

Martinez, Asiris

vs.

Compania Cubano De Avuacion S.A.

Docket

118

CASE NO.

59L 3445

Division

ROBERT H. ANDERSON - H

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83.

Index AA-136

COMMON LAW

IN CIRCUIT COURT

IN AND FOR

DADE COUNTY, FLORIDA

Asiris Martinez

Plaintiff....

vs.

Compania Cubano De Avuacion S.A.

Defendant....

Action for

Damages \$5,000.00

Hendericks & Hendericks

Attorney.....for Plaintiff.....

This File Must Not Be Withheld from Clerk's Office Without Leave of Court. E. B. LEATHERMAN, Clerk, Circuit Court

FILED FOR RECORD

NOV 20 10 43 AM 1958

CLERK OF DISTRICT COURT  
DADE COUNTY, FLA.

CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT IN AND FOR  
DADE COUNTY FLORIDA

LAW

NO. 59 L 3445 - H

OSIRIS MARTINEZ, .  
Plaintiff, .

v. .

AMENDED COMPLAINT

COMPANIA CUBANO DE AVIACION, .  
S.A. a Cuban corporation, .  
Defendant. .

. . . . .

Plaintiff, Osiris Martinez, dues the defendant, Compania Cubano De Aviacion, S.A. a Cuban corporation, and alleges:

Cause of Action #1

1. Plaintiff is a citizen of the United States of America and a resident of the State of Tennessee; the defendant is a corporation incorporated in the Republic of Cuba and is authorized and actively doing business in Dade County, Florida.

2. Plaintiff was the husband of Betty June Martinez, and the father of Michael Anthony Martinez, Byron Rosendo Martinez, and Carl Manuel Martinez, on and prior to November 1, 1958.

3. The defendant, Compania Cubano De Aviacion, S.A. a Cuban corporation, owns and operates passenger aircraft for transportation to and from various points in the United States and countries in the Caribbean area, and contracts with its passengers as a common carrier for the public.

4. Prior to November 1, 1958 the defendant through its authorized agents in the State of Tennessee

for consideration sold to the plaintiff and to the wife and children of the plaintiff tickets for air transportation from the State of Tennessee to Varadero, Cuba via Miami, Dade County, Florida, such flight to be on #495 of the defendant airline.

5. By its contract of carriage the defendant agreed to transport the plaintiff, the wife and children of the plaintiff, and to maintain the degree of care necessary for their safe transportation and conduct from Tennessee to Varadero, Cuba, and the defendant failed to provide such safe transportation and acted in a negligent and careless manner in the following way:-

(a) The defendant airline carelessly and negligently failed and omitted to provide the aircraft carrying the plaintiff, the wife and children of the plaintiff, with sufficient fuel to complete its designated flight from Miami, Florida to Varadero, Cuba with reasonably foreseeable deviations.

(b) The defendant airline, through its authorized agent, negligently and carelessly permitted persons aboard the aircraft with the intent of varying the course of the aircraft and taking it from its normal route from Miami, Florida to Varadero, Cuba, causing an excessive amount of fuel to be used.

(c) The defendant, through its authorized agents, negligently and carelessly failed to provide adequate instructions to the passengers and precaution for survival on a flight over extended water and sea.

(d) That the defendant, through its authorized agents, entered into a conspiracy to vary the direct flight path from Miami, Florida, to

Varadero, Cuba, which created unusual flight conditions and exhausted the fuel supply of the aircraft.

6. As a result of the foregoing acts of negligence and carelessness the aircraft operated by the defendant on said Flight #495 from Miami, Florida to Varadero, Cuba, crashed at Nipe Bay, Cuba on November 1, 1958, and plaintiff's wife, Betty June Martinez, and plaintiff's children, Michael Anthony Martinez, Byron Rosendo Martinez, and Carl Manuel Martinez were killed.

7. As a direct and proximate result of said negligence of the defendant the plaintiff has lost the comfort, services, and consortium of his wife, Betty June Martinez, and has lost the society and services of his children, Michael Anthony Martinez, Byron Rosenda Martinez, and Carl Manuel Martinez, and the plaintiff has suffered great mental pain and suffering caused by the loss of his wife and children.

