

**BEFORE THE
UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

In re:)	
)	
AIR CRASH AT SAN FRANCISCO)	MDL Docket No. 1:13-2497
INTERNATIONAL AIRPORT ON JULY 6,)	
2013)	
)	

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

Asiana Airlines, Inc. ("Asiana") is submitting this Memorandum to join in the Motion to Transfer for Consolidated Pretrial Proceedings pursuant to 28 U.S.C. § 1407 filed by The Boeing Company ("Boeing").

Asiana adopts the legal arguments contained in Boeing's moving papers and adopts, as factually accurate, all of the representations made by Boeing in its Petition relating to the factual basis and status of the pending lawsuits.

Boeing's Petition seeks transfer and consolidation, in the United States District Court for the Northern District of California, of all lawsuits already filed and those yet to be filed, arising from the crash of Asiana flight 214 in San Francisco, California, on July 6, 2013.

A. Current Status of Pending Lawsuits.

As of the filing of this Joinder, Boeing's recitation of the status of pending litigation is both accurate and current. There are currently nine lawsuits pending against Asiana alone and against Asiana and Boeing in the United States District Court for the Northern District of California. The details of these lawsuits are set forth in Boeing's Petition. All of these lawsuits have been consolidated before District Court Judge Yvonne Gonzalez Rogers. Judge Rogers has scheduled a Case Management Conference for all pending lawsuits on November 18, 2013.

There is currently one lawsuit pending in the Northern District of Illinois. Boeing is the only named defendant in that lawsuit. At least six additional lawsuits have been filed against the Boeing Company in the Superior Court in Cook County Illinois, which Boeing intends to remove to the Northern District of Illinois.

B. The Pending Lawsuits Satisfy the Requirements of 28 U.S.C. § 1407 Because Consolidation Is Necessary to Coordinate Pretrial Proceedings and to Avoid Duplication of Effort and Potentially Inconsistent Rulings on Issues of Law.

These lawsuits are suitable for consolidation under 28 U.S.C. § 1407 because they, and those yet to be filed, all derive from the same operative facts. All of the cases involve the same issues relating to the circumstances and potential causes of the crash of Asiana flight 214. All of the cases will involve essentially the same pretrial discovery, and all will involve common issues of fact and law.

All cases will involve the same procedural issues related to the scheduling, scope, and conduct of pre-trial discovery. As noted in Boeing's Petition, Asiana also intends to request a stay of all liability discovery while the NTSB investigation, which precludes the disclosure of certain factual information relating to the crash of Asiana flight 214, remains pending.

The lawsuits already on file require consolidation to avoid unnecessary duplication of effort, duplication of pretrial discovery, and potentially inconsistent rulings on legal issues. Consolidation before a single judge will result in discovery orders that will provide a single, coordinated, and uniform approach to pretrial discovery and the consistent resolution of legal issues.

Also, it is a virtual certainty that a substantial number of additional lawsuits will be filed in the United States. The lawsuits that currently on file represent only a fraction of the passengers

who were onboard the aircraft, and who are potential plaintiffs. The lawsuits currently on file on have been brought on behalf of 21 of the 291 passengers who were onboard the aircraft. Many of those who have not yet filed suit are already represented by U.S. counsel and will inevitably be filing lawsuits in the near future.

C. The Northern District of California Is the Appropriate Jurisdiction for the Consolidation of These Cases.

Asiana is joining in this Petition to ensure that these lawsuits, and those that will inevitably follow, are subject to consolidated and coordinated pretrial proceedings in a jurisdiction which best serves the interests of the parties, the witnesses, and the interests of justice. The Northern District of California is plainly the most appropriate jurisdiction to satisfy these criteria. All of the relevant factors weigh in favor of the Northern District of California as the most appropriate forum:

1. The incident occurred at San Francisco International Airport, within the boundaries of the Northern District of California.
2. Most, if not all, of the witnesses to the incident are located within the Northern District of California. These witnesses include Federal Aviation Administration air traffic control employees; employees of San Francisco International Airport; emergency responders who were on scene and who treated and transported injured passengers; and medical care providers.
3. All of the passengers who received medical treatment immediately following the incident were treated in the San Francisco area.
4. Based upon the best information presently available to Asiana, it appears that the overwhelming majority of the passengers who reside in the United States reside in

either California or other Western states such as Oregon, Nevada, and Arizona.

5. California is the only jurisdiction in which jurisdiction can be asserted over all potentially liable or interested parties. Several potential defendants or interested parties, associated with local municipalities or local government agencies, are only subject to jurisdiction in California.
6. The first lawsuits filed as a result of this incident, and the only lawsuits currently filed against Asiana, are all pending in the Northern District of California before Judge Rogers, who has already set a date for the first case management conference.

By contrast, there are no contacts whatsoever between this incident and the state of Illinois or any other U.S. jurisdiction and no reason why these lawsuits should be resolved anywhere but California:

1. The incident did not occur in Illinois.
2. There were no activities within Illinois which may have contributed to the incident.
3. There are no witnesses in Illinois.
4. Based upon the best information currently available to Asiana, it appears that one out of the 291 passengers resides in Illinois.
5. The aircraft which was involved in the incident had no contact with the State of Illinois, having been designed, manufactured, and sold in other jurisdictions.

