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INTERNATIONAL AIR TRANSPORT AGREEMENT, SIGNED AT CHICAGO, ON 7 DECEMBER, 1944 (TRANSPORT AGREEMENT)

The States which sign and accept this International Air Transport Agreement being members of
the International Civil Aviation Organization declare as follows:Article I

Section 1

Each contracting State grants to the other contracting States the following freedoms of
the air in respect of scheduled international air services:

1. The privilege to fly across its territory without landing;
2. The privilege to land for non_traffic purposes;
3. The privilege to put down passengers, mail and cargo taken on in the territory of the
State whose nationality the aircraft possesses;
4. The privilege to take on passengers, mail and cargo destined for the territory of the
State whose nationality the aircraft possesses;
5. The privilege to take on passengers, mail and cargo destined for the territory of any
other contracting State and the privilege to put down passengers, mail and cargo coming from
any such territory.

With respect to the privileges specified under paragraphs 3, 4 and 5 of this section, the
undertaking of each contracting State relates only to through services on a route constituting a
reasonably direct line out from and back to the homeland of the State whose nationality the
aircraft possesses.

The privileges of this section shall not be applicable with respect to airports utilized for
military purposes to the exclusion of any scheduled international air services. In areas of active
hostilities or of military occupation, and in time of war along the supply routes leading to such
areas, the exercise of such privileges shall be subject to the approval of the competent military
authorities.

Section 2

The exercise of the foregoing privileges shall be in accordance with the provisions of the
Interim Agreement on International Civil Aviation and, when it comes into force, with the
provisions of the Convention on International Civil Aviation, both drawn up at Chicago on
December 7, 1944.

Section 3

A contracting State granting to the airlines of another contracting State the privilege to
stop for nontraffic purposes may require such airlines to offer reasonable commercial service at
the points at which such stops are made.

Such requirement shall not involve any discrimination between airlines operating on the
same route, shall take into account the capacity of the aircraft, and shall be exercised in such a
manner as not to prejudice the normal operations of the international air services concerned or

the rights and obligations of any contracting State.

Section 4

Each contracting State shall have the right to refuse permission to the aircraft of other contracting States to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory. Each contracting State undertakes not to enter into any arrangements which specifically grant any such privilege on an exclusive basis to any other State or an airline of any other State, and not to obtain any such exclusive privilege from any other State.

Section 5

Each contracting State may, subject to the provisions of this Agreement,

1. Designate the route to be followed within its territory by any international air service and the airports which any such service may use;

2. Impose or permit to be imposed on any such service just and reasonable charges for the use of such airports and other facilities; these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services: provided that, upon representation by an interested contracting State, the charges imposed for the use of airports and other facilities shall be subject to review by the Council of the International Civil Aviation Organization established under the above_mentioned Convention, which shall report and make recommendations thereon for the consideration of the State or States concerned.

Section 6

Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State, or in case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.

Article II

Section 1

The contracting States accept this Agreement as abrogating all obligations and understandings between them which are inconsistent with its terms, and undertake not to enter into any such obligations and understandings. A contracting State which has undertaken any other obligations inconsistent with this Agreement shall take immediate steps to procure its release from the obligations. If an airline of any contracting State has entered into any such inconsistent obligations, the State of which it is a national shall use its best efforts to secure their termination forthwith and shall in any event cause them to be terminated as soon as such action can lawfully be taken after the coming into force of this Agreement.

Section 2

Subject to the provisions of the preceding section, any contracting State may make arrangements concerning international air services not inconsistent with this Agreement. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible.

Article III

Each contracting State undertakes that in the establishment and operation of through services due consideration shall be given to the interests of the other contracting States so as not to interfere unduly with their regional services or to hamper the development of their through services.

Article IV

Section 1

Any contracting State may by reservation attached to this Agreement at the time of signature or acceptance elect not to grant and receive the rights and obligations of Article I, Section 1, paragraph 5, and may at any time after acceptance, on six months' notice, given by it to the Council, withdraw itself from such rights and obligations. Such contracting State may on six months' notice to the Council assume or resume, as the case may be, such rights and obligations. No contracting State shall be obliged to grant any rights under the said paragraph to any contracting State not bound thereby.

Section 2

A contracting State which deems that action by another contracting State under this Agreement is causing injustice or hardship to it, may request the Council to examine the situation. The Council shall thereupon inquire into the matter, and shall call the States concerned into consultation. Should such consultation fail to resolve the difficulty, the Council may make appropriate findings and recommendations to the contracting States concerned. If thereafter a contracting State concerned shall in the opinion of the Council unreasonably fail to take suitable corrective action, the Council may recommend to the Assembly of the above_mentioned Organization that such contracting State be suspended from its rights and privileges under this Agreement until such action has been taken. The Assembly by a two-thirds vote may so suspend such contracting State for such period of time as it may deem proper or until the Council shall find that corrective action has been taken by such State.

Section 3

If any disagreement between two or more contracting States relating to the interpretation or application of this Agreement cannot be settled by negotiation, the provisions of Chapter XVIII of the above_mentioned Convention shall be applicable in the same manner as provided therein with reference to any disagreement relating to the interpretation or application of the above_mentioned Convention.

Article V

This agreement shall remain in force as long as the above_mentioned Convention; provided, however, that any contracting State, a party to the present Agreement, may denounce it on one year's notice given by it to the Government of the United States of America, which shall at once inform all other contracting States of such notice and withdrawal.

Article VI

Pending the coming into force of the above_mentioned Convention, all references to it herein other than those contained in Article IV, Section 3, and Article VII shall be deemed to be references to the Interim Agreement on International Civil Aviation drawn up at Chicago on December 7, 1944; and references to the International Civil Aviation Organization, the Assembly, and the Council shall be deemed to be references to the Provisional International Civil Aviation Organization, the Interim Assembly, and the Interim Council, respectively.

Article VII

For the purposes of this Agreement, "territory" shall be defined as in Article 2 of the above_mentioned Convention.

Article VIII

Signatures and Acceptances of Agreement

The undersigned delegates to the International Civil Aviation Conference, convened in Chicago on November 1, 1944, have affixed their signatures to this Agreement with the understanding that the Government of the United States of America shall be informed at the earliest possible date by each of the governments on whose behalf the Agreement has been signed whether signature on its behalf shall constitute an acceptance of the Agreement by that government and an obligation binding upon it.

Any State a member of the International Civil Aviation Organization may accept the present Agreement as an obligation binding upon it by notification of its acceptance to the Government of the United States, and such acceptance shall become effective upon the date of the receipt of such notification by that Government.

This Agreement shall come into force as between contracting States upon its acceptance by each of them. Thereafter it shall become binding as to each other State indicating its acceptance to the Government of the United States on the date of the receipt of the acceptance by that Government. The Government of the United States shall inform all signatory and accepting States of the date of all acceptances of the Agreement, and of the date on which it comes into force for each accepting State.

IN WITNESS WHEREOF, the undersigned, having been duly authorized, sign this Agreement on behalf of their respective governments on the date appearing opposite their respective signatures.

DONE at Chicago the seventh day of December 1944 in the English language. A text drawn up in the English, French, and Spanish languages, each of which shall be of equal authenticity, shall be opened for signature at Washington, D.C. Both texts shall be deposited in the archives of the Government of the United States of America, and certified copies shall be transmitted by that Government to the governments of all the States which may sign or accept this Agreement.

