

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

IN RE AIR CRASH DISASTER : MDL NO. 1269  
NEAR PEGGY'S COVE, NOVA :  
SCOTIA ON SEPTEMBER 2, 1998 : THIS DOCUMENT RELATES TO:  
: ALL CASES

**MEMORANDUM**

Giles, C.J.

February \_\_\_\_, 2002

**I. INTRODUCTION**

Now before this court is the motion of defendants Swissair Swiss Transport Company Ltd. ("Swissair"), Delta Air Lines ("Delta"), SR Technics AG ("SR Technics"), and SAirGroup (collectively "Moving Defendants") to dismiss, or for summary judgment on all claims for punitive damages, on the ground that such claims are precluded by the Convention for the Unification of Certain Rules Relating to International Transportation By Air, Signed at Warsaw on 12 October 1929, commonly known as the Warsaw Convention, 49 Stat. 3000, reprinted at 49 U.S.C. § 40105 (note), a multinational treaty to which the United States is a signatory and which is the supreme law of the United States.<sup>1</sup> For the reasons that follow, the motion is granted and plaintiffs' claims for punitive damages are dismissed with prejudice.

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<sup>1</sup>See U.S. Const. Art VI, cl.2 ("[A]ll treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."); see also Breard v. Greene, 523 U.S. 371, 375 (1998) ("[T]reaties are recognized by our Constitution as the supreme law of the land."); Air France v. Saks, 470 U.S. 392, 406 (1985) (citation omitted) (stating that the Warsaw Convention remains the supreme law of the land).

## **II. BACKGROUND**

These cases all arise from the crash of Swissair Flight No. 111, near Peggy's Cove, Nova Scotia, Canada, on September 2, 1998. The plane, a McDonnell-Douglas MD-11, was traveling from New York's John F. Kennedy Airport to Geneva, Switzerland. Two-hundred fifteen passengers, primarily American, Canadian, Swiss, and French domiciliaries, and fourteen crew members were killed in the crash.

Lawsuits were filed on behalf of more than 140 decedent passengers on that flight in federal and state courts throughout the United States. The defendants include: Swissair, which controlled and operated the international flight; Delta, which ticketed many of the American passengers pursuant to an operating agreement between the airlines; SAirGroup, the parent holding company for Swissair; McDonnell Douglas Corporation ("McDonnell Douglas"), which manufactured the airplane; and The Boeing Co. ("Boeing"), which owns McDonnell Douglas and acts as its successor-in-interest.

Plaintiffs allege that the primary cause of the crash was a malfunction in the In-Flight Entertainment ("IFEN") System that had been installed in the MD-11 aircraft. This system was designed to provide passengers on commercial flights with, among other things, individual movies, video programming, gaming, shopping, and other services. Therefore, plaintiffs have also sued Interactive Flight Technologies, Ltd. ("IFT"), which, the evidence shows, developed, designed, built components for, and marketed the IFEN system and entered into a contract with Swissair to equip the Swissair fleet with the system; Hollingsead International ("HI"), which performed the airplane/IFEN integration engineering and installation, pursuant to a contract with IFT; Santa Barbara Aerospace ("SBA"), which, pursuant to a subcontract with HI, obtained for

HI the necessary certification from the Federal Aviation Administration (“FAA”) for the installation of the IFEN system and reviewed test results for environmental testing of IFEN system components; and SR Technics, which, pursuant to a contract with Swissair, provided facilities, support, and oversight for the installation of the IFEN system, monitored the quality of the workmanship as to the systems being installed, and certified the aircraft as airworthy following installation of the IFEN system and prior to the return of the plane to service. SR Technics, pursuant to a contract with Swissair, is responsible for ensuring the airworthiness, serviceability, and technical flight safety of the Swissair fleet. This includes, but is not limited to, responsibility for base maintenance, line maintenance, inspection, overhaul, alteration, and repair of aircraft, engines, and aircraft components. SR Technics, formerly known as Swissair Technical Services Ltd., is the former Department of Technical Services of Swissair, formed as a separate corporate entity and performing, by contract, the maintenance, service, and repair that Swissair would be obligated to do on its own. SR Technics also is 100 % owned by SAirServices, which in turn is 100 % owned by SairGroup. Plaintiffs have also sued DuPont, the manufacturer of the metallized mylar used in the aircraft's insulation blankets, which, they theorize, permitted the rapid spread of the fire.

