

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

**KATHLEEN CARROLL-BYRNE, ASHER HODARA and  
GEORGES LIBOY**

PLAINTIFFS

- AND -

**AIR CANADA, AIRBUS S.A.S., NAV CANADA,  
HALIFAX INTERNATIONAL AIRPORT AUTHORITY,  
THE ATTORNEY GENERAL OF CANADA** representing  
Her Majesty the Queen in right of Canada, **JOHN DOE #1**  
and **JOHN DOE #2**

Court Administration  
APR 28 2015  
Halifax, N.S.

DEFENDANTS

**Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28**

**Notice of Action**

- TO: AIR CANADA**  
Head Office  
7373 Côte-Vertu Blvd, West  
Saint-Laurent, QC H4S 123
- AND TO: AIRBUS S.A.S**  
Airbus Headquarters in Toulouse  
1, Rond Point Maurice Bellonte  
31707 Blagnac Cedex  
France
- AND TO: NAV CANADA**  
77 Metcalfe Street  
Ottawa, ON K1P 5L6
- AND TO: HALIFAX INTERNATIONAL AIRPORT AUTHORITY**  
1 Bell Boulevard  
Enfield, NS B2T 1K2
- AND TO: THE ATTORNEY GENERAL OF CANADA**  
Atlantic Regional Office  
Department of Justice Canada  
Suite 1400, Duke Tower  
5251 Duke Street  
Halifax, NS B3J 1P3

**AND TO: JOHN DOE # 1**  
**JOHN DOE # 2**  
c/o Air Canada  
Head Office 7373  
Côte-Vertu Blvd,  
West Saint-Laurent, QC H4S 1Z3

**Action has been started against you**

The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

**Deadline for defending the action**

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

**Judgment against you if you do not defend**

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

**You may demand notice of steps in the action**

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiffs must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

**Rule 57 - Action for Damages Under \$100,000**

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiffs.

This action is not within Rule 57.

**Filing and delivering documents**

Any documents you file with the court must be filed at the office of the Prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone #902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

**Contact information**

The plaintiffs designate the following addresses:

Wagners Law Firm  
1869 Upper Water Street  
Suite PH301, Historic Properties  
Halifax, Nova Scotia B3J 1S9  
Email: [classaction@wagners.co](mailto:classaction@wagners.co)

Camp Fiorante Matthews Mogerman  
856 Homer Street  
Suite 400  
Vancouver, BC V6B 2W5  
Email: [info@cfmlawyers.ca](mailto:info@cfmlawyers.ca)

Documents delivered to these addresses are considered received by the plaintiffs on delivery.

Further contact information is available from the prothonotary.

**Proposed place of trial**

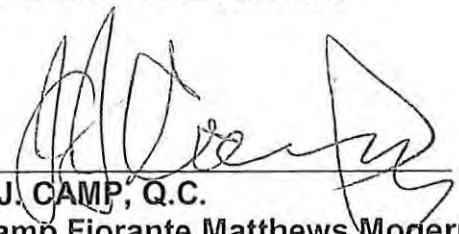
The plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

**Signature**

Signed this 28<sup>th</sup> day of April, 2015.



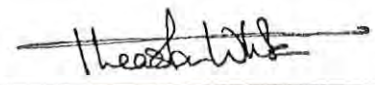
\_\_\_\_\_  
**RAYMOND F. WAGNER, Q.C.**  
Wagners Law Firm  
Counsel for the Plaintiffs



\_\_\_\_\_  
**J.J. CAMP, Q.C.**  
Camp Fiorante Matthews Mogerman  
Counsel for the Plaintiffs

**Prothonotary's certificate**

I certify that this notice of action, including the attached statement of claim, was filed with the court on April 28<sup>th</sup>, 2015.



