

With Compliments of

CONDON & FORSYTH LLP

7 TIMES SQUARE
NEW YORK, NEW YORK 10036
TEL: 212.490.9100
FAX: 212.370.4453

1901 AVENUE OF THE STARS
LOS ANGELES, CALIFORNIA 90067
TEL: 310.557.2030
FAX: 310.557.1299

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THE WARSAW/MONTREAL ROUNDUP: SIGNIFICANT 2006 DECISIONS

The Montreal Convention of 1999¹ entered into force on November 4, 2003, sixty days after the United States became the thirtieth party to ratify the Convention. There are currently seventy-four parties to the Montreal Convention with the recent ratification of the Montreal Convention by Pakistan on December 15, 2006. While the Montreal Convention now has been in effect in the United States for just over three years, there have been relatively few decisions interpreting its provisions. For the most part, the cases discussing the Montreal Convention have done so in conjunction with its predecessor, the Warsaw Convention², to which over one hundred twenty countries are parties.

Preemption/Exclusivity

Not surprisingly, preemption and the exclusivity of the Warsaw Convention continued to be major issues. Attempts by claimants to bring suit outside the confines of the Convention uniformly were dismissed by the courts.

In *Oparaji v. Virgin Atlantic Airways, Ltd.*³, plaintiff was denied boarding when the name on his passport did not match the name on his passenger ticket. The plaintiff was questioned briefly and released. However, instead of simply boarding his flight in Lagos for travel to New York via London, plaintiff chose to remain in the airport and demand a written explanation regarding his brief detention. As a result, he was asked by the Nigerian constabulary to accompany them to an office where

he then gave a short statement. Upon return to the gate area, he was told that his flight had closed for boarding and, as a consequence, missed his flight. He apparently used his remaining funds to purchase another ticket to London. Without any money, he solicited good Samaritans at Heathrow Airport to pay for a ticket to New York. In his suit, he sought damages for breach of contract, loss of baggage, loss of work, emotional distress, and defamation.

While noting that Mr. Oparaji had asserted a number of legal theories, the court pointed out that the Warsaw Convention provided his exclusive remedy as to claims falling within its scope. Since he sustained no bodily injury, the court concluded that Article 17 of the Convention provided no basis for recovery. His claims for delay, while falling within the scope of Article 19, then were dismissed because of his decision to secure substitute travel. Following the Court of Appeals for the Second Circuit decision in *Paradis v. Ghana Airways, Ltd.*⁴, the court held that Article 19 does not allow for recovery of the costs of substitute transportation. In order to recover compensation for delay, the court said that plaintiff should have waited for the next scheduled flight to London, rather than purchasing a ticket on another airline.

In *Singh v. North American Airlines*⁵, plaintiff brought suit for false imprisonment because of his detention, arrest, and incarceration upon suspicion of having illegally imported drugs into the United States. In fact, airline employees had placed tags bearing his name and identification on bags containing illegal drugs⁶. In addressing whether the false imprisonment claim fell within the scope of the

Warsaw Convention, the *Singh* court first concluded that the injury-causing event was the mislabelling of narcotics laden baggage with the plaintiff's identification. Because the court then found that the mislabelling occurred during embarkation, it concluded that plaintiff's claims fell within the scope of Article 17 of the Warsaw Convention. As a result, the court denied remand of the case to the state court, leaving it to plaintiff to prove that he sustained personal injury as a result of the event.

Two federal appellate courts also dealt with the preemption issue. *Mbaba v. Societe Air France*⁷, presented the first opportunity for the Fifth Circuit to interpret the language of the Warsaw Convention as amended by Montreal Protocol No. 4. In *Mbaba*, plaintiff argued that his claims stemming from excess baggage fees were not preempted because such injuries were not contemplated by the Convention. Specifically, he argued that his injury did not fall within any broad category of the Convention, which includes personal injury, and injury due to lost or damaged baggage. The appellate court disagreed, finding that Article 24 specifically preempts claims resulting from the carriage of baggage "however founded".

