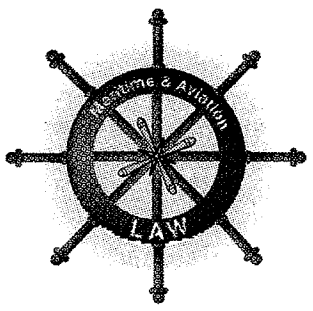
Litigating Accidents and Injuries Under the Montreal Convention

by LADD SANGER

In today's increasingly international community, the Montreal Convention is providing attorneys for both plaintiffs and defendants more opportunities to practice international law. Texas is one of the main gateways for international air travel. For example, the explosive growth in air travel in Central America and South America has many roots in the Lone Star State.



As accidents and incidents happen on international flights, the Montreal Convention allows lawyers to litigate more claims arising out of these accidents in Texas. The case law specific to the Montreal Convention is still evolving, and only a few cases of first impression are just now working their way through the appellate process.

The Montreal Convention, which was ratified by the United States and went into effect Nov. 4, 2003, is a passenger-friendly treaty that allows injured passengers to receive much fairer compensation than the predecessor Warsaw Convention in the event of an accident while on an international flight.

The Montreal Convention replaced the Warsaw Convention, which had been in effect since 1929 and had evolved over its life through numerous protocols and voluntary agreements among the carriers. By 1999, the Warsaw Convention had become a confusing patchwork of conventions, protocols and intercarrier agreements with different effective dates and signatories.

One of the chief weaknesses of the Warsaw Convention was a limitation of $75,000 on recoverable damages for death or injury. To promote a fairer result for the families of passengers, courts were forced to look hard to find "willful misconduct" on the part of carriers to get aroud the limit.

To address the Warsaw Convention's inadequacies, the International Civil Aviation Organization (ICAO), an agency of the United Nations designed to promote uniformity and adopt standards for international air transportation, was formed in 1947 and headquartered in Montreal. ICAO then met in 1999 to draft a new convention to govern international commercial air travel.

The most significant aspects of the Montreal Convention are 1. its two-tiered liability framework; 2. the addition of a fifth jurisdiction for claimants, in addition to the existing four jurisdictions of place of ticket purchase, origin, destination and principal place of business of the carrier; and 3. the ability to recover from the contracting carrier, the carrier who issues the ticket.

The Montreal Convention applies to commercial international air carriage between two signatory countries or a round-trip from a signatory country with an agreed stopping place in another signatory or nonsignatory country. If any part of a passenger's itinerary has an international component, then the convention will apply to the entire trip. For example, if a passenger travels from McAllen to Dallas-Fort Worth to London and an accident occurs on the domestic McAllen to Dallas-Fort Worth portion of the flight, the Montreal Convention would still apply.

Cases interpreting the terms "accident," "agent," "embarking" and "disembarking" under the Warsaw Convention are largely applicable to Montreal Convention cases. Because the case law interprets these terms broadly, most unexpected injury-causing events external to the passenger are considered an accident within the meaning of the convention. As a result, the following incidents have been classified as accidents compensable under the convention: significant turbulence, falling baggage, malfunctioning seats, injury on shuttle buses transporting passengers to aircraft, assault by an airline agent, slippery air stair steps, runaway beverage carts, lavatory doors, contaminated meal service, and improper wheelchair transfers. Some events that are not considered accidents under the Montreal Convention are deep vein thrombosis, heart attacks and intoxicated-passenger injuries.

Looking at Liability

As noted above, the Montreal Convention establishes a two-tiered liability framework. Under the convention's first tier, the carrier is strictly liable for the first 100,000 special drawing rights (SDRs) (approximately $152,174) of proven damages if an accident causing a passenger's death or injury took place on board the aircraft or in the course of any of the operations related to embarking or disembarking from the aircraft. The carrier's only defense to this first tier is contributory negligence by the passenger.

As for the second tier, a passenger or his or her heirs may recover full compensatory damages beyond the first 100,000 SDRs provided under the first tier, unless the carrier can prove that it was not negligent or that a third party who was not an agent or servant of the carrier was solely responsible for the accident.

In addition to injury and death damages, the Montreal Convention governs the carrier's liability for cargo and baggage. The carrier's liability for lost or damaged baggage is limited to 1,000 SDRs or approximately $1,521. Notably the carrier's liability for checked baggage is significantly less on international itineraries than on domestic trips.

To address the lack of inflation adjustment that was present under the Warsaw Convention, Montreal provides for review of the various SDR limits every five years to keep pace with inflation. Damages under Montreal are limited to compensatory damages as the convention specifically excludes recovery of punitive or other noncompensatory damages. The Montreal Convention does not address recovery for mental injuries. Accordingly, the legal precedents established under the Warsaw Convention, which permit the recovery of mental injury damages when the mental injury flows from the physical injury incurred as a result of the accident, remain in place.

Under Warsaw, there were instances where a passenger could not bring a case in his or her home domicile. To correct this, the Montreal Convention adds a fifth jurisdiction to allow plaintiffs to bring their claims in the country of their principal and permanent residence at the time of the accident. The practical application of this provision is important when dealing with itineraries involving multiple carriers and the "accident" occurs in a foreign country.

This provision, however, is subject to some restrictions, including the requirement that the carrier must operate passenger service and conduct business in the country of the passenger's residence. Still, in many cases, the passenger may be able to recover from the carrier who sold the ticket — the contracting carrier — and obtain a recovery even though the actual carrier is not subject to the jurisdiction of the courts in the country of the passenger's residence.

For example, consider the case of a passenger who purchases a ticket from WorldWide Airlines for a flight from Dallas-Fort Worth to Budapest. The first leg of the trip from Dallas-Fort Worth to London takes place on WorldWide's aircraft; while the second leg from London to Budapest occurs on Air Hungary's aircraft. The passenger is then injured on the Air Hungary flight. Thus, WorldWide was the actual carrier for part of the contracted carriage, and Air Hungary was the actual carrier on the portion of the trip where the accident occurred. Even though Air Hungary does not operate in the United States, does not have an office in the United States and, therefore, may not be subject to the jurisdiction of U.S. courts, the passenger, as a U.S. resident, can collect full damages from either Air Hungary or WorldWide Airlines, which is subject to the jurisdiction of U.S. courts and was both the "contracting carrier" that sold the ticket and the actual carrier on one leg of the journey.

The Montreal Convention has replaced the outdated Warsaw Convention system and its host of tack-on fixes with a more fair and workable system that is appropriate in this era of increasing international air travel. While minor injury cases involving less than 100,000 SDRs in damages are relatively straightforward, cases involving multiple foreign carriers or damages in excess of 100,000 SDRs can result in lengthy, complicated litigation as carriers and their insurers are required to defend cases around the world, even where they may not operate.

Furthermore, now that passengers are entitled to full compensation, there is an incentive for carriers to mitigate their liability for damages by looking to apportion liability to aircraft manufacturers, governmental agencies and other third-parties to whom the convention may not apply. The litigation that results from cases implicating the Montreal Convention promises attorneys for carriers and passengers new opportunities to practice in a fascinating niche of international law. TL

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