\_\_\_\_\_  
**Theaston White**  
Deputy Prothonotary

**Statement of Claim**

**Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28**

**I. OVERVIEW**

1. On March 28, 2015 Air Canada Flight 624 departed from Toronto Pearson International Airport en route to Halifax Stanfield International Airport.
2. At or about 00:43 AM on March 29, 2015, Flight 624 violently struck the ground approximately 300 metres short of Runway 05 at Halifax Stanfield International Airport. The Aircraft, which carried 133 passengers and five crew members, ricocheted off the ground on impact, struck down a second time and proceeded to skid along the Runway for about 335 metres before coming to a halt.
3. At the time of the Crash there was heavy snowfall, high winds, low cloud and low visibility at the airport. Due to the poor weather conditions, the Aircraft circled the Airport for approximately thirty minutes during which time the Passengers were informed by the Flight Crew that weather conditions prevented the scheduled landing and that they would await improved visibility and lifting of the cloud ceiling before landing. The Flight Crew also informed Passengers that the flight may be diverted to Moncton, New Brunswick.
4. Approximately 300 metres before reaching the Runway threshold, the Aircraft hit one or more above-ground power lines and an antenna array, creating interference with signals used for instrument landings and cutting off power to much of the Airport.
5. Upon impact one engine broke off from the Aircraft and the other was destroyed. Engine fuel spilled out onto Runway. Sparks and flashes were

- visible. During the course of the crash, the landing gear separated from the Aircraft.
6. The Class Members exited the Aircraft with reasonable expedition but were not met with an expeditious emergency response, stranding them on the tarmac for approximately 50 minutes in extreme weather conditions.
  7. As set out more fully below, the Plaintiffs and Class Members suffered serious personal injury as a result of the Crash.
  8. The Crash was caused solely by the negligence of the Defendants, particulars of which are set below.
  9. In this Statement of Claim, the following defined terms are used:
    - (a) **A320** – refers to the Airbus A320 series aircraft which includes the Aircraft;
    - (b) **Airbus** – refers to the Defendant Airbus SAS which designed, manufactured and placed in the stream of commerce the Airbus A320 aircraft involved in the Crash;
    - (c) **Aircraft** – refers to the subject Airbus A320-211 aircraft, bearing registration C-FTJP, utilized by Air Canada for the conduct of Flight 624;
    - (d) **Air Canada** – refers to the Defendant air carrier Air Canada which operated Flight 624;
    - (e) **Airport** – refers to Halifax Stanfield International Airport;
    - (f) **ATIS** – refers to the Automated Terminal Information Service provided by Nav Canada at the Airport which provides inbound aircraft with, *inter alia*, weather and runway surface condition data;
    - (g) **CAR** - refers to the Canadian Aviation Regulations;
    - (h) **Class Members** – refers to all passengers onboard Flight 624 which crashed on landing at Halifax Stanfield International Airport in Nova Scotia on March 29, 2015;
    - (i) **Crash** – refers to the March 29, 2015 crash at Halifax Stanfield International Airport of Air Canada Flight 624;

- (j) "**domestic carriage**" - refers to any carriage which does not fall within the meaning of "international carriage" as defined in the Montreal Convention and the Warsaw Convention;
- (k) **Flight 624** – refers to Air Canada Flight 624 from Toronto Pearson International Airport to Halifax Stanfield International Airport which was subject of the Crash;
- (l) **Flight Crew** – refers to the Captain, First Officer, and other members of the crew who exercised operational control over Flight 624;
- (m) **Halifax ATC** – refers to air traffic control provided by Nav Canada at the Airport;
- (n) **HIAA** – refers to the defendant Halifax International Airport Authority which operates and owns the Airport;
- (o) **ILS** - refers to Instrument Landing System, a ground-based radio navigation system that provides lateral (localizer) and vertical (glide slope) guidance to aircraft flying an approach to a runway;
- (p) "**international carriage**" - has the meaning such term is given in the Montreal Convention and the Warsaw Convention;
- (q) **Montreal Convention** – refers to the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* signed at Montreal in 1999 and which was enacted into law in Canada on November 4, 2003 by the *Carriage by Air Act*, R.S.C. 1985, Chapter C-26 as amended (the "*Carriage by Air Act*");
- (r) **Nav Canada** – refers to the Defendant Nav Canada which was responsible for the provision of air navigation services at the time of the Crash;
- (s) **Runway** – refers to runway 05 at Halifax Stanfield International Airport;
- (t) **SMS** – refers to a Safety Management System required under the Canadian Aviation Regulations;
- (u) **Transport Canada** – refers to the Minister of Transport; and
- (v) **Warsaw Convention** – refers to the *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, signed at Warsaw on 12 October 1929, as amended by the Protocol to Amend the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* signed at Warsaw

