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## Paths to Legal Relief in Malaysia Flight Disappearance Prove Elusive

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The location and cause of Malaysia Airlines Flight 370's disappearance two years ago continues to prove elusive, but that hasn't stopped plaintiffs lawyers from pursuing novel and, at times conflicting, legal theories in U.S. courts on behalf of the families of the deceased.

A federal panel coordinated about 40 lawsuits filed in U.S. courts June 2 before District Judge Ketanji

Brown Jackson of the District of Columbia. The U.S. Judicial Panel on Multidistrict Litigation selected Jackson even though she hasn't handled an MDL before, calling her "an able and experienced jurist." Jackson, a federal judge since 2013. was named as a potential candidate for the U.S. Supreme Court earlier this year.

Eight lawsuits were filed against Malaysia Airlines, including four



Forty lawsuits over the crash of Malaysia Airlines Flight 370 have been consolidated before a federal judge in Washington.

> naming the airline's insurance firm. The Chicago-based Boeing Co. has been named in 32 lawsuits claiming the jet must have suffered a catastrophic defect.

> The jumble of claims has led to a particularly divided front among plaintiffs lawyers, many of whom cases in an MDL.

"There's no smoking gun in this case, and that's what's really

frustrating for these families," said Justin Green, a partner at New York's Kreindler & Kreindler, who has filed a case against Malaysia Airlines. "You're not going to have an MDL where normally the plaintiffs have the same positions against the same defendants. It's going to be a complicated MDL."

Flight 370 was en route from Kuala Lumpur, Malaysia, to Beijing on March 8. 2014, when it changed course and lost all communications. The aircraft is believed to have crashed into the Indian Ocean.

Malaysia Airlines attorney Richard Walker, a member of Chicago's Kaplan, Massamillo & Andrews, moved in March to coordinate federal lawsuits over Flight 370 in Illinois. In court, Malaysia Airlines disputed some of the claims and indicated it could move for dismissal on a jurisdiction claim under the U.S. Foreign Sovereign Immunities Act.

The number of U.S. cases is subargued against coordinating all the stantial even though only a handful of the 227 passengers were U.S. citizens. Under 1999 Montreal Convention, passengers from foreign countries can't sue a foreign airline in U.S. courts, which

offer significantly higher awards than overseas jurisdictions. But even lawyers who initially said there wouldn't be U.S. lawsuits have come up with ways to file in the United States.

Motley Rice filed three lawsuits against Malaysia Airlines that named the airline's liability insurer, Allianz Global Corporate and Specialty, and in one case a U.S.-based Allianz executive. The cases allege Allianz was liable after Malaysia Airlines, which was restructured following Flight 370's disappearance, began rejecting claims brought in Malaysia based on the fact that it wasn't the same company as its former entity.

Steven Marks of Miami's Podhurst Orseck, who has filed two cases in the District of Columbia, including one on behalf of the brother of a passenger who was a U.S. citizen, brought most of the lawsuits against Boeing. Originally filed in Chicago state court and removed to federal court, the cases allege strict products liability claims. Boeing's attorney, Eric Wolff, a partner at Seattle's Perkins Coie, declined to comment.

Though no defect has been identified. Marks pointed to what he called "some type of cascading problem" in the electrical system that was highlighted in a Dec. 3 report from the Australian Transport Safety Bureau, which is overseeing the search of the aircraft. But his cases also assert a basic inference: Since investigators have found no reason to believe the pilots or passengers deliberately downed Flight 370 or that maintenance problems or weather were issues, a defect in the aircraft must have occurred, he said.

"If a product is missing or destroyed, and you can eliminate all the other explanations as to the cause, there's a presumption something went wrong with the product," he said.

Amanda Bronstad reports for the National Law Journal, an ALM affiliate of the **Daily Business Review.** 



