



FLIGHT-WATCH



VOLUME 158

By: Alan Armstrong, Esq.

July, 2005



GEORGIA SUPREME COURT HOLDS THAT DELTA AIRLINES HAS NO LIABILITY FOR SERVING ALCOHOL TO AN INTOXICATED PASSENGER UNDER THE GEORGIA DRAM SHOP ACT

The case arose out of a flight from Milwaukee to Atlanta. William Serio was served wine aboard the Delta flight. After landing, Mr. Serio operated his car and had a collision with a Mr. Townsend. Mr. Townsend filed suit against Serio and Delta Airlines in the Superior Court of Fulton County. The claims against Delta Airlines were based upon the Georgia Dram Shop Act (“GDSA”) and also common law.

Delta asserted Federal preemption and removed the case to Federal District Court. The District Court concluded that there was no Federal claim and no preemption. The case was remanded to the Superior Court of Fulton County. Following the remand, Delta filed a motion to dismiss for failure to state a claim. The trial court granted Delta’s motion. Delta filed an appeal to the Georgia Court of Appeals. The Georgia Court of Appeals upheld the dismissal of the common law negligence claim, but reversed the trial court for dismissing the GDSA claim against Delta. Delta then took an appeal to the Supreme Court of Georgia.

The common law rule was that the proximate cause of an accident involving the consumption of alcoholic beverages was the responsibility of the person consuming the beverages, not the responsibility of the person providing the beverages. However, with the passage of the Georgia Dram Shop Act (O.C.G.A. § 51-1-40), the causation issue which placed responsibility with the consumer of the beverages has been altered if the provider of alcoholic beverages knows the person to whom the beverages are provided “will soon be driving a motor vehicle.” O.C.G.A. § 51-1-40(b).

The Supreme Court of Georgia reversed the Georgia Court of Appeals decision and reasoned that the trial court correctly dismissed Townsend’s claims against Delta, both under the Georgia Dram Shop Act and under common law. The Supreme Court reasoned that the provision of alcoholic beverages aboard a commercial airliner is an amenity and is not the commercial objective of the flight. Further, the airline has no control over the passenger’s activities once he departs the aircraft. Many factors determine whether or not the passenger will soon be driving, such as customs, baggage claims and a host of other activities following deplaning the aircraft. For this reason, the Supreme Court of Georgia reasoned that Delta could not have known that the passenger would soon be operating a motor vehicle. On the other hand, owners of bars,

restaurants and similar businesses typically are patronized by persons who drive automobiles. The operators of these businesses can certainly appreciate that patrons will soon be driving if the business operator allows the patron to leave the business establishment in an inebriated condition. The Supreme Court said: “Thus, unlike the clientele of land-based establishments, airline passengers generally do not have direct and immediate access to their vehicles after they deplane.”



In summary, the Georgia Supreme Court affirmed the decision of the Superior Court of Fulton County (trial court) dismissing the claims brought by Mr. Townsend against Delta Airlines, both under the Georgia Dram Shop Act and under common law negligence principles. Justice Fletcher dissented, arguing that whether the Georgia Dram Shop Act should have presented a case of liability against Delta should not have been determined on a motion to dismiss.

Delta Airlines, Inc. v. Townsend ___ Ga. ___, Case Number: S05G0251 (June 16, 2005).



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

**Aviation Matters, Personal Injury,
Professional Negligence (Malpractice),
Products Liability**

**Phone: (770) 451-0313 Fax: (770) 451-0317
Email: alan@alanarmstronglaw.com**

**Website Addresses: www.alanarmstronglaw.com
www.flyingtigersfilm.com**

**Please contact us at
flightwatch@alanarmstronglaw.com
with any questions, comments, or if you no longer wish to
receive Flightwatch via email.**

Copyright 2005. Alan Armstrong. All rights reserved.