Warsaw Convention

The President has the power "by and with the advice and consent of the Senate, to make treaties provided two-thirds of the senators present concur." (U.S. Const., Art. II, §2.)

The international treaty known as the Warsaw Convention (49 Stat 3000 (1934)), applies preemptively to international flights in general. It limits potential liability of international air carriers, and provides rules to facilitate recovery for personal injury or property damage. Injuries and death claims are limited to a maximum recovery, according to proof, of approximately \$8,300. Limits also apply to loss or damage to personal property (baggage).

Most nations that originally ratified the Warsaw Convention subsequently ratified the Hague Protocol, which effectively doubled the liability limits. The Warsaw Convention is actually entitled "The Convention for Unification of Certain Rules Relating to International Transportation by Air" and was adhered to (adopted) by the United States in 1934. It provides uniform rules for international air travel and limits potential liability for international air carriers. Article 28(1) of the Convention states:

"An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination."

The full text is as follows:

(WARSAW CONVENTION) CONVENTION FOR THE UNIFICATION OF

CERTAIN RULES RELATING TO INTERNATIONAL
CARRIAGE BY AIR,
SIGNED AT WARSAW ON 12 OCTOBER 1929
CHAPTER I
SCOPE _ DEFINITIONS

Article 1

1. This Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.

3. A carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

Article 2

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. This Convention does not apply to carriage performed under the terms of any international postal Convention.

CHAPTER II
DOCUMENTS OF CARRIAGE
Section I _ Passenger Ticket
Article 3

1. For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

- (a) the place and date of issue;
- (b) the place of departure and of destination;
- (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the carrier or carriers;
- (e) a statement that the carriage is subject to the rules relating to liability established by this Convention.

2. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Convention which exclude or limit his liability.

Section II _ Luggage Ticket

Article 4

1. For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.

2. The luggage ticket shall be made out in duplicate, one part for the passenger and the other part for the carrier.

3. The luggage ticket shall contain the following particulars:

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) the name and address of the carrier or carriers;

(d) the number of the passenger ticket;

(e) a statement that delivery of the luggage will be made to the bearer of the luggage ticket;

(f) the number and weight of the packages;

(g) the amount of the value declared in accordance with Article 22(2);

(h) a statement that the carriage is subject to the rules relating to liability established by this Convention.

4. The absence, irregularity or loss of the luggage ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain the particulars set out at (d), (f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

Section III _ Air Consignment Note

Article 5

1. Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air consignment note"; every consignor has the right to require the carrier to accept this document.

2. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

1. The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.

2. The first part shall be marked "for the carrier," and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

3. The carrier shall sign on acceptance of the goods.

4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

5. If, at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

Article 8

The air consignment note shall contain the following particulars:

- (a) the place and date of its execution;
- (b) the place of departure and of destination;
- (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the consignor;
- (e) the name and address of the first carrier;
- (f) the name and address of the consignee, if the case so requires;
- (g) the nature of the goods;
- (h) the number of the packages, the method of packing and the particular marks or numbers upon them;
- (i) the weight, the quantity and the volume or dimensions of the goods;
- (j) the apparent condition of the goods and of the packing;
- (k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;
- (l) if the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred;
- (m) the amount of the value declared in accordance with Article 22 (2);
- (n) the number of parts of the air consignment note;
- (o) the documents handed to the carrier to accompany the air consignment note;
- (p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;
- (q) a statement that the carriage is subject to the rules relating to liability established by this Convention.

Article 9

If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in Article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability.

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.
2. The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

1. The air consignment note is prima facie evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.
2. The statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a

person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

3. If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

1. Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

3. If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air consignment note.

Article 16

1. The consignor must furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III LIABILITY OF THE CARRIER

Article 17

The carrier is 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.

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

2. The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

3. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

Article 20

1. The carrier is not 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.

2. In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

1. In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

2. In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

4. The sums mentioned above shall be deemed to refer to the French franc consisting of 65 « milligrams gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does

not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 24

1. In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

2. In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

1. The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the Court seized of the case, is considered to be equivalent to wilful misconduct.

2. Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

Article 26

1. Receipt by the person entitled to delivery of luggage or goods without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.

2. Questions of procedure shall be governed by the law of the Court seized of the case.

Article 29

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

Article 30

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Convention, and is deemed to be one of

the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

2. In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

CHAPTER V

GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

Article 34

This Convention does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this Convention means current days not working days.

Article 36

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

1. This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the

Government of each of the High Contracting Parties.

2. As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have ratified and the High Contracting Party who deposits his instrument of ratification on the ninetieth day after the deposit.

3. It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

Article 38

1. This Convention shall, after it has come into force, remain open for accession by any State.

2. The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.

3. The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

1. Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.

2. Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

Article 40

1. Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.

2. Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.

3. Any High Contracting Party may denounce this Convention, in accordance with its provisions, separately or for all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

ADDITIONAL PROTOCOL

(With reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or

mandated territories or by any other territory under its sovereignty, suzerainty or authority."

In P.T. Airfast Services v. Superior Court, a wrongful death action arising from an airplane crash in Southeast Asia, defendant carrier sought to quash service of summons. Plaintiff, conceding the absence of minimum contacts between defendant and California, asserted jurisdiction under Article 28(1) of the Convention, contending that California was decedent's final destination. In finding no basis for jurisdiction under the Convention, the court discussed two conflicting interpretations of Article 28: (1) The view that, by engaging in international flights, a carrier consents to personal jurisdiction in one of the forums set forth in Article 28(1). (2) The view that the Convention provides only treaty jurisdiction. Even though a country may be a proper country in which to bring an action under Article 28, "questions of subject matter jurisdiction and personal jurisdiction over the defendant still must be resolved by reference to the domestic laws of the jurisdiction of the particular court" in which the action is brought.

Because of U.S. dissatisfaction of the comparatively low liability limits, the Warsaw Convention was modified by a tariff known as the Montreal Agreement (31 Fed Reg 7302 (1966)), which applies only to those international flights which include a departure, destination or agreed stopping point in the United States.

As to accidents on flights to which it applied, the Montreal Agreement increased maximum damages to \$75,000 for personal injury or death, and makes air-carrier liability for accidents absolute, unless the passenger was at fault. (Day v Trans World Airlines, Inc.). Importantly, these liability limits do not apply in cases where the carrier's action is found to have been "wilful misconduct" (specifically, "the French term "dol"). (Re Aircrash in Bali).

The definition of an international flight to which these treaties apply depends on the particular contract of carriage. For example, an accident on a flight from New York to San Francisco, which is part of a ticket that goes on to Tokyo, is considered an "international flight" even though the occurrence was during the domestic portion. However, if the ticket from San Francisco to Tokyo is a separate ticket, the flight from New York to San Francisco would not be considered an international flight.

The limitations on liability are contractual in nature, and normal contract principles generally apply. Although the carrier is required to notify the passenger of international treaty liability limits before the journey begins, certain kinds of defective notice no longer abrogate the liability limit. [Chan v Korean Air Lines, Ltd. (print on back of ticket was not too small)]

These international agreements do not necessarily apply to every aviation-related injury. For example, Air France v Saks (hearing loss from cabin pressurization system was not covered "accident" for which recovery could be had under Convention); Schroeder v Lufthansa German Airlines (airline not liable under Convention for actions of police investigating bomb threat off airplane, nor was detention of suspect passenger in cockpit outrageous)

The treaties provide several places where an action may be brought, including:

- (1) The carrier's domicile
- (2) The carrier's principal place of business
- (3) The place of ticket purchase
- (4) The destination.

