CARLTON FIELDS
ATTORNEYS AT LAW

SKY DOCKET

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A REVIEW OF RECENT U.S. AIRLINE LIABILITY COURT ACTIVITY

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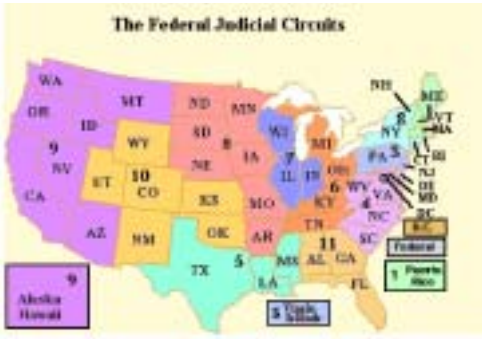
U.S. COURTS BEGIN INTERPRETING SUPREME COURT'S HUSAIN DEFINITION OF "ACCIDENT" UNDER WARSAW CONVENTION



Federal courts have begun the task of interpreting the U.S. Supreme Court's February 24, 2004 decision in *Olympic Airways v. Husain*. The Supreme Court, in that decision, ordered Olympic Airways to pay $1.4 million to the family of an asthmatic California doctor who died on a flight after the crew refused to move him away from the smoking section. The Supreme Court arguably expanded the definition of an "accident" under Article 17 of the Warsaw Convention by ruling that a failure to act (and not just an affirmative act) constitutes an "accident" that subjects an air carrier to liability – so long as that *failure* to act is unusual or unexpected and it is a link in the chain of causes of an injury.

Fifth Circuit applies *Husain* in DVT case

The Fifth Circuit Court of Appeals (New Orleans) weighed in on the subject in *Blansett v. Continental Airlines, Inc.* (July 21, 2004). Both the Air Transport Association of America and the International Air Transport Association filed *amicus curiae* briefs in that appeal. The plaintiff suffered an episode of deep vein thrombosis ("DVT") resulting in a cerebral stroke on a June 2001 Houston to London flight. The airline did not make pre-flight DVT warnings. Federal regulations do not require such warnings. IATA recommended that airlines give warnings regarding the risks of DVT. The issue in the case was whether the failure to give those warnings was an "accident" under the Warsaw Convention.

The Fifth Circuit held that the failure to warn was not an accident, even if it was a departure from an industry standard of care. In so doing, the *Blansett* court discussed *Husain,* relying in part on Justice Scalia's dissent that cited foreign decisions that a failure to warn of DVT risks is not an "event" in contrast to a specific refusal to lend aid as was the case in *Husain*. The Fifth Circuit also commented that an "unreasonable" departure from airline standards was not an unusual or unexpected event, noting that the Supreme Court declined to base its analysis on language of reasonableness or unreasonableness.

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The Fifth Circuit acknowledged that the Supreme Court in *Husain* did hold that certain kinds of inaction can constitute an accident, e.g., specific refusals to render requested assistance. The Fifth Circuit distinguished the *Blansett* facts by relying on a district court case cited in *Husain* that said it would be an unusual and unexpected event if an air crew decided not to divert a flight to save a passenger who suddenly became ill. In that case, the Fifth Circuit said that "unusual circumstances existed to elevate the willing inaction of airline personnel from mere inertia – from a non-event – to an event both 'unexpected and unusual.'" (One member of the three-judge Fifth Circuit panel rejected the "mere inertia/inertia plus unusual circumstances dichotomy drawn by the majority".)

The *Blansett* panel concluded that "no such circumstances were thrust on the flight crew in the present case, and their compliance with the regular policy of their airline was hardly unexpected." Some departures from an industry standard may be an accident, and some may not, the Fifth Circuit reasoned, thereby declining to create a *per se* rule that any departure from an industry standard must be an accident.

