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Damages Awards in International Flight Disasters: The Court Takes Another Look

by Michael Peter Waxman

Eastern Air Lines, Inc.
v.
Robert F. Mahfoud
(Docket No. 83-1807)

To be reargued October 9, 1985

(Originally argued on January 15, 1985 in conjunction with *Air France v. Valerie Hermien Saks*, which was decided March 4, 1985.)

ISSUE

Most commercial flights arrive at their destinations safely. Unfortunately, when an accident does occur, the physical, emotional and economic damages may be enormous. Recent air disasters in Japan, Texas and Ireland show that massive injuries and loss of life may occur abruptly. Although sufficient compensation for such losses is impossible, the United States government and international air carriers have attempted to place a maximum value on such losses in the Agreement Relating to Liability Limitations of the Warsaw Convention and the Hague Protocol (the Montreal Agreement). In *Eastern Air Lines, Inc. v. Mahfoud*, the United States Supreme Court will be required to interpret the Montreal Agreement. The Court must determine whether the $75,000 maximum recovery for injuries suffered in international air transport set forth in the Montreal Agreement includes prejudgment interest damages.

FACTS

Bernard and Odile Mahfoud (brother and sister-in-law of Robert F. Mahfoud, who is bringing this action) were on Eastern Airlines' Flight 66 from New Orleans, Louisiana to John F. Kennedy International Airport in New York City enroute to Paris, France on June 24, 1975. Flight 66 was caught in a "windshear" and crashed just prior to landing at Kennedy Airport. The Mahfouds and many other passengers were killed in the accident. Since flight 66 was the first leg of an international journey for the Mahfouds, the provisions of the Warsaw Convention and Montreal Agreement applied to the claims made on their behalf. As noted below, due to the procedural assertions of Eastern Airlines, Robert F. Mahfoud was denied recovery on behalf of his relatives who were killed until December 2, 1982. By that time, Eastern's accumulated interest on the unpaid amount was over 50% of the total amount recovered (prior to interest) by Mahfoud.

Mahfoud asserts that to permit Eastern to delay paying its maximum liability through dilatory procedural tactics, and yet not pay the interest awarded, effectively denies the full value of the appropriate recovery. In addition, controlling provisions of the Montreal Agreement allow for paying greater amounts as long as such payments are no greater than $75,000 in dollars valued at the time of injury. He argues that this constitutes an acceptance of interest amounts greater than the $75,000 maximum recovery.

Eastern claims that the Montreal Agreement contemplates no exception from the maximum except where legal fees and court costs are ordered separately. Where separate legal fees and court costs are ordered, the maximum is reduced to $58,000 plus the fees and costs.

In addition, Eastern states that the $75,000 maximum was negotiated down from $100,000 in exchange for the agreement not to assert paragraph 20.1 of the Warsaw Convention (discussed below). Eastern argues that to increase the maximum for interest would eliminate the fruits of the negotiation.

The judicial history of *Mahfoud* is serpentine. Mahfoud's original action against Eastern was filed in 1975 in the United States District Court for the Western District of Louisiana. This action was transferred to the Eastern District of New York in 1976 and consolidated with other claims related to flight 66.

Summary judgment was entered in the Eastern District of New York against Eastern Air Lines, Inc. in 1978. The decision was reversed by the United States Court of Appeals for the Second Circuit on procedural grounds in 1980. Ultimately, the case was transferred back to the Western District of Louisiana. In November, 1982, Eastern was held liable for the injuries to the Mahfouds. The district court also concluded that Robert F. Mahfoud was entitled to recover prejudgment and postjudgment interest from Eastern over and above the $75,000 limit on liability at the rate established by the Louisiana Civil Code. The court reasoned that under the Montreal Agreement, a passenger or passenger's estate is entitled to prompt recovery from an air carrier and that it is unconscionable to let an airline delay litiga-

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tion to an extent that a smaller amount of money may be invested to pay a $75,000 claim. On December 2, 1982, Eastern deposited $150,000 (2 x $75,000) with the district court.

