

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

PATRICK JOHNSON)
As Administrator)
of the Estate of Michael Johnson, deceased)

CASE NO. 2:17-cv- 885 - RMG

and)

HILLARY ELLIOTT,)
As Administrator)
Of the Estate of Joseph Johnson, deceased,)

COMPLAINT

Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA)

Defendant.)

Now come plaintiffs PATRICK JOHNSON, Administrator of the Estate of Michael Johnson, deceased, and HILLARY ELLIOTT, Administrator of the Estate of Joseph Johnson, deceased, by and through their attorneys, and for their Complaint state as follows:

PARTIES

1. Plaintiff PATRICK JOHNSON is the duly appointed Administrator of the estate of Michael Johnson, Deceased, who was killed in an air crash that occurred on July 7, 2015, near Moncks Corner, South Carolina and at all times relevant hereto were citizens and residents of the State of South Carolina.

2. Plaintiff HILLARY ELLIOTT is the duly appointed Administrator of the estate of Joseph Johnson, Deceased, who was killed in an air crash that occurred on July 7, 2015, near

Moncks Corner, South Carolina and at all times relevant hereto were citizens and residents of the State of South Carolina.

3. At all times relevant hereto, plaintiffs' decedents Michael Johnson and Joseph Johnson were citizens and resident of the State of South Carolina.

4. Defendant the United States of America is a body politic which for purposes of this litigation operates through its executive branch an agency of government known as the Federal Aviation Administration (FAA), charged with responsibility under the Federal Aviation Act of 1958, as amended, to ensure the safety of flight, and in which control of all airspace over the United States and its territories is vested. Further, the United States of America is a body politic which for the purposes of this litigation operates through its executive branch, the Department of Defense and more specifically the United States Air Force (USAF).

JURISDICTION AND VENUE

6. This action arises under the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*, and plaintiffs have complied with all administrative prerequisites to the institution of suit.

7. This Court has jurisdiction of the instant action pursuant to 28 U.S.C. § 1331, in that this case arises under the Federal Tort Claims Act, and pursuant to 28 U.S.C. § 1346, in that this Court has original jurisdiction over all claims against the United States of America and the various agencies thereof, including the FAA and USAF.

8. Venue is proper in the District of South Carolina pursuant to 28 U.S.C. § 1402(b), in that plaintiffs and plaintiffs' decedents resided in this judicial district at the time of decedents' death and the accident that gives rise to this litigation occurred in this district.

BACKGROUND

9. Plaintiff Patrick Johnson is the duly appointed Administrator of the Estate of Michael Johnson, deceased.

10. Plaintiff Hillary Elliott is the duly appointed Administrator of the Estate of Joseph Johnson, deceased.

11. The FAA is and was an agency of the United States government in which control of all airspace over the United States and its territories, including South Carolina, is exclusively vested.

12. Further, the Federal Aviation Act of 1958, as amended by the Department of Transportation Act of 1967, authorizes and directs the Secretary of Transportation to provide necessary facilities and personnel for the protection and regulation of air traffic.

13. The Secretary of Transportation is further authorized and directed to prescribe air traffic rules and regulations governing the flight of aircraft, the efficient utilization of navigable airspace, and the prevention of controlled flight into terrain.

14. Among the duties of the FAA is to supply through its employees and/or agents, flight following and monitoring in accordance with the FAA internal procedures set out in FAA Order JO 7110.65, titled Air Traffic Control.

15. At all times material hereto, the Federal Aviation Administration (FAA) was a United States governmental entity charged with ensuring safe air transportation by formulating, enacting and enforcing safety standards that apply to air commerce.

16. On and before July 7, 2015, the FAA had been providing air traffic control services at Charleston ATCT, a combined tower and terminal radar approach control facility (TRACON).

17. On and before July 7, 2015, Charleston TRACON was acting as a duly authorized agent of the United States of America, under its supervision, authority and control.

18. On and before July 7, 2015, it was the duty of the FAA's Office of Air Traffic System Effectiveness to evaluate air traffic operations and periodically evaluate the air traffic controllers employed at Charleston TRACON.

19. The USAF is one of the branches of United States Military and operates Shaw Air Force Base in Sumter, South Carolina. Based at Shaw AFB are several squadrons of F-16 fighter aircraft.