The second case, *Acevedo-Reinoso v. Iberia Lineas Aereas De Espana, S.A.*⁸, involved a Cuban citizen legally residing in the United States who travelled from Puerto Rico to Madrid to attend a business meeting. He alleged that he had been assured at check-in in San Juan that his travel documents were in order, but was detained upon arrival in Spain after showing his Cuban passport. He was questioned, detained overnight and subjected to a strip search by Spanish immigration authorities who also threatened to deport him to Cuba. Eventually he was put on a flight back Puerto Rico.

Plaintiff sued Iberia, alleging negligence under Puerto Rican law. Iberia moved to dismiss, arguing that the Complaint failed to state a cause of action under Puerto Rican law and, alternatively, that the Warsaw Convention preempted the plaintiff's claims.

The lower court concluded that plaintiff's negligence claim was preempted by the Warsaw Convention and that plaintiff had no sustainable claim under the Convention because he had not alleged "bodily

injury" as required by Article 17. He only had alleged humiliation, embarrassment and anguish which are not recognizable under the Convention. As a result, the court dismissed plaintiff's Complaint.

On appeal, plaintiff argued, and the First Circuit agreed, that the lower court erroneously assumed the Convention's applicability, failing to resolve the threshold issue of whether plaintiff's injuries were sustained on board the aircraft or in the process of embarking or disembarking. Absent such a determination, the court could not dismiss the case based on upon the preemptive effect of the Convention and plaintiff's failure to state a valid claim under its terms. "If the Convention is not applicable, it is not preemptive, and the passenger is free to pursue his or her claim under local law". Since the lower court never determined whether plaintiff's injury occurred on board the aircraft or in the process of embarking or disembarking and, therefore, that the Convention did indeed apply, the appellate court concluded that it had erred in dismissing plaintiff's claim under local law as preempted by the Convention⁹.

The First Circuit also concluded that the facts alleged by plaintiff were sufficient to state a claim for negligent failure to advise under Puerto Rican law should that claim not be preempted by the Convention. Accordingly, the case was sent back to the lower court for further proceedings on both issues.

Another preemption/breach of contract case was *Sobol v. Continental Airlines*¹⁰. Plaintiffs brought four first class tickets to travel from Newark to Mazatlan but some members of the family were downgraded because the flights were oversold. They received the difference in airfare as well as an award of frequent flyer mileage to their accounts as a gesture of Continental's goodwill. Unsatisfied with this result, plaintiffs sued Continental which moved for summary judgment on the grounds that the Warsaw Convention precluded plaintiffs from pleading any legally viable claims.

In analyzing the summary judgment motion, the court first concluded that the separation and segregation of a travelling party does not qualify as an "accident" for the purposes of the Warsaw

Convention as interpreted by the Supreme Court in *Air France v. Saks*¹¹. “Sitting apart from one’s family can hardly be described as out of ordinary or unexpected on a plane flight, nor is the rigid enforcement of the boundary between first class and coach a surprise to anyone who has flown before”. Moreover, the court found that, even if the separation of the travelling party constituted an accident, the plaintiffs could not meet the second requirement for liability under Article 17 of the Warsaw Convention, the occurrence of a bodily injury. Finding both preemption and a lack of a viable claim under the Warsaw Convention, the court granted Continental’s motion for summary judgment and dismissed the lawsuit.

The exclusivity of the Warsaw Convention remedy for incidents occurring during international transportation was applied to FU (apparently pronounced “EFF-YOU”), a cat which used up all its nine lives after flying on Air Canada from Toronto to San Francisco in *Wysotski v. Air Canada*¹². When the plane landed at San Francisco International Airport, FU’s crate was damaged and the cat was missing. Despite plaintiffs’ search, FU was never found. Plaintiffs filed suit against Air Canada and Continental, asserting claims under both the Warsaw Convention and state law for negligence, negligent infliction of emotional distress, fraud, false advertising and violation of the California Civil Code.

Finding that the Warsaw Convention preempted state law claims with respect to claims for loss of goods in international transportation, the court dismissed all claims other than those brought under the Convention. Plaintiffs argued that alleged misrepresentations by Air Canada concerning the care that would be taken with FU and its refusal to permit adequate searching after he was found missing occurred prior and subsequent to the air transportation and hence, were not preempted by the Convention. In rejecting these arguments, the court noted that the Convention would cease to be an exclusive remedy and the Supreme Court’s decision in *El Al Israel Airlines, Ltd. v. Tseng*¹³ “would be gutted if plaintiffs who could not assert state-law claims for the act itself were nonetheless permitted to sue under state law for ex ante representations

that the act would not occur or ex post failure to redress the harm.”

