

# Payouts mount from maker of gear blamed in St. Louis firefighter deaths

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TUESDAY 26 SEPT 2006 - This is the Survivair Personal Alert Safety System, or PASS device, worn by St. Louis firefighter Rob Morrison when it malfunctioned, leading to his death on May 3, 2002. Firefighter Derek Martin, who was trying to rescue Morrison, also died.

**ST. LOUIS** • The claims evoke the plot of a legal thriller: an international corporation, partially blamed for the deaths of two St. Louis firefighters, accused of concealing dangerous equipment malfunctions from plaintiffs in a multimillion-dollar civil trial.

After paying \$43 million to the widows, the company — formerly Survivor, now Sperian Protection — quietly added \$7 million last fall to satisfy one widow's claims of deception and fraud. That widow, Laura Morrison, originally settled a lawsuit in St. Louis Circuit Court after receiving a \$3 million settlement. But after a trial over the other death — and reports that defects in self-contained breathing equipment and safety gear were hidden from firefighters, fire departments, regulators, lawyers and judges — she sued again.

Her lawyers accused Sperian and its officers and employees of lying under oath and concealing thousands of problems.

Suits continue from elsewhere in the country, with \$3 million paid in December to a Virginia firefighter, a lawyer said last week. Neither side would comment at length.

Mark Hamel of Honeywell, which acquired Sperian last year, said by e-mail: "As the settlement stated, we deny the allegations that were made. Honeywell is confident in the quality and effectiveness of Sperian Survivair equipment."

Morrison's lawyer, Dan Finney Jr., would only say, "It's settled and we're satisfied with the results." He declined to make Laura Morrison available for an interview.

The settlement ends a series of suits arising from the deaths of firefighters Rob Morrison and Derek Martin, both of Rescue Squad 1, at a blaze May 3, 2002, at Gravois Refrigeration, 2241 Gravois Avenue.

An investigation by the Fire Department and the National Institute for Occupational Safety and Health, which investigates fatalities, blamed a series of accidents and mistakes by the department and firefighters for their first line-of-duty deaths in 25 years. NIOSH could not determine if the malfunction in one firefighter's equipment happened during or after the fire but recommended that breathing gear be "properly inspected, used, and maintained to ensure they function properly when needed."

In separate lawsuits in 2004, the Martin and Morrison families blamed Survivair.

## **A FAILED ALARM**

In 2006, when the first suit came to trial, Finney alleged that Morrison's Personal Alert Safety System failed. The PASS device is supposed to sound a loud alarm if triggered by a firefighter or by a lack of a movement. This failure was fatal because Morrison became incapacitated inside the burning building and rescuers could not find him, Finney said.

Survivair's former chief executive, Jack Bell, testified that the only known PASS malfunctions involved units going into constant alarm, not failing. "It was not a safety issue," he said.

Survivair's lead attorney, Lynn Hursh of Kansas City, assured jurors, "You cannot make this device fail."

The jury was deliberating when the case was settled confidentially. The amount was \$3 million, according to people with knowledge about it.

Finney would soon learn that the company did know of problems — both with the PASS device and with a valve that allows a firefighter to breathe compressed air from a tank on his back.

In the next trial, in 2007, Angela Martin, widow of Derek Martin, claimed his mask's exhalation valve became stuck, depriving him of air in the smoky environment. Her suit also alleged that since it happened while he was searching for the fallen Morrison, her husband would not have died had Morrison's PASS device worked.

In testimony in that trial, Bell said, "We have not heard of any situation when a firefighter or any other (fire department) officer considered (the equipment) a danger.

"I've never heard of a PASS failing to alarm when it should," Bell insisted.

Martin's lawyer, Jerome Schlichter, brought in firefighters from around the country to challenge that. They described problems with Survivair equipment, and complaints to the company.

A company regional manager also testified that 3,900 PASS devices had been returned out of about 67,000 sold.

Jurors awarded the Martin family \$27 million: \$12 million in compensatory damages and \$15 million in punitive damages. Schlichter, frustrated with what he characterized as the company's duplicity, told a reporter, "It's like something you'd expect from a John Grisham novel, but tragically, in this case, it's true."

Sperian has continued to deny that Martin's valve failed.

