

LIABILITY OF AIRCRAFT LESSORS

PROTECTIVE COATING NEEDS EXTRA PATCHES



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LIABLE PERSONS - CIVIL LIABILITY FOR DAMAGES (AIR ACCIDENT)

- ❖ Air carrier (not defined under Warsaw / Montreal Convention)
 - ❖ *contractual and actual (operating) carrier (Guadalajara Convention 1961)*
 - ❖ *and their agents*
- ❖ Civil liability is channelled through the airline
 - ❖ *irrelevant whether the airline is the lessor or owner*
 - ❖ *exclusivity of the Warsaw (Art. 24) / Montreal (Art. 29) Convention*
 - ❖ *evolving litigation/academic discussion on the exclusivity*
- ❖ Recent international conventions aim to expressly protect the lessor
 - ❖ *General Risks Convention, 2009 (not in force)*
 - ❖ *Unlawful Interference Compensation Convention, 2009 (not in force)*

THE POSITION OF LESSORS UNDER INTERNATIONAL AIR LAW

LESSORS STAY HAPPILY OUTSIDE THE LIABILITY CHAINS

- ❖ Merely finance providers / not an operator under WC/MC
- ❖ Distinction between finance lease / operating lease
 - ❖ *physical possession, inspection, maintenance*
- ❖ Acceptance certificates - key protection instrument for lessors
 - ❖ *“as is, where is” clause - Olympic v. ACG case*
- ❖ Aircraft financing mostly, if not entirely, governed by English or US law
- ❖ END OF PRESENTATION?



THE POSITION OF LESSORS UNDER U.S. LAW

SECTION 44112(b) OF THE U.S. FEDERAL AVIATION ACT

- ❖ Enacted in 1948 to shield security holders in aircraft from liability
- ❖ Lessor will not be held liable if the lessor is not in operational control of the a/c

“A lessor, owner or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine or propeller is in the actual possession or control of the lessor, owner or secured party, and the personal injury, death or property loss or damage occurs because of (1) the aircraft, engine or propeller; or (2) the flight of, or an object falling from, the aircraft, engine or propeller.”

- ❖ Applicable when damage occurs to persons on ground / water only
 - ❖ *The Supreme court in Florida affirmed this in the Vreeland v. Ferrer case, 2011*
- ❖ Other dubious cases in Michigan, Illinois and few other states
- ❖ Solution?

THE POSITION OF LESSORS UNDER U.S. LAW

NEGLIGENT ENTRUSTMENT DOCTRINE

- ❖ Lessor is liable if it knew or should have known that the lessee as operator was not competent to safely operate the aircraft

- ❖ *Layug v. AAR Parts Trading, Inc. (Air Philippines Flight 541)*

- ❖ *Should a lessor be held liable for negligent entrustment of an aircraft to a foreign airline which crashes in a foreign jurisdiction?*

- ❖ “EU black-listed airlines” - should lessor hesitate to lease?

- ❖ *Lessor is not immune to liability (White v. Inbound Aviation, 1999)*



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CONCLUSION

- ❖ Normally, i.e. on international flights and flights outside the U.S. domestic market or outside of the scope of U.S. state law (e.g. Florida, Michigan, Illinois), lessors are outside of the liability claims
- ❖ The airline is liable - exclusivity of the WC29 / MC99
- ❖ For their large role in commercial aviation - an alternative potential deep pocket?
- ❖ Lawsuits against lessors will likely to rise in the U.S. (especially in FL, MI, IL)

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LESSOR'S PERSPECTIVE - ACTIONS TO PROTECT

- ❖ Protection of assets and own financial being
 - ❖ *Providing adequate insurance*
- ❖ Legally, this needs:
 - ❖ *careful drafting of the lease agreements and other commercial agreements*
 - ❖ *conducting jurisdictional analysis (risks and mitigants)*
 - ❖ *examining the bankruptcy laws of the country of the lessee*
 - ❖ *applicability of the Cape Town Convention*
- ❖ Non-legally, also:
 - ❖ *Conducting market analysis, economic outlook of the country, etc.*



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THANK YOU FOR YOUR ATTENTION