

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GEORGE FARRA	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	
AMERICAN AIRLINES, INC. and	:	NO. 00-67
AMR CORPORATION	:	
Defendants	:	

MEMORANDUM AND ORDER

YOHN, J. June , 2000

Pro se plaintiff George Farra sued defendants American Airlines, Inc. [“AA”] and AMR Corporation for injuries he sustained on a flight from London, England, to Philadelphia, Pennsylvania. Pending before the court is the defendants’ motion for summary judgment. Because the Warsaw Convention provides the exclusive remedy for the plaintiff’s injury, and because the plaintiff may not recover under the Warsaw Convention, the court will grant the defendants’ motion.

I. Background

The complaint contains the following allegations.

The plaintiff suffers a peculiar malady on long airplane flights: if he begins to digest food too long after boarding the plane, he runs the risk of becoming ill and suffering a variety of unpleasant effects. *See* Notice of Removal (Doc. No. 1) Ex. A [“Compl.”] at 1. He has surmised that the cause of this malady is the dryness of the air in an airplane, and he has discovered a sure way to prevent its occurrence: to drink no alcohol and to eat very soon after takeoff, such as

when the “Fasten Seat Belts” sign is extinguished. *See id.* Knowing of his problem and the solution, when he is planning a trip on a long flight that will include a meal, he makes a special request that his meal be served as soon after takeoff as possible. *See id.*

In anticipation of a November 1999 trip to London on an AA flight, the plaintiff telephoned AA in October 1999 to request that his meals on both the outbound and return flights be served early. *See Compl.* at 1, Ex. 1. On November 2, 1999, the plaintiff telephoned AA to obtain contact information for the airline in London, but the person with whom the plaintiff spoke told the plaintiff that this information was confidential and that a supervisor would have to return his call. *See Compl.* at 3. When the supervisor returned the plaintiff’s call, the supervisor was hostile and called the plaintiff “a trouble-maker.” *Id.* The supervisor asked the plaintiff to surrender his tickets in return for a full refund. *See id.* When the plaintiff refused, the supervisor stated that “he would instruct the AA Ground Staff at London Heathrow *not to attend on* [sic] *any of* [the plaintiff’s] *special or other requests.*” *Id.*

On November 8, 1999, the plaintiff flew from Philadelphia to London and received his meal soon after takeoff pursuant to his request. *See id.* at 1. He did not become ill. *See id.* On November 18, 1999, the plaintiff returned to Philadelphia. *See id.* On the return flight, however, the plaintiff received his meal when the other passengers did—roughly two hours after takeoff. *See id.* at 2. The plaintiff was told that the members of the cabin crew on his return flight “had instructions from their Ground Staff at Heathrow Airport” not to serve him his meal early. *Id.* at 3. By the end of the flight, the plaintiff was ill. *See id.* at 2.

On December 7, 1999, the plaintiff filed suit against the defendants in the Philadelphia Municipal Court. *See Compl.* In Count I of his complaint, the plaintiff seeks compensatory

damages for the pain and suffering that resulted from the illness. *See id.* at 2. In Count II, he seeks punitive damages. *See id.*

On January 5, 2000, the defendants removed this action to federal court. *See* Notice of Removal at 1.

II. Legal Standard

Either party to a lawsuit may file a motion for summary judgment, and it will be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party bears the initial burden of showing that there is no genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where the nonmovant bears the burden of persuasion at trial, the moving party may meet its initial burden and shift the burden of production to the nonmoving party “by ‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case.” *Id.* at 325. Thus, summary judgment will be entered “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.” *Id.* at 322.

When a court evaluates a motion for summary judgment, “[t]he evidence of the nonmovant is to be believed.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Additionally, “all justifiable inferences are to be drawn in [the nonmovant’s] favor.” *Id.* At the same time, “an inference based upon a speculation or conjecture does not create a material

factual dispute sufficient to defeat entry of summary judgment.” *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990). The nonmovant must show more than “[t]he mere existence of a scintilla of evidence” for elements on which he bears the burden of production. *Anderson*, 477 U.S. at 252. Thus, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. Discussion

In 1999, the Supreme Court made it clear that the Warsaw Convention,¹ a treaty governing certain aspects of international air travel, provides the exclusive remedy for personal injuries suffered on international airplane flights. *See El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 161. In *El Al*, the Court held that in the context of international flights “recovery for a personal injury suffered ‘on board [an] aircraft or in the course of any of the operations of embarking or disembarking,’ if not allowed under the [Warsaw] Convention, is not available at all.” *Id.* (internal citation omitted).

