

United States Court Of Appeals (6th Circuit) Provides A New Interpretation Of Article 17(1) Of The Montreal Convention

September 29, 2017

Doe v. Etihad Airways, P.J.S.C., No. 16-1042 (6th Cir. 2017)

The *Montreal Convention* creates, among other things, uniformity in the legal treatment of international carriage of passengers, including passenger compensation following accidents that occur during international flights.

Article 17(1) imposes strict liability on air carriers in the case of bodily injury or death:

The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking

The *Montreal Convention* and its predecessor, the *Warsaw Convention*, have historically been applied by courts such that passengers could not recover for mental distress unless that mental distress resulted from a bodily injury sustained in an airplane accident. In other words, a causal connection between the bodily injury and mental distress was necessary. Recently, the United States Court of Appeal for the Sixth Circuit in *Doe v Etihad Airways* (“*Doe*”) applied a different interpretation such that no causal connection was required.

In *Doe*, the plaintiff was onboard an international flight destined for Chicago. During the flight, the tray table remained in the open position and could not be closed as one of its knobs had fallen off. The knob was placed by the plaintiff into the seat pocket in front of her. During descent, a flight attendant instructed the plaintiff to put her tray in the upwards position. In attempting to explain the problem with the tray table, the plaintiff reached into the seat pocket to show the knob. When she did so, she pricked her finger on a used hypodermic needle apparently left in the seat pocket from a previous flight. As a result of the needle prick, the plaintiff sued the air carrier for physical injury (the pin prick) and mental distress arising from a fear that she may have contracted some kind of disease.

The District Court declined to award damages for the mental distress under the *Montreal Convention* on the grounds that it was not caused by the bodily injury itself (a pin prick to a finger) but was due to the nature of the instrument that caused the bodily injury (the used hypodermic needle). The court noted that if an innocuous object caused the injury (e.g. a sterilized toothpick) it would not have resulted in mental distress.

The Appeals Court disagreed. Specifically, the Appeals Court held that for damages to be recoverable pursuant to the wording of Article 17, “...in case of death or bodily injury of a passenger”, the distress does not need to be “caused by” the bodily injury. The Court determined that the correct interpretation of “in case of” is “if there is” or “in the event of”. In other words, in order for a plaintiff to recover for mental distress under the *Montreal Convention*, an accompanying physical injury is still required but it need not have a causal connection to the mental injury.

The Appeals Court opined that the decision’s overall result favoured passengers by not requiring them to prove causation in a burdensome way, and that this aligned with the purpose of the *Montreal Convention*.

Businesses exposed to passenger injury claims should take note of this significant change in the interpretation of the *Montreal Convention* and its potential for application by other courts.

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