In a rather unusual case, *Eid v. Alaska Airlines, Inc.*¹⁴, the court found that claims for defamation were preempted by the Warsaw Convention. Nine passengers boarded a flight in Vancouver, British Columbia bound for Las Vegas, Nevada. Due to an in-air incident, the flight was diverted to Reno, Nevada and all nine passengers were ordered to leave the aircraft. The passengers sued Alaska Airlines for delay under the Warsaw Convention as well as state law claims for defamation and slander. The court dismissed the state law claims, finding them preempted by Warsaw. Plaintiffs filed an Amended Complaint, with the court again dismissing the defamation and invasion of privacy claims.

With respect to the delay claim, Alaska Airlines by moving for summary judgment under the Tokyo Convention, which provides that any action taken by a pilot in command to preserve the good order and discipline on board the aircraft precludes liability¹⁵. The Tokyo Convention provides that neither the aircraft commander nor any other crew member shall be held responsible in any proceeding because of the treatment undergone by the person removed from the aircraft. Finding that the Captain had reasonable grounds to believe that a person had committed or was about to commit an offense on board the aircraft, the court concluded that the Captain was justified in diverting the flight and ordering the passengers off. “Reasonable minds, given even a cursory examination of all of the facts and circumstances of this matter could not differ in concluding that the Captain had reasonable grounds for his decision”. Accordingly, the Complaint was dismissed.

Article 8 – Failure to Designate Stopping Places

*Nissan Fire and Marine Insurance Company Ltd. v. BAX Global Inc.*¹⁶ involved a shipment of cargo from Indiana to Hong Kong in 2001. The shipper Hitachi and its insurer brought an action against BAX Global, which prepared the original “house” air waybill and arranged for the shipment from Indiana to Hong Kong. The plaintiffs asserted that the Warsaw limits of liability were inapplicable for

two reasons: the loss occurred outside airport premises and the BAX air waybill failed to list Chicago as a stopping place. (The cargo was trucked from Indiana to Chicago and then transported by Cathay Pacific to Hong Kong.)

The date of loss for the shipment was after the United States ratified the Montreal Protocol, but before the Senate consented to the Hague Protocol. Article 8 of the unamended Warsaw Convention provides a list of seventeen particulars which an air waybill must contain, including all of the stopping places for the consignment. The failure to comply with the requirements of Article 8 renders the limitations of liability provided by the Convention inapplicable. The Hague Protocol deleted the requirement in Article 8 concerning the listing of the particulars, including the stopping places on the air waybill.

Following *Avero v. Belgium Insurance v. American Airlines, Inc.*¹⁷, the *Nissan* court held that the United States did not demonstrate an intent to be bound by the Warsaw Convention as amended by the Hague Protocol. Accordingly, since the unamended Warsaw Convention was applicable to the transportation as a result of BAX's failure to list the stopping places on the air waybill, it was not entitled to limit its liability under the Warsaw Convention. The court awarded Hitachi and its insurer the full amount of damages sought, less a setoff for the settlement paid by the airline.

Article 10 – Correctness of the Air Waybill

Article 10 of both the Warsaw and Montreal Conventions provide that the consignor (shipper) is responsible for the correctness of the particulars and statements in the air waybill relating to the cargo. This rule was found by the court in *BDM, LLC v. Federal Express Corporation*¹⁸, to exonerate FedEx from liability in an action involving gems shipped from Washington to China, and which were detained and ultimately destroyed by Chinese customs authorities. In *BDM*, plaintiff contracted with FedEx for the shipment of twenty-one export grade cartons of gems. The goods apparently failed to clear customs because they had not been properly packed and the value had not been properly declared on the air waybill. The Chinese customs

authorities refused to clear the goods into China and they sat in the customs warehouse for several months prior to their destruction by Chinese governmental authorities.

In reaching its decision, the court relied on both Article 10 and Article 16 which provides that the consignor must furnish such information as is necessary to meet the formalities of customs, control, or police before the goods can be delivered to the consignee. Because the court concluded that the correct information was not provided to the Chinese government authorities by the consignor (or the consignee), it held that FedEx bore no liability for the goods which were ultimately destroyed by the government authorities.

