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Digest of Recent Cases

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CONTRACTS—BREACH—GOVERNMENTAL IMMUNITY FROM SUIT

Ace Flying Service, Inc. v. Colorado Department of Agriculture

5 CCH Aviation L. Rep. 17,554 (Colorado Supreme Court, August 12, 1957)

Plaintiff had executed a written contract with the defendant State of Colorado to conduct aerial spraying over large areas of state-owned land which had become infested with grasshoppers. After plaintiff had borrowed money for planes and personnel, the state failed to provide the necessary acreage, allowing plaintiff to spray only a portion of the contracted area. In reversing the trial court's dismissal of the complaint, it was held that since the legislature had appropriated funds for this work and had authorized the department of agriculture to contract for such services, there is an implied consent by the state to be sued for such contract breaches. Immunity from suit is waived upon the state's execution of the contract.

TAXATION—AIRCRAFT PLANT LEASED FROM FEDERAL GOVERNMENT—IMMUNITY FROM LOCAL TAXATION

Grumman Aircraft Engineering Corp. v. Board of Assessors of the Town of Riverhead

2 N.Y. 2d 500 (March 8, 1957) Cert. Denied U. S. Sup. Ct.,
5 CCH Aviation L. Rep. 17,378 (Oct. 14, 1957)

A writ of certiorari was denied by the United States Supreme Court where the New York Court of Appeals had held that an aviation corporation's lease of a plant from the United States Government created no taxable interest that is subject to New York state real estate tax, in spite of the fact that the lessee was given the option of first refusal to purchase at the expiration of the lease or at such time as the government had ceased to have any use for the plant.

WARSAW CONVENTION—LIMITATION OF LIABILITY—RIGHT TO TRIAL BY JURY ON DAMAGE QUESTION

Pierre v. Eastern Airlines

5 CCH Aviation L. Rep. 17,515 (F. Supp.-D.C. New Jersey 1957)

In a suit against the defendant airlines for damages sustained on an international flight, plaintiff claimed that the limitation of carrier liability under the Warsaw Convention is not binding as its application would be a denial of the right to trial by jury as guaranteed by the seventh amendment of the Constitution. In holding that the question of damages under the limitation of liability clause is not a fact within the province of the jury, the court analogized Article 22 of the Warsaw Convention to the Longshoremen and Harbor Worker's Compensation Act, state workmen compensation acts, and common law assessment of damages in default tort or contract suits. The measure of damages in one of these areas has been regarded as proper for jury determination and neither has such denial been regarded as a violation of either the fifth amendment due process clause or the seventh amendment right to jury trial. Similarly, the denial of trial by jury on the question of damages under the Warsaw Convention is a matter of practice, not of right, and thus not violative of the United States Constitution.

JUDICIAL REVIEW—C.A.B. ORDERS—AIR FREIGHT CERTIFICATION—REMOVAL OF RESTRICTION AGAINST EXPRESS

Delta Airlines, Inc. v. Civil Aeronautics Board

5 CCH Aviation L. Rep. 17,530 (5th Cir. July 19, 1957)

On review by the Court of Appeals for the Fifth Circuit, a Civil Aeronautics Board order granting temporary authority to four cargo carriers for the transportation of property and mail has been affirmed. Under the Board's order, the term "property" was regarded as including air express, thus removing the original Board-imposed restriction against the transportation of express originated by the Railway Express Agency. Authorization for the carriage of mail was similarly approved as being in the public interest, and two of the carriers were authorized to conduct intra-area operations, that is, service between points in the same general geographical area.

MUNICIPAL AIRPORTS—IMMUNITY FROM TORT LIABILITY—CONSTITUTIONALITY

Opinion of the Justices Re Senate Bill No. 140

5 CCH Aviation L. Rep. 17,517 (New Hampshire Supreme Court, July 2, 1957)

A provision in a statute establishing a municipal airport authority stating that such authority shall be immune from tort liability is constitutional irrespective of the fact that revenues will be earned from the airport's private operations. Reliance was placed upon prior decisions holding that the receipt by a municipality of fees in connection with its activities does not conclusively establish that the activities are commercial and not governmental. Moreover, the establishment of air navigation facilities has been declared by statute to be a public governmental function.

