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Digest of Recent Cases

DIGEST OF RECENT CASES

CONSTITUTIONALITY OF LOCAL ORDINANCE PROHIBITING LOW ALTITUDE FLIGHTS IN AIRPORT APPROACH ZONE

Allegheny Airlines, Inc. v. Village of Cedarhurst

2 CCH Aviation L. Rep. 17,708 (E.D.N.Y. June 27, 1955).

Defendant village, situated within one mile of New York International Airport, known as "Idlewild," passed an ordinance prohibiting air flight over the town at less than 1,000 feet. Plaintiffs, comprising ten airline companies, the Port of New York Authority, the Air Line Pilots Association International, and nine air pilots in their individual capacities brought suit to enjoin the enforcement of this ordinance. The Administrator of Civil Aeronautics and the Civil Aeronautics Board intervened as plaintiffs. The court, stating that air travel is a form of interstate commerce and therefore regulated by the federal government, held that Congress had adopted a comprehensive plan for the regulation of air traffic in the navigable airspace and therefore by preemption had precluded local legislation. Moreover, although the Civil Aeronautics Board had issued landing regulations which under certain weather conditions required an approach over the village of Cedarhurst at an altitude of 450 feet, these regulations were a valid exercise of the authority delegated to the Board by Congress under the Civil Aeronautics Act of 1938. The Court rejected the defendant's contention that Congress had not intended to regulate the first 1,000 feet of airspace above the land surface, and that this airspace was not "navigable airspace" within the meaning of the Act of 1938. The definition of "navigable airspace" was held to include all necessary take-off and landing altitudes. The court further stated that Congress has not recognized private rights in airspace, and at any rate, the public interest required a free access to the airport at the altitude designated by the Civil Aeronautics Board.

UNFAIR COMPETITION IN USE OF WORD "AMERICAN" IN TRADE NAME OF AIRLINE

North Am. Airlines, Inc. v. C.A.B.

2 CCH Aviation L. Rep. 17,698 (D.C. Cir. June 23, 1955).

Petitioner sought review of a Board order which denied its application for authority to engage in air transportation under the name North American Airlines, Inc., and which further ordered the petitioner to cease and desist from using any combination of the word "American" in its trade name. American Airlines, Inc. was allowed to intervene in opposition to the petitioner's application, alleging that the name "North American" infringed upon the established name of American and constituted unfair competition. The Board found that the likelihood of confusion between the two companies by the general public warranted the order as issued. The Board also concluded that although there was no evidence that North American adopted its name with intent to deceive the public, the name "American" had acquired a secondary meaning in the field of air travel synonymous with American Airlines. The court held that the public interest did not require the Board to supervise the selection of trade names by airline applicants. Section 411 of the Civil Aeronautics Act which gives the Board the responsibility of safeguarding the public interest against unfair competition was patterned after Section 5 of the Federal Trade Commission Act which did not provide private persons with administrative remedies for

private wrongs. The possibility that American Airlines might succeed in a private suit for trade-mark infringement did not dictate a finding of unfair competition over which the Board had jurisdiction. The Court stated that the word "American" had been used by other airline companies, and that there was no evidence of substantial confusion caused by the use of the name "North American." Congress had not intended the Board to adjudicate issues arising in the field of trade-marks, and the public interest did not require a finding of unfair competition merely because of the use of the word "American."

TORTS—ACTION BY AIRLINES AGAINST PLANE MANUFACTURER FOR FAULTY DESIGN

Northwest Airlines, Inc. v. Glenn L. Martin Co.

2 CCH Aviation L. Rep. 17,682 (6th Cir. May 31, 1955).

Plaintiff airline sued a plane manufacturer, on the basis of negligence in design and construction, for loss of an aircraft which crashed and for the loss of use of four other planes. The defects in all the planes were caused by broken wing joints which developed from fatigue cracks. The defendant claimed that it had used not only reasonable care, but very great care, in the manufacture and design of the planes. It contended alternatively that if there was a finding of negligence, the plaintiff had assumed the risk of danger or was guilty of contributory negligence. It was shown that during the period of manufacture personnel representing the airline were stationed at defendant's plant. This group included an engineer, inspectors, and pilots who inspected the planes during different phases of construction. The court found that there was no evidence of actual notice of the defects on the part of the airline personnel, and also found that the defects were not so obvious as to constitute constructive notice. The defense on the basis of assumption of risk therefore failed. The court further held that since the airline did not participate in the manufacture of the planes in which the fatigue cracks appeared it was not guilty of contributory negligence. The question of the manufacturer's negligence was left to the jury.