Article 17 – DVT and Accidents

Most of the cases decided regarding what constitutes an “accident” and a “bodily injury” for purposes of establishing liability under Article 17 focused on the recurring issues of Deep Vein Thrombosis (DVT) and whether the development of DVT by a passenger constituted an accident for purposes of the Warsaw Convention. The courts in the United States have adopted the reasoning of their sister signatory States of France, Great Britain and Australia, unanimously rejecting that the development of DVT is an “accident” under Article 17 or that the failure of an airline to warn of the risk of developing DVT constitutes an accident for which the airline is liable under Article 17.

In a quartet of Ninth Circuit cases, plaintiffs were denied recovery for DVT. In *Caman v. Continental Airlines*¹⁹, the Ninth Circuit held that *Caman* could not establish that his DVT was the result of an accident because he could not show that it resulted from an unexpected or unusual event aboard the aircraft. The court concluded that Continental's failure to warn Caman of the risk of DVT was not an “event” as that term was used in the *Air France v. Saks*²⁰ and *Olympic Airways v. Husain*²¹ cases. The court distinguished *Husain* which involved the airline's rejection of a direct plea for help by the passenger's widow, who wanted him moved to a non-smoking section of the aircraft in view of his allergic condition. In distinguishing *Caman* from *Husain*, the court found that Continental's failure to

warn was an act of omission which allowed an unfolding series of events to reach their natural conclusion, rather than an act of commission as in the rejection of a direct plea for help in *Husain*.

The *Caman* decision was preceded by *Blotteaux v. Qantas Airways Limited*²² in which the court found that plaintiff failed to demonstrate any clear cut industry wide standards against which Qantas' warnings concerning the risk of DVT could be measured. Finding that *Blotteaux's* claim was squarely controlled by *Saks and Rodriguez v. Ansett Austl. Ltd.*²³, it dismissed the Complaint.

Finally, in two DVT cases decided on the same day, *Cortez v. Air New Zealand Limited*²⁴ and *Damon v. Air Pacific Ltd.*²⁵, the court reiterated its conclusion that failure to warn of DVT risk is not an Article 17 event.

Article 17 – Accident Onboard Aircraft

An Article 17 case of a different nature was *Sharma v. Virgin Atlantic Airways*²⁶, where the court, believing that “something” happened to the plaintiff, ruled that this “something” was a sufficient basis to award plaintiff substantial damages when he slipped and fell in the lavatory of a Virgin Atlantic aircraft, allegedly because of the presence of the residue of liquid soap on the floor of the lavatory. While the evidence as the nature and extent of plaintiff's injuries was hotly contested, and defendant claimed that, as a matter of physics, it would have been impossible for the plaintiff to have fallen in the way that he claimed, the court chose to credit the testimony of plaintiff's expert who concluded that the floor was extremely slippery with soap on the surface. The expert further opined that even a small amount of soap on to the lavatory floor would cause it to be dangerous and unsafe for patron use.

Following the occurrence, the plaintiff had multiple hospitalizations and treatments associated with post-concussion syndrome, knee and back pain. Finding that the defendant had failed to take all necessary measures to prevent the plaintiff's accident such as more frequent inspection of the lavatory floors or changing the flooring of the lavatory so that it was not so slippery, the court

found that the plaintiff had sustained his burden of proving an “accident” and a “bodily injury” on board the aircraft. The court awarded a total of \$250,000 for the plaintiff's past medical expenses as well as general damages for pain and suffering.

Article 18 – What Constitutes Carriage by Air

Two decisions in 2006 discussed the meaning of “carriage by air” under the Warsaw regime. *Sysco Food Services of Hampton Roads, Inc. v. Maersk Logistics, Inc.*²⁷ involved a claim for damages to a shipment of frozen foods which was to be transported from the United States to Qatar. The damage occurred because dry ice was not properly placed between the cartons and allegedly resulted in the loss of \$800,000 worth of perishable cargo. The court found the applicable treaty to be the Warsaw Convention, as amended by Montreal Protocol No. 4, which provides that the carrier was liable for damage sustained in the event of destruction or loss of, or damage to, cargo if the occurrence which caused the damage took place during the “carriage by air”. Finding that the term “carriage by air” was not limited to actual air travel but extended to the period when the cargo was in the charge of the carrier, whether on the airport premises or on board the aircraft, the court concluded that FedEx as the carrier was liable under Article 18 for damages which occurred during the loading process. Finding that the clause in the FedEx shipping agreement exonerating FedEx from liability during the carriage by air (the actual flight was being performed by Atlas Air Worldwide Holdings, Inc.) conflicted with Article 18, the court held the contractual clause was preempted.