Carriers are absolutely liable under the Montreal Agreement for accidents occurring on

an international flight with a stop in the United States, unless the passenger is at fault. (Day v Trans World Airlines, Inc.)

Terrorist attacks are considered "accidents" within the scope of the Warsaw Convention, for which an air carrier on an international flight is liable. (Day v Trans World Airlines, Inc.; Evangelinos v Trans World Airlines, Inc. (terrorist attack) The same is true of hijacking. (See, for example, Krystal v British Overseas Airways Corp.)

Since Warsaw Convention limits on liability do not apply to liability for injury or death caused by the carrier's wilful misconduct, plaintiffs can offer evidence of a pilot's training records in support of their claim that a pilot was incompetent so that the employer airline was guilty of wilful misconduct. A pilot's violation of certain flight rules can amount to wilful misconduct.

The provisions of the original Warsaw Convention severely limit the rights of passengers. Warsaw was designed to protect an infant airline industry. Since 1945 there has been an increasing awareness that the provisions were inadequate. However, all attempts by *governments* to modify the Convention have been unsuccessful except for the Hague Convention (doubling the limit, up to \$16,600) and the IATA's Montreal Agreement raising limits to \$75,000 for flights "touching" the U.S.

On January 10, 1997, the United States Department of Transport ("DOT") by Order 97_1_2 approved changes to the IATA inter_carrier agreements which will dramatically alter the legal regime governing international carriage by air. Previously, the Warsaw Convention imposed strict limits on the liability of carriers for wrongful death and personal injury sustained during flights of international carriage. Under the approved changes now implemented by many large carriers, international carriers have agreed on a system wide basis to waive the limits of liability under Article 22 for all claims and to accept strict liability for all claims (or portions thereof) up to 100,000 Special Drawings Rights ("SDRs") (roughly to \$150,000 U.S.). For all claims in excess of this amount, the carriers would be permitted to rely on defenses provided by Article 22. The agreement provides that the carrier may specify particular routes (other than those to or from the United States) on which the strict liability provisions would be inapplicable. The agreement further provides that the carrier may at its option include contract conditions which permit it to agree to the application of the law of the domicile of the passenger for any claims brought.

Waiving the Warsaw limits does not mean "unlimited liability." It means that liability on the part of the carrier will be limited to the amount that the claimant can prove he/she has suffered as damages and is recoverable under applicable law.

Death on the High Seas Act ("DOHSA")

Congress enacted DOHSA in 1920. Section 761 provides:

"Whenever the death of a person be caused by wrongful act, neglect or default occurring on the high seas beyond a maritime league away from shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of decedent's wife, husband, parent, child or dependent relative against the vessel, person, or corporation which would have been liable if the death had not ensued."

DOHSA was intended to provide a wrongful death cause of action to beneficiaries of those individuals killed on the high seas as a result of neglect or wrongful act. DOHSA specifically provides that such beneficiaries may recover for pecuniary losses sustained. However, damages for non_pecuniary loss of society are not recoverable. DOHSA is the

exclusive remedy for deaths on the high seas. DOHSA precludes additional claims for wrongful death which might otherwise be available under either general maritime or state law to recover for non_pecuniary losses.

Interaction Between DOHSA and Warsaw Convention

Courts have struggled to determine whether DOHSA and the Warsaw Convention should be applied concurrently to actions arising out of international aviation disasters on the high seas. The Supreme Court resolved this conflict by creating a framework for cases governed by both DOHSA and Warsaw Convention. The Court concluded that where an incident has occurred involving international air travel, the Warsaw Convention creates the right to bring an action. However, the Warsaw Convention does not determine the nature of those actions that may be initiated. Instead, it mandates that "such matters [be relegated] to the laws of the nation in which the action is filed."

In the United States, there is no specific legislation dictating the types of sustainable actions under the Warsaw Convention. Therefore, courts must apply the "law that would govern in absence of the Warsaw Convention." The Supreme Court has recognized that, where aviation disasters occur on the high seas, DOHSA governs wrongful death claims. Yet the Supreme Court failed to address whether DOHSA applies to, and therefore preempts, survivorship claims arising out of deaths on the high seas.

Case #1

P. T. AIRFAST SERVICES, INDONESIA v. SUPERIOR COURT **(1983) 139 CA3d 162, 188 CR 628**

OPINION

MAJORITY: SPARKS, J.

Petitioner P. T. Airfast Services, Indonesia, an Indonesian corporation, seeks a peremptory writ of mandate directing the respondent Superior Court of Siskiyou County to quash the service of summons upon it. Petitioner is a defendant in a wrongful death action brought against it by real parties in interest Shara Marisa Kaufman, a minor, and her mother, Jacqueline Kaufman, individually and as guardian ad litem for Shara. We shall issue the writ.

Facts

Petitioner is a company organized and existing under the laws of Indonesia. Its business consists of charter aviation services in Southeast Asia. In the trial court petitioner asserted, without dispute, that it has never had any employees, offices, telephone listings, agents, ticket agents, bank accounts, assets, real property, personal property, or agents for the service of process in the State of California or in the United States. Petitioner further asserted, again without dispute, that it has never advertised or solicited or transacted business in the State of California or in the United States, and that it does not have and has never had any flights originating or landing in the United States. Finally, petitioner has never authorized ticket agents in the United States to issue tickets on its behalf through any of the airline interline agreements. In short, its air service is limited to private charter flights and does not involve any regularly scheduled public flights.

On or about March 2, 1981, petitioner, as carrier, and Hudbay Oil (Malacca Strait) Ltd., as charterer, entered into an aircraft charter agreement in Jakarta, Indonesia, which provided for a series of round trip flights between Seletar Airport in Singapore, Malaysia, and Pekan Baru Airport in Sumatra, Indonesia. On or about April 28, 1981, petitioner's DC_3 aircraft crashed while in a final approach to Sumatra from Singapore. Real parties' decedent, Vern Kaufman, was aboard the flight and was killed in the crash.

Vern Kaufman was a drilling rig supervisor employed by Atlantic Richfield of Indonesia. Pursuant to his employment with Atlantic Richfield, Kaufman would work one month and have the next

month off. During his month off Kaufman would travel to his home in Mt. Shasta, California, from Jakarta, Indonesia. Atlantic Richfield paid for his transportation.

In March 1981, Atlantic Richfield and Hudson Bay Oil and Gas Company (Hudbay) entered into an agreement whereby Atlantic Richfield provided the services of two drilling rig supervisors for the operation of an oil rig known as Brinkerhoff No. 1. Hudbay also agreed to reimburse Atlantic Richfield for the commercial air transportation costs of its employees. Pursuant to this agreement Kaufman worked on Brinkerhoff No. 1.

