



# FLIGHT-WATCH



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## AIRMAN'S BID TO OVERCOME LIFETIME REVOCATION FAILS

This case arose out of a Federal Express first officer who, apparently, transported Ecstasy to his girlfriend aboard a passenger aircraft flying to Japan. Following his arrest in Japan, he spent 48 days in solitary confinement. The Administrator brought an action to revoke his airline transport pilot certificate and other certificates and his first class medical certificate. When the matter was heard by Judge Fowler, Chief Judge of the National Transportation Safety Board (NTSB), he opined that he believed that the duration of the airman's certificate revocation should be for 18 months. The airman appealed to the full NTSB which could not render a binding decision since it was split two to two, there only being four members of the NTSB at the time of the appeal.

Subsequently, the airman filed a petition for review to the United States Circuit Court of Appeals by the District of Columbia arguing that since he was merely a passenger aboard the commercial airliner and not a crewmember, the lifetime revocation invoked by the FAA should not be applied. The airman failed to prevail on the appeal, and he then applied for and was granted a third class medical certificate and a student pilot's certificate only to have the FAA bring an action to revoke those certificates.

In the revocation action against the newly-issued certificates, the FAA moved for judgment on the pleadings invoking 49 U.S.C. §44703(f) which imposes a lifetime revocation on the certificate

of an airman involved in the transportation of illegal drugs aboard an aircraft. Fighting fire with fire, the airman filed a motion for summary judgment, as well as a motion to reassign the proceedings back to Judge Fowler, the case having been assigned to Judge Pope.

Judge Pope reasoned that the opinion expressed by Judge Fowler in the initial hearing of an 18 month denial, was not a matter properly before the court, since the duration of the revocation was not in issue at that time. Judge Pope denied the airman's request to reassign the case to Judge Fowler. He also denied the airman's motion for summary judgment reasoning that Judge Fowler did not have the statutory authority to reduce the lifetime revocation imposed by 49 U.S.C. §44703(f).

The Administrator was represented by Susan S. Caron, Esq., and the airman was represented by Mark T. McDermott, Esq.

*Petition of David J. Donnelly*, NTSB Docket No. SM-4753 (February 7, 2007).





**FAILURE TO WARN OF THE DANGERS OF  
DEEP VEIN THROMBOSIS IS NOT AN  
ACCIDENT UNDER THE WARSAW  
CONVENTION**

The case arose out of a flight from Los Angeles to Paris. The passenger sued Continental Airlines claiming that the airlines' failure to warn the passenger of developing deep vein thrombosis (DVT) on long flights constituted an "accident" under Article 17 of the Warsaw Convention. The trial granted the Defendant's Motion for Summary Judgment, and the passenger appealed.

The United States Court of Appeals for the Ninth Circuit affirmed after looking at the definition of an "accident" under the Warsaw Convention which must be an "unexpected or unusual event or happening that is external to the passenger." The Ninth Circuit reasoned that developing DVT from air travel is not an accident. DVT is the passenger's internal reaction to a normal event, aircraft operation. The Court distinguished between an accident under Article 17 and the remedial action an airline can take under Article 20(1) of the Convention. The Court reasoned that requiring an airline to give a precautionary instruction and expand

the definition of an Article 17 accident would improperly invade the function of Article 20(1) of the Convention dealing with the defense that the airline took all necessary measures to avoid the injury.

*Caman v. Continental Airlines, Inc.*, 455 Fed.3d, 1087 (9<sup>th</sup> Cir. 2006).



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Alan piloting the Kate during the Greater Georgia Air Show—10/15/06

Photo Courtesy of Neil Estes