#### Cause of Action #2

1. Plaintiff, Osiris Martinez, re-affirms and re-alleges Cause of Action #1, Paragraphs 1, 3, 4, and 5.

2. As a direct result of the foregoing acts of negligence and carelessness in the defendant's operation of the aircraft on said Flight #495 from Miami, Florida to Varadero, Cuba, the plaintiff was injured in an accident of said aircraft at Nipe Bay, Cuba on November 1, 1958.


3. As a direct and proximate result of the foregoing acts of negligence and carelessness of the defendant, the plaintiff was severely injured in and about his feet, skull, face and body, including fractures, scars, lacerations, disfigurement and disabling disease, all of

which injuries are permanent, lasting and continuous; and plaintiff has further suffered great mental pain and suffering caused by the foregoing injuries and disease, and has sustained loss of wages and diminishment in his earning capacity, and has incurred medical, hospital, and nursing expenses, and incurred transportation costs, and costs for medicines and medical treatment, all the proximate result of the negligence of the defendant.

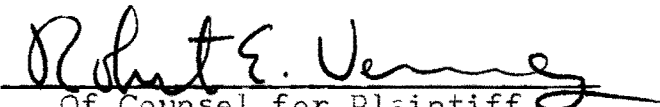
WHEREFORE, Plaintiff, Osiris Martinez, sues the defendant and alleges that the matters in controversy in this cause exceed in value \$5,000.00, and are matters within the jurisdiction of this Court; and Plaintiff further demands trial by jury of all issues.

HENDRICKS & HENDRICKS

BY

  
Attorneys for Plaintiff  
603 Seybold Building  
Miami 32 Fla

WE HEREBY CERTIFY that a copy of the foregoing Amended Complaint was mailed on this 18th day of November, 1959 to the defendant, Compania Cubano De Aviacion S.A. attention of Mr. Jose Herrera, 100 Biscayne Boulevard, Miami, Florida.

  
Of Counsel for Plaintiff

FILED FOR RECORD  
IN THE CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND  
FOR DADE COUNTY. AT LAW.  
NOV 20 10 59 AM 1959

No. 59L3445

E. B. LEATHERMAN  
CLK. CT. DADE CO. FLA.

OSIRIS MARTINEZ,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COPY OF PETITION FOR
	)	<u>REMOVAL</u>
COMPANIA CUBANO DE AVIACION, S.A.)	)	
a Cuban corporation,	)	
	)	
Defendant.	)	

In accordance with Title 28, U.S. Code, Section 1446, the Defendant in the above cause files the attached copy of its Petition for Removal which has been filed this day in the District Court of the United States for the Southern District of Florida, Miami Division.

Dated this 20<sup>th</sup> day of November, 1959.

SMATHERS, THOMPSON & DYER

By David W. Dyer  
Attorneys for Defendant

I HEREBY CERTIFY that a true copy of the foregoing Copy of Petition for Removal was mailed this 20<sup>th</sup> day of November, 1959, to Messrs. Hendricks & Hendricks, attorneys for Plaintiff, 603 Seybold Building, Miami 32, Florida, this 20<sup>th</sup> day of November, 1959.

David W. Dyer  
Of Counsel

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

No.

OSIRIS MARTINEZ,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>PETITION FOR REMOVAL</u>
	)	
COMPANIA CUBANO DE AVIACION, S.A.	)	
a Cuban corporation,	)	
	)	
Defendant.	)	
_____	)	

1. The Petitioner, COMPANIA CUBANA DE AVIACION, S.A., a Cuban corporation, by its undersigned attorneys, states that it is the Defendant named in Summons dated November 2, 1959, and served upon Defendant on November 4, 1959, issued out of the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, No. 59L3445, in which OSIRIS MARTINEZ is Plaintiff and COMPANIA CUBANA DE AVIACION, S.A. is Defendant.

2. COMPANIA CUBANA DE AVIACION, S.A. is a corporation organized and existing under the laws of the Republic of Cuba with its principal place of business in Havana, Cuba, and not in the State of Florida, and was so organized and existing and had its principal place of business as above stated at the time of the commencement of this cause.

