

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THELMA KIGER

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§
§

vs.

C.A. NO. _____

UNITED AIRLINES, INC.

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff, THELMA KIGER, complains of UNITED AIRLINES, INC. [hereinafter “Defendant”], and for cause would show the Court as follows:

I.
PARTIES

1.01 Plaintiff, THELMA KIGER [“Plaintiff”], resides in Groves, Texas.

1.02 Defendant, UNITED AIRLINES, INC. [“United”], is a Delaware corporation with its principal place of business in Chicago, Illinois. United is registered to do business, and does business, in Texas. United may be served with process through its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

II.
JURISDICTION AND VENUE

2.01 This case falls within the diversity jurisdiction of this Court; the amount in controversy exceeds \$75,000.00USD and Plaintiff and Defendant are diverse in citizenship pursuant to 28 U.S.C. § 1332(a)(2).

2.02 Venue is proper because Plaintiff was injured at George Bush Intercontinental Airport in Houston, Texas, within this District.

III. FACTS

3.01 Plaintiff, an 89-year old woman, booked a flight with Defendant United to travel from Los Angeles, California to Houston, Texas on February 18, 2016. Plaintiff was returning home after taking a cruise vacation with her niece and required a one-way flight from Los Angeles to Houston. Upon checking her rolling suitcase at the United baggage counter in Los Angeles, Plaintiff was met with an attendant who took her to the departure gate by wheelchair. The attendant handed Plaintiff a wheelchair voucher and told her that a wheelchair would be waiting for her when she arrived at George Bush Intercontinental Airport (“Airport”) in Houston, Texas. Specifically, United was to provide wheelchair assistance to take Plaintiff from the arrival gate at the Airport to the baggage claim and then to ground transportation. Plaintiff, traveling alone, required wheelchair assistance due to her age and difficulty in ambulating long distances.

3.02 Upon her arrival at the Airport on United Airlines Flight 1817, Plaintiff disembarked the plane and asked a United representative about the wheelchair and was told to sit in the gate waiting area for the wheelchair and attendant. Despite having been promised wheelchair assistance when she purchased the ticket from United, there was no wheelchair waiting for her at the arrival gate. Plaintiff sat alone for approximately ten minutes and then a man operating an electric cart stopped near the gate waiting area and approached Plaintiff. The man told Plaintiff to get on the electric cart and grabbed her arm to escort her to the cart. Plaintiff boarded the electric cart with her one carry-on bag and was taken to the general vicinity of the “down” escalator within the Airport. The subject escalator transports passengers down to the lower level to access the baggage claim and ground transportation areas.

3.03 After stopping the electric cart at the escalator, the operator instructed Plaintiff to

get off the cart and left her standing alone. With no other assistance by United, or any explanation as to whether she would be provided any further assistance to the baggage claim area on the lower level, Plaintiff attempted to access the escalator to go down to the baggage claim area. As Plaintiff grabbed the handrail to step onto the escalator, suddenly and unexpectedly, she fell to the bottom of the escalator and was knocked unconscious.

3.04 As a result of the fall, Plaintiff sustained serious injuries, including four fractured ribs, a fractured pelvis, and injuries to her left shoulder, left arm, back and legs. Plaintiff was immediately taken via ambulance to Memorial Hermann hospital for emergency medical treatment and was admitted overnight at the ICU. Plaintiff spent one week at Memorial Hermann and was then transferred to the Medical Center of Southeast Texas, closer to her home, for continued medical treatment. Plaintiff underwent weeks of physical therapy and due to her injuries, Plaintiff now must use a cane to ambulate and can no longer participate in many activities she was able to enjoy prior to the incident.

IV.
CAUSE(S) OF ACTION

A. NEGLIGENCE

4.01 Plaintiff repeats and realleges each allegation contained in paragraphs 3.01 - 3.04 above.

4.02 Plaintiff would show that Defendant United issued Plaintiff a voucher promising that wheelchair assistance would be provided upon her arrival at the gate in Houston. Despite United's representations and promises that wheelchair assistance would be provided to Plaintiff, United failed to provide any wheelchair assistance to Plaintiff from the arrival gate to the baggage claim and ground transportation areas as promised. United's failure to provide Plaintiff with the promised wheelchair assistance and, instead, allowing Plaintiff to board an electric cart

without any assistance, constitutes negligence and falls below the standard of reasonable care for a common carrier airline.

