



David A. Frank, II

Partner

david.frank@wilsonelser.com

Milwaukee, WI – 414.292.3020

Dave Frank is a partner in Wilson Elser's Milwaukee office whose practice focuses on aviation and product liability matters. He has significant experience representing clients in complex civil litigation in federal and state courts across the country and internationally. As a key member of Wilson Elser's Aviation & Aerospace Practice, Dave has extensive experience representing product manufacturers, defense contractors, and major airlines in cases involving claims for wrongful death, personal injury, product liability, property damage, premises liability, breach of contract, breach of warranty, and unfair trade practices. Additionally, Dave's practice extends outside aviation to include representing product manufacturers of industrial and consumer products and other clients in various types of claims involving insurance coverage, product liability, and commercial litigation. Dave was one of 20 nominated finalists who successfully completed Wilson Elser's rigorous Mock Trial Invitational through which our most successful trial lawyers impart their knowledge to those destined to join their ranks.

Prior to becoming an attorney, Dave served in the United States Navy as a Naval Flight Officer and Flight Instructor in the F-14 Tomcat and F/A-18 Super Hornet. As an aviator, he learned the importance of technical expertise and attention to detail early on and consistently demonstrated his ability to perform best when the stakes were the highest. As a lawyer, Dave leverages his military experience to assist clients in reaching their goals at each phase of litigation.

Education

- Loyola University Chicago School of Law (J.D., 2012)
 - Symposium Editor, Loyola Consumer Law Review
- Brandeis University (B.A., 1999)

Services

- Aviation & Aerospace

Bar Admissions

- Wisconsin
- Minnesota

Court Admissions

- U.S. Court of Appeals, Seventh Circuit
- U.S. District Court, Eastern District of Wisconsin
- U.S. District Court, Western District of Wisconsin
- U.S. District Court, Northern District of Illinois
- U.S. District Court, Eastern District of Michigan

Representative Matters

Skillfully managed the defense of complex personal injury, wrongful death and product liability cases brought against major airlines, aircraft and product manufacturers, aircraft operators and aircraft maintenance facilities throughout the country and European Union while providing superior client service.

Obtained defense verdict in favor of hot air balloon operator in Racine County Circuit Court.

Responsible for litigation management of general liability claims involving automobile accidents, premises liability, 42 U.S.C. § 1983 prisoner litigation; as well as commercial disputes.

Obtained dismissal of multiple breach of insurance contract and bad faith actions filed in Indiana state and federal courts.

Successfully defended appeal before the United States Court of Appeals for the Seventh Circuit (unanimous decision).

Won summary judgment in breach of contract dispute in the U.S. District Court for the Northern District of Illinois that included significant damages, attorney fees, and costs.

Represented the City of Milwaukee, the Chief of Police and the Milwaukee Fire & Police Commission in class action alleging the unconstitutional racial profiling of motorists and pedestrians by Milwaukee law enforcement; favorable settlement obtained.

Client Wins

Loringer, Frank & Obscherning Secure Summary Judgment for Airline Client Based on Lack of Evidence

Milwaukee partners John Loring and David Frank, assisted by associate Sam Obscherning, secured summary judgment for an airline client and its insurer in the U.S. District Court for the Eastern District of Wisconsin. The plaintiff, a passenger, claimed that an overhead panel fell and struck him in the chest, allegedly causing injuries that required multiple surgeries to repair an implantable cardioverter defibrillator (ICD). The plaintiff asserted that the airline was negligent in maintaining the aircraft and sought to rely on the doctrine of *res ipsa loquitur* to meet his burden of proof. On summary judgment the Wilson Elser team argued that the plaintiff could not establish either negligence or causation. The court agreed, emphasizing that the plaintiff had conducted minimal discovery, taken no depositions, and neglected to retain a liability expert. In the court's view, aircraft maintenance is a technical matter requiring expert testimony and "Plaintiff has failed to present any evidence negligence... regardless of the applicable standard of care." The court ruled that *res ipsa* "cannot excuse plaintiff's lack of evidence here." The court also rejected the plaintiff's request for spoliation sanctions, finding no evidence of bad faith and noting that the plaintiff did not report the injury to the airline and did not seek to inspect the aircraft panel or move for a sanction in discovery. The court ultimately held that plaintiff failed to create a triable issue of fact on breach and granted our motion for summary judgment, dismissing all claims with prejudice and removing the case from the trial calendar.

Frank Secures Dismissal in Denial of Claim by Pilot's Estate

David Frank (Partner-Milwaukee, WI) secured a dismissal for an aircraft owner and its insurance company before the United States District Court for the Eastern District of Michigan. The case arose from a plane crash caused by pilot error. Shortly after the crash, the lone passenger's estate made a demand against the aircraft owner, which was quickly settled. Several months later, the pilot's estate made a first-party claim for the third-party liability limits without claiming the aircraft owner was liable for any conduct that would give rise to coverage. The insurance company invited the pilot's estate to provide a theory of liability for which there would be coverage, which it failed to do. Rather, the pilot's estate then brought suit in Michigan state court against the aircraft owner and insurance company alleging, among other things, breach of contract claims for wrongful denial of its claim. The case was removed to the Eastern District of Michigan and since the plaintiff had pled no colorable action against the aircraft owner for allegedly denying the policy benefits, the court dismissed the insured at the outset of the case. The plaintiff amended its complaint and the insurance company, now the sole defendant, moved to dismiss for failure to state a claim. In response, the plaintiff argued that the liability provisions did not require a determination of liability, rather it was entitled to the liability coverage simply because an accident had occurred regardless of fault. In granting the motion to dismiss, the court held that the plaintiff failed to put forth a plausible theory as to how it was entitled to the liability coverage whether as an insured or to the extent the estate was claiming that it was a third-party beneficiary under the policy.