



members of the public by air for hire, including travel between Munich, Germany and the Washington, D.C. area.

#### **Jurisdiction**

4. This court has jurisdiction under 28 U.S.C. §1331(a), in that this is a civil action for damages which arises under the laws and treaties of the United States, namely the *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, concluded at Montreal, Canada, on May 28, 1999 (the "Montreal Convention") and all relevant laws applicable or related thereto, including the *Convention for the Unification of Certain Rules Relating to International Carriage by Air*, signed at Warsaw on October 12, 1929 (the "Warsaw Convention), 49 U.S.C. § 1502 et. Seq. as amended by the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air*, at The Hague on October 28, 1955 (the "Hague Protocol").
5. Mr. Lipnick is a citizen of the United States; accordingly, he has the right to pursue his case in a United States court under Article 33(2) of the Montreal Convention.

#### **Facts**

6. Lewis Lipnick was injured on September 18, 2010, while embarking on United Air Lines Flight 903 from Munich, Germany to Washington, D.C.
7. United Flight 903 was a "code share" flight between Defendants United and Lufthansa. Defendants had an agreement to share duties for United Flight 903, including that Lufthansa would supply ground agents to assist in the boarding of United Flight 903 through a boarding gate at the Munich airport controlled by Lufthansa.

8. Defendants United and Lufthansa have a joint operating agreement for trans-Atlantic flights called "Star Alliance," in which they share revenue and flight operational duties for flights such as Flight 903.
9. In this case, gate services were provided by Lufthansa, as part of its agreement with its agent United, which was operating the aircraft assigned as Flight 903.
10. Mr. Lipnick plays contraforte (a type of contrabassoon) and bassoon for the National Symphony Orchestra, and had traveled to Germany specifically to purchase and bring home a new contraforte.
11. Mr. Lipnick had purchased separate business-class tickets for himself and his contraforte for Flight 903 over the phone. Mr. Lipnick informed the United agent who sold him the tickets that he would be bringing the contraforte back from Munich, described its approximate size and weight, and was told he would be accommodated if he purchased a separate ticket for the contraforte, which he did.
12. The contraforte is a large instrument, and when encased is nearly five feet tall and weighs approximately 70 lbs.
13. When Mr. Lipnick arrived at the Munich Airport on September 18, 2010, he reported to the United check-in counter, and reconfirmed with a United agent that he was allowed to bring his separately-ticketed contraforte onboard Flight 903. Mr. Lipnick was reassured that he was allowed to do so, and was given his boarding passes.
14. After going through security, Mr. Lipnick walked to the gate for Flight 903.
15. While attempting to transport the contraforte from the waiting area to the boarding gate, Mr. Lipnick was denied assistance and safe access by the Defendants through their agents and employees.

16. Mr. Lipnick is informed and believes that the gate where he was injured was under the control of Lufthansa and the employees responsible for boarding the passengers were working for Lufthansa.
17. At the gate where United Flight 903 was boarding, Mr. Lipnick made repeated requests to a Lufthansa employee, who was the flight manager at that gate, asking if he could use a nearby elevator to transport his contraforte down through the gate to the door of the aircraft.
18. Mr. Lipnick, who was travelling alone, informed this employee that in addition to his contraforte, he also had two pieces of carry-on luggage.
19. The Lufthansa employee told Mr. Lipnick that he could not use the elevator, and directed him to take the escalator two flights down with other passengers to the plane level, without offering any additional assistance.
20. While attempting to balance his contraforte in front of him and his other luggage behind him on the escalator, taking as much care for his own safety as the circumstances allowed, Mr. Lipnick subsequently fell down the escalator and was injured.
21. As a result of this fall, Mr. Lipnick sustained serious injuries, including injuries to his neck, back, and left arm, and severe mental and emotional injuries.

