

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

JAMES PAUL CHALUPSKY,)
)
Plaintiff,)
)
v.)
)
SOUTHWEST AIRLINES CO., a Texas corporation;)
THE BOEING COMPANY, a Delaware corporation;)
and the CITY OF CHICAGO, a municipal corporation,)
)
Defendants.)
)

Case No. 2006L004459
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COMPLAINT AT LAW

Plaintiff, JAMES PAUL CHALUPSKY, by and through his attorneys, Kreindler & Kreindler LLP, a Professional Corporation and the Law Offices of Mark V. Ferrante, in support of his complaint against the Defendants, SOUTHWEST AIRLINES CO., a Texas corporation; THE BOEING COMPANY, a Delaware corporation; and the CITY OF CHICAGO, a municipal corporation, pleading in the alternative, states the following:

GENERAL ALLEGATIONS

1. The causes of action set forth in this complaint arise out of the crash of Southwest Flight 1248 at Chicago’s Midway International Airport (“Midway”) on December 8, 2005.
2. The plaintiff was a fare-paying passenger on Flight 1248 who was injured and suffered damages as a result of the crash.
3. The causes of action arose in Cook County, Illinois making venue appropriate under §5/2-101 of the Illinois Code of Civil Procedure.

4. On and before December 8, 2005, Southwest Airlines, Co. ("Southwest") was an airline and common carrier registered to do business in Illinois.
5. On and before December 8, 2005, The Boeing Company ("Boeing") was an aircraft manufacturer with its headquarters in Chicago, Illinois.
6. On and before December 8, 2005, the City of Chicago owned and operated Midway.
7. Southwest Flight 1248 was a scheduled passenger flight from Baltimore to Chicago ("subject flight") utilizing a Boeing 737-700 bearing FAA aircraft registration number N471 ("subject aircraft").
8. At all relevant times, the subject aircraft was designed, manufactured, assembled, inspected, tested distributed, sold, serviced, maintained and repaired by defendant Boeing.
9. At all relevant times the subject aircraft was operated by Southwest, its officers, agents, employees, servants, joint ventures and/or representatives.
10. At all relevant times, Midway was owned, operated and under the control of the City of Chicago, its officers, agents, employees, servants, joint ventures and/or representatives.
11. James Paul Chalupsky was a fare paying passenger who was injured on Flight 1248.

COUNT I

(Against Southwest for Negligence)

12. James Paul Chalupsky incorporates by reference the general allegations above in paragraphs 1 through 11.
13. As a common carrier, Southwest, through its officers, agents, employees, servants, joint ventures and/or representatives had a duty to the passengers on the subject flight, namely James Paul

Chalupsky, to use the highest degree of care consistent with the mode of conveyance used and the practical operation of its business as a common carrier by air.

14. On December 8, 2005, Southwest, through its officers, agents, employees, servants, joint ventures and/or representatives was guilty of one or more of the following acts or omissions:

- a. Began an unsafe approach to runway 31C at Midway knowing, or having constructive notice, that the prevailing weather conditions included snow, low cloud ceilings, a tailwind, reduced visibility, fair to poor runway conditions and that runway 31C had only 5,826 feet of useable runway with obstructions, a road, and a neighborhood at the end of the runway;
- b. Failed to discontinue an unstable and unsafe approach which resulted in the subject plane landing approximately 2,000 feet down runway 31C when Southwest knew, or should have known, that the aircraft was required to land in the first 1,000-1,500 feet of runway to stop the aircraft on the runway;
- c. Allowed the subject aircraft to touch down too far down runway 31C; and
- d. Failed to stop the subject aircraft on the runway by failing to properly operate the subject aircraft's manual braking system, autobrake system, thrust reverse system and/or spoiler system.

15. Southwest, through its officers, agents, employees, servants, joint ventures and/or representatives was guilty of one or more of the following acts and/or omissions:

- a. Failed to activate and/or allow its pilots to use the autobrake system for landings;
- b. Failed to train the flight crew of the subject aircraft in, among other things, the proper use of the autobrake, reverse thrust and spoiler systems; and
- c. Implemented an on-board performance computer ("OPC") system which, among other things, improperly used a thrust reverser credit, and failed to train the flight crew in the safe use of the OPC.