These cases all have been transferred to this court for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407(a) as the cases all involve common questions of fact. Once in this court, Boeing and Swissair, pursuant to a joint agreement, conceded liability for purposes of the claims brought on behalf of the passengers and agreed to pay to the plaintiffs full compensatory damages available under whatever law is applicable to a particular decedent in a particular case, provided that there was no remaining claim for punitive damages.

According to the defendants, as of November 1999, there were 68 cases in which the Warsaw Convention was pled against Swissair and Delta as the basis of liability. Punitive damages were sought against defendants other than Swissair and Delta, including SR Technics. There were 60 cases in which the Warsaw Convention was pled against Swissair, Delta, and SairGroup. Punitive damages were sought against all defendants generally. There were six cases in which the Warsaw Convention was not pled and punitive damages were sought against all defendants generally. There were six cases in which the Warsaw Convention was pled but punitive damages were not sought against any defendant.

Given the procedural posture of this case—concession of liability and agreement to pay full compensatory damages under applicable law from the two main defendants—this court ordered a stay of all liability discovery,<sup>2</sup> pending resolution by this court of three legal issues. First, several defendants sought to dismiss cases brought on behalf of French and Swiss decedents under the doctrine of forum non conveniens. Second, all defendants argued that punitive damages are not available because DOHSA is the applicable law, at least as to U.S. decedents, and DOHSA does not permit the recovery of punitive damages. Third, Swissair, Delta, SR Technics, and SAirGroup argued that punitive damages are not available for the additional reason that the claims against them are governed by the Warsaw Convention, 49 Stat. 3000, reprinted at 49 U.S.C. § 40105 (note), a multinational treaty to which the United States is a signator and which also does not allow for the recovery of punitive damages.

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<sup>2</sup> Limited discovery was permitted on compensatory damages, to facilitate settlement of cases.

### III. DISCUSSION

#### *A. Warsaw Convention*

The Warsaw Convention “applies to all international transportation of persons, luggage or goods performed by aircraft for hire,” Convention, art. 1(1), and is the exclusive cause of action for personal injury or death occurring during such international transportation. See El Al Airlines v. Tseng, 525 U.S. 155, 176 (1999) (holding that the Warsaw Convention precludes recovery under other law for personal injury damages). Under the Convention, international transportation or carriage

shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another power, even though that power is not a party to this convention.

Convention, art. 1(2). It is uncontested that the plane crash at issue in the instant case occurred during international transportation by an aircraft for hire, for purposes of the Convention. Swissair No. 111 was traveling from New York to Geneva and the tickets of all the decedent passengers were marked “international.” It also is uncontested that the plane crash was an “accident” within the meaning of Article 17, that is, the plane crash was “an unexpected or unusual event or happening external to the passenger.” Saks, 470 U.S. at 405.

#### *1. Unavailability of Punitive Damages*

The exclusive remedy for death and personal injury in the instant case is provided by Article 17, which states:

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a 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.

Convention, art. 17. The Convention also provides for limitations on the amount of liability of the carrier. See Convention, art. 22(1). Any action for damages brought under Article 17 is subject to all the conditions and limitations set out in the Convention, including limitations as to the amount and type of damages that may be recovered. See Convention, art. 24.

Every court that has addressed this issue has held that the liability and remedy contemplated by Article 17 of the Convention is compensatory in nature and not punitive. See, e.g., In re Korean Air Lines Disaster of Sept. 1, 1983, 932 F.2d 1475, 1485 (D.C. Cir. 1991) (stating that the language of Article 17 describes liability for compensatory or actual damages that will compensate the injured party for the injury sustained); In re Air Disaster at Lockerbie, Scotland, 928 F.2d 1267, 1281 (2d Cir. 1991) (“Article 17 contemplates monetary or compensatory damages only.”); Floyd v. Eastern Airlines, Inc., 872 F.2d 1462, 1483 (11th Cir. 1989) (stating that the liability provisions under the Convention are “entirely compensatory in tone and structure”). Therefore, courts uniformly have held that punitive damages are not available in cases of death or personal injury governed by the Warsaw Convention. See Korean Air Lines, 932 F.2d at 1490 (holding that Article 17 “sets the parameters of plaintiffs’ right of recovery at compensatory damages only.”) (citation and internal quotation marks omitted); Lockerbie, 928 F.2d at 1288 (“[P]unitive damages are not recoverable in actions governed by the Warsaw Convention.”); Floyd, 872 F.2d at 1462 (holding that the awarding of punitive damages would be inconsistent with the Convention’s intent to provide compensatory damages); Zarolli v.

