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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

COLLEEN MCCORMICK AND DONALD Case No.:
HUDSON, individually and on behalf of
A.H., C.H., AND D.H., minors,

and

ANGEL HUDSON,

Plaintiffs,

v.

COMPLAINT
Personal Injury Action (28 U.S.C. § 1331)
DEMAND FOR JURY TRIAL

AEROVIAS DE MEXICO S.A. DE C.V., a
foreign corporation doing business in Oregon,
d/b/a AEROMEXICO, d/b/a AEROLITORAL
DE MEXICO S.A. DE C.V., d/b/a
AEROMEXICO CONNECT,

and

DELTA AIR LINES, INC., a Georgia
corporation doing business in Oregon,

Defendants.

1 – COMPLAINT

COMES NOW Plaintiffs, COLLEEN MCCORMICK AND DONALD HUDSON, individually and on behalf of their minor children, A.H., C.H., and D.H. and ANGEL HUDSON, by and through the undersigned counsel (“Plaintiffs”), brings this Complaint against Defendants AEROVIAS DE MEXICO S.A. DE C.V. d/b/a AEROMEXICO d/b/a AEROLITORAL DE MEXICO S.A. DE C.V. d/b/a AEROMEXICO CONNECT (hereinafter “AEROMEXICO”) and DELTA AIR LINES, INC. (hereinafter “DELTA”), upon information and belief, and allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction over this claim and the Defendants exists pursuant to 28 U.S.C. § 1331 under a treaty of the United States of America, the Convention for the Unification of Certain Rules For International Carriage by Air, signed at Montreal, Canada, on May 28, 1999 (commonly known as the Montreal Convention) and its predecessor treaty, Article 28, Paragraph 1 of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929 (commonly known as the Warsaw Convention), as modified 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, done at The Hague On 28 September 1955 (commonly known as the Hague Protocol to the Warsaw Convention).

2. Defendant AEROMEXICO, a Mexico corporation, is registered to do business in the state of Oregon, Registry Number 138359997, and has a significant presence in the State of Oregon including but not limited to the Portland International Airport (PDX) facilities, equipment, employees, flights, and advertising on its website stating it provides flights between Portland, Oregon, and Guadalajara, Mexico City, Cancun, Guatemala City, Havana, Puerto

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Vallarta, Leon, Bogota, Iguazu Falls, Cabo San Lucas, Morelia, Merida, Oaxaca, Medellin, Veracruz, Durango, Lima, Panama City, Buenos Aires, San Jose, and Acapulco.

3. Specific (as well as general) jurisdiction for this action exists in this district against Defendant AEROMEXICO, which has a registered agent at 780 Commercial Street, SE, Suite 100, Salem, Oregon 97301.

4. Defendant DELTA, a Georgia corporation, has a significant presence in the State of Oregon, including but not limited to PDX facilities, equipment, employees and flights to and from PDX.

5. Specific (as well as general) jurisdiction for this action exists in this district against Defendant DELTA, which has a registered agent at 1127 Broadway Street, NE, Suite 310, Salem, Oregon 97301.

6. Defendant DELTA sold DELTA tickets to Plaintiffs for all flights at issue herein.

7. Plaintiffs herein includes the three minor children.

8. Plaintiffs were injured when Plaintiffs' DELTA tickets placed Plaintiffs on a Defendant AEROMEXICO flight and AEROMEXICO pilots attempted a takeoff in bad weather, crashed and burned.

9. Defendants DELTA and AEROMEXICO conduct code-share operations and code-share services in the U.S.A. and Mexico.

10. Before any code-share operations can be implemented, the U.S. carrier must conduct a safety audit of its foreign carrier code-share partner to ensure that the operations meet acceptable international standards.

11. Defendant DELTA failed to conduct a safety audit or failed to conduct an adequate or accurate safety audit of Defendant AEROMEXICO.

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12. Venue in this district satisfies the requirements of 28 U.S.C. § 1391 in that, as set out herein, Defendants DELTA and AEROMEXICO conduct substantial business in this district, are at home in this district, acts complained of in this action occurred in this district and the treaties at issue herein specify jurisdiction and venue in this district. The Montreal Convention and its predecessor treaties establish this district as proper jurisdiction and venue, and all Defendants are subject to specific personal and general jurisdiction in this district.

13. Therefore both jurisdiction and venue are appropriate in this district because Plaintiffs' tickets were purchased in this district, this district was the destination of Plaintiffs, Plaintiffs are and were at all times relevant herein domiciled in this district, and Defendants conduct substantial and continuous business in this district.

NATURE OF THE CAUSE OF ACTION

14. This is an action for damages on behalf of the Plaintiffs, COLLEEN MCCORMICK AND DONALD HUDSON individually and on behalf of their minor children, and ANGEL HUDSON, for personal injuries suffered in the crash and burning of Defendant AEROMEXICO flight 2431 at Durango, Mexico, on July 31, 2018, on which flight Defendant DELTA booked, ticketed, charged and collected airfares from Plaintiffs.

FACTUAL ALLEGATIONS

15. On or about July 31, 2018, Defendants DELTA and AEROMEXICO were common carriers which operated services to Portland, Oregon from Durango, Mexico through Mexico City, Mexico. At all times relevant to this Complaint, Defendants DELTA and AEROMEXICO owned, operated, staffed, and supervised the Plaintiffs' flights, reservations, booking, ticketing, transportation and operation of the flights, including on the crashed flight, through their actual and/or apparent agents, employees, joint venture and common enterprise.

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16. On or about July 31, 2018, Plaintiffs were fare-paying passengers onboard the crashed flight and were engaged in international travel pursuant to tickets purchased on the internet from DELTA which tickets were purchased by Plaintiffs from their home in Oregon in the United States of America.

