

BEFORE THE UNITED STATES JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION

In re:

AIR CRASH AT SAN FRANCISCO  
INTERNATIONAL AIRPORT ON  
JULY 6, 2013

MDL Docket No. 13-124

**THE BOEING COMPANY'S MOTION TO TRANSFER FOR COORDINATED OR  
CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

The Boeing Company ("Boeing") moves this Panel, pursuant to 28 U.S.C. § 1407, to coordinate and consolidate the cases identified in the attached Schedule of Actions for pretrial proceedings in the United States District Court for the Northern District of California.

Centralization under Section 1407 is warranted because all of these actions arise out of the July 6, 2013 crash of Asiana Airlines, Inc. ("Asiana") Flight 214 ("the Accident") at San Francisco International Airport ("SFO") and share common questions of fact and law. Centralization would conserve resources and promote the just and efficient conduct of this complex aviation accident litigation. It also would eliminate duplicative discovery and prevent repetitive and potentially inconsistent pretrial rulings.

The Northern District of California is the proper transferee district. The Accident took place in San Francisco, California. Many of the critical witnesses and the accident wreckage are

located in the Northern District of California, and the large majority of the 27 Plaintiffs reside in California. Nine of the ten federal court cases currently are pending in the Northern District of California. Further, the docket conditions in that District indicate that the cases can be litigated expeditiously there.

In support of its Motion to Transfer, Boeing relies on the following facts as well as the concurrently filed Memorandum in support of this Motion.

**A. The Subject Actions Arise out of a Single Aviation Accident – The Crash of Asiana Airlines Flight 214 at San Francisco International Airport.**

1. On July 6, 2013, a Boeing 777-200ER aircraft being operated as Asiana Airlines Flight 214 (the “Subject Aircraft”) departed Incheon International Airport, Seoul, South Korea, bound for SFO in San Francisco, California.

2. During landing at SFO on July 6, 2013, the Subject Aircraft hit a seawall separating San Francisco Bay from the runway and came to a stop on the runway designated Runway 28L.

3. At the time of the Accident, approximately 291 passengers and 16 crew were on board the Subject Aircraft. Passengers and crew were citizens of several countries, the majority from China (141), South Korea (77), and the United States (61).<sup>1</sup>

4. Certain passengers and crew reportedly sustained injuries, and three passengers died in the aftermath of the Accident.

5. The Accident currently is the subject of an ongoing investigation by the National Transportation Safety Board (“NTSB”), which has not yet been completed. The NTSB has not yet released findings on its factual investigation or conclusions regarding the cause of the

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<sup>1</sup> See Asiana Airlines (July 7, 2013), “Information for Incident Involving Asiana Flight HL7742,” Press Release (in English, Korean, Chinese) (retrieved July 30, 2013).

Accident. Both Asiana and Boeing are parties to the NTSB's investigation. The NTSB has predicted that it will release its final report within a year of the Accident.

**B. The Subject Actions Name Common Defendants and Are Pending in Multiple U.S. District Courts.**

6. In ten lawsuits pending in federal district courts, a total of 27 Plaintiffs (on behalf of 21 passengers) have brought claims arising from the Accident against Asiana and Boeing.<sup>2</sup> Nine of the ten lawsuits are pending in the Northern District of California. The other lawsuit is pending in the Northern District of Illinois. A list of these cases is set forth in the Schedule of Actions annexed hereto. Copies of the Complaints are included as Exhibits A – J, respectively, in the accompanying Appendix of Exhibits in Support of Motion to Transfer.

7. *Hector Machorro, Jr., et al. v. Asiana Airlines, Inc. ("Machorro")* was filed in the Northern District of California on July 15, 2013. In *Machorro*, two of the three Plaintiffs allege that they were passengers on the Subject Aircraft, and one of these two Plaintiffs also brings claims as a guardian ad litem and parent of a passenger. The third Plaintiff brings claims as the spouse of a passenger. Plaintiffs are represented by Bowles & Verna LLP of Walnut Creek, California. Plaintiffs' Complaint names one Defendant: Asiana. Asiana answered the Complaint on August 9, 2013. The lawsuit has been assigned to the Honorable Yvonne Gonzalez Rogers. A copy of the *Machorro* Complaint and docket sheet are attached hereto as Exhibit A.

