

inspection of a Gulfstream business jet. This action also seeks a declaratory judgment that Gulfstream must indemnify and defend the plaintiffs in any action for deaths, personal injuries, or other damages or losses brought by any potential third parties

The Parties

3. Plaintiff Lima Delta Company ("Lima Delta") is a corporation organized under the laws of the State of Delaware with offices at 112 Deer Valley Lane, Wilmington, DE 19807. Lima Delta is the registered owner of a certain Gulfstream G-IV aircraft bearing U.S. registration number N2SA (the "Aircraft"). Though the Aircraft's registered owner, Lima Delta is solely an "owner trustee" of the Aircraft under a trust agreement. This type of trust ownership is a common arrangement permitted under applicable U.S. statutory law; it allows non-U.S. residents to register aircraft with the Federal Aviation Administration's registry.

4. Plaintiff Société Commerciale et Industrielle Katangaise, formerly known as Société du Ciment au Katanga ("Socikat"), is a business entity based and domiciled in the DRC. Socikat provides mining support equipment to the mining industry in the DRC.

5. Socikat is the beneficiary of the trust under which Lima Delta acts as owner trustee of the Aircraft, and is therefore the Aircraft's equitable owner, being purchased by Lima Delta (as owner trustee for the benefit of Socikat) on or about May 4, 2011. The Aircraft was originally described as having a floating base in Wilmington, Delaware and Johannesburg, South Africa. In an arrangement common to such

trusts, Socikat used the Aircraft in the course of its business operations pursuant to a lease from Lima Delta (as owner trustee).

6. Plaintiff Trident Aviation Services, LLC ("Trident") is a limited liability company organized under the laws of the State of Delaware. Trident managed the Aircraft for Socikat, providing contract flight crews, scheduling and overseeing maintenance, arranging for flight support services, arranging and paying for navigational database subscriptions, and administering maintenance tracking programs, warranty programs, and related aviation services.

7. Defendant Gulfstream Aerospace Corporation ("Gulfstream") is a corporation organized under the laws of the State of Delaware, and whose registered agent for service of process in Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

The February 12, 2012 Accident

8. Gulfstream designs, manufactures, tests, inspects, assembles, markets, and sells business corporate jet aircraft, and provides product-related instructions, manuals, maintenance and training to customers worldwide. Originally a division of Grumman Aircraft Engineering Company, Gulfstream was founded in the late 1950s to develop the first purpose-built business aircraft, the G-I twin turboprop. In the 1960s Gulfstream introduced its first business jet, the G-II. Gulfstream began to manufacture and sell the G-IV in 1987.

9. The Gulfstream G-IV is a twin-engine, large-cabin business jet capable of carrying up to 19 passengers plus crew. The G-IV is designed to serve as an intercontinental business aircraft, typically

operated over long-range international flights.

10. While Gulfstream's earlier designs share many systems and features with that of the G-IV, the G-IV introduced several new system designs. For example, earlier Gulfstream aircraft employed hydro-mechanical wheel brakes to slow and stop an aircraft on the ground using hydraulic pressure, actuated mechanically by the pilots' brake pedals. By contrast, the Gulfstream G-IV introduced a "brake by wire" system. In the latter system, the pilots' brake pedals have no mechanical connection to the actual wheel brakes; rather, the brake pedals send an electronic signal to an electronic control processor, which in turn signals actuators at each main landing gear wheel to engage the brakes.

11. One advantage of the "brake by wire" system was that it did not require brake lines to pass through the pressure vessel. Notwithstanding, the G-IV "brake by wire" system was notoriously fraught with problems. Consequently, Gulfstream ultimately abandoned the system in 1993, reverting to hydromechanical brakes for its then-new G-IV "SP" (an enhanced version of the G-IV) and (in 1995) offering a retrofit kit for owners who wished to equip their G-IVs with conventional brakes.

12. The Aircraft departed Wilmington, Delaware on or about June 29, 2011. Socikat used the Aircraft for travel throughout the EU (including Belgium, the U.K., Spain and Greece), Africa (including South Africa, the DRC and Algeria), and in Israel. The Aircraft spent most of December 2011 in Lanseria, South Africa undergoing routine inspections and maintenance.

13. On the morning of Sunday, February 12, 2012, the pilots of the Aircraft, Captains Marcus Beresford and Geoffrey Weiner filed flight plans to fly the Aircraft from Lubumbashi, DRC to Kinshasa, DRC; from Kinshasa to Goma, DRC; and from Goma to the Bukavu Kavumu Airport near Kamakombe, DRC. The Aircraft departed Goma shortly after noon with nine persons aboard in addition to the pilots.