Based upon the foregoing, all lawsuits resulting from the crash of Asiana flight 214 on July 6, 2013 should be consolidated for coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407 in the United States District Court for the Northern District of California.

CONCLUSION

There are compelling reasons why all lawsuits resulting from a commercial air disaster such as this should be consolidated for coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407. Consolidation is necessary to avoid duplication of effort and the potential for inconsistent results on issues of law. The Northern District of California is the only appropriate jurisdiction for the resolution of lawsuits resulting from this incident. It is the location where the incident occurred and it is the jurisdiction in the United States where most of the liability witnesses and evidence are located. It is also the jurisdiction in which most of the U.S. resident passengers reside. Conversely, there is no legitimate reason to consolidate these cases in any jurisdiction other than in the Northern District of California. There were no operative events in any other U.S. jurisdiction, and there would be no prejudice to any plaintiff or any party in having these lawsuits consolidated in the Northern District of California. Accordingly, Asiana respectfully requests that this Court enter an order transferring all pending lawsuits, and all "tag along" lawsuits for coordinated pretrial proceedings before District Judge Yvonne Gonzalez Rogers in the United States District Court for the Northern District of California.

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**BEFORE THE
UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

MDL – 1:13-2497 - In re: Air Crash at San Francisco International Airport on July 6, 2013

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge
Plaintiffs Hector Machorro, Jr.; Younga Jun Machorro; B.H. M., a minor Defendant: Asiana Airlines, Inc.	U.S.D.C. Northern District of California	CV13-03286	Yvonne Gonzalez Rogers
Plaintiffs: Zhengheng Xie; Wei Song Defendant: Asiana Airlines, Inc.	U.S.D.C. Northern District of California	CV13-03489	Yvonne Gonzalez Rogers
Plaintiffs: Liman Qian, A.M, a minor; Shuzhi Han Defendants: Asiana Airlines, Inc.; The Boeing Company	U.S.D.C. Northern District of California	CV13-03684	Yvonne Gonzalez Rogers
Plaintiffs: Kazuhisa Yanagihara; S.Y., a minor; L.Y., a minor; Sophia Chan Defendants: Asiana Airlines, Inc.; The Boeing Company	U.S.D.C. Northern District of California	CV13-03686	Yvonne Gonzalez Rogers
Plaintiffs: Sun Hong Andrighetto; Robert Andrighetto; A.J.A., a minor Defendants: Asiana Airlines, Inc.; The Boeing Company	U.S.D.C. Northern District of California	CV13-03687	Yvonne Gonzalez Rogers
Plaintiffs: Soon Hee Chung; S.C., a minor; Bunny Chung Defendants: Asiana Airlines, Inc.; The Boeing Company	U.S.D.C. Northern District of California	CV13-03712	Yvonne Gonzalez Rogers

Case Caption	Court	Civil Action No.	Judge
Plaintiff: Huilong Chen; Jianming Xu; Yuying Shen; S.Y., a minor by and through her guardian Bo Yang Defendants: Asiana Airlines, Inc.; The Boeing Company	U.S.D.C. Northern District of California	CV13-03881	Yvonne Gonzalez Rogers
Plaintiff: Amanda McLean Defendants: Asiana Airlines, Inc.; The Boeing Company	U.S.D.C. Northern District of California	CV13-03895	Yvonne Gonzalez Rogers
Plaintiff: Ryan Boesch Defendants: Asiana Airlines, Inc.; The Boeing Company	U.S.D.C. Northern District of California	CV13-03896	Yvonne Gonzalez Rogers
Plaintiffs: Jinhua Yang; Jingtao Xie, as Guardian Ad Litem and Parents of Minor J.X Defendant: The Boeing Company	U.S.D.C. Northern District of Illinois	1:13 cv 6846	Harry D. Leinenweber

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In re:)
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AIR CRASH AT SAN FRANCISCO) MDL Docket No. **1:13-2497**
INTERNATIONAL AIRPORT ON JULY 6,)
2013)
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PROOF OF SERVICE

I certify that on September 25, 2013, I electronically filed the foregoing *Defendant Asiana Airlines' Response to The Boeing Company's Motion to Transfer for Coordinated or Consolidated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407, Schedule of Actions*, and this *Proof of Service* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorney(s) of record whose e-mail addresses are known to the Court. In addition, I caused service to be made by the alternative method indicated hereinafter upon those attorney(s) of record listed below who have not agreed to accept e-mail notification by the Court, addressed as stated on the attached service list:

- ☐ **(By Facsimile):** I caused the above-referenced document(s) to be transmitted by facsimile machine to the person(s) at the address(es) set forth below
- ☐ **(By Mail):** As Follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.
- ☐ **(By Personal Service):** I caused the above-referenced document(s) to be personally delivered by hand to the person(s) at the address(es) set forth below.
- ☒ **(By Overnight Courier):** I caused the above-referenced document(s) to be delivered by an overnight courier service to the person(s) at the address(es) set forth below.

I further certify under penalty of perjury that the foregoing is true and correct. Executed this 25th day of September, 2013, at Los Angeles, California.

/s/ Frank A. Silane
Frank A. Silane

SERVICE LIST

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