

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Chad Schnell

Plaintiff

v.

United Airlines, Inc.

Defendant

Case No. 21-CV-683

CLASS-ACTION COMPLAINT

JURY DEMANDED

INTRODUCTION

- 1) Plaintiff Chad Schnell was a passenger on United Airlines Flight 328 (“UA328”) on February 20th, 2021, operated by Defendant United Airlines, Inc. (“UNITED”), using a Boeing 777-200 with tail number N772UA, departing from Denver International Airport.
- 2) As a result of UNITED’s failure to properly inspect and maintain its aircraft, one of two engines on this plane spectacularly failed, scattering pieces of the engine over Colorado and leaving passengers to a horrifying view of a fire on the wing, massive turbulence, and an emergency landing predicated by a well-deserved mayday call from the cockpit.
- 3) The 231 passengers on board UA328 were lucky to escape with their lives, as the flight managed to land with no serious physical injuries; however, it left these passengers in fear for their life for nearly 20 minutes as air traffic control and UNITED pilots hurried to make an emergency landing at the origin airport, causing foreseeable and severe emotional distress that could have been avoided had UNITED operated in accordance with federal regulations.
- 4) Plaintiff therefore seeks to recover for negligent infliction of emotional distress on behalf of himself and all other passengers on board who are similarly situated.

JURY DEMAND

- 5) Plaintiff demands a trial by jury on all issues so triable.

PARTIES

- 6) Plaintiff Chad Schnell is an individual residing in Carmel, Indiana.
- 7) Defendant UNITED is a corporation headquartered in Chicago, Illinois, with offices in Denver, Colorado.

JURISDICTION & VENUE

- 8) Personal jurisdiction is proper because Defendant UNITED maintains offices within the State of Colorado and the incident that gave rise to the complaint occurred within the State of Colorado.
- 9) Subject matter jurisdiction is proper under 28 U.S.C. § 1332(d)(2), as Plaintiff and Defendant are citizens of different states and the total amount in controversy is likely to exceed \$5,000,000.
- 10) Venue is proper because the incident that gave rise to the complaint occurred within the boundaries of this district.

ALLEGATIONS OF FACT

- 11) On February 20th, 2021, Plaintiff boarded UA328, a flight marketed and operated by UNITED between Denver, Colorado and Honolulu, Hawaii, and serviced by a Boeing 777-200 with tail number N772UA.
- 12) Approximately 4 minutes after takeoff, at an altitude of approximately 12,000 ft., all passengers, including Plaintiff, could hear loud noises.
- 13) At that same time, all passengers, including Plaintiff, began to feel severe turbulence: violent shaking of the aircraft.

- 14) Plaintiff, as well as many other passengers, was able to look out of his window and visibly see pieces of the right engine of this two-engine plane obviously missing, as well as the engine vibrating or bouncing from its normal position on the wing
- 15) Shortly thereafter, a fire was visibly present within the engine.
- 16) This image was captured by a passenger on UA328, depicting the above state of affairs from the plain view of the passengers:



- 17) Any passengers who were not immediately able to see the engine failure shown above were promptly informed of the state of the airplane as a result of the ensuing yelling and chaos.
- 18) A distress call was made from the cockpit of UA328 to Air Traffic Control (“ATC”):
“Mayday, mayday, United 28 -- 328 heavy, mayday, mayday, aircraft [pause] Denver Departure, United 328 heavy, mayday, aircraft just experienced engine failure, need a turn immediately.”
- 19) The cockpit fire alarm is audible during this ATC transmission.

- 20) Following procedure, the pilots to the plane cut all fuel and hydraulic fluid to the affected engine.
- 21) However, because of what is likely (and thus upon information and belief) the result of damage to the fuel lines or valves, the fire continued in the engine.
- 22) ATC immediately provided UA328's pilots with a flight path to return to the airport, suggested the immediate start of descent, authorized the pilot to deviate from altitude instructions as necessary, and cleared use of any runway at Denver International Airport, in any direction, for the emergency landing.
- 23) ATC further coordinated emergency services to dispatch to the runways to meet UA328, with instructions to UA328 to make a full stop wherever it lands, essentially grinding this international airport to a halt.
- 24) Approximately 22 minutes after takeoff – and 18 minutes after passengers were aware of the danger they faced – UA328 landed without further incident.
- 25) Plaintiff, as well as, upon information and belief, most (if not all) passengers, reasonably feared for their life as a result of the shambled state of their airplane, starting at over 2 miles in altitude, and lasting approximately 18 minutes.
- 26) Plaintiff, as well as, upon information and belief, most (if not all) passengers, suffered physical symptoms as a result of this intense experience, including: nausea, tachycardia, shaking, symptoms of shock, and following the flight, insomnia.
- 27) Preliminary results from an NTSB investigation into this incident indicated that it appears at least 1 engine fan blade tore off during flight due to “metal fatigue,” and in the process took at least 1 more fan blade with it, causing an “uncontained engine event.”
- 28) It is possible to inspect fan blades for metal fatigue using processes including “fluorescent penetrant inspection” and “thermal acoustic imaging,” and in fact, the NTBS ordered all planes using the same engine models to do so after the incident.