14. The Aircraft arrived at Bukavu after the short flight from Goma and was cleared to land on Runway 35. Based on the information available at that time, the Aircraft made a stabilized approach in visual conditions and touched down normally. The crew deployed the thrust reversers (clam shell doors at the rear of each engine that deflect engine exhaust to slow the aircraft) and spoilers (devices that rise from each wing to kill lift after touchdown), and attempted to apply the brakes.

15. The G-IV "brake by wire" system simulates the tactile response of hydro-mechanical brakes. In other words, while a loss of brake pressure in hydro-mechanical brakes (in an aircraft, car or other vehicle) is immediately recognizable by the diminished response that occurs when the brake pedal is depressed, the G-IV "brake by wire" system produces the sensation of brakes engaging, even if the brakes have actually failed or malfunctioned. This is what occurred when the flight crew attempted to apply the Aircraft's brakes after landing at Bukavu Kavumu Airport.

16. While it is clear that the flight crew attempted to apply the Aircraft's brakes, the Aircraft's forward velocity did not decrease to accommodate the remaining section of runway. Instead, the Aircraft

continued off the far end of the runway, traversed a soft, unpaved runway overrun area, and hurtled off a cliff, while both pilots were desperately attempting to get the brakes to work. The Aircraft crashed near the bottom of a deep ravine, and was completely destroyed, although many of the major components, such as the engines and auxiliary power unit (the "APU"), could have been salvaged.

17. Both Captain Beresford and Captain Weiner died in the Accident, as did one passenger, Augustin Katumba Mwanke, one of the DRC's president's closest advisors.¹ Two local farmers also died in the Accident.

COUNT I (NEGLIGENCE)

18. Paragraphs 1 through 17 are hereby realleged and incorporated by reference herein.

19. At all relevant times, Gulfstream was the designer, manufacturer, distributor and/or seller of the Aircraft. Defendant Gulfstream was at all relevant times in the business of designing, testing, manufacturing, selling, assembling, building, distributing, marketing and/or inspecting business jets, including the Aircraft that crashed on February 12, 2012. Gulfstream had a duty to purchasers and users of its business jets to perform its functions in a reasonable and proper manner.

20. At all relevant times, Gulfstream was negligent and breached its duty of care to the plaintiffs in that, among other things,

¹ Another passenger, Oscar Gema di Mageko, national deputy of the Lukunga District, died a few weeks later. On information and belief, his death was not caused by the injuries he suffered in the Accident.

Gulfstream a) failed to design, test, manufacture and sell a safe and effective braking system with the Aircraft; b) failed to provide adequate warnings regarding the use of the braking system on the Aircraft; and c) failed to provide adequate instructions regarding the braking system on the Aircraft.

21. Additionally, as holder of the FAA-issued type certificate for the G-IV model of aircraft, Gulfstream has a continuing obligation for each G-IV's airworthiness. Specifically, as the type certificate holder, Gulfstream is responsible for:

a. Notifying the FAA when they become aware of any failure, malfunction, or defect in any product, part, process, or article manufactured by them (14 CFR 21.3);

b. developing appropriate design changes to correct the unsafe condition(14 CFR 21.99(a)); and,

c. incorporating the corrective action in future production of the product to ensure the product is in condition for safe operation (14 CFR 21).

22. While Gulfstream incorporated "corrective action in future production of the product to ensure the product is in condition for safe operation," by abandoning the brake by wire system and reverting to hydro-mechanical brakes, based on information and belief, Gulfstream failed to sufficiently notify the FAA when it became aware of brake by wire malfunctions and problems and failed to develop appropriate design changes to correct the unsafe condition which would have been sufficient to prevent the accident at issue in this case.

23. Additionally, Gulfstream, which has a regulatory obligation

to provide current and accurate flight operations and maintenance instructions for aircraft it manufactures, failed to provide sufficient and appropriate information concerning the brake by wire system shortcomings to flight crews, flight crew training providers, and Gulfstream maintenance providers to prevent the accident at issue in this case.

24. Finally, while the Aircraft at issue was inspected and underwent service and replacement of components throughout its existence at the intervals specified by Gulfstream, with much of such maintenance being performed by facilities owned and/or authorized by Gulfstream, the inspections, maintenance, repairs, and replacement of components specified by Gulfstream failed to prevent the accident at issue in this case.

25. As a direct and proximate result of the negligent conduct of Gulfstream as aforesaid, plaintiffs have suffered damages, including, but not limited to, the following: the value of the Aircraft, which was \$8,000,000.00, loss of use of the Aircraft, lost earnings, incidental and consequential damages, and any other damages sustained by plaintiffs which are recoverable under applicable law.