Upholding Angela Martin's damages in 2009, Missouri appellate court judges said evidence showed that, "Survivair not only inadequately responded to reports of defects, but that they

attempted to cover them up. All of this shows Survivair's conduct was unquestionably reprehensible."

By the time Martin's judgment was paid, it had grown to \$40.4 million, with interest.

Chris Porche, a former Survivair distributor in Florida, told the Post-Dispatch that he had monitored both suits here. "Some things just didn't add up," he said. He called the plaintiffs' lawyers to say he had thousands of documents, detailing repairs or replacements of Survivair gear, and that the company should have them too.

"I can tell you that the attorney personally told me that they had none of that information. He was perplexed at the fact that, 'This was the kind of stuff we subpoenaed, why didn't we get any of it?' And I know that the information was used to reopen the case."

Bell's testimony notwithstanding, Porche said that Survivair "replaced all the PASS devices that were bad." He said that if a department passed a certain percentage of failures, Survivair would replace them all.

"We've got customers that they've replaced a hundred and some odd PASS devices, not once but twice," Porche insisted.

Last year, Sperian issued a notice that bad battery connections might cause some PASS devices to turn off or reset, and that transformer problems might result in "low sound output." Hamel, the Honeywell spokesman, said it was expanded to cover more PASS devices in August but did not apply to Morrison's unit.

Finney said photos used at the first trial clearly show that Morrison's PASS device was covered by the notice.

## **A FRAUD LAWSUIT**

Armed with the new information, Finney first tried to reopen Morrison's claim, then filed a fraud lawsuit in 2009, alleging that Sperian officials repeatedly lied in depositions and failed to produce records as required by law.

After the Martin trial, Sperian turned over thousands of complaints that Finney never saw before, the lawyer said.

In e-mails from early 2010 that were put in the court file, Finney accused the company of continuing to hide records. "I do not believe Sperian. Period," he wrote in one. "Six years after we started, I am still getting new forms, never produced before, directly on point to the issues of each lawsuit."

He also rejected company claims of poor record-keeping as "pathetic nonsense, utterly unbelievable and possibly criminal."

Schlichter made similar accusations in a 2009 lawsuit against Sperian involving a 2007 fire that injured John Bradford Thomas, chief of the Bowling Green, Va., volunteer fire department. It blamed a stuck exhalation valve and malfunctioning low-air alarm for Thomas' severe burns and lung damage.

Sperian did not issue warnings about gear defects even after the Martin verdict, the suit said.

Schlichter said the Virginia case was settled in December for \$3 million.

David Farris, Laura Morrison's brother-in-law, said he thinks she settled because she was tired of "fighting the fight." She has given speeches, met with politicians and lobbied for replacement of Survivair gear in St. Louis, which eventually was done.

"I think the main thing that she wanted to get out of Survivair was the truth," Farris said in a telephone interview. "Whatever it was settled for, it sounds like the truth came out, at least for Laura."

## **DIGGING DEEPER**

Finney filed a new suit against Sperian in St. Louis County Circuit Court last year, alleging that a stuck breathing valve injured a Glendale firefighter.

He also reported his concerns to a nonprofit private testing agency in Virginia, the Safety Equipment Institute, which administers a third-party certification program for products.

In a November letter to Sperian, SEI said it could not duplicate the kind of failure alleged in the Morrison case. But it faulted Sperian's record-keeping, complaining that the company did not track returned products. The institute also criticized the manufacturer for "failing to disclose" to SEI problems it identified with a PASS device, and for waiting six months to tell SEI of problems with another PASS device.

SEI told the company to keep much better records, provide monthly reports on the status of safety notices or recalls and submit to more frequent, unannounced audits.

Schlichter recently announced the outcome of his lawsuits in a news release to fire departments around the country, prompting worried calls to repair technicians, Sperian and regulators.

Mark Sgantas, the fire chief of Stowe, Vt., was left wondering, "Is this truly a defect in the equipment or a maintenance issue?" Ultimately, Sgantas settled on warning firefighters to emphasize maintenance and never work alone.

With Sperian and NIOSH saying there is no problem, Sgantas explained, "I just can't go out and spend \$300,000 that I don't have," he said.

"After a while, who do you believe?" he asked. "I don't know anymore."