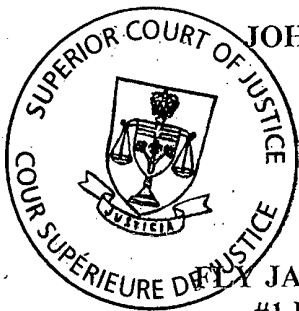


ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE MORGAN)

Thursday, THE 19TH
DAY of SEPTEMBER, 2019



JOHN SOMWAR, TULSIDAI SOMWAR and SHANTA PERSAUD

Plaintiffs

-and-

JAMAICA AIRWAYS LTD., THE BOEING COMPANY, JOHN DOE
#1 PILOT, JOHN DOE #2 CO PILOT, JOHN DOE #3 AIRCRAFT
MAINTENANCE PROVIDER, JOHN DOE #4 AIRCRAFT
MAINTENANCE MECHANIC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs, for an order amending the Fresh As Amended Statement of Claim in this action, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the Affidavit of Paul Miller, and upon being advised that the Defendants

1. THIS COURT ORDERS that the Plaintiffs be granted leave to amend the Fresh as Amended Statement of Claim to add Basil Ferguson and Keone Bryan as Defendants to

this proceeding, in accordance with the Fresh as Amended Amended Statement of Claim attached to this Order as Schedule "A".

2. THIS COURT ORDERS that there shall be no costs of this motion.



E.M. Morgan J.

ENTERED AT / INSCRIPT A TABANTA
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 24 2019

PER/PAR

e

Schedule "A"

Court File No. 18-00609498-00 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOHN SOMWAR, TULSIDAI SOMWAR and SHANTA PERSAUD

Plaintiffs

-and-

FLY JAMAICA AIRWAYS LTD., THE BOEING COMPANY, JOHN DOE
~~#1 PILOT, JOHN DOE #2 CO PILOT~~ BASIL FERGUSON, KEONE
BRYAN, JOHN DOE #3 AIRCRAFT MAINTENANCE PROVIDER, JOHN
DOE #4 AIRCRAFT MAINTENANCE MECHANIC

Defendants

Proceeding under the Class Proceedings Act, 1992

FRESH AS AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date "November 23, 2018" Issued by "Brenton"
Local Registrar

Address of
court office: 393 University Ave. - 10th Fl.
Toronto, Ontario
M5G 1E6

TO: **FLY JAMAICA AIRWAYS LTD.**
Paul Ronald Reece
2 Holborn Road
Kingston 10 Jamaica

TO: **THE BOEING COMPANY**
100 North Riverside
Chicago, IL 60606 USA

TO: **JOHN DOE #1 PILOT, JOHN DOE #2 CO PILOT**
BASIL FERGUSON and KEONE BRYAN

TO: **JOHN DOE #3 - AIRCRAFT MAINTENANCE PROVIDERS**

TO: **JOHN DOE #4 - AIRCRAFT MAINTENANCE MECHANIC**

I. RELIEF SOUGHT

1. The Plaintiffs repeat the paragraphs below and seek as relief the following:

(a) an order certifying this proceeding as a class proceeding and appointing John Somwar, Tulsidai Somwar and Shanta Persaud, or any of them, as the Representative Plaintiffs for the Class and any appropriate subclass thereof;

(b) compensation and/or damages including:

a. \$25,000,000.00 in general damages; and

b. special damages;

(c) damages pursuant to s. 61 of the *Family Law Act*;

(d) an order that any release(s) signed by a putative class member in exchange for funds prior to the certification of this action is against Rule C55 of the *International Passenger Rules and Fares Tariff* applicable to this action, and is unconscionable, unenforceable and does not constitute a release of any claim in this proceeding;

(e) costs of all Ontario Health Insurance Plan (OHIP) subrogated claims and all other provincial healthcare subrogated claims from resulting medical treatments of the Representative Plaintiffs and the Class;

(f) the costs of providing notice of certification of this action as a class proceeding to the Class, and the costs of distributing the proceeds of any judgment to all Class members;

- (g) pre-judgment interest in accordance with the provisions of s. 127 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) post-judgment interest in accordance with the provisions of s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) costs of this action on a substantial indemnity basis, including applicable HST;
- (j) such further and other relief as this Honourable Court deems just.

