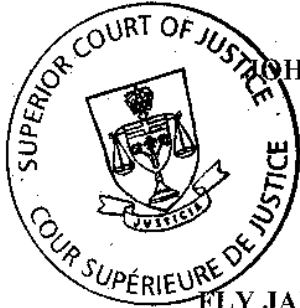


**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
JUSTICE MORGAN )

THURSDAY, THE 19<sup>TH</sup>  
DAY of SEPTEMBER, 2019



**JOHN SOMWAR, TULSIDAI SOMWAR and SHANTA PERSAUD**

Plaintiffs

-and-

**FLY JAMAICA AIRWAYS LTD., THE BOEING COMPANY, ~~JOHN DOE~~  
~~#1 PILOT, JOHN DOE #2 CO PILOT~~ BASIL FERGUSON, KEONE  
BRYAN, JOHN DOE #3 AIRCRAFT MAINTENANCE PROVIDER, JOHN  
DOE #4 AIRCRAFT MAINTENANCE MECHANIC**


Defendants

Proceeding under the *Class Proceedings Act, 1992*

**CERTIFICATION ORDER**

**THIS MOTION**, made by the Plaintiffs, for an order certifying this action as a class proceeding as against the Defendants Fly Jamaica Airways Ltd., Basil Ferguson, Keone Bryan, and The Boeing Company, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**ON READING** the certification motion record of the Plaintiffs, the facts and books of authorities of the Plaintiffs, the Fresh as Amended Amended Statement of Claim, and on hearing the submissions of Class Counsel and the lawyers for the Defendants;

AND ON BEING ADVISED that the Defendants  CONSENT TO certification of this action on the terms set out in this Order:

**THIS COURT ORDERS** that this action is certified as a class proceeding as against the Defendants Fly Jamaica Airways Ltd., Basil Ferguson, Keone Bryan, and The Boeing Company, pursuant to sections 2 and 5 of the *Class Proceedings Act, 1992*.

1. **THIS COURT ORDERS** that the class is defined as:

- (a) ***Passenger Class*** – refers to the passengers who were aboard Flight OJ256. For the sake of clarity, the following persons are excluded from this class: (i) as against all the Defendants: on-duty employees of Fly Jamaica Airways Ltd. including the pilots in command, co-pilots and flight attendants; and (ii) as against Fly Jamaica Airways Ltd.: passengers whose claims against Fly Jamaica Airways Ltd. and the Flight Crew and Cabin Crew are not subject to jurisdiction before the Courts of Canada under the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended; and (iii) passengers who opt out of the class proceeding.
- (b) ***Family Claimant Class*** – refers to the spouse, children, grandchildren, grandparents, brothers and sisters of a Passenger Class member who are entitled to claim damages pursuant to Section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended and, or section 2(5) and Schedule II of the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended. Relatives of a Passenger Class member who has chosen to opt out of the class proceeding are excluded from this class.

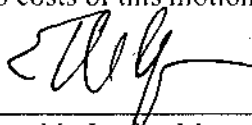
2. **THIS COURT ORDERS** that the causes of action to be determined on behalf of the Class are as alleged in the Fresh As Amended Amended Statement of Claim and include:
  - a. claims for damages under the Montreal Convention as enacted into the law of Canada by the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended;
  - b. claims for damages under the Warsaw Convention as enacted into the law of Canada by the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended; and,
  - c. derivative actions under Section 61 of the *Family Law Act*, 1990, c F 3 and under the provincial health care costs recovery legislation of each province and territory in Canada.
3. **THIS COURT ORDERS** that Shanta Persaud shall be appointed as the Representative Plaintiff on behalf of the Passenger Class, and John and Tulsidai Somwar shall be appointed as the Representative Plaintiffs on behalf of the Family Claimant Class.
4. **THIS COURT ORDERS** that pursuant to ss. 2 and 5 of the *Class Proceedings Act* the common issues attached as **Schedule "A"** to this Order shall be certified.
5. **THIS COURT ORDERS** that the Class Members shall be given notice of the certification of this action as a class proceeding ("Notice of Certification"), in accordance with the form of the Notice of Certification, attached as **Schedule "B"**, in the following manner:
  - a. sent via postal, where addresses of class members have been provided, or by electronic means, including email, SMS or social messaging apps, including WhatsApp;

