RECENT DEVELOPMENTS IN AVIATION LAW

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I. AIR CARRIER CASES:

A. U.S. SUPREME COURT CASE: STATUTORY IMMUNITY

Air Wisconsin Airlines Corp. v. Hoeper,
No. 12-315, 2014 WL 273239
(U.S. Jan. 27, 2014)

Airlines are immune under federal law from defamation claims their employees bring over "materially true statements" airline officials make to law enforcement about aviation security even if the statements are not literally true, the United States Supreme Court has decided.

A divided Supreme Court reversed the Colorado Supreme Court on January 27, 2014, finding that the Aviation and Transportation Security Act shields Air Wisconsin from liability for telling the Transportation Security Administration half-truths about commercial pilot William L. Hoeper's state of mind, employment status and license to carry a firearm aboard planes.

The report to TSA was "materially true," meaning the minor falsehoods and lies of omission it contained would not have disturbed a reasonable TSA agent's subsequent decision to remove Hoeper from his flight and question him, according to Justice Sonia Sotomayor's majority opinion. Heoper was a passenger on that flight, not the pilot.

The case concerned a 2004 incident in which TSA removed Hoeper from a Denver-bound flight out of Virginia and searched and questioned him after his superiors

at Air Wisconsin reported to the agency that he had lost his job, seemed agitated about it and was a “federal flight deck officer” who might be armed.

Hoeper, whom the airline did not actually fire until the following day, had allegedly reacted angrily after failing a recertification exam for the third time.

When TSA agents asked Hoeper about his gun, he told them it was in his Denver home, where agency officials found it after conducting a search, according to the opinion.

Hoeper, who boarded a later flight without incident, sued Air Wisconsin in Colorado state court, where a jury awarded him $850,000.00 after rejecting the airline’s argument that the ATSA shields it from defamation liability. The state’s Court of Appeals affirmed.

After granting *certiorari,* the state Supreme Court upheld the judgment, although it found that the lower courts committed harmless error when they allowed the jury to determine ATSA immunity instead of rejecting the argument from the bench as a matter of law. The jury happened to get it right, Colorado’s justices found in letting the ruling stand.

The United States Supreme Court disagreed. When Air Wisconsin officials told TSA in 2004 that Hoeper was a federal flight deck officer who might be armed, they did not defame him even though they had no specific reason to suspect he was carrying a gun, Justice Sotomayor stated for the majority.

Nor did they commit defamation when they told the agency they were worried about Hoeper’s mental state and that they had let him go, even though they did not fire

him until the following day and had no basis for questioning his emotional stability, the supreme court found.

Although the airline's statements were not literally true in every respect, the majority held, the true information alone was enough to justify treating Hoeper as a threat in light of his license to carry a gun on planes, his evident anger toward Air Wisconsin and the spate of security incidents involving airline personnel.

B. MONTREAL CONVENTION: STATUTE OF LIMITATION

1. *Narayanan et al. v. British Airways,* No. 11-55870, 2014 WL 1057304 (9th Cir. Mar. 19, 2014)

The family of a British Airways passenger who died six months after the carrier allegedly denied him supplemental oxygen should have filed suit within two years of the flight rather than within two years of his death, a federal appellate court has decided.

Reaching an issue of first impression, a divided three-judge panel of the United States Court of Appeals, Ninth Circuit dismissed Susheele Narayanan's wrongful-death suit on March 19, 2014, finding that the Montreal Convention's two year filing window relates back to the flight's arrival, not to the later date of her husband's death.

"We must decide whether [the treaty's timing] strictures apply equally to a claim which had not yet accrued at the time that the Convention's two year limitations period was triggered. We hold that under the plain language of the Convention, the answer is yes," according to the Ninth Circuit.

Even though the crew of Narayanan's December 2008, flight from London to India knew about his late-stage lung disease and promised him access to his supplemental oxygen, the suit claimed, flight attendants did not let him use the oxygen

system, exacerbating his terminal condition and hastening his death. Narayanan died six months after the flight.

The wrongful death suit stated claims under the Montreal Convention on international aviation, which provides for strict liability against airlines in connection with in-flight "accidents," or unusual events that injure a passenger through no fault of his own.