20. On or before July 7, 2015, the USAF was acting as a duly authorized agent of the United States of America, under its supervision, authority and control.

ALLEGATIONS RELEVANT TO ALL CLAIMS

20. On and before July 7, 2015, at approximately 11:01 a.m. Eastern Daylight time, decedent Joseph Johnson was piloting and decedent Michael Johnson was a passenger aboard a Cessna 150M, FAA registration no. N3601V (CESSNA), which had departed Berkeley County Airport (MKS) in Moncks Corner, South Carolina enroute to Grand Strand Airport (CRE) in North Myrtle Beach, South Carolina.

21. On and before July 7, 2015, at approximately 11:01 a.m. Eastern Daylight time, the USAF was piloting a Lockheed Martin F-16CM, call sign DEATH 41 (F-16) which had departed Myrtle Beach International Airport (MYR) in Myrtle Beach, South Carolina and was enroute to Charleston International Airport (CHS).

22. At all times material hereto, the F-16 was operating under the control of an air traffic controller and other personnel at Charleston TRACON, certified and trained by the FAA

to direct, control, and separate aircraft in a safe, orderly and expeditious manner.

23. At all times material hereto, the CESSNA was operating under Visual Flight Rules and squawking 1200.

24. While enroute to CHS, the F-16 contacted TRACON at 1052 and requested to perform a practice tactical air navigation system (TACAN) instrument approach to runway 15.

25. TRACON instructed the F-16 to fly a heading of 260 degrees to intercept the final approach course.

26. At 1055, a TRACON controller instructed the F-16 to descend from his present altitude of 6,000 feet to 1,600. At this time, the F-16 was located about 34 nautical miles northeast of CHS.

27. At 1057, the CESSNA departed MKS.

28. At 1057:41, the CESSNA became visible on the TRACON controllers radar screen as an aircraft flying under visual flight rules with a transponder code of 1200, in the vicinity of the departure end of runway 23 at MKS, at an indicated altitude of 200 feet.

29. For the next three minutes, the CESSNA continued to climb and began tracking in an easterly direction and climbing in altitude, passing 1000 feet at 1059:49.

30. At 1100:13, the controller's radar system issued a visual and aural ARTS IIE conflict alert alarm between the CESSNA and F-16.

31. At 1100:16 the controller transmitted "Death 41, traffic twelve o'clock two mile opposite direction one thousand two hundred, indicated type unknown."

32. At 1100:24 the F-16 pilot responded "Death 41 looking."

33. At 1100:26 the controller told the F-16 "41 turn left heading 180 if you don't have

that traffic in sight.”

34. The F-16 pilot responded “confirm two miles?”

35. At 1100:34, the controller transmitted “Death 41 if you don’t have that traffic in sight turn left heading one eight zero immediately.”

36. Following this transmission, the F-16 began a gradual turn to the south, radar data showed the F-16 at 1500 feet, one hundred feet below his assigned altitude.

37. At 1101, the F-16 struck the Cessna, slicing the Cessna in half, and causing it to spiral out of control towards the surface and the Cooper River.

38. Michael and Joseph Johnson were killed as a result of the crash.

39. At all times mentioned hereto, the subject aircraft were or should have been under surveillance by air traffic controllers employed and trained by the FAA who were charged with duties including navigational assistance, timely furnishing of weather data, surveillance and other guidance, instructions and air traffic control services pursuant to duties prescribed in FAA Order 7110.65 and other rules, regulations, procedures and standards.

40. FAA Order 7110.65 states that the primary purpose of the Air Traffic Control system is to prevent a collision between aircraft operating in the system.

41. Despite the activation of the conflict alert, the air traffic controller never issued any conflict or safety alert to the pilot, and the controller failed to render appropriate radar services to the aircraft all in violation of applicable law, procedures, regulations and rules including controller’s duties as prescribed in FAA Order 7110.65.

42. As a direct and proximate result of the negligence of the defendant, including its air traffic controllers, managers and supervisors, the CESSNA and F-16 collided, resulting in the

deaths of Michael and Joseph Johnson.

43. The F-16 failed to see and avoid the Cessna in violation of applicable law, procedures, regulation and rules governing flight operations.

44. Had the air traffic controller and her supervisors and managers carried out their duties and responsibilities in accordance with all applicable rules, regulations, practices, policies and procedures, including FAA Order 7110.65, the crash would have been averted.

