Journal of Air Law and Commerce

Volume 22 | Issue 2 Article 10

1955

Digest of Recent Cases

DIGEST OF RECENT CASES

JURISDICTION FOR SERVICE OF PROCESS—LEASING AGREEMENT

Scholnik v. National Airlines, Inc.
219 F. 2d 115 (6th Cir. Feb. 4, 1955)

Defendant airline operated no flights within Ohio but some of its planes were flown into Ohio under an Equipment Interchange Leasing Agreement with Capital Airlines. Through flights to Miami were advertised by Capital-National and tickets were sold by Capital in Ohio. Plaintiff was injured on a flight while the plane was over Florida. The court found that the defendant was doing business in Ohio so as to be subject to service of process there. An agency relationship was said to exist in the solicitation of business for National by Capital. The court refused to follow cases holding that a state obtained no jurisdiction over connecting railroad carriers.

AVIATION EXCLUSION CLAUSE—DEATH ON COMBAT FLIGHT HELD COVERED BY INSURANCE

Onze v. Prudential Insurance Company of America
2 CCH Aviation Law Rep. 17,562 (Pa. Ct. of Common Pleas, June 4, 1955)

Insured was killed when his plane was shot down by enemy gunfire over Korea. His insurance policy had a clause limiting liability of the company for death as a result of operating or riding in an airplane. There was no clause excluding the war risk. The aviation exclusion clause was said to be a "result" clause; that is, death must have been a direct or indirect result of the flight to be excluded. Only the ordinary risks and perils of aviation were intended to be excluded and not the deliberate act of a public enemy. In this case, the insured was killed solely by enemy gunfire and, since this is a risk associated with war, it is not excluded.

AVIATION EXCLUSION CLAUSE—DROWNING AFTER FORCED LANDING

McDaniel v. Standard Accident Insurance Co.
2 CCH Aviation Law Rep. 17,617 (7th Cir. March 31, 1955)

Deceased's plane made a forced landing 35 yards from shore. Deceased was not injured by the landing and started to swim toward shore. Although there were no turbulences in the lake and the deceased was an average good swimmer, he drowned about 15 feet from shore. In applying the exclusion clause, the court felt there was no evidence that death resulted from injuries sustained while in an airplane. Drowning is not a risk associated with aerial flight in a private plane. The court awarded plaintiff attorney's fees under a statute authorizing this where an insurance company's refusal to pay a loss is vexatious and without reasonable cause.

FAILURE OF AIR CARRIER TO PROVIDE CONNECTIONS—LIMITATION OF LIABILITY

Wittenberg v. Eastern Airlines, Inc.
126 F. Supp. 459 (E.D. S. Car. Dec. 7, 1954)

Plaintiff alleged that he sustained damages because defendant's Cleveland-Charlotte flight failed to connect with its Charlotte-Columbia flight.

He further alleged that defendant's agent assured him that the Cleveland flight would make the connection and if it were late the Columbia flight would be held until the Cleveland flight arrived in Charlotte. The Columbia flight departed ten minutes before the Cleveland flight arrived. When plaintiff refused to sign an unconditional acceptance for the refund of his ticket, the refund offer was withdrawn. The court granted a summary judgment holding that the Tariff Rules and the conditions on the ticket relieving defendant of liability for changes in scheduling and failure to make connections barred plaintiff's relief. The court also relied on a condition on the ticket denying the authority of defendant's agents to alter or waive any of the provisions of the contract. In seeking to avoid these provisions, the plaintiff alleged a tort, but the court found no tortious conduct on defendant's part and limited plaintiff's recovery to the price of his unused ticket.

DAMAGE TO PROPERTY ON GROUND IN PLANE CRASH—PROOF OF INTENT

Margosian v. U.S. Airlines, Inc.
127 F. Supp. 464 (E.D.N.Y. Jan. 6, 1955)

Plaintiff's property was damaged by the crash of defendant's airplane. The complaint alleged trespass and sought a motion for summary interlocutory judgment. The defendant claimed no trespass occurred because there was no intent or wilfulness in the damage of plaintiff's property. The court held that the defendant need not intend the injury; if the harm is an immediate consequence of defendant's act he will be liable in trespass apart from his intent. The court went on to say further, in answer to defendant's argument that the operation of planes is no longer an ultrahazardous activity, that the greater number of planes, take-offs, and landings indicate that there is now a *more* frequent exposure to accidents on the part of persons and property.

