



FLIGHT-WATCH



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DEFENSE PLOY OF REMOVING CASE TO FEDERAL COURT FAILS

Quite frequently in air crash litigation, the plaintiff will try to avoid litigating in federal court. Federal court has a myriad of rules, a series of deadlines and other impediments to the expeditious provision of justice. Generally, the state court process is less complex. Because the complexities of federal court litigation favor the defense, it is quite common to find cases removed to federal court by the defendant if there is diversity of citizenship (the plaintiff lives in one jurisdiction, but the defendant resides in another) or if there is a federal question.

Aviation being heavily regulated by federal initiatives, one can anticipate that an enterprising defense attorney will remove a state-filed case to federal court, alleging that joinder of a non-diverse defendant is fraudulent, by reason of which the case *really* should have been filed in federal court.

The case in question arose out of the crash of a commuter aircraft. An action was filed in Missouri against American Airlines, as well as a Missouri-based, non-diverse airline. The defense removed the case to federal court, claiming that joinder of the Missouri-based company was fraudulent and merely a ploy by the Plaintiff to keep the case in the Missouri state

court system. The court reasoned that the Plaintiff had at least a colorable claim against the Missouri-based defendant, by reason of which joinder of that defendant was not fraudulent. Accordingly, the case would have to be remanded from the federal court back to the Missouri state court where it was originally filed. The defendant then argued that a federal question was presented because the Plaintiff had included citations in their complaint to Federal Aviation Regulations. The federal court declined to entertain jurisdiction on a federal question theory, noting that merely because the plaintiff made references to the Federal Aviation Regulations in the complaint, it did not present a federal question requiring that the federal court retain jurisdiction.

Wandel v. American Airlines, Inc.,
Case No.: 4:05MD1702JCH, 205 WL
2406017 (E.D. Mo., Sept. 28, 2005).



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