

IN THE CIRCUIT COURT, EIGHTEENTH  
JUDICIAL CIRCUIT, IN AND FOR  
BREVARD COUNTY, FLORIDA

CASE NO:

DIVISION:

**JEANETTE McMAHON**, as Personal Representative of the Estate of Michael McMahon, **TRACY GROGAN**, as Personal Representative of the Estate of Travis Grogan, and **SARAH MILLER**, as Personal Representative of the Estate of Harley Miller,

*Plaintiffs,*

-VS.-

**PRESIDENTIAL AIRWAYS, INC.**, a Florida corporation, **AVIATION WORLDWIDE SERVICES, LLC**, a Florida limited liability company, **STI AVIATION, INC.**, a Florida corporation, **AIR QUEST, INC.**, a Florida corporation, and **BLACKWATER LODGE & TRAINING CENTER, INC.**, a foreign corporation,

*Defendants.*

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**COMPLAINT**

Plaintiffs sue Defendants and allege:

**Jurisdiction and Venue**

1. This is an action for damages in excess of \$15,000.00, exclusive of costs and interest, brought pursuant to the Florida Wrongful Death Act, Florida Statute Sections 768.16-.26.
2. Pursuant to Section 48.193(1)(a), Florida Statutes, Defendant Presidential Airways, Inc. (“Presidential”) is subject to personal jurisdiction in Florida because it operates, conducts,

engages in, or carries on a business or business venture within this state or has an office or agency within this state.

3. Pursuant to Section 48.193(1)(a), Florida Statutes, Defendant Aviation Worldwide Services, LLC (“AWS”) is subject to personal jurisdiction in Florida because it operates, conducts, engages in, or carries on a business or business venture within this state or has an office or agency within this state.
4. Pursuant to Section 48.193(1)(a), Florida Statutes, Defendant STI Aviation, Inc. (“STI”) is subject to personal jurisdiction in Florida because it operates, conducts, engages in, or carries on a business or business venture within this state or has an office or agency within this state.
5. Pursuant to Section 48.193(1)(a), Florida Statutes, Defendant Air Quest, Inc. (“Air Quest”) is subject to personal jurisdiction in Florida because it operates, conducts, engages in, or carries on a business or business venture within this state or has an office or agency within this state.
6. Pursuant to Section 48.193(1)(a), Florida Statutes, Defendant Blackwater Lodge & Training Center, Inc. (“Blackwater”) is subject to personal jurisdiction in Florida because it operates, conducts, engages in, or carries on a business or business venture within this state or has an office or agency within this state.
7. Pursuant to Section 47.051, Florida Statutes, venue is proper in Brevard County, Florida, because Defendants Presidential, AWS, STI, and Air Quest maintain business offices at Melbourne International Airport, Melbourne, Brevard County, Florida.

#### **Parties**

8. Plaintiff Jeanette McMahon is, or soon will be appointed, Personal Representative of the Estate of Michael McMahon, deceased.
9. The following are survivors and beneficiaries of a recovery for the wrongful death of Lieutenant Colonel Michael McMahon:
  - a) Jeanette McMahon, spouse of Michael McMahon, age 41;
  - b) Michael McMahon, Jr., age 14, minor child of Michael McMahon;
  - c) Thomas McMahon, age 11, minor child of Michael McMahon;
  - d) Ricky McMahon, age 5, minor child Michael McMahon; and
  - e) The Estate of Michael McMahon.
10. Plaintiff Tracy Grogan is, or soon will be appointed, Personal Representative of the Estate of Travis Grogan, deceased.
11. The following are survivors and beneficiaries of a recovery for the wrongful death of Chief Warrant Officer Travis Grogan:
  - a) Tracy Grogan, spouse of Travis Grogan, age 31;
  - b) Ashley Grogan, age 6, minor child of Travis Grogan;
  - c) Austin Grogan, age 3, minor child of Travis Grogan; and
  - d) The Estate of Travis Grogan.
12. Plaintiff Sarah Miller is the Personal Representative of the Estate of Harley Miller, deceased.
13. The following are survivors and beneficiaries of a recovery for the wrongful death of Specialist Harley Miller:
  - a) Sarah Miller, spouse of Harley Miller, age 21;