- b. posted on the following websites: [www.hshlawyers.com](http://www.hshlawyers.com); [www.cfmllawyers.ca](http://www.cfmllawyers.ca) and, [www.rochongenova.com](http://www.rochongenova.com);
  - c. provided by Class Counsel to any person who requests it; and
  - d. published on one occasion in each of the Globe and Mail, the National Post, and Guyana Chronicle.
6. **THIS COURT DECLARES** that it shall determine who will bear the costs of providing Notice of Certification to the Class Members.
7. **THIS COURT DECLARES** that the Notice of Certification and its distribution satisfy the requirements of s. 17 of the *Class Proceedings Act*.
8. **THIS COURT ORDERS** that the litigation plan attached as **Schedule "C"** is a workable method of advancing the proceedings, and may be amended or clarified if required by agreement of the parties, directions of the Court at a case management conference or, on application to the Court.
9. **THIS COURT ORDERS** that members may opt out of this class proceeding by delivering an Opt Out Form, attached as **Schedule "D"**, to Class Counsel, which must be postmarked, if sent by mail, or received, if sent by fax, e-mail or courier, on or before January 6, 2020 at 11:59 pm E.S.T. (the "Opt Out Deadline"). Opt Out forms received after this date will not be accepted or valid. The completed Opt Out Form must contain:
  - a. the full name, mailing address, and telephone number of the Proposed Class Member.

10. **THIS COURT ORDERS** that any putative member of the Class who validly opts out of this action by the Opt Out Deadline, in accordance with paragraph 9 of this Order shall no longer participate in or have the opportunity in the future to participate in this action including any future settlement of this action.
11. **THIS COURT ORDERS** that within 14 days of receiving a valid opt out form, Class Counsel shall provide to counsel for the Defendants the names of persons who have delivered a valid completed Opt Out Form and a copy of the completed Opt Out Form.
12. **THIS COURT ORDERS** that within 15 days of this Order, the Defendant, Fly Jamaica Airways Ltd. will provide to Class Counsel, to the extent known, a list of the Passenger Class Members, including their names, and last known contact information, including emails and phone numbers where available.
13. **THIS COURT ORDERS** that Class Counsel shall use the information provided pursuant to paragraph 12 of this Order for the sole purpose of facilitating the Notice of Certification and for no other purpose.
14. **THIS COURT ORDERS** that Class Counsel shall maintain confidentiality over and shall not share the information provided pursuant to paragraph 12 with any other person, including but not limited to any lawyer, unless doing so is necessary for effecting Notice of Certification or any other steps in relation to the litigation of this action.
15. **THIS COURT DECLARES AND ORDERS** that this Order constitutes an Order compelling the production of information by the Defendant, Fly Jamaica Airways Ltd. within the meaning of applicable privacy laws, including that it satisfies the requirements

of section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5.

16. **THIS COURT ORDERS** that this Order does and is deemed to comply with any requirement under applicable privacy laws for the Defendants to provide any notice to persons of disclosure of the information required by this Order without consent.
17. **THIS COURT ORDERS** that the Defendant, Fly Jamaica Airways Ltd. be and is hereby released from any and all obligations pursuant to any and all applicable privacy laws, including common law, statutes and regulations in relation to the disclosure of personal information or personal health information required by this Order.
18. **THIS COURT ORDERS** that this Order is binding upon each member of the Class who does not validly opt out from this actions on or prior to the Opt Out Deadline in accordance with paragraph 9 of this Order, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.
19. **THE COURT ORDERS** that the certified Defendants shall deliver their statements of defence no later than sixty (60) days following the issuance of this Order.
20. **THIS COURT ORDERS** that there shall be no costs of this motion.



