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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KALITTA AIR, L.L.C., as assignee of
American International Airways, Inc.,

Plaintiff,

v.

CENTRAL TEXAS AIRBORNE SYSTEMS, INC.,

Defendant.

No. C 96-2494 CW

PRELIMINARY JURY
INSTRUCTIONS
[VERSION TWO]

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United States District Court
For the Northern District of California

DUTY OF THE JURY

Ladies and gentlemen: You are now the jury in this case. It is my duty to instruct you on the law.

These instructions are preliminary instructions to help you understand the principles that apply to civil trials and to help you understand the evidence as you listen to it. You will be given a copy of these instructions to keep throughout the trial. This set of instructions is not to be taken home and must remain in the jury room when you leave in the evenings. At the end of the trial, I will give you a final set of instructions. It is the final set of instructions which will govern your deliberations.

You must not infer from these instructions or from anything I may say or do that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you.

1 You must follow the law as I give it to you whether you agree with
2 it or not. And you must not be influenced by any personal likes or
3 dislikes, opinions, prejudices or sympathy. That means that you
4 must decide the case solely on the evidence before you. You will
5 recall that you took an oath to do so.

6 In following my instructions, you must follow all of them and
7 not single out some and ignore others; they are all important.

8 **CLAIMS AND DEFENSES**

9 To help you follow the evidence, I will give you a brief
10 summary of the positions of the parties:

11 In this case, the Plaintiff is suing the Defendant for
12 negligence. The Plaintiff company is Kalitta Air, which used to be
13 known as American International Airways or AIA, and is owned by
14 Conrad Kalitta. The Defendant company is Central Texas Airborne
15 Systems or CTAS.

16 Kalitta had contracted with a company called GATX/Airlog to
17 convert two Boeing 747 airplanes from passenger planes to freighter
18 planes. The two planes in question are often referred to by their
19 tail numbers, N701CK and N706CK. However, after the planes were
20 converted, the Federal Aviation Administration, also known as the
21 FAA, ordered that the planes could not fly if they carried the
22 220,000 pounds of freight that they were intended to carry, which
23 meant that it was not profitable to use them. As a result, the
24 Kalitta sued CTAS. Other companies which were involved in the
25 transaction but are not parties in this trial are Evergreen
26 International Airlines, the Bank of New York or BNY, GATX/Airlog,
27 Pemco Aeroplex, which used to be called Hayes International

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1 Corporation, and Elsinore Aerospace Services.

2 Kalitta claims that CTAS negligently performed the
3 modification. Kalitta is asking for CTAS to pay for direct damages
4 caused by the grounding of the planes and for consequential damages
5 caused to the company.

6 CTAS denies Kalitta's claim for negligence. CTAS also denies
7 that Kalitta is entitled to damages.

8 **WHAT IS EVIDENCE**

9 The evidence you are to consider in deciding what the facts
10 are consists of:

- 11 (1) the sworn testimony of any witness;
12 (2) the exhibits which are received into evidence; and
13 (3) any facts to which the lawyers stipulate.

14 **WHAT IS NOT EVIDENCE**

15 In reaching your verdict, you may consider only the testimony
16 and exhibits received into evidence. Certain things are not
17 evidence, and you may not consider them in deciding what the facts
18 are. I will list them for you:

19 (1) Arguments and statements by lawyers are not evidence. The
20 lawyers are not witnesses. What they will say in their opening
21 statements, closing arguments, and at other times is intended to
22 help you interpret the evidence, but it is not evidence. If the
23 facts as you remember them differ from the way the lawyers state
24 them, your memory of them controls.

25 (2) Questions and objections by lawyers are not evidence.
26 Attorneys have a duty to their clients to object when they believe
27 a question is improper under the rules of evidence. You should not

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1 be influenced by the objection or by the Court's ruling on it.

2 (3) Testimony that is excluded or stricken, or that you are
3 instructed to disregard, is not evidence and must not be
4 considered.

5 (4) Anything you see or hear when the Court is not in session
6 is not evidence. You are to decide the case solely on the evidence
7 received at the trial.

8 **EVIDENCE FOR LIMITED PURPOSE**

9 Some evidence may be admitted for a limited purpose only.
10 When I instruct you that an item of evidence has been admitted for
11 a limited purpose, you must consider it only for that limited
12 purpose and for no other.

13 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

14 Evidence may be direct or circumstantial. Direct evidence is
15 direct proof of a fact, such as testimony by a witness about what
16 that witness personally saw or heard or did. Circumstantial
17 evidence is proof of one or more facts from which you could find
18 another fact. You should consider both kinds of evidence. The law
19 makes no distinction between the weight to be given to either
20 direct or circumstantial evidence. It is for you to decide how
21 much weight to give to any evidence.

22 **RULING ON OBJECTIONS**

23 There are rules of evidence that control what can be received
24 into evidence. When a lawyer asks a question or offers an exhibit
25 into evidence and a lawyer on the other side thinks that it is not
26 permitted by the rules of evidence, that lawyer may object. If I
27 overrule the objection, the question may be answered or the exhibit

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1 received. If I sustain the objection, the question cannot be
2 answered, and the exhibit cannot be received. Whenever I sustain
3 an objection to a question, you must ignore the question and must
4 not guess what the answer might have been.

