

The dangers of disobedient

Increased volumes of cabin baggage mean that airlines need to emphasise to passengers that leaving an aircraft safely in the event of an incident means doing so without their belongings. Simon Phippard, Of Counsel at Bird & Bird, reports

One of the noticeable features of the terrible recent events in Brussels was the apparent hazard created by hundreds of abandoned suitcases in the check-in hall, some of which may have been further unexploded devices. But perhaps also unsurprising were the CCTV images of passengers fleeing from the terminal building with their baggage. This illustrates the strong attachment which many people have to their immediate possessions, even in a life-threatening situation. Of course the check-in hall situation differs from an aircraft evacuation in that no announcement was made. On board an aircraft before departure or in the event

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of an incident there is the opportunity to emphasise that passengers should take nothing with them. However, social media featured many images of passengers taking their bags following last year’s British Airways incident at Las Vegas.

This is a troublesome issue for airlines, not only in terms of how to encourage everyone to leave an aircraft unimpeded and without increasing the danger to themselves and others, but also in terms of legal liability exposure if unnecessary or additional harm is caused to a passenger following an otherwise survivable accident. Airlines are well aware that they almost invariably face full liability to passengers following an aircraft accident. Is there anything to be done if a passenger contributes to his or her own injury or causes, or increases, harm to others in the course of an evacuation?

Legal starting point

The starting point, of course, is the presumption of liability, now contained in Article 17 of the Montreal Convention 1999, which almost always applies in international air transport. The passenger recovers damages simply by showing that they suffered injury due to an accident in the course of disembarkation. However if a passenger makes his or her own position worse by taking his or her bags with them, the regime may help the airline. The carrier may be exonerated from liability to the extent that contributory negligence or “other wrongful act” by a passenger contributes to his or her own injury. An airline may also be able to recover advance payments made to a passenger under the EU air carrier’s liability regime if the passenger’s contributory negligence reduces the liability to less than the advance payment – the only situation in which an advance payment is returnable.



Simon Phippard

Additional injury to others

The position of a passenger whose lack of consideration causes additional injury to others is a little more complex. The 1999 Convention provides that the airline’s liability for damages under the equivalent of around €150,000 cannot be excluded or limited at all where the passenger is innocent. For damages over that sum, the airline can avoid liability if it can show that the injury was not due to its negligence, wrongful act or omissions (or that of its employees) or that the damage was solely due to the negligence, wrongful act or omission of someone else. It is, therefore, theoretically possible to show that the level of injury, or the enhanced injury, was solely due to another passenger and thereby reduce liability above €150,000. However, this situation does not entitle return of advance payments.

The Tokyo Convention 1963 also empowers the aircraft commander to authorise restraint against anyone threatening good order or to protect the safety of anybody on board. The legal basis therefore exists for crew members to remove baggage by force, but in doing so they need to exercise judgment as to whether such steps will actually make the situation worse.

passengers

Serious cases of disobedience

There are other consequences for passengers who do not comply with instructions. The UK Air Navigation Order provides for an unlimited fine or up to five years imprisonment if a passenger recklessly or negligently endangers any person in an aircraft. Failure to obey the captain's lawful commands is also an offence, as is interference with the performance of duties by a crew member. Accordingly, steps can be taken following serious cases of disobedience or obstruction of other passengers. However, these are criminal proceedings, ordinarily only brought by the police or the aviation authorities, and the evidence has to reach the "beyond all reasonable doubt" standard. Given the confusion of an emergency evacuation, a clear and undisputed reconstruction of events is likely to be difficult, and it is often unattractive for an airline to criticise its customers about conduct in circumstances which are probably as frightening a situation as many passengers ever face.

Nevertheless, the law provides a range of consequences for a passenger who imperils him or herself or endangers another, whether in terms of reduced compensation or more serious implications under the criminal law. The flight safety community is rightly concerned about the best means to ensure that passengers actually follow instructions in the event of an evacuation, but they should not be unduly concerned about the financial implications which will be borne by insurers. These are not situations which have frequently reached court. With increasing volumes of cabin baggage, it may yet be necessary for an airline to take action in a serious case to convey the message that inconsiderate behaviour is not only unacceptable, but dangerous. ■



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