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**FACT PATTERN FOR PRE-TRIAL MOOT COURT ARGUMENT ON FORUM NON
CONVENIENS & MOCK MEDIATION**

Facts

- On October 1, 2009, a EuroFabrique D347 aircraft, operating as Airline X flight 001, crashed while landing in Mumbai, India.
- The crash occurred while landing in inclement weather.
- The flight originated in New Delhi, India with a final destination of Cape Town, South Africa via Mumbai, India.

The Airline

- Airline X is a low-cost Indian air carrier with a record of spotty maintenance and failing to hire experienced pilots.
- Airline X is incorporated in India.
- Airline X does not operate flights to or from the U.S.
- All executives and board members of Airline X are Indian nationals except for the Chief Operating Officer, who is a U.S. national. He works 10 months of the year in New Delhi and spends an average of 2 months a year in New York, where his wife and children reside.
- Airline X purchases/leases aircraft engines and parts from U.S. manufacturers and has sold several spare engines to U.S. entities.

The Aircraft

- The EuroFabrique D347 aircraft is a wide-bodied long-haul aircraft manufactured by EuroFabrique S.A.S. in France.
- The accident aircraft was 5 years old.
- The EuroFabrique D347 aircraft was registered in India.
- The engines were manufactured in the U.S. by KIT Power, Inc., a U.S. company. The avionics were manufactured in Australia by ProToType Avionics Limited, an Australian company.
- The accident aircraft was leased by Airline X from USD Leasing, based in New York.
- The accident aircraft was owned by USD Leasing and financed by Bronx Bank & Trust, also located in New York.

The Passengers and Crew

- 200 passengers on board:
 - 190 passengers died
 - 130 Indian citizens
 - 48 South African citizens
 - 9 U.K. citizens
 - 2 U.S. citizens (one residing in Florida and one residing in New York)
 - 1 Brazilian citizen
 - 10 passengers survived with serious injuries
 - 7 Indian citizens
 - 2 U.K. citizens
 - 1 Brazilian citizen
- 15 crew members on board:
 - 12 crew members died
 - 3 crew members survived with serious injuries
 - All crew members citizens of India

The Passengers Tickets

- Except for 5 passengers, all passengers were traveling per contracts of carriage governed by the Montreal Convention.
- 5 of the Indian passengers who died were traveling per a domestic Airline X ticket roundtrip New Delhi-Mumbai-New Delhi.
- The 2 U.S. passengers purchased, in the U.S., roundtrip tickets between the U.S. and New Delhi on U.S.-based FrequentFlyer Air. While in New Delhi, they purchased roundtrip tickets to Cape Town on Airline X.

The Accident Investigation

- The cause of the accident is still unknown and is being investigated by the Indian Civil Aviation Authority, which is looking into allegations implicating air traffic controllers (including whether timely and accurate weather information was conveyed to the flight crew) and Airline X (including flight crew performance, training, and experience/qualifications). Thus far, the investigation has not focused on the engine manufacturer KIT Power, Inc. or the avionics manufacturer ProToType Avionics Limited.
- Several months after the accident, and 2 days after the aircraft wreckage was released to Airline X by the Indian Civil Aviation Authority, several parts of the aircraft wreckage were pilfered from the wreckage storage site at the airport.

Litigation

- Litigation has been commenced by all passengers/crew members or their representatives in the U.S. District Court for the Southern District of New York against:
 - USD Leasing, Bronx Bank & Trust, EuroFabrique S.A.S., KIT Power, Inc., and ProToType Avionics Limited.
 - In addition, the 2 U.S. passengers and 5 passengers traveling domestically have also sued Airline X.
 - EuroFabrique S.A.S., KIT Power, Inc., and ProToType Avionics Limited have instituted/ asserted third-party actions/cross-claims against Airline X.

- The Complaints of the various Plaintiffs raise a combination of Montreal Convention claims, negligence claims, product liability claims, spoliation of evidence claims, and negligent entrustment/lessor liability claims. All of the Complaints seek compensatory damages, and, except for claims governed by the Montreal Convention, punitive damages.
- In their Answers to the Complaints, Defendants assert defenses pertaining to the lack of merit of the Plaintiffs' various claims and Defendants request an apportionment of fault. In addition, some of the Defendants have raised jurisdictional defenses, including forum non conveniens. Airline X has challenged subject matter jurisdiction in the U.S. of the third-party complaints brought against it by other Defendants in cases in which the passengers' transportation on flight 001 was governed by the Montreal Convention and the U.S. is not an Article 33 jurisdiction.

Selected Damages Cases

- ***Smith*** – The *Smith* case was brought to recover damages for the death of passenger A. Smith, a 50 year-old Senior Manager at a U.S.-based information technology outsourcing firm, MacGill Inc. Mr. Smith, a resident of New York, was travelling to New Delhi and Cape Town on business, looking to establish new foreign satellite offices for customer support center outsourcing. He is survived by his 48 year-old wife B. Smith, a homemaker, and sons L. Smith and M. Smith, age 14 and 16. In 2008, Mr. Smith earned a salary of \$200,000, a performance bonus of \$40,000 (based on a very profitable first year for a foreign satellite office previously established by Mr. Smith), plus fringe benefits of \$30,000. In 2009, Mr. Smith's salary was increased to \$220,000. Beginning in 2006, Mr. Smith supplemented his MacGill earnings by working as an adjunct professor at a local community college, teaching a course in cloud computing two nights a week for \$5,000 per semester. MacGill did not object to Mr. Smith's adjunct teaching activities, which helped recruit summer interns for the company. Mr. & Mrs. Smith were separated for a short time in 2007 but then reunited with no further separations.
- ***Jones*** – The *Jones* case was brought to recover damages for the death of passenger C. Jones, a 35 year-old legal secretary residing in Florida. Mrs. Jones is survived by her husband M. Jones, a 37 year-old self-employed carpenter; Mrs. Jones is also survived by her 60 year-old mother, who lives nearby. In the last few years before the accident, Mrs. Jones had been earning an average of approximately \$55,000, including periodic overtime, as compared to an average of approximately \$35,000 earned by her husband. In August 2009, due to economic conditions, Mrs. Jones was part of a "reduction in force." At the time of the accident, she remained unemployed but was actively looking for work. Mrs. Jones was travelling to New Delhi and Cape Town on a holiday with her widowed sister, a landscape photographer.