After removing the case to the United States District Court for the Central District of California, British Airways moved to dismiss it, arguing that the treaty's statute of limitations time-barred the suit.

United States District Judge John F. Walter agreed in May 2011, dismissing the suit with prejudice, and the Narayanans appealed to the Ninth Circuit.

On appeal, the Narayanans argued that the treaty's filing window could not fairly apply to claims until they accrue because a prospective plaintiff has nothing to sue over until an injury manifests itself. The panel could avoid the injustice by applying California state law instead, they argued.

Acknowledging that it was "writing on virtually a blank slate," the court rejected that reasoning. The treaty's limitations clause, Article 35(1), expressly provides that in situations like Papanasam Narayanan's, only the plane's arrival triggers the limitations period.

"The plain language of Article 35(1) leaves no room for flexibility as to the commencement of the limitations period," Judge Nguyen wrote. "By urging us to evaluate the timeliness of their claim under the Convention based upon the date upon

which it accrued under California law, plaintiffs effectively ask us to write an implied . . . trigger into the Convention's terms. This we cannot do."

The dissent stated that "the Montreal Convention, by retaining the Warsaw Convention's rigid statute of limitations, continues to protect international airline carriers at the expense of their passengers," Judge Pregerson wrote. "Because of the unfair and unconscionable result in this case and perhaps others, I hope that the Montreal Convention will be revisited and revised to protect families like the Narayanans."

2. *Sykes et al. v. Qantas Group,*
N0. 2:14-cv-02192, *removal notice filed,*
(C.D. Cal. Mar. 21. 2014)

Qantas Removes Case Over Passenger's Seating Dispute

Asserting federal question jurisdiction, Qantas has removed to Los Angeles federal court a lawsuit accusing the Australian flagship carrier of kicking a passenger off a plane after he refused to leave his elderly father in first class and move to coach.

The suit, which Randy and Arthur Sykes filed in February, 2014, in the Los Angeles County Superior Court, asserts that after Qantas partly reneged on the free upgrades it gave the pair, Randy refused to leave his elderly father unaccompanied, telling flight attendants his father was too feeble to fly alone.

The airline then had Randy handcuffed and removed from the plane, according to the complaint for negligence, breach of fiduciary duty and intelligence infliction of emotional distress.

In addition to federal question jurisdiction based on the Montreal Convention, Qantas' March 21, 2014, removal notice in the United States District Court for the Central District of California asserts diversity.

3. *Ekufu et al. v. Iberia Airlines et al.,*
No. 1:12-cv-06669, 2014 WL 997068
(N.D. Ill, E. Div. Mar. 13, 2014)

Woman Awarded $1,730 For Items Stolen From Luggage

A woman who claims Iberia Airlines employees stole from her checked bags will receive $1,730.00, the liability limit for lost luggage under the Montreal Convention, after a federal judge in Illinois issued a ruling March 13, 2014, in Iberia's favor.

Plaintiff Gladys Agbasi argued unsuccessfully that the liability limit did not apply because the Iberia employees intentionally stole the items between Lagos, Nigeria and Chicago. United States District Judge Elaine E. Bucklo of the Northern District of Illinois found that Agbasi failed to show the workers were acting within the scope of their employment, which she would have had to prove to recover more than $1,730.00, denominated in "special drawing rights," a floating artificial currency. Judge Bucklo granted Iberia's motion for judgment.

4. *In re American Airlines Flight 331;*
Case et al. v. American Airlines, Inc.,
N0. 1:14-cv-20533, *amended complaint filed*
(S.D. Fla. Feb. 12, 2014)

American Airlines Faces Mass Suit Over Jamaica Crash

A group of American Airlines passengers is suing the carrier in Miami federal court over a 2009 crash landing they survived at Jamaica's largest airport. The suit, which more than 30 passengers filed February 12, 2014, in the United States District Court for the Southern District of Florida, asserts a Montreal Convention claim in connection with the December 2009 accident, which occurred as American Flight 331 from Miami approached Norman Manley International Airport near Kingston, Jamaica's capital.