8. *Zhengheng Xie, et al. v. Asiana Airlines, Inc. ("Xie")* was the second case filed in the Northern District of California on July 29, 2013. In *Xie*, one of the two Plaintiffs alleges that he was a passenger on the Subject Aircraft, and the other Plaintiff brings claims as the spouse of

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<sup>2</sup> On September 17, 2013, seven other lawsuits against Boeing were filed in the Circuit Court of Cook County, Illinois. Boeing plans to remove those actions to federal court. After removal, Boeing will request that the Panel consolidate those seven actions with the other actions arising from the Accident.

a passenger. Plaintiffs are represented by Bowles & Verna LLP of Walnut Creek, California. Plaintiffs' Complaint names one Defendant: Asiana. Asiana has not yet answered the Complaint or filed a responsive pleading. The lawsuit has been assigned to the Honorable Yvonne Gonzalez Rogers. A copy of the *Xie* Complaint and docket sheet are attached hereto as Exhibit B.

9. *Liman Qian, et al. v. Asiana Airlines, Inc., et al.*, ("*Qian*") was the third case filed in the Northern District of California on August 8, 2013. In *Qian*, each of the three Plaintiffs alleges that he or she was a passenger on the Subject Aircraft. One of the three Plaintiffs also brings claims as the custodial parent and next friend of a passenger. Plaintiffs are represented by Cotchett, Pitre & McCarthy, LLP of Burlingame, California. Plaintiffs' Complaint names two Defendants: Asiana and Boeing. Boeing answered the Complaint on September 3, 2013. Asiana has not yet answered the Complaint or filed a responsive pleading. The lawsuit has been assigned to the Honorable Yvonne Gonzalez Rogers. A copy of the *Qian* Complaint and docket sheet are attached hereto as Exhibit C.

10. *Kazuhisa Yanagihara, et al. v. Asiana Airlines, Inc., et al.*, ("*Yanagihara*") was the fourth case filed in the Northern District of California on August 8, 2013. In *Yanagihara*, each of the four Plaintiffs alleges that he or she was a passenger on the Subject Aircraft. One of the four Plaintiffs also brings claims as the custodial parent and next friend of two passengers. Plaintiffs are represented by Cotchett, Pitre & McCarthy, LLP of Burlingame, California. Plaintiffs' Complaint names two Defendants: Asiana and Boeing. Boeing answered the Complaint on September 3, 2013. Asiana has not yet answered the Complaint or filed a responsive pleading. The lawsuit has been assigned to the Honorable Yvonne Gonzalez Rogers. A copy of the *Yanagihara* Complaint and docket sheet are attached hereto as Exhibit D.

11. *Sun Hong Andrighetto, et al. v. Asiana Airlines, Inc., et al.*, (“*Andrighetto*”) was the fifth case filed in the Northern District of California on August 8, 2013. In *Andrighetto*, two of three Plaintiffs allege that they were passengers on the Subject Aircraft, and the third Plaintiff alleges that he is the custodial parent and next friend of a passenger. Plaintiffs are represented by Cotchett, Pitre & McCarthy, LLP of Burlingame, California. Plaintiffs’ Complaint names two Defendants: Asiana and Boeing. Boeing answered the Complaint on September 3, 2013. Asiana has not yet answered the Complaint or filed a responsive pleading. The lawsuit has been assigned to the Honorable Yvonne Gonzalez Rogers. A copy of the *Andrighetto* Complaint and docket sheet are attached hereto as Exhibit E.