Ninth Circuit applies *Husain* in death case arising from delayed arrival of carry-on baggage

The Ninth Circuit Court of Appeals (San Francisco) had occasion to address *Husain* in *Prescod v. AMR, Inc.* (August 19, 2004). During the course of international transportation by air from Los Angeles to Georgetown, Guyana, while connecting in JFK, a 75-year old passenger relinquished her rollaway suitcase containing a breathing device and medication to an airline employee who gave her a claim ticket and who promised her the bag would be with her in Guyana when she arrived. At the commencement of her itinerary, the passenger's daughter told an airline agent that the bag had to stay with her mother at all times. The bag arrived two days late. The passenger, who had chronic respiratory problems, died six days later.

Relying on *Husain*, the Ninth Circuit held that the wrongful death claim was governed by the Warsaw Convention because an "accident" occurred. The seizure of the passenger's carry-on bag was an accident due to the subsequent delay in its delivery, airline employees' promises that her bag would remain with her in the airplane cabin on all flights and that when it was removed from her possession the bag would accompany her in the aircraft hold.

There was a rejection of an explicit request for assistance rendering the incident an event and it was unusual or unexpected because "airlines do not usually take steps that could endanger a passenger's life after having been warned of the person's special, reasonable needs and agreeing to accommodate them." The Ninth Circuit noted that the passenger's pre-existing illness was a contributing cause of her death, but under *Husain* the accident need only be a link in the chain of causes. The Ninth Circuit commented that the Fifth Circuit's decision in *Blansett* was not comparable because in *Blansett* "no request was made of the airline; the flight staff was entirely passive."

Ninth Circuit applies *Husain* in DVT case

In another DVT case, the Ninth Circuit in *Rodriguez v. Ansett Australia Ltd.* (September 3, 2004) ruled that neither the development of the passenger's DVT nor the airline's failure to warn of the risks of DVT constituted an accident under the Warsaw Convention. Following a 12-hour flight in September 2000 from Los Angeles to Melbourne, Australia, the plaintiff collapsed in the jetbridge. She had suffered a DVT resulting in a pulmonary embolism.

Plaintiff tried to rely on *Husain*, arguing that her DVT was caused by cramped seating conditions and by the airline's failure to warn of the risks of DVT. The Ninth Circuit distinguished *Husain,* saying that *Husain* involved a response by the flight crew to the passenger's medical condition. In contrast, in *Rodriguez,* there was no response by the flight crew that may or may not have violated industry standards. Because the plaintiff submitted no evidence that the airline failed to comply with industry standards in place at the time of her flight, the Ninth Circuit declined to decide

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whether an airline's failure to warn of DVT can be an accident (as the Fifth Circuit did in *Blansett*) and instead only held that the plaintiff's development of DVT was not an accident.

Illinois federal judge applies *Husain* to $6 billion claim against airline for failure to warn passengers that aircraft would undergo a chemical "disinsection" treatment

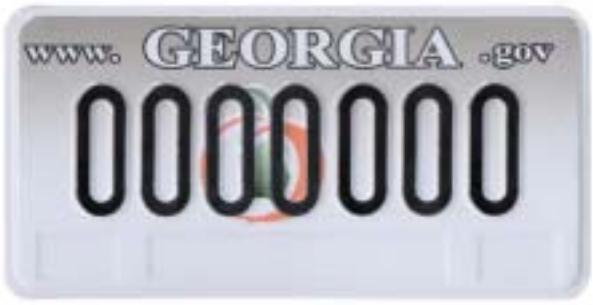
Plaintiffs brought a $6 billion class action claim (for three million class members who reacted to the pesticide exposure by having a severe limited duration illness) against an airline under bankruptcy protection in *In re: UAL Corporation* (June 2, 2004). They alleged they were injured by "disinsection" of the airline's aircraft flying into Australia and New Zealand. All aircraft flying from California to Australia or New Zealand are regularly disinsected in order to qualify the aircraft for flight to Australia or New Zealand. Disinsection involves the use of residual insecticides on the ground and aerosol spraying in flight of the cabin. The airline knew that about 2% of people exposed to the compounds will be irritated by them.

