

Mid-Air Collision Over Newark

The following is a hypothetical occurrence for “Landing in Court – The State of Modern Aviation Litigation,” a panel discussion hosted by the Rutgers Admiralty, Aviation, and Space Law Association.

The events below took place on February 20th, 2010. TransAtlantica is an American air carrier, incorporated and having its principle place of business in New York. All times are given in Eastern Standard Time.

2:36am – TransAtlantica Flight 3342 from Frankfurt to Newark began to taxi for takeoff. The Boeing 767 was scheduled to land at Newark International Airport at 11:45am. Among the 239 other passengers were:

- Jared and Sally Freekdout, an American newlywed couple returning to the United States on one-way tickets, after their wedding in Frankfurt;
- Hanz Honorof, a German heart surgeon, visiting New York for a three-day conference on a roundtrip ticket;
- William Phull and Jennifer Conducked, two French foreign-exchange students on open-ended round-trip tickets for the semester.

10:34am - At Trenton Mercer County Airport, Scott Flyboye, a 26-year-old student pilot, and his Certified Flight Instructor, Joseph Seeyefii, had just finished performing preflight inspection on a 1991 Cessna 172, owned by Seeyefii. Seeyefii had recently purchased the plane from Jonson Aviation and was assured it was current on all servicing. Seeyefii was insured by Eagleton Flight Insurance. The flight plan was to land at TF Green Airport, just south of Providence, RI, approximately 3 hours later, following the southern shoreline of Long Island for the majority of the flight. It was to be Flyboye’s first landing at an unfamiliar airport. After takeoff, Flyboye and Seeyefii tuned the VOR receiver to the Colts Neck VOR. However, due to a faulty repair by Trenton Mercer County’s local avionics maintenance company, Minuteman Avionics, the Cessna’s VOR receiver was functioning improperly, causing Flyboye and Seeyefii to follow a more northerly course, towards Orange, NJ.

11:03am – TransAtlantica 3342, having reached the U.S. coast safely, headed south and began its initial descent. Passengers were warned to return to their seats and fasten their seatbelts, in keeping with FAA standards. Though multiple language warnings, on international flights, had become popular among many airlines, TransAtlantica had not yet implemented this costly safety protocol.

11:17am – Realizing that they should have been nearing the coast, but were still over New Jersey countryside, Flyboye and Seeyefii tuned to the Teterboro VOR and attempted to correct their course, however, they failed to correct enough and ten minutes later were over northern Newark, heading into Newark Airport airspace. New York TRACON picked up the errant Cessna, but did not communicate with the plane or provide any sort of warning due to understaffing and increased workloads.

11:21am – The Cessna pilots realized that they had entered restricted airspace and began to turn northwest to exit the area. The TransAtlantica copilot checked the Traffic alert and Collision Avoidance System (TCAS) on the 767 as the plane descended before the aircraft broke through the visibility ceiling. The Cessna did not appear on the 767’s TCAS because the Cessna’s transponder was not operating. The Cessna’s original transponder had been replaced five years ago, with a twenty-year-old transponder, refurbished by Minuteman Avionics.

11:29am - Seeyefii spotted the 767 descending into the direct path of the Cessna, realized they were on a collision course and took evasive action, but too late. The right wing of the Cessna clipped the right engine of the 767. Unable to regain control, the Cessna spiraled into the Newark Bradley Made Corrugated Box factory, narrowly missing Rutgers School of Law, Newark. Since it was a Saturday, no one was working at the factory, however both Flyboye and Seeyefii were killed instantly.

11:35am – The two pilots flying the 767 made an emergency landing at Newark Airport, destroying much of the right wing, scrapping the bottom of the hull, and bringing the plane to a stop at an angle. During the landing, Phull and Conducked were not wearing their seatbelts, since they spoke only French and had not understood the warning. Both suffered head and neck injuries. Conducked suffered a fractured tibia, and Phull a herniated disk. Ambulances were dispatched to the plane and took the two to the hospital. Buses met the plane on the tarmac shortly thereafter, and took the remaining passengers to the terminal. While getting off the bus, Hanz Honorof got his arm caught in the bus door and in attempting to free himself, broke his wrist.

Results and Legal Actions

- Jared and Sally Freekdout, who required months of psychological counseling before either were able to return to work, brought a timely suit against TransAtlantica Airlines for mental anguish in New York State Supreme Court.
- Hanz Honorof, who returned to Germany the following week, could not work until his broken wrist healed. He brought a timely suit against TransAtlantica Airlines for personal injury in U.S. District Court for the Southern District of New York.
- William Phull and Jennifer Conducked spent two weeks recovering in the hospital, where several friendly attorneys visited them often and even brought flowers. Thankfully, they sought other representation after their recuperation. The two brought a timely claim against TransAtlantica Airlines for personal injury in U.S. District Court for the District of New Jersey. Recognizing that the damage limits in the Warsaw and Montreal conventions would not cover their medical bills, they asserted that TransAtlantica acted with willful misconduct, because of their failure to warn them to put on their seatbelts before landing and their failure to prevent the accident.
- Scott Flyboye had no living relatives and the executor of his estate decided not to pursue any legal remedies.
- Mrs. Seeyefii, Joseph Seeyefii's widow, as administratrix of Mr. Seeyefii's estate, brought a timely wrongful death action in Superior Court of New Jersey, against Cessna for faulty manufacture of the original transponder and VOR receiver, alternatively against Minuteman Avionics for installation and manufacture of a faulty transponder and VOR receiver, and under the Federal Tort Claims Act, the Federal Aviation Administration as operator of the New York TRACON for failure to warn.
- TransAtlantica Airlines' insurer brought a timely suit for subrogation as well as damages to the 767, in U.S. District Court for the District of New Jersey, against the FAA under the Federal Tort Claims Act as operator of the New York TRACON for failure to warn and against Minuteman Avionics for their installation of a faulty transponder and VOR receiver.
- Bradley Made Corrugated Box Company settled their claims out of court.