5 **CREDIBILITY OF WITNESSES**

6 In deciding the facts in this case, you may have to decide
7 which testimony to believe and which testimony not to believe. You
8 may believe everything a witness says, or part of it, or none of
9 it.

10 In considering the testimony of any witness, you may take into
11 account:

- 12 (1) the opportunity and ability of the witness to see or hear or
13 know the things testified to;
14 (2) the witness' memory;
15 (3) the witness' manner while testifying;
16 (4) the witness' interest in the outcome of the case and any bias
17 or prejudice;
18 (5) whether other evidence contradicted the witness' testimony;
19 (6) the reasonableness of the witness' testimony in light of all
20 the evidence; and
21 (7) any other factors that bear on believability.

22 The weight of the evidence as to a fact does not necessarily
23 depend on the number of witnesses who testify about it.

24 **EXPERT OPINION**

25 Some witnesses, because of education or experience, are
26 permitted to state opinions and the reasons for those opinions.

27 Opinion testimony should be judged just like any other
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1 testimony. You may accept it or reject it, and give it as much
2 weight as you think it deserves, considering the witness's
3 education and experience, the reasons given for the opinion, and
4 all the other evidence in the case.

5 **CHARTS AND SUMMARIES**

6 Certain charts and summaries may be received into evidence to
7 illustrate information brought out in the trial. Charts and
8 summaries are only as good as the underlying evidence that supports
9 them. You should, therefore, give them only such weight as you
10 think the underlying evidence deserves.

11 Certain graphics not received in evidence may be shown to you
12 in order to help explain the contents of books, records, documents
13 or other evidence in the case. They are not themselves evidence or
14 proof of any facts. If they do not correctly reflect the facts or
15 figures shown by the evidence in the case, you should disregard
16 these graphics and determine the facts from the underlying
17 evidence.

18 **CORPORATIONS**

19 All parties are equal before the law and a corporation is
20 entitled to the same fair and conscientious consideration by you as
21 any party.

22 **LIABILITY OF CORPORATIONS**

23 Under the law, a corporation is considered to be a person. It
24 can only act through its employees, agents, directors, or officers.
25 Therefore, a corporation is responsible for the acts of its
26 employees, agents, directors, and officers performed within the
27 scope of authority.

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1 about the case or anything to do with it; do not do any research,
2 such as consulting dictionaries, searching the Internet or using
3 other reference materials; and do not make any investigation or in
4 any other way try to learn about the case on your own.

5 I know that many of us are used to communicating and learning
6 by electronic communications and research. However, there are good
7 reasons why you must not electronically communicate or do any
8 research on anything having to do with this trial or the parties.

9 In court, jurors must make important decisions that have
10 consequences for the parties. Those decisions must be based only
11 on the evidence that you hear in this courtroom.

12 The evidence that is presented in court can be tested; it can
13 be shown to be right or wrong by either side; it can be questioned;
14 and it can be contradicted by other evidence. What you might read
15 or hear on your own could easily be wrong, out of date, or
16 inapplicable to this case.

17 The parties can receive a fair trial only if the facts and
18 information on which you base your decisions are presented to you
19 as a group, with each juror having the same opportunity to see,
20 hear, and evaluate the evidence.

21 Also, a trial is a public process that depends on disclosure
22 in the courtroom of facts and evidence. Using information gathered
23 in secret by one or more jurors undermines the public process and
24 violates the rights of the parties.

25 A juror who violates these restrictions jeopardizes the
26 fairness of these proceedings, and a mistrial could result that
27 would require the entire trial process to start over. If any juror
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1 is exposed to any outside information, please notify the court
2 immediately.

3 **NO TRANSCRIPT AVAILABLE TO JURY**

4 At the end of the trial, you will have to make your decision
5 based on what you recall of the evidence. You will not have a
6 transcript of the trial. I urge you to pay close attention to the
7 testimony as it is given.

8 If at any time you cannot hear or see the testimony, evidence,
9 questions or arguments, let me know so that I can correct the
10 problem.

11 **TAKING NOTES**

12 If you wish, you may take notes to help you remember the
13 evidence. If you do take notes, please keep them to yourself until
14 you and your fellow jurors go to the jury room to decide the case.
15 Do not let note-taking distract you. When you leave, your notes
16 should be left in the jury room. No one will read your notes.
17 They will be destroyed at the conclusion of the case.

18 Whether or not you take notes, you should rely on your own
19 memory of the evidence. Notes are only to assist your memory. You
20 should not be overly influenced by your notes or those of your
21 fellow jurors.

22 **QUESTIONS TO WITNESSES BY JURORS**

23 You will be allowed to propose written questions to witnesses.
24 You may propose questions in order to clarify the testimony, but
25 you are not to express any opinion about the testimony or argue
26 with a witness. If you propose any questions, remember that your
27 role is that of a neutral fact finder, not an advocate.

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1 After the evidence has been presented, I will instruct you on
2 the law that applies to the case and the attorneys will make
3 closing arguments.

4 After that, you will go to the jury room to deliberate on your
5 verdict.

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7 Dated: October 28, 2011



CLAUDIA WILKEN
United States District Judge

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