II. OVERVIEW

2. On November 9, 2018, just after 02:09 hours local time, Fly Jamaica Flight OJ256 departed from Georgetown Cheddi Jagan International Airport in Guyana, en route to Toronto Pearson International Airport. There were 120 passengers on board, including 2 infants, and 8 crew members, ~~on board~~, being the Flight Crew and the Cabin Crew.
3. The subject Aircraft, a Boeing 757-23N, was more than 19 years old at the time of the Flight, and as described below, was in a state of disrepair and was not airworthy immediately prior to the Flight.
4. Flight OJ256 was already approximately 39 minutes late from its scheduled departure time of 01:30 am. The delay in departure was due, in part, to mechanical problems with the left front door which could not be closed. Maintenance personnel were called out to the Aircraft to effect a last minute repair to the door so that it could be closed and the Aircraft could depart.

5. Shortly after takeoff, the Flight experienced a problem with the Aircraft's hydraulic system and the Aircraft turned back to Georgetown-Cheddi Jagan International Airport.
6. At or about the time the Aircraft turned back, there was a PA announcement by the Flight Crew that the aircraft had experienced an unspecified hydraulic system problem and had to return to the airport. ~~problem and was turning back to Guyana.~~ Nothing further was said by either the Flight Crew or the Cabin Crew to the passengers by way of PA announcement or otherwise, to anticipate the landing or the dangerous situation the passengers were about to encounter.
7. As reported by the Guyana Minister of Public Infrastructure to the Guyana National Assembly on November 19, 2018, the Flight Crew did not declare an emergency with air traffic control prior to the crash landing.
8. At or about 02:53 hours on November 9, 2018, Flight OJ256 touched down on Runway 06 at CJIA. The Aircraft, ~~which carried 120 passengers and 8 crew members,~~ proceeded to go off the runway and came to a rest across the airport perimeter fence, sustaining ~~The aircraft sustained-~~ substantial damage. ~~The right-hand main landing gear had broken off, and the no. 2 (right hand) engine pivoted forward and upwards.~~
9. Runway 06 is approximately 7,448 feet (2,270 meters) in length, although there is a not yet completed runway extension by of an additional approximately 3,000 feet at its north east end.
10. The Flight Crew was unable to bring the Aircraft to a stop before the end of Runway 06 or even before the end of the incomplete 3000 foot runway extension.

11. The Aircraft skidded violently past the end of the runway, through a perimeter fence, and over a sand berm, ripping off its right-hand main landing gear and its number 2 (right-hand) engine. The passenger cabin went dark and ceiling panels came loose falling on several passengers along with other debris, injuring them.
12. During the final seconds of the crash landing, one Cabin Crew member sitting at the front of the passenger cabin adjacent to the front left door, realized the seriousness of the situation, and shouted for passengers to brace themselves. This statement was not made over the PA system and was only heard by passengers immediately adjacent to that Cabin Crew member.
13. Most of the passengers, not hearing the Cabin Crew Member at the front of the aircraft, did not brace for landing, as they had no opportunity to do so, and were thrown violently forward and back, many striking their heads on the seats in front as the Aircraft crash landed past the end of the runway.
14. After the Aircraft came to a halt, the darkened aircraft cabin began to fill with smoke, amid the screaming and crying of passengers.
15. The passengers, including the Plaintiffs, had to effect an emergency evacuation. The Cabin Crew were ineffectual in managing the evacuation and the passengers were largely on their own, with no meaningful guidance or assistance from either the Cabin Crew or the Flight Crew.
16. Neither the Cabin Crew nor the Flight Crew managed the evacuation onto the evacuation slides, and passengers collided with one another suffering injury.
17. Many passengers including the Plaintiffs suffered serious bodily injury as they scrambled from the aircraft, ~~some jumping from the aircraft to save themselves.~~