The bankruptcy judge held that plaintiffs did not allege an "accident" under the Warsaw Convention: "The Dorazios' claim alleges no failure by United to comply with industry standards at any time, and the failure to warn of disinsection that is involved in the Dorazios' claim did not occur during the flight itself. Rather, the Dorazios assert that United should have warned them – before the flight took place – of a normal procedure involved in the flight, so that they could have chosen not to fly. In this way, the Dorazios have gone far beyond the understanding of 'accident' set out in *Saks* and *Husain* – asserting an injury caused by the ordinary, required operations of a flight because they had not been advised of those operations. This is not an accident under the Warsaw Convention, and because the Convention precludes any alternative recovery under local law, the Dorazios' claim must be disallowed."

GEORGIA COURT: AIRLINE CAN BE SUED FOR POST-FLIGHT AUTO ACCIDENT CAUSED BY INTOXICATED AIR PASSENGER

An intermediate Georgia appellate court has decided that a motorist can sue an airline for injuries he sustained in a head-on collision caused by another driver who was served an excessive quantity of alcoholic beverages when he was a passenger on a Milwaukee – Atlanta flight. In *Townsend v. Delta Air Lines, Inc.* (September 16, 2004), the court ruled that Georgia's dram shop statute applied to an airline's service of alcohol on an interstate flight.

Plaintiff alleged that the airline upgraded the passenger to first class as a reward for being a frequent flier and served him excessive quantities of red wine long after he became visibly intoxicated until the plane landed in Atlanta. The court further held that the claim was not



preempted expressly by the Airline Deregulation Act of 1978 or implicitly by the Federal Aviation Act of 1958. The *Townsend* court, however, affirmed the dismissal of plaintiff's common law negligence claim, holding that the dram shop statute was plaintiff's exclusive remedy against the airline.

CLAIM THAT AIRLINE FAILED TO PROVIDE WHEELCHAIR ASSISTANCE IN ROME IS TIME-BARRED BY WARSAW CONVENTION

Plaintiff waited too long (three years) to file her lawsuit against an airline that she claimed failed to provide her husband with wheelchair assistance in Rome, Italy and medical assistance on board the departing aircraft, according to a Michigan federal court in *Fazio v. Northwest Airlines, Inc.* (March 15, 2004). Her husband suffered a serious and significant fall and injury trying to transport himself through the terminal, according to plaintiff. Under the Warsaw Convention, she had to file suit within two years after the completion of her international air travel. Plaintiff argued that Warsaw did not govern because the personal injuries did not occur in the course of any of the operations of embarking or disembarking. She claimed the injuries occurred while her husband was riding an escalator in the Rome airport during the "pre-boarding process".

In dismissing the case, the *Fazio* court explained: "The liability in this case is not premised on conditions in the airport terminal, but on the airline's failure to transport Plaintiff and her husband to the boarding area by wheelchair in such a manner that they would not be required to maneuver the escalator as they made their way through the airport to the airplane for boarding. Plaintiff's theory of liability against the airlines is premised on her contention that the airlines owed her and her husband a duty to assist in embarkation and disembarkation by providing wheelchair assistance through the airport to the airplane at each point on their itinerary. Plaintiff's allegations indisputably pertain to the 'operations of embarking and disembarking…'"

WARNING SIGNS IN JETBRIDGE DO NOT INSULATE AIRLINE FROM LIABILITY

Plaintiff fell down in a jetbridge while boarding a flight at LaGuardia Airport in New York. She fractured her arm and shoulder and sued the airline, claiming she tripped on an four-inch wide, three quarters of an inch-deep channel on the side of the jetbridge in *Katersky v. American Airlines, Inc.* (April 20, 2004). The airline claimed it had installed warning signs in the jetbridge calling attention to the uneven surfaces on the floor of the jetbridge.

In a motion for summary judgment, the airline cited a work order for the installation of the warning signs. Plaintiff said she saw no such signs and alleged the

design of the jetbridge was defective and dangerous. A New York federal court denied the airline's motion, indicating that whether the warning signs were installed was a contested fact, but also saying that installation of the warning signs did not as a matter of law satisfy the airline's duty of care to its passengers.

