RECENT DEVELOPMENTS IN AIR CARRIER LIABILITY under the Montreal Convention

BY BARTHOLOMEW J. BANINO

The Montreal Convention of 1999[1] entered into force on November 4, 2003, 60 days after the United States became the thirtieth party to ratify the Convention. It is applicable to all "international carriage of persons, baggage or goods performed by aircraft for reward."[2] Currently, 87 countries are parties to the Convention, with the recent ratification by Australia becoming effective on January 24, 2009.

The Montreal Convention is the successor to the Warsaw Convention of 1929[3] and was "designed to replace the Warsaw Convention and all of its related instruments and to eliminate the need for the patchwork of regulation and private voluntary agreements."[4] To consolidate the various liability rules and preserve the body of case law interpreting and applying the Warsaw Convention and its amendments, the drafters of the Montreal Convention incorporated the substantive language of the prior treaties and amendments. Accordingly, the language in most of the Montreal Convention's articles is essentially the same as in the corresponding articles in the Warsaw Convention.[5]

Because of the similarities between the Conventions, the cases that have discussed the Montreal Convention have referenced its predecessor, to which over 120 countries are parties, and for which there is a well-established body of case law.[6] In those cases that concern countries that have not yet ratified the Montreal Convention or concern events that preceded the Montreal Convention's effective date, courts have continued to apply the Warsaw Convention.

U.S. courts have recently decided a number of cases interpreting the Montreal Convention. These cases represent developments in three significant areas of the Montreal Convention body of law. The courts have clarified not only the relationships among "actual carriers," "contracting carriers," and "successive carriers" but also jurisdictional issues set out in Article 33

of the Convention. Several recent decisions have also addressed, sometimes inconsistently, the preemptive effect of the Montreal Convention on claims arising from international transportation.

Preemption

Preemption under the Montreal Convention is governed by Article 29, "Basis of Claims," which is similar to the language in Article 24 of the Warsaw Convention and states:

> In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention . . . .

The U.S. Supreme Court's decision in *El Al Israel Airlines v. Tseng*[7] in 1999 resolved many issues regarding the preemptive effect of the Warsaw and Montreal Conventions. In *Tseng*, the Supreme Court confirmed the Warsaw Convention's goal of creating a uniform system of liability, holding that "recovery for a personal injury suffered 'on board [an] aircraft or in the course of any of the operations of embarking or disembarking,' Art. 17, 49 Stat. 3018, if not allowed under the Convention, is not available at all."[8] Since *Tseng*, it has become well established that "[f]or all air transportation to which the Montreal Convention applies, if an action for damages falls within one [of] the treaty's damage provisions, then the treaty provides the sole cause of action under which a claimant may seek redress for his injuries."[9] Although the majority view among the courts as to the Montreal Convention's preemptive effect is that the Convention completely preempts common (state) law claims within its scope, several recent cases show that not all courts agree.

One recent case illustrating the preemptive scope of the Montreal Convention is *Matz v. Northwest Airlines*.[10] The plaintiffs claimed they were treated badly during their trip from Detroit to Kilimanjaro. The plaintiffs brought suit for breach of contract in Michigan state court, alleging that their baggage was lost, they were not given a complimentary toiletry kit, and they were put in a hotel approximately 50 miles from the airport. After defendant airlines' removal to the U.S. District Court for the Eastern District of Michigan, the plaintiffs sought to amend their action to add a claim for violation of the Michigan Consumer Protection Act. The defendants opposed the amendment, arguing that such a claim would be preempted by the Montreal Convention. The court agreed, finding that "regardless of whether Plaintiffs' alleged injuries are ultimately compensable under the Montreal Convention, the Montreal Convention is the exclusive remedy."[11]

Preemption under the Warsaw and Montreal Conventions also arises when a defendant airline seeks to remove a case that arises out of international transportation to federal court, after a passenger has asserted a claim in state court, usually pleading common (state) law causes of action. Recent decisions have addressed some of the complexities that arise when dealing with preemption in that context.

