

Client Bulletin

June 2009

Fifth Circuit Clarifies Application of Montreal Convention to Baggage Claims

Sometimes the smallest cases stand for the largest legal principles. In other words, it isn't the amount of money involved, it is the legal issue decided. In *Muoneke v. Compagnie Nationale Air France*, Docket No. 08 20227 (5th Cir., May 12, 2009), the Fifth Circuit Court of Appeals addressed the proper scope and application of the Montreal Convention to a baggage claim. The *Muoneke* plaintiff alleged that Air France lost her baggage during international carriage on a trip from Houston to Lagos in 2004. Plaintiff claimed that when she changed planes in Paris for her onward flight to Lagos, Air France personnel forced her to check her carry-on bag. When the bag was returned to her in Lagos, it was allegedly missing \$900.00 in cash and a digital camera. After a non-jury trial, the District Court concluded that the amount of plaintiff's loss was \$1,242.79, but limited the carrier's liability under the Warsaw Convention to \$134.30 based on the weight of the pilfered bag. Air France claimed no liability for the loss based on its contract of carriage which expressly disclaimed liability for such items as cash and cameras contained in checked baggage. On appeal, the Fifth Circuit articulated the correct standard of law.

The Applicable Convention

The Appellate Court agreed with plaintiff that the District Court applied the wrong Convention: because the United States ratified the Montreal Convention on September 5, 2003, the Montreal Convention supersedes the Warsaw Convention on all claims arising after the effective date of the Montreal Convention on November 4, 2003. Since the damage to the plaintiff's baggage occurred some time in late

December of 2004, it is the Montreal Convention, and its liability cap of 1,000 SDRs (approximately U.S. \$1,500.00) for loss, damage, delay or pilfered passenger baggage, which is applicable,¹ not the lower cap of the Warsaw Convention. Moreover, the Montreal Convention does not allow for prorating of the loss based on the weight of the bag.

Valuables Not Excluded From Carrier's Liability

The Appellate Court also rejected Air France's argument that it was not liable for the damage to plaintiff's baggage because its conditions of contract exclude liability for valuables such as cameras, computers and cash contained in checked baggage. The Court pointed out that Article 17 of the Montreal Convention provides for strict liability in the case of damaged or lost baggage. If Air France was able to contract out of its liability, then Article 17 would be meaningless. Accordingly, while a carrier's liability is capped at 1,000 SDRs for lost or damaged baggage under Article 17 of the Montreal Convention (assuming that wilful misconduct is not proven), the carrier cannot "except out" liability for any particular items contained in the passenger's checked baggage.

Recoverability of Attorneys' Fees

Finally, the Court dealt with the issue of recovery of attorneys' fees under the Montreal Convention. The Court found that while the Montreal Convention does not bar the recovery of either fees or costs in excess of the liability limits found in the Montreal Convention, it does not provide an independent basis on which such amounts may be awarded. Accordingly, if plaintiff was able to successfully cite to a law that permitted an award of attorneys' fees, then the Court could award those fees. However, since no such statute was cited, the Court declined to award attorneys' fees in this matter.

Conclusion

While this case is small in terms of dollar value, it does clarify issues relating to the application of the proper Convention to claims in the United States, *i.e.* the Montreal Convention as opposed to the Warsaw Convention for claims which arose after November 4, 2003 and the liability of the carrier under Article 17 of the Montreal Convention, which is subject neither to proration based on the weight of the lost baggage nor exclusion based on the alleged items contained in the baggage.

The Department of Transportation has recently taken an interest in this issue, with the issuance on March 26, 2009 of guidance on airline baggage liability and responsibilities of code share partners involving code share itineraries. The guidance from the Department of Transportation is consistent with the holding of the Firth Circuit in *Muoneke*: “Although carriers may wish to have tariff terms that prohibit passengers from including certain items in checked baggage, once a carrier accepts checked baggage, whatever is contained in the checked baggage is protected, subject to the terms of the [Montreal] Convention, up to the limit of 1,000 SDRs”. *See* Guideline on Airline Baggage Liability and Responsibilities of Code Share Partners involving International Itineraries, 74 Fed. Reg. 837, 838 (April 1, 2009).



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¹ Montreal Convention, Art. 22.2.