\_\_\_\_\_  
The Honourable Justice Morgan

ENTERED AT / INSCRIBÉ À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

SEP 24 2019

PER/PAR



## SCHEDULE "A"

### PROPOSED COMMON ISSUES

The following defined terms are used:

- (a) **Aircraft** – refers to the subject Boeing 757-23N aircraft, operated by Fly Jamaica for the conduct of Flight OJ256;
- (b) **Boeing 757** – refers to the Boeing 757 series aircraft which includes the Aircraft;
- (c) **Boeing** – refers to the Defendant, The Boeing Company, which designed, manufactured and placed in the stream of commerce the Boeing 757-23N aircraft involved in the Crash;
- (d) **Cabin Crew** – refers to the flight attendants on board Flight OJ256;
- (e) **Class Members** – refers to all passengers on board Flight OJ256 and all family members of passengers on board Flight OJ256 who are entitled to assert a claim for damages under the *Family Law Act*, R.S.O. 1990, c. F. 3, as amended and, or section 2(5) and Schedule II of the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended;
- (f) **Crash** – refers to the November 9, 2018 crash of Fly Jamaica Flight OJ256 at Cheddi Jagan International Airport in Guyana;
- (g) **Family Claimant Class** – refers to the spouse, children, grandchildren, grandparents, brothers and sisters of a Passenger Class member who are entitled to claim damages pursuant to Section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended and, or section 2(5) and Schedule II of the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended. Relatives of a Passenger Class member who has chosen to opt out of the class proceeding are excluded from this class;
- (h) **Flight OJ256** – refers to Fly Jamaica Flight OJ256 from Cheddi Jagan International Airport to Toronto Pearson International Airport which crashed at Cheddi Jagan International Airport in Guyana on November 9, 2018;
- (i) **Flight Crew** – refers to the pilot in command, co-pilot and other members of the crew, who exercised operational control over Flight OJ256;
- (j) **Fly Jamaica** – refers to the Defendant, Fly Jamaica Airways Ltd., which operated Flight OJ256;
- (k) **"International Carriage"** – has the meaning such term is given in the Montreal Convention, and applicable provisions of the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended;
- (l) **Crash** – refers to refers to the November 9, 2018 crash of Fly Jamaica Airways Flight OJ256 at Cheddi Jagan International Airport in Guyana;

- (m) **Montreal Convention** – refers to the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Montreal in 1999 and which was enacted into law in Canada by the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended, on November 4, 2003 and was enacted into law in Guyana on June 28, 2003;
- (n) **“PA”** – refers to “Public Address” as in the Public Address system on the Aircraft used to make announcements to the passengers in the Aircraft Cabin;
- (o) **Passenger Class** – refers to the passengers who were aboard Flight OJ256. For the sake of clarity, the following persons are excluded from this class: (i) as against all the Defendants: on-duty employees of Fly Jamaica including the pilots in command, co-pilots and flight attendants; and (ii) as against Fly Jamaica Airways: passengers whose claims against Fly Jamaica Airways and the Flight Crew and Cabin Crew are not subject to jurisdiction before the Courts of Canada under the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended;
- (p) **“Runway 06”** – refers to Runway 06 at the Cheddi Jagan International Airport where the Crash occurred;

## **FLY JAMAICA AIRWAYS**

### **Common Issues of the Passenger Class as they relate to Fly Jamaica**

1. Do the events of the crash of Flight OJ256 constitute an “accident” within the meaning of Article 17 of the Montreal Convention such that Fly Jamaica is liable to pay damages:
  - (a) to the Passenger Class Members for “bodily injury” caused by the “accident”; and, or
  - (b) to Family Claimant Class Members for the bodily injury to or death of any passenger on Flight OJ256 caused by the “accident”?
2. If the answer to question (1(a)) is “Yes”, what is the meaning of “bodily injury” under Article 17 of the Montreal Convention? In particular, does “bodily injury” include any or all of the following injuries:
  - (a) mental distress of any type;
  - (b) post-traumatic stress disorder or any other form of recognized psychological or psychiatric condition unaccompanied by any other form of bodily injury due to physical trauma;
  - (c) post-traumatic stress disorder or any other form of recognized psychological or psychiatric condition accompanied by any other form of bodily injury due to physical trauma; or



