

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

CASE NO: 6:05-cv-1002-ORL-28-JGG

**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.-

**AVIATION WORLDWIDE SERVICES, LLC**, a Florida limited liability company, **PRESIDENTIAL AIRWAYS, INC.**, a Florida corporation, **STI AVIATION, INC.**, a Florida corporation, **AIR QUEST, INC.**, a Florida corporation,

*Defendants.*

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**AMENDED COMPLAINT**

Plaintiffs sue Defendants and allege:

**Jurisdiction and Venue**

1. The issues of jurisdiction and venue are contested, and are currently pending

before this Court.<sup>1</sup>

### **Parties**

2. Plaintiff Jeanette McMahon is the Personal Representative of the Estate of Michael McMahon, deceased.
3. 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.
4. Plaintiff Tracy Grogan is the Personal Representative of the Estate of Travis Grogan, deceased.
5. 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.
6. Plaintiff Sarah Miller is the Personal Representative of the Estate of Harley Miller, deceased.

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<sup>1</sup> Defendants removed this case from a Florida Circuit Court on July 6, 2005. See Notice of Removal. (Dkt. No. 1). Plaintiffs filed a Motion to Remand on August 4, 2005. (Dkt. No. 21). Defendants filed opposition to the Motion on August 12, 2005. (Dkt. No. 24).

7. 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.
8. At all times material, Defendant Aviation Worldwide Services, LLC (“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.
9. At all times material, Defendant Presidential Airways, Inc. (“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.
10. At all times material, Defendant STI Aviation, Inc. (“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.
11. At all times material, Defendant Air Quest, Inc. (“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.
12. Defendants AWS, Presidential, STI, and Air Quest collectively operate under the

trade name of "Blackwater USA."

### **General Allegations**

13. 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. Per the contract, Defendants were obligated to comply with FAR Part 135 and 32 CFR Section 861.
14. The air transportation and operational services were to be planned, coordinated, scheduled, performed, and maintained by Defendants.
15. Presidential is, and was at all times material, certificated to operate as a Federal Aviation Administration ("FAA") Part 135 air charter carrier operation.
16. Defendants were bound to comply with 32 *Code of Federal Regulations*, Sec. 861 (DoD Commercial Air Transportation Quality and Safety Review Program), including, but not limited to:
  - 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.
17. 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.”

18. As a common carrier, Defendants AWS, Presidential, STI, and/or Air Quest owed its passengers the highest duty of care.
19. Blackwater 61 was operated under Visual Flight Rules, during daylight hours and in clear weather conditions.
20. 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”).
21. 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.
22. N960BW was owned, operated, and/or maintained by one or more of the Defendants.
23. 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”).
24. At all times material, the flight crew was acting within the course and scope of its employment with Defendants.
25. Through the doctrine of *respondeat superior*, Defendants are vicariously liable for the negligence of the flight crew.
26. Prior to November 27, 2004, the flight crew of Blackwater 61 had never flown the route from Bagram Airfield, Afghanistan to Farah, Afghanistan.

27. 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.
28. 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.
29. While attempting to cross a mountain ridge of approximately 16,580 feet, Blackwater 61 crashed into the mountain at approximately 14,650 feet.
30. The crash resulted in the deaths of all souls on board, including Plaintiffs' Decedents.

#### **Count I—Negligence of all Defendants**

31. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs one (1) through thirty (30) above, and further allege:
32. 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.
33. Defendants breached their duty in the following ways:
  - a. Negligent failure to use reasonable care by entrusting an aircraft to a company lacking adequate safety policies and programs;
  - b. Negligent failure to use reasonable care by entrusting an aircraft to a company lacking legally compliant safety policies and programs;
  - c. Negligent failure to use reasonable care by entrusting an aircraft to a flight crew inexperienced in flying the mountainous terrain of Afghanistan;

- d. Negligent failure to conduct a formal route study prior to initiating the Blackwater 61 flight;
- e. Negligent failure to establish a proper flight plan route for Blackwater 61;
- f. Negligent failure to create a safe and specific route of flight for the mishap mission;
- g. Negligent failure to properly supervise route planning and flight planning activities;
- h. Negligent failure of the flight crew to wear available oxygen masks as required by FAR 135.89(a)(1);
- i. Negligent failure to properly plan and execute the Blackwater 61 flight;
- j. Negligent failure to adequately brief the flight crew prior to the Blackwater 61 flight;
- k. Negligent failure to maintain sufficient air speed and altitude above terrain;
- l. Negligent failure to prevent a stall;
- m. Negligent failure to assign a flight crew with adequate experience in flying a CASA 212 aircraft in mountainous terrain;
- n. Negligent failure to assign a flight crew with adequate experience and familiarity with the mountainous terrain and routes of flight to be taken;
- o. 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;
- p. Negligent failure to properly equip the subject aircraft with adequate communications equipment to facilitate flight following;