16. As a direct and proximate result of one or more of the aforementioned negligent acts or omissions by Southwest, James Paul Chalupsky has been injured and sustained damages including, but not

limited to physical injury, pain, suffering, disability, loss of a normal life, emotional distress, medical expenses, lost earnings and lost earning capacity. These losses have been incurred in the past and will be incurred in the future; all or some of these losses are permanent.

WHEREFORE, James Paul Chalupsky respectfully requests judgment in his favor against Southwest for an amount in excess of FIFTY-THOUSAND ((50,000.00) DOLLARS that the jury finds to be fair and reasonable, plus costs of this lawsuit.

COUNT II

(Against Southwest for Conscious Disregard for Safety)

17. James Paul Chalupsky incorporates by reference the general allegations above in paragraphs 1 through 11.

18. Southwest had a duty to refrain from willful and wanton conduct which would endanger the safety of its passengers and the public, yet notwithstanding, and in breach of this duty, on December 8, 2005, Southwest acted in conscious disregard for the safety of its passengers and the public's safety.

Southwest was guilty of, among other things, the following willful and wanton acts and/or omissions:

- a. Attempted to make up for lost time by flying the aircraft in a dangerous manner, including, but not limited to, flying at a dangerous speed, rate of descent and/or glide path for the runway length, runway conditions, wind direction, wind speed, visibility and snow during the approach to land and landing on runway 31C at Midway;
- b. Operated the subject aircraft during the approach and landing at Midway contrary to the operating limits, requirements, specifications and procedures set forth for the subject aircraft in, among other documents, the approved flight manual for the subject aircraft and the markings, placards and warnings installed in the aircraft;

- c. Operated the aircraft during the approach and landing at Midway contrary to the operating procedures, instructions and specifications set forth by Southwest in, among other documents, its flight operating manual for the subject aircraft;
- d. Failed to perform a “go-around” or divert to an alternate runway or airport at a time when the pilots had notice, and knew, that given the subject aircraft’s location, the short runway length, the excessive speed, the rate of descent, the glide path, the configuration, weight, altitude, wind direction, wind speed, runway condition, and weather, among other things, landing the subject aircraft on Midway Airport’s runway 31C posed a serious risk to, and endangered the lives of, their crew, passengers, and others on the ground. Instead, the pilots continued the dangerously unsafe approach and landed even though they had sufficient opportunity to execute a “go-around”, divert to an alternate airport, or take other action to discontinue the approach after such notice and knowledge;
- e. Failed to stop the aircraft on runway 31C such that it crashed through two fences at the perimeter of the airport and emerged into traffic on South Central Avenue and West 55th Street, public streets in Chicago;
- f. Fostered a culture that emphasized keeping within flight schedules, punctuality, and cost savings. Southwest gave the pilots great discretion and charged them with the duty to make life-and-death policy decisions with company profitability in mind at all times;
- g. Pressured the pilots by scheduling only a 20-minute “turn around” at Midway before the subject aircraft was scheduled to depart for Las Vegas. On December 8, 2005, Flight 1248 was running two hours late;
- h. Maintained a company policy and culture that strongly encourages “on-time performance” and quick turn-arounds of aircraft to minimize the time an aircraft spends on the ground before leaving on its next flight. Southwest attempted this unsafe landing to save time and money, in conscious disregard of the safety of its passengers as a result of a corporate culture of rushed operation;
- i. Maintained a company policy that prohibited the use of the autobrake system for landing even though no other airline has such a prohibition in order to improve company profitability; and
- j. Implemented an OPC system knowing that its performance data was based on improper performance parameters including, but not limited to, a thrust reverser credit beginning immediately upon touchdown, which was in conscious disregard of the safety of passengers and the public.

19. The crash of the subject aircraft and the plaintiff's resultant injuries were caused by the wanton and willful misconduct of Southwest, including their officers, agents, servants and/or employees as set forth herein, whose actions and omissions were outrageous and despicable. By doing and omitting the acts and conduct as alleged above, Southwest showed a conscious disregard for the safety of its passengers and the public's safety.