It frequently has been held that the period encompassed by “carriage by air” includes the time in which the goods are at the airline's warehouse as so long as that warehouse is located within the grounds of the airport. *See, e.g. Victoria Sales Corp. v. Emery Airfreight*²⁸. This rule was used to dismiss certain state law claims brought against All Nippon Airways for cargo lost during transportation between India and San Francisco, California. In *Kaur v. All Nippon Airways Co., Ltd.*²⁹, the Complaint alleged four causes of action under state law as well as a claim under the Warsaw Convention. After quickly dismissing the state law

claims on the basis of preemption, the court reviewed the history of Article 18 and rejected plaintiff's argument that the Warsaw Convention did not apply. Finding that the defendant airline had submitted undisputed evidence that its cargo warehouse was located within the grounds of San Francisco International Airport, the court held that the Warsaw Convention exclusively applied to the claim.

Article 19 – Bumping

In *Weiss v. El Al Israel Airlines, Ltd.*³⁰ plaintiffs asserted that the Montreal Convention did not apply to their claims for damages as a result of being “bumped” because bumping is more accurately described as a complete non-performance of a contract rather than delay under Article 19. Relying on *Wolgel v. Mexicana Airlines*³¹, and the drafting history of the Montreal Convention, the court agreed and held that bumping constitutes nonperformance and not delay for which the Convention supplies the exclusive remedy.

Article 22 – Limit of Liability

While Articles 3 and 17 of the Montreal Convention do away with the requirements contained in Article 4 of the Warsaw Convention that the baggage ticket contain the weight and number of pieces of checked baggage, the issue of compensation due passengers who have lost bags and whose tickets did not have the weight and number of the bags printed on them was raised in a class action lawsuit, *Stevens v. Delta Air Lines, Inc.*³², filed in the District of Columbia by the Estate of Louise Stevens. Ms. Stevens lost a single piece of baggage on international flight terminating at Atlanta, Georgia in January of 1999. She filed a claim with Delta Air Lines seeking recovery of \$1,044. Delta responded that its maximum liability was \$640.00, representing the maximum free allowable weight of thirty-two kilos per bag, and tendered that amount. After cashing the check, Mrs. Stevens brought a class action suit claiming that Delta had failed to compensate her and all other affected class members who had lost bags on Delta's flights where the passenger ticket did not provide the weight and number of the missing pieces. The purported class consisted of approximately 3,000 Delta passengers who

allegedly had received less than the fair market value of their loss or damaged baggage because of the Warsaw Convention's limits of liability. Class action status was denied on the basis that class certification was not appropriate under Rule 23 of the Federal Rules of Civil Procedure because Delta had an affirmative defense of satisfaction and release (plaintiffs had cashed settlement checks) which required the application of varying state laws on a case by case factual basis. The District of Columbia Court of Appeals affirmed the dismissal of class action status.

Article 26 – Timely Notice of Claim

Article 26 of the Warsaw Convention provides that in the case of a damaged bag, timely notice of claim must be dispatched within seven days of receipt of the damaged goods. In *Figueira v. Alitalia*³³, the issue was the dispatching of timely notice of claim with respect to a computer stolen from inside plaintiff's checked backpack. Since neither Italy nor the United Kingdom, the origin and destination of plaintiff's flights, had ratified the Montreal Convention as of the time of the loss, June 13, 2004, the Warsaw Convention was applicable. The issue was whether the claim letter, written on June 15, 2004, had been properly “dispatched” within the meaning of Article 26 of the Warsaw Convention. The plaintiff alleged that she sent a letter on June 15, 2004 to Alitalia, properly stamping and dispatching it to an address which Alitalia conceded was proper. However, Alitalia contended that it never saw the letter until it was produced in the litigation. Relying on the presumption that a properly addressed piece of mail placed in the care of the postal service has been delivered, the court found that there was a disputed issue of fact concerning timely notice of claim and therefore denied Alitalia's motion to dismiss the Complaint.