Doe, Civ. No. 98-786, 1998 WL 195697, \*1 (E.D. Pa. 1998) (Fullam, J.) (“Punitive damages are not recoverable under the Warsaw Convention.”); In re Aircrash Disaster Near Roselawn, Indiana, on October 31, 1994, 960 F. Supp. 150, 153 (N.D. Ill. 1997) (discussing prior cases with approval and holding that punitive damages are not available in claims governed by the Warsaw Convention). This court agrees with these cases and holds that punitive damages are unavailable under the Convention. Thus, if Article 17 of the Convention applies to the claims against a defendant, then punitive damages are not recoverable against that defendant.

## 2. *Meaning of “Carrier”*

The central legal dispute on this motion is whether the Warsaw Convention, and therefore the prohibition on punitive damages, applies to all the moving defendants. By its terms, Article 17 applies only to a “carrier,” see Warsaw Convention, art. 17, although that term is not defined in the Convention. See Waxman v. C.I.S. Mexicana de Aviacion, S.A. de C.V., 13 F. Supp. 2d 508, 513 (S.D.N.Y. 1998). At a minimum, the term must include the air carrier that operates the flight itself, here Swissair and Delta, a point the plaintiffs concede. The question becomes whether the Convention contemplates and embraces a broader scope of “carrier.”

In Reed v. Wiser, 555 F.2d 1079, 1083 (2d Cir. 1977), the second circuit addressed the question of whether the term carrier “is limited to the corporate entity . . . or was intended to embrace the group or community of persons actually performing the corporate entity’s function.” The court reasoned that the Convention applies to an airline’s employees, holding that plaintiffs could not recover from an air carrier’s employees, or from the carrier and its employees together, a sum greater than that recoverable in a suit against the carrier alone as limited by the provisions of the Convention. See id. at 1093. The Convention, it found, served two underlying purposes:

1) establishing a uniform body of world-wide liability rules to govern international aviation, see id. at 1090, and 2) fixing liability at a definite, certain, predictable level. See id. at 1089. The court recognized that both purposes would be undermined if plaintiffs were permitted to recover damages in excess of the Convention limits by suing the carrier's employees rather than the carrier. The court also recognized the "modern-day reality" that carriers provide employees with indemnity protection and thus any recovery from an employee would, in fact, be recovery from the carrier. See Reed, 555 F.2d at 1090. Thus, not to extend the term carrier, and therefore the limitations of liability, to include airline employees would have "radically changed" the character of international air disaster litigation involving American carriers, as the Convention "could then be circumvented by the simple device of a suit against the pilot and/or other employees, which would force the American employer . . . to provide indemnity for higher recoveries as the price for service by employees who are essential to the continued operation of the airline." Id. at 1082.

Subsequent cases in various courts have used the Reed analysis to protect "employees and agents who perform services fundamental to, or in furtherance of, the carriage enterprise, and which the carrier itself would be bound to perform—even if not technically required by statute—pursuant to its contract with its customers." Waxman, 13 F. Supp. 2d at 515. This includes "those agents who perform services in furtherance of the contract of carriage," see In re Air Disaster at Lockerbie, Scotland, on December 21, 1988, 776 F. Supp. 710, 714 (E.D.N.Y. 1991) (citing Johnson v. Allied Eastern States Maintenance Corp., 488 A.2d 1341, 1345 (D.C. 1985)), and "those agents performing services within the scope of the Convention that the airline is otherwise required by law to perform." See Lockerbie, 776 F. Supp. at 714 (citing Baker v. Lansdell Protective Agency, 590 F. Supp. 165, 171 (S.D.N.Y. 1984)); see also In re Aircrash

Disaster Near Roselawn, Indiana on October 31, 1994, Civ. No. 95-4593, MDL 1070, 1997 WL 572898, \*2 (N.D. Ill. 1997) (holding that services provided for the carrier in its operations and that are a source of the potential liability in litigation render them agents of the carrier and therefore entitled to the protections of the Warsaw Convention). These extensions to agents assure that the rules remain uniform and that the liability levels remain definite, certain, and predictable, regardless whom a plaintiff may choose to name as a defendant in a particular action. See Johnson, 488 A.2d at 1345.