3. Plaintiff is a resident of a state other than the Republic of Cuba and Defendant alleges upon information and belief that he is a citizen and resident of the State of Florida.

A copy of the Summons referred to above is annexed to and made a part of this Petition together with a copy of the Complaint. No other papers or pleadings on behalf of the Plaintiff have been served upon or received by the Defendant.

5. As appears from the annexed Summons and Complaint, Plaintiff demands damages in excess of Five Thousand (\$5,000.00) Dollars and Defendant, upon information and belief, states that the matter in dispute exceeds the sum of Ten Thousand (\$10,000.00) Dollars, exclusive of interest and costs.

6. Petitioner is filing simultaneously with the Petition a Bond with good and sufficient surety conditioned as required by the Act of Congress in that behalf made and provided, in Title 28, United States Code, Section 1446.

WHEREFORE, Petitioner prays this Court that the Bond be accepted as good and sufficient and that this cause be removed to the District Court of the United States for the Southern District of Florida, Miami Division, in which District and Division this action is pending.

SMATHERS, THOMPSON & DYER

By David W. Dyer  
Attorneys for Defendant

STATE OF FLORIDA    )  
                              )  
COUNTY OF DADE     )

Personally appeared before me, the undersigned authority, DAVID W. DYER, who being by me first duly sworn, deposes and says:

That he is a member of the law firm of Smathers, Thompson & Dyer, and that he is one of the attorneys of record for the Petitioner above named, and he is authorized to and does make this affidavit for and on behalf of said Petitioner.

That he has read the foregoing Petition and that the same is true and correct.

David W. Dyer

Sworn to and subscribed before me this \_\_\_\_\_ day of November, 1959.

My commission expires:

Notary Public, State of  
- 2 - in Florida at Large  
SMATHERS, THOMPSON & DYER  
ALFRED I. DUPONT BUILDING  
MIAMI, FLORIDA



WE HEREBY CERTIFY that a true copy of the foregoing  
Petition for Removal was mailed to Hendricks & Hendricks,  
Attorneys for Plaintiff, 603 Seybold Building, Miami 32,  
Florida, this 20<sup>th</sup> day of November, 1959.

David W. Dyer  

---

Of Counsel

FILED FOR RECORD

NOV 2 2 09 PM 1958

E. B. HENDRICKS & SONS  
CLERK, CT. CL. DADE CO., FLA.

CIRCUIT COURT OF THE ELEVENTH  
JUDICIAL CIRCUIT IN AND FOR  
DADE COUNTY FLORIDA  
LAW NO.

59L3415

OSIRIS MARTINEZ,

Plaintiff,

v.

COMPANIA CUBANO DE AVIACION, S.A.  
a Cuban corporation,

Defendant.

ROBERT H. ANDERSON

COMPLAINT

*SEP 12 50*  
*[Signature]*

Plaintiff, Osiris Martinez, sues the defend-  
ant, Compania Cubano De Aviacion, S.A., a Cuban corporation,  
and alleges:-

1. Plaintiff is a citizen of the United States of America and a resident of the State of Tennessee; the defendant is a corporation incorporated in the Republic of Cuba and is authorized and actively doing business in Dade County, Florida.

2. Plaintiff was the husband of Betty Jane Martinez, and the father of Michael Anthony Martinez, Byron Rosendo Martinez, and Carl Manuel Martinez, on and prior to November 1, 1958.

3. The defendant, Compania Cubano De Aviacion, S.A., a Cuban corporation, owns and operates passenger aircraft for transportation to and from various points in the United States and countries in the Caribbean area, and contracts with its passengers as a common carrier for the public.

4. On or about November 1, 1958 the defendant, through its authorized agents in the State of Tennessee, for consideration sold to the wife and children of the plaintiff tickets for air transportation from the State of Tennessee to Havana, Cuba via Miami, Dade County, Florida.

5. By its contract of carriage the defendant agreed to transport the wife and children of the plaintiff and to maintain the degree of care necessary for their safe transportation and conduct from Tennessee to Havana, Cuba and the defendant failed to provide such safe transportation and acted in a negligent and careless manner in the following way:

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(b) The defendant airline, through its authorized agent, negligently and carelessly permitted persons aboard the aircraft with the intent of varying the course of the aircraft and taking it from its normal route from Miami, Florida to Havana, Cuba, causing an excessive amount of fuel to be used.