In April 1981, during an off month, Kaufman made arrangements for his trip to and from the Brinkerhoff No. 1 oil rig. He purchased a commercial airline ticket issued by Pan Am from a travel agency in Mt. Shasta to take him from Redding to San Francisco, from San Francisco to Singapore, and on the return trip from Singapore to San Francisco and from San Francisco to Redding. Petitioner was not listed as a carrier on that ticket. Kaufman told his travel agent that he would take a charter flight from Singapore to Indonesia, and his agent wrote in Jakarta as his ultimate destination.² His agent did not, and under Indonesian law could not have, sold Kaufman a ticket on petitioner's Singapore to Sumatra flight. Pursuant to its charter agreement with Hudbay, petitioner was to provide a shuttle service for equipment and employees between Sumatra and Singapore. Kaufman intended to take petitioner's charter flight from Singapore to Sumatra, and on his return from Sumatra to Singapore. It was on petitioner's charter flight from Singapore to Sumatra on April 28, 1981, that the crash occurred in which Kaufman was killed.

Real parties in interest, Kaufman's wife and daughter, brought an action in the Siskiyou County Superior Court for wrongful death against petitioner and others. Petitioner asserts on information and belief that the complaint and a service of summons were served on the California Secretary of State who then mailed the summons and complaint to petitioner. A first amended complaint was later sent to the attorneys representing petitioner in this petition, but was not served on petitioner. Petitioner's motion to quash the service of summons was denied and this petition for a writ of mandate followed.

Discussion

Personal jurisdiction over a nonresident is normally permitted by California courts so long as that person maintains such minimal contacts with this state that traditional notions of fair play and substantial justice are not offended by the assertion of such personal jurisdiction. There can be no question that real parties in interest did not show sufficient minimum contacts of petitioner with this state. In fact, no contacts of any nature were shown with this state or any of the United States. The sole basis upon which real parties assert that jurisdiction is proper over petitioner is the Warsaw Convention.

The Warsaw Convention is actually entitled: "Convention for Unification of Certain Rules Relating to International Transportation by Air." The convention was written in 1929, but this country did not become a party to it until 1934. (49 Stats. 3000, T.S. 876; for the text of the Warsaw Convention see the note in 49 U.S.C.A. § 1502.) The Warsaw Convention is a treaty of the United States and as such it preempts local laws in the areas in which it applies. (U.S. Const., art. VI, cl. 2; Husserl v. Swiss Air Transport Company, Ltd.) purpose of the Warsaw Convention is to facilitate international air travel by providing uniform rules for such travel. It provides a limitation of potential liability for international air carriers, and provided rules to facilitate recovery. (Husserl)

Article 28, subdivision (1), of the Warsaw Convention provides: "An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination." Article 28, subdivision (2), provides: "Questions of procedure shall be governed by the law of the court to which the case is submitted."

There has been a split of authority on the meaning of Article 28. The federal courts have held that the convention provides only "treaty jurisdiction" and not subject matter or in personam jurisdiction. According to this view the initial inquiry is whether one of the four situs requirements of Article 28, subdivision (1), has been met. If so then the United States may be a proper country in which to bring the action. Such a finding, however, does not mean that a particular court within the country may hear the action. Questions of subject matter jurisdiction and personal jurisdiction over the defendant still must be resolved by reference to the domestic laws of the jurisdiction of the particular court. As the circuit court of appeals explained in Smith v. Canadian Pacific Airways, Ltd., "in a Warsaw Convention case there are

two levels of judicial power that must be examined to determine whether suit may be maintained. The first level, on which the opinion turns, is that of jurisdiction in the international or treaty sense under Article 28 (1). The second level involves the power of a particular United States Court, under federal statutes and practice, to hear a Warsaw Convention case, jurisdiction in the domestic law sense. It is only after jurisdiction in both senses is had that the question of venue is reached and a determination made regarding the appropriateness and convenience for the parties of a particular domestic court." 3

In a case cited by real parties, a New York trial court held contrary to the federal interpretation of article 28 of the Warsaw Convention. (Berner v. United Airlines) In that case the court held that by engaging in international air flights a carrier consents to in personam jurisdiction in one of the forums set forth in article 28, subdivision (1). Real parties argue that California is an appropriate forum for their wrongful death action under article 28, subdivision (1), of the Warsaw Convention, and that petitioner must be deemed to have consented to in personam jurisdiction in California.

Regardless of which of the two divergent views is followed the first question which must be resolved is whether real parties have brought their wrongful death action in one of the four locations set forth in article 28, subdivision (1). If they have not done so then the motion to quash the service of summons must be granted. There is no dispute that the first three enumerated locations are not applicable here. The sole claim that California is an appropriate place in which real parties may bring their action is that this state must be considered the "place of destination."

Article 1, subdivision (3), of the Warsaw Convention provides: "Transportation to be performed by several successive air carriers shall be deemed, for the purposes of this convention, to be one undivided transportation, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts" 5 Real parties assert that Kaufman intended his travel to begin and end in Redding and that for this reason the flight on petitioner's aircraft from Singapore to Sumatra must be considered a part of an indivisible operation with a destination of Redding.

We must reject real parties' argument. The applicability of the Warsaw Convention is unquestionably premised upon a contract. The requisite contract is based upon the promise or undertaking of the carrier to transport the passenger and the reciprocal consent of the passenger. Petitioner undertook to transport Kaufman from Singapore to Sumatra when Kaufman presented himself for the flight and showed the requisite credentials. There was no promise or undertaking to transport Kaufman on his expected return flight one month later. Such an undertaking or agreement could only occur when Kaufman presented himself with proper credentials at an appropriate time for such a flight. Kaufman could not and did not procure a ticket by which petitioner would be required or agreed to transport him on the return flight. In short, Kaufman had only a unilateral expectation that petitioner would transport him to Singapore when his month of duty was up and he desired to return to Redding.

Our conclusion is not changed by the fact that petitioner had contracted with Hudebay to make flights between Singapore and Sumatra and to transport Hudebay employees on such flights. To be sure, the Warsaw Convention applies to so-called "voyage" charter flights. In Block the Atlanta Art Association had arranged a charter flight by Air France and thereafter procured customers. The court of appeals noted that a person who had paid for the flight had no right to a place on the flight until Air France issued a ticket in the person's name. It was clear that Air France agreed to the carriage of each individual passenger on the specified route. Under such circumstances it was irrelevant that a third party had negotiated the agreement and signed the charter. The essential contract between Air France and the passengers was established when Air France issued the ticket to the customer procured by the Art Association.

This case is inapposite to Block. There was never any contract within the meaning of the Warsaw Convention by which petitioner undertook or promised to undertake to transport Kaufman on one leg of an undivided trip on which he would ultimately arrive in Redding. Petitioner's undertaking was only to transport authorized representatives of Hudebay to Sumatra. Until such time as Kaufman presented himself for the flight to Singapore from Sumatra on his return trip such a contract could not arise. 6 In order for a flight by a successive carrier to be considered part of an undivided transportation under the Warsaw Convention it must be shown that the parties regarded it as a single operation. The unilateral expectation of one party alone cannot be deemed controlling. In this case there is no evidence from

which it could be inferred that petitioner regarded itself as part of an indivisible operation by which Kaufman would be transported to California. Accordingly it cannot be said that California was "the place of destination" of petitioner's Singapore to Sumatra flight on which the fatal crash occurred.⁷

We conclude that real parties in interest have not shown that they have brought their wrongful death action in a proper place under article 28, subdivision (1), of the Warsaw Convention. California courts thus lack "treaty jurisdiction" and petitioner is entitled to have the service of summons quashed. In view of our conclusion it is unnecessary to determine whether an air carrier must be regarded as having consented to personal jurisdiction in a court with treaty jurisdiction under the Warsaw Convention and we do not address that issue.

