

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
AT LEXINGTON

DORRIT T. LANDMARK, surviving  
mother of CHRISTINA CECILIA  
ANDERSON, deceased; SVEN M.T.  
LANDMARK and JOHAN V.H.  
LANDMARK, surviving brothers of  
CHRISTINA CECILIA ANDERSON,  
deceased,

Plaintiffs,

v.

COMAIR, INC.

SERVE:

PRENTICE-HALL CORP. SYSTEM

421 West Main Street

Frankfort, KY 40601

Defendant.

Case No. \_\_\_\_\_

COMPLAINT WITH JURY DEMAND

Plaintiffs DORRIT T. LANDMARK, SVEN M.T. LANDMARK, AND JOHAN

V. H. LANDMARK hereby state as follows:

**THE PARTIES**

1. Plaintiff DORRIT T. LANDMARK is the mother of CHRISTINA CECILIA ANDERSON, deceased, and is a citizen and resident of the Province of Ontario, Canada.
2. Plaintiff SVEN M. T. LANDMARK is a brother of CHRISTINA CECILIA ANDERSON, deceased, and is a citizen and resident of the Province of Ontario, Canada.
3. Plaintiff JOHAN V.H. LANDMARK is a brother of CHRISTINA CECILIA ANDERSON, deceased, and is a citizen and resident of the Province of Ontario, Canada, temporarily residing in Belgium.

4. Decedent CHRISTINA CECILIA ANDERSON was a citizen and resident of Canada prior to and at the time of her death on August 27, 2006.

5. Defendant COMAIR, INC. is a corporation organized under the laws of the State of Ohio with its principal place of business in Georgia.

### **JURISDICTION AND VENUE**

6. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331, in that this action arises under a treaty of the United States, namely the Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Montreal, Canada, on May 28, 1999 ("Montreal Convention").

7. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. Section 1332, as the plaintiffs are all citizens and residents of a foreign country, defendant COMAIR, INC. is a citizen and resident of states within the United States, and the amount in controversy exceeds the sum of seventy five thousand dollars.

8. Venue in this Court is proper pursuant to 28 U.S.C. Section 1391(a) and (b), as this is the District where a substantial part of the events or omissions giving rise to the claim occurred.

### **FACTUAL ALLEGATIONS**

9. Defendant COMAIR, INC. operates as a common carrier in the air transportation of passengers for hire.

10. Defendant COMAIR, INC. was the owner and/or operator of a Bombardier CRJ-100 aircraft, FAA Registration Number N431CA ("subject aircraft"), that it operated as Comair Flight 5191 on the morning of August 27, 2006.

11. Decedent CHRISTINA CECILIA ANDERSON was a passenger on board the subject aircraft on the morning of August 27, 2006, for its flight from Lexington, Kentucky to

Atlanta, Georgia.

12. The contract of carriage pursuant to which decedent CHRISTINA CECILIA ANDERSON was flying listed her origin and ultimate destination as Ontario, Canada, with intermediate stopping points in Atlanta and Lexington, Kentucky.

13. The subject aircraft crashed while taking off from the Blue Grass Airport in Lexington, Kentucky.

14. Decedent CHRISTINA CECILIA ANDERSON died from injuries suffered in that crash.

15. The crash was the result of the negligence and other culpable conduct of defendant COMAIR, INC., through its agents and employees, because, *inter alia*, the pilots of the subject aircraft attempted to take off from Runway 26, the shorter of two runways at Blue Grass Airport which they were not cleared to use.

16. The pilots' erroneous use of Runway 26 resulted from their failure to take appropriate care to observe runway markings and signs, their failure to check the headings shown on the aircraft's compasses to confirm that the aircraft was aligned on the proper runway after positioning for takeoff but before beginning the take-off roll, their failure to observe the runways markings as they began their takeoff roll, which indicated that they were on the secondary and not primary runway at Blue Grass Airport, and from other negligent acts.

17. Nevertheless, a serious number of deficiencies in the performance of agents and employees of the United States Federal Aviation Administration and the Lexington-Fayette Urban County Airport Board, as outlined below, also contributed to the accident and decedent CHRISTINA CECILIA ANDERSON's death, and plaintiffs will file further claims with respect to those entities.

18. Prior to August 27, 2006 and at all times relevant hereto, the Federal Aviation Administration ("FAA") was the agency of the United States responsible for several safety-related functions pertinent to this case, including, in particular, the creation of aerodrome charts for use by pilots in navigating airport taxiways and runways, and air and ground traffic control.

19. The Aerodrome chart published by the FAA and in effect for the Blue Grass Airport at the time of the subject accident violated numerous mandatory directives found in Annexes to the International Civil Aviation Organization (ICAO) Chicago Convention of 1944, a multilateral, international treaty to which the United States is a party.

20. ICAO standards require the depiction of "all runways including those under construction ... displaced thresholds, stopways, clearways, runway directions to the nearest degree magnetic, type of surface and runway markings;" as well as "any part of the depicted movement area permanently unavailable for aircraft, clearly identified as such." These requirements are imposed to ensure that the chart properly reflects what pilots see on the ground so that they may easily orient themselves.