on 12 October 1929 signed at the Hague on September 28, 1955, and as adopted in Canada pursuant to the provisions of the *Carriage by Air Act*.

## II. THE PARTIES

### REPRESENTATIVE PLAINTIFFS AND CLASS

10. The Plaintiff, Kathleen Carroll-Byrne, was a passenger on Flight 624. She resides in Halifax, Nova Scotia. She was en route from Seattle, Washington, the place of her departure, to Halifax, the place of her destination, via a connection in Toronto.
11. The Plaintiff, Asher Hodara, resides in Halifax, Nova Scotia and was a passenger on Flight 624. He was en route from Tel Aviv, Israel, the place of his departure, to Halifax, the place of his destination, via a connection in Toronto.
12. The Plaintiff, Malanga Georges Liboy, resides in Church Point, Nova Scotia and was a passenger on Flight 624. He was en route from Vancouver, the place of his departure, to Halifax, the place of his destination, via a connection in Toronto.
13. The Plaintiffs seek to certify this action as a class proceeding and plead the *Class Proceedings Act*, S.N.S. 2007, c. 28, as providing the basis for such certification.
14. The Plaintiffs propose to bring a class proceeding on behalf of themselves and the Class. The proposed Class will be further defined in the Motion for Certification.
15. The Plaintiffs, as the proposed representative plaintiffs, do not have any interest adverse to any of the members of the proposed Class. The Plaintiffs state that there is an identifiable class that would be fairly and

adequately represented by the Plaintiffs; that the Plaintiffs' claims raise common issues; and that a class proceeding would be the preferable procedure for the resolution of such common issues.

16. The claims of the Plaintiffs are typical of the claims of the Class in that the Plaintiffs, and all Class Members, were passengers on the same flight and experienced the Crash and the Crash response or lack thereof. The Plaintiffs, like all Class Members, have suffered losses as a result of the Defendants' actions or omissions.

## **DEFENDANTS**

17. The Defendant, Air Canada, is a body corporate continued under the *Canada Business Corporations Act* on August 25, 1988. Its head office is located at 7373 Boulevard de la Côte-Vertu, Saint Laurent, Quebec, Canada, H4S 1Z3.
18. At all material times Air Canada was the air carrier responsible for the conduct of Flight 624 and is the registered operator of the Aircraft.
19. At all material times Air Canada was the employer of the Flight Crew of Flight 624 including pilots John Doe #1 and Jane Doe #2 and is therefore vicariously liable for acts and omissions of the Flight Crew of Flight 624.
20. The Defendant John Doe # 1 (the "Captain") was at all material times the pilot in command of Flight 624 and an employee of Air Canada. The name of the Captain had not been officially disclosed at the time of issuing this pleading.
21. The Defendant Jane Doe # 2 (the "First Officer") was at all material times the co-pilot of Flight 624 and an employee of Air Canada. The name of the First Officer had not been officially disclosed at the time of issuing this pleading.