Let a peremptory writ of mandate issue directing the respondent Superior Court of Siskiyou County to vacate its order denying petitioner's motion to quash the service of summons and to enter a new order granting said motion. The alternative writ of mandate previously issued is discharged.

Evans, Acting P. J., and Bond, J.,* concurred.

The petition of real parties in interest for a hearing by the Supreme Court was denied March 2, 1983.

FOOTNOTE 1. Paragraph 32 of the agreement, under the heading of "General Conditions," provided: "The Carrier's Conditions of contract of Passengers, Baggage and Goods (which are based upon the Convention of Warsaw of 12th October 1929 as amended by The Hague Protocol 1955 whichever may be applicable to carriage hereunder) shall be deemed to be incorporated herein as the same are applicable therein and are not inconsistent with the conditions of this Agreement."

The United States has never adhered to The Hague Protocol. (*Reed v. Wiser* (2d Cir. 1977) 555 F.2d 1079 [38 A.L.R. Fed. 928].)

FOOTNOTE 2. The ticket issued to Kaufman by Pan Am listed this itinerary: Redding, CA to San Francisco, CA via Republic; San Francisco to Singapore, Malaysia via Pan Am; unscheduled from Singapore to Jakarta, Indonesia; Jakarta to Singapore via Garuda; Singapore to San Francisco via Pan Am; San Francisco to Redding via Western.

Although Kaufman's destination was Jakarta, petitioner's charter flight was from Singapore to Sumatra. We are not informed as to the manner of transportation Kaufman intended to use from Sumatra to Jakarta, but it is clear that his plans did not include flying into Jakarta on petitioner's aircraft.

FOOTNOTE 3. The Smith court further observed in a footnote that "If the Convention allows suit, a plaintiff may pursue his case in a federal or a state court, Congress having never placed Warsaw Convention suits exclusively within the province of federal courts. We naturally view this case from the perspective of a federal court, but the issue involved is whether suit may be brought at all in the courts of the United States, considered collectively." (Id., at p. 800, fn. 3.)

FOOTNOTE 4. Berner does not aid real parties. There the deceased passenger purchased, in New York City, a round trip ticket from New York to Sydney, Australia, from a general sales agent for the foreign carrier. Berner merely held that since Article 28 was part of the contract of carriage for decedent's flight, "it constituted an acceptance by the foreign carrier of jurisdiction over it in any of the forums in which, under the provisions of Article 28, the passenger or his executors might elect to sue, these including New York as the place of destination and as the place of business through which the contract was made." (Id., at pp. 341-342.) Here, in contrast, petitioner was not a party to the contract of flight carriage upon which jurisdiction of the California court is sought to be invoked. Petitioner consequently did not contractually consent to jurisdiction in California.

FOOTNOTE 5. Article 30, subdivision (1), further provides: "In the case of transportation to be performed by various successive carriers and falling within the definition set out in the third paragraph of article 1, each carrier who accepts passengers, baggage or goods shall be subject to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision."

As the Court of Appeals of New York noted in *Egan v. Kollsman Instrument Corp.* (1967) 21 N.Y.2d 152, 168 [287 N.Y.S.2d 14, 234 N.E.2d 194] "It is equally clear that [the carrier] did not have to be an actual party to such original contract in order to obtain the benefits of the Convention: subdivision (1) of article 30 specifically provides that any successive air carrier who accepts passengers under a contract for international transportation is subject[ed] to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation."

Here petitioner did not accept Kaufman as a passenger under the original contract for the international flight from San Francisco. Instead, decedent merely boarded petitioner's aircraft after presenting appropriate identification as an oil company employee. Petitioner was not, therefore, a "successive carrier" within the meaning of article 30 of the Warsaw Convention. "The situation covered by Article 30 is a factual, chronological partition of a single service as contemplated by the contracting parties." G. Miller, *Liability for Air Carriage under the Warsaw System in Municipal Courts* (Nov. 1975) (unpublished doctoral thesis, quoted in 1 Speiser & Krause, *Aviation Tort Law* (1978) *International Transportation*, § 11:29, p. 723,

fn. 51).

FOOTNOTE 6. In fact, petitioner's agreement with Hudbay called for charter flights as advised by Hudbay for a period of 10 weeks. That contract was signed by Hudbay on March 2, 1981, more than 12 weeks before Kaufman intended to make his return to Redding, California. It cannot be determined from the record when the 10-week period covered by the charter agreement commenced, nor can it be determined that the agreement would not have been concluded before Kaufman expected to return. It is thus possible that in the absence of an extension of the charter agreement Kaufman would not have been able to fly with petitioner to Singapore on his return trip.

FOOTNOTE 7. In our view article 1, subdivision (3), of the Warsaw Convention contemplates what has become a well-established feature of contemporary air transportation. As noted in Eck v. United Arab Airlines, Inc. (2d Cir. 1966) 360 F.2d 804, at page 807, it is possible for a person to arrange an entire itinerary through one airline even though successive carriers are required for the route chosen. The agents of one airline are typically authorized to reserve and confirm a place on a connecting flight of another airline and to forward the fare collected. Under such circumstances it is clear that the parties regard the flight as one undivided transportation despite the fact that successive carriers are used. In the absence of such an arrangement, however, it is necessary that there be evidence that both parties regard the transportation as a single operation. Such evidence is lacking here.

Case 2
U.S. Supreme Court
ZICHERMAN v. KOREAN AIR LINES CO., ___ U.S. ___ (1996)

In a suit brought under Article 17 of the Warsaw Convention governing international air transportation, petitioners Zicherman and Mahalek were awarded loss_of_society damages for the death of their mutual relative who was a passenger on respondent Korean Air Lines' Flight KE007 when it was shot down over the Sea of Japan. The Second Circuit set aside the award, holding that general maritime law supplied the substantive compensatory damages law to be applied in an action under the Warsaw Convention and that, under such law, a plaintiff can recover for loss of society only if he was the decedent's dependent at the time of death. The court concluded that Mahalek had not established dependent status and remanded for the District Court to determine whether Zicherman was a dependent of the decedent.

Held:

In a suit brought under Article 17, a plaintiff may not recover loss_of_society damages for the death of a relative in a plane crash on the high seas, within the meaning of the Death on the High Seas Act (DOHSA). Pp. 4_15.

(a) Article 17 permits compensation only for legally cognizable harm, but leaves the specification of what harm is legally cognizable Page II to the domestic law applicable under the forum's choice_of_law rules. That the Convention does not itself resolve the issue of what harm is compensable is shown by the text of Articles 17 and 24, the Convention's negotiating and drafting history, the contracting states' post_ratification understanding of the Convention, and the virtually unanimous view of expert commentators. Pp. 4_12.

(b) Having concluded that compensable harm is to be determined by domestic law, the next logical question would be that of which sovereign's domestic law. In this case, the Court need not engage in this inquiry, because the parties have agreed that if the issue of compensable harm is unresolved by the Warsaw Convention, it is governed in the present case by the law of the United States. The final unresolved question is then which particular United States law applies. The death that occurred here falls within the literal terms of DOHSA 761, and it is well established that those terms apply to airplane crashes. Since recovery in a 761 suit is limited to pecuniary damages, 762, petitioners cannot recover for loss of society under DOHSA. Moreover, where DOHSA applies, neither state law nor general maritime law can provide a basis for recovery of loss_of_society damages. Because petitioners are not entitled to recover

loss_of_society damages under DOHSA, this Court need not reach the question whether, under general maritime law, dependency is a prerequisite for loss_of_society damages. Pp. 12_15. 43 F.3d 18, affirmed in part and reversed in part.