Generally, the basis for removal is determined by the "well-pleaded complaint" rule, which states that removal is permissible where the plaintiff's own statement of his or her cause of action presents a claim based on a federal issue, such as the application of a treaty of the United States.[12] However, two exceptions to the well-pleaded complaint rule are (1) the

"complete preemption" doctrine, where a law so completely regulates a particular field that not only is the state law preempted by the federal law, but a plaintiff's state law cause of action is also preempted, requiring that the plaintiff's claim be heard in federal court,[13] and (2) the "artful pleading" doctrine, in which a court looks beyond the plain language of the complaint to determine whether a plaintiff has concealed the federal nature of the claim by pleading in common (state) law terms.

Most courts following *Tseng* hold that the Convention completely preempts a plaintiff's common (state) law causes of action. In *Knowlton v. American Airlines*,[14] American removed, and the plaintiff sought to remand, an action alleging breach of contract because the plaintiff did not receive a free meal on her flight. When she purchased her ticket, the electronic confirmation of the plaintiff's travel itinerary included the notation "breakfast" on the first leg of her international travel. While on board, however, the plaintiff was informed that American no longer served complimentary breakfasts but that she could purchase breakfast for $3. The plaintiff argued that the treaty only addresses claims for personal injury, property damage, and damage caused by delay. American argued that the Montreal Convention, nonetheless, completely preempts the plaintiff's state law breach of contract claim. The *Knowlton* court acknowledged that federal preemption cannot serve as the basis for federal question jurisdiction, warranting removal, unless the doctrine of complete preemption applies, in which case the federal claim is "deemed to appear on the face of the complaint."[15]

The *Knowlton* court also recognized that *Tseng* stands for the proposition that the Warsaw Convention preempted state law claims. Because the Warsaw and Montreal Conventions were "designed to create a uniform system of liability among airlines for claims arising from international flights,"[16] the *Knowlton* court held that the Montreal Convention completely preempts all claims arising out of international flights.[17] The court also said, "As a matter of public policy, airlines should not be subject to contract claims in state courts involving a three-dollar breakfast."[18] Accordingly, the *Knowlton* court denied the plaintiff's motion to remand.

The court in *Serrano v. American Airlines*[19] took a notable departure from precedent established by the Supreme Court in *Tseng*. The plaintiffs were off-loaded from an American flight bound from Los Angeles to Heathrow Airport (serving London) when airline staff refused to allow the plaintiffs' infant child to be seated on their laps in business class. The plaintiffs sued for refusal to transport and alleged causes of action under the California Civil Rights Act, breach of contract, interference with contract, defamation, and intentional infliction of emotional distress. American removed the case to federal court and the plaintiffs moved to remand, arguing that their claims were based solely upon state law.

The Supreme Court in *Tseng* ruled directly on the issue of preemption relating to claims arising under the Warsaw Convention, providing the district court in *Serrano* clear precedent to apply to the facts before it. The *Serrano* court, however, took a notable departure from this precedent and held that the "plain language" of the *Tseng* decision, as well as the text of Article 29, suggested that state law claims are permissible when the plaintiff's claim "*does* 'satisfy the conditions of liability under the Convention.'"[20] The court held that the *Tseng* decision did not necessarily preclude claims for relief under state law, "as long as those local laws are in accordance with the rules of the Convention."[21]

The *Serrano* court also rejected American's complete preemption argument and instead adopted the dissenting opinion of Judge Morris Sheppard Arnold in *Husmann v. Trans World Airlines*.[22] Embracing the reasoning and conclusion in that dissent, the district court found that the uniformity required by the Montreal Convention may be achieved by exclusive remedies and liabilities, not by a requirement that all such cases be brought in federal court. Thus, according to the court, "complete preemption does not follow federal preemption."[23] Accordingly, the court remanded the case to state court based on the finding that there was no complete preemption and that cases arising under the Montreal Convention may still be maintained in state court. There was, said the district court, nothing to indicate that Congress intended for the Montreal Convention to wholly displace the plaintiffs' contract and tort causes of action.[24]

The result reached in *Serrano*, in addition to being inconsistent with other judicial interpretations of the Montreal Convention, misstates Congress's role in the treaty. The Montreal Convention is not a domestic statute; it is a treaty that the United States has ratified, thus making it a binding treaty obligation of the United States and subject to federal question jurisdiction.

