

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

LINDA MAGGISANO

Plaintiff

- and -

SKYSERVICE AIRLINES INC.

Defendant

Proceeding Commenced under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

Following extensive negotiations between the parties, including disclosure of medical and financial information of all Class Members retained by Class Counsel, the parties have agreed to resolve this class action upon the following terms, without any admission of liability by the Defendant, and subject to the approval of the Ontario Superior Court of Justice:

DEFINED TERMS

The following terms, as used in these Minutes of Settlement, shall have the meanings set forth below:

“Approval Notice Date” means the date on which the Notice of Court Approval is first disseminated to Class Members.

“Approval Order” means the order of the Ontario Superior Court of Justice which certifies the within action as a class action and approves this Settlement Agreement.

“Bodily Injury” means when suffered by a Class Member (i) any physical injury; (ii) a psychological injury consequent upon a physical injury or (iii) the

physical manifestations of a psychological injury; but in any event, does not include a psychological injury itself;

“Claimant” means a Class Member who has submitted a Claim Package, or the executor, administrator or personal representative of a deceased person who, had he or she not died, would have been a Class Member;

“Claims Period” means nine (9) months from the Approval Notice Date;

“Claim Package” means all medical documentation, income records where applicable, receipts and other documentation in support of the Claimant’s claim for General Damages and/or Special Damages and loss of income;

“Class Counsel” means *Rochon Genova LLP*, 121 Richmond Street West, Suite 900, Toronto, Ontario, M5H 2K1;

“Class Members” means Primary Class Members and Derivative Class Members, collectively;

“Defendant’s Counsel” means Paterson, MacDougall LLP, 1 Queen Street East, Suite 900, Toronto, Ontario M5C 2W5;

“Derivative Claimants” means persons related to Class Members who are entitled to assert a derivative claim for damages pursuant to section 61 of the *Family Law Act*, R.S.O. 1990, c. F-3;

“the Landing of Flight 560” means the initial contact between either the main landing gear of LMC or the nose landing gear of LMC and the runway at the Punta Cana Airport and any contact immediately thereafter;

“Settlement Approval Date” means the date of the Order of the Court granting certification and settlement approval.

CERTIFICATION

1. The Defendant (“Skyservice”) will consent to certification of this action for the purpose of effecting this settlement;
2. The Class shall be defined as (collectively, “Class Members”):
 - a) All persons who were passengers on Skyservice Flight No. 560 which departed from Toronto en route to Punta Cana, Dominican Republic on May 22, 2005 (“Flight 560”). (“Primary Class Members”); and

- b) Persons related to persons listed in subparagraph (a) above who are entitled to claim pursuant to section 61 of the *Family Law Act*, R.S.O. 1990, c. F-3 ("Derivative Class Members").

SETTLEMENT BENEFITS

3. Skyservice shall pay all Class Member Bodily Injury damages and damages of Derivative Class Members arising from the Landing of Flight 560 as may be agreed upon by the parties or assessed pursuant to a Court monitored claims/arbitration process as set out below or as otherwise agreed upon by the parties.
4. Skyservice shall pay any associated subrogated claims of OHIP for those Class Members with Bodily Injury claims.
5. Skyservice shall pay pre-judgment interest on amounts agreed to or assessed under paragraph 3 above, in accordance with the *Courts of Justice Act*.
6. A list of known Class Members with Bodily Injury claims which have been agreed upon by the parties is attached as **Schedule "A"** to these Minutes of Settlement. The amounts set out in Schedule "A" are inclusive of interest, exclusive of costs, disbursements, taxes and subrogated OHIP claims.
7. Skyservice will establish a Preliminary Settlement Fund in the amount of \$600,000.00, within 30 days of the Settlement Approval Date from which all claims listed under Schedule "A" shall be paid as well as the associated subrogated OHIP claims within 30 days from the Approval Notice Date.
8. Skyservice will pay assessable disbursements associated with the preparation of the certification and settlement of this action as well as the gathering of all medical records for claimants in Schedule "A".

