

JUDGE BUCHWALD**11 CIV 6581**

Louis R. Martinez (LM9155)
 Richard Ritorto (RR2774)
 MARTINEZ & RITORTO, P.C.
 67 Wall Street, 25th Floor
 New York, New York 10005
 Tel. (212) 248-0800
 Attorneys for Defendant
 DELTA AIR LINES, INC.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

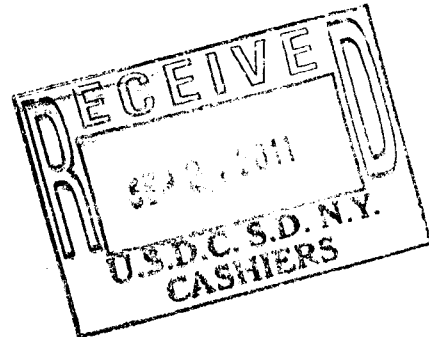
ELEFThERIA MARIA TSIAVOS,

Plaintiff,

-against-

DELTA AIRLINES, INC.,

Defendants.



Case No.:

**DEFENDANT'S NOTICE OF
 REMOVAL**

ECF CASE

This Notice of Defendant DELTA AIR LINES, INC. (hereinafter "DELTA"), by its attorneys, MARTINEZ & RITORTO, P.C., for removal of this action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York, respectfully shows this Honorable Court:

1. The Summons and Verified Complaint in this action were served on DELTA via Corporation Service Company, DELTA's designated New York agent for service of process, on September 1, 2011; a true copy of the Proof of Service is attached hereto as Exhibit "A" and made a part hereof.

2. True copies of the Summons and Verified Complaint dated August 18, 2011, are attached hereto as Exhibit "B" and made a part hereof.

3. That the time to answer or otherwise move with respect to the Summons and Verified Complaint has not yet expired.

4. That, upon information and belief, the aforementioned Summons and Verified Complaint were the first and only pleadings delivered to DELTA in the said action.

5. That the above-referenced action is a civil action allegedly arising out of personal injuries sustained on or about January 5, 2011, aboard DELTA Flight 133 from Athens, Greece to John F. Kennedy International Airport in Jamaica, New York.

6. That thirty days have not yet expired since the action became removable to this Court.

7. That, upon information and belief, Plaintiff Eleftheria Maria Tsiavos is a resident of New York, New York.

8. That Defendant DELTA was at all times relevant herein a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business in Georgia. DELTA's address is 1030 Delta Boulevard, Atlanta, GA 30354.

9. That, upon information and belief, and based on the Verified Complaint, the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

BASES FOR REMOVAL

10. That the basis for removal is that this action is one over which the District Courts of the United States have original jurisdiction by reason of the diversity of

citizenship of the parties. Therefore, by virtue of the provisions of Title 28, United States Code, Section 1441(a), the entire case is one that may be removed to this Court.

11. That an alternative basis for removal is that this action is one over which the District Courts of the United States have original jurisdiction by reason of Federal Question Jurisdiction under Title 28, United States Code, Section 1331 on the basis that the Montreal Convention, S. Treaty Doc. No. 106-45, preempts state law standards governing aviation safety and flight operations concerning international flight. According to the allegations contained in the Complaint, Plaintiff sustained personal injuries while aboard an international flight from Greece to the United States. Therefore, by virtue of the provisions of Title 28, United States Code, Section 1441(b), the entire case is one that may be removed to this Court.

12. An alternative basis for removal is that this action is one over which the District Courts of the United States have original jurisdiction by reason of Federal Question Jurisdiction under Title 28, United States Code, Section 1331 on the basis that the Airline Deregulation Act of 1978 (ADA), 49 U.S.C. App. § 1305(a)(1), preempts state law relating to the rates, routes, or services of any air carrier. Plaintiffs' claims require the resolution of issues relating to the services of an air carrier. Therefore, by virtue of the provisions of Title 28, United States Code, Section 1441(b), the entire case is one that may be removed to this Court.


13. An alternative basis for removal is that this action is one over which the District Courts of the United States have original jurisdiction by reason of Federal Question Jurisdiction under Title 28, United States Code, Section 1331 on the basis that the Federal Aviation Act of 1958, 49 U.S.C. § 40101 et seq., implicitly

preempts state law standards governing aviation safety and flight operations. Plaintiffs' claims require the resolution of substantial questions of federal law, including aviation safety and flight operations. Therefore, by virtue of the provisions of Title 28, United States Code, Section 1441(b), the entire case is one that may be removed to this Court.

WHEREFORE, Defendant DELTA respectfully submits that: 1) this Notice complies with the statutory removal requirements; 2) this action should proceed in this Honorable Court as a properly removed action; and 3) that Defendant DELTA should have such other and further relief as this Court may deem just and proper.