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Two recent decisions from district courts in Illinois also highlight the difficulty courts have in addressing issues of preemption in the context of the Montreal Convention. In *Narkiewicz-Laine v. Scandinavian Airlines System*,[25] a passenger filed a claim for delay and refusal to refund a ticket. Christian Narkiewicz-Laine was delayed in his transportation from Dublin to Copenhagen, causing him to miss his connection to Helsinki, and he arrived in Helsinki one and a half hours later than originally scheduled. Narkiewicz-Laine also included a claim for damages because the defendant refused to refund his ticket from Dublin to Orso on a different trip, after he called the day of his scheduled flight and advised that he would not be able to fly because he was sick.

The court in the Northern District of Illinois said that the preemptive effect of the Montreal Convention is an affirmative defense and, as such, does not provide a basis for federal subject matter jurisdiction according to the well-pleaded complaint rule. The court noted that complete preemption is the exception to this rule; however, relying on the Seventh Circuit's conclusion in an earlier case that "[t]he liability limitation provisions of the Warsaw Convention simply operate as an affirmative defense,"[26] the district court concluded that claims falling within the scope of the Montreal Convention may be brought in contract or tort under state law, "but such claims are subject to an affirmative defense based on the conditions and limits set out in the Montreal Convention."[27] The court found that because the plaintiff pled only state law breach of contract claims, they did not provide a basis for federal jurisdiction.[28] The defendant's assertion that the Montreal Convention was the exclusive cause of action was simply an affirmative defense and complete preemption did not apply. The court therefore remanded the case back to Illinois state court for further proceedings.

A decision just a few months later in the Central District of Illinois issued an opposite ruling with regard to a defendant airline's preemption defense under the Convention. In *Schoeffler-Miller v. Northwest Airlines*,[29] the plaintiff had traveled uneventfully from Chicago to Stuttgart, Germany, via Amsterdam. On her return flight from Stuttgart to Amsterdam, the plaintiff became ill and allegedly notified the flight attendants that she would need assistance disembarking the aircraft upon arrival in Amsterdam. According to the plaintiff, the attendants refused. As the plaintiff attempted to disembark unassisted, she lost consciousness and fell down metal stairs to the tarmac.

The defendants removed the action to federal court, and the plaintiff filed a motion to remand back to state court. Like the court in *Narkiewicz-Laine*, the Central District of Illinois also looked to the well-pleaded complaint rule and whether the plaintiff's cause of action "arises under" federal law. The court noted that preemption is an affirmative defense and, therefore, not usually a basis for removal. The defendants argued, however, that the artful pleading rule requires the court to look beyond the complaint and determine whether "there is a strong but latent federal nature to the cause of action."[30] The court explained that where a plaintiff's claim raises an issue that is completely preempted by federal law, he or she cannot keep it out of federal court simply by characterizing the suit as one arising out of common (state) law. Because the court found that a carrier's tort liability during international transportation is completely preempted by federal law, i.e., the Montreal Convention, and that the plaintiff's claim arises under the Convention, it denied the plaintiff's motion to remand.[31]

As noted above, courts generally hold that plaintiffs' claims that arise out of international transportation are governed by a treaty of the United States and are therefore appropriate for removal to federal court based on federal question jurisdiction. However, as shown by the decisions in *Narkiewicz-Laine* and *Serrano*, courts are still not in complete agreement on the preemptive effect of the Montreal Convention.

