

Client Bulletin

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New York Federal Court Expands Definition Of “Dependents” In Allowing Recovery For Non-Pecuniary Damages Under DOHSA

The Death on the High Seas Act, 46 U.S.C. § 761 (DOHSA) governs the scope of recoverable damages in suits arising from aviation accidents in international transportation where the crash occurs on the high seas, *i.e.* more than twelve nautical miles from the United States shore. In a case arising from the crash of EgyptAir Flight 990 on October 31, 1999, a Federal District Judge in Brooklyn recently awarded damages in the amount of \$3.6 million, including more than \$1.0 million in prejudgment interest, to the family of a single man killed in the accident. *Makary v. EgyptAir*, ___ F. Supp. 2d ___, Docket No. CV-00-1388 (FB) (E.D.N.Y. Nov. 28, 2006).

The decedent Sami Makary, a twenty-eight year old businessman, was survived by his parents, four sisters, his younger brother and a cousin who resided with the family in Egypt. Sami Makary had moved to the United States from Egypt in 1997 and was returning home to Egypt for a visit when he died in the crash of EgyptAir Flight 990. The Court found that Sami Makary had made significant financial contributions to his parents, his sisters and brother, as well as his cousin, from 1997 until the time of his death in 1999. While the total awards for pecuniary losses of \$675,000 were not particularly unusual in amount, what was startling were the non-pecuniary awards which, when combined with prejudgment interest running from the date of loss, constituted the bulk of the \$3.6 million award. The Court reviewed the amended DOHSA statute to conclude that Sami's parents

(who were defined beneficiaries under the statute) as well as his dependent relatives (dependency was determined by the evidence adduced at trial) were each entitled to non-pecuniary losses because they suffered from the loss of Sami Makary's care, comfort and companionship.

In making its award, the Court relied on the close relationship between Sami and his parents and the loss of a child suffered by a parent. The Court pointed out that a child is expected to survive his or her parent and that, from earliest biblical times, the primacy of a parent's love for his or her child was found in many cultural or religious traditions. Based on the close relationship between Sami and his father and mother, the Court awarded non-pecuniary damages to them for their loss of care, comfort and companionship in the total amount of \$1,310,000. The Court also awarded non-pecuniary loss damages to Sami's sisters and brother of \$125,000 each, finding that Sami had a close relationship with his siblings and had provided them with financial assistance when they required it. Finally, while Sami's young cousin was not a blood relative, the evidence demonstrated that he was a dependent and thus, found the Court, was entitled to recover non-pecuniary damages based on the closeness of his relationship with Sami. He also was awarded \$125,000 in non-pecuniary damages.

The award by the District Court, sitting without a jury,¹ of such substantial non-pecuniary damages in a wrongful death action governed by DOHSA, undoubtedly will raise the bar in terms of demands by astute plaintiffs' counsel in further aviation disaster cases governed by DOHSA.



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¹ EgyptAir is an agency or instrumentality of a foreign state under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1330 and was entitled to a non-jury trial.