Eastern appealed the award of prejudgment interest in excess of the $75,000 limit of liability to the United States Court of Appeals for the Fifth Circuit. While this appeal was pending, the Fifth Circuit held in *Domanque v. Eastern Air Lines, Inc.* (722 F.2d 256 (5th Cir. 1984)), that both prejudgment and postjudgment interest might be awarded over and above the $75,000 limit of liability. Citing *Domanque*, the Fifth Circuit, in an unreported opinion, affirmed the judgment of the district court in *Mahfoud*. The *Domanque* court based its ruling on two objectives embodied in the Montreal Agreement. The first objective was to increase the limit of liability to a maximum of $75,000. An important additional objective was to encourge the speedy disposition of claims. Having identified these objectives, the court of appeals then sought to balance the objetives of maintaining a fixed and definite level of liability against the objectives of speedy compensation and maximum recovery for those injured or their survivors.

The court of appeals struck the balance in favor of allowing the pa;'ment of postjudgment interest above and beyond the $75,000 limit to liability established by the Montreal Agreement. The court held that awarding postjudgment interest would encourage the payment of judgments when the victim or survivors most need help and that by referring to legal rates of interest or paying the principal amount into the registry of the court or an escrow account, the air carriers would still be provided with a definite basis for determining their liability. Moreover, since the Montreal Agreement expressly provides for including legal fees and costs in the $75,000 limit, the failure of the drafters of the agreement to specifically include interest in the limit suggests that it is proper to award postjudgment interest. The *Domanque* court held prejudgment interest warranted the same treatment.

BACKGROUND AND SIGNIFICANCE

The Convention for Unification of Certain Rules Relating to International Transportation by Air (the Warsaw Convention) is an international treaty among 120 nations (including the United States) entered into in 1929. The convention contemplates among other things the liability of air carriers in international aviation. Due to the Warsaw Convention's liability award ceiling ($8,300.00), the United States, in 1966, fostered the development of a private agreement among international air carriers (the Montreal Agreement) which set a maximum liablity for accidents in air transportation at $75,000 per person. In addition, the air carriers surrendered their right to assert paragraph 20.1 of the Warsaw Convention which states: "[T]he carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

Specifically, the Supreme Court in this case must determine whether the damages recovery limitation of $75,000 denies recovery in excess of that amount if prejudgment and postjudgment interest is awarded to the plaintiff. The $75,000 maximum recovery set forth in the Montreal Agreement permits only one specific exception. If the law of a state permits a court to separate legal fees and court costs from the rest of the plaintiff's recovery, the maximum liability is set at $58,000 plus such legal fees and costs.

A decision to permit air carriers to delay paying liability claims, thereby lessening the real effect of the damages award, may encourage such practices. In light of the severity of recent crashes, a delay in payments may greatly reduce the "real" recompense to bereaved beneficiaries. By contrast, a decision in support of Mahfoud may foster prompt payment of clearly compensable claims.

ARGUMENTS

For Eastern Air Lines, Inc. *(Counsel of Record, Richard M. Sharp, 1800 Massachusetts Avenue, NW, Washington, DC 20036; telephone (202) 828-2000)*

1. The plain language of the Warsaw Convention and the Montreal Agreement precludes an award of prejudgment interest over and above the carrier's limit of liability.
2. An award of prejudgment interest over and above the carrier's limit of liability is inconsistent with the purposes of the convention and the agreement.
3. The plain language and purposes of the convention and agreement cannot be overridden by the equitable considerations relied on by the courts below.

For Robert F. Mahfoud *(Counsel of Record, George E. Farrell, 1216 Sixteenth Street, NW, Washington, DC 20036; telephone (202) 833-2005)*

1. The award of prejudgment interest is inconsistent with the purposes of the Warsaw Convention and Montreal Agreement.
2. The convention and agreement permit awarding prejudgment interest as reimbursement for delay.

AMICUS BRIEF

In Support of Mahfoud

A single brief was filed on behalf of the surviving family members or personal representatives of deceased passengers who were killed while engaged in international travel on various airlines.

[Although the Court has ordered reargument, no rebriefing or supplemental briefing has been permitted.]