

2003-2004 Survey of International Law in the Second Circuit*

I. WARSAW CONVENTION

Magan v. Lufthansa German Airlines

In *Magan v. Lufthansa German Airlines*, the plaintiff appealed the granting of summary judgment in favor of the defendant, Lufthansa German Airlines [hereinafter Lufthansa].¹ The complaint arose out of an incident that occurred on an aircraft destined for Sofia, Bulgaria on March 27, 1997.² Plaintiff claimed that, following the pilot's announcement to be seated, some turbulence caused him to hit his head on an overhang.³ As a result of the impact, Plaintiff Magan broke his nose and "dislodged a dental bridge from his mouth."⁴ Additionally, Magan complained of blurred vision and claimed he blacked out as a result of striking his head.⁵ In response to the incident, Magan filed a complaint in district court pursuant to Article 17 of the Warsaw Convention.⁶

The parties agreed that the remedy for Magan's injuries, if necessary, would be that provided for under the Warsaw Convention.⁷ Such exclusive remedy provided for under Article 17 states, "the carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if *the accident* which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of

* This survey reviews significant case law from the United States Court of Appeals for the Second Circuit, the federal district courts in New York, and the Court of Appeals decided between July 1, 2002 and June 30, 2003. Those cases that overturned old law and/or broke new ground were included in this survey. Consequently, cases that simply reaffirmed previous decisions are not discussed.

1. *Magan v. Lufthansa German Airlines*, 339 F.3d 158 (2d. Cir. 2003).

2. *Id.* at 160.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Magan*, 339 F. 3d at 160.

7. *Id.* at 161.

embarking or disembarking.”⁸ This provision creates a presumption that holds the carrier liable for injuries sustained when such injury is caused by an “accident.”⁹ It is noted that, where a passenger sustains an injury that falls within the scope of the Warsaw Convention, he is entitled recovery solely under the Convention.¹⁰

The issue before the court was “whether the occurrence leading to Magan’s injuries amounted to an “accident” under the terms of the Warsaw Convention.”¹¹ The district court applied the *Saks* test, which states, “where a passenger sustains an injury that is caused by turbulence, the turbulence will not constitute an ‘accident’ within the meaning of Article 17. . . unless she can establish that the turbulence was ‘severe’ or ‘extreme’ as defined by the FAA.”¹² The plaintiff argued that the degree of turbulence should be irrelevant when determining whether an accident occurred because when turbulence results in impact, the definition of “accident” will be satisfied.¹³ On the other hand, Lufthansa argued that “light” or “moderate” turbulence should be expected on any flight and therefore the term “accident” as defined in *Saks*, is not satisfied.¹⁴

The Court of Appeals stated that neither the defendant nor the district court were able to cite legislative provisions in Article 17 of the Warsaw Convention which justify using “weather-reporting criteria” as part of the test of determining whether an “accident” in fact caused the injury.¹⁵ Therefore, the court reversed the trial court’s grant of summary judgment for the defendant and thus remanded the case for further proceedings on the grounds that “light” or “moderate” turbulence may never constitute an “accident” for finding liability under Article 17 of the Warsaw Convention and that no issue of material fact regarding the degree of turbulence was present.¹⁶

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8. *Magan*, 339 F. 3d at 161; Warsaw Convention, art. 17.

9. *Id.* at 161.

10. *Id.*; *El Al Israel Airlines, Ltd. v. Tseng*, 525 U.S. 155, 161 (1991).

11. *Magan*, 339 F. 3d at 159.

12. *Id.* at 163; *Air France v. Saks*, 470 U.S. 392, 403, 406 (1985).

13. *Id.*

14. *Id.* at 162.

15. *Id.* at 164.

16. *Magan*, 339 F. 3d at 166.