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Digest of Recent Cases

DIGEST OF RECENT CASES

ALTITUDE REGULATIONS—LACK OF CONTRIBUTORY NEGLIGENCE—CREATION OF AERIAL HAZARD

Yoffee v. United States

123 A. 2d 636 (Penn. Sup. Ct. 1956).

A plane flying along the Susquehanna River collided with the overhead wires of the defendant power company spanning the river. The pilot died from injuries sustained when the plane crashed, and his administrator brought an action in trespass. The court allowed recovery, although the pilot was flying at an altitude of approximately 185 feet, and federal regulations generally require a minimum altitude of 500 feet. The regulations expressly exempt flights over open water from this minimum altitude requirement, and the court applied the term "open water" to the Susquehanna River. Therefore, the pilot's flight at low altitude did not constitute contributory negligence. Furthermore, the court held that the power company owed the decedent the affirmative duty to make its transmission lines supporting poles clearly visible, an obligation which it had not fulfilled.

AIRCRAFT CRASHES AT SEA—DEATH ON THE HIGH SEAS ACT—WARSAW CONVENTION—ADMIRALTY JURISDICTION

Noel v. Linea Aeropostal Venezolana

144 F. Supp. 359 (S.D. N.Y., 1956), 2 CCH Aviation L. Rep. 18,204

Plaintiff's decedent was a passenger on the defendant's aircraft and was killed when the plane crashed into the ocean. The plaintiff brought a wrongful death action under the Federal Death on the High Seas Act, 41 Stat. 537 (1920), 46 U.S.C. § 761-67 (1952) as a civil action in Federal District Court. The court, dismissing the complaint for lack of jurisdiction over the subject matter as a civil action, held that the words in the Act, ". . . may maintain a suit . . . in admiralty . . ." made admiralty the exclusive forum for entertaining such actions. The court disposed of the plaintiff's further contention that the Warsaw Convention, 49 Stat. part 2, p. 3000, created a new cause of action maintainable as a civil action, by holding that, although the Convention applied, it did not create a substantive cause of action, at least so long as the *lex loci delicti,* in this case the Death on the High Seas Act, created such a cause.

RESTRICTED VISIBILITY—VISUAL FLIGHT PATTERN—NO INFERENCE OF NEGLIGENCE

Springer v. United States

2 CCH Aviation L. Rep. 18,111 (S.D.N.Y. 1956).

Deceased was killed in the crash of an Air Force plane during a period of restricted visibility. The plane had been flying on a visual flight pattern and, although the pilot had requested permission to go to instrument flight, there was no basis for concluding that he had been authorized to do so. The court, therefore, refused to hold the pilot negligent for attempting to keep below the ceiling, nor would it draw an inference of negligence from the mere fact that an accident occurred. It is as likely that the accident resulted from an act of God as from the negligence of any of the participants.

INJURY TO CIVILIAN IN AIR FORCE PLANE CRASH—CIVIL AIR PATROL—SCOPE OF EMPLOYMENT—APPLICABILITY OF GUEST STATUTE

United States v. Alexander

234 F. 2d 861 (4th Cir. 1956).

Plaintiff, a professional golfer, was injured in the crash of an Air Force plane on which he was a passenger, when the pilot was attempting an emergency landing at Evansville, Indiana. The plane was on loan to the Civil Air Patrol and was piloted by an Air Force liaison officer assigned to the CAP. At the time of the crash, the CAP was negotiating with the Professional Golfers Association with respect to holding a series of golf tournaments, the proceeds of which would go to the CAP. The plaintiff was to have participated in these tournaments, and the flight was arranged for his convenience after he was unable to find other suitable transportation to his home from a tournament in which he had been a contestant. Air Force regulations, also applicable to the CAP, permit only the following to be passengers on military aircraft: military personnel of the Air Force Reserve acting under orders from some higher authority, senior members of the CAP in pursuit of their official duties, or any person in an extreme emergency or where his travel is primarily of official concern to the national military establishment. Since none of these categories covered the plaintiff, the court held that his presence in the plane was unauthorized, and the pilot was acting beyond the scope of his employment in using an Air Force plane in making an unauthorized flight. Following the view that the Federal Tort Claim Act requires the application of the *lex loci delicti*, the court applied the Indiana doctrine of *respondeat superior* and held that the United States was not liable for any lack of due care on the part of the pilot. Even if the plaintiff's presence on the plane was authorized, however, the court indicted that the Indiana guest statute would have barred recovery. The possibility that the courtesy extended the plaintiff would contribute to the formation of an arrangement beneficial to the CAP was insufficient to exclude the guest relationship.