The Fifth Jurisdiction

Under the Montreal Convention, there are five different forums in which plaintiffs may bring their claims against a carrier: (1) the domicile of the carrier; (2) its principal place of business; (3) the place where the ticket was bought; (4) the place of destination; or (5) in the case of personal injury, the principal and permanent place of residence of the plaintiff.

The Montreal Convention expanded on the four jurisdictions set out in the Warsaw Convention in which a carrier could be sued by adding the "fifth jurisdiction," the plaintiff's "permanent and principal residence." Under the Warsaw Convention, some U.S. citizens who purchased their tickets abroad for flights that did not depart from or arrive in the United States were prohibited from suing in U.S. courts.[32] The drafters of Article 33 of the Montreal Convention, by adding the fifth jurisdiction, sought to resolve that problem.

A recent cargo case confirmed the jurisdictional requirements of Article 33 in *Transvalue, Inc. v. KLM Royal Dutch Airlines*.[33] In *Transvalue*, the defendant argued that the United States was not a proper jurisdiction for the action since KLM's principal place of business and domicile is The Netherlands, and the subject air waybill was issued in Mexico with a destination of Switzerland. The plaintiff argued that the United States was the proper jurisdiction to commence

this action because of the existence of some negotiations in the United States between the parties concerning the shipment in question. The court rejected the plaintiff's attempt to proceed with the claim in the United States, holding that the contract of transportation, the air waybill, stated clearly on its face that it was issued in Mexico, and the court dismissed the plaintiff's action. It explained that the plaintiff could only bring the action in one of four forums pursuant to Article 33 of the Montreal Convention, none of which would have been the United States in this case. In cargo cases, unlike passenger cases, the fifth jurisdiction is not applicable.[34]

In *Aikpitanhi v. Iberia Airlines of Spain*,[35] the court also found that the plaintiff did not satisfy the jurisdictional requirements of Article 33 and no action could proceed in the United States. In *Aikpitanhi*, the plaintiffs' decedent was being deported from Spain to Nigeria, his home country, by Spanish authorities. The plaintiffs alleged that he was drugged and beaten by Spanish police authorities and forced to travel on the Iberia flight in an unsafe condition, resulting in his death onboard the aircraft. The plaintiffs alleged that although Iberia's head office was in Spain, it had registered to do business in Florida, and thus it was domiciled in the United States and there was proper jurisdiction there under Article 33. The plaintiffs also asserted that jurisdiction was proper under 28 U.S.C. § 1350, the Alien Tort Statute. The court rejected the plaintiffs' argument that the Montreal Convention was not the exclusive cause of action and that registering to do business in a particular state changed its domicile.[36] Because the plaintiffs could not satisfy the jurisdictional prerequisites of Article 33, the court lacked subject matter jurisdiction and accordingly dismissed the plaintiffs' complaint.

In *Hornsby v. Lufthansa German Airlines*,[37] the plaintiff was allegedly injured during a turbulence incident on a flight from Frankfurt, Germany, to Los Angeles. The defendant moved to dismiss the plaintiff's action based upon lack of subject matter jurisdiction as set forth in Article 33, arguing that the plaintiff had her principal and permanent residence in Germany. The plaintiff, a U.S. citizen, admitted that at the time of the incident she was living and working in Germany, was traveling on a round-trip ticket to return to Germany, had bank accounts and doctors in Germany, and received her mail and maintained telephone numbers in Germany. Additionally, the plaintiff admitted that she sold her home in California more than two years before the incident. The plaintiff, however, maintained a California driver's license, had a bank account in California, maintained a storage facility and post office box in California, voted in U.S. elections by absentee ballot, and filed U.S. tax returns. Most important to the *Hornsby* court's reasoning, however, the plaintiff declared that she never intended to become a permanent resident of Germany or any other country outside of the United States.