18. Once off of the Aircraft, the passengers were given no assistance or direction from the Flight Crew, the Cabin Crew or any employee of Fly Jamaica. Those who were ambulatory were required to make their own way to the safety of the air terminal.
19. Because the Flight Crew did not declare an emergency prior to landing, emergency airport personnel did not anticipate the Crash and were not dispatched to assist the passengers until well after the Crash. There were no CFR crews timely attending on the scene of the Crash to assist the passengers.
20. As set out more fully below, the Plaintiffs and Class Members suffered serious personal injury as a result of the Crash. One passenger death has been reported and is being investigated.
21. The Crash was caused solely by the negligence of the Defendants, particulars of which are set below.
22. In this Statement of Claim, the following defined terms are used:
- (a) **Aircraft** – refers to the subject Boeing 757-23 N aircraft, utilized-operated by Fly Jamaica for the conduct of Flight OJ256;
 - (b) **Airport** – refers to Georgetown Cheddi Jagan International Airport (CJIA);
 - (c) **Boeing** – refers to the Defendant, The Boeing Company, which designed, manufactured and placed in the stream of commerce the Boeing 757-23N aircraft involved in the Crash;
 - (d) **Boeing 757** – refers to the Defendant Boeing which designed, manufactured and placed in the stream of commerce the Boeing 757-23N aircraft involved in the Crash; refers to the Boeing 757 series aircraft which includes the Aircraft;

(e) ~~Class Members~~ — refers to all passengers onboard Flight OJ256 which crashed on landing at Cheddi Jagan International Airport in Guyana on November 9, 2019;

(f) Class Members — refers to, collectively: all passengers on board Flight OJ256 and all family members of passengers on board Flight OJ256 who are entitled to assert a claim for damages under the *Family Law Act*, R.S.O. 1990, c. F. 3, as amended and, or section 2(5) and Schedule II of the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended;

a. Family Claimant Class — refers to the spouse, children, grandchildren, grandparents, brothers and sisters of a Passenger Class member who are entitled to claim damages pursuant to Section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended and, or section 2(5) and Schedule II of the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended. This includes claims of spouse, children, grandchildren, grandparents, brothers and sisters of any Class Member who died as a result of the Crash. Relatives of a Passenger Class member who has chosen to opt out of the class proceeding are excluded from this class;

b. Passenger Class — refers to the passengers who were aboard Flight OJ256. For the sake of clarity, the following persons are excluded from this class: (i) as against all the Defendants: on-duty employees of Fly Jamaica including the pilots in command, co-pilots and flight

attendants; and (ii) as against Fly Jamaica Airways: passengers whose claims against Fly Jamaica Airways and the Flight Crew and Cabin Crew are not subject to jurisdiction before the Courts of Canada under the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended;

- (g) **Crash** – refers to the November 9, 2018 crash at Cheddi Jagan International Airport of Fly Jamaica Flight OJ256;
- (h) **Flight OJ256** – refers to Fly Jamaica Flight OJ256 from Cheddi Jagan International Airport to Toronto Pearson International Airport which was subject of the Crash;
- (i) **Flight Crew** – refers to the pilot in command, co-pilot and other members of the crew who exercised operational control over Flight OJ256;
- (j) **Fly Jamaica** - refers to the Defendant air carrier Fly Jamaica Airways Ltd. which operated Flight OJ256;
- (k) **"International Carriage"** - has the meaning such term is given in the Montreal Convention, and the Warsaw Convention and applicable provisions of the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended;
- (l) **"International Passengers"** – means the passengers on board the Flight OJ 256 whose travel was by way of International Carriage;
- (m) **Montreal Convention** – refers to the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* signed at Montreal in 1999 and which was enacted into law in Canada on November 4, 2003 by the *Carriage by Air Act*, R.S.C. 1985, Chapter C-26 as amended (the "*Carriage by Air Act*");

- (n) **Runway** – refers to runway 06 at Cheddi Jagan International Airport off of
en which the Aircraft crashed;
- (o) **Warsaw Convention** – refers to the *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, signed at Warsaw on 12 October 1929, as amended by the Protocol to Amend the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* signed at Warsaw on 12 October 1929 signed at the Hague on September 28, 1955, and as adopted in Canada pursuant to the provisions of the *Carriage by Air Act*.

III. THE PARTIES

REPRESENTATIVE PLAINTIFFS AND CLASS

23. The Plaintiff, Shanta N. Persaud, is a resident of the City of Oshawa, Ontario, and on November 9, 2018, was a passenger on Flight OJ256. Shanta N. Persaud brings this action on behalf of herself and all passengers on board Flight OJ256.
24. The Plaintiffs, John and Tulsidai Somwar (the "Somwar's") are spouses and were both passengers on Flight OJ256. They reside in Pickering, Ontario. John and Tulsidai Somwar were en en route from Georgetown Guyana to Toronto, their place of destination. In addition to bringing this action on behalf of all passengers on board Flight OJ256, these Plaintiffs bring this action pursuant to the provisions of the *Family Law Act*, R.S.O. 1990, C. F.3, as amended, or such other similar legislation as may be applicable, for pecuniary and non-pecuniary losses arising as a result of the injuries and losses sustained by their spouses (i.e. each other).

