

Mental Injury Under the Article 17 Montreal Convention – Recent US Developments

Travel Law Forum
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Andrew J. Harakas, Clyde & Co US LLP

Article 17 - Liability for Passenger Injury or Death

Primary Liability Provision – Montreal Convention, Article 17.1:

“The carrier is liable for **damage sustained** in case of **death** or **bodily injury** of a passenger upon condition only that the **accident** which caused the death or injury took place **on board** the aircraft or in the course of any of the operations of **embarking or disembarking.**”

Three Conditions for Liability Under Article 17.1:

1. an “accident”
2. “**bodily injury**” or death
3. on board the aircraft or during embarking/disembarking

What is an Article 17 “bodily injury”?

Floyd v. Eastern Airlines, 499 U.S. 530 (1991)

General Rule: Article 17 (Warsaw Convention) phrase “bodily injury” does not encompass pure mental injury damages.

- But the *Floyd* Court did not express view as to whether mental injuries accompanied by physical injuries are recoverable.

After *Floyd* & the Warsaw Convention

- **All Courts hold that physical manifestation of a bodily injury is not sufficient.**
 - *Carey v. United Airlines*, 255 F.3d 1044, 1052 (9th Cir. 2001)
 - *Terrafranca v. Virgin Atl. Airways Ltd.*, 151 F.3d 108, 111 (3d Cir. 1998)

- **All Courts, but one, have held mental injury damages are allowed but only if they are caused by or flow from a bodily injury.**
 - *Ehrlich v. Am. Airlines, Inc.*, 360 F.3d 366 (2d Cir. 2004)
 - *In re Air Crash at Little Rock Ark., on June 1, 1999*, 291 F.3d 503, 509 (8th Cir. 2002)
 - *Contra In re Aircrash Disaster Near Roselawn, Ind., on Oct. 31, 1994*, 954 F. Supp. 175, 178-79 (N.D. Ill. 1997)

After *Floyd* & the Montreal Convention

- **All Courts hold that physical manifestation of a bodily injury is not sufficient.**
 - *Jacob v. Korean Air Lines Co.*, 606 F. App'x 478, 482 (11th Cir. 2015)

- **Until a few Months ago all Courts had held mental injury damages are allowed but only if they are caused by or flow from a bodily injury.**
 - *Jacob v. Korean Air Lines Co.*, 606 F. App'x 478, 482 (11th Cir. 2015)
 - *Bassam v. Am. Airlines, Inc.*, 287 F. App'x 309, 317 (5th Cir. 2008)
 - *Sanches-Naek v. TAP Portugal, Inc.*, 260 F. Supp. 3d 185, 196 (D. Conn. 2017); *Naqvi v. Turkish Airlines, Inc.*, 80 F. Supp. 3d 234, 241 (D.D.C. 2015); *Kruger v. Virgin Atl. Airways, Ltd.*, 976 F. Supp. 2d 290, 327 (E.D.N.Y. 2013), *aff'd*, 578 F. App'x 51 (2d Cir. 2014); *Schaefer-Condulmari v. U.S. Airways Grp., LLC*, 2012 WL 2920375, at *3 (E.D. Pa. Jul. 16, 2012); *Katin v. Air France-KLM, S.A.*, 2009 WL 1940363, at *3 (E.D. Tex. Jul. 2, 2009)

Montreal Convention: Article 17

Fear of Contacting AIDS Is Not a “Bodily Injury”

Doe v. Etihad Airways, 2015 WL 5936326 (E.D. Mich. Nov. 13, 2015)

- Near end of 14 hour flight pax reaches into seat-back pocket & struck by a hypodermic syringe not removed from prior flight.
- Pax feared she may have contracted HIV/Hep-C.
- Sues for physical pain and mental distress.
- Airline moved to dismiss arguing that fear of contracting a disease is not an Article 17 “bodily injury” as it did not flow from the injury.
- **Trial Court:** agreed and granted motion for summary judgment:

“Plaintiff's mental distress damages were not caused by her physical injury. It is not the physical needle prick itself that caused Plaintiff's distress, but the possibility that she may have been exposed to an infectious disease.”

The Court of Appeals Reverses

Doe v. Etihad Airways, 870 F.3d 406 (6th Cir. Aug. 20. 2017)

- Rejected all Convention cases finding the mental injury must flow from the bodily injury.
- Montreal Convention is a new treaty with different goals – full compensation.
- Language of Article 17 only requires the bodily injury to be caused by an accident – no support for position that mental injury must be caused by a bodily injury.
- Thus, concluded that if there is a bodily injury all mental injuries are then revocable regardless of causation.