12. *Soon Hee Chung, et al. v. Asiana Airlines, Inc., et al.*, (“*Chung*”) was the sixth case filed in the Northern District of California on August 9, 2013. In *Chung*, each of the three Plaintiffs alleges that he or she was a passenger on the Subject Aircraft. One of the three Plaintiffs also brings claims as the custodial parent and next friend of a passenger. Plaintiffs are represented by Cotchett, Pitre & McCarthy, LLP of Burlingame, California. Plaintiffs’ Complaint names two Defendants: Asiana and Boeing. Boeing answered the Complaint on September 3, 2013. Asiana has not yet answered the Complaint or filed a responsive pleading. The lawsuit has been assigned to the Honorable Yvonne Gonzalez Rogers. A copy of the *Chung* Complaint and docket sheet are attached hereto as Exhibit F.

13. *Huiling Chen, et al. v. Asiana Airlines, Inc., et al.*, (“*Chen*”) was the seventh case filed in the Northern District of California on August 21, 2013. In *Chen*, three of the four Plaintiffs allege that they were passengers on the Subject Aircraft. One of the four Plaintiffs alleges that he is the spouse of a passenger. Plaintiffs are represented by Lieff, Cabraser, Heimann & Bernstein, LLP of San Francisco, California. Plaintiffs’ Complaint names two

Defendants: Asiana and Boeing. Boeing answered the Complaint on September 19, 2013.

Asiana has not yet answered the Complaint or filed a responsive pleading. The lawsuit has been assigned to the Honorable Yvonne Gonzalez Rogers. A copy of the *Chen* Complaint and docket sheet are attached hereto as Exhibit G.

14. *Amanda McLean v. Asiana Airlines, Inc., et al.*, (“*McLean*”) was the eighth case filed in the Northern District of California on August 22, 2013. In *McLean*, the Plaintiff alleges that she was a passenger on the Subject Aircraft. Plaintiff is represented by Cotchett, Pitre & McCarthy, LLP of Burlingame, California. Plaintiff’s Complaint names two Defendants: Asiana and Boeing. Boeing answered the Complaint on September 16, 2013. Asiana has not yet answered the Complaint or filed a responsive pleading. The lawsuit has been assigned to the Honorable Yvonne Gonzalez Rogers. A copy of the *McLean* Complaint and docket sheet are attached hereto as Exhibit H.

15. *Ryan Boesch v. Asiana Airlines, Inc., et al.*, (“*Boesch*”) was the ninth case filed in the Northern District of California on August 22, 2013. In *Boesch*, the Plaintiff alleges that he was a passenger on the Subject Aircraft. Plaintiff is represented by Cotchett, Pitre & McCarthy, LLP of Burlingame, California. Plaintiff’s Complaint names two Defendants: Asiana and Boeing. Boeing answered the Complaint on September 16, 2013. Asiana has not yet answered the Complaint or filed a responsive pleading. The lawsuit has been assigned to the Honorable Yvonne Gonzalez Rogers. A copy of the *Boesch* Complaint and docket sheet are attached hereto as Exhibit I.

16. *Jinhua Yang, et al., v. The Boeing Company* (“*Yang*”) was filed in the Circuit Court of Cook County, Illinois on August 15, 2013. In *Yang*, one of the three Plaintiffs alleges that he was a passenger on the Subject Aircraft, and the other two Plaintiffs allege that they are

guardians ad litem and parents of a passenger. Plaintiffs are represented by Ribbeck Law Chartered of Chicago, Illinois, and Kreindler & Kreindler LLP of New York, New York. Plaintiffs' Complaint names one Defendant: Boeing. Boeing has not yet answered the Complaint or filed a responsive pleading. On September 23, 2013, Boeing removed the *Yang* action to the Northern District of Illinois. The lawsuit has been assigned to the Honorable Harry D. Leinenweber. A copy of the *Yang* Complaint, Notice of Removal, and docket sheet are attached hereto as Exhibit J.

17. Asiana and Boeing expect that numerous additional U.S. lawsuits will be filed on behalf of additional passengers and crew, many of whom have already retained counsel and have indicated their intention to sue.

18. It is Boeing's understanding that Asiana agrees that consolidation and transfer of the pending and future cases arising from the Accident is appropriate and that Asiana will file a joinder in this Motion.