According to Article 33(b), a passenger's principal and permanent residence is defined as "the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard." In defining the term "permanent abode," the court in *Hornsby* relied upon a definition from *Black's Law Dictionary* as a "domicile or fixed home, which the party may leave as his interest or whim may dictate, but which has no present intention of abandoning."[38] The court found further support in federal common law, which provides that "one does not abandon one's domicile simply by physically leaving the place; one must move to a new location with the intent to remain there."[39] The court determined that the plaintiff's intent must be relevant to the phrase "fixed and permanent abode," and that it was more likely than not the plaintiff intended to return to the United States. Accordingly, the court found that the plaintiff properly satisfied the fifth jurisdiction of the Montreal Convention to maintain an action in the United States.

Code-Share Liability

Since the Montreal Convention took effect in the United States, few courts have considered the relationship between "actual carriers," "contracting carriers," and "successive carriers." Recent cases, however, have addressed this liability issue.

Under the liability regime of the older Warsaw Convention, courts had held that a passenger may seek recovery only against the actual carrier, not the contracting carrier.[40] In other words, only the operating carrier that was performing the transportation when the injury occurred could be held liable for a passenger's injury, not the carrier that only sold the ticket or operated a different segment of the transportation.[41]

The drafters of the Montreal Convention attempted to address issues that were arising with more frequency because of increased code-sharing, where a passenger purchases a ticket from one carrier but all or part of the carriage is performed by a different carrier. In a typical code-share flight, a passenger purchases a ticket from one carrier (the contracting carrier) but the carriage may be performed by another carrier (the actual carrier) that has no contractual relationship with the passenger.

Article 39 of the Montreal Convention, which evolved from the Guadalajara Convention of 1961,[42] remedies this situation by providing the passenger with the option of seeking damages from either the contracting carrier or the actual carrier. This purpose was further

evidenced by the presidential transmittal letter when the Convention was presented to the U.S. Senate:

> Articles 39-48 of the Convention define the rights of passengers and consignors in operations where all or part of the carriage is provided by an airline that is not a party to the contract of carriage (e.g., code-share operations, freight consolidators, etc.). The provisions follow the precedent set by the Guadalajara Convention. Pursuant to Article 40, when a claim arises under the Convention, a claimant may bring suit against the carrier from which the carriage was purchased or against the code-sharing carrier operating the aircraft at the time of the accident.[43]

Thus the addition of Article 39 provided passengers with the ability to seek damages from more carriers.

Article 36 of the Montreal Convention, "Successive Carriage," continued the principle from the Warsaw Convention that, in the case of successive carriage, a person entitled to compensation under the Convention has a cause of action "only against the carrier which performed the carriage during which the accident or delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey." In the context of baggage or cargo, a cause of action is permissible against the first carrier, last carrier, and the last carrier that performed the carriage during which the destruction, loss, damage, or delay took place.

Article 39, regarding contracting carriers and actual carriers, expressly excludes successive carriers from liability. According to the provision, if a carrier is considered a successive carrier, it cannot also be considered a contracting carrier for purposes of liability, as will be discussed below in *Best v. BWIA West Indies Airways*.[44]

The *McCarthy* court concluded that more than one carrier—both the contracting and actual carriers—could be liable for a plaintiff's injuries.

Recent decisions that have discussed these types of carriers will assist litigants in determining which carrier(s) may be liable under the Montreal Convention for injuries sustained during international transportation.

In *McCarthy v. American Airlines*,[45] which interpreted the definition of "carrier" under the Montreal Convention, the court noted that the treaty provides for a new liability regime whereby a passenger has a claim against both the contracting carrier and the actual carrier and denied summary judgment for the defendant contracting carrier.

In *McCarthy*, the plaintiff purchased a ticket with American Eagle Airlines to travel from Georgetown, The Bahamas, to Miami, Florida. Pursuant to a contractual relationship with American Eagle, Executive Airlines owned and operated the flight for which the plaintiff purchased his ticket. On board the subject flight in Georgetown, the plaintiff, at the direction of a flight attendant, attempted to check his carry-on baggage plane-side after determining that it would not fit in the overhead compartment or underneath his seat. The plaintiff proceeded to the rear door of the aircraft to get the attention of the baggage handlers on the ground. The flight attendant allegedly touched the plaintiff, which caused him to fall or jump out of the aircraft and sustain bodily injuries.