22. The Defendant, Airbus, is a company incorporated pursuant to the laws of France with its head office in Toulouse, France. At all material times, Airbus designed and manufactured the Aircraft and placed the Aircraft into the stream of commerce in Canada.
23. The Defendant, Nav Canada, is a private, non-share capital company incorporated pursuant to the laws of Canada. At all material times, Nav Canada owned and operated Canada's civil air navigation service and was responsible for the provision of air navigation services at the Airport, including the provision of air traffic control, flight information, weather briefings, aeronautical information, airport advisory services, runway selection and electronic aids to navigation.
24. At the time of the Crash, Flight 624 was under the control of Halifax ATC.
25. The Defendant, HIAA, was incorporated on November 23, 1995 as a corporation without share capital under Part II of the *Canada Business Corporations Act*. On February 1, 2000 the HIAA signed a 60-year ground lease with Transport Canada and assumed responsibility for the management, operation and development of the Airport. At all material times HIAA was responsible for providing airport services including ensuring that it provided reasonably safe landing facilities and promptly providing reasonable emergency response measures.
26. The Defendant, the Attorney General of Canada, has an address for service at 284 Wellington Street, Ottawa, Ontario, Canada, K1A 0H8 and an address in Nova Scotia at Suite 1400, Duke Tower, 5251 Duke Street, Halifax, Nova Scotia, Canada, B3J 1P3. The Attorney General of Canada is responsible for the regulation of commercial aviation and the enforcement of aviation safety regulations and standards in Canada through Transport Canada.

#### **IV. CAUSES OF ACTION**

##### ***Claims Against Air Canada and the Flight Crew***

27. Air Canada entered into contracts of either international or domestic carriage with each of the Passengers, including the Plaintiffs. The Passengers with whom Air Canada entered into contracts of international carriage are referred to as “Montreal Convention Passengers” and “Warsaw Convention Passengers”. The passengers with whom Air Canada entered into contracts of domestic carriage are referred to as “Domestic Passengers”.

##### **International Carriage Claims**

28. The contracts of international carriage and liability of Air Canada and the Flight Crew are governed by the provisions of the *Carriage by Air Act*, including, in particular, Articles 17 and 21 of the Montreal Convention and Articles 17, 18, 22 and 25 of the Warsaw Convention.

##### **Montreal Convention Passenger Claims**

29. The events of Flight 624 described in the Overview above constitute an “accident” within the meaning of Article 17 of the Montreal Convention and accordingly Air Canada is liable to the Montreal Convention Passengers for damage sustained in case of bodily injury upon condition only that the accident which caused the injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.
30. Pursuant to Article 21 of the Montreal Convention, Air Canada is strictly liable for damages sustained by Montreal Convention Passengers up to 100,000 Special Drawing Rights.
31. Further, and in the event that the claim of any Montreal Convention Passenger exceeds 100,000 Special Drawing Rights (as such term is defined in the Montreal Convention), the Crash was caused or contributed to by the negligence of Air Canada and its employees including the Flight

- Crew, and accordingly Air Canada cannot avail itself of any limits on liability under Article 21.
32. Particulars of the negligence of Air Canada and the Flight Crew are set forth below at paragraph 41 (a) through (e) and paragraph 42 (a) through (h).
  33. Pursuant to Article 17(2) of the Montreal Convention, Air Canada is liable to the Montreal Convention Passengers for damage sustained in case of destruction or loss of, or of damage to, checked and unchecked baggage.
  34. Further, and in the event that the claim for lost or damaged baggage of any Montreal Convention Passenger exceeds the limits prescribed by Article 22(2) of the Montreal Convention, the Montreal Convention Passengers' damages resulted from acts and omissions of Air Canada and its employees including the Flight Crew, which were done with the intent to cause damage or alternatively were done recklessly with knowledge that damage would probably result, such that the limits on liability in Article 22 do not apply. Particulars of the acts or omissions are outlined in paragraph 41 (a) through (e) and paragraph 42 (a) through (h).

### **Warsaw Convention Passenger Claims**

35. The events of Flight 624 described in the Overview above constitute an "accident" within the meaning of Article 17 of the Warsaw Convention and accordingly Air Canada is liable to the Warsaw Convention Passengers for damage sustained in case of bodily injury upon condition only that the accident which caused the injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.
36. Pursuant to Article 18(1) of the Warsaw Convention, Air Canada is liable to the Warsaw Convention Passengers for damage sustained in case of destruction or loss of, or of damage, to checked and unchecked baggage.