20. Willful and wanton conduct is a traditional basis for punitive damages claims in Illinois. However, § 5/2-604.1 of the Illinois Code of Civil Procedure states: "In all actions on account of bodily injury . . . where punitive damages are permitted no complaint shall be filed containing a prayer for relief seeking punitive damages. However, a plaintiff may, pursuant to a pretrial motion and after a hearing before the court, amend the complaint to include a prayer for relief seeking punitive damages. The court shall allow the motion to amend the complaint if the plaintiff establishes at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages." In compliance with this provision the following prayer for relief does not, at this time, include a claim for punitive damages, however, Southwest is hereby notified plaintiff intends to pursue punitive damages theories during the discovery phase of this litigation and may well move to include punitive damages in the prayer for relief at the appropriate time.

21. As a direct and proximate result of willful and wanton conduct by Southwest, James Paul Chalupsky has been injured and sustained damages including, but not limited to, physical injury, pain, suffering, disability, loss of a normal life, emotional distress, medical expenses, lost earnings and lost earning capacity. These losses have been incurred in the past and will be incurred in the future; all or some of these losses are permanent.

WHEREFORE, James Paul Chalupsky respectfully requests judgment in his favor against Southwest for an amount in excess of FIFTY-THOUSAND ((\$50,000.00) DOLLARS that the jury finds to be fair and reasonable, plus costs of this lawsuit.

COUNT III

(Against Boeing for Strict Liability)

22. James Paul Chalupsky incorporates by reference the general allegations above in paragraphs 1 through 11.

23. There existed in the aircraft at the time it left Boeing's control conditions which made it unreasonably dangerous including, but not limited to, autobrake, spoiler, reverse thrust and OPC systems that were defective in design and/or manufacture, that failed to safely and properly operate in the intended manner, and failed to safely or properly operate as reasonably expected by users, including Southwest's pilots.

24. As a direct and proximate result of one or more of the aforementioned unreasonably dangerous conditions, the subject aircraft crashed and James Paul Chalupsky has been injured and sustained damages including, but not limited to physical injury, pain, suffering, disability, loss of a normal life, emotional distress, medical expenses, lost earnings and lost earning capacity. These losses have been incurred in the past and will be incurred in the future; all or some will be permanent.

WHEREFORE, James Paul Chalupsky respectfully requests judgment in his favor against Boeing for an amount in excess of FIFTY-THOUSAND ((\$50,000.00) DOLLARS that the jury finds to be fair and reasonable, plus costs of this lawsuit.

COUNT IV

(Against Boeing for Breach of Warranty)

25. James Paul Chalupsky incorporates by reference the general allegations above in paragraphs 1 through 11.

26. Prior to December 8, 2005, defendant Boeing expressly and/or impliedly warranted and represented that the subject aircraft and its component parts and systems including, but not limited to, the subject aircraft's autobrake, reverse thrust, spoiler and OPC systems, and its manuals, instructions, specifications, service bulletins, warnings and cautions, were airworthy, of merchantable quality, or fit and safe for the purposes for which they were designed, manufactured, assembled, inspected, tested, distributed, sold, serviced, maintained, repaired, intended and used, and Boeing further warranted that the subject aircraft and its component parts and systems were free from all defects.

27. Defendant Boeing breached said warranties in that the subject aircraft and its accompanying manuals, instructions, specifications, service bulletins, warnings and cautions, and subsequent modification, revisions and updates thereto, were not of merchantable quality, airworthy, or fit and safe for the purposes for which it was designed, manufactured, assembled, inspected, tested, distributed, sold, serviced, repaired, maintained, written, published and intended and used and further was not free from all defects.

28. As a direct result and proximate result of one or more of the aforementioned acts and/or omissions of Boeing, James Paul Chalupsky has been injured and sustained damages including, but not limited to physical injury, pain, suffering, disability, loss of a normal life, emotional distress, medical expenses, lost earnings and lost earning capacity. These losses have been incurred in the past and will be incurred in the future; all or some will be permanent.

