

Court File No.:

05-CV-290727
CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

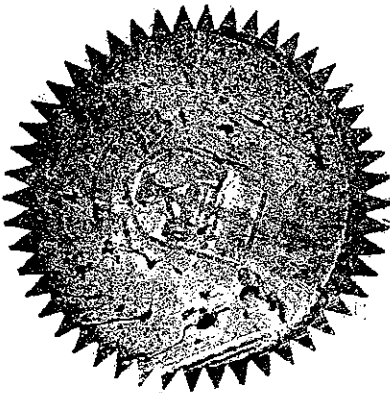
LINDA MAGGISANO

Plaintiff

- and -

SKYSERVICE AIRLINES INC.

Defendant



STATEMENT OF CLAIM

Proceeding Commenced under the Class Proceedings Act, 1992

TO THE DEFENDANT(S):

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 WILL BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date of Issue: June 2nd, 2005 Issued by: Y. Grant
Local Registrar

YVONNE GRANT

Address of court office:

Court House
393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: **Skyservice Airlines Inc.**
9785 Avenue Ryan
Dorval, Quebec
H9P 1A2

Skyservice Airlines Inc.
Pearson International Airport, Toronto
6120 Midfield Road
Mississauga, Ontario
L5P 1B1

CLAIM

1. The Plaintiff, on her own behalf, and on behalf of a class of persons defined in paragraph 4 claims:
 - (a) an Order certifying this action as a class proceeding;
 - (b) an Order appointing Linda Maggisano as representative Plaintiff;
 - (c) general damages in the amount of \$10,000,000.00 or such other amount as this Honourable Court deems just;
 - (d) special damages in an amount to be specified prior to trial;
 - (e) punitive damages in the amount of \$1,000,000.00 or such other amount as this Honourable Court deems just;
 - (f) in the alternative, damages for breach of contract as against the Defendant in the sum of \$10,000,000.00;
 - (g) pre-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 2000, c.C 43;
 - (h) costs of this action on a substantial indemnity basis; and
 - (i) such further and other relief as this Honourable Court deems just.

THE PARTIES

2. The Plaintiff, Linda Maggisano, resides in the City of Vaughan, in the Province of Ontario. The Plaintiff was a passenger aboard Skyservice Flight No. 560 which departed from Toronto en route to Punta Cana, Dominican Republic on May 22, 2005 ("Flight 560").
3. The Defendant, Skyservice Airlines Inc. ("Skyservice") is a corporation incorporated pursuant to the laws of Canada. At all material times Skyservice carried on business as a charter airline.
4. The Plaintiff brings this action on her own behalf and on behalf of the class of persons ("Class") which is defined as:
 - (a) All persons who were passengers on Flight 560 ("Primary Class Members"); and

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

MATERIAL FACTS

5. On May 22, 2005, at approximately 4:20 p.m., a Boeing 767 commercial jet liner (the “Plane” or the “Aircraft”) owned and/or maintained and/or operated by Skyservice departed from Toronto’s Pearson International Airport en route to Punta Cana, Dominican Republic. On board the Plane was the Plaintiff, several members of the Plaintiff’s family, including her infant and toddler sons, as well as approximately 308 other passengers. Specifically, the Plaintiff was traveling with the following members of her family:

Relation	Name	Residence (Ontario)
Son	Anthony Magissano, born March 17, 2005	Woodbridge
Son	Ethan Magissano, born June 1, 2003	Woodbridge
Mother	Ranzia Goriel	Thornhill
Brother	Nabil Goriel	Maple
Sister-in-law	Maria Goriel	Maple
Nephew	Marco Goriel, born March 15, 2000	Maple
Nephew	Nicholas Goriel, born June 25, 2001	Maple
Nephew	Luca Goriel, born January 28, 2004	Maple
Mother of sister-in-law	Vittoria Fazzari	Aurora

6. Although the take-off and flight were largely unremarkable, the landing of Flight 560 was not. As the Plane was approaching the landing strip at the airport in Punta Cana, at approximately 8:20 p.m. it descended suddenly and violently and crashed

into the runway. The landing was so forceful that the Plane's fuselage sustained significant structural damage and resulted in the Plane bouncing off the runway three times before finally coming to a stop. In addition, as a result of the "crash" landing, the oxygen masks in the Plane were released and various items in the Plane, including video monitors, baggage and metal containers, were thrown around and within the Plane violently striking many passengers.

CAUSE OF ACTION

7. The Defendant, Skyservice entered into contracts for international carriage with each of the passengers of Flight 560, including the Plaintiff, Linda Maggisano.
8. The contract of international carriage was governed by the provisions of the *Warsaw Convention*, as modified and amended by the *Hague Protocol* (hereinafter referred to as the "*Warsaw Convention*").
9. The Plaintiff pleads and relies on the provisions of the *Warsaw Convention* as adopted in Canada pursuant to the provisions of the *Carriage by Air Act*, R.S.C. 1985, c. C-26.
10. The events described herein involving Flight 560 constitute an "accident" within the meaning of Article 17 of the *Warsaw Convention*.
11. Pursuant to Article 17 of the *Warsaw Convention*, Skyservice is liable to passengers for damages sustained in the event of death, wounding or bodily injury caused by an accident, including any such damage which occurred on board the aircraft or during disembarkation.
12. The Plaintiff, Linda Massigano, as well as other passengers, suffered bodily injury within the meaning of Article 17 of the *Warsaw Convention* and, as a result, Skyservice is liable for the damages sustained by the Plaintiff and these other passengers.