45. Had the F-16 maintained appropriate altitude, used all available equipment in its aircraft, and carried out its duties and responsibilities in accordance with all applicable rules, regulations, practices, policies and procedures, the collision would have been averted.

COUNT I

NEGLIGENCE– WRONGFUL DEATH

46. Plaintiffs incorporate by reference all prior allegations as if fully set forth herein.

47. Defendant the United States of America owed a duty to plaintiffs' decedents to exercise reasonable care in providing air control services.

48. On and before July 7, 2015, defendant the United States of America was negligent and in breach of its duties and superior duties described herein, in that the FAA personnel responsible for providing air traffic control and flight following to the accident aircraft, and the FAA personnel responsible for supervising, instructing, qualifying and training said personnel:

- a. Failed to prevent an occurrence of a mid-air collision in controlled airspace;
- b. Failed to resolve the conflict alert between the CESSNA and F-16;
- c. Failed to use their best judgment to ensure the safety of the occupants of the

- accident aircraft;
- d. Failed to issue safety alerts as required under FAA Order 7110.65 2-1-6;
 - e. Failed to adequately warn the F-16 of the conflict alert and impending traffic;
 - f. Failed to maintain situational awareness and did not take action until a collision was imminent;
 - g. Failed to provide appropriate radar navigational guidance;
 - h. Failed to take action as required under FAA Order 7110.65 10-1-1 to address an imminent emergency;
 - i. Failed to provide clear, concise standard instructions to the accident pilot as required by relevant rules, practices and regulations;
 - j. Failed to properly and adequately train, certify, and/or re-certify the air traffic control personnel responsible for the accident flight;
 - k. Failed to properly or adequately evaluate, monitor and supervise the air traffic control personnel responsible for the accident flight;
 - l. Failed to have present adequate experienced and competent personnel to appropriately handle the situation involved;
 - m. Failed to warn the F-16 of the immediate and extreme danger to his aircraft;
 - n. Failed to warn the F-16 of the danger the controllers created for the aircraft by assigning a vector and altitude which was dangerous and unsafe; and
 - o. Defendant United States was negligent for other reasons to be developed in discovery and presented at trial.
48. On and before July 7, 2015, defendant the United States of America was negligent

and in breach of its duties and superior duties described herein, in that the USAF personnel responsible for piloting the F-16 and the USAF personnel responsible for supervising, instructing, qualifying and training said personnel:

- a. Failed to prevent an occurrence of a mid-air collision in controlled airspace;
- b. Failed to see and avoid the CESSNA in accordance with FAR §91.113 and FAA AIM 5-5-8 ;
- c. Failed to maintain assigned altitude;
- d. Failed to take appropriate action when directed by Air Traffic Control;
- e. Failed to utilize all systems onboard the F-16 which could have prevented the collision; and
- f. The Defendant United States was negligent for other reasons to be developed in discovery and presented at trial.

49. As a direct and proximate result of the aforesaid acts and/or omissions by the defendant the United States of America, Michael and Joseph Johnson suffered injuries resulting in their death on July 7, 2015, and Michael and Joseph Johnsons' Estates and lawful beneficiaries sustained damages and losses as described herein.

50. This action is brought on behalf of all persons who are entitled to recover damages under the wrongful death law applicable to this loss, including but not limited to:

- a. Lisa Johnson – Wife of Michael Johnson;
- b. Patrick Johnson – Son of Michael Johnson;
- c. Minor child of Joseph Johnson; and
- d. Other next-of-kin.

51. As a result of Michael and Joseph Johnsons' untimely and tragic death, plaintiffs have each sustained damages that include, but are not limited to:

- a. Loss of care, comfort, companionship and consortium;
- b. Loss of guidance and tutelage;
- c. Loss of inheritance;
- d. Loss of net accumulations;
- e. Loss of life's pleasures;
- f. Loss of support;
- g. Loss of earnings;
- h. Loss of society;
- I. Loss of companionship;
- j. Loss of love;
- k. Loss of affection;
- l. Loss of solace;
- m. Loss of protection;
- o. Loss of moral guidance;
- p. Loss of marital consortium;
- q. Loss of counsel;
- r. Loss of moral support;
- s. Loss of familial care;
- t. Loss of advice;
- u. And other damages as developed by discovery and evidence presented at trial.

