

Lawsuit Over MH370 Not Likely to Survive Long

Amundsen Davis Aerospace Alert

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On March 4, 2017, roughly three years since Malaysia Airlines Flight MH370 disappeared, a suit was filed in South Carolina on behalf of the estates and next of kin of over 40 of the presumably deceased passengers against the Boeing Company. Yet, without any critical parts or data to support the allegations made in this lawsuit, it is not likely to last long.

The lawsuit alleges Boeing:

1. Was negligent in the manufacturing and assembly of the aircraft;
2. Breached its warranties related to the aircraft; and
3. Should be held strictly liable for the alleged defects in the manufacturing and assembly of the aircraft.

Simply put, in order to sustain this lawsuit, the plaintiffs will need to show that a defect existed in the Boeing 777 through the acts or omissions of Boeing, proximately causing the crash and loss of passengers' lives.

In Illinois, the lack of physical evidence is typically fatal to negligence and product liability claims, and since Boeing is headquartered in Illinois, a strong argument may be made for application of Illinois law. For instance, in slip and fall cases, premises owners may not be held liable to a plaintiff who is unable to show the source of the liquid causing his or her fall. Similarly, in products liability cases, a plaintiff's claim will fail if he or she is unable to show the exact defect of the product that caused the alleged damages. Our courts have specifically rejected the *ipso facto* logic that certain accidents are themselves evidence of likely negligence or product failure. After all, human operators (including pilots) can have accidents in presumably safe vehicles, and vehicles can operate without incident in spite of sub-optimum design or manufacture. Thus, juries are asked to evaluate the connection between the alleged defective condition and the subject incident.

To meet their evidentiary burdens parties often rely upon expert testimony. But, experts cannot base opinions on what *may have* occurred or what the expert believes *could have* happened in a particular case. Further, judges are expected to bar expert testimony that isn't properly supported with an objective factual foundation. Accordingly, even where an expert is qualified to opine on how an alleged accident *may have happened*, there must be sufficient evidence to

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support an opinion that the proffered cause is *more likely* than other *possible* causes.

Consequently, without any physical evidence or factual basis for what actually happened on March 8, 2014, the plaintiffs face an uphill battle on their claims against Boeing related to the disappearance of Flight MH370. While it may seem plausible that, as alleged in the complaint, an electrical system failed, a fire occurred, the avionics and communications systems in the cockpit failed, the transponder failed, the pressurization system failed, and/or the fire suppression systems failed, this case is completely devoid of the crucial piece of evidence confirming what exactly did or did not transpire. Moreover, even if the allegations are deemed viable, Boeing may argue that it is not proper to ask it to defend such a case when it has been deprived of the evidence it needs to defend itself (due to no fault of its own). It seems that under these circumstances, no aircraft equals no case.

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