25. The Plaintiffs seek to certify this action as a class proceeding and plead the *Class Proceedings Act, 1992, S.O. 1992, c. 6*, as providing the basis for such certification.
26. The Plaintiffs propose to bring a class proceeding on behalf of themselves and the Class. ~~The proposed Class will may be further defined in the Motion for Certification.~~
27. The Plaintiffs, as the proposed Representative Plaintiffs, do not have any interest adverse to any of the members of the proposed Class. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented by the Plaintiffs; that the Plaintiffs' claims raise common issues; and that a class proceeding would be the preferable procedure for the resolution of such common issues.
28. The claims of the Plaintiffs are typical of the claims of the Class in that the Plaintiffs, and all Passenger Class Members and all Class Members, were passengers on the same Flight and experienced the Crash; and, the Somwar's, as spouses of each other, and the Family Claimant Class, have sustained damages arising out of the death or injury of a family member which resulted from the Crash. ~~the Crash response or lack thereof.~~ The Plaintiffs, like all Class Members, have suffered losses as a result of the Defendants' actions or omissions.

DEFENDANTS

29. The Defendant, Fly Jamaica Airways Ltd., is a corporation incorporate pursuant to the laws of Jamaica. Its head office is located in Kingston, Jamaica.

30. John and Tulsidai Somwar purchased their tickets for their flights with Fly Jamaica in Ontario, Canada.
31. At all material times, Fly Jamaica was the air carrier responsible for the conduct of Flight OJ256 and is the registered operator of the Aircraft.
32. At all material times, Fly Jamaica was the employer of the Flight Crew of Flight OJ256 including Pilot Basil Ferguson ~~John Doe #1 Pilot~~ and First Officer Keone Bryan ~~Jane Doe #2 Co-Pilot~~ and is therefore vicariously liable for acts and omissions of the Flight Crew of Flight OJ256.
33. The Defendant Basil Ferguson ~~John Doe #1 Pilot~~ (the "Pilot") was at all material times the Pilot in command of Flight OJ256 and an employee of Fly Jamaica. ~~The name of the Pilot had has not been officially disclosed to the Plaintiffs at the time of issuing this pleading.~~
34. The Defendant Keone Bryan ~~Jane Doe #2 Co-Pilot~~ (the "First Officer Co-Pilot") was at all material times the First Officer ~~co-pilot~~ of Flight OJ256 and an employee of Fly Jamaica. ~~The name of the Co-Pilot had has not been officially disclosed to the Plaintiffs at the time of issuing this pleading.~~
35. The Defendant, The Boeing Company ("Boeing") is a corporation organized and existing under the General Corporation Law of the State of Delaware, having its registered office in the City of Wilmington, in the State of Delaware. Its Corporate Head Office is located in Chicago Illinois. Boeing directly employs approximately 2,000 employees in Canada at 13 locations, with 6 locations in Ontario including at 45 O'Connor Street, Ottawa Ontario and has reported sales in Canada for 2018

of US\$2.583 billion. At all material times, Boeing designed and manufactured the Aircraft and placed the Aircraft into the stream of commerce in Ontario, Canada.

35. The Defendant, John Doe #3 Aircraft Maintenance Provider, is a company incorporated pursuant to the laws of its country of origin and was responsible for the maintenance of the Aircraft for Flight OJ256. At all material times John Doe #3 was the employer of John Doe #4 Aircraft Maintenance Mechanic and is therefore vicariously liable for acts and omissions of the John Doe #4. The full corporate name and identify of the Aircraft Maintenance Provider and its' employees and or contractors had has not been officially disclosed to the Plaintiffs at the time of issuing this pleading.

36. The Plaintiffs plead that there is a sufficient real and substantial connection existing between the parties and the causes of actions pleaded such that the eCourt has jurisdiction ~~should assume jurisdiction~~ over all aspects of the action case, including aspects of the action case involving Defendants located outside of Ontario.

IV. CAUSES OF ACTION

Claims Against Fly Jamaica and the Flight Crew

37. Fly Jamaica entered into contracts of international carriage with each of the Passengers, including the Plaintiffs. The Passengers with whom Fly Jamaica entered into contracts of international carriage are referred to as "Montreal Convention Passengers" and "Warsaw Convention Passengers".

