Journal of Air Law and Commerce

Volume 21 | Issue 1 Article 9

1954

# Digest of Recent U.S. Cases

It would seem that this approach is sensible. Certainly it was not the intention of Congress to require full and strict adherence to the requirements of competition of the antitrust laws.[22] Further, in such a specialized area it will tend to provide a greater uniformity of regulation if the Board is allowed to set the standards of conduct, rather than have the courts interfere. Perhaps the solution is for Congress to amend the Civil Aeronautics Acts so as to provide for damages in cases of violations. But the mere absence of a damage provision need not force a court to determine the whole controversy, possibly in opposition to the policies of the Civil Aeronautics Board, as was done in the *Slick* case.

# DIGESTS OF RECENT U.S. CASES

JURISDICTION — STATE REGULATION — DECLARATORY ACTION

*Public Utilities Commission of California v. United Air Lines, Inc.*

74 S. Ct. 151 (Nov. 30, 1953)

The California Public Utilities Commission has claimed jurisdiction over rates charged by United in its operations between the mainland and Catalina Island. The Supreme Court, in a *per curiam* decision, reversed a holding of a three judge district court in a declaratory action brought by United to test the jurisdiction of the California agency. The court below found that Congress had given the Civil Aeronautics Board authority over such rates. 109 F. Supp. 13 (N.D. Cal. 1952).

The only indication of the rationale of the Court comes from the citation of *Public Service Commission of Utah v. Wycoff*, 344 U.S. 237 (1952) as decisive of the issue involved in the litigation. In the *Wycoff* case the Supreme Court held that no case or controversy existed in a declaratory judgment action against a state administrative agency. The decision rested on the grounds that the issues involved were committed for initial decision to the administrative agency; that a decision might interfere with the actions of a state agency; and because the action was merely presenting a defense before a controversy arose.

In the principal case Mr. Justice Douglas dissented on the ground that since the issue could be settled by a rule of law, *i.e.*, by a construction of the Civil Aeronautics Act, the court should determine the jurisdiction question. The result of the case allows the Public Utilities Commission to make a determination, which will be subject to review by the Court.

FEDERAL TORT CLAIMS ACT — LACK OF NEGLIGENCE BY U.S.

*United States v. Praylou*

*United States v. Walker*

208 F. 2d 291 (4th Cir. Nov. 9, 1953)

Actions for personal and property damages resulting from the crash of two Government planes operated by Government employees while on official business. In both cases the trial court held the Government liable under a South Carolina statute which imposes absolute liability on the owner of aircraft for injuries caused by its flight, irrespective of negligence. The Government appeals on the ground that sections 1346(b) and 2674 of the

[22] "The air transportation industry is a regulated industry which, in the considered judgment of Congress, has been given a special status with relation to the antitrust laws. It is the national policy that embridled competition in that industry is not in the national interest, and the CAB has been entrusted with responsibility of making the accommodation between monopoly and competition in the public interest." *Id.* at 709.

Federal Tort Claims Act subjects the United States to liability only when there has been negligence. The Court in rejecting this contention held the State statute makes the infliction of injury or damages by the operation of an airplane itself a wrongful act giving rise to liability. The Court expressed the opinion that the Federal Tort Claims Act contemplated such result, and that the contention that the Government would only be liable when there is negligence, but the ordinary tortfeaser would be absolutely liable, would not be considered.

### NEGLIGENCE — PRESUMPTION OF DUE CARE

*Davis Flying Service, Inc. v. United States*

114 F. Supp. 776 (W.D. Ky. Sept. 17, 1953)

Plaintiff contracted with the Government to provide to certified pilots of the Civil Aeronautics Authority the use of a Cessna 170. The contract provided that the Plaintiff was to be liable for all damage, both to the craft, third persons, or other property, "except that due to negligence on the part of Government personnel in line of duty." The Plaintiff sues to recover the value of a craft which crashed while in flight with a CAA official at the controls, the cause of the crash unknown. Plaintiff relies upon the doctrine of *res ipsa loquitor* since the record shows no basis for negligence beyond the fact that the accident happened. The Court dismissed the suit on the ground that since the accident might have been caused by any of several reasons, a presumption of due care will be applied, and that the Plaintiff had the burden under the contract of proving negligence on the part of the pilot.

