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**JUNE 2005**

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## ***FORUM NON CONVENIENS***

### **Flash Airlines Crash Cases Dismissed in *Gambra v. International Lease Finance Corp.*, 377 F. Supp. 2d 810 (C.D. Cal. 2005)**

On January 3, 2004, a Flash Airlines 737-300 aircraft crashed in the Red Sea off the coast of Egypt while en route from Sharm el-Sheikh, Egypt to Paris, France, resulting in the death of all 148 people aboard the flight. As is inevitable in air crash cases, litigation arising from the accident found its way into the United States courts. Since Flash Airlines, the operator of the aircraft, is not subject to personal jurisdiction in the courts of the United States, the 150 plaintiffs in 56 consolidated cases before the United States District Court for the Central District of California in Los Angeles named as defendants International Lease Finance Corporation (ILFC), the owner of the aircraft who leased it to Flash Airlines, The Boeing Company, manufacturer of the plane, Honeywell International, Inc., manufacturer of certain component parts of the aircraft flight management system, and Parker-Hannifin Corporation, another manufacturer of component parts of the aircraft.

Predictably, as occurs when foreign air crash cases are filed in the courts of the United States, the defendants moved to dismiss on the grounds of *forum non conveniens*. Arguing that France presented the most appropriate forum, the defendants sought dismissal of the cases to France.

In determining the motion, the court first considered whether France presented an adequate alternative forum (*i.e.*, whether the plaintiffs had a cognizable remedy in the French courts).

The court determined that France is an adequate alternative forum, as defendants' agreement to submit to the jurisdiction was sufficient to satisfy the requirement that they be amenable to service of process in the foreign country. Defendants also agreed, as is customary in *forum non conveniens* dismissal motions, to waive any statute of limitations defense which may have arisen subsequent to filing of the cases in the United States, and to toll any statute of limitations for 120 days after the dismissal of the cases in the United States.

Plaintiffs disputed that France was an appropriate alternative forum on the basis that the French courts do not have jurisdiction over claims by non-French plaintiffs. Plaintiffs claimed that the French Civil Code would not permit jurisdiction to be asserted over the defendants solely because defendants agreed to submit to accept process. Defendants' rejoinder was that if the plaintiffs' assertion proved to be correct, the case would come back to the United States for trial if the French courts declined to accept jurisdiction. Relying on expert testimony from a French law professor, defendants further argued that consent to French jurisdiction was permitted under French law.

Defendants argued that France was the most appropriate forum for the litigation because:

(1) at least 121 of the 143 potential heirs and beneficiaries who sued were citizens or residents of France;

(2) all of the defendants, including Flash Airlines and its insurer, could be sued in France; and

(3) a separate lawsuit against Flash Airlines and its insurer already was proceeding in the French courts.

Declining to enter into the debate over French jurisdictional law, the federal district court in Los Angeles concluded that there was a reasonable basis to conclude that the French courts would be able to exercise jurisdiction over the plaintiffs' claims. The court said that it would condition dismissal of the action on the French courts' assumption of jurisdiction over the plaintiffs' claims. If the French courts refused to accept jurisdiction over the plaintiffs' claims, the cases simply could come back to the United States for trial.

Having found that an adequate alternative forum likely existed in France, the court then turned to the familiar private interest and public interest factors of *Gulf Oil Corp. v. Gilbert*<sup>1</sup> and *Piper Aircraft Co. v. Reyno*.<sup>1</sup> The court found that all three private interest factors weighed in favor of trial in France.

The court found:

Given that a large volume of relevant evidence is either located in France now or can be made available there by agreement while much of the evidence located in France would be difficult, if not impossible, to obtain in California, the Court finds that this factor clearly favors dismissal.

The court also found that the second private interest factor, *i.e.*, the availability of obtaining witness testimony, weighed in favor of a trial in France. Most of the witnesses on damage issues resided in France, and bilateral agreements between

France and Egypt made it likely that important witnesses located in Egypt would be made available in France. The court found that even if the French witnesses were willing to testify voluntarily and come to California, their costs in doing so would be great. Moreover, if the French witnesses refused to testify, the court found that it would be unlikely that the witnesses could be required to travel to California. Defendants of course agreed, as a condition of the *forum non conveniens* dismissal, to make their witnesses and other evidence available in France.

