time, search and rescue (SAR) efforts by the Royal Malaysian Police (RMP) and Department of Civil Aviation (DCA) were commenced. SAR efforts by helicopters and planes failed to locate the wreckage before sunset that day at 6:30 pm.

Within a few hours of ATC reporting that the plane was missing in Malaysia, Conoco President and DuPont Executive Vice President Constantine S. Nicandros and General Counsel and DuPont Assistant General Counsel Howard J. Rudge were notified about the situation.[25] Notification of Conoco senior executive officers was the first step in executing a recently developed Significant Incident Response Plan (SIRP).[26] Under the SIRP, Nicandros and Rudge convened a meeting of their public relations,

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[24] Central Daylight Time (CDT) is local Malaysia time minus 13 hours.

[25] Conoco contracted Universal Weather and Aviation (UWA) in Houston to provide logistics and flight tracking services for Conoco when it operated planes on international trips (contracting local services such as fuel, food, weather, flight plan filings, etc.). UWA contracted with Errol Flynn at KKIA to provide these services for Fox's flight. Flynn was waiting for Fox to land and monitoring ATC radio communications with Fox. Flynn realized by the desperate efforts by ATC to contact Fox that something was wrong. Flynn contacted UWA personnel who had an emergency contact list for DuPont Aviation in Houston. McNown and Peck were the listed emergency contacts. McNown and Peck would have contacted Nicandros and/or Rudge under these circumstances.

[26] SIRP was developed by Conoco in 1990, in response to avoid the public relations problems that Exxon faced following the USTS Exxon Valdez disaster.

legal and aviation advisors in a room at Conoco headquarters in Houston specifically equipped for Nicandros and his lieutenants to monitor and control developments.[27]

McNown advised Nicandros and Rudge that the plane only had enough fuel to fly for an hour after it was reported missing at 1:17 am CDT. Consequently, very early on the morning of September 4, 1991, Nicandros and Rudge speculated that the plane had crashed and that the passengers and crew, if not dead, had sustained major injuries.

In accordance with the SIRP, Rudge directed his staff to assemble all Conoco medical records[28] on the passengers and crew that so that they could be forwarded to physicians in Malaysia who would treat the injured and identify the dead. In reviewing the medical records Conoco had on Fox, Rudge discovered Catterson's 1991 report to Conoco that Fox had been engaging in heavy alcohol consumption for several years. Rudge brought the matter to Nicandros' attention.

Nicandros directed Petersen[29], who was at his headquarters in Wilmington, to prepare a team to travel to Malaysia. Nicandros directed Petersen to stop in Houston first to receive detailed instructions from Rudge and to pick up several DuPont Aviation pilots from Conoco's aviation operations, including Peck, to assist Petersen with the assignment in Malaysia.

By September 5, 1991, Nicandros, Rudge, McNown, Peck and Petersen had entered into a conspiracy to destroy all evidence of Fox's alcoholism, and all evidence that DuPont and Conoco had knowledge of Fox's alcoholism. The immediate objective

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[27] Woolard assigned Nicandros with all DuPont responsibility and authority in matters surrounding the Malaysian plane crash.

[28] For Ann Parsons, Rudge obtained dental records for which he had no authorization.

[29] The same morning Nicandros promoted Petersen from "Director" to "Vice President", an unprecedented three-level jump in corporate position to a status of a corporate" officer". Nicandros' motivation was obviously: give Petersen the legal standing of corporate officer so that he could be sacrificed to shield Nicandros.

of the conspiracy was to obstruct the work of the US and Malaysian federal agencies the conspirators anticipated would be investigating the plane crash in Malaysia. Nicandros and Rudge ordered (1) the destruction of the incriminating medical records on Fox controlled by Conoco and DuPont, (2) the destruction of the original cockpit voice recorder (CVR) recording when it was recovered from the wreckage of the plane, and (3) destruction of all of Fox's remains.

Nicandros and Rudge directed Conoco Indonesia Vice President Sidney S. Smith and Conoco Indonesia General Counsel Walter L. Brignon to go to Kota Kinabalu with all the necessary manpower and money needed to find the plane and the victims remains. Nicandros directed DuPont Singapore Public Relations Manager Irvin Lipp to go to Malaysia to gain control of local print and television coverage of the plane crash. Pursuant to the DuPont's AIG aviation liability policy, AIG sent two claims adjustors from its Malaysian subsidiary to assist the DuPont and Conoco personnel in dealings with local public officials and directing money for the SAR effort.

Smith, Brignon and Lipp arrived along with several subordinates from their offices and physician Lyndon E. Laminack, MD with Asia Emergency Assistance, Inc. (AEA)[30] early on the morning of September 5th. Smith ordered a heavy-lift helicopter and crew employed by Conoco operations in Indonesia to come to Kota Kinabalu. Smith planned to use the helicopter to recover the victims' remains when they were located.

Late on the morning of September 5th Petersen and his ten-man "investigation" team departed Houston for Malaysia flying in the DuPont Gulfstream IV Woolard used. They arrived at Kota Kinabalu on September 6th at about 11:00 pm. Although Malaysian

[30] Laminack was deployed from AEA offices in Singapore, under a contract Conoco had for AEA to provide medical services to employees of Conoco Indonesia.

police reports indicate that the location of the crash site was known to the police through an eyewitness account of the crash in the late afternoon of September 4th, the crash site was only officially "discovered" at noon on September 6th. Immediately after the official discovery, a six-man team of Royal Malaysian Air Force (RMAF) commandos and Department of Civil Aviation (DCA) firemen repelled from a helicopter into the forest to provide medical assistance to any survivors and secure the crash site. By the time Petersen's team arrived on September 6th, Conoco and DuPont already had positioned more than twenty other employees and contractors to Kota Kinabalu from its operations in Indonesia and Singapore.