**First Claim for Relief-**  
**Claim for Damages under the Montreal Convention**

22. At all times described herein, there was in force and effect in the United States a multilateral treaty relating to the rules governing international carriage by air known as the Montreal Convention.
23. At all times relevant herein, Mr. Lipnick was engaged in international carriage as defined in Article 1(2) of the Montreal Convention and the same is, therefore, applicable to this

action pursuant to Article 1(1) of the Montreal Convention. Pursuant to Article 17 of the Montreal Convention. Defendants, as common carriers, are strictly liable for damages sustained in case of death or bodily injury of a passenger up to 113,100 special drawing rights (approximately \$138,000), upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

24. Pursuant to Article 21(2) of the Montreal Convention, Defendants are strictly liable to Plaintiff for all personal injury or wrongful death damages exceeding 113,000 Special Drawing Rights (SDRs), unless the carrier proves (a) the injury was not due to the negligence or other wrongful acts or omissions of the carrier or its servants or agents; or (b) the injury was solely due to the negligence or other wrongful acts or omissions of a third party.
25. Mr. Lipnick fell while descending an escalator in the process of embarking on United Flight 903, while he was under the control of the Defendants and not at liberty to disobey their instructions.
26. Mr. Lipnick's fall was an "accident" under Article 17 of the Montreal Convention, caused by circumstances external to Mr. Lipnick.
27. Defendant United is liable as the joint-operator of Flight 903, and as the entity that sold Mr. Lipnick his ticket. United was responsible, through its employees and agents, including Defendant Lufthansa, for providing Mr. Lipnick with safe passage through the gate while embarking on Flight 903.
28. Defendant Lufthansa is liable as the joint-operator of Flight 903, and as the entity that was directly responsible for handling passengers as they travelled through the gate while

embarking of Flight 903. Lufthansa was responsible, through its employees and agents, for providing Mr. Lipnick with safe passage through the gate while embarking on Flight 903.

29. As a direct and proximate result of the Defendants' aforementioned acts, omissions, and conduct, the Defendants are liable to the Plaintiff for all damages under the applicable law, according to proof at time of trial.

**Second Claim for Relief - Negligence**

30. At all times described herein, the Defendants were common air carriers of passengers and, as such, were required to use the utmost care and diligence for the safe carriage of passengers. At all times described herein, Defendants operated, designed, leased, maintained, owned, serviced, supervised, controlled or were otherwise responsible for the operation and control of the passenger ticketing, waiting, and boarding areas of the airport in Munich, Germany, which allowed ingress to United Flight 903, and were at all times responsible for providing useable and accessible routes of travel for all passengers, including persons with special requirements, needs, or disabilities.
31. Defendants are vicariously liable for all the acts, omissions, and conduct of their agents and employees described herein.
32. Defendants recklessly, carelessly, and negligently failed to provide Mr. Lipnick with a means of safe access to the boarding area, despite prior notice and agreement that Mr. Lipnick would be carrying the contraforte on board the aircraft.
33. Defendants recklessly, carelessly, and negligently failed and refused to permit Mr. Lipnick access to readily-available alternative means of access to the boarding area; and

recklessly, carelessly, and negligently failed and refused to assist Mr. Lipnick in boarding or to otherwise attend to his needs, all of which created an unreasonable risk of harm and injury to Mr. Lipnick, and directly and proximately resulted in the injuries and damages alleged herein.

34. Defendants are each liable as the owner, agent, servant, and/or employee of each other, and each was acting within the course and scope of its ownership, agency, service, and employment with regard to the embarkation and operation of United Flight 903.
35. As a direct and proximate result of Defendants' negligence, Mr. Lipnick sustained injuries to his neck, back, and left arm, and severe mental and emotional injuries. Mr. Lipnick is informed and believes, and therefore alleges upon such information and belief, that certain of his injuries will be permanent in nature.

#### **Damages**

36. Under each claim, Mr. Lipnick demands all damages allowed under the law for his injuries, including damages for:
- a. Past and future medical expenses;
  - b. Past and future care needs;
  - c. Loss of earnings and loss of earning capacity;
  - d. The extent and duration of Mr. Lipnick's injuries;
  - e. The effect Mr. Lipnick's injuries have on his overall physical and mental wellbeing;
  - f. The past and future physical pain and emotional distress suffered by Mr. Lipnick;
  - g. Any disfigurement and deformity suffered by Mr. Lipnick, including any humiliation or embarrassment associated with that disfigurement and deformity;

h. Past and future inconvenience.

37. Plaintiff demands judgment against the Defendants, jointly and severally, for general and special damages according to proof, plus interest and costs.

Respectfully submitted,



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**JURY DEMAND**

The Plaintiff demands trial by jury.



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