Finally, the court weighed other private interest factors that can interfere with an expeditious trial. Plaintiffs argued that the parties to the lease agreement (ILFC and Flash Airlines) had agreed that California law would govern their lease agreement, and that the parties had selected ILFC's home district in Los Angeles as the proper forum for disputes involving the leased aircraft. Defendants contended that the lease between ILFC and Flash Airlines did not require the court to retain the case because the plaintiffs were not third-party beneficiaries of the lease agreement. Defendants argued that the lease was not intended to apply to claims involving parties other than the lessor, ILFC, and the lessee, Flash Airlines. The court agreed with defendants, finding that the aircraft lease did not weigh in favor of retaining the cases in California. The court also was not persuaded that plaintiffs were third-party beneficiaries entitled to enforce the forum selection clause in the lease agreement. Since there was no dispute regarding the terms of the lease or the relationship between Flash Airlines and ILFC, the court found that the lease provisions did not weigh against the dismissal of the cases from California.

Having found that the private interest factors favored dismissal from the United States to France, the court then weighed the public interest factors. The first public interest factor, court congestion, was neutral. The Court noted that the Central District of California (Los Angeles) is one of the busiest districts in the country with civil cases taking approximately 21 months to proceed to trial. The French experts opined that the trial in France would take between nine months and two years from the time of filing of the Summons through the

end of trial. Thus the court found that this factor did not favor dismissal.

The court then turned to the second public interest factor, the local interest in resolving the controversy. Defendants argued that France had a compelling interest in resolving the litigation since over 100 of its residents had been killed, the aircraft was transporting French tourists, a criminal investigation was lodged in France, other litigation involving the plaintiffs and Flash Airlines was already underway in France and that California's interest in the litigation was extremely limited given that the only contact with California was that the aircraft had been leased to Flash Airlines by a California corporation two years prior to the crash.

Plaintiffs argued that the United States had an interest in judging the products of its manufacturers, *i.e.*, Honeywell, Parker-Hannifin and The Boeing Company, against standards imposed under United States law.

The court concluded that France had a greater interest in hearing this case since 120 of the 122 decedents involved in the consolidated cases were residents of France and only four United States citizens perished in the crash. While the court agreed that the United States had an interest in ensuring that products manufactured by U.S. companies are safe, California's interest in the action was minimal, especially because a substantial portion of the manufacturing defendants' evidence regarding liability was located outside of California.

The court next weighed the preference in favor of having a forum apply a law with which it is familiar. Finding that the need to apply foreign law generally favors dismissal, the court rejected plaintiffs' assertion that United States substantive law would apply with respect to the product liability defendants. Defendants argued that a choice of law analysis based on the law of France would likely result in the application of Egyptian or French law. While declining to undertake a lengthy choice of law analysis, the court found that since it was unlikely that California law would be applicable, the court would most likely look to the law of France or Egypt.

Accordingly, the court granted *forum non conveniens* dismissal of all of the cases to France, subject to the standard *forum non conveniens* dismissal conditions:

- (1) Defendants' agreement to
  - (a) submit to the jurisdiction of a French court in actions refiled by plaintiffs there;
  - (b) toll any statute of limitations that might apply to such refiled actions for 120 days after dismissal by this Court;
  - (c) make available in such refiled actions in the courts of France any evidence and witnesses in their possession, custody, or control in the United States that the French courts properly deem discoverable and relevant to the resolution of any issue before them; and
  - (d) pay any damages awarded by the French courts in such refiled actions, subject to any right to appeal; and
- (2) A French court's acceptance of jurisdiction over the claims of all plaintiffs presently before this Court.

#### Endnotes

<sup>1</sup> 330 U.S. 501 (1947).

<sup>2</sup> 454 U.S. 235 (1981).

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