- (d) post-traumatic stress disorder or any other form of recognized psychological or psychiatric condition caused by the accident?
3. If the answer to 1(a) and, or 1(b) is "Yes", were the damages caused by the accident, due to the negligence or other wrongful act or omission of Fly Jamaica and, or its servants and its agents including, but not limited to, members of the Flight Crew and Cabin Crew, such that the limitations of liability in Article 21(2) of the Montreal Convention do not apply? In particular:
- (a) Did Fly Jamaica owe a duty of care to Class Members as it relates to the Crash?
  - (b) If the answer to 3(a) is "Yes", what was the standard of care required of Fly Jamaica as it relates to the Crash?
  - (c) Did Fly Jamaica fail to adequately train the Flight Crew on procedures to land the Aircraft in the condition present at the time of the Crash, including,
    - (i) pre-flight inspection and verification of the airworthiness of the Aircraft prior to departure;
    - (ii) the proper response to an in-flight operational problem such as the hydraulic problems or problems identified by the Flight Crew shortly after take-off of the Flight including:
      - (1) following the appropriate checklist of procedures when such a problem is encountered;
      - (2) anticipating possible operational implications to such an identified hydraulic problem, including braking problems on landing;
      - (3) briefing the Cabin Crew via the lead flight attendant of the nature of the problem and ensuring that the Cabin Crew had a reasonable plan in the anticipation of a possible crash landing and an emergency evacuation;
      - (4) ensuring that the passengers are notified by the PA system of a potential emergency landing and the need to follow Cabin Crew instructions including to brace themselves prior to landing;
    - (iii) landing the Aircraft under an emergency situation in the conditions present on Runway 06 at the time of the Crash and the braking distance required to safely stop the Aircraft in the conditions present on Runway 06 at the time of the Crash?
  - (d) Did Fly Jamaica fail to carry out proper inspections of the Aircraft prior to Flight OJ256?

- (e) Did Fly Jamaica fail to take appropriate maintenance action in relation any aspect of the Aircraft which may have caused or contributed to the Crash including, but not limited to, the hydraulic system problems identified by the Flight Crew shortly after take-off of Flight OJ256?
- (f) Did the Flight Crew,
  - (i) accept the Aircraft for Flight OJ256 without having conducted an adequate pre-flight inspection;
  - (ii) operate the Aircraft when they knew or ought to have known that there were problems associated with the hydraulic and mechanical controls, electronic and/or computerized controls and/or other instruments or that there were mechanical engineering problems with the Aircraft;
  - (iii) fail to ensure that the Cabin Crew had conducted a pre-flight safety briefing with the passengers;
  - (iv) commence the Flight when the Aircraft was not in an airworthy condition;
  - (v) fail to take appropriate action to diagnose the nature of the hydraulic system problem which it identified shortly after take-off;
  - (vi) when it first identified the hydraulic system problem shortly after take-off,
    - (1) fail to follow the appropriate checklist of procedures when such a problem is encountered;
    - (2) fail to anticipate possible operational implications to such an identified hydraulic problem, including braking problems on landing;
    - (3) fail to take appropriate measures in response to such a hydraulic system failure;
    - (4) fail to brief the Cabin Crew via the lead flight attendant, or otherwise, of the nature of the problem and ensure that the Cabin Crew had an appropriate plan in the anticipation of a possible crash landing and an emergency evacuation;
    - (5) fail to ensure that that the passengers were notified by the PA system of a potential emergency landing and the need to follow Cabin Crew instructions to brace themselves prior to landing.
    - (6) fail to properly assess the weight of the aircraft, the weather conditions, the runway length and surface condition in order that they might execute a safe landing within the available length of Runway 06;