Under Article 17 of the Warsaw Convention, an airline is liable to a passenger on one of its international flights “for damage sustained in the event of the death or wounding of [the] passenger or any other bodily injury suffered by [the] 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). If, however, a passenger on an

¹Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876 (1934), note following 49 U.S.C. § 40105.

international flight suffers bodily injury that is not caused by an “accident,” then the Warsaw Convention does not provide for the airline’s liability. *See Air France v. Saks*, 470 U.S. 392, 396 (1985) (“Air France is liable to a passenger under the terms of the Warsaw Convention only if the passenger proves that an ‘accident’ was the cause of her injury.”). Therefore, *El Al* and *Saks* dictate that if a passenger on an international flight suffers a bodily injury that is not caused by an “accident,” then the passenger cannot recover for the injury at all. *See El Al*, 525 U.S. at 161; *Saks*, 470 U.S. at 396.

As the term is used in the Warsaw Convention, an “accident” is “an unexpected or unusual event or happening that is external to the passenger.” *Saks*, 470 U.S. at 405. On the other hand, the Court has explained that “when [an] injury indisputably results from [a] passenger’s own internal reaction to the usual, normal, and expected operation of the aircraft, it has not been caused by an accident.” *Id.* at 406.

The plaintiff asserts that he became ill on an international flight from the United Kingdom to the United States. *See Compl.* at 2. Therefore, any recovery the plaintiff seeks from the defendants for this injury, “if not allowed under the [Warsaw] Convention, is not available at all.” *El Al*, 525 U.S. at 161. Moreover, recovery for this injury is not allowed under the Warsaw Convention, and thus not at all, unless the plaintiff’s illness was caused by “an unexpected or unusual event or happening that is external to the [plaintiff].” *Saks*, 470 U.S. at 405.

According to the plaintiff, his illness was caused by his meal being served at the same time the other passengers’ meals were served. *See Compl.* at 2. Thus, if the service of his meal at the same time the other passengers’ meals were served was “an unexpected or unusual event or

happening that is external to the [plaintiff],” then he may be able to recover for his injury. *Saks*, 470 U.S. at 405.

The service of the plaintiff’s meal at the same time the other passengers’ meals were served was not, however, “an unexpected or unusual event.” *Id.* During the plaintiff’s November 2, 1999, conversation with the supervisor, the supervisor allegedly told the plaintiff not to expect to receive his meal early on the return flight. *See* Compl. at 3. Sixteen days later, the plaintiff claims to have experienced exactly what the supervisor told the plaintiff he would experience: the service of his meal at the regular time, not any earlier. *See id.* Experiencing the expected is not “an unexpected or unusual event.” *Saks*, 470 U.S. at 405.

Because the plaintiff’s alleged illness “result[ed] from [his] own internal reaction to the usual, normal, and expected operation of the aircraft” on an international flight, the court concludes that this illness was not caused by an “accident,” as the Supreme Court has defined that term. *Saks*, 470 U.S. at 406. Thus, the Warsaw Convention does not provide a remedy for the plaintiff’s injury. *See id.* at 396. Moreover, because the plaintiff cannot recover under the Warsaw Convention for the injury he claims to have suffered, he cannot recover “at all.”² *El Al*, 525 U.S. at 161.

For the foregoing reasons, the court concludes “that there is no genuine issue as to any material fact and that the [defendants are] entitled to a judgment as a matter of law.” Fed. R.

²The plaintiff argues that because his case involves willful misconduct, the court should not apply *Saks* and *El Al*. *See* Letter from George Farra to Judge Yohn (Doc. No. 8) at 2. The Supreme Court has recognized, however, that willful misconduct in a case like this one merely removes the Warsaw Convention’s cap on liability. *See El Al*, 525 U.S. at 163 n.7, 166-67.

Civ. P. 56(c). Consequently, the court will grant the defendants' motion for summary judgment.

An appropriate order follows.

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AMERICAN AIRLINES, INC. and	:	NO. 00-67
AMR CORPORATION	:	
Defendants	:	

ORDER

YOHN, J.

AND NOW, this day of June, 2000, upon consideration of the defendants' motion for summary judgment (Doc. No. 4) and the plaintiff's responses thereto (Doc. Nos. 7, 8, 9), IT IS HEREBY ORDERED that the defendants' motion for summary judgment is GRANTED. Judgment is entered in favor of the defendants and against the plaintiff.

William H. Yohn, Jr.