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## Aeronautics: Warsaw Convention

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## RECENT DEVELOPMENTS

**AERONAUTICS: WARSAW CONVENTION—***Warsaw v. Trans World Airlines, Inc.*, 46 U.S.L.W. 2327 (E.D. Pa. 1977).

The United States District Court for the Eastern District of Pennsylvania has held that an airline passenger who suffers a hearing loss as a result of routine repressurization of an aircraft cabin during landing cannot recover from the airline under Article 17 of the Warsaw Convention, as modified by the Montreal Agreement, which established carrier liability for injuries proximately caused by some "accident" occurring on board the plane or during the process of embarkation or debarkation.

The passenger had an upper respiratory tract infection at the time of the flight in question, but was otherwise in good health. His level of hearing was essentially normal although his left ear had been operated on 13 years earlier. The passenger's left ear became blocked during the aircraft's descent for landing and he had completely lost the hearing in his left ear by the time he arrived at the air terminal. Subsequent medical treatment failed to restore his hearing and his condition was diagnosed as permanent damage to the nerve of the left inner ear. The airline was sued by the passenger under the provisions of the Warsaw Convention, as modified by the Montreal Agreement, for damages as a result of his hearing loss.

The question before the court concerned a judicial interpretation of an article of the Warsaw Convention.<sup>1</sup> Article 17 of the Convention provides: "The carrier shall be liable for damages sustained in the event of the death or wounding of a passenger, if the accident which caused the damage there sustained took place on board the aircraft or in the course of any operation of embarking or disembarking."<sup>2</sup> The Montreal Agreement<sup>3</sup> made no changes governing the pre-conditions for liability under Article 17. The Agreement did, however, waive the

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<sup>1</sup> In 1934, the United States became a party to the Warsaw Convention, a treaty subsequently signed by 107 nations, applying to "all international transportation of persons . . . performed by aircraft for hire. . . ." Warsaw Convention, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (effective for the United States Oct. 29, 1934), art. 1(1).

<sup>2</sup> *Id.* art. 17.

<sup>3</sup> Approved by the Civil Aeronautics Board, May 13, 1966, Order E-23680, 31 Fed. Reg. 7302 (1966). The Montreal Agreement applies to international flights which involve a location in the United States.

defenses formerly available under Article 20(1)<sup>4</sup> and create an absolute liability standard for injuries proximately caused by some "accident" occurring on board the aircraft, or during the embarkation or debarkation process.

After determining that the plaintiff's hearing loss was proximately caused by the routine repressurization of the cabin during descent, the court turned to the issue of whether the repressurization was an "accident" under the provisions of Article 17. It was noted by the court that a factual situation in which an injury was caused by a normal and routine flight procedure had not previously been dealt with by a federal or state court.

Although the specific question of an airline's liability for passenger injuries proximately caused by routine flight procedures was one of first impression, it had previously been determined that the Montreal Agreement imposed liability on carriers for damages resulting from circumstances beyond their control such as sabotage, hijacking and terrorist attack.<sup>5</sup> In *Husserl v. Swiss Air Transport Co., Ltd.*,<sup>6</sup> the court held that the Montreal Convention covered hijacking and that acts of persons other than the airline or the passenger were comprehended by the treaty. Liability was imposed upon the airline although identifiable independent acts caused the injury to the passenger.

A terrorist attack upon passengers waiting to complete preboarding security checks was held by the court in *Evangelinos v. Trans World Airlines, Inc.*,<sup>7</sup> to fall outside the coverage of Article 17. The reasoning of the *Evangelinos* court was that the use of the term "embarkation" in Article 17 is limited to a geographically and temporally circumscribed space.

The *Warsaw* court observed that the term "accident" in Article 17 had been held in *Chutter v. KLM Royal Dutch Airlines*<sup>8</sup> to embrace an action brought by a passenger who was injured by stepping out of an airplane while the loading ramp was being removed. The *Chutter*

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<sup>4</sup> Article 20(1) provided that a carrier would have as a defense that it had: "taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

<sup>5</sup> See *Husserl v. Swiss Air Transport Co., Ltd.*, 351 F. Supp. 702 (S.D.N.Y. 1972), *aff'd*, 485 F.2d 1240 (2d Cir. 1973) and *Evangelinos v. Trans World Airlines, Inc.*, 396 F. Supp. 95 (W.D. Pa. 1975). See also Lowenfeld & Mendelsohn, *The United States and the Warsaw Convention*, 80 HARV. L. REV. 497, 560 (1967).