The Sabah state and Malaysian federal governments were providing more than sixty police and military personnel, and three heavy-lift helicopters to transport personnel and remains to and from the crash site.[31] However, after observing the massive contingent of experienced and better funded investigators arrive in Malaysia from DuPont, Conoco and several US federal agencies,[32] the Malaysian Department of Civil Aviation (DCA), sent only one investigator from DCA headquarters in Kuala Lumpur to participate in the plane crash investigation.

When he arrived at the SAR command center at Keningau[33] on the morning of September 7th, dressed in his military flight suit,[34] he took command of the Malaysian

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[31] Documents obtained in Malaysia by Parsons' investigator reveal that Conoco or AIG paid more that $250,000 to the local police for their work.

[32] The number of US federal agencies and the number of US federal employees involved in this investigation of a private plane crash was unprecedented. Six Consular Officers from the Department of State (DOS); one investigator from the National Transportation Safety Board (NTSB); two investigators from the FAA; twelve investigators from the Office of Armed Forces Medical Examiner (OAFME)[32], and one investigator from the Federal Bureau of Investigation (FBI).

[33] Keningau is about six nautical miles from the crash site and a abandon airfield there was used as a base of SAR operations for helicopters flying to and from the crash site.

military personnel who were charged with searching the crash site and extracting the victims' remains. Petersen could have ordered that any remains located at the crash site be immediately airlifted by the helicopter Smith had brought in from Indonesia using long-line techniques Smith used in Conoco's remote oil field operations in Indonesia.[35] Instead, Petersen ordered that the Malaysians cut down trees on top of the ridge into which the plane had first impacted treetops to create a helicopter landing-zone. Although Petersen was advised that the task would take the 60-man team camped at the crash site more than two days to complete, Petersen ordered that the landing-zone be completed before anything was removed.

When the Malaysians finally completed the helicopter landing-zone Petersen had ordered on September 9th, DOS Manila Consular Officer Philip N. Suter was flown to the crash scene to inventory items being recovered by the SAR team. Videotape shot of the crash scene by a DCA employee shows Suter making an inventory of the "things" that the Malaysian military personnel working at the scene were bringing him. However, Suter shows no interest in noting or directing the recovery of a victim's remains that can be seen hanging in trees a few yards from where he stands.

On September 9th, the CVR from the plane was found at the crash site, and National Transportation Safety Board (NTSB) Investigator Robert P. Benzon arrived in Kota Kinabalu to represent the United States in the investigation of the plane crash. Benzon had two FAA investigators with him to assist in his work.

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[34] Gulfstream Aerospace Representative Gerald Runyon, who was on Petersen's team, shot videotape that showed Petersen wearing a US military flight suit. However, the quality of the videotape is not good enough to see if Petersen's name patch indicates his former rank: "General Petersen".

[35] As a Marine Corp General Officer, Petersen would have been familiar with the long-line techniques for airlifting materials to and from mountainous and forested terrain.

By September 10th, investigators with the Criminal Investigations Division (CID) of the Sabah state police had located, documented, and separately bagged 24 separate human remains. The CID investigators documented the recoveries by maps, notes, photographs and videotape of their gruesome work.

On September 10th, while Petersen was in charge, two of the 24 body-bags were airlifted from the crash site, taken to Kota Kinabalu's Queen Elisabeth Hospital, and custody of the remains was transferred from the Sabah state police CID investigators to DOS Kuala Lumpur Consular Officer Peter G. Kaestner, representing the United States. Later that morning Kaestner and Laminack would have two body-bags taken to a private room at the hospital morgue and examine the contents.

Rudge had directed DuPont Corporate Counsel William E. Gordon to get the victims' families to execute authorizations that would allow Conoco to take custody of all of the victims' remains once custody was turned over to the US federal government. The authorizations were faxed to Brignon in Kota Kinabalu who presented them to Kaestner. Thereafter, Conoco had legal custody of the remains including the two body-bags that the CID investigators had turned over to Kaestner on September 10th.[36]

On September 11th, the day after the first two body-bags were airlifted from the crash site, Petersen abruptly left Malaysia in the Gulfstream IV. The remaining 22 body-

[36] Documents generated by the OAFME team show that Conoco never turned these first two body bags, each containing at least the torso of one individual, to the OAFME team for identification. Conoco however did turn over 22 other bags of remains to the OAFME. The OAFME team found ten torsos in these body bags that they eventually identified as belonging to the nine passengers and the flight mechanic, Stephen James. Hence, the two torsos contained in the two body bags that Conoco withheld from the OAFME belonged to Fox and Johnston.

bags were left at crash site until the OAFME team that Conoco had instructed that the Department of Defense (DOD) send to Malaysia had arrived.[37]

The OAFME team arrived in Kota Kinabalu on September 14th. Finally, on September 15th, after rotting[38] in the forest for more than ten days, and five days after they could have been airlifted from the crash site, the remaining 22 body-bags were airlifted to Queen Elisabeth Hospital, where the OAFME team assumed custody and began to identify and autopsy the remains. However, Brignon, Smith and Laminack[39] hid the first two body-bags that they knew contained the remains of Fox and Johnston from the OAFME team. [40]

Nicandros and Rudge directed Petersen to obtain the original CVR recording that contained recordings of Fox's voice for more than thirty minutes before the plane crash. They feared the recording could lead investigators to suspect that Fox had been intoxicated, or otherwise mentally or physically incapacitated before the plane crash.[41]

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[37] The AFIP team had recommend that Conoco bring all of the remains to a US facility (Okinawa, Hawaii, Maryland) where identifications could be made conveniently by AFIP personnel using their own equipment. However, Conoco insisted that the AFIP team go to Malaysia and agreed to pay more that $300,000 to for them to do so.

