

Northern District of California Dismisses Claim Against Lufthansa

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In *Wendelberger v. Deutsch Lufthansa AG*, No. 18-cv-01055, 2018 U.S. Dist. LEXIS 88532 (N.D. Cal. May 25, 2018), the Northern District of California recently dismissed a claim against Deutsch Lufthansa AG (“Lufthansa”) on the grounds that the court did not have subject matter jurisdiction over the claims in the United States. In the underlying facts, the plaintiffs had purchased round-trip tickets from Lufthansa for carriage from Vienna, Austria, to Boston, Massachusetts, with layovers in Frankfurt, Germany. On the flight, a cup containing scalding water slid off the seat and injured the plaintiff. The plaintiff and her husband filed claims for mental distress, embarrassment, and loss of spousal support. However, the plaintiffs filed suit in California, rather than Austria. Lufthansa moved to dismiss the claims on the grounds that the Northern District of California did not have jurisdiction over the claims.

Article 33 of the Montreal Convention, which governs international air carriage, provides that an injured party may present a claim for damages in a territory of the State Party to the Convention before a court (1) of the domicile of the carrier or of its principal place of business; (2) where the air carrier has a place of business through which the contract has been made; or (3) before the court at the place of destination. The plaintiff argued that the “place of destination” was in the United States, thereby giving rise to jurisdiction in the United States.

Under Warsaw Convention, the predecessor to the Montreal Convention, when a round-trip ticket was purchased, the “place of destination” was uniformly held to be the ultimate place of destination at the end of the round-trip, and did not include any intermediary locations. When the Montreal Convention was adopted, Article 33 of the Montreal Convention was substantively identical to its predecessor provision. Despite this, the plaintiffs argued that the “place of destination” related to a particular aircraft, or a particular leg of a flight, and argued that the court should not simply adopt the holdings under the predecessor Warsaw Convention.

The court squarely rejected this argument, concluding that in light of the near-identical language between the Montreal and Warsaw Convention, there was no need to depart from prior precedent. Accordingly, because the plaintiffs’ “place of destination” was Austria, and without any other grounds to justify jurisdiction in the United States, the court dismissed the claim.

By itself, the outcome of *Wendelberger* is not surprising and is consistent with decades of prior precedent regarding jurisdiction under the Montreal and Warsaw Conventions. However, the key takeaway is that the plaintiffs attempted to rely on a recent decision from the Sixth Circuit, *Doe v. Etihad*

, 870 F.3d 406 (6th Cir. 2017), in attempting to persuade the court to ignore prior precedent from the Warsaw Convention to reach a different conclusion. As we have previously reported in prior issues, the Sixth Circuit’s decision in *Etihad* represents a radical departure from prior decisions applying the Warsaw Convention to claims under the Montreal Convention.

Just like the plaintiffs attempted to do in *Wendelberger*, we have previously warned that *Etihad* will encourage plaintiffs to file new lawsuits on previously well-settled issues, whether as part of a legitimate attempt to change the course of precedent under the Montreal Convention, or simply to try and create leverage for settlements. Indeed, *Wendelberger* involved a completely different issue than what was presented in *Etihad*, and while the plaintiffs’ attorney seemed to acknowledge the likely difficulties they faced in their claims, they claimed that *Etihad* gave them a sufficient “good faith” basis to continue prosecution of their claims “unless the parties settled.”

The court in *Wendelberger* considered, but did not impose, sanctions on the plaintiffs’ attorney, finding that the arguments were not necessarily frivolous “given the Sixth Circuit’s entertainment of related arguments (albeit in a substantially different context).” Thus, whatever the context of potential claims under the Montreal Convention, air carriers must continue to be prepared to defend against new claims that attempt to rely on *Etihad*, and be prepared to discuss the factual and legal issues of *Etihad* and why no other courts should follow it.

For more information on this topic, contact a member of our [Transportation & Logistics Practice Group](#).

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