DISCRIMINATION—AIR CARRIER'S REFUSAL TO EMPLOY NEGRO—JUDICIAL REVIEW—DISMISSAL OF COMPLAINT BY STATE COMMISSION

Jeanpierre v. Arbury

5 CCH Aviation L. Rep. 17,416 (N.Y. Sup., App. Div., May 7, 1957)

A negro whose application for employment as a flight steward was rejected by Pan American World Airways filed a complaint with the State Commission Against Discrimination alleging that the refusal of his employment request was motivated by racial discrimination. When this complaint was dismissed without a formal hearing on the grounds that the plaintiff had a "nebulous and inconsistent" employment record, suit was filed for an order rescinding the Commissioner's dismissal and for an order remitting the plaintiff's claim to the Commission for a public hearing.

On appeal from a judgment on the merits in favor of the defendant, it was held that judicial review is available for only those orders of the Commission which issue after a formal hearing at which testimony is taken under oath. Although the commissioner investigating the complaint might have exercised faulty judgment, and his finding that the information disclosed by the investigation did not warrant a formal hearing might appear unsupported by the facts, the merits of the case are not subject to judicial review where the Commissioner has not exceeded his statutory authority or disregarded the legislative standard.

However, in the dissenting opinion, it was considered that since the commissioner's dismissal of the complaint was affirmed by the agency chair-

man, and because the petitioner had exhausted his available administrative remedies, the dismissal constituted a final order. Therefore, judicial review should be available. In considering the merits of the case, it was emphasized that the Commissioner's action disregarded standards established in prior discrimination cases and was an unreasonable, arbitrary and capricious exercise of discretion.

AIRMEN—SUSPENSION OF CERTIFICATE—CIVIL AERONAUTICS ACT

Wilson v. Civil Aeronautics Board

5 CCH Aviation L. Rep. 17,411 (D.C. Cir. May 9, 1957)

In an airline pilot's suit seeking review of a C.A.B. order suspending his airman certificate, it was recognized that even though the Board does not find the pilot to be unqualified for flight, Section 609 of the Civil Aeronautics Act, 49 U.S.C. § 559, 52 Stat. 1011 (1938), authorizes the C.A.B. to suspend his certificate for disciplinary reasons as a deterrent sanction. The court considered that even though Section 901, 49 U.S.C. § 621, Stat. 1015 (1938) provides civil penalties for regulation violations, the interests of air safety justify the use of other sanctions which may more effectively minimize the hazards of air commerce.

INSURANCE—DEATH IN AIRPLANE CRASH—DOUBLE INDEMNITY EXCLUDED UNDER AVIATION RIDER—INSURER'S LIABILITY

New York Life Ins. Co. v. Atkinson

5 CCH Aviation L. Rep. 17,363 (10th Cir. Jan. 3, 1957)

Suit was brought to compel double indemnity payment upon the insured's death in an airplane accident where the policy excluded liability if death resulted from "service, travel or flight in any kind of aircraft . . . while the insured is participating in aviation training in such aircraft or is a pilot, officer or other member of the crew of such aircraft; . . .". The insured was a geologist employed by the Colorado Exploration Company to operate a scintillometer during flights conducted to detect uranium deposits. Although the sole occupants of the company-owned plane at the time of the accident were the insured and a pilot, recovery was allowed because the insured was not regarded as a member of the "crew," as the word was used in the liability exclusion clause. Since the insured's operation of the scintillometer had nothing to do with the operation of the plane, only the pilot was considered a member of the crew. Moreover, because the undefined use of the word "crew" rendered the term ambiguous, the question was resolved in favor of the insured.