[38] Although Petersen was confident that he had secured the bulk of Fox's remains. He could not be sure that a part of Fox large enough to conduct forensic toxicological analysis to check his sobriety had not been recovered and placed in one of the other 22 body bags at the crash site. Leaving the remains at the crash site to decay and generate biogenic ethanol was a means to create an excuse for the ethanol Conoco feared would be found in Fox's body tissues.

[39] Conoco asked Laminack to see if he and AEA could get the remains out of Malaysia by way of Singapore, without involving the DOS. The plan was stopped when someone in Laminack's Singapore office called the US Consulate in Singapore to naively about documentation. The subject of the telephone call quickly was passed on to the US Consulate in Kuala Lumpur.

[40] Individual police reports for each of the 12 crash victims, including Fox and Johnston, states that the individual was brought in dead to the Queen Elisabeth Hospital. The Malaysian death certificates issued by the local medical examiner for each of 12 crash victims, including Fox and Johnston, states that the individual died of multiple blunt force injuries. In his 1992, deposition testimony in the wrongful death cases, Petersen would falsely testify that: "...sadly, no pilots' remains were recovered..."; thus "...sadly..." no toxicological tests were performed.

[41] Similar evidence was used by the NTSB in establishing Exxon Valdez Captain

The CVR was taken from the crash site on September 10th, flown to DCA headquarters in Kuala Lumpur and then taken by a DCA and FAA investigator to the United Kingdom Air Accidents Investigation Branch (AAIB) to be decoded and copied to audio cassette.

Petersen knew if he appeared too eager to gain control of the CVR recording that investigators may become suspicious that the owner or the operator of the plane was attempting to obstruct the DCA investigation by destroying the CVR recording before it could be thoroughly analyzed. Before Petersen left Malaysia, he told Benzon, using the pretense of his official capacity, to get the original CVR recording from the DCA.

After the AAIB copied the part of the CVR recording that the DCA had requested, the investigators returned the original CVR recording and the copy[42] back to the DCA. On September 16th, Benzon arrived at DCA headquarters in Kuala Lumpur and, under the pretense that he was acting in this official capacity and would have the recording analyzed by the NTSB CVR laboratory in Washington, D.C., Benzon demanded that the DCA give him custody of the original CVR recording.[43] The DCA complied with Benzon's demand, but after Benzon arrived in the US on September 18th, he did not check the original CVR recording into the NTSB CVR laboratory as NTSB procedures required. Instead, Benzon took the recording to DuPont in Wilmington, Delaware. Benzon later testified that he retained a copy of CVR recording that the AAIB had made

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Hazelwood's intoxication on March 24,1989. Rudge and his staff would have been very familiar with this development in the Exxon Valdez case.

[42] FAA FAR required that the DuPont plane be equipped with a CVR that recorded three channels: one channel for each of the pilots' headsets, and one channel for an "area microphone" that captured cockpit conversations and noises. The cassette tape returned to DCA contained only the (stereo) recordings of the two pilots' headsets.

[43] Petersen testified that he had directed Benzon to obtain the CVR recording from the Malaysian DCA.

for the DCA, but that he "…threw it in his waste basket…" when he learned that wrongful death lawsuits had been filed.

Facts Relating to Fraud Conspiracy – AIG, Gardere and LOWT

On September 21, 1991, a day after Ann Parsons should have celebrated her 36th birthday, the remains of all nine passengers and James were returned to Houston onboard a DC-8 jet that Conoco had chartered for the job. Ann Parsons was buried in Dallas on September 23, 1991.

In early October 1991, representatives of DuPont, Conoco and AIG met with Parsons purportedly to answer questions that Parsons had asked concerning what the companies had learned in their investigation of the plane crash.[44] However, at the meeting Parsons discovered that the lawyers representing the companies treated Parsons as a litigant and refused to share any information about what had been learned in the investigations until Parsons released DuPont and Conoco from all liability for his wife's death. In exchange for Parsons signing a release, the AIG offered Parsons a token money "settlement".[45]

After the hardball approach that AIG had used in its discussions with him, Parsons began to investigate AIG's relationships with the Government of Malaysia. Parsons discovered that the Malaysian Department of Civil Aviation (DCA) was closely

[44] After the crash AIG sent at least two claims adjusters from its offices in Malaysia to assist in the SAR efforts.

[45] When Parsons protested to Nicandros by telephone about how the DuPont, Conoco and AIG lawyers had denied him any information about the companies' investigation, Nicandros told Parsons that Conoco would supplement the AIG settlement offer to bring the total settlement up to eight or nine million dollars. Parsons ask Nicandros to meet with him in person to discuss the situation, however Nicandros insisted that Parsons meet with Rudge instead. When Parsons met with Rudge, in response to Parsons' questions about what the companies had learned from their investigation, Rudge told Parsons that he "…would have to sue…" to get that information.

linked to the near bankrupt national airline, Malaysian Airlines through its International Lease Finance Corporation (ILFC) subsidiary that was the largest leaser of the airlines' aircraft. Furthermore, through its American International Assurance (AIA) and American International Underwriters (AIU) subsidiaries, AIG was the largest insurer in Malaysia, even contracting with the Government of Malaysia for its employees. Parsons came to believe that AIG was using its significant political leverage in Malaysia to influence the DCA's investigation of the plane crash to minimize the liability claims losses arising from the plane crash.[46]

AIG had retained the Dallas law firm Gardere & Wynne, LLP ("Gardere")[47] to defend against liability claims brought in Texas against its clients. In particular, AIG used Gardere aviation specialist trial Martin E. Rose ("Rose")[48] and aviation appellate specialist Cynthia C. Hollingsworth ("Hollingsworth") to represent DuPont and Conoco in liability claims arising from the plane crash in Malaysia.

In October and November1991, Roger Parsons interviewed lawyers at more than seven personal injury law firms in Houston, Austin and Dallas to identify a firm that with expertise in aviation litigation who could thoroughly investigate the plane crash and prosecute Parsons' legal claims. Parsons interviewed the three most promising candidates twice. In the second interview, Parsons asked the candidate if they had any relationship with DuPont, Conoco or AIG, or subsidiaries of these companies.