The passengers claim they suffered unspecified personal injuries when the commercial jet overshot the runway, cracked its fuselage in three pieces and nearly rolled into the ocean.

C. AIRLINE FINANCING

Delta Air Lines Inc. et al. v. Export-Import Bank of the United States et al.,
No. 14-42, *complaint filed*
(D.D.C. Jan. 10, 2014)

The United States government sponsored Export-Import Bank improperly provided a $1.3 billion guaranteed loan and committed $2.1 billion to a foreign airline, Delta Air Lines claims in Washington federal court.

Delta's suit, filed January 10, 2014, in the United States District Court for the District of Columbia, argues that the financing the Export-Import Bank of the United States provided to Air India will hurt the domestic airline industry. Hawaiian Airlines and the Air Line Pilots Association joined Delta as plaintiffs.

The Export-Import Bank is an independent federal agency and corporation established in 1934 by an executive order. It guarantees, issues and extends credit to foreign buyers who buy exportable goods manufactured in the United States.

The Delta suit concerns a loan and financial commitment Air India allegedly received on the cheap as an incentive to buy aircraft manufactured by Boeing.

According to the complaint, the Export-Import Bank is supposed to "screen" each transaction to determine if it would result in a product that could be exported from the foreign country.

According to the complaint, the bank has a history of providing foreign airlines with financing at cheap rates that are detrimental to the United States airline industry,

and in 2012, it held an outstanding balance in foreign airline loans totaling $106.6 billion.

If a creditor fails to repay the debt, "the United States Treasury, and hence American taxpayers, picks up the bill," the suit alleges.

The District Court granted the bank's motion for summary judgment of the case, dismissing the suit after finding that the screening process was an unreviewable act of Export-Import Bank discretion under the Bank Act. *Air Trans. Ass'n. of Am. V Export-Import Bank of the United States et al.,* No. 11-cv-02024, 878 F.Supp. 2d 42 (D.D.C. July 18, 2012).

Delta appealed to the D.C. Circuit, which held that the bank's conduct was indeed subject to judicial review and remanded the case to the District Court. *Delta Air Lines v. Export-Import Bank of the United States el al.,* 718 F.3d 974 (D.C. Cir. May 14, 2013).

According to the complaint, the Export-Import Bank responded to the appellate court's ruling with "deficient" justifications for its financing decision. The bank's responses fail to explain the changes to the bank's screening process or its Air India transactions, Delta claims.

II. GOVERNMENT LITIGATION:

A. FEDERAL TORT CLAIMS ACT

Moore v. United States et al.,
No. 2:14-cv-00049, *complaint filed*
(S.D. Tex. Feb. 14, 2014)

The federal government and two private intelligence contractors are responsible for a fatal plane crash in Colombia that occurred during a secret antidrug raid last October after they let a half blind pilot fly an experimental aircraft, a passenger's daughter claims in federal court.

Jennifer Moore's suit, filed February 14, 2014, in the United States District Court for the Southern District of Texas, accuses Sierra Nevada Corp., New Frontier Innovations and the federal government of unreasonably giving the man "special permission" to fly a plane with no ground proximity warning system for the mission.

The pilot, who had no vision in his right eye, became lost, accidentally deviated from the plane's intended flight path over the ocean, and crashed the modified twin-turboprop Bombardier Dash 8 into the mountains near Colombia's border with Panama, the suit alleges.

Moore's father, Ralph J. Dietz, died of blunt force injuries he suffered in the wreck, and the ensuing blaze consumed his body.

Two other Americans and a Panamanian National Guardsman also died in the crash, which the half blind man and his co-pilot survived, according to media reports and the Aviation Safety Network. Both crewmen were Americans.

In addition to costing four lives, the accident allegedly blew the lid off Operation Prospector, a clandestine United States Air Force mission to track cocaine-smuggling speedboats in Latin America and the Caribbean as part of the larger Operation Martillo, a regional drug-interdiction project.

After the crash, Colombian military commanders ruled out the possibility that rebel guerillas known to operate in the area had shot down the plane, the Associated Press reported last October 6, 2013.

