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Mock Trial Fact Pattern

During the pre-dawn hours of October 1, 2009, an Avion D347 commuter jet aircraft operating as Mumbai Comair/Delta Connection Flight 5191 crashed while attempting to take off from the wrong runway at New Delhi/Lexington Airport in India on a flight bound for Mumbai, India. Instead of taking off from its assigned Runway 22, a 7,003 foot and 150 foot wide runway designed for use by commercial aircraft, Flight 5191 attempted to depart from Runway 26, which was 3,501 feet long and painted to a width of 75 feet, prohibited from use by aircraft weighing more than 12,500 pounds, was in use only during daytime hours and had no operative runway edge lighting system. The weather at the time of the crash was not a factor, and there were no maintenance or product liability issues with the airplane.

Mumbai Comair is a low cost air carrier that operates in India in the same manner that regional airlines operate in the United States in that it contracts with major air carriers who market and collect all of the revenue for the flights, while Mumbai Comair operates the flights.¹ Mumbai Comair has a history of failing to hire qualified and experienced pilots, and the airline also has a history of failing to properly train and supervise its pilots to operate its short distance flights as evidenced by the failures of the Flight 5191 flight crew for which the airline is vicariously liable.

¹For the purpose of this exercise in trial tactics and techniques and to facilitate the use of the computerized animation, we presume that there is jurisdiction over the air carrier in the U.S.

²As stated above, for the purposes of this exercise in trial tactics and techniques and to facilitate the use of the computerized animation, we also presume that the plaintiff has a viable claim for punitive damages, despite the prohibition against the recovery of same under the 1999 Montreal Convention.

The aircraft was carrying 47 passengers and 3 crew members. All perished with the exception of the First Officer John Simpson, who suffered serious injuries and was at the controls at the time of the crash. Other crew members who perished were the captain and a flight attendant. Since the engines and avionics on board the D347 jet were manufactured by American companies, and two U.S. citizens were killed in the crash, including the decedent, Lendon Smith, the National Transportation Safety Board (“NTSB”) joined the Indian Civil Aviation Authority in the investigation into the cause of the crash.

A lawsuit was filed by Barbara Smith, the widow of the decedent Lendon Smith, in the United States District Court for the Southern District of New York. Mrs. Smith has filed claims alleging negligence and gross negligence on the part of Mumbai Comair for the actions of its flight crew and the plaintiff seeks both compensatory and punitive damages.²

Mrs. Smith lost her husband, Lendon, to whom she had been married for 13 years. She had been married twice before, and had a child from a previous marriage. She and Lendon had a happy marriage, and he loved and cared for her child. The Smith's had one child together, and Lendon had a son from a previous marriage, who was an adult.

Lendon Smith, 50 years old at the time of his death, had a Ph.D. in Chemistry and was a chemist at a world-wide pharmaceutical company. He had been there for over 23 years, and was earning approximately \$100,000 per year. He was also a National Guard Reservist Lieutenant Colonel. Together, the Smiths had three rental properties, in addition to the two houses that they owned and lived in. After Lendon died, Mrs. Smith received \$1,400.00 a month in retirement benefits from her husband's company, and \$1,200.00 a month each, for herself and her son from Social Security.

Mrs. Smith believed her husband to be in good health but the autopsy report showed indications of emphysema and arteriosclerosis.

The Cockpit Voice Recorder (CVR) recovered from the wreckage of the aircraft reveals that the Captain and First Officer Simpson violated numerous aviation regulations as well as Mumbai Comair's written policies and procedures. Sworn deposition testimony was obtained from more than 20 of Mumbai Comair's management pilots, flight instructors, department managers, directors and corporate officers presented with a copy of the CVR transcript, and all acknowledged the flight crew's deviations and violations.