COUNT II (BREACH OF EXPRESS AND IMPLIED WARRANTIES)

26. Paragraphs 1 through 25 are hereby realleged and incorporated by reference herein.

27. Gulfstream was the designer, manufacturer, distributor and/or seller of the Aircraft.

28. Prior to the crash of the Aircraft on February 12, 2012, Gulfstream expressly and/or impliedly represented and warranted that

the Aircraft, including its component parts, and in conjunction with the instructions and warnings given by Gulfstream, was airworthy, of merchantable quality, both fit and safe for the purposes of air travel for which it was designed, intended and used. Additionally, Gulfstream further warranted that the Aircraft and/or its component parts were free from all defects.

29. Gulfstream breached said warranties in that the Aircraft was not airworthy, of merchantable quality, or fit and safe for the purposes for which it was designed, intended and used, and free from all defects as set forth above.

30. Among other things, plaintiffs were beneficiaries and intended third-party beneficiaries of Gulfstream's warranties that the Aircraft was airworthy, of merchantable quality, both fit and safe for the purposes of air travel for which it was designed, intended and used, and free from all defects.

31. As a direct and proximate result of the wrongful acts and/or omissions set forth herein, Gulfstream breached said warranties and caused plaintiffs to suffer damages as set forth in Count I above.

COUNT III (STRICT LIABILITY)

32. Paragraphs 1 through 31 are hereby realleged and incorporated by reference herein.

33. Gulfstream designed, manufactured, distributed and/or sold the Aircraft. Gulfstream is and was in the business of designing, testing, manufacturing, selling, assembling, building, distributing, marketing and/or inspecting aircraft as suitable for business air transportation, including the Aircraft that crashed on February 12,

2012.

34. At all relevant times, the Aircraft was being operated by plaintiffs and used for the purposes for which it was manufactured, designed, inspected, sold and intended to be used, in a manner reasonably foreseeable by Gulfstream.

35. At all relevant times, the Aircraft was defective, dangerous, unsafe, and not airworthy by reason of Gulfstream's defective manufacture, design, braking system, inspections, testing, and warnings as set forth herein.

36. As a direct and proximate result of the wrongful acts and/or omissions of Gulfstream, plaintiffs have suffered damages as set forth in Count I above.

COUNT IV (DECLARATORY JUDGMENT)

37. Paragraphs 1 through 36 are hereby realleged and incorporated by reference herein.

38. As set forth above, five individuals died and at least one was injured as a result of the February 12, 2012 crash of the Aircraft.

39. Plaintiffs may be sued for the deaths and injuries caused by the February 12, 2012 crash, and any other damages caused thereby to third parties.

40. Gulfstream is obligated to indemnify the plaintiffs and hold them harmless against any claims or damages arising from any deaths, injuries, or losses caused by the February 12, 2012 crash.

41. At plaintiffs' request, Gulfstream must defend the plaintiffs against any lawsuits, claims or damages arising from any deaths,

injuries, or losses caused by the February 12, 2012 crash.

42. Gulfstream is also obligated to provide contribution toward any claims or damages which are made or awarded against the plaintiffs arising from any deaths, injuries, or losses caused by the February 12, 2012 crash.

43. An actual controversy of a justiciable nature exists between Gulfstream and the plaintiffs concerning the parties' rights and obligations with respect to the duty to indemnify, provide contribution, and/or defend third party claims arising out of the February 12, 2012 crash. The controversy is of sufficient immediacy to justify the entry of a declaratory judgment.

44. Pursuant to Title 10 of the Delaware Code, Chapter 65, the Delaware Declaratory Judgments Act, plaintiffs are entitled to a declaratory judgment that i) Gulfstream is obligated to indemnify and hold plaintiffs harmless against any claims or damages arising from any deaths, injuries, or losses caused by the February 12, 2012 crash, and ii) Gulfstream is also obligated to provide contribution toward any claims or damages which are made or awarded against the plaintiffs arising from any deaths, injuries, or losses caused by the February 12, 2012 crash.

45. An award of declaratory relief by this Court will terminate some or all of the existing controversy between Gulfstream and the plaintiffs.

Wherefore, plaintiffs demand judgment in their favor and against the defendant as follows:

a) For the damages suffered by the plaintiffs;

b) Pre-judgment and post-judgment interest;

c) a declaratory judgment that i) Gulfstream is obligated to indemnify and hold plaintiffs harmless against any claims or damages arising from any deaths, injuries, or losses caused by the February 12, 2012 crash, and ii) Gulfstream is also obligated to provide contribution toward any claims or damages which are made or awarded against the plaintiffs arising from any deaths, injuries, or losses caused by the February 12, 2012 crash.

c) All costs of this action;

d) Reasonable attorneys' fees; and

e) Such other and further relief as the Court deems just and proper, and that is appropriate under law.

Respectfully submitted,

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