**C. The Subject Actions Raise Common Factual Issues Regarding the Cause of the Accident.**

19. Each of the ten lawsuits contains claims for personal injuries and damages asserted by passengers of the Subject Aircraft relating to the Accident.

20. The Complaints in each of the ten lawsuits allege the following common facts:

- The Subject Aircraft was a Boeing model 777-200ER aircraft. *Machorro* Compl. ¶ 11; *Xie* Compl. ¶ 9; *Qian* Compl. ¶ 39; *Yanagihara* Compl. ¶ 40; *Andrighetto* Compl. ¶ 38; *Chung* Compl. ¶ 39; *Chen* Compl. ¶ 19; *McLean* Compl. ¶ 36; *Boesch* Compl. ¶ 36; *Yang* Compl. ¶ 1.
- On July 6, 2013, the Subject Aircraft was operated by Asiana as Flight 214 and was flown from Seoul, Korea to SFO. *Machorro* Compl. ¶ 11; *Xie* Compl. ¶ 9; *Qian* Compl. ¶¶ 1, 39; *Yanagihara* Compl. ¶¶ 1, 40; *Andrighetto* Compl. ¶¶ 1, 38; *Chung* Compl. ¶¶ 1, 39; *Chen* Compl. ¶¶ 19, 21; *McLean* Compl. ¶¶ 1, 36; *Boesch* Compl. ¶¶ 1, 36; *Yang* Compl. ¶¶ 1, 5.

- Some or all of Plaintiffs named in the Complaints were passengers on Asiana Flight 214 on July 6, 2013. *Machorro* Compl. ¶ 6; *Xie* Compl. ¶ 4; *Qian* Compl. ¶¶ 7, 9, 10; *Yanagihara* Compl. ¶¶ 7, 9-11; *Andrighetto* Compl. ¶¶ 7, 8; *Chung* Compl. ¶¶ 7, 9, 10; *Chen* Compl. ¶ 8; *McLean* Compl. ¶ 7; *Boesch* Compl. ¶ 7; *Yang* Compl. ¶ 3.
- The Subject Aircraft crashed during landing at SFO. *Machorro* Compl. ¶ 12; *Xie* Compl. ¶ 10; *Qian* Compl. ¶ 1; *Yanagihara* Compl. ¶ 1; *Andrighetto* Compl. ¶ 1; *Chung* Compl. ¶ 1; *Chen* Compl. ¶ 22; *McLean* Compl. ¶ 1; *Boesch* Compl. ¶ 1; *Yang* Compl. ¶ 1.

21. The Complaints in nine of the ten lawsuits allege the following common facts:<sup>3</sup>

- The crash occurred as a result of the negligence and recklessness of Asiana and Asiana's flight crew, including failure to follow procedures for a visual landing approach and failure to properly communicate in the cockpit. *Machorro* Compl. ¶¶ 13-14, 22-24; *Xie* Compl. ¶¶ 11-12, 20-22; *Qian* Compl. ¶¶ 86-87; *Yanagihara* Compl. ¶¶ 87-88; *Andrighetto* Compl. ¶¶ 78-80; *Chung* Compl. ¶¶ 86-87; *Chen* Compl. ¶¶ 30, 53, 56-57; *McLean* Compl. ¶¶ 83-84; *Boesch* Compl. ¶¶ 83-84.
- The crash also occurred as a result of inadequate training and supervision of Asiana's flight crew by Asiana. *Machorro* Compl. ¶¶ 14, 22-24; *Xie* Compl. ¶¶ 12, 20-22; *Qian* Compl. ¶¶ 86-87; *Yanagihara* Compl. ¶¶ 87-88; *Andrighetto* Compl. ¶¶ 78-80; *Chung* Compl. ¶¶ 86-87; *Chen* Compl. ¶¶ 30, 53, 56-57; *McLean* Compl. ¶¶ 83-84; *Boesch* Compl. ¶¶ 83-84.
- Asiana is strictly liable to plaintiffs under Article 17 of the Montreal Convention. *Machorro* Compl. ¶¶ 16-21; *Xie* Compl. ¶¶ 14-21; *Qian* Compl. ¶ 95; *Yanagihara* Compl. ¶ 96; *Andrighetto* Compl. ¶ 88; *Chen* Compl. ¶ 50; *Chung* Compl. ¶ 95; *McLean* Compl. ¶ 92; *Boesch* Compl. ¶ 92.