SCALIA, J., delivered the opinion for a unanimous Court.

This case presents the question whether, in a suit brought under Article 17 of the Warsaw Convention governing international air transportation, Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T. S. No. 876 (1934) (reprinted in note following 49 U.S.C. App. 1502 (1988 ed.)), a plaintiff may recover damages for loss of society resulting from the death of a relative in a plane crash on the high seas.

I

On September 1, 1983, Korean Air Lines Flight KE007, en route from Anchorage, Alaska, to Seoul, South Korea, strayed into air space of the Soviet Union and was shot down over the Sea of Japan. All 269 persons on board were killed, including Muriel Kole. Petitioners Marjorie Zicherman and Muriel Mahalek, Kole's sister and mother, respectively, sued respondent Korean Air Lines Co., Ltd. (KAL) in the United States District Court for the Southern District of New York. Petitioners' final amended complaint contained three counts, entitled, respectively, "Warsaw Convention," "Death on the High Seas Act," and "Conscious Pain and Suffering." At issue here is only the Warsaw Convention count, in which petitioners sought "judgment against KAL for their pecuniary damages, for their grief and mental anguish, for the loss of the decedent's society and companionship, and for the decedent's conscious pain and suffering." App. 29.

Along with other federal_court actions arising out of the KAL crash, petitioners' case was transferred to the United States District Court for the District of Columbia for consolidated proceedings on common issues of liability. There, a jury found that the destruction of Flight KE007 was proximately caused by "willful misconduct" of the flight crew, thus lifting the Warsaw Convention's \$75,000 cap on damages. See Warsaw Convention, Art. 25, 49 Stat. 3020; Order of Civil Aeronautics Board Approving Increases in Liability Limitations of Warsaw Convention and Hague Protocol, reprinted in note following 49 U.S.C. App. 1502 (1988 ed.). The jury awarded \$50 million in punitive damages against KAL. The Court of Appeals for the District of Columbia Circuit upheld the finding of "willful misconduct," but vacated the punitive damages award, holding that the Warsaw Convention does not permit the recovery of punitive damages. *In re Korean Air Lines Disaster of Sept. 1, 1983*, 932 F.2d 1475, 1479_1481, 1484_1490 (CA DC), cert. denied, 502 U.S. 994 (1991). The individual cases were then remanded by the Judicial Panel on Multidistrict Litigation to the original transferor courts for trial of compensatory damage issues.

At petitioners' damages trial in the Southern District of New York, KAL moved for determination that the Death on the High Seas Act (DOHSA), 41 Stat. 537 (1988 ed.), 46 U.S.C. App. 761 et seq., prescribed the proper claimants and the recoverable damages, and that it did not permit damages for loss of society. The District Court denied the motion and held, *inter alia*, that petitioners could recover for loss of "love, affection, and companionship." *In re Korean Air Lines Disaster of Sept. 1, 1983*, 807 F. Supp. 1073, 1086_1088 (SDNY 1992). The jury awarded loss_of_society damages in the amount of \$70,000 to Zicherman and \$28,000 to Mahalek.¹

The Court of Appeals for the Second Circuit set aside this award. Applying its prior decisions in *In re Air Disaster at Lockerbie, Scotland*, on Dec. 21, 1988, 928 F.2d 1267, 1278_1279 (CA2) (*Lockerbie I*), cert. denied sub nom. *Rein v. Pan American World Airways*,

Inc., 502 U.S. 920 (1991), and *In re Air Disaster at Lockerbie, Scotland*, on Dec. 21, 1988, 37 F.3d 804 (CA2 1994) (*Lockerbie II*), cert. denied sub nom. *Pan American World Airways, Inc. v. Pagnucco*, 513 U.S. ____ (1995), it held that general maritime law supplied the substantive law of compensatory damages to be applied in an action under the Warsaw Convention. 43 F.3d 18, 21_22 (1994). Then, following its decision in *Lockerbie II*, it held that, under general maritime law, a plaintiff is entitled to recover loss_of_society damages, but only if he was a dependent of the decedent at the time of death. 43 F.3d, at 22. The court concluded that as a matter of law Mahalek had not established that status, and therefore vacated her award; it remanded to the [*ZICHERMAN v. KOREAN AIR LINES CO.*, ____ U.S. ____ (1996), 4] District Court for determination of whether Zicherman was a dependent of Kole. Ibid.

In their petition for certiorari, petitioners contended that under general maritime law dependency is not a requirement for recovering loss_of_society damages. In a cross_petition, KAL contended that the Warsaw Convention does not allow loss_of_society damages in this case, regardless of dependency. We granted certiorari.

II

Article 17 of the Warsaw Convention, as set forth in the official American translation of the governing French text, provides as follows:

"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." 49 Stat. 3018 (emphasis added).

The first and principal question before us is whether loss of society of a relative is made recoverable by this provision.

It is obvious that the English word "damage" or "harm" _ or in the official text of the Convention, the French word "dommage"² _ can be applied to an extremely wide range of phenomena, from the medical expenses incurred as a result of Kole's injuries (for which every legal system would provide tort compensation), to the mental distress of some stranger who reads about Kole's death in the paper (for which no legal system would provide tort compensation). It cannot seriously be maintained that Article 17 uses the term in this broadest sense, thus exploding tort liability beyond what any legal system in the world allows, to the farthest reaches of what could be denominated "harm." We therefore reject petitioners' initial proposal that we simply look to English dictionary definitions of "damage" and apply that term's "plain meaning." Brief for Petitioners 7_9.

There are only two thinkable alternatives to that. First, what petitioners ultimately suggest: that "dommage" means what French law, in 1929, recognized as legally cognizable harm, which petitioners assert included not only "dommage materiel" (pecuniary harm of various sorts) but also "dommage moral" (non_pecuniary harm of various sorts, including loss of society). In support of that approach, petitioners point out that in a prior case involving Article 17 we were guided by French legal usage: *Air France v. Saks*, 470 U.S. 392 (1985) (interpreting the term "accident"). See also *Eastern Airlines, Inc. v. Floyd*, 499 U.S. 530 (1991) (interpreting the Article 17 term "lesion corporelle"). What is at issue here, however, is not simply whether we will be guided by French legal usage vel non. Because, as earlier discussed, the dictionary meaning of the term "dommage" embraces harms that no legal system would compensate, it must be acknowledged that the term is to be understood in its distinctively legal sense _ that is, to mean only legally cognizable harm. The nicer question, and the critical one here, is whether the word "dommage" establishes as the content of the concept "legally cognizable harm" what French law accepted as such in 1929. No case of ours provides precedent for the adoption of

French law in such detail. In *Floyd*, we looked to French law to determine whether "lesion corporelle" indeed meant (as it had been translated) "bodily injury" _ not to determine the subsequent question (equivalent to the question at issue here) whether "bodily injury" encompassed psychic injury. See 499 U.S., at 536_540. And in *Saks*, once we had determined that in French legal terminology the word "accident" referred to an unforeseen event, we did not further inquire whether French courts would consider the event at issue in the case unforeseen; we made that judgment for ourselves. See 470 U.S., at 405_407.