Documents discovered and testimony obtained during the course of the litigation produced the following facts:

In violation of Mumbai Comair's express procedures prohibiting flight crews from consuming alcohol within 12 hours of reporting for duty, credit card receipts show that First Officer Simpson purchased two bottles of beer at the airport hotel bar on September 30, 2009 at 6:30 P.M., less than 12 hours before his report time of 5:15 A.M.;

A construction project was underway at the New Delhi/Lexington Airport at the time of the crash that closed off taxiway A north of Runway 26 with low profile barricades and red flashing lights;

At approximately 0047 on October 1, 2009, all air traffic control tower and radar positions were combined at New Delhi/Lexington Airport. There were no aircraft operations between 0300 and 0545. At the time of the crash, all functions were being worked by a single controller from the local control position;

Sunrise occurred at 0703 on October 1, 2009, approximately one hour after the crash, and the moon was below the horizon at the time of the crash - it was dark;

Shortly after arriving at the airport, the pilots collected the Dispatch Release which provided them with weather information, NOTAMs, their flight plan, and the Mumbai Comair ship identifier (#7472) for their assigned aircraft;

The Captain and First Officer Simpson proceeded onto the air carrier ramp area, walked past their assigned aircraft and boarded the wrong airplane, despite the fact that the ship identifier # 7472 was prominently painted on both sides of the aircraft's nose and on both sides of its tail;

The Captain started the auxiliary power unit on the wrong airplane and was halted in his pre-flight preparations when a ramp agent came aboard and advised the crew they were on the wrong aircraft;

Shortly after boarding the correct aircraft, the flight crew began what would become a long running discussion about their employment with Mumbai Comair and other job opportunities that was not pertinent to their safe preparation or operation of the aircraft;

The Cockpit Voice Recorder ("CVR") recording began at 05:36:08, and at 05:48:24 the CVR recorded the automatic terminal information service ("ATIS") information "ALPHA" which reported that Runway 22 was in use;

At 05:49:42.2 First Officer Simpson advised the controller he had received the ATIS ALPHA information;

At 5:49:49.3 the air traffic controller provided the crew with a clearance and First Officer Simpson stated that he missed a portion of it in his response at 5:50:06.5 necessitating a read-back by the controller at 5:50:14.1;

At 5:56:14.0 the Captain stated "for our own briefing, [Mumbai] Comair standard", an abbreviated briefing that failed to include required information in accordance with Mumbai Comair's Operations Manual for a crew paired together for the first time as the Captain and First Officer Simpson were;

At 5:56:27.6 ATIS information was updated to BRAVO;

At 5:56:34.1 First Officer Simpson briefed the Captain that flex thrust procedures were applicable to the flight although the NTSB determined during its investigation that this type of procedure was not permissible under the atmospheric and other conditions that existed at New Delhi/Lexington Airport that morning. In addition to improperly briefing the Captain about the applicability of flex thrust procedures, First Officer Simpson confused the runway clearance the flight crew had previously received from air traffic control as "24" instead of "22", and made three other references to Runway 22.

At 5:57:23.3, in contravention to Mumbai Comair's taxi procedures set forth in its Operations Manual, First Officer Simpson gave the taxi briefing instead of the Captain, and the taxi briefing he gave did not acknowledge the need to cross Runway 26 to get to Runway 22 as required under Mumbai Comair's procedures;

At 5:57:53.5 the Captain gave the Crew Briefing required under the Before Starting Engines checklist, but failed to make reference to sterile cockpit procedures;

At 5:58:12.2 First Officer Simpson attempted to restart the captain-required Before Starting Engines checklist. When the Captain pointed out that they had already completed that checklist, First Officer Simpson responded “we did”?;

The data recovered from the Flight Data Recorder (“FDR”) revealed that Flight 5191 pushed back from the gate signifying the commencement of sterile cockpit procedures at approximately 5:59:14;

At 5:59:45.4 First Officer Simpson committed the first sterile cockpit violation by initiating a discussion with the Captain about their families and pets and this non-pertinent conversation continued for more than 2 minutes;

At 6:00:32.2 the CVR recorded an instruction to Skywest Flight 6891 that they were cleared to takeoff from Runway 22;

At 6:02:01 First Officer Simpson notified the controller on duty that Flight 5191 was ready to taxi with ALPHA ATIS information, apparently having failed to hear the BRAVO ATIS update given at 556:27.6.

