

# DC Judge Set to Hear Dismissal Motions Over Malaysia Air Flight 370

A federal judge in the District of Columbia is set to hear arguments Tuesday over whether to dismiss lawsuits brought on behalf of passengers of Malaysia Airlines Flight 370, which disappeared over the Indian Ocean in 2014.

By [Amanda Bronstad](#) | [UPDATED](#) Dec 19, 2017 at 12:00 AM

A federal judge in the District of Columbia is set to hear arguments Tuesday over whether to dismiss lawsuits brought on behalf of passengers of Malaysia Airlines Flight 370, which disappeared over the Indian Ocean in 2014.

Most of the dismissal motions focus on the families of about 70 passengers, represented by various law firms including Motley Rice, Miami's Podhurst Orseck and Spagnoletti & Co. in Houston. They allege that Malaysia Airlines should be held accountable since it rejected wrongful death claims after it reorganized its corporate structure months after the aircraft's disappearance. Most of the cases also target the plane's manufacturer, Boeing Co., for alleged defects that caused the aircraft to malfunction.

Plaintiffs attorneys have brought [various](#) theories, even though the cause of the flight's demise remains unclear.

The most novel theory is suing Malaysia Airlines insurer Allianz Global Corporate and Specialty. Plaintiffs represented by Motley Rice's Mary Schiavo, former U.S. Department of Transportation inspector general, have attempted to hold Allianz liable by citing Article 32 of the Montreal Convention, which states: "In the case of the death of the person liable, an action for damages lies in accordance with the terms of this convention against those legally representing his or her estate."

The cases identify Malaysia Airlines as a dead "person" whose legal representative is now Allianz. Allianz has filed a [motion](#) to dismiss for failure to state a claim.

“Neither Article 32 of the Montreal Convention, nor any other article, create a direct cause of action against a carrier’s liability insurer,” wrote Richard Walker, of Kaplan, Massamillo & Andrews in Chicago, who represents Allianz. “Further, nothing within the Montreal Convention authorizes a cause of action against a noncarrier.”

In a response, Schiavo said the case was one of “first impression.”

“Contrary to defendants’ assertion, no court has ever said Article 32 cannot be applied against an insurance policy,” she [wrote](#).

On Tuesday, U.S. District Judge Ketanji Brown Jackson of the District of Columbia, overseeing the multidistrict litigation, will hear arguments on that motion and several others seeking to dismiss the litigation over Flight 370.

Walker, who also represents Malaysia Airlines, did not respond to a request for comment.

A spokesman for Boeing, represented by Perkins Coie, declined to comment on the litigation.

“It is important to note that the Malaysian government investigation into the MH370 disappearance remains open and no cause has been determined,” wrote spokesman Miles Kotay in an email. “Boeing continues its support of the investigation and is providing technical advisors under the direction of government investigation agencies.”

Schiavo did not respond to a request for comment, and Steven Marks, of Podhurst Orseck, another plaintiffs attorney in the litigation, declined to comment.

Flight 370 was en route from Kuala Lumpur, Malaysia, to Beijing on March 8, 2014, when it changed course and lost all communications. Most of the 227 passengers were from China or Malaysia, though lawsuits have been brought on behalf of a handful of U.S. citizens.

That’s important because, under the Montreal Convention, an international treaty from 1999, passengers from foreign countries can’t sue a foreign airline in U.S. courts, which offer significantly higher damages awards than do overseas jurisdictions. In [one of its motions](#) to dismiss, Malaysia Airlines has asserted lack of subject matter jurisdiction under the Montreal Convention.

But there are some key exceptions in the treaty.

Plaintiffs lawyers have **insisted** that some Flight 370 plaintiffs were U.S. citizens, while others were working abroad but had a “principal and permanent residence” in the United States. They also allege plaintiffs who had purchased tickets through U.S.-based travel agencies, such as Orbitz, could sue in U.S. courts.

In a **joint motion to dismiss**, Malaysia Airlines and Boeing both claim that, based on forum non conveniens, the lawsuits belong in Malaysia.

Malaysia Airlines, which is owned by the Malaysian government, also has brought a **dismissal motion** under the U.S. Foreign Sovereign Immunities Act, which Allianz, based in Germany, has joined. Plaintiffs claim Malaysia Airlines waived that immunity when it applied for a foreign air carrier permit from the U.S. Department of Transportation and when the Malaysian government signed the Montreal Convention.