WHEREFORE, James Paul Chalupsky respectfully requests judgment in his favor against Boeing for an amount in excess of FIFTY-THOUSAND ((\$50,000.00) DOLLARS that the jury finds to be fair and reasonable, plus costs of this lawsuit.

COUNT V

(Against Boeing for Negligence)

29. James Paul Chalupsky incorporates by reference the general allegations above in paragraphs 1 through 11.

30. Defendant Boeing had a duty to plaintiff to use reasonable care in manufacturing, designing, assembling, inspecting, testing, servicing and repairing the subject aircraft, and its component parts, including, but not limited to, the subject aircraft's autobrake, reverse thrust, spoiler and OPC systems. Boeing also had a duty to provide accurate and complete manuals, instructions, specifications, service bulletins, warnings, cautions and related documentation.

31. The defects which caused or contributed to the crash and plaintiff's injuries were caused by the negligence of Boeing, and/or their officers, agents, employees, servants, joint ventures and/or representatives in that they were guilty of one or more of the following acts and/or omissions:

- a. Designed, manufactured, assembled, inspected, tested, marketed, distributed, sold, serviced, maintained, overhauled and repaired and/or approved modifications of the subject aircraft and its component parts and systems, including, but not limited to the subject aircraft's autobrake, reverse thrust, spoiler and OPC systems in a manner that made them unsafe;
- b. Failed to accurately, completely and properly establish, determine, publish and implement appropriate methods, procedures, instructions and specifications for safely stopping the subject aircraft on the runway under the conditions that existed at Midway during the subject flight; and

- c. Prepared, wrote, approved and/or sold operations and flight manuals, procedures, instructions, warnings, cautions and service bulletins for the subject aircraft and its component parts including, but not limited to, the autobrake, reverse thrust, spoiler and on-board computer systems in a manner that made them unsafe.

32. As a direct result and proximate result of one or more of the aforementioned acts and/or omissions of Boeing, James Paul Chalupsky has been injured and sustained damages including, but not limited to physical injury, pain, suffering, disability, loss of a normal life, emotional distress, medical expenses, lost earnings and lost earning capacity. These losses have been incurred in the past and will be incurred in the future; all or some will be permanent.

WHEREFORE, James Paul Chalupsky respectfully requests judgment in his favor against Boeing for an amount in excess of FIFTY-THOUSAND ((\$50,000.00) DOLLARS that the jury finds to be fair and reasonable, plus costs of this lawsuit.

COUNT VI

(Against City of Chicago for Negligence)

33. James Paul Chalupsky incorporates by reference the general allegations above in paragraphs 1 through 11.

34. The City of Chicago has a duty to exercise ordinary care under the circumstances in managing, operating and maintaining Midway including its runways to protect planes and their passengers from hazardous conditions at Midway.

35. The City of Chicago, through its agents, servants or employees, acting within the scope of their employment, were guilty of one or more of the following acts and/or omissions:

- a. Carelessly and improperly failing to maintain runway 31C in a reasonably safe condition for air carrier operations;

- b. Carelessly and improperly failing to clear snow, ice, slush, and water from runway 31C;
- c. Carelessly and improperly failing to close runway 31C given the prevailing conditions;
- d. Carelessly and improperly failing to accurately observe and report the condition of runway 31C;
- e. Carelessly and improperly failing to design, construct and maintain runway 31C in a safe condition including, but not limited to, providing for a satisfactory overrun area and/or Engineered Material Arresting System; and
- f. Negligently, carelessly and improperly failing to provide prompt and effective emergency response.

36. As a direct and proximate result of one or more of the aforementioned negligent acts or omissions Flight 1248 crashed and James Paul Chalupsky has been injured and sustained damages including, but not limited to physical injury, pain, suffering, disability, loss of a normal life, emotional distress, medical expenses, lost earnings and lost earning capacity. These losses have been incurred in the past and will be incurred in the future; all or some will be permanent.

WHEREFORE, James Paul Chalupsky respectfully requests judgment in his favor against the City of Chicago for an amount in excess of FIFTY-THOUSAND ((\$50,000.00) DOLLARS that the jury finds to be fair and reasonable, plus costs of this lawsuit.

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