Moore, who alleges negligence by the federal government and both contractors, seeks unspecified wrongful-death damages on her own behalf and survival damages on behalf of Dietz's estate.

A second suit was filed in the Southern District of Florida on March 7, 2014, *Gonzales v. Sierra Nevada Corp. et al.,* No. 1:14-cv-20872 (S.D. Fla. March 7, 2014), by the widow of an American airman.

The widow accused the plane's pilots, the accident's only survivors, of causing the crash by flying the modified twin-turboprop Bombardier Dash 8 too low over the mountainous jungle near Colombia's border with Panama.

The pilots, who worked for defense contractors Sierra Nevada Corp. and New Frontier Innovations, took a huge and unnecessary risk when they recklessly deviated from the plane's intended flight path over the ocean, Gonzales claims.

"The crash was caused by pilot error and not the result of any hostile activity or equipment failure," the suit alleges. "There was no government contract provision or [Defense Department] or United States Air Force contract requirement that the defendants' pilots fly this aircraft into terrain."

B. DRONE WARFARE

New York Times Co. v. United States Department of Justice et al.,
Nos. 13-422 and 13-445, 2014 WL 1569514
(2d Cir. Apr. 21, 2014)

In a case pitting executive power against the public's right to know what its government does, the United States Circuit Court of Appeals, Second Circuit, reversed a lower court ruling preserving the secrecy of the legal rationale for the killings, such as the death of United States citizen Anwar at-Awlaki in a 2011 drone strike in Yemen.

Ruling for The New York Times, a unanimous three-judge panel held on April 21, 2014, that the government waived its right to secrecy by making repeated public statements justifying targeted killings. These included a Justice Department "white paper," as well as speeches or statements by officials like Attorney General Eric Holder and former Obama administration counterterrorism adviser, John Brennan, endorsing the practice.

The Times and two reporters, Charlie Savage and Scott Shane, sought the memorandum under the federal Freedom of Information Act, saying it authorized the targeting of al-Awlaki, a cleric who joined al-Qaida's Yemen affiliate and directed many attacks.

"Whatever protection the legal analysis might once have had has been lost by virtue of public statements of public officials at the highest levels and official disclosure of the Department of Justice white paper," Circuit Judge Jon O. Newman wrote for the appellate court panel in New York. The judge stated it was no longer logical or plausible to argue that disclosing the legal analysis could jeopardize military plane, intelligence activities or foreign relations.

The court redacted a portion of the memorandum on intelligence gathering, as well as part of its own decision. It is unclear when the memorandum or the full Second Circuit decision might be made public or whether the government will appeal.

C. GOVERNMENT CONTRACTOR FRAUD

1. *United States v. Aviation Fuel International Inc. et al.,* No. 9:13-cr-80162, *plea entered* (S.D. Fla. Mar. 6, 2014)

Sean E. Wagner, of Davie, Florida, pleaded guilty in the United States District Court for the Southern District of Florida to one count of conspiracy to commit honest-services wire fraud. He faces up to 20 years in prison and a $250,000.00 fine at sentencing, set for May 15, 2014, before United States District Judge Daniel T.K. Hurley.

Wagner was the owner of Aviation Fuel International Inc., a Broward County fuel brokerage company that purchased fuel from suppliers and resold it to individual airlines, according to an indictment filed in the District Court.

Prosecutors say that between December 2005, and August 2009, Wagner, AFI and others paid $200,000.00 in kickbacks to Wayne Kepple, former vice president of ground operations for Rockford, Illinois, based Ryan International Airlines, in exchange for favorable treatment on fuel contracts.

Kepple, Wagner and others also conspired to inflate the prices on fuel and equipment sold to Ryan and to split the proceeds among themselves, the indictment states. Prosecutors found that the defendants attempted to conceal the conspiracy by wiring payments directly to Kepple's bank account, making secret cash payments through FedEx and providing him with American Express gift cards.

Much of Ryan's business at this time was transporting personnel and cargo for the United States Defense Department and Homeland Security Department, according to the indictment.

"These types of kickback schemes subvert the competitive process and increase costs to American consumers," Assistant United States Attorney General Bill Baer said in a statement. "The Antitrust Division will vigorously prosecute individuals who defraud American taxpayers and businesses."