AMERICAN AIRLINES FLIGHT 1420 JUDGE ORDERS PRODUCTION OF COCKPIT VOICE RECORDING

In a decision arising from the June 1999 crash of American Airlines Flight 1420 at Little Rock National Airport, a federal magistrate judge ordered the production of the cockpit voice recorder audio recording to the airport and the airport commission in *Buschman v. Little Rock National Airport* (May 26, 2004). The judge first listened to the tape privately. The judge ordered production of the tape because the transcript did not reflect the tone of voice, pitch and inflection of statements made by the flight crew. Those were relevant to the crew members' state of mind, emotional condition and situational awareness. It also established the level of noise in the cockpit. The noise level was an issue because the first officer testified he could not hear the second wind shear alert provided by the air traffic controller and other statements reflected in the transcript. The CVR audio tape also was being produced because the plaintiffs would not stipulate to the transcript's authenticity.

PREGNANT PASSENGER WHO FELL IN AISLE OF AIRCRAFT CANNOT RECOVER FOR PSYCHOLOGICAL INJURIES

A passenger who was four and half months pregnant on a New York – London flight tripped over a bag protruding in the aisle and fell face first to the floor. She and her husband sued the airline seeking compensation for the psychological injuries she suffered as a result of her own physical injuries and the uncertainty of the health of her unborn child.

In *Marks v. Virgin Atlantic Airways Limited* (July 14, 2004), a New York federal judge ruled that none of the passenger's mental injuries were caused by a physical injury (the incident report only said she bruised her knee and was concerned about her unborn child; the passenger's gynecologist told her "everything was fine.") The court held that the claim for mental injuries was not compensable because, even if physical injury is established, recovery for mental injuries is permitted but only to the extent that they flow from bodily injuries. Mental injuries sustained in the same situation or circumstances as a bodily injury where the former have not been caused by the latter are not recoverable, the court explained.

O'JAYS REMOVED FROM FLIGHT FOR STARING AT FLIGHT ATTENDANT; STATE LAW CLAIMS PREEMPTED

Two members of the vocal group known as the O'Jays were removed from an August 2001 Milwaukee – New York flight before it departed the gate. They alleged in *Williams v. Midwest Airlines, Inc.* (June 9, 2004) that one was accused of staring at a flight attendant. They claimed they were met by two deputies and a dog and since that incident they have been unfairly targeted for searches and harassment causing shame and humiliation.

A Wisconsin federal judge ruled that their state law tort claims arising from the refusal to allow them to board were preempted by the Airline Deregulation Act because they were connected to the airline's "rates, routes, or services." The judge did say, however, that other claims would not be preempted, such as state law breach of contract, and claims under federal anti-discrimination statutes. Punitive damages would be preempted, though.

CLAIM THAT UNACCOMPANIED 11 YEAR-OLD MINOR WAS MOLESTED BY PASSENGER ALLOWED TO GO FORWARD UNDER MICHIGAN PREMISES LIABILITY LAW

A federal judge in Michigan has denied an airline's motion to dismiss a complaint brought under state law that the plaintiff's 11 year-old daughter was molested by a male passenger sitting next to her. In *Garza v. Northwest Airlines, Inc.* (February 23, 2004), the plaintiff claimed that she paid an additional fee for her daughter Brittany to fly as an unaccompanied minor in August 2001 from Kansas City to Detroit. Under the airline's "Unaccompanied Minor" program, the parent or guardian pays an additional fee to assure the child will be "safe and supervised", plaintiff alleged. Brittany was not seated in a designated section for unaccompanied minors. The man next to whom she was seated, plaintiff alleged, "touched, fondled, molested, assaulted and battered" Brittany as she was left unmonitored and unsupervised by the flight attendants.

The airline claimed it owed no duty under Michigan premises liability law to protect Brittany from criminal acts of third parties. Plaintiff argued that under Michigan law there is an exception to that general proposition where there is a "special relationship" between the plaintiff and defendant, such as where, as in this case, there was a contractual obligation under the airline's "Unaccompanied Minor" program. The court observed that the airline's web site indicated that the program was mandatory for travelers aged 5 -14 and was established to "ensure a safe, comfortable, and fun trip for the unaccompanied child traveler". The web site also said the program "provides supervision for children accepted under the program from the time of boarding until the child is met at the final destination."

