

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PAIBOON PHAPUN, CHOWALERT
JITJAMNONG, individually and as an
heir and Co-Personal Representative of
the Estate of SIRIPHUT JITJAMNONG,
deceased, KIM SAMUNUAL, as an heir
and Co-Personal Representative of the
Estate of SIRIPHUT JITJAMNONG,
deceased, CHOWIT JITJAMNONG,
through his next friend, CHOWALERT
JITJAMNONG, WARANGKANA
NGAMSIRI, as an heir and Co-Personal
Representative of the Estate of SIRLAK
THAPTHANEE, deceased, PAIROJ
SUKKONG, as an heir and Co-Personal
Representative of the Estate of SIRLAK
THAPTHANEE, deceased

CIVIL DIVISION

FILED by IG D.C. ELECTRONIC
SEPT 15, 2008
STEVEN M. LARIMORE CLERK U.S. DIST. CT. S. D. OF FLA. - MIAMI

CASE #:

08-22554-CIV-MORENO/TORRES

v

APOLLO AVIATION CAPITAL, LLC,
a Florida corporation

COMPLAINT

Plaintiffs, by their undersigned counsel, for their complaint against defendant

Apollo Aviation Capital, LLC, state as follows:

INTRODUCTION

1. This is an action for damages against Apollo Aviation Capital, L.L.C. ("Apollo Aviation"), a corporation with its principal place of business at 848 Brickell Avenue, Suite 900, Miami, Florida 33131.. Apollo Aviation negligently sold and delivered a deadly instrumentality, a 23-year-old McDonnell Douglas MD-82 aircraft that

had been retired and sent for storage in the New Mexico desert, to an unfit, irresponsible and improper foreign operator. Just six months after receiving the aircraft from Apollo Aviation, the foreign operator crashed the aircraft on September 16, 2007 in Phuket, Thailand, killing 90 of the people on board and injuring 40.

2. Plaintiffs include the heirs and co-personal representatives of two passengers who died in the crash of the aircraft, as well as three individuals who survived the crash but suffered serious personal injuries. Plaintiffs seek to hold this Florida business liable (a) for its negligent sale of this deadly instrumentality to an unfit and improper user, and (b) for strict products liability for its sale of a defective aircraft.

PARTIES

3. Plaintiffs and plaintiffs' decedents are citizens and residents of Thailand who were injured or killed in the crash of One Two Go Flight OG 269 on September 16, 2007 at Phuket, Thailand.

4. Plaintiffs Chowalert Jitjamnong, Kim Samunual, Warangkana Ngamsiri and Pairoj Sukkong are collectively referred to herein as the "Wrongful Death Plaintiffs." Each of the above Wrongful Death Plaintiffs was, is and/or will be the duly appointed administrator, executor and/or personal representative of the estates of their respective decedents identified above. Each of the above Wrongful Death Plaintiffs seeks to recover such damages for the decedent's wrongful death and such damages for the surviving heirs as may be available under the Florida Wrongful Death Act and/or whatever law this Court deems applicable.

5. Plaintiffs Chawalert Jitjamnong, Chawit Jitjamnong and Paibon Phapun survived the crash but suffered personal injuries as a result of the crash and are collectively referred to herein as the “Personal Injury Plaintiffs.”

6. Defendant APOLLO AVIATION CAPITAL, L.L.C. (“Apollo Aviation”), is a citizen of the United States as it is a Delaware limited liability company with its principal place of business at 848 Brickell Avenue, Suite 900, Miami, Florida.

JURISDICTION AND VENUE

7. Jurisdiction is founded on diversity of citizenship, 28 U.S.C. Section 1332, in that all Wrongful Death Plaintiffs and Personal Injury Plaintiffs were and are citizens and residents of Thailand while Defendant Apollo Aviation is incorporated in the State of Delaware and maintains its principal place of business in the State of Florida and does systematic and continuous business in the State of Florida. The amount in controversy as to each plaintiff’s claim exceeds \$75,000, exclusive of interest and costs.