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[46] The DCA had responsibility for issuing the official report on the plane crash, pursuant to Annex 13 of the United Nations, International Civil Aviation Organization (ICAO) Agreements (treaty), however the Malaysian's depended on the NTSB and FAA to gather documentary evidence from the US manufacturer (Gulfstream Aerospace), the owner of the plane (DuPont), and the operator of the plane (Conoco).

[47] Now known as Gardere Wynne Sewell , LLC.

[48] Rose left Gardere in 1999, to become name-partner of Rose-Walker, LLP.

In Parsons' second interview of R. Windle Turley and Michael G. Sawicki with the Law Offices of Windle Turley, P.C. ("LOWT"), Turley and Sawicki denied having any relationships with any of these companies. In 1998, Parsons would learn that Turley had lied to Parsons and that Turley was insured by AIG subsidiary NUFIPP for $10,000,000 for any claims arising from Turley's professional negligence.

In November 1991, believing Turley to be the best candidate to handle his case, Parsons signed a contingency fee agreement with Turley. Parsons agreed to pay Turley 20% of *any* recovery that Parsons received for his claims and all LOWT expenses in litigating his claims. Windle Turley agreed that he would personally represent Parsons in *all* legal claims arising from Ann Parsons' death.

In December 1991, Parsons organized a trip to the Malaysia to interview any eyewitnesses of the plane crash and to survey the wreckage of the crashed plane. Parsons asked Turley to assign one of his firm's investigators or lawyers to go with him to preserve testimony or physical evidence useful in prosecuting Parsons legal claims. Turley refused to participate, so Parsons employed two other individuals to go to Malaysia with him to help in an investigation. On this trip and his subsequent trips in July 1992, [49] June 1993 and November 1993, Parsons learned that AIG had indeed brought political pressure on the DCA personnel conducting the official investigation. AIG was influencing the politicians who oversaw the DCA to prevent publication of the report on the DCA investigation of the plane crash until all litigation in the United States had concluded. Parsons' believed the AIG actions to obstruct the official investigations

[49] Parsons returned to the crash site in July 1992, to conduct an extensive survey of the site and map the wreckage in the debris field and to interview other witnesses.

of a foreign government to save the company from paying a $100,000,000 claim against its clients DuPont and Conoco, violated the Foreign Corrupt Practices Act ("FCPA").[50]

In February 1992, Turley filed suit in Texas district court in Houston naming only DuPont as a defendant. Within a few weeks, Rose motioned the Texas court for removal to federal court on grounds of diversity jurisdiction.[51] The motion was granted, and for the next year and a half Parsons demanded that Turley join Conoco and Fox in the suit to defeat Rose's diversity jurisdiction claim and have the case remanded back to the Texas district court.

In August 1993, Turley was contacted by Cardamone, offering Turley copies of the letters he had written to DuPont senior management before the plane crash. Cardamone offered these letters to Turley to use in the prosecution of Parsons' claims as evidence that DuPont and Conoco knew, before the plane crash in Malaysia, about the dangerous situation created by the gross mismanagement of DuPont pilots.

Parsons directed Turley to go to Wilmington to meet with Cardamone and any other pilots in Wilmington who would agree to meet with him to discuss what DuPont had been told prior to the plane crash in Malaysia. In late 1993, Turley held a meeting in Wilmington with Cardamone and several other former DuPont pilots. At this meeting, Cardamone gave Turley a complete set of copies of all of correspondence that he had had with DuPont and Conoco management. After reviewing the documents, Parsons

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[50] Parsons, a stockholder of DuPont, expressed his concerns about what he had learned about AIG efforts to influence agencies of the Malaysian government to lessen AIG's legal liabilities in a letter to the DuPont Board of Directors in March 1993. Parsons' actions caused AIG have Rose attempt to obtain a frivolous gag order in *Parsons v. DuPont* to prevent Parsons' from communicating with DuPont directors. When Turley refused to file an objection to the motion, Parsons was forced to hire two new lawyers to defend his free speech rights in Parsons v. DuPont. Parsons was successful in getting Rose's motion denied.

[51] Within days of Turley filing of the lawsuit, Conoco fired Parsons.

was confident that Turley had key evidence in hand that proved knowledge by DuPont officers of the dangerous situation created by their gross mismanagement of their pilots. Until the trial of the case had begun, Turley mislead Parsons to believe that he would use Cardamone's documents and testimony to prove Parsons gross negligence claims.

By late 1993, Parsons had reviewed the portions of Fox's medical records that were produced by DuPont in *Parsons v. DuPont* and by Conoco and Fox in *Parsons v. Conoco*. Parsons discovered Catteron's 1990 narrative report warning Conoco about the potential for Fox having a glucose metabolism problem. Parsons also discovered that Catterson's 1991 narrative report for Fox was missing from the production. Parsons insisted that Turley to have a knowledgeable physician review the parts of Fox's medical records that had been produced, and demand that DuPont, Conoco and Fox turn over Fox's complete medical file. Until the trial of the case had begun, Turley mislead Parsons to believe that he would have a knowledgeable physician review the parts of Fox's medical records that had been produced, and demand that DuPont, Conoco and Fox turn over Fox's complete medical file. [52]

In September 1993, a few days before limitations barred joining other defendants in *Parsons v. DuPont*, Turley filed suit against Conoco and Fox's estate in Texas district

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[52] Turley never demanded that DuPont, Conoco or Fox turn over Fox's complete medical file nor did he attempt to obtain a copy of the complete medical file from the files originator, Catterson.

