



FLIGHT-WATCH



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PASSENGERS SUFFERING PSYCHOLOGICAL INJURIES NOT RELATED TO PHYSICAL INJURIES MAY NOT RECOVER UNDER THE WARSAW CONVENTION

A passenger aircraft landed long and was stopped by an arrestor bed. Failing this, the aircraft would have fallen into a body of water. The passengers aboard the aircraft were evacuated. Two of the passengers brought actions under the Warsaw Convention, 49 U.S.C. §40105, alleging claims of both physical and mental injuries, such as fear of flying, nightmares, and difficulty sleeping. The defendants moved for summary judgment, contending that the Plaintiffs could only recover for mental injuries that were caused by physical injuries. The plaintiffs then settled their physical injury claims. The court granted the defendant's motion for summary judgment with respect to mental injury claims of the plaintiffs that were not related to physical injuries.

The plaintiffs appealed the trial court's decision to the United States Court of Appeals for the Second Circuit. The Second Circuit affirmed the decision of the trial court. Interpreting Article 17 of the Warsaw convention, the Second Circuit reasoned that to allow the recovery of mental injuries that did not arise out of physical injuries would be inconsistent with the legislative history of Article 17 of the Warsaw Convention. Further, the Second Circuit reasoned that a purpose of the Warsaw Convention was to foster the growth of the airline industry. Granting plaintiffs relief for mental injuries not caused by physical injuries would be inconsistent with the purpose of the Warsaw Convention.

Ehrlich v. American Airlines, Inc., 360 F.3d 266 (2d Cir. 2004).

A PASSENGER WHO IS ARRESTED AFTER BEING DENIED ACCESS TO THE AIRCRAFT MAY SUE FOR FALSE IMPRISONMENT

A female passenger was arrested after she was denied permission to board an aircraft. An airline employee heard this passenger use the word "bomb." The would-be passenger was arrested by two police officers, and she was fingerprinted, handcuffed, searched, and photographed. Subsequently, all charges against the passenger were dropped.

The passenger sued the airline, claiming false imprisonment, intentional infliction of emotional distress, and malicious prosecution. The airline moved to dismiss the claims under the Warsaw Convention, 49 U.S.C. §40105. Further, the airline contended that the claims of the passenger were subject to dismissal under the air carrier immunity provisions of the Aviation Transportation Security Act, 49 U.S.C. §44941 and also under the immunity provisions of the Federal Aviation Act, 49 U.S.C. §44902(b).

The trial court denied the airline's motion to dismiss. The trial court reasoned that whether or not the passenger was "in the course of any operation of embarking" under Article 17 of the Warsaw Convention was a question of fact for the jury. Also, with respect to the claims of immunity under federal statutes, the trial court reasoned that whether the airline employee acted maliciously or capriciously or in an arbitrary fashion so as to defeat any such immunity was a question of fact for the jury. The airline's motion to dismiss was denied.

Hansen v. Delta Airlines, Civil Action File No. 02-C-7651, 2004 WL 524686 (N.D. Ill. Mar. 17, 2004).



Alan Armstrong is engaged in the general practice of law with an emphasis in the following areas:

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