Article 29 – Statute of Limitations

Two Article 29 cases decided in 2006 reinforced that it is the Warsaw Convention statute of limitations, and not any state statute of limitations, which governs a claim for personal injuries or wrongful death during international transportation. In *Robinson v. Virgin Atlantic Airways, Ltd.*³⁴, plaintiff sustained a personal injury on a Virgin

Atlantic flight from London to Newark on September 27, 2002. When the airplane experienced turbulence, hot tea slid off plaintiff's tray table and into her lap. Although Ms. Robinson's suit was timely under the three year New York statute of limitations for personal injuries, she was nearly a year late under the Article 29 two year statute of limitations. In dismissing the case, the federal court in New York found it "crystal clear that the Warsaw Convention preempts any alternate ground for bringing a personal injury claim". Accordingly, Ms. Robinson could not maintain a state law negligence claim and her claim was dismissed under the two year statute of limitations of Article 29 of the Warsaw Convention.

The similar fate of dismissal was suffered by the plaintiff in *Linders v. MN Airlines, LLC*³⁵. In that case, plaintiff was injured on June 27, 2001 when he fell down stairs while exiting an aircraft in Cancun, Mexico, resulting in injury to his back. Sun Country Airlines, the operator of the flight, went into bankruptcy shortly thereafter and plaintiff did not file his lawsuit until April 27, 2005, nearly four years after the date of flight. Plaintiff contended that his Complaint was timely because he had filed a proof of claim with the bankruptcy court within the two year period. Plaintiff's argument that the filing with the bankruptcy court was an "action" for purposes of meeting the limitations period of Article 29 was rejected since a proof of claim in bankruptcy court does not constitute the commencement of an action under the Federal Rules of Civil Procedure. The court also found that the Warsaw Convention's two year statute of limitations cannot be tolled and accordingly the action was untimely, resulting in a dismissal of the Complaint.

Article 30 – Successive Carriage

Two cases involving successive carriage were decided by courts in New York and California. In *Ramirez v. United Airlines, Inc.*³⁶, plaintiff purchased transportation through United for travel on a United flight from San Francisco to Los Angeles and from Los Angeles to Mexico City on Mexicana. She sued both carriers in connection with injuries allegedly sustained during the Los Angeles/Mexico City flight, which bore both United and Mexicana flight numbers and was being operated as a "code share" flight between the two

airlines. In attempting to avoid dismissal of her claims against United, plaintiff argued that her "confusion" over the arrangement between Mexicana and United prevented the court from finding that United was not the carrier. The court rejected this argument, holding that with respect to a code share flight, it is the carrier that actually operates the flight that is the carrier for the purposes of the Warsaw Convention. As a result, the court dismissed the claims against United Airlines, allowing the case to proceed solely against Mexicana.

The second successive carriage case was *Christoph v. AMR Corp.*³⁷ The plaintiffs purchased two tickets in New York for travel from Miami, Florida to Brazil on TAM Brazilian Airlines. The following day plaintiffs bought two roundtrip tickets for travel from New York to Fort Lauderdale, Florida, on the American Airlines' website. Neither American or TAM, or the plaintiffs' travel agent from whom the TAM tickets had been bought, had any knowledge of the plaintiffs' complete itinerary. After the loss of their baggage, plaintiffs brought suit in the state court in New York against American. American attempted to remove the case to the federal court on the ground that the Warsaw Convention governed the international transportation involved. Plaintiffs argued that the Convention was inapplicable because their overall trip from New York to Brazil was not regarded by the parties as a single operation as required in Article 30 for successive carriage. Plaintiffs further argued that, even if they regarded the trip as a single operation, defendant American Airlines could not have done so because it had no knowledge of the Miami to Brazil and return sectors on TAM. The issue as framed by the court was whether both the traveler and the airline must contemplate international travel in order for the Convention to apply. Answering that question in the affirmative, and relying on an earlier Second Circuit decision in *Lemly v. Trans World Airlines, Inc.*³⁸, the court held that in order to form a contract for international travel, the Warsaw Convention requires that both parties contemplate international travel. American clearly did not regard this travel as international since it did not know of the plaintiffs' domestic plans. In remanding the case to the state civil court, the court concluded that international transportation was not involved and that the Warsaw Convention was inapplicable.

