

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.

By

[Robin Squires](#), [Katherine Ayre](#)

Expertise

[Insurance Claim Defence](#), [Aviation](#)

BLG | Canada’s Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.