The court found that the alleged lack of a promised security measure was sufficient to state a claim under the "voluntary undertaking" theory of liability recognized by Michigan courts. If the allegations were proven, the court decided, they would support a claim that the airline negligently failed to respond reasonably to specific criminal conduct aboard its plane that imminently threatened the well-being of one of its passengers.

REPORT LISTS CARLTON FIELDS AS ONE OF THE TOP 200 LAW FIRMS IN THE COUNTRY

Carlton Fields, P.A. is named among the top 200 law firms in the nation, for the third consecutive year, in the August 2004 issue of *The American Lawyer* magazine. The leading legal magazine annually ranks the top law firms in the nation based on gross revenue. Results are for the firm's 2003 fiscal year. Carlton Fields improved its ranking on the list to #195.

Carlton Fields opened an office in **Atlanta** on July 21, 2004, marking its seventh office. The Firm is known for its national client base, including representation of nearly two-thirds of the Fortune 100 companies.

DISRUPTIVE PASSENGER WHO YELLED "FREE BOOZE" REMOVED FROM FLIGHT BEFORE DEPARTURE; STATE LAW CLAIMS PREEMPTED BY AIRLINE DEREGULATION ACT

Plaintiff, a 41 year-old female, lost all of the hearing in her right ear when she was 15 as a result of a gunshot wound during an attempted assault and rape. Her June 2001 Newark – Ft. Myers, Florida flight was delayed for several hours due to weather. Shortly after she boarded, she was removed from the flight, and traveled to Florida the following day at no additional cost. In *Ruta v. Delta Air Lines, Inc.* (June 2, 2004), she sued in federal court in New York for breach of contract, wrongful ejectment, negligence, intentional and negligent infliction of emotional distress, violation of the Americans with Disabilities Act, and defamation.

Plaintiff and the airline had completely different accounts of what happened. The airline said she was yelling loudly and behaving in a rude, disruptive and inconsiderate manner. She cut in front of other passengers in line, used foul and shocking language with the gate agent and was observed drinking in the bar before departure. Flight attendants said she appeared intoxicated, was disruptive, out of control. She smelled of alcohol, kicked an agent in the leg and shouted "free booze" on the plane. The gate agent and a flight attendant reported to the captain who decided that plaintiff needed to be removed. Airport security was requested and plaintiff was removed.

Plaintiff claimed her tongue was partially paralyzed due to her injuries at age 15 and as a result she speaks with a slur and because of hearing impairment speaks louder than others. She is on a number of medications including painkillers and antidepressants. She said a passenger said something like "For all those hours we were delayed we should have free drinks" and she loudly replied (unwittingly) "Yes, we should."

The court held that the breach of contract and tort claims were preempted by the Airline Deregulation Act. The captain's decision was not arbitrary or capricious. The decision whether to transport a given passenger is a "service" under that Act. When plaintiff tried to recharacterize her Americans with Disabilities Act claim as one under the Air Carrier Access Act (because the Americans with Disabilities Act does not cover air travel), the court held that there is no private right of action for passengers under ACAA. The defamation claim (that the gate agent said she was intoxicated in front of other passengers or that she kicked him) was not preemepted by the Airline Deregulation Act.

CARLTON FIELDS RECEIVES QUALITY OF LIFE AWARD FROM THE FLORIDA BAR

Carlton Fields is pleased to announce that the firm is the 2004 recipient of the **Michael K. Reese Quality of Life Award** from The Florida Bar Young Lawyers Division. The humanitarian award is presented annually to a person and/or entity that strives to balance work habits and schedules to provide a more flexible working environment and a more meaningful existence. Carlton Fields' Chair of The Board of Directors, **Sylvia H. Walbolt,** accepted the award on behalf of the Firm at The Florida Bar Annual Meeting in Boca Raton, Florida.