Dated: New York, New York
September 20 2011

MARTINEZ & RITORTO, P.C.

By 
Louis R. Martinez (LM9155)

67 Wall Street, 25th Floor
New York, New York 10005
(212) 248-0800

Attorneys for Defendant
DELTA AIR LINES, INC.

TO:

Costas M. Eliades, Esq.
Law Offices of Costas M. Eliades, P.C.
405 Lexington Ave, 26th Floor
New York, NY 10174

Attorneys for Plaintiff

EXHIBIT A

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NOTICE OF SERVICE OF PROCESS

Transmittal Number: 9069723

Date: 09/01/2011


Pursuant to client instructions, we are forwarding this summary and notice of Service of Process. The Service of Process document has been sent to the primary contact listed below.

Entity:	Delta Air Lines, Inc.
Entity I.D. Number:	2078129
Entity Served:	Delta Airlines Inc.
Title of Action:	Eleftheria Maria Tsiavos vs. Delta Airlines Inc.
Document(s) type:	Summons/Complaint
Nature of Action:	Personal Injury
Court/Agency:	New York County Supreme Court, New York
Case/Reference No:	109990/11
Jurisdiction Served:	New York
Date Served on CSC:	09/01/2011
Answer or Appearance Due:	20 Days
Originally Served On:	CSC
How Served:	Personal Service

Sender Information:

Costas M. Eliades
212-947-7077

Primary Contact:


Delta Air Lines, Inc

NOTES:

Plaintiff was injured by a meal cart while aboard an airplane.

To review other documents in this matter, please link to CSC's Matter Management Services at www.cscglobal.com

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the document(s) and taking appropriate action.

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Tsiavos.pdf

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
ELEFThERIA MARIA TSIAVOS,

Plaintiff(s),

-against-

DELTA AIRLINES, INC.,

Defendant(s).

Index No.: 109990/11

Date Filed:

SUMMONS

Plaintiffs designate
NEW YORK County
as the place of trial.

The basis of the venue is
Plaintiff's residence:
NEW YORK County

NEW YORK
COUNTY CLERK'S OFFICE

AUG 30 2011

NOT COMPARED
WITH COPY FILE

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York). In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 18, 2011



LAW OFFICES OF COSTAS M. ELIADES, P.C.
Attorneys for Plaintiff
ELEFThERIA MARIA TSIAVOS
405 Lexington Avenue - 26th Floor
New York, New York 10174
(212) 947-7077

DEFENDANT'S ADDRESS:

DELTA AIRLINES, INC.
c/o CORPORATION SERVICE COMPANY
80 State Street
Albany, New York 12207-2543

158676

AC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
ELEFThERIA MARIA TSIAVOS,

Plaintiff(s),

-against-

DELTA AIRLINES, INC.,

Defendant(s).
-----x

Index No.:

109990/11

VERIFIED COMPLAINT

AUG 30 2011

The Plaintiff, by her attorneys, LAW OFFICES OF COSTAS M. ELIADES, P.C. complaining of the defendant, respectfully alleges, upon information and belief, as follows:

1. That at all of the times hereinafter mentioned, the plaintiff, ELEFThERIA MARIA TSIAVOS, was and still is a resident of the County of New York, City of New York, and State of New York.

2. That at all of the times hereinafter mentioned, and upon information and belief, the defendant, DELTA AIRLINES, INC., was and is a domestic corporation organized and existing under and by virtue of the laws of the State of New York.

3. That at all of the times hereinafter mentioned, and upon information and belief, the defendant, DELTA AIRIINES, INC., was and is a foreign corporation authorized to do business under and by virtue of the Laws of the State of New York.

4. That at all of the times hereinafter mentioned, and upon information and belief, the defendant, DELTA AIRIINES, INC., was and is a common carrier of passengers for hire and was and is engaged in the business of operating commercial aircraft.

5. That at all of the times hereinafter mentioned, and upon information and belief, the defendant, DELTA AIRLINES, INC., owned, operated, controlled and managed a fleet of airplanes in furtherance of its business of owning, operating, managing and/or otherwise controlling an airline and various airplanes.

6. That at all of the times hereinafter, and upon information and belief, the defendant, DELTA AIRLINES, INC., owned a certain aircraft designated as flight number "133," traveling from Athens, Greece, to New York (John F. Kennedy International Airport).

7. That at all of the times hereinafter, and upon information and belief, the defendant, DELTA AIRLINES, INC., operated a certain aircraft designated as flight number "133," traveling from Athens, Greece, to New York (John F. Kennedy International Airport).

8. That at all of the times hereinafter, and upon information and belief, the defendant, DELTA AIRLINES, INC., controlled a certain aircraft designated as flight number "133," traveling from Athens, Greece, to New York (John F. Kennedy International Airport).