- b) Korey Miller, age 1, minor child of Harley Miller;
  - c) Christine Miller, mother of Harley Miller; and
  - d) The Estate of Harley Miller.
14. At all times material, Defendant Presidential was a corporation organized and existing under the laws of Florida, with its principal place of business located at 1371 General Aviation Drive, Melbourne, Brevard County, Florida.
15. At all times material, Defendant AWS was a limited liability company organized and existing under the laws of Florida, with its principal place of business located at 1371 General Aviation Drive, Melbourne, Brevard County, Florida.
16. At all times material, Defendant STI was a corporation organized and existing under the laws of Florida, with its principal place of business located at 1371 General Aviation Drive, Melbourne, Brevard County, Florida.
17. At all times material, Defendant Air Quest was a corporation organized and existing under the laws of Florida, with its principal place of business located at 1371 General Aviation Drive, Melbourne, Brevard County, Florida.
18. At all times material, Defendant Blackwater was a corporation organized and existing under the laws of Delaware, with its principal place of business located at 850 Puddin Ridge Road, Moyock, North Carolina, and operating in Florida as Blackwater Aviation, located at 1425 General Aviation Drive, Melbourne, Brevard County, Florida.

**General Allegations**

19. Defendants contracted with the United States of America (“USA”) to provide air transportation and operational support services to the Department of Defense (“DoD”) in Afghanistan.

20. The air transportation and operational services were to be planned, coordinated, scheduled, performed, and maintained by Defendants.
21. Presidential is, and was at all times material, certificated to operate as a Federal Aviation Administration (“FAA”) Part 135 air charter carrier operation.
22. Pursuant to 32 *Code of Federal Regulations*, Sec. 861 (DoD Commercial Air Transportation Quality and Safety Review Program):
  - a. Presidential was to have in place flight operations policies and procedures that were up-to-date and reflected its scope of operations.
  - b. Presidential was to establish policies that promoted flight safety in all of its flight operations.
  - c. Presidential was to have provided clear written procedures for mission preparation and the flight following of aircraft.
  - d. Presidential was to have in place established procedures to notify DoD in a case of an accident, missing, or overdue aircraft.
23. Defendant Blackwater is the parent company of Defendants AWS, Presidential, STI, Air Quest, and Blackwater Aviation.
24. On or about November 27, 2004, Defendants undertook to provide air transportation services from Bagram, Afghanistan to Farah, Afghanistan, for passengers Michael McMahon, Travis Grogan, and Harley Miller. The flight was known as “Blackwater 61.”
25. As a common carrier, Defendants Blackwater, AWS, Presidential, STI, and/or Air Quest owed its passengers the highest duty of care.
26. Blackwater 61 was operated under Visual Flight Rules, during daylight hours, clear of

terrain and in clear weather conditions.

27. Defendants utilized a CASA 212-CC, twin-engine, turboprop, fixed wing aircraft for flying the Blackwater 61 flight, bearing United States FAA registration N960BW (“N960BW”).
28. N960BW was licensed to be operated by Defendants under 14 C.F.R. part 135 as a commercial charter operator under the rules applicable to a United States registered air carrier.
29. N960BW was owned, operated, and/or maintained by one or more of the Defendants.
30. The flight crew of Blackwater 61 was employed by one or more of the Defendants, and included Captain Noel English, First Officer Loren Hammer, and Flight Mechanic Melvin Rowe (“flight crew”).
31. At all times material, the flight crew was acting within the course and scope of its employment with Defendants.
32. Prior to November 27, 2004, the flight crew of Blackwater 61 had never flown the route from Bagram Airfield, Afghanistan to Farah, Afghanistan.
33. On or about November 27, 2004, the control tower reported that at 7:08 a.m., Afghanistan time, Blackwater 61 departed Bagram Airfield, with Plaintiffs’ Decedents aboard.
34. Blackwater 61 was last detected by radar at 10,000 feet MSL 9.5 miles from Bagram at a location known as the entrance to the Bamian Valley.
35. While attempting to cross a mountain ridge of approximately 16,580 feet, Blackwater 61 crashed into the mountain at approximately 14,650 feet.

36. The crash resulted in the deaths of all souls on board, including Plaintiffs' Decedents.

**Negligence of all Defendants**

37. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs one (1) through thirty-five (36) above, and further allege:

38. Defendants owed their passengers the highest duty of care to properly equip, maintain, and operate the aircraft, to ensure that the aircraft was airworthy for its intended use, to hire and train properly qualified pilots, to train and orient the flight crew, and to provide flight following for its airplanes on DoD missions.