- (7) fail to properly assess the identified hydraulic problem and how it might impact the braking ability of the Aircraft in the conditions then prevailing at the time of the Crash and make appropriate adjustments in order that they might safely land the Aircraft within the available length of Runway 06;
  - (vii) cause the Aircraft to touch down at a location on Runway 06 with insufficient remaining distance in order to safely effect the landing, when they knew or ought to have known that they would be unable to bring the Aircraft to a safe stop in the remaining distance on Runway 06 having regard to the condition of the Aircraft, the weight of the aircraft, the length of the runway, its surface conditions, and the weather;
  - (viii) fail to exercise due care and skill in the operation of the Aircraft despite knowing that damage would probably result;
  - (ix) err in selecting or accepting the selection of Runway 06 to carry out the emergency landing which resulted in the Crash;
  - (x) err by failing to divert Flight OJ256 to an airport with a longer, more suitable runway for an emergency landing?
4. If the answer to question 3 is: "Yes, the damages caused by the accident, were due to the negligence or other wrongful act or omission of Fly Jamaica and, or its servants, agents or employees", is Fly Jamaica vicariously liable for any act or omission of its servants, agents or employees, including but not limited to the Flight Crew or any member of the Flight Crew, or the Cabin Crew or any member of the Cabin Crew, which caused or contributed to the accident and, or any injuries or damages to any of the Class Members?
  5. Was the accident due to the negligence or wrongful act or omission of a party other than Fly Jamaica or its servants, agents or employees, in whole or in part?
  6. If the answer to question 5 is "Yes":
    - (a) What other party or parties, by its or their negligence, wrongful act or omission, caused or contributed to the accident?
    - (b) What is the proportionate degree of fault or negligence of such other party or parties for the accident?
  7. Is Fly Jamaica liable to pay compensation to members of the Passenger Class for damage caused by delay in the carriage of the members of the Passenger Class and their baggage in accordance with Articles 19 and 22 of the Montreal Convention?
  8. If the answer to question 7 is "Yes", was the damage caused by an act or omission by Fly Jamaica, its servants, agents or employees acting within the scope of their employment, done with the intent to cause damage or recklessly and with knowledge that damage would

probably result from the delay, such that Fly Jamaica cannot rely on the limitation of liability provided in Article 22(1) of the Montreal Convention for damage due to delay?

9. Is Fly Jamaica liable to pay compensation to members of the Passenger Class for destruction or loss or damage to their baggage in accordance with Articles 17(2) and 22 of the Montreal Convention?
10. If the answer to question 9 is "Yes", was the destruction, or loss, or damage to the baggage caused by an act or omission by Fly Jamaica, its servants, agents or employees acting within the scope of their employment, done with the intent to cause damage or recklessly and with knowledge that damage would probably result from the destruction, or loss, or damage to the baggage, such that Fly Jamaica cannot rely on the limitation of liability provided in Article 22(2) of the Montreal Convention for damage due to destruction, loss, or damage to baggage.

#### **Common Issues of the Family Claimant Class vis-à-vis Fly Jamaica Airways**

11. Are the Family Claimant Class members entitled to recover damages against Fly Jamaica pursuant to Section 61 of the Family Law Act, R.S.O. 1990, c. F.3, as amended, and, or section 2(5) and Schedule II of the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended if the claims of the Passenger Class members' are governed by the provisions of the Montreal Convention?

#### **THE BOEING COMPANY**

12. Did Boeing owe a duty of care to the Class Members as it relates to the Crash?
13. If the answer to question 12 is "Yes", what is the duty and the standard of care required of Boeing as it relates to the Crash?
14. Did Boeing breach the duty and standard of care required of Boeing as it relates to the Crash?
15. If the answer to question 14 is "Yes", did the breach of the standard of care cause or contribute to the Crash?
16. Did the Passenger Class members sustain an injury that was proximately caused by the Crash?
17. Did the Family Claimant Class members sustain an injury that was proximately caused by the Crash?
18. Is Boeing liable to pay damages to members of the Passenger Class who sustained injuries and/or death?
19. Is Boeing liable to pay damages to members of the Family Claimant Class?

## SCHEDULE "B"

**To: All passengers on board Fly Jamaica Flight OJ256 departing from Georgetown (Guyana) to Toronto on November 9, 2018 ("Class Members")**

### **Notice of Certification of Fly Jamaica Flight OJ256 Class Action**

Class Members be advised of certification of a class action on behalf of all passengers on board Fly Jamaica Flight OJ256 departing from Georgetown (Guyana) to Toronto on November 9, 2018 which crashed upon landing at the Georgetown Cheddi Jagan International Airport. All passengers and crew members survived, but some experienced personal injuries during the landing and/or the emergency response. The baggage of some passengers was lost or destroyed.