37. In the event that the claim of any Warsaw Convention Passenger exceeds 250,000 francs, Air Canada waived this limit when it entered into the IATA Intercarrier Agreement on Passenger Liability such that the limit on liability in Article 22(1) of the Warsaw Convention does not apply.
38. Alternatively, in the event that Air Canada has not waived the limits on claim prescribed under Article 22(1) of the Warsaw Convention, the Warsaw Convention Passengers' damages resulted from actions and omissions of Air Canada and its employees including the Flight Crew acting within the scope of his, her or their employment, which were done with the intent to cause damage or alternatively were done recklessly with knowledge that damage would result. Accordingly, the limits on liability in Article 22 of the Warsaw Convention do not apply. Particulars of the acts or omissions are outlined in paragraph 41 (a) through (e) and paragraph 42 (a) through (h).
39. Further, and in the event that the claim for lost or damaged baggage of any Warsaw Convention Passenger exceeds the limits prescribed by Article 22(2) of the Warsaw Convention, the damages resulted from acts and omissions of Air Canada and its employees including the Flight Crew, which were done with the intent to cause damage or alternatively were done recklessly with knowledge that damage would probably result, such that the limits on liability in Article 22 of the Warsaw Convention do not apply. Particulars of the acts or omissions are outlined in paragraph 41 (a) through (e) and paragraph 42 (a) through (h).

### **Domestic Passenger Claims**

40. Air Canada is liable to the Plaintiffs and all Class Members, including the Domestic Passengers, in negligence. Air Canada owed a duty of care to the Plaintiffs and Class Members. Its conduct fell below the reasonable standard of care required of it under the circumstances, as a result of which the Plaintiffs and Class Members sustained damages.

41. Particulars of the negligence of Air Canada presently known to the Plaintiffs include:

- (a) Inadequately training the Flight Crew on the procedures for the Airbus A320, including in particular the procedures for landing the Aircraft in the conditions present on or near the Runway at the time of the Crash;
- (b) Inadequately training the Flight Crew on the minimum visibility requirements required to safely land the Aircraft in the conditions present on or near the Runway at the time of the Crash;
- (c) Ignoring and not complying with CAR 705 which requires the implementation of an SMS to identify, assess and mitigate operational risks;
- (d) Conducting an inadequate and incomplete assessment, management and mitigation of the risks associated with non-precision approaches; and
- (e) Adopting a non-precision approach procedure which lacked an adequate margin of safety.

42. Air Canada is also vicariously liable for all loss or damage caused by the Flight Crew. Particulars of the recklessness and/or negligence of the Flight Crew presently known to the Plaintiffs include:

- (a) Operating the Aircraft in such a manner that it violently struck terrain approximately 300 metres short of the Runway touchdown zone;
- (b) Ignoring and not complying with applicable regulatory minimums as to required visibility prior to approach;
- (c) Choosing not to abort the landing on the Runway and divert the Flight to another airport when they knew or ought to have known that a safe touchdown was impaired or prevented by the weather conditions;
- (d) Choosing not to request updated weather information from Halifax ATC including snowfall conditions and prevailing wind speed and direction;
- (e) Choosing not to follow the instructions of Halifax ATC;

- (f) Choosing not to declare an emergency and/or to alert Halifax ATC and/or the HIAA and emergency personnel in a timely manner of the true nature of the situation that arose;
- (g) Operating the Aircraft when they knew or ought to have known that there were problems associated with the mechanical, electronic, or computerized controls or other instruments; and
- (h) Operating the Aircraft without due care and skill despite knowing that damage would probably result.