- 29) It turns out, UNITED had good reason to perform such inspections before this incident.
- 30) On February 13th, 2018, another of the same plane model, with the same engines, with tail number N773UA¹, had an uncontained engine event that was also caused by a fan blade lost due to metal fatigue.
- 31) Both N772UA and N773UA have been in service since 1995, upon information and belief making them and a few others owned by UNITED the oldest 777-200 airplanes in commercial service in the world.
- 32) UNITED's failure to ensure that what happened in 2018 did not happen again in 2021 is a stunning failure of reasonable safety practices by any standard.

CLASS ALLEGATIONS

- 33) Plaintiff seeks certification of a single class: all passengers above the age of two years old on board UA328 at the time of engine failure who experienced emotional distress.
- 34) This class excludes all actively working for UNITED in service of UA328 at the time of the engine failure (*e.g.*, flight deck crew, cabin crew), but does not exclude “non-revenue customers” (those traveling on a free ticket) or UNITED employees who may have been on board but not in service of the flight.
- 35) There were 231 passengers on board, and it is expected that nearly all of them experienced the emotional distress that would be a natural human emotional response to a near-death experience².

¹ Shockingly, the replacement plane that passengers on UA328 flew on the next day was none other than N773UA. Would *any* class members have consented to that if they knew?

² It is not an element of Plaintiff's claim that the passengers were actually about to die. An uncontained engine fire is not a “safe” condition for an airplane, regardless of whether it is or is not actually likely that such a situation will result in one's fiery death, but the emotional distress here was due to what any passenger would *foreseeably and reasonably perceive* as a situation where they may lose their life. One who puts another in fear of death, causing emotional distress, is liable regardless of whether or not there was any actual risk of death.

- 36) This putative class meets the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3).
- 37) *Numerosity* – The size of the class is expected to be over 200 persons, making it impracticable to individually name all possible plaintiffs.
- 38) *Commonality* – The application of Colorado negligence law to an incident that occurred on an airplane above its land will be a common question of law for all class members. Likewise, the factual basis for the negligence of UNITED will be a common question of fact for all class members.
- 39) *Typicality* – All passengers on board encountered the same scenario as the named plaintiff and are highly likely to have suffered emotional distress similar to the named plaintiff, as this complaint speaks of a natural human emotional response to a near-death experience.
- 40) *Adequacy* – Plaintiff has no interest separate from, or in conflict with, those of the proposed class he seeks to represent, and will fairly and zealously seek recovery for the entire class.

CLAIMS FOR RELIEF

Count 1 – Negligent Infliction of Emotional Distress

- 41) UNITED has a duty, whether established by Colorado common-law or by federal statutes and regulations, to inspect and maintain its aircraft using some level of due prudence.
- 42) Regardless of the exact level and nature of the prudence required, aircraft engine do not disintegrate mid-air absent a complete failure to use any industry-standard or government-required procedures; breach of duty is thus demonstrated by principals *of res ipsa loqitor*, and will be further demonstrated via records obtained through discovery.
- 43) UNITED’s breach of duty resulted in the infliction of severe emotional distress upon Plaintiff and his fellow passengers.
- 44) This emotional distress was entirely foreseeable and would not have occurred but for UNITED’s breach of duty.

- 45) UNITED is therefore liable to Plaintiff and all similarly situated for the emotional distress they encountered as a result of UNITED's negligent infliction of emotional distress.

Count 2 – Negligence *Per Se*

- 46) Plaintiff repeats and re-alleges the paragraphs under Count 1 as if hereby stated in full.
- 47) UNITED was required by federal law to properly inspect and maintain its aircraft such that it could safely operate.
- 48) To wit, UNITED failed to abide by 14 C.F.R. § 91.8 ("Civil aircraft airworthiness"), § 91.13 ("Careless or reckless operation"), and upon information and belief, inspection of UNITED's inspection and maintenance records will uncover numerous other failures that led to this disaster.
- 49) UNITED's failure to follow that law resulted in the type of harm that law sought to prevent, to wit: unsafe conditions on an airplane resulting in injury to persons or property.
- 50) UNITED is therefore liable to Plaintiff and all similarly situated for the emotional distress they encountered as a result of UNITED's negligence *per se*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- i. Actual damages for emotional distress, in an amount to be determined by a jury,
- ii. Pre- and post-judgment interest as allowed by law,
- iii. Attorney's fees for this action,
- iv. Cost of the action, and
- v. Any other such relief as the Court deems appropriate.

Dated: Denver, CO

March 7th, 2021

Respectfully submitted,

/s/Jonathan Corbett

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JS 44 (Rev. 10/20) District of Colorado

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Chad Schnell

(b) County of Residence of First Listed Plaintiff Hamilton County, Ind.
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jonathan Corbett, 958 N. Western Ave. #765
Hollywood, CA 90029, (310) 684-3870

DEFENDANTS

United Airlines, Inc.

County of Residence of First Listed Defendant Cook County, Ill.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input checked="" type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
class action for state law tort under 28 U.S.C. § 1332(d)(2)

☐ AP Docket

Brief description of cause:
negligent infliction of emotional distress

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/07/2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Signature of Clerk or Deputy Clerk

Civil Action No. 21-CV-683

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: