

U.S. Legal Developments in Air Carrier Liability



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“Imperfect Response” by Air Carrier – Liability?

Arzu v. American Airlines (N.D. Texas)

- Passenger was a 13-year-old boy who collapsed on board flight from Honduras to Miami
- Generally, a passenger’s internal reaction to normal flight operation is not an “accident” under Montreal Convention
 - Article 17 requires an “unusual or unexpected event” that is external to the passenger
 - Plaintiffs’ attorneys seek to find some other link in the chain of causation which was “unusual or unexpected,” like the crew deviating from protocol or failing to divert the aircraft
- Passenger here claimed that defective response included steps required by the carrier’s in-flight manuals:
 - Not immediately alerting the flight crew
 - Not immediately administering CPR or using the defibrillator (AED)
 - Not connecting with on-call medical assistance
 - Not establishing and adhering to emergency team roles

“Imperfect Response” by Air Carrier – Liability?

Arzu v. American Airlines (N.D. Texas) (cont.)

- Court agreed that the response was not perfect but was not “unusual or unexpected”
 - Cabin crew and responding passengers did the best they could under the circumstances
 - Passenger had pre-existing health conditions (weighed 319 pounds, history of asthma, diabetes, etc.) which affected the response and outcome
- While the “crew could have done *more* to aid” the passenger, “there is rarely, if ever, a perfect response to a medical emergency.”

Plaintiffs will continue to try to circumvent the Convention, but this is a reasonable recognition of the difficulty crews face in emergency circumstances

Personal Jurisdiction in U.S. Courts

Trend had been that U.S. courts have been dismissing cases for lack of personal jurisdiction in the U.S. Now courts seem to be widening jurisdiction considerations.

Josifoski v. Austrian Airlines (E.D. Michigan) and Roesch v. Korean Air Lines (N.D. Texas)

- Josifoski injured during layover at Vienna Airport; Roesch injured during landing in Philippines
- Personal jurisdiction should be based on:
 - Place where defendant is “at home” or
 - Place where injury-causing conduct occurred
- Both courts allowed the cases to proceed by focusing on all of the air carriers’ contacts with the U.S., not just in the states where the actions were filed

Is the pendulum on jurisdiction swinging back to courts being more permissive on cases filed in the U.S.?

Court of Appeals Vacates DOT Rule About Disclosure of Ancillary Fees

Airlines for America v. DOT and Spirit v. TRAN (5th Circuit Court of Appeals)

- Biden Administration-era rule by the DOT that required air carriers to more clearly disclose add-on fees upfront, like for checking baggage and changing flights
- Last year, the Court of Appeals had delayed the rule from taking effect because the DOT did not comply with the notice-and-comment period
- This past month, the court decided to vacate the rule completely because of the failure to comply with the notice-and-comment rules
- The DOT, now under a new administration, admitted to the court that it had failed to comply with the requirement and was planning to rescind the rule anyway

Sign of how the Trump Administration is shaping the regulatory environment for air carriers

Trump Administration – How Does it Look for Air Carriers?

- Business-Friendly Regulatory Environment
- Less Regulation and Fewer Pro-Consumer and Environmental Rules
- Decreased Enforcement Actions