The court specifically did not rely upon precedent interpreting the Warsaw Convention "because the Montreal Convention differs from the Warsaw Convention in a significant respect. In the Montreal Convention, the drafters included an entire chapter dedicated to addressing the distinction and relationship between a contracting carrier and an actual carrier: Chapter V."[46] The district court explained that, unlike the Warsaw Convention, under the Montreal Convention "where there is a contracting carrier and an actual carrier, both carriers 'shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.'"[47] The district court in *McCarthy* thus concluded that more than one carrier—both the contracting and actual carriers—could be liable for a plaintiff's injuries.[48]

In *In re West Caribbean Airways*,[49] the court refined the definition of a "contracting carrier." The case involved an air crash of a West Caribbean Airways flight in Venezuela that was en route from Panama to Martinique. The plaintiffs sued West Caribbean as well as Newvac Corporation, which had a "charter contract" with West Caribbean, under which West Caribbean leased its aircraft and crew to Newvac for certain flights. Newvac, in turn, entered into a charter agreement with Globe Trotter Agency, a travel

agency, which sold tickets to passengers for flights from Panama to Martinique, including the flight in question. The plaintiffs argued that there must be a contracting carrier under the Montreal Convention and maintained that Newvac should be that contracting carrier because it most closely fit the definition under the Convention. Newvac, however, argued that it could not be a contracting carrier because there were no passengers at the time it contracted with Globe Trotter and, thus, it could not have entered into a contract with any passenger or anyone acting on a passenger's behalf.

Because West Caribbean staffed and operated the flight by authority from Newvac, the court declined to rigidly interpret the Montreal Convention as requiring a direct contract between Newvac and the passengers. The court held that because Newvac and Globe Trotter contemplated that the latter would secure passengers for the flight, Globe Trotter acted on the passengers' behalf. The court also declined to adopt Newvac's argument that it could not be a "principal" under Article 39 because the travel agency was not its agent. Interpreting "principal" as it was used in the Guadalajara Convention, the court found that the term merely clarified that carriers acting only as agents could not qualify as contracting carriers.[50]

Accordingly, the court found that Newvac made a contract of carriage as a principal with a party acting on a passenger's behalf, but another entity actually performed the carriage under Newvac's authority. Therefore, Newvac was a contracting carrier as defined by Article 39.[51]

Expanding upon the contracting carrier decisions of *McCarthy* and *In re West Caribbean Airways*, a recent decision focused on the interplay between contracting carriers and successive carriers. *Best v. BWIA West Indies Airways*[52] is the first reported decision in the United States interpreting and clarifying the relation between contracting carriers and successive carriers under the Montreal Convention and precluded liability based upon successive carriage.

In *Best*, the plaintiffs sought damages for personal injuries sustained when Karen Best was forcibly removed from an international flight. In August 2004, Best purchased a ticket from BWIA for round-trip transportation from New York to Grenada via Port of Spain, Trinidad. The itinerary provided for Best to travel on BWIA from New York to Port of Spain and then on another carrier, LIAT, from Port of Spain to Grenada. The flight from New York to Port of Spain was uneventful. Upon her arrival in Port of Spain, Best disembarked the BWIA flight, collected her checked baggage, and proceeded to her flight.

Upon boarding the aircraft, an unidentified man boarded and advised Best that there had been a mistake and that she had to disembark. She refused. Another man (believed to be a Trinidadian Customs Officer) then boarded the aircraft and asked Best to disembark. Again she refused. He then forcibly removed Best from the aircraft, shoving her down the portable stairs and onto the tarmac. Without explanation, Best was then assisted up from the tarmac and escorted back onto the aircraft.