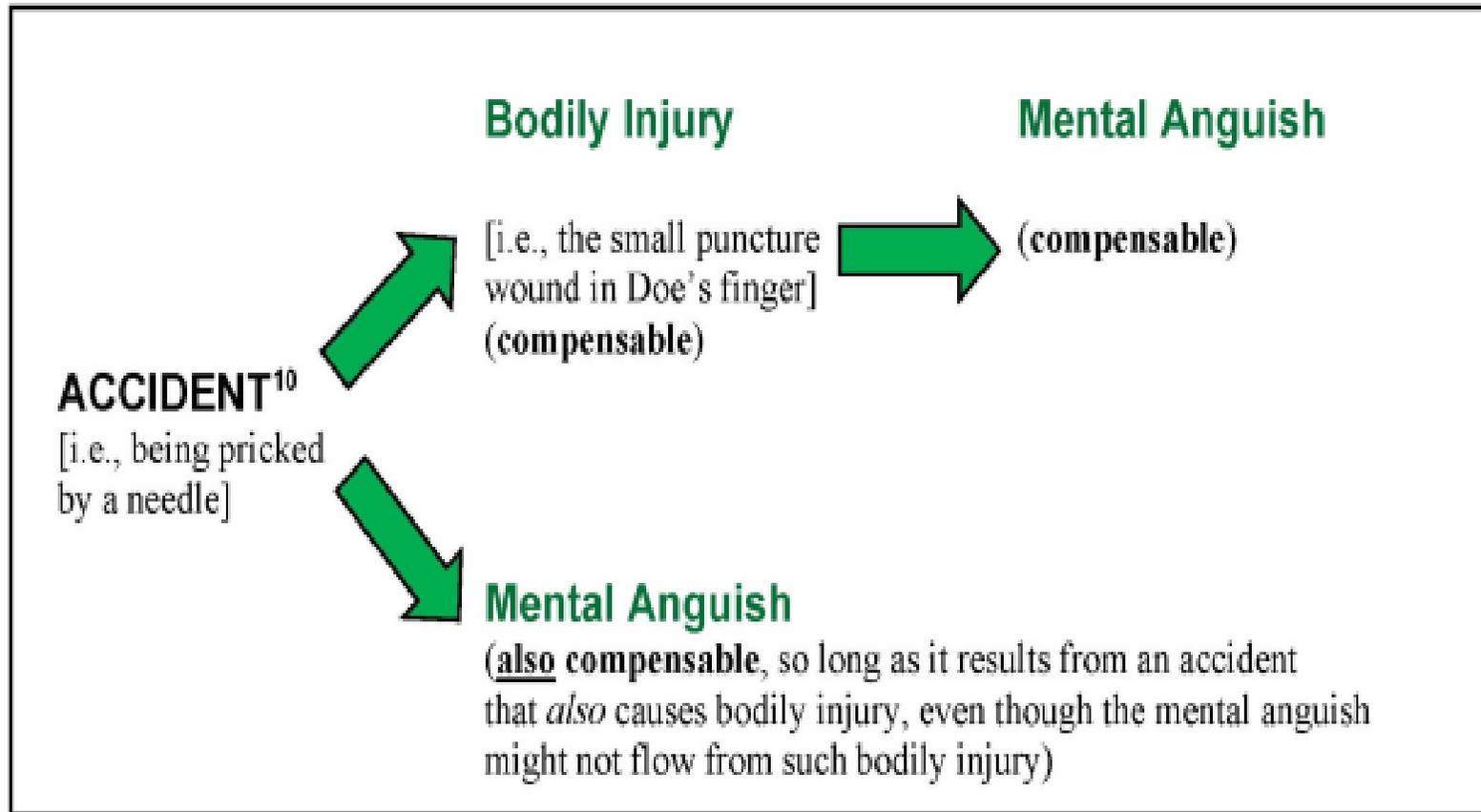
The New Rule in the 6th Circuit

To recover damages a plaintiff must prove that:

1. there was an "accident," defined as "an unexpected or unusual event or happening that is external to the passenger,"
2. the accident happened either "on board the aircraft" or during "the operations of embarking or disembarking"; and
3. the accident caused "death or bodily injury of a passenger."

The carrier is then liable for damage sustained, which the 6th Circuit interpreted to include emotional or mental damages, ***so long as they are traceable to the accident, regardless of whether they are caused directly by the bodily injury.***

Doe v. Etihad – The 6th Circuit Rule



U.S. Supreme Court - Petition for *Writ of Certiorari*

Question presented:

Whether Article 17(1) of the Montreal Convention allows recovery for mental or psychic injuries as "damage sustained," where an "accident" causes a "bodily injury" but the mental or psychic injuries are not caused by or do not flow from the "bodily injury"?

Etihad Airways v. Jane Doe, No. 17-977 (U.S., filed Jan. 4, 2018)

Thank You

Andrew J. Harakas
Clyde & Co – New York
Tel: +1 212 710 3920
Andrew.Harakas@clydeco.us

www.clydeco.com

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