



1 (1) the extent to which the transaction was intended to affect the  
2 plaintiff, (2) the foreseeability of harm to the plaintiff,  
3 (3) the degree of certainty that the plaintiff suffered injury,  
4 (4) the closeness of the connection between the defendant's  
5 conduct and the injury suffered, (5) the moral blame attached to  
6 the defendant's conduct, and (6) the policy of preventing future  
7 harm. Id.

8 Prior to trial, CTAS had moved for summary judgment that it  
9 had no special relationship with Kalitta. The Court found that  
10 disputed issues of material fact precluded such a ruling. With  
11 the parties' agreement, the Court contemplated that, if the jury  
12 returned a negligence verdict and awarded damages, the Court would  
13 then resolve whether a special relationship existed under the six  
14 factor test in J'Aire, being advised by the jury's findings. If  
15 the Court found no special relationship, the jury's negligence  
16 verdict and damages award would have been set aside as violative  
17 of the economic loss rule. At the close of Kalitta's case at  
18 trial, CTAS moved for judgment as a matter of law, pursuant to  
19 Federal Rule of Civil Procedure 50(a)(1), and the Court took the  
20 motion under submission. Thereafter, the jury returned a verdict  
21 finding that CTAS was not negligent. CTAS renewed its Rule  
22 50(a)(1) motion under Rule 50(b).

23 The jury's verdict on the question of CTAS's negligence  
24 informs several of the J'Aire factors. With respect to the second  
25 J'Aire factor, the Court infers, based on the jury's verdict of no  
26 negligence, that any harm to Kalitta was not foreseeable. Finding  
27 no negligence, the jury had no occasion to determine whether  
28 Kalitta suffered injury, the third factor. However, even if

1 Kalitta suffered economic injury from the grounding of its  
2 airplanes, the jury's verdict indicates that the injury was not  
3 caused by CTAS. Thus, the connection between CTAS's conduct and  
4 Kalitta's injury is not close, the fourth factor. Given that CTAS  
5 was found not negligent, under the fifth factor, moral blame  
6 cannot be attached to CTAS' conduct and, under the sixth factor,  
7 the policy of preventing future harm would not be furthered by an  
8 exception to the economic loss rule here.

9 More importantly, however, a determination on the special  
10 relationship question is now moot because no damages have been  
11 awarded. The Court will not make an advisory ruling as to whether  
12 the transaction was intended to affect Kalitta, or what it would  
13 find if the jury's verdict were set aside and a new jury were to  
14 find negligence and award damages.

15 CTAS's request for entry of judgment pursuant to Federal Rule  
16 of Civil Procedure 58 is granted, although not in the language  
17 proposed by CTAS. The clerk will enter judgment for CTAS and CTAS  
18 shall recover its costs from Kalitta.

19 IT IS SO ORDERED.

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21 Dated: 3/20/2012

  
22 CLAUDIA WILKEN  
23 United States District Judge  
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