***Negligence of Halifax International Airport Authority***

- 43. HIAA is liable to the Plaintiffs in negligence. HIAA owed a duty of care to the Plaintiffs. Its conduct fell below the reasonable standard of care expected of it under the circumstances, as a result of which the Plaintiffs sustained damages.
- 44. Particulars of the negligence of the HIAA presently known to the Plaintiffs include:
  - (a) Conducting inadequate and unsafe operations by not installing an ILS on the Runway, or on runway 32, to provide both lateral and vertical guidance to aircraft on approach;
  - (b) Inadequately and incompletely maintaining and keeping clear of snow a Precision Approach Path Indicator to provide vertical guidance to aircraft approaching the Runway;
  - (c) Inadequately and incompletely installing, maintaining, and keeping clear of snow a runway lighting system to ensure adequate visibility for pilots in conditions such as those prevailing at the time of the Crash;
  - (d) Designing the Runway, or allowing and permitting the Runway to be designed, without an appropriate level of safety given the weather, geography, and structures in the vicinity of the Airport;
  - (e) Allowing and permitting the installation of above ground, instead of underground, power lines in the Runway approach area;
  - (f) Conducting inadequate and unsafe operations by not installing Terminal Doppler Weather Radar, or other similar systems which would have alerted Halifax ATC and inbound aircraft in the event of wind shear or sudden changes in the direction of the prevailing winds at the airport;

- (g) Conducting inadequate and unsafe operations by not installing real time display systems which would have provided Halifax ATC with real time display of critical meteorological information including sudden changes in the direction of prevailing winds;
- (h) Keeping the Runway open when it knew or ought to have known that the existing navigation aids were inadequate in the existing conditions;
- (i) Keeping the Runway open when it knew or should have anticipated that the meteorological conditions prevailing at the Airport on the night of March 28, 2015 and early morning hours of March 29, 2015 were rapidly deteriorating, rendering the Runway unsafe for landings;
- (j) Inadequately and incompletely keeping runway 32 clear of snow to provide a more favourable option given the prevailing winds;
- (k) Conducting an inadequate and incomplete inspection, test and report on the operability of the Combined Services Complex and terminal building's electric gates in the event of a power failure, so as to ensure there would be no obstacle to emergency personnel responding as soon as possible to incidents on the Runway;
- (l) Conducting an inadequate and incomplete installation, inspection, test and report on the Combined Services Complex and terminal building's backup power generators, or other redundant sources of electricity in the event of a power failure at the Airport;
- (m) Ignoring and not complying with CAR 302 which requires the implementation of an SMS to identify, assess and mitigate operational risks;
- (n) Conducting an inadequate and incomplete assessment, management and mitigation of the risks associated with non-precision approaches;
- (o) Conducting an inadequate and incomplete assessment, management and mitigation of the risks associated with wind shear and rapidly changing weather conditions; and
- (p) Inadequately and incompletely implementing, and inadequately training its employees in, emergency communication and response procedures so as to ensure that victims of crashes such as the Plaintiffs are availed of third party emergency responses and shelter as quickly as possible.

***Negligence of Nav CANADA***

45. Nav Canada is liable to the Plaintiffs in negligence. Nav Canada owed a duty of care to the Plaintiffs. Its conduct fell below the reasonable standard of care expected of it under the circumstances, as a result of which the Plaintiffs sustained damages.
46. Particulars of the negligence of Nav Canada presently known to the Plaintiffs include:
- (a) Selecting Runway 05 as the active runway when the crosswind and tailwind components exceeded the safe limits for runway use;
  - (b) Clearing the Aircraft to land on the Runway when Halifax ATC knew or should have known the weather conditions and poor visibility conditions rendered the Runway unsafe for landing;
  - (c) Keeping the Runway open when Halifax ATC knew or should have known that the weather conditions and poor visibility conditions rendered the Runway unsafe for landing;
  - (d) Inadequately informing the Flight Crew of the unsafe weather conditions, unserviceable equipment, and poor visibility conditions by updating the ATIS or by other means;
  - (e) Conducting inadequate and unsafe operations by not installing Terminal Doppler Weather Radar, or other similar systems which would have alerted Halifax ATC and inbound aircraft in the event of wind shear or sudden changes in the direction of the prevailing winds at the airport;
  - (f) Conducting inadequate and unsafe operations by not installing real time display systems which would have provided Halifax ATC with real time display of critical meteorological information including sudden changes in the speed and direction of prevailing winds;
  - (g) Conducting inadequate and unsafe operations by not employing tactical weather prediction techniques to anticipate and warn of sudden changes in weather and speed and wind direction;
  - (h) Issuing no or no adequate warning to the Flight Crew of the crosswind and tailwind components present on the approach to the Runway at the time of the Crash;