8. Venue in this District satisfies the requirements of 28 U.S.C. § 1391, in that Defendant Apollo Aviation resides in this District and is subject to personal jurisdiction in this District.

GENERAL ALLEGATIONS

9. Apollo Aviation is in the business of “aircraft asset management and brokerage” and sells and leases aircraft and aircraft engines to operators.

10. The subject McDonnell Douglas MD-82 aircraft (Serial No. 49183) was designed and manufactured in the United States and had its first flight in November 1983. From 1983 until 2001, the aircraft was operated by TWA Airlines in the United States. From 2001 to in or around September 2004, the aircraft was registered and operated by

American Airlines in the United States. Beginning in or around September 2004, the MD-82 aircraft, now 21 years old, was retired from use by American Airlines.

11. The aircraft was then parked in the desert in Roswell, New Mexico, where it remained for over two years.

12. In or around December 2006, the MD-82 aircraft was purchased by Apollo Aviation. Apollo Aviation proceeded to market the MD-82 for sale or lease to operators from its Florida principal place of business.

13. In or around March 2007, Apollo Aviation managed to sell the 23-year-old MD-82 aircraft to an unfit, unsuitable and irresponsible foreign operator. Just six months later, that foreign operator would cause the aircraft to crash, killing 80 individuals and injuring 40.

14. Nominally, the MD-82 aircraft was sold to a British Virgin Islands company called Grandmax Group Limited ("Grandmax"). Grandmax in turn leased the aircraft, pursuant to a dry lease, to Orient Thai Airlines Co., Ltd. ("Orient Thai"), which in turn leased the aircraft, pursuant to a wet lease, to its wholly-owned subsidiary One Two Go Airlines Co., Ltd. ("One Two Go"). Orient Thai and One Two Go carry passengers on scheduled and charter flights in Thailand and around the world.

15. In reality, these three entities are indistinguishable. Grandmax is merely a holding company used by Orient Thai/One Two Go to act as nominal owner of the aircraft it operates. At all material times, Orient Thai and One Two Go were run as a single company. The principals of the companies were the same; the management of the companies was the same; the administrative staff was the same; the Maintenance Department was the same; the Flight Operations Department was the same; the physical

offices were the same.

16. The negotiations for the sale by Apollo Aviation were carried out in the United States (Florida and New York) with an agent of Orient Thai/One Two Go/Grandmax, by the name of Cho T. Tsang (“Cho”). Cho is a United States citizen who resides in New York and conducts substantial business on behalf of Orient Thai, One Two Go and Grandmax in and from the United States. The aircraft was subsequently inspected in the United States prior to delivery (New Mexico), and the buyer took delivery of the aircraft in the United States as well (New Mexico).

17. Orient Thai/One Two Go/Grandmax was an entirely unfit, unsuitable and irresponsible operator for an antiquated MD-82 aircraft. Formed in 1995, Orient Thai lost its license to operate scheduled passenger flights in 1997, when Thailand’s Aviation Department found that Orient Thai had failed to maintain proper records or conduct proper safety training for its pilots. Orient Thai had to suspend all of its operations in 1998, but then was resurrected in 2002. One year later, Orient Thai formed One Two Go in December 2003 to be a “budget” and “low cost” carrier.

18. According to Orient Thai’s/One Two Go’s own pilots and former pilots, the airline engaged in egregious safety violations, ranging from routinely disregarded duty and flight time limitations for its pilots, to ignoring required maintenance inspections, to directing its pilots to ignore weather minimum standards for safe operations. Pilots were even bribed with cash to fly routes when they were beyond their duty and flight time limitations.