<sup>6</sup> 351 F. Supp. 702 (S.D.N.Y. 1972).

<sup>7</sup> 396 F. Supp. 95 (W.D. Pa. 1975).

<sup>8</sup> 132 F. Supp. 611 (S.D.N.Y. 1955).

court stated that the incident was an "accident" in that it occurred either on the airplane or in the embarkation process.

The common thread running through all of the cited cases was seen by the *Warsaw* court to be the fact that the proximate cause of each of the injuries was an "out-of-the-ordinary" unanticipated event. Whether the injury resulted from negligence, an unclassifiable occurrence causing a crash, or the intentional acts of third parties, the common characteristic was an event which in each case was not within the normal and preferred mode of operation for the flight. However, the *Warsaw* court was faced with an injury resulting from a change in cabin pressure and such repressurization is a part of the normal, anticipated and established method of procedure on a commercial airline flight. The court concluded that the routine repressurization of a jet aircraft cabin during its descent from high altitude if performed in the usual and expected manner with no complications or external disruptions, is not within the normal interpretation given by federal courts to the term "accident" under the provisions of Article 17 of the Warsaw Convention, as modified by the Montreal Agreement.

Thus, *Warsaw v. Trans World Airlines, Inc.* has achieved two basic results. First, it has determined that an event occurring on an aircraft cannot be termed an accident if it is a normal and expected occurrence. An event must be unusual or unexpected to constitute an accident and is not an accident if it arises exclusively from the passenger's state of health. Second, it has held that an injury which results from normal, expected and necessary changes in the operation of the aircraft, when such changes were performed by the plane's crew in the usual and prudent manner, is not covered by the presently effective version of the Warsaw Convention, as amended by the Montreal Agreement.

*Richard A. Naegele*

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in the context of public administration and government operations.

2. The second part of the document outlines the various methods and tools used for data collection and analysis. It highlights the need for standardized procedures to ensure consistency and reliability of the information gathered. This includes the use of surveys, interviews, and digital data management systems.

3. The third part of the document focuses on the ethical considerations surrounding data collection and analysis. It stresses the importance of protecting individual privacy and ensuring that data is used only for the purposes it was originally collected for. This involves implementing strict data protection policies and obtaining informed consent from participants.

4. The fourth part of the document discusses the challenges associated with data analysis, particularly in the context of large and complex datasets. It highlights the need for advanced statistical techniques and software tools to effectively process and interpret the data. This also includes the importance of having a clear understanding of the research objectives and the questions being addressed.

5. The fifth part of the document addresses the issue of data quality and the potential for bias or error. It emphasizes the need for rigorous quality control measures throughout the data collection and analysis process. This includes regular monitoring and validation of data to ensure its accuracy and integrity.

6. The sixth part of the document discusses the importance of data security and the measures taken to protect sensitive information. It highlights the need for robust security protocols, including encryption and access controls, to prevent unauthorized access and data breaches. This is particularly critical in the context of government and public sector data.

7. The seventh part of the document focuses on the dissemination and sharing of data and research findings. It emphasizes the importance of making data accessible and transparent to the public and other stakeholders. This involves developing clear and concise reports and using appropriate channels for sharing information.

8. The eighth part of the document discusses the role of data in decision-making and policy development. It highlights the importance of using data-driven insights to inform and guide the actions of government and public organizations. This involves identifying key trends and patterns in the data and using them to make evidence-based decisions.

9. The ninth part of the document addresses the future of data and the potential for new technologies to revolutionize data collection and analysis. It highlights the importance of staying up-to-date with the latest developments in data science and technology to ensure that data is used effectively and efficiently.

10. The tenth part of the document concludes by summarizing the key points discussed and emphasizing the overall importance of data in public administration and government operations. It calls for continued commitment to data-driven practices and the pursuit of transparency and accountability in all aspects of government activity.

11. The final part of the document provides a list of references and resources for further reading and research. This includes books, articles, and online resources that provide additional information on the topics discussed in the document.