It is particularly implausible that "the shared expectations of the contracting parties," *id.*, at 399, were that their mere use of the French language would effect adoption of the precise rule applied in France as to what constitutes legally cognizable harm. Those involved in the negotiation and adoption of the Convention could not have been ignorant of the fact that the law on this point varies widely from jurisdiction to jurisdiction, and even from statute to statute within a single jurisdiction. Just as we found it "unlikely" in *Floyd* that Convention signatories would have understood the general term "lesion corporelle" to confer a cause of action available under French law but unrecognized in many other nations, see 499 U.S., at 540, so also in the present case we find it unlikely that they would have understood Article 17's use of the general term "dommage" to require compensation for elements of harm recognized in France but unrecognized elsewhere, or to forbid compensation for elements of harm unrecognized in France but recognized elsewhere. Many signatory nations, including Czechoslovakia, Denmark, Germany, the Netherlands, the Soviet Union, and Sweden did not, even many years after the Warsaw Convention, recognize a cause of action for non_pecuniary harm resulting from wrongful death, see 11 *International Encyclopedia of Comparative Law: Torts*, ch. 9, pp. 15_18 (A. Tunc ed. 1972); *Floyd*, *supra*, at 544_545, n. 10.

The other alternative, and the only one we think realistic, is to believe that "dommage" means (as it does in French legal usage) "legally cognizable harm," but that Article 17 leaves it to adjudicating courts to specify what harm is cognizable. That is not an unusual disposition. Even within our domestic law, many statutes that provide generally for "damages," or for reimbursement of "injury," leave it to the courts to decide what sorts of harms are compensable. See, e.g., *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (Jones Act, 46 U.S.C. App. 688 (1988 ed.), which provides "action for damages" to "[a]ny seaman who shall suffer personal injury," permits compensation only for pecuniary loss); *Michigan Central R. Co. v. Vreeland*, 227 U.S. 59, 71 (1913) (former Employers' Liability Act of Apr. 22, 1908, which makes employer "liable in damages . . . for . . . injury or death," permits compensation only for pecuniary loss); *Broan Mfg. v. Associated Distributors, Inc.*, 923 F.2d 1232, 1235_1236 (CA6 1991) (Lanham Trade_Mark Act, 15 U.S.C. 1117(a), which provides for recovery of "any damages sustained," permits compensation for future lost profits); *Phelps v. White*, 645 So.2d 698, 703 (La. Ct. App. 3d Cir. 1994) (specifying elements of compensation allowable under La. Civ. Code Ann., 2315.2 (West Supp. 1995), providing for recovery of "damages . . . sustained as a result" of wrongful death); *Department of Ed. v. Blevins*, 707 S. W. 2d 782, 783 (Ky. 1986) (Kentucky Rev. Stat. Ann. 411.130 (Michie 1992), which provides that "damages may be recovered" for wrongful death, does not permit compensation for emotional distress).

That this is the proper interpretation is confirmed by another provision of the Convention. Article 17 is expressly limited by Article 24, which as translated provides:

"(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.

"(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who

have the right to bring suit and what are their respective rights." 49 Stat. 3020 (emphasis added).³

The most natural reading of this Article is that, in an action brought under Article 17, the law of the Convention does not affect the substantive questions of who may bring suit and what they may be compensated for. Those questions are to be answered by the domestic law selected by the courts of the contracting states. Petitioners contend that, because Article 24 refers to the parties' "respective rights," this provision defers to domestic law only on the "procedural" issues of who has standing to sue and how the proceeds of a damages award under Article 17 should be divided among eligible claimants. It does not seem to us that the question of who is entitled to a damages award is procedural; and in any event limiting Article 24 to procedural issues would render it superfluous, since Article 28(2) provides that "[q]uestions of procedure shall be governed by the law of the court to which the case is submitted." 49 Stat. 3021. More importantly, petitioners' reading of Article 24(2) would produce a strange regime in which 1929 French law (embodied in the Convention) determines what harms arising out of international air accidents must be indemnified, while current domestic law determines who is entitled to the indemnity and how it is to be divided among claimants. When presented with an equally plausible reading of Article 24 that leads to a more comprehensible result — that the Convention left to domestic law the questions of who may recover and what compensatory damages are available to them — we decline to embrace a reading that would produce the melange of French and domestic law proposed by petitioners.

Because a treaty ratified by the United States is not only the law of this land, see Const., Art. II, 2, but also an agreement among sovereign powers, we have traditionally considered as aids to its interpretation the negotiating and drafting history (*travaux préparatoires*) and the post-ratification understanding of the contracting parties. Both of these sources confirm that the compensable injury is to be determined by domestic law. In the drafting history, the only statements we know of that directly discuss the point were made by the Comité International Technique d'Experts Juridiques Aériens (CITEJA), which did the preparatory work for the two Conferences (1925 in Paris, 1929 in Warsaw) that produced the Warsaw Convention. In its report of May 15, 1928, the Committee stated:

"It was asked whether it would not be possible, in this respect, to determine the category of damages subject to reparations.

"Although this question seemed very interesting, it was not possible to find a satisfactory solution before knowing exactly the legislation of the various countries. It was understood that the question would be studied later on, when the issue of knowing which are the persons, who according to the various national laws, have the right to take action against the carrier, will have been elucidated." Report of the Third Session by Henry de Vos, CITEJA Reporter (May 15, 1928), reprinted in *International Technical Committee of Legal Experts on Air Questions* 106 (May 1928).

To the same effect is the following passage from the CITEJA Report accompanying the 1929 draft:

"The question was asked of knowing if one could determine who the persons upon whom the action devolves in the case of death are, and what are the damages subject to reparation. It was not possible to find a satisfactory solution to this double problem, and the CITEJA esteemed that this question of private international law should be regulated independantly [sic] from the present Convention." Report of the Third Session of CITEJA by Henry de Vos (Sept. 25, 1928), reprinted in *Second International Conference on Private Aeronautical Law*

Minutes, Warsaw 1929, 255 (R. Horner & D. Legrez transl. 1975).

Both these statements make clear that the questions of who may recover, and what compensatory damages they may receive, were regarded as intertwined; and that both were unresolved by the Convention and left to "private international law" _ i.e., to the area of jurisprudence we call "conflict of laws," dealing with the application of varying domestic laws to disputes that have an interstate or international component.

We are unpersuaded by petitioners' reliance on the comment of French delegate Georges Ripert, asserting, as one basis for rejecting application of domestic law to the issue of carriers' vicarious liability, that it would be "the first time that application of national law is required." *Id.*, at 66. Reply Brief for Petitioners 2_3. Not only does this remark not have the authority of submissions by the drafting committee, but it is a generalization rather than a statement focused specifically upon the issue here: what law governs the "category of damages subject to reparations." And the generalization is demonstrably wrong to boot, since it is incontrovertible that Article 24 of the Convention requires the application of national law to some issues.

