Late in the afternoon on March 20, 1998, a low-pressure storm moved eastward through the Ohio Valley, bringing with it light snow and freezing drizzle.

The wind began to blow counterclockwise in what is known as a “wraparound effect,” and the system quickly lowered the temperatures in the southern regions of Indiana and Illinois. An aircraft advisory was subsequently issued at 5:00 p.m., and it predicted precipitation between the ground and 16,000 feet, as well as occasional and moderate rime icing in the clouds, in the area extending between Louisville and Indianapolis.

The pilot was flying a Beechcraft Bonanza, which was manufactured in 1981 and had received regular inspections and maintenance.

To aid in navigation, the plane was equipped with a Northstar global positioning system and other sophisticated equipment, in addition to an autopilot device. The plane also had a temperature gauge to inform the pilot of the temperature outside, but it contained no deicing equipment. In fact, the flight manual and a placard inside the plane had the rather terse warning: FLIGHT IN KNOWN ICING CONDITIONS IS PROHIBITED.

On the day in question, weather reports from three pilots had been received at the airport—one from a Cessna 195 reporting light to moderate rime icing as it descended from 4,000 feet to 3,000 feet, one from a Cessna 340 reporting moderate to severe mixed icing at 6,000 feet, and another from an Aero Commander reporting rime icing at 7,500 feet.

At approximately 6:18 p.m., the Bonanza pilot called the airport, and he expressed concern about the projected icing conditions. The airport briefing included the following:
There is an advisory for occasional moderate rime or mixed icing along the entire route from three thousand to sixteen thousand feet. Low pressure moving slowly to the east should pull some of the moisture with it. The area is getting some snow. A pilot reported light to moderate rime icing.

When asked if he needed any further information, the pilot politely declined, “That is all you can get for me now.” During the briefing, the pilot mentioned he had the Chicago area forecast, but that it did not include “a whole lot of icing reports.”

At 6:52 p.m., the pilot called the airport to file his flight plan, which called for him to leave at 7:15 p.m. and fly at 4,000 feet, with an estimated flying time of 1 hour and 58 minutes. The flight briefer then asked if he needed a weather report, and the pilot replied that he had received one earlier. The briefer reminded him that he could always get an update with Flight Watch or Flight Service.

Once in the air, the pilot asked the control center if it had received any reports of icing in the area. The traffic controller told him that he personally had seen none in the last two hours, but it turned out that there had been two reports of icing. One came from an aircraft 55 minutes earlier from a position 30 miles away, at an altitude of 8,000 feet descending to 2,500 feet. The pilot said that he picked up ice until he descended below 4,500 feet and that the ice started to come off at 2,500 feet.

The second was from an aircraft at 7:01 p.m., which reported he was picking up some “light mixed” at 7,000 feet. The pilot sought permission to ascend to 9,000 feet to get between cloud layers.

At 7:45 p.m., the pilot contacted the next airport along the way and requested icing reports there. The controller told him that he had one report two hours earlier, which indicated light to moderate mixed at or below 5,000 feet. Four minutes later, the pilot requested permission to descend to 3,000 feet. The pilot then reported that he was starting to accumulate ice that he did not think he could shed, and he asked for permission to land. The air controller immediately cleared him to do so and provided him with the weather there.

At 7:55 p.m., the pilot was authorized to descend to 2,500 feet. Six minutes later, he reported he was quickly losing airspeed and requested a closer airport. The controller advised him that another airport was five
miles ahead, and the controller attempted to vector him to the approach gate.

At 8:04 p.m., the controller told the pilot that he was “about two and a half miles from Rodeo” and that he should turn right heading “zero two zero” and maintain his altitude at 2,500 feet until he reached the radio navigation system. Final radio contact with the pilot occurred one minute later when he exclaimed, “Heck we’re all over the place right now.”

The controller provided the pilot with approach instructions, but he never responded. About this time, all radar and radio contact went silent. A minute later the plane crashed five miles south of the airport. The pilot managed to survive the crash, but all three passengers died. In the subsequently filed case of *Bauer v. United States*, the executors of their estates sued the U.S. government under the Federal Tort Claims Act, claiming that the personnel of the Federal Aviation Administration (FAA), flight service station (FSS), and air traffic control (ATC) committed negligent acts and omissions that contributed to the deaths of the passengers.

The government responded that the cause of the accident was pilot error. The pilot, it contended, left in the face of adverse weather reports and forecasts that warned him he would be flying through icing conditions for virtually the entire route. The icing conditions that he encountered caused an ice buildup on the aircraft that in turn caused the crash. The location of the crash showed that the pilot could not have made a visual approach to the airport, so any incorrect vectoring was not a proximate cause of the crash. Instead of proceeding northward, the pilot should have returned to the airport as soon as he encountered icing.

The case went to trial, and the court eventually agreed with the government that pilot error—not the negligence of aviation personnel—was the cause of the accident.

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Orville Wright is reported to have once quipped, “The airplane stays up because it doesn’t have the time to fall.”

Unfortunately, the father of modern aviation wasn’t completely right about this natural phenomenon—sometimes planes do have time to fall, and especially small ones. If nothing else, flying diminutive (by airline
standards anyway) aircraft has its share of dramatic moments, mostly due to a volatile cocktail of bad weather, mechanical failure, pilot error, and air traffic control miscalculations.

The jurisprudence of aviation contains a plethora of cases dealing with the difficult issues of liability resulting from flying small aircraft. The book before you contains a compelling representation of judicial decisions—divided between product liability lawsuits and those that deal with the regulatory scheme that oversees aviation—that present the typical dilemmas of the courts in this area of law.

In the end, these opinions invariably portray the dramatic courtroom struggles resulting from the tense circumstances that often lead to the tragic loss of human life in this most alluring of human endeavors.