- (i) Issuing no or no adequate warning to the Flight Crew that the Aircraft's speed, rate and angle of descent would result in the Aircraft landing "short";
- (j) Conducting inadequate and unsafe operations by not installing an ILS on the Runway, or on runway 32 to provide both lateral and vertical guidance to aircraft on approach;
- (k) Ignoring and not complying with CAR 805 which requires implementation of an SMS to identify, assess and mitigate operational risks;
- (l) Conducting an inadequate and incomplete assessment, management and mitigation of the risks associated with non-precision approaches; and
- (m) Conducting an inadequate and incomplete assessment, management and mitigation of the risks associated with wind shear and rapidly changing weather conditions.

### ***Negligence of Airbus***

47. Airbus is liable to the Plaintiffs in negligence. Airbus owed a duty of care to the Plaintiffs. Its conduct fell below the reasonable standard of care expected of it under the circumstances, as a result of which the Plaintiffs sustained damages.
48. Particulars of the negligence of Airbus presently known to the Plaintiffs include:
- (a) Inadequately designing and testing the avionics and computerized flight control system for the Airbus A320 series aircraft to ensure that the Aircraft could be safely landed in the conditions prevailing on the Runway at the time of the Crash;
  - (b) Defectively designing and manufacturing the avionics and computerized flight control system of the Aircraft;
  - (c) Defectively designing the ground speed mini system for automatic control of aircraft speed during approach;
  - (d) Issuing no or no adequate warning of the risks of using the ground speed mini system in unstable weather conditions such as those present at the time of the Crash;

- (e) Publishing no or no adequate instructions for landing the Aircraft in the conditions prevailing on the Runway at the time of the Crash;
- (f) Inadequately or incompletely training Air Canada crews, including the Flight Crew, on the landing procedures for the Airbus A320 series aircraft including the Aircraft; and
- (g) Issuing no or no adequate warning of the risks attendant on use of the Aircraft.

### **Negligence of Transport Canada**

49. Transport Canada, as regulator of the aviation industry in Canada, owes a duty of care to members of the flying public to certify and conduct oversight of aircraft operators, airport operators and air navigation service providers with reasonable care. Facts underlying this duty of care include:

- (a) As a contracting State of the International Civil Aviation Organization (“ICAO”), the Federal Government of Canada through Transport Canada has an obligation to oversee the safe and efficient operation of all aviation activity for which it is responsible. Canada has agreed to the application of Article 12 of the ICAO Convention, Rules of the Air, which directs that each contracting State adopt measures to ensure that every aircraft flying over or maneuvering within its territory, shall comply with the rules and regulations relating to the flight. As well, Canada committed to ensuring the prosecution of all persons violating applicable regulations;
- (b) The paramount purpose of the *Aeronautics Act* and *Canadian Aviation Regulations* is to protect members of the flying public;
- (c) Transport Canada has undertaken to oversee the activities of aircraft operators, airport operators and air navigation service providers in Canada;
- (d) Transport Canada has issued policies and manuals which set out the actions that its employees must take in relation to the oversight of aircraft operators, airport operators, and air navigation service providers;
- (e) Transport Canada makes representations to the public and its employees that:

- (i) Transport Canada may be held civilly liable for injuries caused or contributed to by negligent oversight of regulated entities;
  - (ii) Transport Canada inspectors have an inherent legal responsibility within their Delegation of Authority to act in the interest of public safety;
  - (iii) Transport Canada is working for individual members of the flying public;
  - (iv) Transport Canada's mandate is the safety of the Canadian public; and
  - (v) Transport Canada is responsible for ensuring the safety of aircraft operations in Canada.
- (f) Transport Canada considered the Passengers to be indirect clients of their services; and
- (g) The Passengers had a reasonable expectation that Transport Canada would enforce regulations and follow policies with the safety of members of the flying public in mind and do so competently.
50. Transport Canada was at all material times responsible for the certification and oversight of Air Canada, HIAA and Nav Canada.
51. Transport Canada was responsible for ensuring that Air Canada, HIAA and Nav Canada implemented appropriate SMS programs to identify, assess and mitigate operational risks.
52. Pursuant to its State Safety Program, Transport Canada was required to verify that Air Canada, HIAA and Nav Canada were in compliance with their respective SMS programs.
53. Further, Transport Canada was responsible for assessing the risks associated with Air Canada's non-precision approach procedures to ensure that an adequate margin of safety existed before approving the approach procedures.

