

Client Bulletin

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Claim For Deep Vein Thrombosis (DVT) Is Not Compensable Accident Under Warsaw Convention

Decisions in the United States and United Kingdom have held that Deep Vein Thrombosis (DVT) allegedly caused by passengers sitting onboard long distance flights, do not qualify as “accidents” for which monetary damages are recoverable under Article 17 of the Warsaw Convention. A recent decision by the Ninth Circuit Court of Appeals, *Blotteaux v. Qantas Airways Limited*, 2006 WL 475458 (9th Cir. 2006), confirms this conclusion and rejects several attempts made by the passenger to distinguish his case from earlier decisions dismissing DVT claims.

Mr. Blotteaux was a business class passenger traveling on a Qantas flight from Australia to the United States in September 2001 when he developed a DVT. He did not request any assistance or other accommodations from Qantas personnel during the trip and did not seek any medical attention for his condition for two weeks.

The susceptibility of passengers to a DVT (a blood clot formation in the deep veins of the legs) during the course of long flights is well recognized in the aviation industry. Since 2001, Qantas has shown a DVT informational video on its international flights. Qantas also places DVT information articles in its in-flight magazine and its audio entertainment system includes a segment about the importance of maintaining blood circulation during long flights.

Mr. Blotteaux claimed that the term “accident”, which is the trigger for liability for bodily injury under Article 17 of the Warsaw Convention,

should be flexibly interpreted to allow recovery in his case. Mr. Blotteaux argued that he was not provided with any meaningful warning as to DVT risks and that Qantas’s failure to provide such warning constituted an “accident”, subjecting the airline to liability under the Warsaw Convention. The Ninth Circuit Court of Appeals sensibly rejected both arguments. The Court found that Mr. Blotteaux’s case was indistinguishable from earlier cases, notably *Rodriguez v. Ansett Australia Ltd.*, 383 F.3d 914 (9th Cir. 2004), where the same Circuit Court of Appeals had found that the occurrence of DVT on an otherwise unremarkable flight did not constitute an accident within the meaning of Article 17. The development of DVT was not precipitated by any unusual or unexpected event external to the passenger but rather was a product solely of the passenger’s own internal reaction to normal aircraft operation. The Court also found that there was no factual basis for Mr. Blotteaux’s claim that Qantas had failed to warn him about the dangers of DVT since audio, visual and written materials concerning DVT had been provided to the passengers. The fact that Mr. Blotteaux failed to heed the warnings did not support a failure to warn claim. Accordingly, the case against Qantas was dismissed.

As courts in the United States and the United Kingdom have now squarely rejected DVT cases as being “accidents” under the Warsaw Convention (and presumably under the new Montreal Convention, which adopts the identical “accident” language contained in Article 17 of the Warsaw Convention), the steady stream of DVT cases filed against airlines should come to a halt.



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