WRONGFUL DEATH—SUBPOENA OF AIRLINE RECORDS—WARSAW CONVENTION

Supine v. Compagnie Nationale Air France

(E.D.N.Y. June 8, 1955)

An action for wrongful death was brought against Air France after a plane crash in the Azores in which all the occupants were killed. The plane was on an international flight at the time. The plaintiff subpoenaed three classes of documents: (1) regulations and rules in regard to defendant's flights; (2) advertising releases in regard to defendant's flights; and (3) reports of prior accidents. Defendant sought to quash the subpoenas on the ground that plaintiff did not show good cause for producing them. However, it was pointed out that under the Warsaw Convention, which governs international flights, a plaintiff can only recover $8,296 unless he can prove that an accident was caused by the airline's willful misconduct. Because of this heavy burden of proof, the court refused to quash the subpoena. The court also refused to vacate plaintiff's notice of taking oral depositions from some of defendant's employees who were stationed abroad. The court said that since defendant airlines has its own transportation facilities it is not unreasonable to require their employees to come to New York.

VALIDITY OF PROVISION LIMITING TIME FOR SUIT IN AIR CARRIER'S TICKET

Herman v. Northwest Airlines, Inc.

222 F. 2d 326 (2d Cir. 1955)

Plaintiff's ticket contained a clause which limited liability on the part of the defendant to suits brought within one year of the date of an injury caused by defendant's negligence. The action was not brought within the permissive period and the plaintiff sought to have the time limitation held invalid. The court said that a common carrier is not permitted to set as short a period as it pleases within which a passenger must sue for damages arising from its negligence, but that it may set a "reasonable" period. One year was held to be a reasonable period.

TORTS—LIABILITY OF MUNICIPALLY OWNED AIRPORTS

City of Knoxville v. Bailey

222 F. 2d 520 (6th Cir. 1955)

A plane passenger was injured at an airport when she fell down while walking from one platform to another. She sued both the municipal corporation which owned the airport and the airline from which she purchased her ticket. The municipality defended on the basis of a state statute which specifically stated that the operation of airports by municipal corporations was a governmental function and that suits against them arising out of such operations were barred. The court recognized the power of the state legislature to designate functions as governmental so as to bar suits against municipalities, but held that where a municipality acquires insurance to cover personal injuries incurred on its property it thereby waives its immunity to suits arising from performance of a governmental function. The court upheld the verdict against the air carrier stating that the carrier owed its passengers the duty of ordinary care while they await passage on its line even though the airline merely rented the space in common with other airlines.

CONTRACTS—LIABILITY OF MUNICIPALLY OWNED AIRPORTS

City of Jackson v. Brummett (Miss. Sup. Ct. June 13, 1955)

80 So. 2d 827 (Miss. Sup. Ct. 1955)

Pursuant to an oral agreement between plaintiff and defendant's employee, plaintiff's aircraft was parked at an airport which was maintained by the defendant municipal corporation under authority of a state statute. While the plane was so situated a sudden storm arose. As a result the aircraft was broken from its moorings and damaged. Plaintiff charged negligence on the part of the defendant because of the use of rotten ropes to tie down the plane. The defendant denied the charge of improper care and, alternatively, argued immunity to suit because the operation of the airport was a governmental rather than a corporate function. The state statute authorizing operation of airports by municipalities permitted the corporation to "operate for income." The court construed that provision to mean that the municipality was acting in a corporate rather than a governmental capacity, and therefore found that the corporation was subject to a suit for breach of contract. The court also held that an injury was not caused by an act of God if it could have been prevented by the use of reasonable care.

AIRCRAFT INSURANCE POLICY—EXCLUSION OF LIABILITY

Bruce v. Lumbermens Mut. Casualty Co.

222 F. 2d 642 (4th Cir. 1955)

During a public demonstration of safe flying techniques, an airplane failed to pull out of an intentionally induced spin, and a passenger was killed. The administratrix of the decedent's estate obtained a judgment against the flying school which had sponsored the demonstration. The company which had insured the flying school refused to pay, and this action was brought to secure the judgment. The company argued that, by an exclusion clause, the policy was not to apply to any liability incurred where the aircraft was used "in violation of any government regulation for civil aviation." Civil Air Regulations prohibit "aerobatic" flight unless all occupants have parachutes. Here, no parachutes had been provided. Although it was shown that a parachute would not have helped decedent because of the low altitude at which the maneuvers were performed, the court affirmed a decision for the insurance company. The court said that "an insurer need not show a casual connection between the breach of an exclusion clause and the accident, if the terms of the policy are clear and unambiguous, since the rights of the insured flow from the contract of insurance and not from a claim arising in tort."