54. Transport Canada breached the duty of care it owed to the Passengers. Particulars of the negligence of Transport Canada include:

- (a) Allowing and permitting Air Canada to maintain and operate an inadequate SMS program to identify, assess and mitigate operational risks;
- (b) Allowing and permitting HIAA to maintain and operate an inadequate SMS program to identify, assess and mitigate operational risks;
- (c) Allowing and permitting Nav Canada to maintain and operate an inadequate SMS program to identify, assess and mitigate operational risks;
- (d) Allowing and permitting Air Canada to ignore and to not comply with its SMS program;
- (e) Allowing and permitting HIAA to ignore and to not comply with its SMS program;
- (f) Allowing and permitting Nav Canada to ignore and to not comply with its SMS program;
- (g) Conducting an inadequate and incomplete assessment of Air Canada's non-precision approach procedures; and
- (h) Approving Air Canada's non-precision approach procedures when they lacked an adequate margin of safety.

## **V. DAMAGES**

55. As a result of the Crash, the Plaintiffs and Class Members have suffered damages including damages relating to physical and psychological injuries and damage to their personal property.

56. The Plaintiff Asher Hodara sustained serious physical injuries as a result of the Crash, including a mild traumatic brain injury and dental damage. He also sustained psychological injuries as a result of the Crash, including anxiety, loss of concentration and profound psychological distress.

57. The Plaintiff, Malanga Georges Liboy, sustained serious physical injuries as a result of the Crash, including pain to his neck, knee and mouth. He also sustained psychological injuries as a result of the Crash, including anxiety and profound psychological distress.
58. The Plaintiff, Kathleen Carroll-Byrne, sustained serious psychological injuries. She suffered from and continues to suffer from anxiety, loss of concentration and profound psychological distress, including fear of flying.
59. Further, as a result of the Crash, the Plaintiffs and Class Members will be required to undergo a course of medical treatment and to undergo medical tests and procedures and ingest medications. As a result of the Crash, the Plaintiffs and Class Members have incurred medical, hospital, healthcare and other out of pocket expenses.
60. The Plaintiffs and Class Members plead that the damages may have been incurred directly, or may constitute subrogated claims owed to provincial health insurers, or to private health, disability, or group benefit insurers.

#### **VIII. RELIEF SOUGHT**

61. The Plaintiffs repeat the foregoing paragraphs and seek as relief the following:
  - (a) an order certifying this proceeding as a class proceeding and appointing Asher Hodara, Kathleen Carroll-Byrne and Malanga Georges Liboy as the representative plaintiffs for the Class and any appropriate subclass thereof;
  - (b) compensation and/or damages including:
    - i. pain and suffering;
    - ii. loss of amenities of life;
    - iii. loss of past and future income;
    - iv. diminished earning capacity;
    - v. past and future costs of care;
    - vi. loss of past and future valuable services;
    - vii. special damages; and
    - viii. loss of consortium;

- (c) interest pursuant to the *Judicature Act*;
- (d) costs; and
- (e) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 28<sup>th</sup> day of April, 2015.



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**RAYMOND F. WAGNER, Q.C.**

**Wagners**

**Counsel for the Plaintiffs**

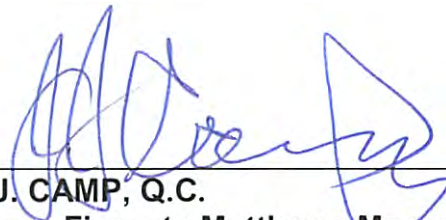
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