

Client Bulletin

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Aviation Accident Cases: Where to Litigate – Federal vs. State Court

The United States of America, with a centralized national or federal government and fifty state governments, has two separate judicial systems. The federal court system is a national system of limited jurisdiction; each state maintains its own separate state court system. The federal court system, established by the Founding Fathers in the United States Constitution, was originally intended to prevent discrimination against “out of towners”, *i.e.*, residents who were not sued in their home state.

Federal courts have limited jurisdiction and access is granted only on the basis of diversity of citizenship among the parties and a requisite amount in controversy, or in lawsuits arising under the laws of the United States. Because the federal judicial system historically has been viewed by lawyers as more favorable to defendants rather than plaintiffs, defendants who are sued in state court frequently look for ways to remove cases to federal court. Additionally, the procedural rules governing discovery in federal court, the availability of magistrates and special masters and the overall quality of federal judges often are deemed by defense counsel to provide a better forum in which to litigate and protect their clients’ interests than many state court venues. In contrast, plaintiffs suing corporate defendants such as airlines or aircraft manufacturers generally would rather proceed in state court where often plaintiffs’ attorneys are more comfortable, more familiar with the judges and where it is generally perceived that jury awards, to injured or deceased victims of air disasters for example, are more favorable than in the federal courts.

Although a new federal statute enacted in 2002 permits suits to be brought in federal court when a single air crash leads to at least seventy-five fatalities, the statute does not mandate that every

aviation disaster case be litigated in federal court. Litigation arising out of two recent air crash disasters demonstrate the continued procedural maneuverings of aviation accident parties in order to satisfy their preference for litigating in either state or federal court.

In Re Air Crash Disaster at Lexington, Kentucky, 31 Avi. Cas. 18,270 (E.D. Kentucky 2007), involves numerous wrongful death actions arising out of the crash of Comair Flight 5191 at Lexington, Kentucky in August of 2006. The cases originally were filed in state court in Kentucky, and then removed by Comair to federal court. Comair asserted that removal was proper because federal law governed the plaintiffs’ right of recovery and that the complaints involved allegations that raised substantial issues of federal law. Plaintiffs filed motions to remand the cases back to state court, arguing that Comair had failed to meet its burden of proving federal jurisdiction and that the complaints alleged only state law causes of action without reference to federal law.

In deciding the remand motion, the federal district judge held that plaintiffs’ wrongful death claims were not completely pre-empted by federal law and that the plaintiffs did not raise any substantial federal question which needed to be decided by a federal court. Accordingly, the actions were returned to the state court.

A similar result was reached by a federal appeals court in *Bennett v. Southwest Airlines, Inc.*, 31 Avi. Cas. 18,751 (7th Cir. 2007), a case arising out of the crash of a Southwest Airlines aircraft at Chicago’s Midway Airport on December 28, 2005. Various tort suits were brought in state court. Defendants removed the case to the federal court, asserting that the plaintiffs’ claims arose under federal law. The position urged by defendants was that federal law was applicable because federal aviation standards played a major role in the claim that the operator of the aircraft, the aircraft manufacturer and the operator of the airport acted negligently, thus

causing the crash. The district court denied the motion to remand the case to state court and plaintiffs appealed. As the Seventh Circuit Court of Appeals observed, the court below effectively decided that all suits concerning commercial air travel belong in federal court because the national government is the principal source of rules regarding safe air transportation and uniform application of these rules is desirable. Rejecting this argument and remanding the case to state court, the appellate court concluded that defendants' position, if accepted, would move a whole category of lawsuits to federal court. Claims related to air transport may be litigated in state court, and the fact that standards of care to be used in tort litigation come from federal law do not make the tort claims arise under federal law or pre-empt state law. As a result, the Seventh Circuit remanded the cases to the state court in Illinois, finding an absence of federal jurisdiction.

These decisions involving two recent major aircraft accident cases in the United States highlight the continuing battle between plaintiffs and defendants to choose a forum that they feel will be most receptive to their clients' interests and positions. While the new federal statute, 28 U.S.C. § 1369, mandates that most of major aviation disasters (those taking more than seventy-five lives where the passengers are from different jurisdictions) will be litigated in federal court, there is still an on-going and important role for the state court judicial systems to play in the litigation of aviation crash cases.



If you have any questions or would like further information, please contact:

Michael J. Holland, Esq.
Condon & Forsyth LLP
Times Square Tower
7 Times Square
New York, NY 10036
Tel: (212) 894-6740
Fax: (212) 370-4482
E-mail: mholland@condonlaw.com