2. *United States v. Wisidagama,*
No. 3:13-cr-04030, *plea agreement filed*
(S.D. Cal. Mar. 18, 2014)

The former general manager of a Singapore-based defense contractor that provided hundreds of millions of dollars worth of services to the United States Navy has pleaded guilty to a conspiracy charge for his role in a scheme to overbill for work performed on military vessels coming to port.

Alex Wisidagama, who worked for Glenn Defense Marine Asia, admitted he generated phony or inflated invoices to overcharge the Navy for things like local tariffs, fuel and incidental items for ships and submarines arriving at ports in Southeast Asia, the Justice Department said in a statement.

The Navy awarded three contracts to GDMA in June 2011, for "husbanding" services, which vessels need when they arrive at port, according to the charges. These services involve the provision of security personnel and tugboats, paying customs fees on behalf of vessels, supplying fuel and water, and waste removal.

One of the contracts awarded to GDMA concerned the Southeast Asia region. These inflated bills resulted in more that $20 million in fraudulent charges to the Navy for port services in Southeast Asia alone, according to the information.

Wisidagama is the second person to plead guilty in the case. Former NCIS Supervisory Special Agent John Bertrand Beliveau Jr. also pleaded guilty to conspiracy

to commit bribery for providing Wisidagama's cousin, GDMA CEO, Leonard Glenn Francis, with information about a Navy fraud investigation in exchange for cash, travel accommodations, lavish dinners and prostitutes.

Prosecutors claim in separate criminal filings that Francis bribed others with cash, luxury trips and prostitutes in exchange for port service contracts and confidential information such as ship movements and port schedules, which allegedly allowed Francis to beat competitors in locations where Navy ships planned to dock.

III. PRODUCTS LIABILITY:

A. ASIANA AIRLINES CRASH

Junhong v. Boeing Co.,
No. 13 C 7418, 2014 WL 1409441
(N.D. Ill., E. Div. Apr. 11, 2014)

Suits Over Asiana Airlines Crash Go Back To State Court

Boeing Co. did not have the right to remove a group of lawsuits over the crash of Asiana Airlines Flight 214, which injured more than 180 people and killed three when it struck a runway seawall in San Francisco last July, a Chicago federal judge has ruled.

United States District Judge Harry D. Leinenweber, of the Northern District of Illinois, remanded seven cases to state court on April 11, 2014, finding that Boeing, which built the 777 jetliner, had failed to establish federal admiralty jurisdiction under the "inevitability" doctrine. Judge Leinenweber rejected the plane maker's argument that the jet's position and trajectory proved the high-profile crash became inevitable while the aircraft was still over San Francisco Bay. The judge sent the suits back to Illinois' Cook County Circuit Court, where the plaintiffs originally filed them.

B. GENERAL AVIATION REVITALIZATION ACT (GARA)

Moore et al. v. Hawker Beechcraft Corp.,
No. 13-674, *cert. denied*
(U.S. Apr. 21, 2014)

The United States Supreme Court has declined to hear a case about whether federal aviation law barred product liability claims against the maker of a 37 year old twin-engine aircraft involved in a fatal crash.

The supreme court denied *certiorari,* on April 21, 2014, to Lisabeth Moore, the widow of Daniel Hart, who was killed in a 2007, accident involving a Hawker Beechcraft airplane sold in 1970.

Moore sued the Wichita, Kansas aircraft company in 2009, claiming that a defect in the plane's flap system caused the crash, and that the company had known about the problem but failed to alert federal regulators.

A state court in Delaware found the case time-barred under the General Aviation Revitalization Act of 1994. That law amended the Federal Aviation Act to add a statute of repose that protects manufacturers from civil liability for parts or planes made 18 years or more before the accident at issue.

Moore argued that the company should be held liable because it knowingly misrepresented information about the part to the Federal Aviation Administration, which would exclude it from GARA's liability shield. She urged the United States Supreme Court to take up the case to provide greater clarity to lower courts on how to apply that exception.

Without elaborating, the high court turned aside the petition.