International Carriage

38. The contracts of international carriage and liability of Fly Jamaica and the Flight Crew are governed by the provisions of the *International Passenger Rules and Fares Tariff No. OJ-1*, including, in particular, Articles 17 and 21 of the Montreal Convention and Articles 17, 18, 22 and 25 of the Warsaw Convention.

Montreal Convention

39. The events of Flight OJ256 described above constitute an "accident" within the meaning of Article 17 of the Montreal Convention and accordingly Fly Jamaica is liable to the International Passengers for damage sustained in case of bodily injury upon condition only that the accident which caused the injury took place on board the aircraft or in the course of any of the operations of embarking on or disembarking from the Flight.

40. Pursuant to Article 21 of the Montreal Convention, Fly Jamaica is strictly liable for damages sustained by International Passengers up to 113,100 Special Drawing Rights for each passenger (approximately CA\$208,000).

41. Further, and in the event that the claims of any International Passenger whose claim is governed by the Montreal Convention exceeds 113,100 Special Drawing Rights (as such term is defined in the Montreal Convention), the Crash was caused or contributed by the negligence of Fly Jamaica and its employees including the Flight Crew and accordingly Fly Jamaica cannot avail itself of any limits on liability under Article 21 of the Montreal Convention.

42. Particulars of the negligence of Fly Jamaica and the Flight Crew are set forth at paragraphs 52-61 52-65 below.

43. Pursuant to Article 17(2) of the Montreal Convention, Fly Jamaica is liable to the Montreal Convention Passengers for damage sustained in case of destruction or loss of, or of damage, to checked and unchecked baggage.
44. Pursuant to Article 19 of the Montreal Convention, Fly Jamaica is liable for delay in transport of the passengers.
45. Further, and in the event that the claim for lost or damaged baggage of any Montreal Convention Passenger exceeds the limits prescribed by Article 22(2) of the Montreal Convention or Article 22 of the Warsaw Convention, the International Passengers' damages for such loss or damage to their baggage resulted from acts and omissions of Fly Jamaica and its employees including the Flight Crew, which were done with the intent to cause damage or alternatively were done recklessly with knowledge that damage would probably result, such that the limits on liability in Article 22 do not apply. Particulars of the acts or omissions are outlined in paragraphs 52-61 52-65.

Warsaw Convention Passenger Claims

46. The events of Flight OJ256 described above constitute an "accident" within the meaning of Article 17 of the Warsaw Convention and accordingly Fly Jamaica is liable to the Warsaw Convention Passengers for damage sustained in case of bodily injury upon condition only that the accident which caused the injury took place on board the aircraft or in the course of any of the operations of embarking on or disembarking from.

47. Pursuant to Article 18(1) of the Warsaw Convention, Fly Jamaica is liable to the Warsaw Convention Passengers for damage sustained in case of destruction or loss of, or of damage, to checked and unchecked baggage.
48. In the event that the claim of any Warsaw Convention Passenger exceeds 250,000 francs, (as the term is used in the Warsaw Convention) Fly Jamaica waived this limit when it entered into the IATA Inter-carrier Agreement on Passenger Liability such that the limit on liability in Article 22(1) of the Warsaw Convention does not apply.
49. Alternatively, in the event that Fly Jamaica has not waived the limits on claim prescribed under Article 22(1) of the Warsaw Convention, the Warsaw Convention Passengers' damages resulted from actions and omissions of Fly Jamaica and its employees including the Flight Crew acting within the scope of his, her or their employment, which were done with the intent to cause damage or alternatively were done recklessly with knowledge that damage would result. Accordingly, the limits on liability in Article 22 of the Warsaw Convention do not apply. Particulars of the acts or omissions are outlined in paragraphs 52-61 ~~52-65~~.
50. Pursuant to Article 19 of the Warsaw Convention, Fly Jamaica is liable for damages occasioned by delay in the carriage of the passengers.
51. Further, and in the event that the claim for lost or damaged baggage of any Warsaw Convention Passenger exceeds the limits prescribed by Article 22(2) of the Warsaw Convention, the damages resulted from acts and omissions of Fly Jamaica and its employees including the Flight Crew, which were done with the intent to cause damage or alternatively were done recklessly with knowledge that

damage would probably result, such that the limits on liability in Article 22 of the Warsaw Convention and do not apply. Particulars of the acts or omissions are outlined in paragraphs 52-61 ~~52-65~~.