Turley hired retired NASA Flight Surgeon Charles A. Berry to review the portion of Fox medical records produced by DuPont, Conoco and Fox. Berry failed to disclose to Turley that he had been Catterson's boss when Berry and Catterson were employed by the National Aeronautics and Space Administration (NASA). Although Berry had a conflict of interest in appraising Catterson's work, Turley accepted without question Barry's statement that he could not determine if Fox had a medical problem from the medical records Turley had sent him. Apparently Berry choose to shield his former colleague from federal criminal sanctions for fraud against the FAA in approving Fox's medical certification despite the obvious liver damage and probably alcoholism indicated by the abnormally high liver enzymes in Fox's blood that were reported by Catterson in the medical records sent to Berry.

court in Houston ("*Parsons v. Conoco*"). Turley also motioned the federal court for leave to join *Parsons v. DuPont* and *Parsons v. Conoco* in the Texas district court. However, Turley failed in his pleadings to state any new evidence that justified joining Conoco in *Parsons v. DuPont*. Consequently, the federal court denied Turley's motion for leave and *Parsons v. DuPont* and *Parsons v. Conoco* proceeded separately in federal and Texas district courts respectively.

Parsons v. DuPont went to trail in July 1994. After an eight-day trial, the jury found that DuPont was guilty of negligence and gross negligent in its supervision of Fox. The jury awarded Parsons $4,750,000 in actual damages – approximately half the amount Turley had argued Parsons had lost.[53] Although Turley purposefully did not use Cardamone's documents or testimony at trail,[54] evidence that would have proved DuPont's subjective awareness of the mismanagement of Fox before the plane crash, the jury found DuPont grossly negligent in assigning Fox to fly the trip.

Immediately following the announcement of the jury's finding, DuPont motioned the court for a judgment as a matter of law (JNOV) on the gross negligence finding arguing that Turley had failed to present legally sufficient evidence for that finding. The trial judge immediately granted DuPont's motion and ended the proceedings before the second phase of the bifurcated trial[55] could occur in which the jury was to determine the quantum of exemplary damages DuPont should pay.

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[53] Parsons repeatedly warned Turley in writing about calculation errors that Turley had made in his estimations of Ann Parsons career value.

[54] After the trial, Turley inexplicably refused to turn over to Parsons the documents that Cardamone had provided Turley for his use in the prosecution of Parsons' case. Parsons intended to provide Cardamone's documents to the three victims' families whose wrongful death cases that were set for trial in August 1994.

[55] Pursuant to *Transportation Insurance Co. v. Moriel*, 879 S.W.2d 10 (Tex. 1994).

Less than a week after trial, Parsons met Turley to discuss appealing the JNOV. Turley told Parsons that he was reluctant to appeal and that if Parsons insisted on an appeal that Parsons should increase Turley's contingency share from 20% to 40%. Parsons told Turley that he would consider Turley's proposition, but insisted that Turley timely file the necessary notice of appeal. Turley timely filed the necessary notice of appeal, but failed to timely file a bill of costs to Parsons right to the court costs awarded by the trial court in the final judgment.[56]

Disappointed with Turley's performance at trial and his reluctance to appeal, Parsons began interviewing appellate specialist willing to represent him on a fee basis in the federal appeal. In December 1994, Parsons hired Sidney K. Powell and Powell & Associates ("Powell") to handle the appeal of *Parsons v. DuPont*. Pursuant to Powell's retention agreement, Parsons instructed Turley in writing that Parsons had given Powell total responsibility for all aspects of the case throughout the appeal, including responsibility for communications with DuPont and DuPont counsel.[57]

Subsequent to Rose learning that Parsons had hired Powell to appeal his case, Rose and Hollingsworth cross-appealed seeking a remittitur on the ordinary damages. To secure the Parsons' judgment during the appeal, Turley obtained the first of two supercedes bonds from AIG. The first supercedes bond contained an explicit calculation of the judgment debt one year after the final judgment, showing the amount of damages

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[56] Turley knowledge of his error from Parsons until May 1997, when Turley finally disclosed copies of correspondence he had had with Gardere attorney's concerning the court costs due Parsons.

[57] On learning that Powell and not Turley would handle Parsons' appeal, Rose called Powell. Rose angrily asked Powell if she intended to sue Turley for legal malpractice. When Powell stated that she only handled federal appeals, Rose said that if Parsons sued Turley for legal malpractice that he would testify that Parsons' claims were baseless because Turley did a good job at trial.

awarded in the judgment, prejudgment interest and one year of post-judgment interest. The second supercedes bond contained an explicit calculation of the judgment debt two years after the final judgment, showing: the amount of damages awarded in the judgment, prejudgment interest, and two years of post-judgment interest. The calculations in both supercedes bonds were approved by AIG, Rose and Turley, and approved by the district court in 1994 and the circuit court in 1995.

In early1995, the Texas district court granted a Rose's motion on behalf of Conoco and Fox for summary judgment in *Parsons v. Conoco*. The motion for summary judgment was based upon (1) collateral estoppel, arguing that a Parsons already had a judgment against Fox's employer, DuPont, for Ann Parsons' wrongful death; and (2) the Texas Workers Compensation Act, arguing that Ann Parsons was employed by Conoco and had died in the course and within the scope of her employment.[58] Parsons instructed Turley to appeal, but Turley refused and Parsons was forced to file a notice of the appeal *pro se* and then seek an appellate specialist to prosecute the appeal.

Parsons hired Texas appellate specialist Timothy Patton to handle the appeal of *Parsons v. Conoco*. However, because Turley failed to tell timely notify Parsons that the summary judgment had been granted, Patton concluded that Parsons' *pro se* filing of his notice of appeal was untimely. Patton subsequently filed an admission with the court stating that the notice of appeal was untimely. Subsequently, the Texas Court of Appeals dismissed the case in October 1995.

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[58] Rose's argument that Parsons is barred by collateral estoppel from suing Fox's estate because Parsons succeeded in suing Fox's employer DuPont is erroneous. The defendants, Fox and DuPont, are distinct.