22. The Complaints in eight of the ten lawsuits allege the following common facts:<sup>4</sup>

- The Subject Aircraft was defective and unreasonably dangerous at the time it left Boeing's custody and control. *Qian* Compl. ¶ 115; *Yanagihara* Compl. ¶ 116; *Andrighetto* Compl. ¶ 108; *Chung* Compl. ¶ 115; *Chen* Compl. ¶ 70; *McLean* Compl. ¶ 112; *Boesch* Compl. ¶ 112; *Yang* Compl. ¶ 22.
- The defective and unreasonably dangerous nature of the Subject Aircraft caused the crash. *Qian* Compl. ¶ 116; *Yanagihara* Compl. ¶ 117; *Andrighetto* Compl. ¶ 109; *Chung* Compl. ¶ 116; *Chen* Compl. ¶ 71; *McLean* Compl. ¶ 113; *Boesch* Compl. ¶ 113; *Yang* Compl. ¶ 23.

<sup>3</sup> The *Yang* plaintiffs bring suit against Boeing only.

<sup>4</sup> The *Machorro* and *Xie* plaintiffs bring suit against Asiana only.



- The crash also occurred as a result of Boeing's negligence, including its failure to provide adequate warnings and its failure to properly design, manufacture, test, assemble, and inspect the Subject Aircraft. *Qian* Compl. ¶¶ 100, 101; *Yanagihara* Compl. ¶¶ 101, 102; *Andrighetto* Compl. ¶¶ 93, 94; *Chung* Compl. ¶¶ 100, 101; *Chen* Compl. ¶¶ 60-62; *McLean* Compl. ¶¶ 97, 98; *Boesch* Compl. ¶¶ 97, 98; *Yang* Compl. ¶¶ 28-29.

**D. The Subject Actions Raise Common Threshold Procedural and Legal Issues.**

23. Both Asiana and Boeing anticipate joining in, or not opposing, a motion to stay discovery in all ten cases and any other cases arising out of the Accident that may be filed in the future. Asiana and Boeing will request a stay to accommodate the NTSB's ongoing investigation into the Accident. The NTSB has not yet completed its factual investigation into the Accident, conducted its public hearing, or released its accident report. Asiana and Boeing both are party participants to the NTSB's investigation. Under federal law, 49 C.F.R. § 831.13, Asiana and Boeing are currently prohibited from releasing information concerning the accident to any person not a party to the investigation without the NTSB's permission. For these reasons, a single court should establish a case management practice that will accommodate the needs and schedule of the NTSB.

24. The subject actions share other common procedural and legal issues as well, including but not limited to issues relating to choice of law, liability, and damages.

**E. Transfer to the Northern District of California Is Appropriate Because the Accident Occurred in This District.**

25. Consolidation in the Northern District of California is warranted because the Accident and recovery operations took place at SFO, which is located in the Northern District of California. The Accident wreckage is in the Northern District of California. Much of the post-accident investigation has been conducted by the NTSB in this District.

26. No other District has a close connection to the Accident or this litigation. The Northern District of Illinois, the only other district where a federal lawsuit is pending, has no

such connection. The Accident did not take place in Illinois, and there are no witnesses in Illinois. There were no activities within Illinois that may have contributed to the Accident. The aircraft involved in the Accident was not designed, manufactured, or sold in Illinois.

**F. The Northern District of California Is the Most Convenient Forum for the Parties and Witnesses.**

27. Many of the percipient witnesses, including but not limited to eyewitnesses, emergency responders, maintenance personnel, air traffic controllers, and health care providers are located in the Northern District of California.

