

Suit on Fatal Fall Down Aircraft Stairs Settled

The husband of a woman who died after falling down the stairs leading from a plane to the tarmac at Orly Airport in France has agreed to settle a lawsuit against American Airlines for an undisclosed amount. A federal court judge in Texas had dismissed state law wrongful death claims against the carrier; the settlement was reached three weeks before trial on Warsaw Convention claims was set to begin. *Verdesca v. American Airlines Inc.*, No. 3-99-CV-2022-BD (N.D. Tex., Nov. 18, 2000).

U.S. District Magistrate Judge Jeff Kaplan of the Northern District of Texas said the state law claim was preempted by the Warsaw Convention. Article 17 of the treaty governs the liabilities of air carriers and the rights of passengers for personal injuries suffered during international flights. The article states:

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

The suit was filed in Texas state court by Joseph Verdesca, whose wife Sandra died from massive head injuries after her fall. She was struggling with her carry-on bags when the accident occurred; the plaintiff claimed American should have had an agent on duty on the tarmac to assist passengers off the plane.

American removed the action to federal court and sought partial summary judgment on the state law claims. The magistrate judge ruled, “There is no dispute that Sandra Verdesca died as a result of injuries sustained while disembarking an international airline flight. Accordingly, the Warsaw Convention provides the exclusive remedy in this case.”

The plaintiff sought summary judgment on the Warsaw Convention claims, arguing that American did not take “all necessary measures” to prevent the accident. Under the International Air Transport Association Intercarrier Agreement, which increased the Convention’s previous monetary limitation on compensatory damages, a carrier cannot be liable for more than 100,000 Special Drawing Rights if it has taken all necessary measures to avoid the accident, or if such measures were impossible.

The court denied Verdesca’s motion, saying there were genuine issues of material fact as to whether agents were stationed at the base of the stairway or if they were “too busy” to notice Sandra Verdesca.

At trial, American asserted two affirmative defenses: that it should be absolved of

liability because the decedent's injuries had been caused by her own negligence, and that it had taken "all necessary measures" to insure safety as required by the Intercarrier Agreement.

The plaintiff presented testimony from American's head of gate agent training, who said the airline had a policy of placing an agent at the bottom of the portable stairs "at all times" during the deplaning process to monitor and assist passengers. He also said it was common procedure for an aircraft to be met with two agents, one at the top of the stairs and one at the bottom. Despite this, there was no agent in place at the time of the accident; American's general manager in Paris testified that there was no such policy and that he relied on the "common sense" of employees to monitor deplaning passengers.

Several flight attendants said they often had trouble descending the steep stairway and that it was not uncommon for passengers to need assistance. A motion to compel was granted requiring American to produce reports on similar incidents since 1990; more than 100 such falls had taken place.

American was represented by John Harris Martin and Mark Taylor of Thompson & Knight in Dallas.

Verdesca was represented by Windle Turley and Jeffrey T. Embry of the Turley Law Office in Dallas.