(c) The defendant, through its authorized agents, negligently and carelessly failed to provide adequate instructions to the passengers and precaution for survival on a flight over extended water and sea.

(d) That the defendant, through its authorized agents, entered into a conspiracy to vary the direct flight path from Miami, Florida, to Havana, Cuba, which created unusual flight conditions and exhausted the fuel supply of the aircraft.

6. As a result of all or each of the foregoing acts of negligence and carelessness, Betty Jane Martinez, Michael Anthony Martinez, Byron Rosendo Martinez, and Carl Manuel Martinez, lost their lives in an aircraft accident at Nipe Bay, Cuba.

7. As a direct and proximate result of said negligence of the defendant the plaintiff has lost the comfort, services, and consortium of his wife, Betty Jane Martinez, and has lost the society and services of his children, Michael Anthony Martinez, Byron Rosendo Martinez, and Carl Manuel Martinez, and the plaintiff has suffered great mental pain and suffering caused by the loss of his wife and his children.

WHEREFORE, Plaintiff, Osiris Martinez, sues the defendant and alleges that the matters in controversy in this cause exceed in value \$5,000.00, and are matters within the jurisdiction of this Court; and Plaintiff further demands trial by jury of all issues.

HENDRICKS & HENDRICKS  
BY Robert E. Vance  
Attorneys for Plaintiff  
603 Seybold Building  
Miami 32 Fla

BC

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY.

THE STATE OF FLORIDA  
TO THE DEFENDANT(S):

COMPANIA CUBANO DE AVIACION S A  
a Cuban corporation

100 Biscayne Boulevard  
Miami Florida

(SERVE: Jose Herrera or  
other Manager or Agent

NOV 2 2 22 PM 1959  
THUR JULY 11A  
DADE

FILED IN CIRCUIT COURT  
NOV 9 10 51 AM 1959  
CLERK OF COURT

You are hereby notified that a Common Law action has been filed against you in the Circuit Court for Dade County, Florida, by

OSIRIS MARTINEZ

You are hereby summoned and required to serve upon:

HENDRICKS & HENDRICKS

Plaintiff's Attorney, whose address is: 603 Seybold Building  
Miami 32 Florida

and file with the Clerk of said Court, either before service or immediately thereafter, an answer to the Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WITNESS my hand and seal of said Court at Miami, Dade County, Florida this 2

day of November, A.D., 19 59.

E. B. LEATHERMAN  
as Clerk of said Circuit Court

By [Signature]  
Deputy Clerk

(Court Seal)

HENDRICKS & HENDRICKS  
FR 34677 Plaintiff's Attorney

No. ~~24735~~ 59L3445  
CORPORATION SERVICE

COURT CIR STYLE S.A.R.

ATTORNEY: HENDRICKS & HENDRICKS

ADDRESS:

PLAINTIFF: MARTINEZ

DEFENDANT: COMPANIA CUBANO DE AVIA-  
S A

RECEIVED THIS WRIT ON THE 2nd DAY OF  
Nov. A. D. 195 9, AND SERVED

THE SAME ON COMPANIA CUBANO DE AVIA-  
SION S A

A CORPORATION, THE WITHIN NAMED DEFENDANT,  
IN DADE COUNTY, FLORIDA, AT 2:10 p. M. ON  
THE 4th DAY OF Nov.

A. D. 195 9, BY DELIVERING A TRUE COPY OF THE  
WRIT WITH THE DATE AND HOUR OF SERVICE EN-  
DORSED THEREON BY ME, AND A COPY OF PLAINTIFF'S  
INITIAL PLEADING AS FURNISHED BY THE PLAINTIFF,  
TO

JOSE HERRERA, MGR., IN THE  
ABSENCE OF THE PRES., V.  
PRES., CASHIER, TREAS.  
SECY.,

OF SAID CORPORATION.

WRIT \$ 3.50

EL  
hw

11-5

THOMAS J. KELLY, METROPOLITAN SHERIFF  
OF DADE COUNTY, FLA.

BY Edward G. Gault  
METROPOLITAN DEPUTY SHERIFF.