CONCLUSION

Because the Montreal Convention has been in effect just in excess of three years, there are still relatively few cases interpreting it. These limited cases have applied the substantive law provisions of the Warsaw Convention since to a great degree the Montreal Convention tracks the substantive provisions of the Warsaw Convention. However, the differences between the Warsaw Convention and the Montreal Convention will be highlighted in future cases as issues are litigated concerning the Montreal Convention, specifically in the areas on exoneration from liability (Article 20) and the mutual liability of contracting and actual carriers (Articles 40 and 41).

EDITORS

MICHAEL J. HOLLAND
KATHERINE B. POSNER
PARTNERS, NEW YORK OFFICE
mholland@condonlaw.com
kposner@condonlaw.com

<http://www.condonlaw.com>

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¹ Convention for the Unification of Certain Rules for International Carriage by Air, opened for signature on May 28, 1999, *reprinted in* S. Treaty Doc. 106-45, 1999 WL 333292734 (Treaty).

² Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Warsaw, Poland, October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (1934), *reprinted in* note following 49 U.S.C.A. § 40105 (1997) (“Warsaw Convention”)

³ 2006 WL 2708034 (E.D.N.Y. 2006)

⁴ 2006 WL 2456499 (2d Cir. 2006)

⁵ 426 F.Supp. 2d 38 (E.D.N.Y. 2006)

⁶ In unrelated criminal prosecutions two airline employees pled guilty to using luggage to illegally transport drugs into the United States.

⁷ 457 F.3d 496 (5th Cir. 2006)

⁸ 449 F.3d 7, (1st Cir. 2006)

⁹ Curiously the court did not discuss, and the issue was apparently not raised by the parties, the defense that Iberia would have based on its passenger rules tariff that the passenger is responsible for having all travel documents necessary to enter a country and that the failure of the passenger to have documents necessary to enter a country, regardless of whether the passenger relied upon the advice of the airline’s agent, operates as a complete bar to plaintiff’s recovery.

¹⁰ 2006 WL 2742051 (S.D.N.Y. 2006)

¹¹ 470 U.S. 392 (1985)

¹² 2006 WL 581093 (N.D. Cal. 2006)

¹³ 525 U.S. 155 (1999)

¹⁴ 31 Av. Cas. 17,833 (N.D. Nevada 2006)

¹⁵ *See Convention on Offenses and Certain Other Acts Committed on Board Aircraft*, 20 U.S.T. 2941

¹⁶ 2006 WL 1305217 (N.D. Cal. May 11, 2006)

¹⁷ 423 F.3d 73 (2d Cir. 2005)

¹⁸ 2006 WL 889788 (W.D. Wash. 2006)

¹⁹ 455 F.3d 1087 (9th Cir. 2006)

²⁰ 470 U.S. 392 (1985)

²¹ 540 U.S. 644 (2004)

²² 2006 WL 475458 (9th Cir. 2006)

²³ 383 F.3d 914 (9th Cir. 2004)

²⁴ 2006 WL 2817981 (9th Cir. 2006)

²⁵ 2006 WL 2817997 (9th Cir. 2006)

²⁶ 2006 WL 870959 (C.D. Cal. 2006)

²⁷ 2006 WL 2506537 (S.D.N.Y. 2006)

²⁸ 917 F.2d 705 (2d Cir. 1990)

²⁹ 2006 WL 997329 (N.D. Cal. 2006)

³⁰ 433 F.Supp.2d 361 (S.D.N.Y. 2006)

³¹ 821 F.2d 442 (7th Cir. 1987)

³² 453 F.3d 525 (D.C. Cir. 2006)

³³ 31 Avi. Cas. 17,943 (S.D. Tex. 2006)

³⁴ 2006 WL 212295 (S.D.N.Y. 2006)

³⁵ 2006 WL 167611 (E.D. Mo. 2006)

³⁶ 31 Avi. Cas. 17,346 (N.D. Cal. 2005)

³⁷ 2006 WL 3359084 (E.D.N.Y. 2006)

³⁸ 807 F.2d 26 (2d Cir. 1986)