#### **Who is included?**

"Class Members" are all passengers who were on board Fly Jamaica Flight OJ256 departing from Georgetown (Guyana) to Toronto on November 9, 2018.

If you are a Class Member you do not need to do anything at this point to get the benefit of any ruling on the common issues.

#### **What is the nature of the class action?**

The common issues in the claim include whether any or all of Fly Jamaica, The Boeing Company are liable to the Class Members for any personal injury suffered by them, including physical injuries, psychological or psychiatric symptoms, or baggage destruction/loss. A judgment on the common issues will bind all Class Members who do not opt out.

#### **Class counsel compensation**

Class counsel have agreed to act on the basis that they will not be paid any legal fees unless and until the class action is either settled or successfully tried to judgment and the Class Members are entitled to recover damages.

The Representative Plaintiffs have entered into a Contingency Fee Agreement with class counsel. Class counsel will apply to the court at the conclusion of the case to have their legal fees approved. Class counsel will pay for all case expenses incurred in prosecuting the case and if the case is successful, class counsel will apply to the court to be reimbursed for these case expenses. If the case is not successfully settled or tried, class counsel will not be paid or be reimbursed for any expenses.

#### **Where can Class Members get more information?**

You may contact class counsel for more information. If you do not want to participate, you must opt out on or before the deadline stipulated in the opt out form. If you opt out you will not be entitled to share in any recovery or take the benefit of any ruling in this case.

For more information, or to access opt out forms, visit: [www.hshlawyers.com](http://www.hshlawyers.com); or [www.rochongenova.com](http://www.rochongenova.com)

#### **HOWIE, SACKS & HENRY LLP**

20 Queen St. W., Suite 3500

Toronto, ON M5H 3R3

Tel: (416) 361-5990

Fax: (416) 361-0083

#### **Representative Plaintiffs:**

John Somwar

Tulsidai Somwar

Shanta Persaud

All c/o Howie, Sacks and Henry LLP (address provided above)

**This Notice has been approved by the Ontario Superior Court of Justice.**

**Do not Contact the Court about this Certification.**

## SCHEDULE "C"

### PLAINTIFFS' LITIGATION PLAN

Counsel for the Plaintiffs in the within action propose the following draft plan of proceeding subject to issues of scheduling and appeals. They propose that the final plan involve input from counsel for the Defendants and this Honourable Court.

#### DEFINED TERMS

1. Capitalized terms that are not defined in this litigation plan (the "Plan") have the meanings given to them in the Statement of Claim, as it may be amended from time to time.

#### CLASS COUNSEL

2. The Plaintiffs have retained the law firms of Rochon Genova, Howie Sacks and Henry and Camp Fiorante Matthews Mogerman (Vancouver, BC) to prosecute this class action (collectively "Class Counsel"). Class Counsel have the requisite knowledge, skill, experience, personnel and financial resources to advance the action to resolution.

#### THE COMPOSITION OF THE CLASS

3. The "Class" and "Class Members" are defined as:

- (a) **Passenger Class** – refers to the passengers who were aboard Flight OJ256. For the sake of clarity, the following persons are excluded from this class: (i) as against all the Defendants: on-duty employees of Fly Jamaica Airways Ltd. Ltd. including the pilots in command, co-pilots and flight attendants; (ii) as against Fly Jamaica Airways Ltd.: passengers whose claims against Fly Jamaica Airways Ltd. and the Flight Crew and Cabin Crew are not subject to jurisdiction before the Courts of Canada under the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended; and (iii) passengers who opt out of the class proceeding.
- (b) **Family Claimant Class** – refers to the spouse, children, grandchildren, grandparents, brothers and sisters of a Passenger Class member who are entitled to claim damages pursuant to Section 61 of the *Family Law Act*, R.S.O. 1990, c. F.3, as amended and, or section 2(5) and Schedule II of the *Carriage by Air Act*, R.S.C. 1985, c. C-26, as amended. Relatives of a Passenger Class member who has chosen to opt out of the class proceeding are excluded from this class.