The post_ratification conduct of the contracting parties displays the same understanding that the damages recoverable _ so long as they consist of compensation for harm incurred ("dommage survenu") _ are to be determined by domestic law. Some countries, including England, Germany and the Netherlands, have adopted domestic legislation to govern the types of damages recoverable in a Convention case. See P. Haanappel, *The Right to Sue in Death Cases under the Warsaw Convention*, 6 *Air Law* 66, 72, 74 (1981); E. Giumulla, R. Schmid & P. Ehlers, *Warsaw Convention* 39, n. 5 (1992); *German Law Concerning Air Navigation (Luft VG)* of January 10, 1959, Arts. 35_36, 38, reprinted in 1 *Senate Committee on Commerce, Air Laws and Treaties of the World*, 89th Cong., 1st Sess., 766_768 (Comm. Print 1965); R. Mankiewicz, *The Liability Regime of the International Air Carrier* 187, pp. 160_161 (1981). Canada has adopted legislation setting forth who may bring suit under Article 24(2), but has left the question of what types of damages are recoverable to provincial law. Haanappel, *supra*, at 70_71. The Court of Appeals of Quebec has rejected the argument that Article 17 permits damages unrecoverable under domestic Quebec law. *Dame Surprenant v. Air Canada*, 1973. C.A. 107, 117_118, 126_127 (Ct. App. Quebec) (opinion of Deschenes, J.). But see *Preston v. Hunting Air Transport Ltd.*, 1956. 1 Q. B. 454, 461_462 (granting damages under Convention, but without considering Article 24). Finally, the expert commentators are virtually unanimous that the type of harm compensable is to be determined by domestic law. See, e.g., H. Drion, *Limitation of Liabilities in International Air Law* 111, pp. 125_126 (1954); Giumulla, Schmid & Ehlers, *supra*, at 33; D. Goedhuis, *National Air Legislations and the Warsaw Convention* 269 (1937); Mankiewicz, *supra*, at 187, 160_161; G. Miller, *Liability in International Air Transport: The Warsaw System in Municipal Courts* 125 (1977); see also Cha, *The Air Carrier's Liability to Passengers in International Law*, 7 *Air L. Rev.* 25, 56_57 (1936).

III

Having concluded that compensable harm is to be determined by domestic law, the next question to which we would logically turn is that of which sovereign's domestic law. That is the "private international law" issue alluded to in the last_quoted excerpt from the CITEJA Report. Choice of law is, of course, determined by the forum jurisdiction, see E. Scoles & P. Hay, *Conflict of Laws* 3.56 (1982), and would normally be a question confronting us here. We have been spared that inquiry, however, because both parties agree that if the issue of compensable harm is (as we have determined) unresolved by the Convention itself, it is governed in the present case by the law of the United States.

That leaves a final question unresolved: which particular law of the United States provides the governing rule? The Second Circuit, moved by the need to "maintain a uniform law

under the Warsaw Convention," held that general maritime law governs causes of action under the Convention, whether the accident out of which they arise occurs on land or on the high seas. 43 F.3d, at 21_22. We think not. As we have discussed, the Convention itself contains no rule of law governing the present question; nor does it empower us to develop some common law rule under cover of general admiralty law or otherwise that will supersede the normal federal disposition. Congress may choose to enact special provisions applicable to Warsaw Convention cases, as some countries have done. See *supra*, at 11. Absent such legislation, however, Articles 17 and 24(2) provide nothing more than a pass-through, authorizing us to apply the law that would govern in absence of the Warsaw Convention. There is little doubt what that law is in this case.

Section 761 of the DOHSA provides:

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued." 46 U.S.C. App. 761 (1988 ed.).

The death that occurred here falls within the literal terms of this provision, and it is well established that those literal terms apply to airplane crashes. See *Executive Jet Aviation, Inc. v. Cleveland*, 409 U.S. 249, 263_264 (1972). Section 762 of DOHSA provides that the recovery in a suit under 761 "shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought." 46 U.S.C. App. 762. Thus, petitioners cannot recover loss_of_society damages under DOHSA. Moreover, where DOHSA applies, neither state law, see *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 232_233 (1986) nor general maritime law, see *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625_626 (1978), can provide a basis for recovery of loss_of_society damages.⁴

Petitioners argue that DOHSA should not apply to this cause of action because of the concern expressed by the Second Circuit: that "a uniform law should govern Warsaw Convention cases." 43 F.3d, at 21. They urge that, if we must look to domestic law, we should craft a federal rule of damages that will be applicable in all suits brought under the Convention. Undoubtedly it was a primary function of the Warsaw Convention to foster uniformity in the law of international air travel, see *Floyd*, 499 U.S., at 552, but as our discussion above has made clear, this is not an area in which the imposition of uniformity was found feasible. See *supra*, at 9_10. The Convention neither adopted any uniform rule of its own nor authorized national courts to pursue uniformity in derogation of otherwise applicable law. Petitioners argue, in effect, that the Convention contains an implicit authorization for national courts to create uniformity between over_land and over_sea accidents governed by their respective domestic laws, even though it leaves the vast discrepancies among the various domestic laws untouched. That is most unlikely.

Finally, petitioners contend that DOHSA cannot supply the substantive law of damages, because this would result in an unintended "double cap." They argue that the Warsaw Convention's \$75,000 per passenger limit on liability (except in cases of willful misconduct), when combined with a DOHSA rule prohibiting compensation for non_pecuniary harm, will not sufficiently deter willful misconduct. We are unpersuaded. The Convention unquestionably envisions the application of domestic law; it is the function of Congress, and not of this Court, to decide that domestic law, alone or in combination with the Convention, provides inadequate

deterrence.

* * *

We conclude that Articles 17 and 24(2) of the Warsaw Convention permit compensation only for legally cognizable harm, but leave the specification of what harm is legally cognizable to the domestic law applicable under the forum's choice_of_law rules. Where, as here, an airplane crash occurs on the high seas, DOHSA supplies the substantive United States law. Because DOHSA permits only pecuniary damages, petitioners are not entitled to recover for loss of society. We therefore need not reach the question whether, under general maritime law, dependency is a prerequisite for loss_of_society damages.

Accordingly, that portion of the Second Circuit judgment permitting Zicherman to recover loss_of_society damages if she can establish her dependency on the decedent is reversed, and that portion of the judgment vacating the award of loss_of_society damages to Mahalek is affirmed.

It is so ordered.

Footnotes

[Footnote 1] The jury also awarded petitioners \$161,000 in survivors' grief, \$16,000 to Zicherman for loss of support and inheritance and \$100,000 to Zicherman for the decedent's pain and suffering. The Second Circuit has set aside the award of grief damages and has remanded for further proceedings on the award for loss of support and inheritance. None of these awards is at issue here.

[Footnote 2] The French text of Article 17 reads:

"Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lesion corporelle subie par un voyageur lorsque l'accident qui a cause le dommage s'est produit a bord de l'aeronef ou au cours de toutes operations d'embarquement et de débarquement." 49 Stat. 3005.

[Footnote 3] The governing French text of Article 24 provides:

"(1) Dans les cas prevus aux articles 18 et 19 toute action en responsabilite, a quelque titre que ce soit, ne peut etre exercee que dans les conditions et limites prevues par la presente Convention.

"(2) Dans les cas prevus a l'article 17, s'appliquent egalement les dispositions de l'alinéa precedent, sans prejudice de la determination des personnes qui ont le droit d'agir et de leurs droits respectifs." 49 Stat. 3006.

[Footnote 4] We need not consider whether 761 of DOHSA calls into question the District Court's determination that the decedent's mother is a proper party to this suit, or its grant of a jury trial, see *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 371, n. 28 (1959), and whether 762 contradicts the District Court's allowance of pain and suffering damages, see *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 215, n. 1 (1986). KAL challenged none of these rulings in its petition for certiorari.
