TOP STORY—AIRCRAFT AND WATERCRAFT—N.D. Ill.: Suits filed against Boeing by Lion Air crash victims’ representatives, (Mar. 22, 2019)

By Georgia D. Koutouzos, J.D.

The aircraft manufacturer allegedly designed a defective flight control system for the ill-fated aircraft and failed to warn of that defect.

Two lawsuits arising from the crash of Lion Air Flight 610 have been filed against Chicago-based Boeing Co. in Illinois federal court by the survivors of two Indonesian passengers who had perished in the crash. Both suits seek damages under Illinois’ wrongful death and product liability laws, asserting claims for defective design and inadequate warnings with respect to the at-issue aircraft, a Boeing 737 MAX 8 that plunged into the Java Sea after apparently having experienced a flight control malfunction believed to have caused the plane to automatically and uncontrollably pitch downward (Manik v. Boeing Co. and Sagala v. Boeing Co., March 20, 2019).

On October 29, 2018, Flight 610—a scheduled flight operated by PT Lion Mentari Airlines (“Lion Air”) from Jakarta to Pangkal Pinang, Indonesia—experienced problems immediately after takeoff, prompting the pilot and co-pilot to ask air traffic control for help. Apparently, the pilots could not determine the plane’s correct altitude or airspeed because two critical sensors on the aircraft registered different readings. Outside of the plane, one of the airliner’s sensors falsely indicated that the aircraft’s nose was pointed too high and that the plane could stall. That data triggered the automatic flight control system, which pushed up the forward edge of the stabilizers on the aircraft’s tail and forced the nose down.

The pilots responded by moving the stabilizers in the opposite direction, trying to lift the plane’s nose back up. This created a tug of war between the plane and the pilots—nose down, nose up—that see-sawed the aircraft more than two dozen times. The pilots pulled desperately on the control columns in a last-ditch effort to attain level flight, but approximately twelve minutes after takeoff, the airliner plunged 5,000 feet at 450 miles per hour and crashed into the Java Sea, killing all 189 individuals on board.

A few months later, on March 10, 2019, another brand-new B-737 MAX 8 that recently had been delivered to Ethiopian Airlines crashed minutes after leaving Addis Ababa Airport, killing all 157 people on board. Preliminary reports indicate that both the Lion Air and the Ethiopian Air flights may have experienced the same malfunction, i.e., an unwarranted activation of the aircraft’s Manuevering Characteristics Augmentation System (MCAS), which is supposed to stabilize the plane in flight. In the days since the second crash, all countries have grounded Boeing 737 MAX 8 and 9 aircraft from continued operation.

Design defect claims. The survivors of two of the Lion Air Flight 610 passengers filed identical complaints against Boeing Co., contending that the B-737 MAX 8 had been sold and delivered to Lion Air by Boeing without having been altered by some other party and without substantial change in the condition since its sale and delivery. In addition, the aircraft was being used as intended, and is defective in design/unreasonably dangerous in the following ways, among others: (1) the automated flight control system—which is new and unique to the 737 MAX series—causes the aircraft to dive down automatically towards the ground in situations where such dives are unwarranted, unreasonably dangerous, and erroneous; (2) the electrical and computer components erroneously and automatically force the nose of the airplane down, causing it to dive, even when the aircraft is being flown manually by pilots; (3) the flight control system incorrectly and automatically operates the aircraft in such a way as to cause excessive nose-down inputs and significant altitude loss; (4) the sensors are defective...
Failure to warn. Furthermore, Boeing failed to warn airlines, pilots, users, and intended third-party beneficiaries of the defective automation that causes the B-737 MAX 8 to dive, the complaint alleges, adding that the manufacturer failed to warn of the defective sensors. The company also failed to warn and educate users on possible manual overrides to the defective system; failed to adequately test the aircraft, its flight control system, and its sensors; and failed to substantiate the changes from previous 737 models with sufficient testing and data.

Negligence claims. Boeing owed a duty to exercise reasonable care in planning, designing, certifying, manufacturing, assembling, installing, overhauling, modifying, repairing, testing, inspecting, marketing, and distributing its aircraft—including the subject aircraft and its component parts—so as not to cause injury to or the death of those who put the airliner to its normal and intended use. According to the complaint, Boeing negligently breached the duty of care it owed to the decedents and their representatives by negligently and carelessly designing the subject aircraft with unreasonably dangerous defects, by designing an unreasonably dangerous product that failed to perform in a manner reasonably to be expected in light of its nature and intended function, by placing the subject aircraft into the stream of commerce with unreasonably dangerous design defects, and by negligently failing to warn users of the 737 MAX 8’s unreasonably dangerous and defective design, including that the aircraft automatically and uncontrollably dived partly because of erroneous sensors.

Civil conspiracy. Finally, Boeing conspired with and assented to a scheme and/or agreement with other entities and individuals—including the Federal Aviation Administration and/or personnel delegated authority by that agency—to certify the B-737 MAX series in violation of U.S. laws and regulations for the purpose of speeding up the approval process of the series, which gave the manufacturer a financial and competitive advantage in the aviation industry.

Boeing and those other entities/individuals engaged in concerted actions to conceal, deny, and downplay the hazards and safety concerns, in violation of federal regulations, presented by the B-737 MAX 8’s new features, including its MCAS, heavier and repositioned engines, and unstable aerodynamics, the complaint charged. The company also took overt tortious and/or unlawful actions in furtherance of the conspiracy, including: (1) failing to correctly classify the safety concerns presented by the MCAS; (2) failing to adhere to industry standards and regulations in designing and testing the B-737 MAX series aircraft; (3) failing to recuse itself from the certification process when it knew or should have known that it was acting under tremendous financial pressure to certify the B-737 MAX promptly; and (4) applying pressure, whether directly or indirectly, to the personnel to whom regulatory authority to certify the B-737 MAX had been delegated, without appropriate testing and data, and in a rushed manner.

Damages. Accordingly, the decedents’ representatives are demanding jury trials and are seeking damages—including pecuniary losses, loss of companionship, loss of guidance, loss of consortium, loss of advice, loss of society, and damages associated with grief, sorrow, and mental suffering, as well as pain and suffering and emotional distress—plus costs, fees, and all other awards deemed just.

Attorneys: Steven C. Marks (Podhurst Orseck, P.A.) for Santi Amarti Sagala and Dewi Marlina Manik.

Companies: Boeing Co.

MainStory: TopStory ComplaintNewsStory DesignManufacturingNews WarningsNews DamagesNews AircraftWatercraftNews IllinoisNews