The Young Lawyers Division also made a monetary donation to a charity of the firm's choice. Carlton Fields selected The Children's Advocacy Center, funded by the Children's Legal Services grant program of The Florida Bar Foundation, to receive the donation from The Florida Bar. Children's Legal Services provides grants that support special education and health care services for children. Carlton Fields matched the Young Lawyers Division contribution to this charity.

USAIR FLIGHT 427 CRASHES TEN YEARS AGO: FINAL MINUTES CAPTURED IN CVR TRANSCRIPT

Ten years ago, on September 8, 1994, **USAir Flight 427**, a Boeing 737-3B7, crashed near Aliquippa, Pennsylvania, with 132 fatalities. A transcript of the cockpit voice recorder audiotape for USAir Flight 427 follows:

CAM-3: They didn't give us connecting flight information or anything. Do you know what gate we're coming into?
CAM-1: Not yet.
CAM-3: Any idea?
CAM-1: No.
CAM-3: Do ya know what I'm thinkin' about? Pretzels.
CAM-1: Pretzels?
CAM-3: You guys need drinks here?
CAM-1: I could use a glass of somethin', whatever's open, water, uh, water, a juice?
CAM-2: I'll split a, yeah, a water, a juice, whatever's back there. I'll split one with 'im.
CAM-3: Okey-dokey. Do you want me to make you my special fruity juice cocktail?
CAM-1: How fruity is it?
CAM-3: Why don't you just try it?
CAM-2: All right, I'll be a guinea pig.
CAM-3: [Sound similar to cabin door closing]

The crew receives instructions to reduce speed to 210kts, maintain FL100 and contact Pittsburgh Approach at 121.25.

CAM-1: Two ten, he said?
CAM-2: Two ten? Oh, I heard two fifty ...
CAM-1: I may have misunderstood him.

Pittsburgh Approach asks Flight 427 to turn left heading 100.

CAM-3: [Sound of cockpit door opening]
CAM-3: Here it is.
CAM-1: All right.
CAM-2: All right. Thank you. Thank you.
CAM-3: I didn't taste 'em, so I don't know if they came out right.
CAM-1: That's good.
CAM-2: That is good.
CAM-3: It's good.
CAM-2: That is different. Be real good with some dark rum in it.
CAM-3: Yeah, right.
APP: USAir 427, Pittsburgh Approach. Heading 160, vector ILS Runway 28 Right final approach course speed 120.
CAM-2: What kind of speed?
RDO-1: We're comin' back to 210 and, uh, one sixty heading, down to ten, USAir 427.
CAM-1: What runway did he say?
CAM-1: It tastes like a...
CAM-2: Good.
CAM-1: There's little grapefruit in it?
CAM-3: No.
CAM-2: Cranberry?
CAM-3: Yeah. You saw that from the color.
CAM-1: Else is in it?
CAM-2: Uh, Sprite?
CAM-3: Diet Sprite.
CAM-2: Huh.
CAM-3: And I guess you could do with Sprite. Probably be a little better if you do.
CAM-1: Yeah. There's more?
CAM-3: One more.
CAM-2: Ah.
CAM-3: You got it.
CAM-2: Huh?
CAM-3: Cranberry, orange, and Diet Sprite.
CAM-2: Really nice.
CAM-3: It's different...
CAM-1: I always mix cranberry and the grapefruit. I like that.
CAM-3: Okay, back to work.
CAM-2: Okay.
CAM-3: [Sound similar to cockpit door opening and closing]

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CAM-2: I suspect we're going to get the right side.
APP: USAir 427 descend and maintain six thousand.
RDO-1: Cleared to six, USAir 427.
CAM-2: Oh, my wife would like that.
CAM-1: Cranberry, orange, and Sprite.
CAM-2: Yeah. I guess we ought to do a preliminary.

Pre-landing checks take place; Approach requests a left turn heading 140, and speed reduction to 190kts.