39. Defendants breached their duty in the following ways:

- a. Negligent failure to use reasonable care by entrusting an aircraft to a flight crew inexperienced in flying the mountainous terrain of Afghanistan;
- b. Negligent failure to conduct a formal route study prior to initiating the Blackwater 61 flight;
- c. Negligent failure to establish a proper flight plan route for Blackwater 61;
- d. Negligent failure to create a safe and specific route of flight for the mishap mission;
- e. Negligent failure to properly supervise route planning and flight planning activities;
- f. Negligent failure of the flight crew to wear available oxygen masks as required by FAR 135.89(a)(1);
- g. Negligent failure to properly plan and execute the Blackwater 61 flight;
- h. Negligent failure to adequately brief the flight crew prior to the Blackwater 61

flight;

- i. Negligent failure to maintain sufficient air speed and altitude above terrain;
  - j. Negligent failure to prevent a stall;
  - k. Negligent failure to assign a flight crew with adequate experience in flying a CASA 212 aircraft in mountainous terrain;
  - l. Negligent failure to assign a flight crew with adequate experience and familiarity with the mountainous terrain and routes of flight to be taken;
  - m. Negligent failure to properly equip the subject aircraft with adequate safety equipment, namely, an enhanced terrain awareness system, a radar altimeter, a global positioning system, and radar equipment;
  - n. Negligent failure to properly equip the subject aircraft with adequate communications equipment to facilitate flight following;
  - o. Negligent failure to warn of the unsafe condition of the aircraft for completing its intended flights;
  - p. Negligent failure to maintain adequate terrain clearance appropriate for the route of flight;
  - q. Negligent failure to comply with all applicable Federal Aviation Regulations; and,
  - r. Negligent failure to have in place procedures established for locating each flight, pursuant to FAR 135.79;
  - s. Negligent failure to provide correct information regarding route of flight to search and rescue personnel, resulting in a delay in search and rescue operations.
40. Defendants' acts or omissions were a direct, proximate, and legal cause of the Blackwater



61 crash on November 27, 2004, which resulted in the deaths of Michael McMahon, Travis Grogan, and Harley Miller.

41. As a further direct and proximate result of the negligence of Defendants, the Estate of Michael McMahon has incurred funeral and burial expenses, and suffered the loss of future earnings and net accumulations, including future pensions and retirement benefits. Jeanette McMahon, the widow of Michael McMahon, has suffered damages including loss of support and services, companionship, comfort, attention, and protection, as well as mental pain and suffering. Michael McMahon, Jr., Thomas McMahon, and Ricky McMahon, the children of Michael McMahon, have suffered damages including loss of support and services, parental companionship, instruction, and guidance, as well as mental pain and suffering.
42. As a further direct and proximate result of the negligence of Defendants, the Estate of Travis Grogan has incurred funeral and burial expenses, and suffered the loss of future earnings and net accumulations, including future pensions and retirement benefits. Tracy Grogan, the widow of Travis Grogan, has suffered damages including loss of support and services, companionship, comfort, attention, and protection, as well as mental pain and suffering. Ashley Grogan and Austin Grogan, the children of Travis Grogan, have suffered damages including loss of support and services, parental companionship, instruction, and guidance, as well as mental pain and suffering.
43. As a further direct and proximate result of the negligence of Defendants, the Estate of Harley Miller has incurred funeral and burial expenses, and suffered the loss of future earnings and net accumulations, including future pensions and retirement benefits. Sarah

Miller, the widow of Harley Miller, has suffered damages including loss of support and services, companionship, comfort, attention, and protection, as well as mental pain and suffering. Kory Miller, the child of Harley Miller, has suffered damages including loss of support and services, parental companionship, instruction, and guidance, as well as mental pain and suffering. Christine Miller, the mother of Harley Miller, has suffered damages including loss of support and services, as well as mental pain and suffering.

44. The conduct of Defendants rises to a level sufficient to warrant the imposition of punitive damages, which will be pled by Plaintiffs at a later date.

**WHEREFORE**, Plaintiffs demand judgment against Defendants Blackwater, AWS, Presidential, STI, and/or Air Quest for damages, costs and interest allowable by law, and trial by jury.

Dated this \_\_\_\_\_ day of June, 2005.

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