9. That at all of the times hereinafter, and upon information and belief, the defendant, DELTA AIRLINES, INC., managed a certain aircraft designated as flight number "133," traveling from Athens, Greece, to New York (John F. Kennedy International Airport).

10. That on or about the 5th day of January, 2011, the plaintiff, ELEFThERIA MARIA TSIAVOS, was lawfully a passenger on board defendant, DELTA AIRLINES, INC.'s certain aircraft designated as flight number "133" traveling from Athens, Greece, to New York (John F. Kennedy International Airport).

11. That on or about the 5th day of January, 2011, the defendant, DELTA AIRLINES, INC., negligently, recklessly and carelessly suffered and permitted the aforesaid aircraft, including but not limited to an aircraft meal/service cart on the aforesaid aircraft and flight, as well as all devices, braking mechanisms, equipment, apparatus, attachments, accessories, connections and mechanisms attached to said aircraft meal/service cart to be, become and remain in a dangerous, unsafe and defective condition therein.

12. That the defendant, DELTA AIRLINES, INC. herein was negligent, reckless and careless in that they violated their duty to passengers lawfully on the aforesaid aircraft and flight, and to this plaintiff, ELEFThERIA MARIA TSIAVOS, in particular, in knowingly permitting suffering and allowing the aforesaid aircraft, including but not limited to an aircraft meal/service cart on the aforesaid aircraft and flight, as well as all devices, braking mechanisms, equipment, apparatus, attachments, accessories, connections and mechanisms attached to said aircraft meal/service cart, to be, become and remain in a

defective, unsafe and dangerous condition, and was further negligent in failing to take suitable precaution for the safety and safe passage of persons lawfully on the aforesaid aircraft and flight.

13. That on or about the 5th day of January, 2011, while the plaintiff, ELEFThERIA MARIA TSIIVOS, was lawfully seated in her assigned airline seat aboard the aforementioned aircraft and flight, an aircraft meal/service cart owned, operated, controlled, and maintained by defendant DELTA AIRLINES, INC. and its flight attendant employees, was caused to violently strike the plaintiff, thereby causing the plaintiff to sustain serious personal injuries.

14. That the aforesaid accident and injuries resulting therefrom were due solely and wholly as a result of the careless and negligent manner in which the defendant, DELTA AIRLINES, INC., owned, operated, maintained and controlled the aforesaid aircraft, including but not limited to the aircraft meal/service cart on the aforesaid aircraft and flight, as well as all devices, braking mechanisms, equipment, apparatus, attachments, accessories, connections and mechanisms attached to said aircraft meal/service cart, without the plaintiff, ELEFThERIA MARIA TSIIVOS, in any way contributing thereto.

15. That by reason of the foregoing and the negligence of the defendants, this plaintiff, ELEFThERIA MARIA TSIIVOS, was severely injured, bruised and wounded, suffered, still suffers and will continue to suffer for some time physical pain and bodily injuries and became sick, sore, lame and disabled and so remained for a considerable length of time.

16. That by reason of the foregoing, the plaintiff, ELEFThERIA MARIA TSIAVOS, was compelled to and did necessarily require medical aid and attention, and did necessarily pay and become liable therefore, for medicines and upon information and belief, the plaintiff, ELEFThERIA MARIA TSIAVOS, will necessarily incur similar expenses for an indefinite period of future duration.

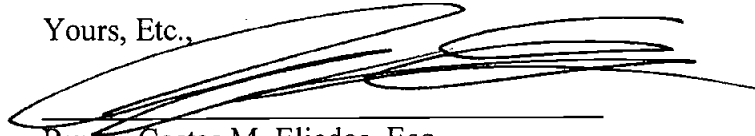
17. That by reason of the foregoing, the plaintiff, ELEFThERIA MARIA TSIAVOS, has been unable to attend to her usual and customary daily activities in the manner required.

18. That as a result of the defendant's negligence as aforesaid, this plaintiff, ELEFThERIA MARIA TSIAVOS, has been injured and damaged in an amount exceeding the jurisdictional limits of all lower Courts, which otherwise would have jurisdiction over this action.

WHEREFORE, the plaintiff, ELEFThERIA MARIA TSIAVOS, demands Judgment against the defendant, DELTA AIRLINES, INC., in an amount exceeding the jurisdictional limits of all lower Courts which otherwise would have jurisdiction over this action, all together with the cost, disbursements, and interest of this action.

Dated: New York, New York
August 18, 2011

Yours, Etc.,



By: Costas M. Eliades, Esq.
LAW OFFICES OF COSTAS M. ELIADES, P.C.
Attorneys for Plaintiff
ELEFThERIA MARIA TSIIVOS
405 Lexington Avenue – 26th Floor
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