CAM-3: [Sound similar to flap handle being moved; sound of single chime similar to seat belt chime]
CAM-2: Oops. I didn't kiss 'em goodbye. What was the temperature? Remember?
CAM-1: *75*.
CAM-2: *75*?
PA: Seatbelts and remain seated for the duration of the flight.
PA: Folks, from the flight deck, we should be on the ground in about ten more minutes. Uh, sunny skies, a little hazy. Temperature . . . temperature's, ah, *75* degrees. Wind's out of the west around ten miles per hour. Certainly 'ppreciate you choosing USAir for your travel needs this evening. Hope you enjoyed the flight. Hope you come back and travel with us again. This time we'd like to ask our Flight Attendants please prepare the cabin for arrival. Ask you to check the security of your seatbelts. Thank you.
CAM-3: [Seatbelt chime]
RDO-1: Did you say Runway 28 Left for USAir 427?
APP: Uh, USAir 427, it'll be 28 Right.
RDO-1: 28 Right, thank you.
CAM-1: 28 Right.
CAM-2: Right, 28 Right. That's what we planned on. Autobrakes on one for it.
CAM-1: Seven for six.
CAM-2: Seven for six.
CAM-1: Boy, they always slow you up so bad here.
CAM-2: That sun is gonna be just like it was takin' off in Cleveland yesterday, too. I'm just gonna close my eyes. [Sound of laughter]. You holler when it looks like we're close. [Sound of laughter]
CAM-1: Okay.
APP: USAir 427, turn left heading one zero zero. Traffic will be one to two o'clock, six miles, northbound Jetstream climbing out of thirty-three for five thousand.
RDO-1: We're looking for the traffic, turning to one zero zero, USAir 427.
CAM-3: [Sound in engines increasing rpms]
CAM-2: Oh, yeah. I see the Jetstream.
CAM-1: Sheez...
CAM-2: zuh?
CAM-3: [Sound of thump; sound like 'clickety-click'; again the thumping sound, but quieter than before]
CAM-1: Whoa ... hang on.
CAM-3: [Sound of increasing rpms in engines; sound of clickety-click; sound of trim wheel turning at autopilot trim speed; sound similar to pilot grunting; sound of wailing horn similar to autopilot disconnect warning]
CAM-1: Hang on.
CAM-2: Oh, [expletive].
CAM-1: Hang on. What the hell is this?
CAM-3: [Sound of stick shaker; sound of altitude alert]
CAM-3: Traffic. Traffic.
CAM-1: What the...
CAM-2: Oh...
CAM-1: Oh God, Oh God...
APP: USAir...
RDO-1: 427, emergency!
CAM-2: [Sound of scream]
CAM-1: Pull...
CAM-2: Oh...
CAM-1: Pull... pull...
CAM-2: God...
CAM-1: [Sound of screaming]
CAM-2: No... END OF TAPE.

TRAVEL AGENCY THAT ISSUED TICKETS TO PASSENGER WHOSE BAGGAGE WAS LOST IS NOT A "CARRIER" FOR PURPOSES OF WARSAW CONVENTION

Baggage Claim

Two plaintiffs sued their travel agency, The American Automobile Association ("AAA") (and the airline), after their baggage was lost in the course of their Boston – Philadelphia – Rome itinerary. On arrival in Rome, they made a lost baggage claim to the airline at the airport and met their tour group at their hotel. They called AAA in Massachusetts the next day and were displeased with the level of assistance they received. The AAA agent said she could only file a report with the airline. The plaintiffs terminated their vacation the following day because they still did not have their personal belongings. They called AAA to make return reservations, but the agent refused, saying it would be easier for plaintiffs to make their own reservations. Plaintiffs paid $1,854 for their return tickets. They did not receive their lost baggage until nearly a month later.