52. By reason of the wrongful acts alleged herein, the plaintiffs and the heirs and next of kin of MICHAEL and JOSEPH JOHNSON, deceased, have sustained losses for which they are entitled to recover damages in wrongful death, and, further, heirs and next of kin of MICHAEL and JOSEPH JOHNSON have sustained mental anguish, grief, torment and distress, and have incurred funeral expenses, for all of which they are entitled to recover damages under the wrongful death law applicable to this loss.

WHEREFORE, plaintiffs, PATRICK JOHNSON, as administrator for the Estate of Michael Johnson and HILLARY ELLIOTT, as administrator for the Estate of Joseph Johnson pray for judgment against defendant THE UNITED STATES OF AMERICA in a sum that is fair and just and consistent with plaintiffs' submitted Claim for Damage, Injury or Death.

COUNT II

NEGLIGENCE – SURVIVOR ACTION

53. Plaintiffs incorporate by reference all prior allegations as if fully set forth herein.

54. Defendant the United States of America owed a duty to plaintiffs' decedents to exercise reasonable care in providing air control services.

55. On and before July 7, 2015, defendant the United States of America was negligent and in breach of its duties and superior duties described herein, in that the FAA personnel responsible for providing air traffic control and flight following to the accident aircraft, and the FAA personnel responsible for supervising, instructing, qualifying and training said personnel:

- a. Failed to prevent an occurrence of a mid-air collision in controlled airspace;
- b. Failed to resolve the conflict alert between the CESSNA and F-16;
- c. Failed to use their best judgment to ensure the safety of the occupants of the

- accident aircraft;
- d. Failed to issue safety alerts as required under FAA Order 7110.65 2-1-6;
 - e. Failed to adequately warn the F-16 of the conflict alert and impending traffic;
 - f. Failed to maintain situational awareness and did not take action until a collision was imminent;
 - g. Failed to provide appropriate radar navigational guidance;
 - h. Failed to take action as required under FAA Order 7110.65 10-1-1 to address an imminent emergency;
 - i. Failed to provide clear, concise standard instructions to the accident pilot as required by relevant rules, practices and regulations;
 - j. Failed to properly and adequately train, certify, and/or re-certify the air traffic control personnel responsible for the accident flight;
 - k. Failed to properly or adequately evaluate, monitor and supervise the air traffic control personnel responsible for the accident flight;
 - l. Failed to have present adequate experienced and competent personnel to appropriately handle the situation involved;
 - m. Failed to warn the F-16 of the immediate and extreme danger to his aircraft;
 - n. Failed to warn the F-16 of the danger the controllers created for the aircraft by assigning a vector and altitude which was dangerous and unsafe; and
 - o. Defendant United States was negligent for other reasons to be developed in discovery and presented at trial.
56. On and before July 7, 2015, defendant the United States of America was negligent

and in breach of its duties and superior duties described herein, in that the USAF personnel responsible for piloting the F-16 and the USAF personnel responsible for supervising, instructing, qualifying and training said personnel:

- a. Failed to prevent an occurrence of a mid-air collision in controlled airspace;
- b. Failed to see and avoid the CESSNA in accordance with FAR §91.113 and FAA AIM 5-5-8;
- c. Failed to maintain assigned altitude;
- d. Failed to take appropriate action when directed by Air Traffic Control;
- e. Failed to utilize all systems onboard the F-16 which could have prevented the collision; and
- f. the Defendant United States was negligent for other reasons to be developed in discovery and presented at trial.

57. As a direct and proximate result of the aforesaid acts and/or omissions by the defendant the United States of America, MICHAEL and JOSEPH JOHNSON suffered serious and traumatic injuries, including but not limited to physical and emotional trauma, severe mental anguish and fear of their impending death prior to July 7, 2015 for which they would have been entitled to seek damages had they survived.

WHEREFORE, plaintiffs, PATRICK JOHNSON, as administrator for the Estate of Michael Johnson and HILLARY ELLIOTT, as administrator for the Estate of Joseph Johnson deceased, pray for judgment against defendant THE UNITED STATES OF AMERICA in a sum that is fair and just and consistent with plaintiffs' submitted Claim for Damage, Injury or Death.

Dated this 4th day of April, 2017.

Respectfully submitted,

/s/ James R. Brauchle
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