

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

PATRICK JOHNSON)	
As Administrator of the Estate)	
of Michael Johnson, deceased)	Case No. 2:17-cv-00885-RMG
)	
and)	
)	
HILLARY ELLIOTT)	
As Administrator of the Estate)	ANSWER, AFFIRMATIVE
of Joseph Johnson, deceased,)	DEFENSES AND STATEMENT
)	REGARDING LIABILITY
Plaintiffs,)	
)	
v.)	
)	
UNITED STATES OF AMERICA)	
)	
Defendant.)	

Defendant United States of America responds to Plaintiffs' Complaint as follows:

RESPONSES TO ALLEGATIONS

Parties

1. The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 1 of Plaintiffs' Complaint and therefore denies those allegations.

2. The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 2 of Plaintiffs' Complaint and therefore denies those allegations.

3. The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 3 of Plaintiffs' Complaint and therefore denies those allegations.

4. The United States admits only that the Federal Aviation Administration and the United States Air Force are agencies of the United States. The United States denies the remaining allegations of this paragraph.

5. Plaintiffs' Complaint omits Paragraph 5.

Jurisdiction and Venue

6. The United States admits only that this action arises under the Federal Tort Claims Act and that Plaintiffs filed administrative claims. The United States denies the remaining allegations of this paragraph.

7. The United States admits only that federal district courts generally have jurisdiction over Federal Tort Claims Act cases against the United States. The United States denies the remaining allegations of this paragraph.

8. The United States admits only that the accident occurred in this district and that venue is proper in the District of South Carolina. The United

States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 8 and therefore denies those allegations.

Background

9. The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph of Plaintiffs' Complaint and therefore denies those allegations.

10. The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations of this paragraph of Plaintiffs' Complaint and therefore denies those allegations.

11. The United States admits only that the Federal Aviation Administration is an agency of the United States. The United States denies the remaining allegations of this paragraph.

12. The United States admits the allegations of this paragraph.

13. The United States denies the allegations of this paragraph.

14. The United States admits only that FAA Order JO 7110.65 prescribes air traffic control procedures and phraseology for use by personnel providing air traffic control services. The United States denies the remaining allegations of this paragraph.

15. The United States admits only that the Federal Aviation Administration is an agency of the United States. The United States denies the remaining allegations of this paragraph.

16. The United States admits the allegations of this paragraph.

17. The United States admits only that the Charleston TRACON is a facility operated by the FAA. The United States denies the remaining allegations of this paragraph.

18. The United States admits only that air traffic controllers and air traffic operations periodically undergo evaluation by the FAA. The United States denies the remaining allegations of this paragraph.

19. The United States admits the allegations of this paragraph.

20. The United States admits only that the USAF is an agency of the United States. The United States denies the remaining allegations of this paragraph.

Allegations Relevant to All Claims

20. (Plaintiffs' Complaint repeats Paragraph 20.) The United States admits the allegations of this second paragraph numbered 20.

21. The United States admits the allegations of this paragraph.

22. The United States admits only that FAA personnel at the Charleston TRACON provided air traffic control services to the subject aircraft while the

aircraft was in the facility's designated airspace. The United States denies the remaining allegations of Paragraph 22 of Plaintiff's Complaint.

23. The United States admits the allegations of this paragraph.

24. The United States admits the allegations of this paragraph.

25. The United States admits the allegations of this paragraph.

26. The United States admits the allegations of this paragraph.

27. The United States admits the allegations of this paragraph.

28. The United States admits the allegations of this paragraph.

29. The United States admits the allegations of this paragraph.

30. The United States admits the allegations of this paragraph.

31. The United States admits the allegations of this paragraph.

32. The United States admits the allegations of this paragraph.

33. The United States admits the allegations of this paragraph.

34. The United States admits the allegations of this paragraph.

35. The United States admits the allegations of this paragraph.

36. The United States admits the allegations of this paragraph.

37. The United States admits only that the F-16 and Cessna collided in midair and that the Cessna subsequently crashed into the ground. The United States denies the remaining allegations of Paragraph 37 of Plaintiff's Complaint.