21. The official airport chart published by the FAA and republished by private entities for use by commercial airlines did not show the Runway 22 "displaced threshold" created by recent construction and configuration changes at Blue Grass Airport, nor did it show the deactivated taxiway that previously was used to travel from the end of Runway 26 to the end of Runway 22. Moreover, the chart inaccurately depicted the new taxiway from Runway 26 to Runway 22.

22. If they attempted to use the then-current chart to navigate Blue Grass Airport on August 27, 2006, the pilots of Flight 5191 easily could have been disoriented and confused by the aforementioned deficiencies and discrepancies, which may have existed in previous versions

as well.

23. A November 2005 memorandum issued by an FAA official in Lexington indicated that the FAA's Eastern Terminal Service Director required that control tower observations and radar approach operations be handled by separate individuals at Blue Grass Airport and other facilities. This necessitated either the assignment of two active controllers to the Blue Grass tower at all times, or the reassignment of certain radar functions to controllers at another FAA facility.

24. The FAA assigned only one air traffic controller to the Blue Grass tower on August 27, 2006, and he was performing both control tower observations of ground traffic and radar operations in violation of the aforementioned directive.

25. Moreover, that one controller negligently reported for work with only two hours sleep the previous afternoon, such that at the time that the subject aircraft was cleared, he had only those two hours sleep for the previous 24 hours, or more.

26. The controller cleared the pilots of the subject aircraft to take off from Runway 22, a runway that was 7,000 feet long and far in excess of that the aircraft needed to take off safely, but thereafter he turned his back to the windows and did not observe the plane until after he heard an explosion.

27. The pilots of Flight 5191 also easily could have been confused as a result of serious violations of IATA requirements by the Lexington-Fayette Urban County Airport Board, owner and operator of the Blue Grass Airport.

28. In violation of ICAO regulations and/or established standards of care, on the day of the subject crash the Blue Grass Airport lacked informational signs at the intersection of taxiway A and Runway 26 indicating that the taxiway continued past Runway 26, or that

Runway 22 was beyond Runway 26. Such signs could have prevented the Comair accident by unequivocally alerting the pilots to their takeoff position on the wrong runway.

29. In violation of ICAO regulations and/or established standards of care, on the day of the subject crash the Blue Grass Airport used the same designation for taxiways on different sides of a runway. Standard practice is to assign a different letter designation for each side when a taxiway intersects with a runway. Had this practice been followed, the pilots of Flight 5191 would have been supplied with yet another opportunity to select the proper runway.

30. ICAO regulations and/or established standards of care dictate that established runway holding positions should be named in a clear and sensible manner, but at least two holding positions along the critical taxiways leading to Runways 22 and 26 shared the same designation.

31. Had clear and distinct holding positions been assigned for Runways 22 and 26, under ICAO procedures for take-off clearances, the control tower would have cleared Flight 5191 by identifying not only the proper runway but also a unique holding position, providing the Comair pilots with yet another means for being sure that they were utilizing the proper runway.

### **COUNT ONE**

#### **MONTREAL CONVENTION - COMAIR, INC.**

32. Plaintiffs hereby incorporate by reference all of the allegations contained in this complaint as if fully rewritten.

33. At all relevant times including August 27, 2006, the United States has signed, ratified and adopted as law a multilateral international treaty which supplies rules governing international carriage by air, known as the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal, Canada, on May 28, 1999, (hereinafter "Montreal Convention").

34. At the time of her injury and death, CHRISTINA CECILIA ANDERSON, was engaged in international carriage as defined in Article 1(2) of the Montreal Convention and the same is, therefore, applicable to this action pursuant to Article 1(1) of the Montreal Convention.

35. On August 27, 2006, Defendant, COMAIR, INC., was the carrier providing international carriage to decedent CHRISTINA CECILIA ANDERSON, under the terms of the Montreal Convention.

36. Pursuant to Article 17 of the Montreal Convention, the carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

37. Plaintiffs have suffered and will continue to suffer damages as a result of the death of decedent CHRISTINA CECILIA ANDERSON, and are entitled to recover those damages from defendant COMAIR, INC. pursuant to applicable laws.

WHEREFORE, Plaintiffs DORRIT T. LANDMARK, SVEN M.T. LANDMARK, AND JOHAN V. H. LANDMARK demand judgment against Defendant COMAIR, INC. in amounts in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs of this action, and such other and further relief as is warranted in the interest of justice.

Dated: September 14, 2006

Respectfully submitted,

SAVAGE, ELLIOTT, HOULIHAN, MOORE,  
MULLINS & ERDMANN, LLP

By: /s/ Joe C. Savage

Joe C. Savage  
PNC Bank Plaza, Suite 810  
200 West Vine Street  
Lexington, Kentucky 40507  
Telephone: 859-233-2700  
Facsimile: 859-233-2704

Robert L. Lieff  
Elizabeth J. Cabraser  
David L. Fiol  
Lexi J. Hazam  
LIEFF, CABRASER, HEIMANN &  
BERNSTEIN, LLP  
Embarcadero Center West  
275 Battery Street, 30th Floor  
San Francisco, CA 94111-3339  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

Attorneys for Plaintiffs

**JURY DEMAND**

With the filing of this Complaint, Plaintiffs herein demand a trial by jury.

By: /s/ Joe C. Savage

Joe C. Savage