4.03 Plaintiff would show she was caused to sustain serious injuries as a result of negligent and/or careless acts and omissions committed by Defendant United and/or its agents, servants, and/or employees in failing to provide her with the promised wheelchair assistance from the gate to the baggage claim and ground transportation areas of the Airport. Such acts and/or omissions by United include, but are not limited to the following:

- (a) Failing to provide wheelchair assistance to Plaintiff upon her arrival at the gate as promised;
- (b) Failing to properly and adequately assist Plaintiff upon her disembarking the airplane to the baggage claim and ground transportation areas of the Airport;
- (c) Failing to follow its own policies and procedures in assisting disabled invitees, including Plaintiff;
- (d) Failing to utilize proper safety procedures, standards, and policies for the assistance of disabled invitees, including Plaintiff;
- (e) Failing to comply with applicable federal and state statutes, regulations, ordinances, rules, and/or codes pertaining to the safety and assistance of disabled invitees, including Plaintiff; and
- (f) Upon information and belief, there are other acts of negligence, incompetence, and/or omissions which may be proved at trial.

4.04 Each of the foregoing acts and omissions of negligence, singularly or in combination with others, was a proximate cause of Plaintiff's resulting injuries and/or damages complained of herein.

B. NEGLIGENCE *PER SE*/NEGLIGENT TRAINING – VIOLATIONS OF THE AIR CARRIER ACCESS ACT

4.05 Plaintiff repeats and realleges each allegation contained in Paragraphs 3.01 - 3.04 above.

4.06 The Department of Transportation (“DOT”) has promulgated rules, 14 C.F.R. § 382, governing airlines for the accommodation of disabled individuals pursuant to the Air Carrier Access Act (“ACAA”), 49 U.S.C. §§ 41702, 47105, and 41712. Subpart 39 of the DOT regulations provides that air carriers shall ensure that individuals with a disability are to be provided with assistance in enplaning, deplaning, and in making flight connections and transportation between gates. *See* 14 C.F.R. § 382.39(a).

4.07 United failed to comply with the ACAA by failing to provide wheelchair assistance to Plaintiff upon arrival at the Airport for her to transit from the gate to baggage claim and ground transportation and constitutes negligence *per se*.

4.08 Additionally, 14 C.F.R. § 382.61(a)(1) requires Defendant United to train its employees to proficiency concerning the following:

- (a) All requirements of Part 382 and all other DOT or FAA Regulations affecting the provision of air travel to persons with a disability;
- (b) United’s procedures and policies, consistent with Part 382, concerning the provision of air travel to persons with a disability;
- (c) Awareness and appropriate responses to persons with a disability; and
- (d) To consult with organizations representing persons with disabilities and developing its training program and the policies and procedures concerning which carrier personnel/employees are trained.

4.09 Plaintiff would also show that United violated the training requirements of 14

C.F.R. § 382.61 by failing to proficiently train its employees to properly and adequately insure that wheelchair assistance was provided for Plaintiff, a disabled person, upon disembarking the airplane at the gate. United further violated 14 C.F.R. § 382.61 by failing to follow its own policies and procedures by not providing wheelchair assistance as requested by Plaintiff.

4.10 Each of the foregoing acts and omissions of negligence *per se* and negligent training, singularly or in combination with others, was a proximate cause of Plaintiff's resulting injuries and/or damages complained of herein.

V.
DAMAGES

5.01 Plaintiff has experienced physical pain and suffering and mental anguish and will, in reasonable probability, continue to do so in the future. By reason of the nature and severity of Plaintiff's injuries, Plaintiff has been caused to incur medical charges in the past and will continue to incur medical expenses in the future for treatment of her injuries.

5.02 Categorical damages which Plaintiff seeks to recover from Defendant include compensation for the following:

- (a) physical disability sustained by Plaintiff from the date of injury to the time of trial;
- (b) future physical disability reasonably anticipated to be sustained by Plaintiff in the future;
- (c) physical pain and suffering sustained by Plaintiff from the date of injury to time of trial;
- (d) physical pain and suffering which is reasonably anticipated to be suffered by Plaintiff in the future;
- (e) reasonable and necessary medical expenses incurred by Plaintiff in the treatment of Plaintiff's injuries from the date of injury to time of trial;
- (f) reasonable and necessary medical expenses reasonably anticipated to be sustained by Plaintiff in the future for treatment of Plaintiff's injuries;

- (g) past and future physical disfigurement; and
- (h) past and future physical impairment.

VI.
INTEREST

6.01 Plaintiff seeks pre-judgment and post-judgment interest as allowed by law.

VII.
JURY DEMAND

7.01 Plaintiff respectfully demands a jury.

VIII.
PRAYER

WHEREFORE, Plaintiff prays:

- a. That upon final hearing, judgment may be entered in favor of Plaintiff against Defendant for the amounts of her individual claims to be determined;
- b. That she have pre-judgment and post-judgment interest and all costs of Court;
- c. That this Honorable Court grant Plaintiff a Trial by Jury; and
- d. That she have such other and further relief as the Court and justice may deem just and appropriate under the circumstances of the cause.

Respectfully submitted,

GILMAN *ALLISON LLP

/s/ Brenton J. Allison

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