19. Orient Thai was also the subject of numerous official safety “red flags” prior to the sale by Apollo Aviation. For example, South Korean authorities singled out

Orient Thai in 2006 for failing to update its safety and operational regulation manuals, and found certain of its safety equipment to be non-functioning. And, Japanese aviation officials investigated Orient Thai in 2004 after a near collision by an Orient Thai aircraft with the tower at the Tokyo Airport.

20. Apollo Aviation nonetheless sold the MD-82 aircraft, a deadly instrumentality, to this unfit, unsuitable and irresponsible operator

21. Just six months later, on September 16, 2007, the inevitable happened, when the MD-82 aircraft, operated by Orient Thai/One Two Go/Grandmax as One Two Go Flight #269, crashed while attempting to conduct a “go around” at the airport in Phuket, Thailand.

COUNT I

NEGLIGENT ENTRUSTMENT/SALE

22. Plaintiffs repeat and reallege paragraphs 1 through 21 of this Complaint and further allege as follows.

23. This is a cause of action for negligence pursuant to Section 390 of the RESTATEMENT (SECOND) OF TORTS, which provides: “One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or from facts known to him should know to be likely because of his . . . inexperience or otherwise, to use it in a manner involving unreasonable risk of bodily harm to . . . others whom the supplier should expect to share in, or be in the vicinity of its use, is subject to liability for bodily harm caused thereby to them.”

24. At all times material hereto, Apollo Aviation owed a duty to the general public, and to the Personal Injury Plaintiffs and the Wrongful Death Plaintiffs’

decedents in particular, to exercise reasonable care in the sale and disposition of a deadly instrumentality, such as the subject aircraft, so as not to entrust the deadly instrumentality to an unsuitable, unfit or irresponsible user.

25. At all times material, it was reasonably foreseeable to Apollo Aviation that the Personal Injury Plaintiffs and the Wrongful Death Plaintiffs' decedents, as passengers on a commercial flight operated by the purchaser of the aircraft from Apollo Aviation, could be injured in accidents such as the one involved herein, if Apollo Aviation did not exercise such reasonable care.

26. Apollo Aviation breached its duty to the Personal Injury Plaintiffs and the Wrongful Death Plaintiffs' decedents in that it carelessly and negligently supplied the MD-82 aircraft to Grandmax/Orient Thai/One-Two-Go knowing, or having reason to know, that Grandmax/Orient Thai/One-Two-Go was an unsuitable, unfit and irresponsible operator and would use the aircraft in a manner involving unreasonable risk of physical harm to others.

27. Moreover, the subject MD-82 aircraft is a "dangerous instrumentality," not an ordinary chattel, thus requiring the sale of which by Apollo Aviation to be subject to a heightened degree of care that the dangerous instrumentality not be entrusted and sold to an unsuitable, unfit and irresponsible user.

28. Apollo Aviation nonetheless sold the subject MD-82 aircraft to an unsuitable, unfit and irresponsible user, which promptly caused the aircraft to be involved in the September 16, 2007 crash.

29. As a direct and proximate result of Apollo Aviation's negligence and carelessness, each of the Wrongful Death Plaintiffs have been damaged and claim all

damages to which he or she, the Estate, and the survivors and/or beneficiaries are entitled, including, as applicable law may provide, but not limited to (a) pain and suffering of decedent prior to death, (b) pain and suffering of Plaintiff, survivors, beneficiaries and/or heirs of the decedent, (c) lost society, consortium, companionship, comfort, instruction, guidance, counsel, training and services of the decedent to Plaintiff and/or the decedent's survivors, beneficiaries and/or heirs, (d) pecuniary losses, including loss of support in money or in kind, (e) loss of net accumulations of the Estate, (f) lost value of life, (g) funeral expenses, and (h) all other damages to which Plaintiff, the decedent, the Estate, the survivors, beneficiaries and/or heirs of the decedent may be entitled under applicable law.

30. As a direct and proximate result of Apollo Aviation's negligence and carelessness, the Personal Injury Plaintiffs suffered personal injuries in the crash of the MD-82 aircraft, including physical pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, the expenses of hospitalization, medical and nursing care and treatment, loss of earnings in the past and/or the loss of ability to earn money in the future. These losses are permanent and continuing in nature and the Personal Injury Plaintiffs will suffer these losses in the future.

WHEREFORE, the Plaintiffs demand judgment against the Defendant Apollo Aviation Capital, L.L.C. for compensatory damages, together with interest and costs.

COUNT II

PRODUCTS LIABILITY

31. Plaintiffs repeat and reallege paragraphs 1 through 30 of this Complaint and further allege as follows.

32. At all times material, Apollo Aviation was engaged in the business of marketing, advertising, leasing, distributing and selling aircraft for profit, including the subject MD-82 aircraft, to be used by operators for the purpose of transporting members of the general public, including the Personal Injury Plaintiffs and Wrongful Death Plaintiffs' decedents.

33. The subject MD-82 aircraft was defective at the time of its distribution and sale by Apollo Aviation. The defective condition rendered the subject aircraft unreasonably dangerous to the Plaintiffs and Plaintiffs' decedents.

34. The subject MD-82 aircraft was in substantially the same condition at the time of the crash as when it left Apollo Aviation's possession and control.

35. At the time and place of the subject crash as well as when placed in distribution and for sale by Apollo Aviation, the subject aircraft and its component parts were defective, unreasonably dangerous and unsafe for foreseeable, expected and recommended use in that, without limitation, the aircraft was defective and unreasonably dangerous in the following respects: (a) the Operating Manuals, checklists and other documentation supplied with the aircraft were not uniform and were out of date, (b) the control surfaces and control systems for the control surfaces, and particularly the tail rudder, were subject to unreasonable risk of failure and uncontrolled movements, (c) the aircraft was beyond its reasonably safe lifespan and had been subject to wear, tear and deterioration from its lengthy storage in the New Mexico desert prior to its sale.

36. The unreasonably dangerous nature of the defects as outlined above created a high probability that the MD-82 aircraft would be involved in an accident resulting in the loss of human life and/or severe personal injuries to its passengers.

Apollo Aviation knew of this risk prior to its marketing, distribution and sale of the subject MD-82 aircraft.

37. As a direct and proximate result of Apollo Aviation's conduct, each of the Plaintiffs have been damaged and claim all damages to which he or she, the Estate, and the survivors and/or beneficiaries are entitled under applicable law.


WHEREFORE, the Plaintiffs demand judgment against Defendant Apollo Aviation Capital, L.L.C. for compensatory damages, together with interest and costs.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury of all issues so triable as a matter of law.

Respectfully submitted,

By: _____


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JS 44 (Rev. 2/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

NOTICE: Attorneys MUST Indicate All Re-filed Cases

SEPT 15, 2008

STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

I. (a) PLAINTIFFS

Paiboon Phapun, Chawalert Jitjamnong, et al.

(b) County of Residence of First Listed Plaintiff Thailand (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Victor A. Careaga, Esq. 150 Alhambra Circle, # 1100 Coral Gables, FL 33134 (305) 441-7040

DEFENDANTS

Apollo Aviation Capital, L.L.C.

County of Residence of First Listed Defendant Miami-Dade County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

unknown

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF 1 DEF 1
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Citizen of Another State PTF 2 DEF 2
Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Citizen or Subject of a Foreign Country PTF 3 DEF 3
Foreign Nation PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (see VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Diversity of citizenship, per 28 U.S.C. Section 1332 in that all wrongful death and personal injury plaintiffs are residents and citizens of Thailand. and where Defendant maintains principal place of business in Florida. LENGTH OF TRIAL via 5 days days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 75,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: YES NO

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of Victor A. Careaga

DATE 9/15/08

FOR OFFICE USE ONLY AMOUNT \$350.00 RECEIPT # 987161

Handwritten date 09/15/08