There is evidence that Rose's claim that Conoco had Ann Parsons covered under the Texas Workers' Compensation Act is also erroneous. DuPont is listed the insured, and Conoco falsely declared to the TWCC that Ann Parsons was an employee of a Conoco subsidiary, Kayo Oil.

In July 1996, the US Fifth Circuit Court of Appeals issued its opinion in *Parsons v. DuPont*, sustaining the trial court in all issues. However, before the appellate court issued its mandate and concluded the appeal, against Parsons' previous directions and without Parsons knowledge, Turley contacted the Hollingsworth seeking immediate payment of the judgment debt owed Parsons. Hollingsworth asked Turley to submit a letter with his calculation of what judgment debt was owed. Turley submitted a calculation to Hollingsworth that was several hundred thousand dollars short of the amount stated 1995 supercedes bond as the exact amount owed.

Before Hollingsworth sent the check to Turley, she called Powell to determine if Powell's name should appear on the check. Powell immediately told Parsons about Turley's unauthorized dealings with Gardere, AIG and DuPont. Parsons immediately faxed Turley written instructions to withdraw his calculation and cease communications with Gardere, AIG and DuPont until after the appellate court issued its mandate. However, Hollingsworth quickly had a check hand delivered to Turley for an amount that Turley had erroneously calculated far short of the actual judgment amount.

After the appellate court issued its mandate on July 28, 1996, Hollingsworth sent another check to Turley for part, but not all, of the short-fall from the first payment, insisting that Parsons sign a release from the judgment for DuPont before Parsons received any money from the checks that Turley now held. After Parsons had demanded his money for more than a month with out the condition of signing a release, Turley cashed the checks in August 1994 and issued a check to Parsons for the judgment amount short approximately two hundred thousand dollars from the amount stated in the last supercedes bond. Furthermore, Turley continued to tell Parsons that

DuPont still owed more than $50,000 in court costs that Parsons was awarded as part of the judgment.

In 1996, Parsons hired Robert M. Greenberg ("Greenberg") to investigate a legal malpractice action against Turley and his firm. On Greenberg's recommendation, Parsons also hired attorney Robert E. Motsenbocker ("Motsenbocker") and investigator Fred Cliff Cameron ("Cameron").

Because Turley repeatedly failed to correct errors Parsons had brought to his attention in time for correction, Parsons suspected that Turley's legal malpractice was not inadvertent, but was intentional and coordinated with Rose and AIG to defeat Parsons legal claims against DuPont, Conoco and AIG. Parsons wanted Greenberg, Motsenbocker and Cameron to find evidence of Turley's motivation for colluding with Rose and AIG. Specifically, Parsons asked Greenberg, Motsenbocker and Cameron to find out if Turley was insured by AIG for professional negligence.

By early 1997, Turley, Rose and AIG had learned that Parsons' was investigating a legal malpractice action against Turley. In May 1997, Turley applied for "claims made" legal malpractice insurance with Carolina Casualty Insurance Company ("CCIC"). Turley's new policy lowered the policy limits from $10,000,000 that he had with AIG to only $5,000,000 with CCIC, although the number and size of Turley's cases increased. On the CCIC application disclosures form, Turley denied knowing of any potential claims against Turley for work he had done before the new policy went into effect.[59]

In May 1997, Rose and Hollingsworth filed a motion in *Parsons v. DuPont* seeking a release from judgment for DuPont and its surety, AIG. In preparing to oppose

[59] Later in pleadings in Parsons' legal malpractice case against Turley, Turley stated he believed that Parsons would sue him for legal malpractice as early as 1994.

this motion, Parsons sought all correspondence[60] that Turley had with Gardere relating to the unpaid court costs. From these correspondence Parsons learned for the first time that Turley had failed to send him two critical correspondences from Gardere to Turley in which Gardere reminds Turley that he had failed to file a timely bill of costs and had no legal basis now for recovering any of Parsons' court costs. Parsons immediately instructed Turley to accept Gardere's offer of less than half the costs Parsons had paid. When Parsons discovered Turley's error, Parsons immediately fired Turley. Subsequently, Gardere refuse to pay any of the costs Parsons was owed.[61]

Parsons countered the DuPont motion for release from judgment with a motion to enforce the judgment, requesting that court order DuPont to pay the amount specified in the final judgment that had been explicitly calculated by AIG, Rose and Turley in the supercedes bonds they had endorsed. In December 1997, a hearing was held to resolve the remaining dispute in *Parsons v. DuPont*. A few week later the court issued its opinion that DuPont owed Parsons $50,000 in additional interest. However, while it was within the discretion of the court to do so, the court would not order DuPont to pay

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[60] Turley was under standing instructions from the day he was hired to copy Parsons on all correspondence that Turley received or generated in Parsons cases.

[61] In August 1996, Rose and Turley believed that paying Parsons most of the money he was owed would silence Parsons demands for the remaining interest and court costs that he had been shorted. When this did not happen, Turley told Parsons that he was continuing to negotiate with Rose on getting Parsons court costs.

Rose and AIG knew that Turley held a $10,000,000 AIG legal malpractice policy. Rose and AIG also knew that Turley had committed multiple counts of legal malpractice against Parsons during Turley's handling of *Parsons v. DuPont*, the least damaging to Parsons being Turley's failure to timely file a bill of costs for approximately $50,000. Rose and AIG was were willing pay the $50,000 in court costs if that would prevent Parsons from making a claim against Turley's $10,000,000 AIG malpractice policy.

When Rose and AIG discovered that Parsons was investigating a major legal malpractice claim against Turley, Turley had lost his leverage in negotiating for AIG to pay the court costs to avoid a claim against Turley's AIG malpractice policy.

the court costs pursuant to the final judgment, because Turley had failed to file a timely bill of costs.