At 6:02:03.8 the flight crew received permission to taxi to Runway 22 which authorized them to cross Runway 26 (the intersecting runway) without stopping;

At 6:02:08.9 First Officer Simpson acknowledged the instruction to taxi to Runway 22;

At 6:02:12.6 the CVR recorded an instruction to American Eagle Flight 881 that they were cleared to takeoff from Runway 22;

At 6:03:02.2 First Officer Simpson briefed information pertaining to radar terrain displays while yawning;

At 6:03:04.0 First Officer Simpson again yawned while briefing the Captain that the taxi check was complete;

At 6:03:16.4 First Officer Simpson initiated another non-pertinent discussion involving employment with Mumbai Comair with the Captain that lasted for 40 seconds;

At 6:04:01.2 First Officer Simpson began to initiate the Before Takeoff checklist, even though this duty is reserved for the captain under Mumbai Comair’s procedures, and acknowledged again that Flight 5191 would be departing from Runway 22;

At 6:04:13.3 First Officer Simpson continued the Before Takeoff list but neglected to reference altitude;

At 6:04:33 Flight 5191 came to a stop near the hold short line for Runway 26 and remained in this position for approximately 40 seconds;

At 6:05:17.7 while holding short of Runway 26, First Officer Simpson incorrectly advised the controller that Mumbai Comair “121” was ready to depart;

At 6:05:21.0 the controller advised Flight 5191 to “fly runway heading ... cleared for takeoff”. Neither First Officer Simpson nor the controller stated the runway number during the request and clearance for takeoff. After issuing the takeoff clearance, the controller scanned the runway from departure to approach ends and scanned the digital bright radar indicator tower equipment to see if there was any traffic. He observed Flight 5191 make a turn toward what he presumed was Runway 22 and turned away from the tower cab windows that overlook the airport runways to conduct a traffic count of activity during his overnight shift;

FDR data shows that Flight 5191 began to taxi across the Runway 26 hold short line at 6:05:24 and started to turn onto the dark, unlit non-precision marked pavement of Runway 26 at 6:05:41;

At this time, the heading on the compass mounted in the cockpit of Flight 5191 showed the aircraft incorrectly lined up at approximately 265 degrees instead of approximately 220 degrees as the airplane turned on to Runway 26;

FDR data showed that the heading bugs (which move to reflect an aircraft’s actual position) in each of the pilots’ Multifunction Displays (“MFD”) and Primary Flight Displays (“PFD”) were set to 227 degrees which corresponded to the magnetic heading for Runway 22;

There were no runway edge lights on Runway 26 as the aircraft turned on to the threshold;

At 6:05:57.6 the Captain transferred the controls of the aircraft to First Officer Simpson who responded “my brakes my controls” at 6:05:58.9;

At 6:06:07.8 the CVR recorded a sound similar to an increase in engine RPM, and First Officer Simpson called for the Captain to set thrust at 6:06:07.8 which he acknowledged at 6:06:11.7;

At 6:06:16.3 just before Runway 26 intersects with the well lit Runway 22 and where there is a red sign with white numbers “4-22” (which indicates to pilots of general aviation aircraft operating during daytime hours that Runway 22 is before them as they taxi down Runway 26), First Officer Simpson remarked “dat is weird with no lights” to which the Captain responded at 6:06:18.0 “yeah” as the aircraft was actually in the intersection of both runways;

At 6:06:24 and almost 8 seconds after First Officer Simpson recognized something was not proper, the Captain made the 100 knot call out;

At 06:06:31.2 the Captain called “V one, rotate”. The NTSB determined that had the Captain aborted the takeoff and the crew applied maximum brakes prior to reaching an airspeed of 103 knots, the aircraft could have stopped within the pavement of Runway 26;

At 6:06:33 the aircraft impacted an earthen berm located about 265 feet from the end of Runway 26. FDR airspeed and altitude data showed that the airplane became temporarily airborne after impacting the berm but climbed less than 20 feet off the ground. The plane struck a tree located approximately 900 feet from the end of the runway, and the CVR recording ended at 6:06:36.2.

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This mock trial presentation will begin with an *in limine* motion concerning the admissibility of the video animation to be followed by two short opening statements. Testimony will be obtained from First Officer John Simpson, the only survivor, along with the playing of a computerized video re-creation of the taxi and attempted takeoff of Flight 5191 shown from two different perspectives. This computerized animation will be followed by testimony from the plaintiff’s piloting expert, Roger Jones, the plaintiff, Barbara Smith, and the defendants’ piloting expert, Charlie Miller. At the conclusion of the testimony, counsel will also do short closing statements.