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# In-Flight Danger

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## A lack of air filters on planes has led to toxic air events, injuring crew and passengers. Here are some of the basics about this litigation.

**W**hen flying thousands of feet above the ground in a sealed airplane, flight crew and passengers must be confident in the ABCs of travel: the **A**ir you **B**reathe should be **C**lean. Sadly that is not always true as airplane cabin air can become contaminated with toxic and dangerous chemicals.<sup>1</sup> During a contaminated cabin air event, noxious chemicals from the jet engines (including the by-products of heated engine oil and hydraulic fluid) flood into the air supply system.<sup>2</sup> Inhaling these contaminants can cause serious injuries, including short-term injuries such as rashes, dizziness, and adverse gastrointestinal and respiratory effects, as well as “long-term central nervous and immunological effects.”<sup>3</sup>

Aircraft manufacturers are aware that heated engine oil, hydraulic fluid, and their toxic by-products “may leak into the aircraft cabin” and can cause adverse health effects.<sup>4</sup> At a 2019 International Aircraft Cabin Air Conference, one researcher noted that while “we may not all agree upon how

often [contaminated cabin air] events occur, may not agree on how severe they are, may not agree upon the toxicity of the contaminants, we all agree that they do occur.”<sup>5</sup> Pilots have reported making errors while landing or on takeoff because they felt dizzy or lost concentration,<sup>6</sup> as well as “a marked deterioration in cognitive function” following exposure to contaminated air.<sup>7</sup>

Since 1955, researchers have called for “every effort” to be made “to minimize or eliminate leakage of engine oil” into the air system.<sup>8</sup> Safer alternatives have been available for more than 15 years, yet aircraft manufacturers continue to resist corrective changes.<sup>9</sup>

Even after a British Airways pilot, Richard Westgate, died from neurotoxicity caused by the organophosphate by-products of jet engine oil in 2012, nothing changed.<sup>10</sup> The British senior coroner who handled the inquiry into Westgate’s death opined that the pilot was poisoned by repeated exposure to contaminated cabin air and warned that these events may be harming the health of cabin crew and passengers who fly frequently.<sup>11</sup>



For more than 10 years, pilots, flight attendants, and passengers have sued airline manufacturers over acute and chronic injuries from these events as these companies continue to refuse to take corrective actions.<sup>12</sup> To better understand a contaminated air event, consider the facts of *Woods v. Boeing*. During a flight from Boston to San Diego in July 2013, passengers and crew smelled an offensive odor in the cabin.<sup>13</sup> Several flight attendants became acutely ill: Four were unsteady or dizzy, two started vomiting profusely, and one lost consciousness.<sup>14</sup> An ER physician onboard tried to assist, but despite medical intervention and the use of oxygen, several flight attendants continued to deteriorate.<sup>15</sup>

The captain diverted the flight and made an emergency landing in Chicago.<sup>16</sup> Four flight attendants were taken to a nearby hospital and treated for acute ailments.<sup>17</sup> Weeks to months later, the afflicted crew members developed chronic cognitive impairments indicative of a toxic exposure brain injury.<sup>18</sup> Multiple flight attendants sued. The *Woods* case settled in 2019, shortly before trial.

## Case Intake

Here's what you need to know about the toxic cabin air litigation and how to evaluate potential cases.

**Claims.** Those injured by toxic cabin air are suing aircraft manufacturers, alleging negligence and design defect claims regarding the air supply system, which allows contaminated air to freely mix with clean air and enter the cabin and cockpit. Flight crew have long demanded that sensors be installed to quickly detect a contaminated air event.<sup>19</sup> With these sensors, an alarm would alert pilots to stop the air flow from an impacted engine and prevent contamination of the air supply. It involves a simple switch that is already installed in every cockpit in case of an

engine fire—pilots just need to know when to flip the switch.<sup>20</sup>

**Injuries.** Flight crew and passengers exposed to toxic cabin air events can experience acute symptoms including dizziness, nausea, vomiting, rashes, headaches, and loss of consciousness.<sup>21</sup> They also can experience significant and permanent cognitive injuries such as slower processing speed, reduced concentration, and memory loss.<sup>22</sup>

ALS. His widow continued the lawsuit, and the case was resolved in April 2022, two days before the trial was scheduled to begin.<sup>27</sup>

Proving long-term cognitive injuries requires neuropsychological testing of your client by a skilled neuropsychologist. Typical symptoms include cognitive slowing, inability to remember or recall basic information, loss of concentration, increased



Studies also confirm an increased risk of developing degenerative neurological diseases such as amyotrophic lateral sclerosis (ALS) among flight crew and that mortality from ALS “was over twice as high” in flight crew than in the general population.”<sup>23</sup>

A 2018 lawsuit on behalf of an American Airlines pilot focused on the causal connection between contaminated air and the development of ALS.<sup>24</sup> In this case, Captain Ron Weiland was exposed to toxic air while troubleshooting mechanical issues on an aircraft at Miami International Airport.<sup>25</sup> He experienced acute symptoms during and immediately following the exposure and, over the following months, developed a degenerative neurological condition.<sup>26</sup> He died two years later from

distractibility, and mood swings. Family members are also often a good source of information about a client's cognitive deterioration.

**Witnesses.** Try to talk to all crew members and passengers who were on the affected flight as early as possible. They are often your best fact witnesses about the contaminated air event. Ask about their acute and long-term issues—some are not aware of the full breadth of injuries these events can cause.

**Defendants.** Major aircraft manufacturers are typically the only defendants in these cases. But if discovery reveals negligent maintenance of the engines by a third-party provider, that entity also may be a viable defendant.<sup>28</sup> This is especially true if there is evidence that



poor maintenance caused an oil leak in the engine compartment or there was a seal leak or failure that should have been corrected.

Lawsuits typically do not name airlines because flight crew are barred under workers' compensation laws from bringing such claims. And suits against the Federal Aviation Administration are uncommon due to the agency's government immunity.

**Discovery.** Propound requests for production to the third-party airline early. These materials often detail the contaminated air event, contain witness statements, highlight the investigation conducted around the event, and describe repairs the airline conducted before putting the airplane at issue back into service.

Since aircraft manufacturers often assist airlines in their investigations of contaminated air events, also request the manufacturer's documents about the specific airplane, date, and flight.

## Pending Litigation

Cases are proceeding against the two major aircraft manufacturers.

**Boeing cases.** For over a decade, toxic cabin air cases have been litigated against Boeing in Illinois<sup>29</sup> and Washington state.<sup>30</sup> There is no MDL or state court consolidation. Boeing has produced over 1 million pages of internal documents, dozens of experts have been retained and disclosed by the parties, and more than 100 depositions have been taken.

**Airbus cases.** Some contaminated cabin air cases are currently pending against Airbus. Much of that litigation is ongoing in France, Airbus's home country, but a few cases have been filed in the United States.<sup>31</sup> Choosing to sue Airbus in a U.S. court requires a careful assessment of the plaintiff's ability to get jurisdiction over a French company in the U.S. Also consider the

costs of translating Airbus documents from French to English and the burden of potentially having to depose Airbus executives using translators.

Congress has tried multiple times to mandate improvements to protect the flying public and crew.<sup>32</sup> But in the meantime, it's up to trial lawyers to protect those injured by toxic cabin air. **T**



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## NOTES

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