

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

EXCEL-JET, LTD., a Colorado Corporation,

Plaintiff,

v.

THE UNITED STATES OF AMERICA

Defendant.

COMPLAINT

Plaintiff, by and through its attorneys, Coppola & Marlin, P.C., and Schaden Katzman Lampert & McClune, for its Complaint against Defendant, states and alleges as follows:

PARTIES AND JURISDICTION

1. This action is brought pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2671, *et seq.* As set forth below, all conditions precedent to maintaining this cause of action have accrued.

2. At all relevant times, Plaintiff Excel-Jet, Ltd. was and is a Colorado corporation in good standing, with its principal place of business located at 1360 Aviation Way, Colorado Springs, Colorado 80916.

3. The incident giving rise to this action occurred on or about June 22, 2006 at the Municipal Airport in Colorado Springs, Colorado.

4. Jurisdiction and venue properly lie with this Court under 28 U.S.C. § 1346(b) and 28 U.S.C. § 1402(b), respectively.

5. At all relevant times, the air traffic controllers discussed below were and are agents and employees of Defendant, and the Defendant is vicariously liable and / or liable under the doctrine of *respondeat superior* for the actions and omissions of said air traffic controllers.

6. Six months have passed since Plaintiff placed Defendant on due notice of its claims pursuant to applicable law. Plaintiff's Form 95, and the attachments and amendments thereto, included a sum certain amount of damages sought and detailed information allowing Defendant to investigate the merits of Plaintiff's claims. *See* 28 U.S.C. § 2675. Jurisdiction is now proper because Defendant has failed to deny or admit the claims. This failure, at the option of Plaintiff, can be treated as a denial of the claims. *Id.*

GENERAL ALLEGATIONS

7. Plaintiff Excel-Jet, Ltd. was founded in 2003 by Bob Bornhofen for purposes of the development and eventual sales of a single engine jet named the Sport-Jet.

8. On June 22, 2006, at the Municipal Airport in Colorado Springs, Colorado, Plaintiff was preparing to fly its sole Sport-Jet prototype. The Sport-Jet was federally registered as N350SJ.

9. At the time and place aforesaid, the air traffic controllers cleared a DeHavilland Dash 8-200 (DH-8) ("Dash 8") air shuttle for takeoff on runway 17R. The Dash 8 commenced its takeoff roll from the end of runway 17R.

10. The air traffic controllers cleared N350SJ for takeoff on runway 17R, from an intersection upon the runway, after the departure of the Dash 8, in violation of the Air Traffic Control Manual.

11. The pilot of N350SJ, James Stewart, promptly commenced his takeoff roll on runway 17R.

12. N350SJ encountered wake turbulence from the Dash 8 and, at an altitude of approximately 15 feet, experienced an uncommanded, violent roll to the left. The left wing tip of N350SJ hit the ground, causing the aircraft to cartwheel and plummet down the runway.

13. N350SJ was registered with the Federal Aviation Administration on an experimental, proof-of-concept, airworthiness certificate.

14. N350SJ weighed approximately 3,450 pounds at the time of departure and was classified as a small aircraft under the Air Traffic Control Manual, FAA Order 7110.65 ("ATCM").

15. The Dash 8 air shuttle is classified as a large aircraft under the ATCM.

16. Regarding flight separation for intersection departures, the ATCM provides the following:

Separate a small aircraft taking off from an intersection on the same runway (same or opposite direction of takeoff) behind a preceding departing large aircraft by ensuring that the small aircraft does not start takeoff roll until at least 3 minutes after the large aircraft has taken off.

17. The air traffic controllers were familiar with the Sport-Jet and knew or should have known that N350SJ was an experimental aircraft and was classified as a small aircraft under the ATCM.

18. The air traffic controllers knew or should have known that the Dash 8 was classified as a large aircraft under the ATCM.

19. By clearing N350SJ for takeoff and otherwise failing to ensure safe and proper flight separation, the air traffic controllers failed to perform their duties, including, but not limited to, following mandatory procedures set forth in 14 C.F.R. § 65.45 and the ATCM.

FIRST CLAIM FOR RELIEF
(Negligence)

20. Plaintiff incorporates by reference each and every paragraph of this Complaint as though fully set forth herein.

21. The air traffic controllers owed duties of reasonable care to Plaintiff, including, but not limited to, the following:

- a) The air traffic controllers owed a duty to Plaintiff to be familiar and comply with the mandatory provisions of the Air Traffic Control Manual.
- b) The air traffic controllers owed a duty to Plaintiff to give Plaintiff's pilot all applicable information and warnings specified in the Air Traffic Control Manual and, in situations such as those which existed at the time of the take off of N350SJ, to take steps beyond those set forth in the Air Traffic Control Manual in order to assure safety.

22. The air traffic controllers negligently and carelessly breached their duties to Plaintiff by, *inter alia*, failing to adequately follow proper procedures relating to wake turbulence and flight separation.

23. As a direct and proximate result of the negligence and carelessness of the air traffic controllers, for which Defendant is liable, Plaintiff suffered property losses and economic damages including loss of the subject aircraft, diminution in the value of Plaintiff's business, and

loss of future sales and profits stemming from the crash and destruction of Plaintiff's single prototype aircraft.

WHEREFORE, Plaintiff prays for judgment in its favor and against Defendant as follows:

- A. For compensatory damages in an amount to be proven at trial;
- B. For interest as provided by law;
- C. For Plaintiff's costs of suit herein;
- D. For such other and further relief as this Court deems just and proper.

DATED this 16th day of October, 2007.

COPPOLA & MARLIN, P.C.

By: *s/ Frank W. Coppola*

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