Parsons appealed the district courts ruling to the Fifth Circuit Court of Appeals. Parsons argued that the supercedes bonds were judicial admissions by DuPont, or alternatively, that the lower court erred in calculating the amount of prejudgment interest Parsons was owed pursuant to Texas law Tex.Rev.Civ.Stat.Art. 5069-1.05. The appellate court issued its final mandate in *Parsons v. DuPont* on December 31, 1999.

Facts Relating to Fraud Conspiracy – LOWT, Carrington and Greenberg

In late 1997, Greenberg and Motsenbocker began formally investigating Parsons malpractice claims against Turley through ancillary litigation under TRCP Rule 202. Turley was represented by Barbara M. G. Lynn ("Lynn") with Carrington Coleman Sloman & Blumenthal, LLP ("Carrington") in these proceedings and the resulting litigation. Greenberg deposed Cardamone and another pilot in Wilmington in late 1997. Greenberg deposed Catterson and others in Houston in early 1998. From Catterson's 1998 deposition, Parsons learned for the first time that Fox had suffered from alcoholism[62] and that DuPont and Conoco had actual notice of Fox's alcoholism before he left Houston on the fatal flight.

Parsons now realized that if Turley had discovered and been willing to use this evidence in his prosecution of *Parsons v. DuPont* that he could have easily had Conoco joined as a defendant and proven beyond reasonable doubt that DuPont and Conoco had been guilty of gross negligence under the Texas standard.

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[62] Pursuant to 1991 Federal Aviation Regulation §67.13 (d) (1) (i) (c).

Parsons now believed that DuPont and Conoco had willfully withheld the parts of Fox's medical records that showed Fox suffered from alcoholism to defraud Parsons and the other victims' families of their legitimate gross negligence claims against the companies. Because Parsons knew that DuPont and Conoco had been intimately involved in the efforts to recover of Fox's remains and the original CVR recording, Parsons now suspected that the companies also destroyed this evidence that would have pointed to Fox's mental and physical incapacitation as a cause of the plane crash.

Parsons sent Cameron to Malaysia to find evidence supporting his suspicions. Cameron found: (1) CID report stating that Fox's remains were recovered and brought to Queen Elisabeth Hospital; (2) Malaysian death certificate stating that Fox died of multiple blunt force injuries; (3) copy of the CID videotape documenting the recovery of Fox's remains at the crash site; and (4) police officer in charge of the CID team. The police officer showed Cameron the videotape of the CID team's work and opined that the first two body-bags airlifted from the crash site on September 10, 1991, contained the pilot and the copilot.

Cameron also obtained a copy of the final report of the DCA investigators in Kuala Lumpur who had done the official investigation of the plane crash. The DCA report stated that Conoco was the operator of the plane, not DuPont as Rose had told the federal court.

After Cameron reported what he had learned to Parsons, Parsons realized that DuPont and Conoco had conspired since September 1991 to destroy evidence of Fox's alcoholism and the companies knowledge of Fox's alcoholism before the plane crash. Parsons also realized that AIG, Rose and Turley had participated in a conspiracy to

keep the court from hearing any of the evidence Cardamone had given Turley relating to DuPont and Conoco mismanagement of pilots, or any of the evidence that Parsons pointed out to Turley relating to Fox's probable glucose metabolism disorder.

Parsons believed that if this evidence and the evidence that this evidence was suppressed would have been a predicate for sever sanctions against the companies and lawyers for spoliation of evidence and/or fraud upon the court.[63]

On June 12, 1998, Greenberg and Motsenbocker filed suit against Turley, *Parsons v. Turley*, alleging among other things, that Turley negligently failed (1) to discover and use the evidence of Fox's alcoholism; and (2) to sue both DuPont and Conoco in state court. Greenberg faxed the complaint to Lynn with a letter proposing that if Turley agreed to a meeting between Turley, Turley's lawyers and Turley's insurer; and Parsons and Parsons' lawyers to discuss a settlement of the case; then, Greenberg would delay his request to issue and serve citation on Turley.

However, Lynn and Turley never intended to negotiate settlement with Parsons. Instead, Lynn and Turley conspired[64] to have Greenberg delay the service of citation until after July 18, 1998, when they believed that limitations would bar Parsons' claims.

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[63] The frauds against the several federal agencies involved in the investigation of the crash, the court may have referred the matter to the Department of Justice for investigation and prosecution.

Citing "a pattern of concealment and misrepresentation", US District Judge J. Robert Elliott ordered record-breaking sanctions against DuPont (see "DuPont Fined $101 Million by Judge For Withholding Data In Benlate Case"; Page B2, Wall Street Journal, August 23, 1995). Judge Elliott stated in his opinion:

> "It is clear that DuPont continues to evidence an attitude of contempt for the court's orders and processes and to view itself as not subject to the rules and orders affecting all other litigants. Put in layman's terms, DuPont cheated. And it cheated consciously, deliberately and with purpose. DuPont committed a fraud in this court, and this court concludes that DuPont should be, and must be severely sanctioned if the integrity of the court system is to be preserved."

[64] Sawicki was a party to some of Lynn's and Turley's conspiratorial discussions. After Sawicki left LOWT and had his own legal dispute with Turley, Sawicki called Greenberg to tell him about the conspiracy.

Lynn knew that Greenberg knew that she was a leading candidate for appointment by the Clinton Administration to be a district judge on the United States District Court for the Northern District of Texas. Turley and Lynn conspired to abuse Greenberg's support for Lynn's political appointment and confirmation to create a legal defense for Turley.

First, Lynn waited until July 1, 1998, to call Greenberg regarding the proposal he had made in his June 12, 1998, letter. In the telephone conversation, Lynn asked Greenberg to delay the meeting Greenberg had proposed until July 21, 1998, to accommodate her schedule for interviews related to her prospective job. Greenberg agreed to the delay, thereby sacrificing Parsons' interests for his political interest in having his friend Lynn obtain a political appointment and congressional confirmation. Greenberg thereby entered into Lynn's and Turley's conspiracy to defraud Parsons of his day in court.