For the sake of clarity, the following persons are excluded from this class:

- (i) as against all Defendants: any on duty members of the flight crew including pilots in command, co-pilots and flight attendants; and
- (ii) as against Fly Jamaica: passengers whose claims against Fly Jamaica are not subject to jurisdiction before the Courts of Canada under the Carriage by Air Act, R.S. 1985, c. C-26, as amended.

#### **NOTICE OF CERTIFICATION AND THE OPT-OUT PROCEDURE**

4. The Plaintiffs propose that notification of certification, the opt out date and means of opting out ("Notice of Certification"), in the form of notice appended as **Schedule "C"** to the Notice of Motion, be approved by the Court and advertised to the Class by the following means:

- (a) sent by electronic communication and/or registered mail to each of the Class Members at the physical address, email address, or mobile phone number or such other means of contact information as provided by Fly Jamaica Airways;
- (b) posted on the following websites: [www.rochongenova.com](http://www.rochongenova.com); [www.hshlawyers.com](http://www.hshlawyers.com); [www.cfmllawyers.ca](http://www.cfmllawyers.ca);
- (c) provided by Class Counsel to any person who requests it; and
- (d) published on one occasion in each of the Globe and Mail, the National Post, and Guyana Chronicle.

5. The Plaintiffs propose that the opt out date be set sixty (60) days after the date of the dissemination of the Notice of Certification to Class Members.

6. The Plaintiffs will aim to disseminate the Notice of Certification by October 7, 2019.

7. Pursuant to a Court Order, Fly Jamaica Airways Ltd. will provide Class Counsel, to the extent known, a list of the Passenger Class Members, including their names and last known contact information, emails and phone numbers where available, for the purposes of identifying Class Members entitled to receive Notice of Certification.

8. The Plaintiffs will ask the Court to order that the costs of disseminating the Notice will be paid by the Plaintiffs in the first instance reserving their right to seek the recovery of these costs from the Defendants by order of the judge presiding at the trial of the common issues.

## REPORTING AND COMMUNICATION

9. Current information on the status of the action is posted and will be updated regularly on Howie, Sacks and Henry website at [www.hshlawyers.com](http://www.hshlawyers.com) and the Rochon Genova website at [www.rochongenova.com](http://www.rochongenova.com).

10. Copies of some of the publicly filed court documents, court decisions, notices, documentation and other information relating to the action are and will be accessible from these websites.

## POST-CERTIFICATION STEPS

11. The Plaintiffs propose that a case management conference be held within <sup>60-90</sup>~~45-60~~ days of the certification order to address the following issues:

- (a) Pleadings – to ensure that pleadings are closed, that all contemplated amendments have been concluded and that all parties have been joined;
- (b) Discovery - to set a timetable for examinations for discovery and production of documents.

## CASE MANAGEMENT CONFERENCES

12. The Plaintiffs propose that there be regular case management conferences scheduled before a case management judge, unless the parties and the Court agree that such conferences are not required.

## DISCOVERY

13. A party can seek the direction of the Court as to the exchange, scope and delivery of Affidavits of Documents on the common issues, absent agreement among counsel.

14. The Plaintiffs anticipate that the documentary productions may be voluminous and propose that counsel for the parties should meet following certification to discuss ways to efficiently disclose documents to one another utilizing computer database software so that, as much as possible, documents may be produced and shared between the parties and be made available to the Court in electronic format.



15. The parties will conduct any examinations for discovery following exchange of the Affidavits of Documents within a reasonable amount of time as agreed by counsel or as determined by the Court. Examinations for discovery shall be confined to the certified common issues.

16. The Plaintiffs propose that a conference of all counsel be held following the completion of the discovery in order to address the following issues:

- (a) refinement of the common issues for trial, including, if necessary, the addition or deletion of common issues; and
- (b) refinement of the definition of the Class, if necessary.

#### **DOCUMENT MANAGEMENT**

17. Class Counsel will use data management systems to organize, code and manage the documents produced by the Defendants and all relevant documents in the Plaintiffs' possession.