Negligence of Fly Jamaica

52. Fly Jamaica is liable to the Plaintiffs and all Class Members in negligence. Fly Jamaica owed a duty of care to the Plaintiffs and Class Members. Its conduct fell below the reasonable standard of care required of it under the circumstances, as a result of which the Plaintiffs and members of the Class Members sustained damages.

53. Particulars of the negligence of Fly Jamaica presently known to the Plaintiffs include:

- a) Dispatching the Aircraft for Flight OJ256 when it was not in an airworthy condition;
- b) Failing to maintain the Aircraft including its hydraulic and braking systems in an airworthy condition ~~contrary to the applicable aviation regulations;~~
- c) Failing to maintain the Aircraft including its hydraulic and braking systems in accordance with the maintenance manuals, service bulletins and customer information letters published by the Aircraft manufacturer, Boeing;
- d) Failing to adequately inspect and test the operation of the hydraulic and braking systems of the Aircraft prior to the Flight;
- e) Failing to adequately train the Cabin Crew on Flight OJ256 in emergency evacuation procedures;

- f) Failing to adequately train the Flight Crew on the flight procedures for the Boeing 757-23N including, the procedures for:
- i. pre-flight inspection and verification of the airworthiness of the Aircraft prior to departure;
 - ii. the proper response to an in-flight operational problem like the hydraulic problems identified by the Flight Crew including:
 1. following the appropriate checklist of procedures when such a problem is encountered;
 2. anticipating possible operational implications to such an identified hydraulic problem, including braking problems on landing;
 3. briefing the Cabin Crew via the lead flight attendant or otherwise of the nature of the problem and ensuring that the Cabin Crew ~~has had an appropriate~~ a plan in the anticipation of a possible crash landing and an emergency evacuation;
 4. ensuring that the passengers are notified by the PA system of a potential emergency landing and the need to follow Cabin Crew instructions to brace themselves prior to landing;
 - iii. landing the Aircraft under an emergency situation in the conditions present on Runway 06 at the time of the Crash and the braking distance required to safely stop the Aircraft in the conditions present on Runway 06 at the time of the Crash.

54. Fly Jamaica is also vicariously liable for all loss or damage caused by the Flight Crew. Particulars of the recklessness and/or negligence of the Flight Crew presently known to the Plaintiffs include:

- a) Accepting the aircraft for the Flight without having conducted an adequate pre-flight inspection;
- b) Commencing the Flight when the Aircraft was not in an airworthy condition;
- c) Operating the Aircraft in such a manner that it overran Runway 06 with such speed and ferocity that it lost its landing gear, and its right-hand engine, while violently bouncing and shaking;
- d) Failing to ensure that the Cabin Crew had conducted a pre-flight safety briefing with the passengers;
- e) When first encountering the hydraulic problem after take-off,
 - i. failing to follow the appropriate checklist of procedures when such a problem is encountered;
 - ii. failing to anticipate possible operational implications to such an identified hydraulic problem, including braking problems on landing;
 - iii. failing to brief the Cabin Crew via the lead flight attendant or otherwise of the nature of the problem and ensuring that the Cabin Crew has had an appropriate a plan in the anticipation of a possible crash landing and an emergency evacuation;
 - iv. failing to ensure that that the passengers were notified by the PA system of a potential emergency landing and the need to follow Cabin Crew instructions to brace themselves prior to landing;

- v. ~~failing to dump sufficient fuel so as to minimize the weight of the Aircraft in order that the Aircraft might stop within the available length of Runway 06 during the conditions present;~~
 - vi. failing to properly assess the weather conditions and the runway surface condition in order that they might execute a safe landing within the available length of Runway 06;
 - vii. failing to properly assess the identified hydraulic problem and how it might impact the braking ability of the Aircraft in the conditions then prevailing at the time of the Crash and make appropriate adjustments in order that they might safely land the Aircraft within the available length of Runway 06;
- f) Touching down at a location on Runway 06 with insufficient remaining distance in order to safely effect the landing, when they knew or ought to have known that they would be unable to bring the Aircraft to a safe stop in the remaining distance on Runway 06 having regard to the condition of the Aircraft, the length of the runway, its surface conditions, and the weather;
- g) Operating the Aircraft when they knew or ought to have known that there were problems associated with the hydraulic and mechanical controls, electronic and/or computerized controls and/or other instruments or that there were mechanical engineering problems with the Aircraft; and
- h) Failing to exercise due care and skill in the operation of the Aircraft despite knowing that damage would probably result.