- q. Negligent failure to warn of the unsafe condition of the aircraft for completing its intended flights;
  - r. Negligent failure to maintain adequate terrain clearance appropriate for the route of flight;
  - s. Negligent failure to comply with all applicable Federal Aviation Regulations; and,
  - t. Negligent failure to have in place procedures established for locating each flight, pursuant to FAR 135.79; and
  - u. Negligent failure to provide correct information regarding route of flight to search and rescue personnel, resulting in a delay in search and rescue operations.
34. 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.
35. 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.

36. 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.

37. 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.

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

## **Count II—Punitive Damages Against All Defendants**

38. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs one (1) through thirty-seven (37) above, and further allege:
39. Defendants committed numerous egregious violations of federal air safety regulations, including FAR Part 135, which resulted in the deaths of Plaintiffs' decedents. Those violations specifically include, but are not limited to:
  - a. Inadequate pre-flight planning;
  - b. Inadequate route selection;
  - c. Improper amendment to in-flight route;
  - d. Failure to file a flight plan;
  - e. Improper flight operations management;
  - f. Unsafe flight operations as demonstrated by:
    - i. No flight following;
    - ii. No search and rescue capability;
    - iii. Improper pilot familiarization training;
    - iv. Improper route of flight;
    - v. Improper alteration of route of flight;
    - vi. Inadequate navigational equipment; and
    - vii. Improper aircraft selection.
40. Additionally, Defendants numerous egregious violations of the Department of Defense Commercial Air Transportation Quality and Safety Review Program, 32 CFR Section 861, including, but not limited to the following:
  - a. Failure of management to ensure that corrective actions resolve unsafe

conditions;

- b. Failure to establish clearly defined, up-to-date, flight operations and procedures reflecting the scope of operations;
- c. Failure to further support flight operations and procedures with a flow of current, management-generated safety and operational communications;
- d. Failure to ensure that the risk associated with all flight operations is reduced to the lowest acceptable level;
- e. Failure of management to supervise crew selection;
- f. Failure to properly consider a flight crew applicant's total aviation background, appropriate experience, and the applicant's ability to perform safely;
- g. Failure to provide increased training and management attention to ensure that new-hire cockpit crewmembers meet industry standards for experience and qualification;
- h. Failure to utilize principles of Crew Resource Management to facilitate full cockpit crew training and full crew interaction;
- i. Failure to establish appropriate emergency procedures training;
- j. Failure to provide crew training appropriate for the level of risk and circumstances anticipated for the trainee;
- k. Failure to document and maintain crew training records;
- l. Failure to properly pair aircrew members according to relative experience of each member;
- m. Failure to provide company-developed standardized procedures for all

preflight, inflight, and postflight operations;

- n. Failure to provide communications with aircrews;
  - o. Failure to provide clear, written procedures to mission preparation and flight following aircraft and aircrews;
  - p. Failure to make personnel available for correctly responding to emergency situations; and
  - q. Failure to establish procedures for notifying DoD in the case of an accident or serious incident.
41. Such failures as described above evince reckless and wanton corporate policies, procedures, planning, and flight operations that warrant the imposition of punitive damages.
42. Defendants' gross and flagrant violations of safety regulations evince a reckless and conscious disregard of human life and for the rights and safety of their passengers.
43. Further, Defendants acted in wanton disregard of the potential harm likely to result as a consequence of their actions and failures to act.
44. As a direct and proximate result of the actions of Defendants, Plaintiffs have suffered the injuries outlined in paragraphs thirty-five (35) to thirty-seven (37) above.

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

**Count III—Survival Action Against All Defendants for Damages Prior to Death**

45. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs one (1) through thirty-seven (37) above, and further allege:
46. As a direct and proximate result of Defendants acts and/or omissions, Plaintiffs' decedents suffered physical injury and damage, mental terror, distress, and pain prior to death.

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

Dated this 4th day of October, 2005.

**GOOD, WEST & SCHUETZ**

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