#### **MEDIATION**

18. The Plaintiffs will participate in mediation before a mutually acceptable mediator if the Defendants are prepared to do so.

#### **COMMON ISSUES RESOLUTION**

19. The Plaintiffs propose to resolve as many of the common issues as possible by agreement or before the case management judge by way of Notices to Admit or interlocutory motions for a preliminary determination of law or fact.

#### **EXPERTS AND EXPERT EVIDENCE**

20. The Plaintiffs propose to call experts in the following areas:

- (a) aircraft accident investigation, including cause and origin;
- (b) proper piloting practices;
- (d) aircraft design; and
- (e) aircraft maintenance.

21. Subject to the agreement of counsel or the direction of the Court, the Plaintiffs propose that the Plaintiffs' expert reports be served on the Defendants within one hundred and twenty (120) days after all undertakings arising out of the examinations for discovery have been concluded.

22. The Plaintiffs propose that the Defendants' responding expert reports be delivered ninety (90) days after delivery of the Plaintiffs' expert reports.

### **TRIAL**

23. The Plaintiffs propose that the common issues trial be set expeditiously, at a date to be determined by the Court.

### **NOTICE OF THE RESOLUTION OF THE COMMON ISSUES**

24. Assuming that the common issues are resolved in favour of the Plaintiffs, the Court will be asked:

- (a) to settle the form and content of the notice of resolution of the common issues (the "Notice of Resolution");
- (b) to prescribe the information required from Class Members in order to make an individual claim based on the judgment on the common issues, if necessary;
- (c) to declare the facts it will be necessary for Class Members to establish to succeed in individual claims, if any; and
- (d) to set a date by which Class Members will be required to file an individual claim.

25. The Plaintiffs will ask the Court to order that the Notice of Resolution be distributed substantially in accordance with the procedure for the Notice of Certification.

### **DAMAGES**

26. The Plaintiffs propose that within sixty days (60) days of the certification order, the parties will meet and confer on means to streamline the resolution of individual issues including damages. In the event the parties cannot agree on the procedure, a case management conference

will be convened after resolution of the common issues for the purpose of setting the procedure for resolution of individual issues.

27. Nothing in the Litigation Plan shall prevent sharing of information on individual damages claims with all Defendants prior to resolution of the common issues.

28. Class Counsel agree to provide Defendants with such information on an "as received" basis.

**FURTHER ORDERS CONCERNING THIS PLAN**

29. This Plan may be amended or modified from time to time by agreement of the parties, directions of the Court at a case management conference or on application to the Court.

**EFFECT OF THIS PLAN**

30. This Plan, as it may be revised by order as noted above from time to time, shall be binding on all Class Members whether or not they make a claim under the Plan.

SCHEDULE "D"

Court File No. 18-00609498-00 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JOHN SOMWAR, TULSIDAI SOMWAR and SHANTA PERSAUD**

Plaintiffs

-and-

**FLY JAMAICA AIRWAYS LTD., THE BOEING COMPANY, JOHN DOE  
#1 PILOT, JOHN DOE #2 CO PILOT BASIL FERGUSON, KEONE  
BRYAN, JOHN DOE #3 AIRCRAFT MAINTENANCE PROVIDER, JOHN  
DOE #4 AIRCRAFT MAINTENANCE MECHANIC**

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**OPT OUT FORM  
DEADLINE – JANUARY 6, 2020**

I, \_\_\_\_\_, do not wish to participate in the class action against the abovenamed Defendants with respect to the crash of Fly Jamaica Flight OJ256 on November 9, 2018.

I understand that if I opt out of the class action, I will not be entitled to share in any recovery or take any benefit of any ruling in this case, but I will be free to bring my own claim if I wish. I understand that if I opt out of the class action and wish to bring my own claim, my own claim may be subject to a limitation period. I understand this Opt Out Form must be received by class counsel via email, mail or fax by **JANUARY 6, 2020**.

**My information is as follows:**

Print  
Name of Class Member:

Email: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

City: Signature: \_\_\_\_\_

Telephone: \_\_\_\_\_

Province: \_\_\_\_\_

Address: \_\_\_\_\_