In *Vaughn v. The American Automobile Association,* Inc. (June 7, 2004), a Massachusetts federal magistrate judge, in a report and recommendation to the district judge, ruled that AAA could not avail itself to the Warsaw Convention's two-year statute of limitations because there was no record evidence that AAA was a "carrier" under the Convention (plaintiffs had waited four years to sue.) The court also ruled, though, that AAA's conduct did not rise to the level of a violation of Massachusetts' unfair and deceptive trade practices statute. Plaintiffs complained that AAA was "cold-hearted, unsympathetic, indifferent, inconsiderate and uncaring as could be." The court, dismissing their claim, ruled: "While the plaintiffs' frustration with AAA is evident, it is frustration arising out of AAA's alleged failure to meet either its obligations or to live up to the plaintiffs' expectations. AAA did not engage in 'conduct that was unethical, immoral, oppressive, or unscrupulous' as required by the statute."

CARLTON FIELDS OFFERS SEMINARS

The Aviation Practice Group of Carlton Fields offers in-house seminars on a variety of subjects of interest to aviation liability professionals. The most popular current topics include The Montreal Convention of 1999 and the "Warsaw System"; denied passenger boarding/passenger ejectment; defending turbulence claims; and evaluating and settling wrongful death claims for catastrophic losses. Continuing insurance and/or legal education credits ordinarily are available. To request an in-house seminar, please call (800) 486-0146, extension 6231 or e-mail: skydocket@carltonfields.com.

CARLTON FIELDS OPENS ATLANTA OFFICE

Carlton Fields, P.A., one of Florida's largest law firms, has opened an office in Atlanta, Georgia. The **Atlanta office** is the firm's seventh office. Carlton Fields is one of the 200 largest law firms in the nation with 210 attorneys located in major financial and governmental regions throughout the State of Florida, and now in Georgia. The firm is known for its national client base, including representation of nearly two-thirds of the Fortune 100 companies. The firm's areas of concentration include aviation, securities, telecom and technology, energy, and insurance litigation; construction; products and toxic tort liability defense; corporate mergers and acquisitions, tax, and international transactions; commercial real estate; financing; civil and criminal appeals; intellectual property; and antitrust and trade regulation.

"Carlton Fields is dedicated to meeting the legal and business needs of its clients," said **Thomas A. Snow,** President and CEO of the firm. "Carlton Fields' move into Atlanta will enhance our relationships with clients by providing additional services, resources, and an expanded legal network. Atlanta is a major business center not only in the Southeast, but in the country, and is the next logical step in the firm's plan for growth."

Wayne Shortridge has joined the firm as a shareholder and will serve as the Atlanta Office Managing Shareholder. Shortridge was formerly the Office Managing Partner at Paul, Hastings and previously Managing Partner at Powell Goldstein. "The firm is committed to building the Atlanta office through the addition of attorneys that complement the firm's highly skilled professionals who are committed to the highest standards of client service. I am excited to join Carlton Fields and help expand the firm to Atlanta and the Southeastern United States."

Shortridge has practiced law for more than forty years, serving as general counsel to a number of companies. He has expertise in the electronic and telecommunications industry as well as corporate governance, including Sarbanes-Oxley matters, mergers and acquisitions, and corporate finance. He has represented companies from the start-up stage through their status as Fortune 500 Companies. He received his bachelor's degree in 1960 from Purdue University, and his law degree in 1963 from Harvard Law School. He is a member of the State Bar of Georgia, American and Atlanta Bar Associations, and a member of the Business Law Sections of the Georgia and the American Bar Associations.

For more information on the Atlanta office, log on to **www.carltonfields.com/Atlanta.**

UPCOMING AIRLINE LIABILITY EVENTS

Embry-Riddle Aeronautical University
Sixteenth Annual Aviation Law & Insurance Symposium
January 20 - 21, 2005
Orlando, Florida
www.erau.edu/ec/pd/symposium.html

39th Annual SMU Air Law Symposium
February 24 - 25, 2005
Addison, Texas
www.smu.edu/lra/ALS

Women in Aviation International
16th Annual International Women in Aviation Conference
March 10 - 12, 2005
Dallas, Texas
www.wai.org/conference/2005

Aviation Insurance Association
2005 Annual Conference
April 30 - May 3, 2005
New Orleans, Louisiana
www.aiaweb.org

Information

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