13. The Plaintiff further states that the landing accident of Flight 560 and subsequent injuries sustained by the Plaintiff and other passengers resulted from an act or omission of Skyservice done recklessly and with knowledge that damage would probably result.
14. The particulars of Skyservice's reckless conduct are as follows:
 - (a) It failed to properly maintain the Aircraft;
 - (b) It failed to perform adequate safety checks of the Aircraft prior to take-off;
 - (c) It failed to hire sufficient numbers of competently trained personnel to maintain the Aircraft;
 - (d) It failed to hire competently trained pilots to operate the Aircraft;
 - (e) It failed to employ competent personnel for the maintenance and handling of the Aircraft and for the proper treatment of passengers;
 - (f) It failed to properly train its flight crew to deal with an emergency and to comfort passengers in the face of a crisis.

DAMAGES

15. As a result of the landing accident of Flight 560, the Plaintiff and Primary Class Members sustained personal injuries, including:
 - (a) soft tissue injuries;
 - (b) bruising;
 - (c) abrasions;
 - (d) sprains and fractures;
 - (e) nervous shock;
 - (f) emotional distress;
 - (g) post-traumatic stress disorder.
16. Specifically, the Plaintiff sustained whiplash associated soft tissue injuries to her neck and back, as well as injuries to her legs, for which she has attended to her family physician for treatment. These injuries have been accompanied with considerable neck and back pain, headaches, tingling and numbness in her legs, as well as sleeplessness.

17. In addition to these physical injuries, the Plaintiff and Primary Class Members suffered emotional trauma, including nervous shock and post-traumatic anxiety. These injuries may also be said to constitute "bodily injury" within the meaning of the *Warsaw Convention*. These conditions have been especially severe for the Plaintiff having regard to her concern over the well-being of her two sons.
18. Further, the Plaintiff and Primary Class Members suffered inconvenience and expense as a result of the accident, including the loss of enjoyment of their vacation, loss of amenities and enjoyment of life, fear of flying, international telephone expenses, medical expenses, travel expenses and lost income.
19. As a result of the injuries sustained by Primary Class Members, Derivative Class Members suffered damages recoverable pursuant to the *Family Law Act*, including:
 - (a) loss of care, guidance and companionship;
 - (b) the provision of nursing and housekeeping services to injured family members;
 - (c) out of pocket expenses, including international telephone charges, travel expenses, medical expenses and lost income.
20. To the extent that the Plaintiff's injuries and claims fall beyond the purview of the *Warsaw Convention*, the Plaintiff relies on the domestic law of Canada to found liability on Skyservice based on negligence and breach of contract. In this regard, the Plaintiff pleads that Skyservice was negligent for the reasons identified herein in paragraph 14 and is therefore liable to the Plaintiff for all related and foreseeable damages. To the extent that such negligence is attributable to agents or employees of Skyservice, the Plaintiff pleads and relies on the principles of agency law and vicarious liability respectively.
21. Further, and/or in the alternative, the Plaintiff seeks damages for breach of contract. In exchange for valuable consideration, the Plaintiff contracted with Skyservice for transportation to Punta Cana, Dominican Republic. It was a term of this contract that such transportation would be provided in a safe and competent fashion.

Skyservice failed to fulfill this contractual obligation and is liable for reasonably foreseeable damages flowing from this breach.

22. The Defendant acted in a high-handed and reckless manner with a callous disregard for public safety such that the Plaintiff is entitled to an award of punitive damages.

JURISDICTION UNDER THE WARSAW CONVENTION

23. Pursuant to the provisions of Article 28 of the *Warsaw Convention*, this court has jurisdiction over the passengers' claims against Skyservice on the following basis:
- (a) Skyservice is domiciled in Canada;
 - (b) Skyservice maintains a place of business in Ontario through which the contract of carriage for Flight 560 was made.

SERVICE EX JURIS

24. To the extent that service of this claim is required outside of Ontario, the Plaintiff relies upon the facts and allegations set out above, and upon subsections 17.02(f), (g), (h), (i) and (n) of the *Rules of Civil Procedure*.
25. The Plaintiff proposes that the trial of this action take place in the City of Toronto.

Date: June 2, 2005

ROCHON GENOVA LLP

Barristers • Avocats
121 Richmond St. West
Suite 903
Toronto, Ontario
M5H 2K1

Joel P. Rochon (LSUC#: 28222Q)
Vincent Genova (LSUC#: 29490T)
Tel: (416) 363-1867
Fax: (416) 363-0263

Solicitors for the Plaintiff

Court File No.: 05-CV-29072i CP

LINDA MAGGISANO
(Plaintiff)

v.

SKYSERVICE AIRLINES INC.
(Defendants)

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

STATEMENT OF CLAIM

ROCHON GENOVA LLP
Barristers • Avocats
121 Richmond St. West
Suite 903
Toronto, Ontario
M5H 2K1

Joel P. Rochon
LSUC#: 28222Q
Vincent Genova
LSUC#: 29490T

Tel: (416) 363-1867
Fax: (416) 363-0263

Solicitors for the Plaintiff