THE SETTLEMENT CLAIMS PROCESS

9. Each Class Member (with the exception of those listed under Schedule "A") will be entitled to submit a Claim Package during the Claims Period which will include all information relating to the Bodily Injury claim and any resulting income loss information and particulars of any Derivative Class Member claims.
10. Upon receiving the Claim Package, Skyservice shall have thirty (30) days to assess and approve the claim (the "Assessment Period").
11. If the claim is approved or otherwise agreed to amongst the parties, Skyservice shall issue payment within 60 days to the Claimant in the approved or agreed upon amount.
12. Where the claim is disputed by Skyservice, the parties may elect within twenty-one (21) days following the end of the assessment period whether the Claim shall be subject to mediation.
13. Where neither party elects mediation and the claim is disputed by Skyservice, the Defendant shall notify the Claimant within twenty-one (21) days following the end of the Assessment Period whether the Defendant will be exercising its right to conduct an examination for discovery of the Claimant or, where applicable, the Derivative Claimant. Such examinations will be conducted under the supervision of the arbitrator.
14. Any claims which cannot be agreed upon will be subject to binding arbitration. Subject to the following paragraph, the cost of arbitration shall be borne by Skyservice.
15. If a Claimant's claim is referred to arbitration, the costs consequences of offers to settle under Rule 49 of the Rules of Civil Procedure apply as if the Claimant is the plaintiff and the Defendant is defendant, however, the maximum cost exposure to the Claimant inclusive of fees, disbursements, taxes and the cost of arbitration, shall not exceed the greater of \$7,500 or 10% of the assessed damages.

16. Regardless of whether an examination for discovery is elected by the Defendant or mediation is elected by the parties, any Arbitration must be heard by no later than nine (9) months from the end of the Assessment Period.
17. Class Counsel will assist each Class Member in assembling records for their Claims Packages and to the extent permitted by individual retainers, will represent all Class Members who are subject to examinations for discovery, mediation or arbitration.
18. Subject to Court approval, the parties have agreed that Reva Devins will act as Arbitrator. The parties agree that the decision of the Arbitrator will be final and binding. The Arbitrator shall report to the Court at the completion of the arbitration process.
19. More detailed claims administration protocols to be agreed upon by the parties and approved by the Court will establish the necessary procedures.

NOTICE TO THE CLASS

20. Notice of certification and final approval of the settlement shall be provided to the Class by:
 - a) Direct mail of the publication notice to all known Class Members;
 - b) A press release agreed to by the parties and approved by the Court, such press release to be posted by Class Counsel on the website of Rochon Genova LLP @ www.rochongenova.com.
21. Skyservice shall assume the costs of providing notice to the Class of the Certification and Settlement Approval Hearing and, in the event that the settlement is approved, of Certification and Settlement Approval, up to a maximum of \$2,000.00.

22. Skyservice will further fund the cost of skip tracers up to a maximum of \$10,000.00 to assist in locating Class Members who have not yet contacted Class Counsel and for those Class Members whose notices are returned.

OPTING OUT

23. In the event of certification and settlement approval, there shall be an opt out period of ninety (90) days from the Settlement Approval Date, or such other period of time as approved by the Court. Any Class Member who validly opts out of the class proceeding shall be excluded from the Class and may not participate in this settlement.
24. Opt out forms shall be in a form attached hereto as **Schedule "B"** or as otherwise approved by the Court. Opt out forms will be available on the skyserviceclassaction.com website, directly from Class Counsel and from the Defendant's website.

RELEASE

25. In consideration of the terms and conditions set out in these Minutes of Settlement, all Class Members who have not opted-out hereby release and forever discharge Skyservice Airlines Inc. and its parents, successors, subsidiaries, assigns, affiliates and past, present and future directors, officers, employees, agents, consultants, advisors, insurers, receivers and other representatives of any kind (the "Released Parties") from any and all actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts claims and demands whatsoever existing up to the date of execution of this agreement that were asserted or could have been asserted by or on behalf of any Class Member, individually, collectively or otherwise relating to the Landing of Flight 560. Class Members further agree not to hereafter make any claims, or take or continue any

proceedings against any person, partnership, corporation or other entity who might claim contribution or indemnity or any other relief of a monetary, declaratory or injunctive nature from the Defendant in connection with the claims released in these Minutes of Settlement.

26. Nothing in these Minutes of Settlement shall be construed as an admission of negligence or fault on the part of the Defendant. Negligence and fault are specifically denied.
27. Subject to any rights of appeal from the Approval Order, the Approval Order shall forever bar the claims of the Plaintiff and of all Class Members, executors, administrators or personal representatives of deceased Class Members who have not opted-out prior to the opt-out deadline.

CLASS COUNSEL FEES

28. Upon approval of the settlement by the Court, Skyservice will pay to Class Counsel the sum of \$200,000.00 plus H.S.T. plus assessable disbursements as described above and all applicable taxes. Skyservice further agrees to pay 10% of all Class Member damages at the time of Settlement Approval for those claims that have been attached in Schedule "A" or at the time of settlement or following arbitration for those Class Members not listed in Schedule "A". The forgoing shall be payable in relation to costs incurred in relation to all matters undertaken to date and to be undertaken in relation to this class action, including all costs associated with the claims process.

All of which is agreed to effective as of _____ by the parties, through their counsel.

 Vincent Genova
 Rochon Genova LLP
 Class Counsel

 Tim Trembley
 Paterson, MacDougall
 Lawyers for the Defendant