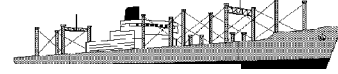




Rollin' On



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Warsaw & Worker's Comp: Could you say that again?

Holiday travel certainly can have its moments. Mother Nature seems to weigh in when travel picks up. Many of you heard about the passengers who got stuck on Northwest Airlines jets a few days ago. Some of them sat on the airport runway for 11 hours waiting to go somewhere. Many of the passengers complained, to no avail: Northwest would not let them off, stating, at least in part, that there were no gates available and that it would have been too dangerous to allow disembarking on to ground. It's a good thing that passengers can't carry weapons on to the plane, as there could have been some casualties. *11 hours.*

So in the good American tradition, several passengers have filed lawsuits against Northwest, claiming false imprisonment and other alleged wrongdoing. Coincidentally, the United States issued an opinion this week concerning the Warsaw Convention, which governs international air transportation. (International aviation agreements are frequently known by the name of the city in which they were adopted.) In this case, involving El Al Israel Airlines, the passenger was subjected to a thorough search. (I believe the passenger would use stronger terms. Those of you who have been through El Al Airlines know that its personnel search parts of your anatomy that you didn't know you had, giving new meaning to the idea of hard to reach places. Their motivation is that passengers can hide weapons in peculiar places.) The Court held that since the passenger suffered no bodily injury

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(whatever that is), the claim was not covered by Warsaw and that recovery pursuant to local law would not be allowed, since it would undermine the uniform regulation of air carrier liability that Warsaw was intended to achieve.

So if you're on the plane, are you in international air travel if your origin and destination are in two different contracting countries? After all, you aren't in the air, which seems to be the gist of the problem. Based upon an earlier opinion, also by the Supremes (lawyer talk), the liability of the carrier for baggage should commence upon delivery to the carrier, contrasted with liability to the passengers, which should commence when the passengers get on the plane. Northwest would therefore be able to embrace Warsaw. So you can have two passengers sitting side by side, one in international travel and one in domestic travel, and thus two different standards of liability will apply.

As a corollary and as many of you know, you can have two people working side by side on dock, one an employee of the dock's owner and the other an employee of some other company, such as a motor carrier. The two individuals can suffer the same injury, yet their recovery be totally different, since the former will be limited to the employer's worker's comp coverage, whereas the latter can waive worker's comp and proceed on a "third party" basis against the dock owner, with no worker's comp limitations. I once handled a

case where one worker received a few hours of lost wages and medical payments, whereas the third party claimant walked off with \$6,000. So if you're going to get injured and you're on the job, make sure that you get injured through some other company's negligence and that that company has deep pockets or good insurance coverage.

Now how I got from the Warsaw Convention to worker's comp, I'm not sure. But there must have been some kind of connection.

Back to Aviation

The FAA is going to require air carriers to install stronger airline seats, so that they will be more crashworthy. That is positive thinking. I used to work with a guy back in the '70s, when I spent a couple of years in Alaska, who was an avid nonsmoker but who would nevertheless always sit in the back of the plane with the smokers, under the theory that planes don't back into mountains. It's true statistically. A few years later my brother-in-law (not my brother-in-law at that time, so a back to the future kind of thing) was the sole survivor of a commuter plane crash. He was in the back seat.

Back then the saying was that if you're flying to Alaska, be sure to fly Alaska Airlines as they know where all the mountains are: They've hit them all.

IRS: I'm here to help you

Here's a new one. As of April 1 (not an April Fool's joke), the IRS mileage rate is dropping from 32 1/2¢ per mile to 31¢, due to reduced vehicle costs and reduced fuel costs.

That's all for now. To shippers, carriers, agents and other third parties, keep the cargo rollin'!!

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 20 years and emphasizing transportation law, business law and related litigation.