CONDEMNATION OF AVIGATION EASEMENT—AFFECT ON MARKETABILITY—JUST COMPENSATION INCLUDES DIMINUTION IN LAND VALUE

United States v. 48.10 Acres of Land

2 CCH Aviation L. Rep. 18,198 (S.D.N.Y. 1956).

The United States instituted condemnation proceedings to acquire avigation easements over three parcels of real estate. The estate sought to be acquired, as set out in the Declaration of Taking, consisted merely of the right to remove and prohibit any obstruction from infringing upon or extending into or above the "glide angle plane." Despite the fact that these were the only rights condemned, and although there was no showing that the present utility of the land for farm purposes was impaired by the easements, the court held that just compensation should include the diminution, if any, in the market value of the lands which was due to the impairment of their future utility. The easements are a detriment impairing the ready and competitive marketability of the tracts, and therefore these tracts have lost a portion of their value as potential residential sites.

INJURY TO PASSENGER—NEGLIGENCE—PROXIMATE CAUSE

Urban v. Frontier Airlines

139 F. Supp. 288 (D. Wyo. 1956).

The plaintiff had been a passenger on one of the defendant's airplanes during a rough and turbulent flight. During the flight, the plaintiff requested permission to unfasten her seat belt to go to the lavatory. The stewardess denied the request, but subsequently allowed the plaintiff to leave her seat. While the plaintiff was in the lavatory, the plane was caught in a down draft, throwing the plaintiff to the floor. As a result of the fall, the plaintiff sustained a fractured ankle, and brought suit for personal injuries. The court specifically rejected the defense of assumption of risk, and held that granting the plaintiff permission to unfasten her seat belt constituted negligence, and that negligence was the proximate cause of the injury.

FAILURE OF AIRCRAFT ENGINES DUE TO WEATHER—NO INFERENCE OF NEGLIGENCE

Blond v. United States

2 CCH Aviation L. Rep. 18,196 (S.D.N.Y. 1956).

Deceased, a military trainee, was killed in a crash of an Air Force plane caused by the failure of its engines to function properly in bad weather. The court, after ruling that the mere occurrence of an aircraft accident did not raise an inference of negligence, held that no inference of negligence arose from the failure of the instruments and engines, despite the fact that the plane was designed to fly in all types of weather. As a further ground for denying recovery, the court held that, although the deceased was on the plane voluntarily, he was there by the authorization of his commanding officer and was subject to military discipline. Because of this, no suit could be brought under the Federal Tort Claims Act.

IRREGULAR CARRIERS—EXEMPTION POWER OF CAB—NECESSITY OF FINDING THAT EXEMPTION FURTHERS PUBLIC INTEREST

American Airlines, Inc. v. CAB

235 F. 2d 861 (D.C. Cir. 1956).

The CAB, concluding that service supplemental to that rendered by the certified air carriers was necessary, and that the development of irregular carriers should be encouraged, exercised its exemption power and amended its basic requirement imposed upon irregular carriers. The old requirement was that irregular carriers had to operate without any semblance as to regularity of schedule or route. The change would have removed the requirement of irregularity, and substitute in its place limitation upon the number of round trips permitted per month between any two points. The court upheld the Board's power to make this change, but ruled that, in order to do so, the Board would have to comply with the statutory requirement that findings be made that the exemption granted was in the public interest. Since the CAB had made no findings that an undue burden would be placed on the irregular carriers by requiring certification, rather than granting them exemption authority, the court remanded the case to the Board for further proceedings.