28. In the ten lawsuits, 22 of the 27 Plaintiffs allege that they are residents of the State of California. None of the other five Plaintiffs allege that he or she is a resident of Illinois or a State other than California. Three of these five Plaintiffs allege that they reside in China, and two of five do not allege their residence.

29. In nine of the ten actions, Plaintiffs' counsel are located in California. Counsel for Asiana also is located in California.

30. Boeing prefers the Northern District of California—the district where the Accident occurred and where many witnesses are located—as the transferee district.

**G. Nine of the Ten Actions Currently Are Pending in the Northern District of California.**

31. Nine of the ten pending actions were filed and currently are pending in the Northern District of California. Only one of the ten actions is pending in another district.

32. The first six of the ten actions were filed in the Northern District of California. The *Machorro* Plaintiffs filed their Complaint in the Northern District of California on July 15, 2013. The *Xie* Plaintiffs filed their Complaint in the Northern District of California on July 29, 2013. The *Qian*, *Yanagihara*, and *Andrighetto* Plaintiffs filed their Complaints in the Northern

District of California on August 8, 2013. The *Chung* Plaintiffs filed their Complaint in the Northern District of California on August 9, 2013.

33. The *Yang* Plaintiffs filed their Complaint in the Circuit Court of Cook County, Illinois on August 15, 2013. This action was removed to the Northern District of Illinois on September 23, 2013. Boeing has not filed an answer or responsive pleading in this case, nor has the court entered any orders.

34. The *Chen* Plaintiffs filed their Complaint in the Northern District of California on August 21, 2013. The *McLean* and *Boesch* Plaintiffs filed their Complaints in the Northern District of California on August 22, 2013.

35. All of the answers that have been filed to date were filed in cases pending in the Northern District of California. Asiana has filed an answer to the Complaint in *Machorro*. Boeing has filed answers to the Complaints in *Qian*, *Yanagihara*, *Andrighetto*, *Chung*, *McLean*, *Boesch*, and *Chen*. No other answers or responsive pleadings have been filed by Asiana or Boeing.

36. On August 28, 2013, the court in the Northern District of California issued a Related Case Order, which assigned the *Machorro*, *Xie*, *Qian*, *Yanagihara*, *Andrighetto*, *Chung*, *Chen*, *McLean*, and *Boesch* actions to the same judge, the Honorable Yvonne Gonzales Rogers. See Exhibit K.

**H. The Docket Conditions in the Northern District of California Indicate That the Cases Can Be Litigated Expeditiously.**

37. The Panel's *Distribution of Pending MDL Dockets (as of September 11, 2013)* reports that 15 MDLs, comprising 547 member cases, currently are pending in the Northern District of California. See Exhibit L. The Panel reports that 17 MDLs, comprising 1,281 member cases, currently are pending in the Northern District of Illinois.

38. During the 12-month period ending March 31, 2013, there were 7,816 filings in the Northern District of California, a 6% decrease in total filings over the previous 12-month period. As of March 31, 2013, 6,989 cases were pending in the Northern District of California. During the 12-month period ending March 31, 2013, there were 12,365 filings in the Northern District of Illinois, a 13.5% increase in total filings over the previous 12-month period. As of March 31, 2013, 12,380 cases were pending in the Northern District of Illinois. *Compare Exhibit M with Exhibit N.*

39. There are only 382 cases (6.6%) still pending after three years in the Northern District of California, compared to 997 cases (9.7%) in the Northern District of Illinois. *Compare Exhibit M with Exhibit N.*

40. The median time from filing to trial in civil cases in the Northern District of California is 28.4 months, compared to 34.5 months in the Northern District of Illinois. *Compare Exhibit M with Exhibit N.*

41. The Northern District of California has experience and expertise with complex multidistrict litigation, including aviation litigation.

WHEREFORE, The Boeing Company respectfully requests that the Judicial Panel for Multidistrict Litigation coordinate and consolidate the cases listed in the attached Schedule of Actions for pretrial proceedings in the Northern District of California.

DATED: September 24, 2013

PERKINS COIE LLP

By:



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