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### AIRPORT TERRORISM AND AIRLINE HIJACKINGS

BY RICHARD HARTZMAN

Recent incidents of terrorism have had a tremendous impact on the perceived risks of travel abroad. I say "perceived risks" because the actual chance of any traveler becoming a victim of terrorists is remote.

Still, the subject of terrorism is on everyone's mind these days, and questions arise. What is the legal liability of an airline in the event of a hijacking, especially one that results in injury or death? How liable are airports for incidents of terrorism that take place within their confines? What legal recourse does a victim or his family have?

#### AIRLINE LIABILITY

On domestic flights, an airline's liability is governed by the ordinary rules of negligence. An airline has an obligation to exercise the highest degree of care for the safety of its passengers. It is required to provide a safe means for boarding, but is not required to protect passengers against injuries which cannot reasonably be foreseen. In today's climate, hijackings can be foreseen; so appropriate measures to prevent them should be expected. Fortunately, incidents on domestic flights are not presently a problem.

With regard to foreign travel, these rules were modified by the Warsaw Convention, an international treaty which established a regime for airline liability in the 1930s and was since modified by the Montreal Agreement of 1966.

Article 17 of the Convention holds airlines liable for damages sustained by the death or wounding of passengers if the accident causing the injuries took place on board the aircraft or in the course of embarking or disembarking. Federal and state courts have uniformly found this provision to be applicable to hijackings and terrorist attacks.

The Montreal Agreement, which applies to all carriers with ports of call in the United States, sets a \$75,000 limitation on liability but holds the airline absolutely liable for the injury—whatever the cause—unless it can prove contributory negligence on the part of the passenger. However, the \$75,000 liability limit can

be avoided if the information on the ticket is incorrect, or if the airline is guilty of willful misconduct in failing to take appropriate measures to keep hijackers and terrorists from the boarding area or aircraft.

Under these rules, an airline will be liable when hijackers take a passenger hostage and cause injury, even if the injury occurs *after* the passenger is removed from the aircraft by the hijackers.

The courts, in considering whether a passenger is in the course of embarking or disembarking and the airline liable or not, will look at the location of the incident, the activity the injured person was engaged in, and the degree of control over the injured person exercised by the airline. Thus, in one Federal lawsuit, an airline was held liable for injuries suffered during an airport terrorist attack where passengers had completed check-in procedures, gone through customs and into a transit lounge, obtained seat assignments, and were then called by the airline to stand in line for a search at the departure gate.

On the other hand, a passenger who

has left the aircraft and gone to the baggage claim area is not considered to be disembarking, and an airline will not be held liable for injuries suffered then. Nor will carriers be held liable when terrorist attacks occur outside the check-in counters of the airport.

#### AIRPORT LIABILITY

In airport situations where the airline is not responsible, the issue is whether the airport itself can be held liable. The first question to resolve is whether the airport, probably run as a governmental entity, is immune from lawsuit. If it is not immune, the rules of negligence will apply in determining liability.

The second question is whether there were malfunctions or inadequacies in the systems in use to protect against terrorist attacks, including the actions taken by security agents and police to foil a terrorist incident. ■

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