17. Defendants DELTA and AEROMEXICO entered into a contract of carriage with Plaintiffs and at all times material were in control of and responsible for Plaintiffs' safe transport from Durango, Mexico to Portland, Oregon.

18. DELTA was the contracting carrier and AEROMEXICO was the carrying carrier of the Plaintiffs.

19. DELTA and AEROMEXICO were engaged in a joint venture, a common enterprise and were actual and/or apparent agents of each other, and are vicariously liable for each other.

20. On or about July 31, 2018, the pilots of the plane carrying Plaintiffs attempted to takeoff in bad weather from Durango International Airport.

21. During the attempted takeoff in bad weather, the Plaintiffs experienced multiple and repeated impacts and physical injury, emotional distress, and fear and terror with each impact, and before, during and after the impacts, the plane finally stopped moving and burned.

22. All Plaintiffs were injured in the crash and their exit from the burning plane, and their property was damaged, destroyed and/or lost, and/or they were deprived of the use of their property.

23. Plaintiffs' international itinerary included AEROMEXICO flight 2431, departing Durango, Mexico, and arriving in Mexico City, Mexico, where Plaintiffs were to connect onto DELTA flight 8072, departing Mexico City, Mexico, and arriving in Portland, Oregon, which was both the Plaintiffs' destination and residence.

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24. As a result of the injuries caused by the multiple impacts, crashing and burning on takeoff, injuries which were foreseeable to Defendants DELTA and AEROMEXICO, Plaintiffs sustained great pain and suffering, as well as physical and emotional distress and post-traumatic stress, property damage, economic loss, surgery, hospitalization, medical costs and treatment and Plaintiffs will continue to require future medical and other care, treatment, counseling and other assistance.

25. Plaintiffs suffered physical and emotional injuries and property damages and the injuries and damages Plaintiffs suffered took place on board and/or in exiting the subject aircraft.

26. Because the flight was part of a travel itinerary with a destination of Portland, Oregon, beginning in Durango, Mexico, with a change of planes in Mexico City, Mexico, the transportation was international carriage by air as defined by the Montreal Convention and its predecessor treaty, the Warsaw Convention, as modified by the Hague Protocol, as stated herein above.

27. Pursuant to Article 17 of the Montreal Convention and its predecessor treaty, the Warsaw Convention, as modified by the Hague Protocol, as stated herein, the Defendants are liable for damage sustained in case of bodily injury of a passenger 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 or disembarking.

28. The injuries and damages set forth in this complaint occurred during the attempted takeoff of flight 2431 and the escape of Plaintiffs from the burning plane, constituted an accident or unexpected unusual event that was external to Plaintiffs as passengers under the applicable provisions of the Montreal Convention.

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29. Defendants are also liable for other damages suffered by Plaintiffs herein in that said claims derive from the injuries suffered by passenger Plaintiffs and are cognizable under applicable law.

30. Defendants were in control of Flight 2431 and owed non-delegable duties to all passengers for its safe operation.

31. Defendants breached those duties in attempting to takeoff in severe weather, crashing and burning.

32. Defendants and their agents, and employees, in the scope of their work, were negligent and/or concurrently negligent, Plaintiffs were injured because of this negligence, and Plaintiffs' injuries were caused by Defendants' negligence.

33. Defendants are liable to Plaintiffs under Article 21(2) of the Montreal Convention and its predecessor treaty for all personal injury and other damages unless Defendants prove that Plaintiffs' injuries were not due to the negligence or wrongful acts or omissions of Defendants or its servants or agents, and Defendants must prove the injuries were solely due to the negligence or other wrongful act or omission of a third party.

34. The injuries and damages suffered by Plaintiffs occurred due to the negligence, wrongful acts and omissions of Defendants and their servants and agents, and not due solely to the negligence or other wrongful act or omission of any third party.

35. Defendants DELTA and AEROMEXICO as common carriers, owed the highest duty and degree of care to their passengers and owed a duty to all passengers to exercise the highest degree of care to prevent injury, loss and damages.

36. As a direct, proximate and foreseeable result of their negligence, and their egregious, reckless or willful conduct according to the evidence as discovered in this case,

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Defendants are liable for the damages sustained by Plaintiffs and Plaintiffs are therefore entitled to recover such damages to the extent allowed under all applicable law and Plaintiffs request judgement as fully set forth herein.

REQUEST FOR RELIEF

WHEREFORE Plaintiffs, COLLEEN MCCORMICK AND DONALD HUDSON, individually and on behalf of their minor children, and ANGEL HUDSON, having complained of the negligence of Defendants DELTA and AEROMEXICO, seek relief commensurate with the cause of action set forth herein, including but not limited to an award for actual damages in an amount to be determined by the trier of fact to be sufficient to compensate fully for all injuries and damages suffered by Plaintiffs including but not limited to physical injury, pain and suffering including from multiple impacts, disability, disfigurement, physical impairment, mental anguish, loss of capacity of enjoyment of life, loss of earnings, future earnings and earning capacity, property loss and damages, emotional distress and trauma, Post Traumatic Stress Disorder, reasonable expense of hospitalization and past and future medical and related treatment and care, reasonable attorney's fees, the cost of this action, and punitive or exemplary damages if appropriate according to facts, evidence, and proof to be developed in this case of egregious, reckless and/or

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willful conduct, and such additional relief as this Honorable Court and the jury deem equitable, just and proper.

JURY DEMAND

Plaintiffs hereby demands a trial by jury on all issues so triable.

Dated this 6th day of September, 2018.

Respectfully submitted,

s/ Christine N. Moore

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