When Moore filed her lawsuit in Delaware's New Castle County Superior Court in 2009, she brought claims for strict liability, negligence and breach of warranty.

Moving for summary judgment, Beechcraft argued that the statute of repose shielded the company from liability because the Beech Duke aircraft that Hart was flying was originally sold in 1970, well before the 18 year limit.

Moore opposed Beechcraft's motion, stating GARA had explicitly carved out exceptions for cases in which a manufacturer knowingly misrepresents pertinent information to the FAA about a plane's safety.

She alleged that when the Beech Duke was initially made, Beechcraft concealed knowledge from the FAA about a design defect that could lead to the kind of malfunction that caused Hart's crash. Moore also accused Beechcraft of manipulating and concealing critical flight-test data that might have let federal regulators know there was a problem.

Moore argued that Beechcraft had replaced the defective part in question just 13 years ago, well before the 18 year limit on lawsuits ran out. Beechcraft denied all of the assertions and said it had turned over all relevant information to regulators.

Judge Mary Johnston sided with Beechcraft in 2011, and granted summary judgment. *Moore et al. v. Hawker Beechcraft Corp.,* No. 9C-12-010, 2011 WL 6400670 (Del. Super. Ct., New Castle County 2011). The court ruled that plaintiffs failed to establish a *prima facie* case that either GARA's knowing-misrepresentation or the new parts exception applied.

Moore appealed to the Delaware Supreme Court, which affirmed the lower court in a brief ruling last September, 2013. *Moore et al. v. Hawker Beechcraft Corp.,* No. 13, 2012, 74 A.3d 654 (Del. Sept. 5, 2013). Moore then filed a *certiorari* petition with the United States Supreme Court in December, 2013, which was denied.

C. INSUFFICIENT EVIDENCE

Jones et al. v. Hawker Beechcraft Corp.,
No. 3:11-cv-00079, 2014 WL 260640
(N.D. Ga. Jan. 22, 2014)

A group of crash victims and their estates did not present enough evidence to proceed with a suit over a 2009 plane wreck in Alabama that killed two people and left two seriously injured, a federal judge in Atlanta has decided.

United States District Judge Timothy C. Batten Sr., of the Northern District of Georgia, granted summary judgment to Hawker Beechcraft Corp. on January 22, 2014, holding the plaintiffs had failed to show that the single-engine Bonanza's deadly defects existed when it left the plane maker's control about 15 years ago.

"As tragic as the accident was, which the court deeply regrets, as a matter of law, Hawker Beechcraft is entitled to summary judgment," Judge Batten wrote.

The ruling deals the plaintiffs a major defeat in their bid to recover for the May 15, 2009, crash, which killed pilot Sanford Jones and passenger Alexander Medina. Jones' and Medina's estates filed wrongful-death claims, and surviving passengers Sarah Conklin and Joshua Rumohr sued Beechcraft over their "severe" but unspecified personal injuries.

According to the complaint, the deadly accident occurred during the return leg of a Georgia-to-Florida round trip after the plane's gauges overstated its fuel load, forcing Jones to attempt an emergency landing near Auburn, Alabama, that he ultimately could not execute.

The suit alleged negligence and strict product liability against Beechcraft, claiming that the Bonanza model suffered from fuel gauge inaccuracies caused by a defective manufacturing process.

Neither claim relied on sufficient evidentiary support, Judge Batten found.

Although the crash may have occurred because faulty gauges misstated the plane's fuel situation, the judge found, there was no evidence that the defective fuel bladder allegedly underlying the gauge problems resulted from improper factory installation. The problem could have arisen later, and there was no reason to think it did not, the judge found.

The negligence claim failed for the same reason, the judge held, saying expert testimony that might have linked the inaccurate gauges to Beechcraft's manufacturing process was too equivocal to support that conclusion.

"Given the complexity of an airplane, expert testimony is essential to establishing the defective condition of the fuel tank," Judge Batten noted and granted summary judgment to the Beechcraft.