EXPLOSION OF AIR FORCE PLANE—*RES IPSA LOQUITUR*

Williams v. United States
218 F. 2d 473 (5th Cir. Jan. 21, 1955)

An Air Force jet plane exploded in mid-air causing flaming fuel to injure the plaintiff who was on the ground. The plaintiff relied solely on the doctrine of *res ipsa loquitur* while the government refused to call any witnesses because the national security might be imperiled. The Court of Appeals ruled that the lower court had mistakenly taken judicial notice of the experimental work being carried on at the field from which the plane came and, that even if it were warranted in taking this notice, there was nothing to justify the inference that this particular flight was an experimental one. Therefore, there was no basis for the lower court's holding that this was a discretionary function for which no liability ensues under the Federal Tort Claims Act. However, after noting the irreconcilable conflict of opinion in the application of *res ipsa loquitur* to airplane accidents, the court decided that the doctrine was inapplicable here. The plaintiff must do more than show that the plane was in the exclusive control of the government; he must also show that the accident would not have occurred in the ordinary course of events if the defendant had exercised due care. Since there is no knowledge of what would cause a jet airplane to explode in mid-air and no evidence to show the accident would not occur unless there were negligence, there was no basis for recovery.

LOW FLYING AIRCRAFT—INJUNCTION—DAMAGES

Gardner v. County of Allegheny
2 CCH Aviation Law Rep. 17,528 (Pa. Sup. Ct. Jan. 12, 1955)

Dahlstrom v. United States
2 CCH Aviation Law Rep. 17,595 (D. Minn. Mar. 15, 1955)

In the *Gardner* case, plaintiffs sought an injunction preventing planes from flying at an altitude lower than the floor of the navigable airspace while landing or taking off at the Greater Pittsburgh Airport. Continuous trespasses and damage to plaintiffs' property were claimed. The Pennsylvania Supreme Court held that the Federal Government's control of aviation was based upon the interstate commerce power of Congress and not on a principle of ownership of the airspace of the country. Further, the power of Congress is not exclusive; state courts may enjoin flights below the minimum safe altitude of flights in interstate commerce if the flights constitute a nuisance or endanger a person's life or property. Damages for the "taking" of land by the low and frequent flights may not be awarded by an equity court since there is a statute for condemnation preceedings authorizing specific methods to be used in arriving at an award.

In the *Dahlstrom case,* a plane flying at an altitude of 100 feet and piloted by an employee of the Civil Aeronautics Administration frightened plaintiff's horses causing them to pull a hayrack over plaintiff's leg. The plane was being used to make a survey of obstacles to an instrument approach pattern for a nearby airport. The court held that, even though the acts of the pilot may have violated the state statute or amounted to negligence, there was no liability under the Federal Tort Claims Act because the duties here fell within the discretionary exception. Flying at an altitude of 100 feet was necessary to measure the height of obstacles to the approach system being developed.

NEGLIGENCE OF CONTROL TOWER PERSONNEL—LIABILITY OF FEDERAL GOVERNMENT

United States v. Union Trust Company
2 CCH Aviation Law Rep. 17,546 (D.C. Cir. Feb. 8, 1955)

Air Transport Associates, Inc. v. United States
2 CCH Aviation Law Rep. 17,613 (9th Cir. Mar. 18, 1955)

The *Union Trust Company* case involved the question of whether the Federal Government could be sued under the Federal Tort Claims Act for alleged negligence in the operation of the control tower at the Washington National Airport which resulted in the collision of two planes. The court held the United States subject to suit on the theories that nothing prevented private persons who would be liable in this situation from operating the control towers; and that the operators were to handle details and therefore their duties were outside the discretionary function exception, there being no planning level decisions in regard to traffic at public airports to make.

One of plaintiff's planes in the *Air Transport Association* case, was damaged because of negligence in instructing it to land when two unlighted trucks were on the runway. The plaintiff had an agreement with the United States to use its military field in Anchorage, Alaska but under the contract plaintiff had released the government from future liability for negligence. The court held such an agreement to be invalid if the party seeking to be released is engaged in public or quasi-public service. The government, in operating the field for civil as well as military flights, was engaged in a public service and, therefore, the contract clause was no bar to recovery.