On July 21, 1998, Parsons, Greenberg, Motsenbocker and Powell meet with Lynn and a representative of CCIC. Turley, who had the settlement authority under the CCIC policy, did not appear. Greenberg presented an outline of the case against Turley including facts gathered in Catterson's deposition under the TRCP Rule 202 ancillary litigation. Greenberg ended his presentation by asking Lynn and the CCIC representative to consider tending the CCIC policy limits to avoid litigating the issues. Lynn responded that she needed discuss Greenberg's proposal with Turley.

Finally, on August 13, 1998, after he realized Lynn's and Turley's deceit, Greenberg requested the issuance of citation. However, Turley evaded service of citation until Greenberg requested service through Lynn on September 22, 1998.

Subsequently, Lynn filed a motion for summary judgment arguing that Parsons' suit was barred by limitations. Lynn used two "fact" scenarios in her legal arguments. Either Parsons fired Turley when he hired Powell in January 1995, and limitations barred suit after January 1997. [*Murphy v. Campbell*, 964 S.W.2d 265 (Tex. 1996)] Or, the appeal that ended with mandate on July 18, 1996, concluded *Parsons v. DuPont*,[65] and limitations bars suit after July 18, 1998. [*Hughes v. Mahaney & Higgins*, *821 S.W.2d 154 (Tex. 1991)*] In her second scenario, Parsons would have to sue and serve notice of citation on Turley by July 18, 1998. Although Greenberg had filed suit against Turley on June 12, 1998, Greenberg failed to serve Turley until September 22, 1998. Without opinion, District Court Judge Martin E. Richter granted Lynn's motion for summary judgment. Parsons appealed to the 5th Court of Appeals.

On August 11, 2000, Texas 5th Court of Appeals issued its opinion, written by Justice David L. Bridges, sustaining Richter's opinion. Bridges wrote that the appellate court found that Parsons had fired Turley in January 1995, and, pursuant to *Murphy* limitations barred suit after January 1997.

Parsons appealed to the Supreme Court of Texas, arguing that *Hughes a*pplied in legal malpractice cases and not *Murphy.* The Texas Supreme Court agreed with Parsons and, on June 19, 2001, remanded *Parsons v. Turley* to the 5th Court of Appeals with instructions to follow the October 11, 2000, opinion in *Apex Towing Company, et al v. William M. Tolin, III, et al*. In *Apex*, the Texas Supreme Court reaffirmed the bright-rule that it had established in *Hughes*.

[65] Lynn knew from taking Parsons deposition in 1998, that Parsons v. DuPont was still on appeal before the Fifth Circuit Court of Appeals.

"We conclude that *Murphy* did not modify the rule we announced in *Hughes*, and today we reaffirm that rule: When an attorney commits malpractice in the prosecution or defense of a claim that results in litigation, the statute of limitations on a malpractice claim against that attorney is tolled until all appeals on the underlying claim are exhausted or the litigation is otherwise finally concluded."

"We continue to believe, however, that in the area of limitations, bright-lines rules generally represent the better approach, and that the policy reasons underlying the *Hughes* rule appropriately balance the competing concerns of the need to bar stale claims and avoid prejudice to defendants yet preserve a reasonable opportunity for plaintiffs to pursue legitimate claims."

"[W]ithout re-examining whether the policy reasons behind the tolling rule apply in each legal-malpractice case matching the *Hughes* paradigm, courts should simply apply the *Hughes* tolling rule to the category of legal-malpractice cases encompassed within its definition."

In their post-remand brief, Greenberg and Motsenbocker failed to argue that the application of the bright-line rule defined in *Apex* to the facts in *Parsons v. Turley* meant that limitation on Parsons suing Turley ran out only after December 31, 2000, two years after mandate issued in the last appeal in *Parsons v. DuPont*, on December 31, 1998.

Nevertheless, in late May 2003, almost two years after the *Parsons v. Turley* had been remanded to the Texas 5th Court of Appeals, Parsons had to ask Greenberg to call the clerk of the appellate court to ask what the happening with his case. An assistant clerk told Greenberg that for unknown reasons *Parsons v. Turley* had not been even

submitted to the panel for review. The next day, the docket sheet for *Parsons v. Turley* indicated that the case had been submitted that day.[66]

On June 23, 2003, the Texas 5th Court of Appeals issued its opinion on remand in *Parsons v. Turley*. Inexplicably, the appellate court again sustained Richter's opinion. Bridges writing again, stated the facts correctly: (1) the first appeal in *Parsons v. DuPont* ended with mandate on July 18, 1998 and (2) the second appeal in *Parsons v. DuPont* ended after the first appeal. (Bridges cited no date for the conclusion of this appeal.) Bridges stated the applicable law as he had been instructed by the Supreme Court: *Apex* was the applicable law in *Parsons v. Turley*. In particular, limitations on Parsons claims were tolled only after all appeals on the underlying claim had been exhausted. However, Bridges takes the date of the conclusion of the first appeal as the date of the conclusion of *all* appeals (Bridges' emphasis) in *Parsons v. DuPont*. Bridges proceeds to conclude that because Greenberg had failed to serve citation on Turley until September 22, 1998, more than two years after the conclusion of the first appeal in *Parsons v. DuPont*, that Parsons suit against Turley was barred by limitations. [109 S.W.3d 804 (Tex. App.--Dallas 2003, pet. den.)]

Parsons instructed Greenberg and Motsenbocker to immediately file a motion for reconsideration pointing out Bridges' blatant error. Although Greenberg and Motsenbocker filed the motion for reconsideration, Bridges personally ruled on the motion and denied it. Parsons' Petition for Review to the Texas Supreme Court was denied, and mandate issued in the appeal on June 23, 2004.

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[66] Months later, to cover-up the court's error, the "Submitted" entry was predated to September 11, 2001.