Conduct Unbecoming of Fly Jamaica – advanced payment and releases

55. Contrary to Rule C55 of the International Passenger Rules and Fares Tariff and section 25(2) of the Contract of Carriage applicable to this action, Fly Jamaica engaged in inappropriate and unbecoming conduct with putative class members.
56. Section 25(2) of the Contract of Carriage states that in cases of bodily injury or death, the Carrier shall make an advance payment where the Carrier determines it is necessary to meet the immediate economic needs of, and hardship suffered by a passenger.
57. Rule C55 of the International Passenger Rules and Fares Tariff provides that unless a dispute arises over the identity of the person to whom an advance payment shall be made, the Carrier shall, without delay, make the advance payment to the passenger in an amount or amounts determined by the carrier in its sole discretion.
58. The advance payment shall be an offset against, or deducted from the payment of any settlement or judgment with respect to any claim for compensation on behalf of the passenger.
59. The advance payment, shall not constitute a release of any claim, whatsoever, by any person.
60. The Plaintiffs state that following the issuance and service of the Statement of Claim, Fly Jamaica engaged in conduct unbecoming, including but limited to contacting passengers and insisting that a release be signed before payment of expenses was made.

61. The Plaintiffs state that following the crash, almost all the members of the Passenger Class incurred significant expenses to pay for emergency accommodations and subsequent replacement flights to their intended destination. These expenses represented and continue to represent an immediate economic need and hardship for all class members, which Fly Jamaica sought to take advantage of, as described above.

Negligence of The Boeing Company

62. Boeing is liable to the Plaintiffs in negligence. Boeing owed a duty of care to the Plaintiffs. Its conduct fell below the reasonable standard of care expected of it under the circumstances, as a result of which the Plaintiffs sustained damages.

63. Particulars of the negligence of Boeing presently known to the Plaintiffs include:

- (a) Failing to adequately design and test the avionics and computerized flight control system for the Boeing 757-23N series aircraft to ensure that the Aircraft could be safely landed in the conditions prevailing on the Runway at the time of the Crash;
- (b) Defectively Negligently designing and manufacturing the avionics and computerized flight control system of the Aircraft;
- (c) Defectively Negligently designing and manufacturing the hydraulic system of the Aircraft;
- (d) Defectively Negligently designing and manufacturing the brake control system of the Aircraft;
- (e) Failing to publish any or adequate instructions for landing the Aircraft in the event of a hydraulics system failure in flight;

- (f) Failing to provide for an adequate redundant braking system or systems in the event of a hydraulics system failure;
- (g) Failing to provide adequate training to Fly Jamaica crews, including the Flight Crew, on the landing procedures for the Boeing 757 series aircraft including the Aircraft; and,
- (h) Failing to warn of the risks attendant on use of the Aircraft.

***Negligence of John Doe #3 Aircraft Maintenance Provider(s) and John Doe #4
Maintenance Mechanic(s)***

64. John Doe #3 and John Doe #4 are liable to the Plaintiffs in negligence. John Doe #3 and #4 owed a duty of care to the Plaintiffs. Its conduct fell below the reasonable standard of care expected of it under the circumstances, as a result of which the Plaintiffs sustained damages.

65. Particulars of the negligence of John Doe #3 and #4 presently known to the Plaintiffs include:

- (a) Failing to adequately maintain and test the avionics, brakes, hydraulics system, blow lines and computerized flight control system for the Boeing 757 series aircraft to ensure that the Aircraft could be safely landed in the conditions prevailing at the time of the Crash;
- (b) Negligently maintaining and testing the avionics, brakes, hydraulics system, blow lines and computerized flight control system for the Boeing 757 series aircraft to ensure that the Aircraft could be safely landed in the conditions prevailing at the time of the Crash;

- (c) If they inspected the aircraft, they failed to properly do such an inspection in order to find the hydraulic issue;
- (d) Failing to keep adequate records of maintenance and inspections;
- (e) Failing to resolve all snags or operational defects with the Aircraft which were identified through inspection prior to releasing the Aircraft for flight; and,
- (f) If they found an issue with the hydraulics, they failed to fix the said problem and put the lives of all members of the Passenger Class in danger. ~~all Class members' lives in danger.~~

V. DAMAGES

66. As a result of the Crash, the Plaintiffs and the members of the Passenger Class Class Members sustained compensable losses in the form of physical and psychological injuries, damage to their personal property and delay.

