CASE NO.   VOL. NO.

BETWEEN:

LORNE P. JOUDREY

PLAINTIFF

- and -

SWISSAIR TRANSPORT COMPANY, a body corporate

DEFENDANT

Justice Robert W. Wright   **Halifax, Nova Scotia**   **File No. S.H. No. 163174**

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[Cite as: Joudrey v. Swissair Transport Company , 2001 NSSC 145]

HEARD: Before the Honourable Justice Robert W. Wright at Halifax, Nova Scotia in Chambers on October 3, 2001.

**ORAL
DECISION:**   October 3, 2001

**WRITTEN
RELEASE OF
DECISION:**   October 18, 2001

SUBJECT: Application to strike Statement of Claim (Civil Procedure Rule 14.25 (1)(a)).

SUMMARY: The plaintiff is a former member of the Canadian Navy who was involved in the recovery effort following the crash of Swissair flight 111. He allegedly suffered a nervous shock/psychiatric injury from that experience and sued for damages, claiming that the injury was attributable to the crash of the aircraft which in turn was attributable to the negligence of Swissair.

Swissair then brought an application under Rule 14.25 (1)(a) asking the court to determine the preliminary question of law as to whether or not Swissair owed a duty of care to the plaintiff in such circumstances (assuming that the facts pleaded in the Statement of Claim were true).

RESULT: However novel the cause of action was in this case, it could not be said, on the face of the pleadings, to be absolutely or obviously unsustainable, especially where the tort law in respect of nervous shock claims is in a continuing state of evolution and development. The application was therefore dismissed although in light of the magnitude of the pre-trial procedures that would otherwise be involved, it was suggested to counsel that they ought to consider putting this question of law before the court for a preliminary determination under an agreed statement of facts (Rule 25) or failing such an agreement, by an application to sever that issue (under Rule 28.04). Costs of the application were awarded to the plaintiff in the amount of $1000.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**