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Relative of crash victim files suit against firm that operates Mercy Flight

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The company that runs Benefis' Mercy Flight service is to blame for a crash that killed all three crewmembers last year, one victim's father said in a civil lawsuit filed Monday.

An attorney for Richard Dengel filed the suit, which seeks unspecified damages, against Metro Aviation, Inc. in District Court in Cascade County. Dengel is the father of Darcy Dengel, a flight nurse killed in a Feb. 6, 2007, crash near Belgrade.

The suit claims Metro Aviation endangered flight crews by using only one pilot, rather than the two previously used, and by failing to adequately train its employees on the use of safety equipment.

The estate of Vince Kirol, the pilot on the flight and an employee of Metro Aviation, also is named as a defendant in the lawsuit.

Benefis Healthcare is not named as a defendant in the suit.

Richard Dengel's attorney, Gregory Pinski, said Kirol's estate was named so the case would remain in Cascade County, and is not an effort to collect money from Kirol's relatives. Had Kirol not been named as a defendant, the case might have played out somewhere else in the state, the attorney said.

"That's a difficult legal issue that weighs heavily on the (Dengel) family," Pinski said. "They did not want to put the Kirol family through that."

Charles Lucero, an attorney listed on the suit as the representative of Kirol's estate, did not return calls to his office Tuesday afternoon.

A report released last month by the National Transportation Safety Board cited pilot error as the probable cause of the crash. The report states that Kirol "failed to maintain an adequate altitude and descent rate during a night visual approach" into the Gallatin Field Airport in Belgrade, where the crew was scheduled to pick up a patient.

The report states that night conditions and mountainous terrain also were factors in the crash. The plane hit a tree about 80 feet below a ridgeline, at an elevation of 5,700 feet, then impacted a mountain, killing Kirol, 59, Darcy Dengel, 27, and paramedic Paul Erickson, 33.

An unaddressed, unsigned letter, which Pinski says was written by Kirol before the crash, is attached to the suit. The letter outlines numerous concerns about the decision to switch to a single-pilot system.

"Flying in this region of the United States on short notice, and in bad weather, should be done with a two-pilot crew to insure (sic) safety," the letter states.

Benefis Healthcare administrators did not receive the letter before the crash, hospital spokeswoman Amy Astin wrote in an e-mail to the Tribune.

The suit also claims that Metro Aviation did not adequately train Kirol to use safety equipment on

the plane — specifically, a system that warns the pilot of hazards in the plane's flight path, including mountains.

"For these and other reasons, Metro is guilty of actual malice since it had knowledge of facts or intentionally disregarded facts that created a high probability of injury to those onboard its fixed-wing aircraft, including Darcy Lynn Dengel," the suit states.

The lawsuit questions Metro Aviation's safety history, noting Mercy Flight airplane operations were shut down last month because of pilots' safety concerns.

In that case, Benefis Healthcare, rather than Metro Aviation, made the decision to suspend airplane operations, Astin wrote.

"Benefis takes every concern very seriously and grounded the fixed-wing program until Benefis received a written certification that maintenance issues had been resolved, as well as (Federal Aviation Administration) records validating Metro's compliance with federal safety standards," Astin wrote.

A spokesman for Metro Aviation declined to comment until company administrators have time to review the suit.

Metro Aviation, which is based in Shreveport, La., contracts with Benefis Healthcare and numerous other hospitals across the country to provide emergency air transport.

Benefis officials declined to comment on the allegations against Metro Aviation, but stressed that the hospital is committed to safety.

"Compliance with federal safety standards is nonnegotiable from our standpoint," Astin wrote. "In fact, Benefis insists, per our contractual agreement with Metro Aviation, that Mercy Flight operates in compliance with FAA standards. This is mandatory — anything less is unacceptable from our standpoint."

The defendants named in the suit are legally required to file a response within 20 days.