67. They have also suffered economic losses such as loss of income, loss of competitive advantage and loss of earning capacity.

68. They have also suffered loss of personal property which was destroyed or lost as a result of the accident and the loss of the price that they paid for the accident Flight.

69. The Plaintiffs and members of the Passenger Class Class Members have also incurred costs associated with alternative lodging arrangements and the cost of return flights to their final destinations.

70. The Plaintiff, Shanta Persaud, sustained serious physical injuries as a result of the Crash, including back, neck, shoulder injury. She also sustained psychological

injuries as a result of the Crash, including anxiety, loss of concentration, profound psychological distress and inability to sleep.

71. The Plaintiffs John and Tulsidai Somwar, sustained serious physical injuries as a result of the Crash, including back, neck, shoulder injury. In addition, each has suffered a loss of care, guidance and companionship from one another. They also sustained psychological injuries as a result of their involvement in the Crash, including anxiety, loss of concentration, profound psychological distress and inability to sleep.

72. Further, as a result of the Crash, the Plaintiffs and the members of the Passenger Class ~~Class Members~~ will be required to undergo a course of medical treatment and to undergo medical tests and procedures and ingest medications. As a result of the Crash, the Plaintiffs and the members of the Passenger Class ~~Class Members~~ have incurred medical, hospital, healthcare and other out of pocket expenses.

73. The Plaintiffs claim on behalf of members of the Family Claimant Class ~~eligible family members~~ damages pursuant to Section 61 of the *Family Law Act*, R.S.O. 1990, c.F.3., as amended, and Schedule II of the *Carriage by Air Act*, as amended, including but not limited to, the following:

- (a) Compensation for their loss of care, guidance and companionship that they might have reasonable expected to receive had this accident not occurred;
- (b) Compensation for nursing, housekeeping and other related services which they have provided and will continue to provide as a result of this accident;

- (c) Compensation for out-of-pocket expenses incurred for the benefit of members of the Passenger Class Class-Members as a result of this accident;
- (d) Compensation for out-of-pocket expense incurred as a result of funeral costs incurred by the family of a Passenger Class as a result of the accident; and,
- (e) Compensation for income lost to date and in the future arising from their provision of care and other related services to members of the Passenger Class Class-Members as a result of this accident; and,
- (f) Compensation for income lost to date and in the future arising from their arrangement of the funeral as a result of funeral costs incurred by the family of a Passenger Class as a result of the accident; and,

74. The Plaintiffs and Class Members plead that the damages may have been incurred directly, or may constitute subrogated claims owed to provincial health insurers, or to private health, disability, or group benefit insurers.

VI. STATUTES RELIED UPON

75. The Plaintiffs plead and rely upon the following statutes:

- (a) *Class Proceedings Act*, 1992, S.O. 1992, c.6, as amended;
- (b) *Family Law Act*, R.S.O. 1990, c. F.3, as amended and corresponding similar legislation in other Provinces where applicable;

(c) *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(d) *Carriage by Air Act*, R.S.C. 1985 c. C-26; and

(e) Any other applicable legislation.

76. To the extent that service of this claim is required outside of Ontario as against any of the Defendants, the Plaintiffs and Class Members plead and rely upon the following provisions of Rule 17 of the *Rules of Civil Procedure* in support of such service:

- a) 17.02(f)(i) – the contract of carriage was made in Ontario;
- b) 17.02 (o) – Boeing and the other Defendants (except Fly Jamaica) are necessary and proper parties to this action which is already properly served on Fly Jamaica;
- c) 17.02(p) – Fly Jamaica and Boeing carry on business in Ontario;
- d) 17.05(3) – where service is to be made in a contracting state pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the document is to be served either a) through the central authority in the contracting state, or b) in a manner that would be permitted by the Convention and that would be permitted by the Rules if the document was being served in Ontario: rule 17.05(3).

77. The Plaintiffs propose that this action be tried in the City of Toronto in the Province of Ontario.

"November 23, 2018"

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Court File No. CV-18-00609498-00 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at
Toronto

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