### RES IPSA LOQUITOR — NATIONAL SECURITY — FEDERAL TORT CLAIMS ACT

*Williams v. United States*

115 F. Supp. 386 (N.D. Fla. Oct. 23, 1953)

Action seeking damages for injuries sustained when a B-47 Strato-Jet Bomber of the United States Air Force caught fire and exploded over the city of Marianna, Florida. The Plaintiffs, unable to prove negligence, relied upon the doctrine of *res ipsa loquitor*. At the trial the Government called no witnesses on the ground that the national security would be imperiled. The Court gave judgment for the United States on the authority of *Dalehite v. U. S.*, 346 U. S. 15 (1953), relying on the exception of liability of section 2680(a) of the Federal Tort Claims Act, where a "discretionary function or duty" is involved. The Court assumes that the activities of the Air Force as to experiments carried on with aircraft are a cabinet level decision, and hence not the subject of suits or claims. Thus the statement as to why no evidence was submitted was sufficient to classify the action as a governmental function under section 2680(a), since to disclose facts of a defense nature to disprove negligence would presumably reveal military secrets.

### EVIDENCE — PRESUMPTION OF PILOT'S DUE CARE FOR OWN SAFETY

*Rennenkamp v. Blair*

101 A. 2d 669 (Penn. S. Ct. Jan. 4, 1954)

Suit by the personal representative of one Swain for wrongful death in the crash of an airplane in which he was a guest passenger. The Plaintiff appeals a judgment for the Defendant *n.o.v.* At the trial Plaintiff, through the testimony of an expert witness, based on assumptions gained from an inspection of the crash, that the pilot should have returned when mechanical difficulty arose, attempted to draw the conclusion that he was negligent in not so returning. The Court in affirming the action of the trial court, held

there was no factual proof for the assumptions of the expert witness. Rather, since the pilot's duty was one of due care, the Court applied the presumption that in such an accident the pilot will exercise due care for his own safety. The Court thus assumes the pilot attempted to follow the correct procedure for one in his position, negating any negligence on his part.

## DAMAGES — NOTICE OF CLAIM

*Bernard v. U. S. Aircoach*

117 F. Supp. 134 (S.D. Cal. Nov. 23, 1953)

Plaintiff sues for personal injuries suffered while a passenger on one of the Defendant's airplanes. The Defendant, after a pre-trial conference, filed a new defense that the action was barred because of the failure to comply with the provisions of a tariff that requires claims to be made against the airline within ninety days after any injury. The Court held the Defendant had waived the right to present such a defense, but that in any event, such a tariff provision can not be relied upon to bar recovery. Treating this tariff as an attempt to limit liability which has no basis as a requirement under the Civil Aeronautics Act or any regulation of the Civil Aeronautics Board, the Court refused to recognize any tariff requiring notice of claims against the carrier.

## CIVIL AERONAUTICS BOARD — TARIFF REGULATION AMENDMENT

*Amendment to Economic Regulation* 221.4(g)

19 FED. REG. 509 (1953)

The Civil Aeronautics Board recently adopted the following amendment to its Regulation 221.4(g): "No provision of the Board's Regulations . . . shall be construed to require . . . the filing of any tariff rules stating any limitation on, or condition relating to, carrier's liability for personal injury or death." The Board, while reserving the authority to make such limitation effective if it desired, sought to make clear that the Board's present rules do not in any way require the filing of such tariff rules which tend to place restrictions on the bringing of suits against the airlines. Two considerations were sought to be achieved by the amendment. First, since the public does not think of aviation and air carriers in terms of special rules of bringing actions, the Board feels the better policy is to adhere to the local rules rather than to promulgate a uniform rule for the entire country. Second, the Board does not believe that the public has sufficient notice of the existence of the limitations upon liability as set out in the tariffs, and therefore their rights in bringing such suits should not be so limited.