Best and her husband commenced an action against BWIA in New York state court, alleging personal injuries to Best caused by the negligence of BWIA and a loss of consortium claim by Best's husband. BWIA removed the action to federal court based upon the applicability of the Montreal Convention. After completion of discovery, BWIA moved for summary judgment, seeking dismissal of the plaintiffs' complaint and arguing that BWIA should be considered a successive carrier and, pursuant to Article 36(2), liability can only attach to the carrier (LIAT) "which performed the carriage during which the accident" occurred.

The plaintiffs argued BWIA was liable as a contracting carrier within the meaning of Article 39 and thus could be liable for a passenger's injuries. The plaintiffs maintained that BWIA was a contracting carrier because BWIA sold Best her ticket for transportation, which included the Port of Spain–Grenada leg on which the incident occurred.

In response, BWIA relied upon the specific language of the Convention. First, Article 39 provides that contracting carrier liability does not apply where there is successive carriage. Second, paragraph 3 of Article 1 specifically provides that successive carriers are those that provide carriage that is regarded by the parties as a single operation. Because BWIA transported Best from New York to Port of Spain as part of a single operation, BWIA should be considered a successive carrier. The court agreed that BWIA was a successive carrier.[53]

The court also agreed with BWIA's arguments that Article 39 liability typically applies to codeshare arrangements and situations where a carrier leases the aircraft and uses the crew of another carrier to provide transportation. Contracting carrier liability does not, however, apply to successive carriers. Accordingly, the court held that contracting carrier liability was not applicable because the relationship between BWIA and LIAT was one of successive carriage.[54]

The court also held that Article 36, discussing successive carriers, also precludes the existence of an implied agency relationship between BWIA and LIAT. Article 36 provides that a successive carrier may be liable for an accident that occurs during another carrier's carriage, only "where, by express agreement, the first carrier has assumed liability for the whole

journey." There was no evidence of any assumed liability.

Because BWIA was a successive carrier and did not assume any responsibility for Best's entire journey, including the LIAT flight, the court held, as a matter of law, that BWIA could not be liable for Best's injuries and dismissed the plaintiffs' complaint.[55] In today's global economy, carriers will likely rely upon more code-share arrangements and charter flights, and courts are likely to continue to be faced with issues regarding the liabilities of actual carriers, contracting carriers, and successive carriers in an increasingly complex aviation industry. ■

Notes

1. Convention for the Unification of Certain Rules for International Carriage by Air, opened for signature on May 28, 1999, *reprinted in* S. Treaty Doc. 106-45, 1999 WL 333292734 (Montreal Convention).

2. *Id.* art. 1(1).

3. Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Warsaw, Poland, October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (1934), *reprinted in* S. Treaty Doc. No. 106-45, 1999 WL 33292734 (200), 3 Av. Law Rep. (CCH) ¶ 27,011 (Warsaw Convention).

4. S. Treaty Doc. 106-45, Letter of Transmittal, IX. *See* Ehrlich v. Am. Airlines, 360 F.3d 366, 371 (2d Cir. 2004).

5. *See* Watts v. Am. Airlines, No. 1:07-cv-0434-RLY-TAB, 2007 WL 3019344, at *2 (S.D. Ind. Oct. 10, 2007) ("Despite the fact that the Montreal Convention is a new treaty, it contains provisions which embrace similar language as the Warsaw Convention so as not to result in a complete upheaval of the 'common law' surrounding the Warsaw Convention.").

6. The Montreal Convention completely replaces the Warsaw Convention system of liability but retains many of the same provisions and terms as the original convention, as amended. *See* Montreal Convention Article 55. It is well settled that courts may rely on cases interpreting a provision of the earlier Warsaw Convention where the equivalent provision in the Montreal Convention is substantively the same. *See* Paradis v. Ghana Airways, 348 F. Supp. 2d 106, 110–11 (S.D.N.Y. 2004), *aff'd*, 194 F. App'x 5 (2d Cir. 2006). Indeed, the Senate Foreign Relations Committee's report on the Montreal Convention stated that the negotiators intended to preserve the 70 years of Warsaw Convention precedents. S. Exec. Rep. No.108-8, at 3 (2003).