38. The United States admits that Michael and Joseph Johnson were killed as a result of the collision. The United States denies the remaining allegations of this paragraph.

39. The United States admits only that FAA personnel at the Charleston TRACON provided air traffic control services to the Air Force F-16 while the aircraft was in the facility's designated airspace, and that at certain times the TRACON was providing those services to the F-16, a target representing the Cessna was visible on the controller's radar scope. The United States denies the remaining allegations of Paragraph 39 of Plaintiff's Complaint.

40. The United States admits only that one of the primary purposes of the ATC system is to prevent a collision between aircraft operating in the system. The United States denies the remaining allegations of this paragraph.

41. The United States denies the allegations of this paragraph but admits that acts and omissions of its employees proximately caused the subject accident.

42. The United States denies the allegations of this paragraph but admits that acts and omissions of its employees proximately caused the subject accident and resulted in the deaths of Michael and Joseph Johnson.

43. The United States denies the allegations of this paragraph but admits that acts and omissions of its employees proximately caused the subject accident.

44. The United States denies the allegations of this paragraph but admits that acts and omissions of its employees proximately caused the subject accident.

45. The United States denies the allegations of this paragraph but admits that acts and omissions of its employees proximately caused the subject accident.

Count I
Negligence – Wrongful Death

46. The United States restates its responses to the allegations of Paragraphs 1 through 45 of Plaintiffs' Complaint.

47. The United States admits only that the Charleston TRACON was providing air traffic control services to the Air Force F-16, and that it had a duty of reasonable care generally in the provision of such services. The United States denies the remaining allegations of this paragraph.

48. The United States denies the allegations of this paragraph and all subparagraphs but admits that acts and omissions of its employees proximately caused the subject accident.

48. (Plaintiffs' Complaint repeats Paragraph 48.) The United States denies the allegations of this second paragraph numbered 48 but admits that acts and omissions of its employees proximately caused the subject accident.

49. The United States admits only that as a direct and proximate result of acts and omissions of employees of the United States, Michael and Joseph Johnson died on July 7, 2015. The United States lacks knowledge or information sufficient

to form a belief about the truth of the remaining allegations of Paragraph 49 and therefore denies those allegations.

50. The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 50 of Plaintiffs' Complaint and therefore denies those allegations.

51. The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 51 of Plaintiffs' Complaint and therefore denies those allegations.

52. The United States admits only that as a direct and proximate result of acts and omissions of employees of the United States, Michael and Joseph Johnson died on July 7, 2015. The United States lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 52 of Plaintiffs' Complaint and therefore denies those allegations.

The allegations of the unnumbered paragraph following Paragraph 52 constitute a demand for relief to which no response is required. To the extent a response is deemed to be required, the United States denies the allegations.

Count II
Negligence – Survivor Action

53. The United States restates its responses to the allegations of Paragraphs 1 through 52 of Plaintiffs' Complaint.

54. The United States admits only that the Charleston TRACON was providing air traffic control services to the Air Force F-16, and that it had a duty of reasonable care generally in the provision of such services. The United States denies the remaining allegations of this paragraph.

55. The United States denies the allegations of this paragraph and all subparagraphs but admits that acts and omissions of its employees proximately caused the subject accident.

56. The United States denies the allegations of this paragraph and all subparagraphs but admits that acts and omissions of its employees proximately caused the subject accident.

57. The United States lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 57 of Plaintiffs' Complaint and therefore denies those allegations.

The allegations of the unnumbered paragraph following Paragraph 57 constitute a demand for relief to which no response is required. To the extent a response is deemed to be required, the United States denies the allegations.

AFFIRMATIVE DEFENSES

1. The Court lacks subject matter jurisdiction over Plaintiffs' claims relating to air traffic control training, certification, evaluation, monitoring, supervision and manning as alleged in Paragraphs 48 and 55.

2. Plaintiff has failed to properly serve the United States.

STATEMENT REGARDING LIABILITY

The United States admits that its employees' acts and omissions proximately caused the subject accident and resulted in the deaths of Michael and Joseph Johnson. Accordingly, the United States does not contest its liability for their deaths in this case but does contest the existence, type and quantum of damages available to Plaintiffs.

Respectfully submitted,

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