IV. AVIATION INSURANCE CASES:

A. JURISDICTION

Air Tropiques SPRL v. Northern & Western Insurance Co. et al.,
No. 4:13-cv-01438, 2014 WL 1323046
(S.D. Tex., Houston Div. Mar. 31, 2014)

An African charter airline cannot sue its insurance company in Houston federal court over a 2011 plane crash in the Congo because the United States does not have personal jurisdiction over the West Indies based insurer, a federal judge has ruled.

In a March 31, 2014, opinion, United States District Judge Lee H. Rosenthal of the Southern District of Texas dismissed Air Tropiques' breach of contract suit, finding that the airline failed to prove that Northern & Western Insurance Company is "at home" in Texas under *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014).

"NWIC did not direct its activities toward Texas, did not contract with Texas residents and did not avail itself of Texas law in the formation of the insurance contract," Judge Rosenthal wrote.

Under *Daimler*, a corporation is "at home" in a state if it has continuous and substantial operations there independent of any actions relating to the complaint, according to the opinion.

The suit stems from a December 2011, Beechcraft King Air 100 crash at Pointe Noire Airport in the Republic of the Congo.

According to an unrelated lawsuit that one of the plane's passengers filed in 2012, the ill-fated Air Tropiques flight from the Democratic Republic of Congo to the neighboring Republic of the Congo crashed after suffering engine failure and overshooting the Pointe Noire runway. *Russell v. Baker Hughes Inc. et al.,* No. 2012-71672, 2012 WL 6021101, *complaint filed* (Tex. Dist. Ct., Harris County Dec. 4, 2012). All five of the aircraft's occupants survived.

In its suit against NWIC, Air Tropiques accused the insurer, its underwriter and its executives of breaching the airline's contract and violating Texas law by denying the claim the air carrier filed after the crash.

NWIC filed a motion to dismiss for lack of personal jurisdiction, noting that its headquarters are in St. Kitts, Air Tropiques is a DR Congo based company, and the crash occurred in Africa.

Air Tropiques countered that the insurer's Texas based underwriter provided a sufficient jurisdictional nexus to the state. Although Judge Rosenthal agreed that the underwriter is "at home" in Texas, he found that "its Texas contacts cannot create general jurisdiction over NWIC." Air Tropiques cannot treat the insurer and its underwriter as a single company for jurisdictional purposes, the judge held.

B. NO COVERAGE FOR PARACHUTE STRIKE

McGirk V. Certain Underwriters at Lloyd's et al.,
No. 3:13-cv-00020, 2014 WL 690684
(W.D. Va. Feb. 21, 2014)

A skydiving company's liability insurance policy does not cover injuries a customer says he suffered after one of the operation's planes struck his parachute during a jump, a federal judge has decided.

United States District Judge Glen E. Conrad of the Western District of Virginia dismissed Sage McGirk's suit on February 21, 2014, finding that the policy Lloyd's of London sold the Skydive Factory clearly excluded injuries skydivers suffer after leaping from the company's planes.

McGirk had agreed to accept only $3,000.00 from Robert Mehl, the Skydive Factory employee who was piloting the plane, and to pursue Mehl's insurance claims against Lloyd's.

Judge Conrad held that based on the policy's plain language, no reasonable person could conclude it covered McGirk's injuries.

C. NEGLIGENCE

Clay et al. v. AIG Aerospace Insurance Services Inc.,
No. 6:14-cv-00235, *complaint filed*
(M.D. Fla. Feb. 11, 2014)

An insurance company caused a fatal 2012 plane wreck by selling the aircraft's owners damaged engine parts it salvaged after Hurricane Wilma totaled one of its insured planes in 2005, the crash victims' families claim in Orlando federal court.

The suit, filed February 11, 2014, in the United States District Court for the Middle District of Florida, accuses AIG Aerospace Insurance Services of selling the engine and vacuum pump on an industry resale website without disclosing their history or condition.

Pilot Dale L. Philips Jr. and passenger Amy Clay died when the single-engine Piper Comanche crashed during their flight from Abilene, Texas, to Norman, Oklahoma, after a vacuum pump failure, according to the complaint. The suit claims negligence and strict product liability against AIG Aerospace and several plane and engine makers that helped build the allegedly defective parts.