7. 525 U.S. 155 (1999).

8. *Id.* at 161.

9. Ugaz v. Am. Airlines, 576 F. Supp. 2d 1354 (S.D. Fla. 2008).

10. No. 07-13447, 2008 WL 2064800 (E.D. Mich. May 13, 2008).

11. *Id.* at *3.

12. Removal, pursuant to 28 U.S.C. § 1441, is permissible where a plaintiff could have originally brought his or her action in federal court, based on a federal court's original jurisdiction.

13. Knowlton v. Am. Airlines, No. RDB-06-854, 2007 WL 273794, at *3 (D. Md. Jan. 31, 2007).

14. No. RDB-06-854, 2007 WL 273794 (D. Md. Jan. 31, 2007).

15. *Id.* at *3 (citing Pinney v. Nokia, Inc., 402 F.3d 430, 449 (4th Cir. 2005)).

16. *Id.* at *5.

17. *Id.*

18. *Id.*

19. No. CV 08-2256, 2008 WL 2117239 (C.D. Cal. May 15, 2008).

20. *Id.* at *4 (quoting El Al Israel Airlines v. Tseng, 525 U.S. 155, 176 (1999)).

21. *Id.* at *5.

22. 169 F.3d 1151 (8th Cir. 1999).

23. *Serrano*, 2008 WL 2117239, at *6.

24. *Id.* at *7.

25. No. 08 C 50106, 2008 WL 4964277 (N.D. Ill. Sept. 12, 2008).

26. Sompo Japan Ins., Inc. v. Nippon Cargo Airlines, 522 F.3d 776 (7th Cir. 2008).

27. *Narkiewicz-Laine*, 2008 WL 4964277, at *2.

28. *Id.* at *2.

29. No. 08-cv-4012, 2008 WL 4936737 (C.D. Ill. Nov. 17, 2008).

30. *Id.* at *2 (citing Rivet v. Regions Bank of La., 522 U.S. 470, 475 (1998)).

31. *Id.* at *3–4.

32. *See, e.g.*, Stanford v. Kuwait Airlines, 648 F. Supp. 657 (S.D.N.Y. 1986).

33. 539 F. Supp. 2d 1366 (S.D. Fla. 2008).

34. *Id.* at 1368.

35. 553 F. Supp. 2d 872 (E.D. Mich. 2008).

36. *Id.* at 877.

37. No. CV 07-7594, 2009 WL 116962 (C.D. Cal. Jan. 6, 2009).

38. *Id.* at *5.

39. *Id.* at *6.

40. *See, e.g.*, Orova v. Nw. Airlines, No. 03-4296-CIV, 2005 WL 281197 (E.D. Pa. Feb. 2, 2005).

41. *See*, *e.g.*, *id.*; Shirobokova v. CSA Czech Airlines, 376 F. Supp. 2d 439 (S.D.N.Y. 2005).

42. The Guadalajara Convention of 1961 introduced liability where a contracting carrier does not provide any portion of the actual transportation but simply contracts with the passenger for the air travel. *See* Paul S. Dempsey & Michael Milde, International Air Carrier Liability: The Montreal Convention of 1999, at 232–34 (2005).

43. *See* Letter of President Clinton Approving the Montreal Convention (Sept. 6, 2000), 106th Cong., 2d Sess., Treaty Doc. 106-45 (2000).

44. 581 F. Supp. 2d 359 (E.D.N.Y. 2008).

45. No. 07-61016-CIV-COHN, 2008 WL 2704515 (S.D. Fla. June 27, 2008).

46. *Id* at *2.

47. *Id.* (citing Montreal Convention art. 40).

48. *Id.* at 3.

49. No. 06-22748-CIV, 2007 WL 5559325 (S.D. Fla. Sept. 27, 2007).

50. *Id.* at *6.

51. *Id.*

52. 581 F. Supp. 2d 359 (E.D.N.Y. 2008).

53. *Id.* at 364.

54. *Id.*

55. *Id.* at 365.