Nearly every case to consider Reed in this context has held that the liability rules of the Convention, such as limitations of liability and statutes of limitations, apply to various agents performing services that are related to or in furtherance of air travel, and that the airline is obligated to provide, whether by formal statutory requirement or in order to provide the best possible carriage services. See, e.g., Waxman, 13 F. Supp. 2d at 515 (applying the Convention limitations to subcontractor responsible for cleaning the plane); Lockerbie, 776 F. Supp. at 714 (applying the Convention limitations to company providing the security services that the airline was statutorily obligated to provide); Baker, 590 F. Supp. at 170 (same); Lear v. New York Helicopter Corp., 597 N.Y.S.2d 411, 415 (N.Y. App. Div. 1993) (applying Convention to companies that were interrelated parent and sister corporations of main carrier and which performed services such as inspection, maintenance, and repair of helicopter and components for carrier in furtherance of the contract of carriage); Johnson, 488 A.2d at 1342 (applying Convention to company under contract with airlines to perform skycap services); Julius Young Jewelry Mfg. Co., Inc. v. Delta Air Lines, 414 N.Y.S.2d 528, 529-30 (N.Y. App. Div. 1979) (applying Convention to independent contractor engaged by the air line to perform inter-line

baggage transfer services in case in which personal property was lost during travel).

This court finds that the Reed rule and the reasoning of the cases expanding that rule are sound and should be followed in the interest of keeping the rule for liability and damages arising from international aviation accidents uniform, certain, and predictable. Plaintiffs cite to no American case in any jurisdiction that has rejected Reed. They rely on Canadian and French cases, decided prior to Reed, that necessarily have been rejected in the line of American cases. Cf. Stratton v. Trans Canada Air Lines, 7 Avi. 17724 (B.C. Sup. Ct. 1961); Miller, Liability in International Air Transport, 276-78 (Kluwer, Netherlands, 1978) (French court permits direct suit against pilot) (citing Billet [Ministère Public c.] (1964) 27 R.G.A.E. 257 note E. du Pontavice (Trib. corr. Versailles, 11 July 1964), rev'd, (1965) 28 R.G.A.E. 408 note E. du Pontavice (C.A. Paris, 25 June 1965), cassation sub nom. Cie U.T.A., Lagarrigue, D.S. 1970.J.81, note P. Chauveau (Cass. crim. 3 Dec. 1969)).

Therefore, this court holds that the provisions of the Warsaw Convention extend beyond the carrier to include those independent agents which, pursuant to contracts or subcontracts with the carrier, perform services related to air travel and in furtherance of the carriage enterprise that the carrier would be bound to perform, either by law or in the interest of providing the best, safest, and most thorough carriage services, in furtherance of the performance of its contract with its customers. Such services necessarily would include, inter alia, inspection, service, maintenance, and repair of aircraft. See Lear, 597 N.Y.S.2d at 415.

*B. Application of the Warsaw Convention to Moving Defendants*

The issue, therefore, becomes whether the Convention applies, that is, whether any of the moving defendants is a carrier under Article 17 or is an agent which “performs services fundamental to, or in furtherance of, the carriage enterprise, and which the carrier itself would be bound, by statute or otherwise to perform in furtherance of its performance of its contract with its customers.” See Waxman, 13 F. Supp. 2d at 515.

*1. Swissair and Delta*

Plaintiffs concede that both Swissair and Delta are carriers for purposes of Article 17, that the claims against them are governed by the Convention, and that punitive damages therefore are unavailable against either defendant. Indeed, punitive damages are not sought specifically against Swissair or Delta in any complaint. To the extent punitive damages have been sought against these two defendants in any complaints, this court holds that they are unavailable as a matter of law and summary judgment is entered in favor of both Swissair and Delta on any claims for punitive damages.

*2. SR Technics*

The real dispute here is whether the Convention applies to SR Technics. According to the evidence presented by the parties, Swissair performed all overhaul and maintenance services on aircraft and powerplants itself, through its Department of Technical Services prior to 1996. Then, in 1996, this business was spun-off into a separate corporate entity, Swissair Technical Services, Ltd., later renamed SR Technics AG. Swissair no longer performed maintenance on its own aircraft, a function for which it would have ultimate legal responsibility under Swiss law. Instead, SR Technics, pursuant to a contractual agreement with Swissair, has assumed

responsibility for maintenance, repairs, and other technical matters pertaining to all aircraft and for ensuring airworthiness, serviceability, and technical flight safety of the Swissair fleet. SR Technics performed all base maintenance, line maintenance, inspection, overhaul, repair, and alteration of aircraft, engines, and aircraft components.<sup>3</sup>

Maintenance, repair, and inspection services described are services “fundamental to, or in furtherance of, the carriage enterprise, and which the carrier itself would be bound to perform.” Waxman, 13 F. Supp. 2d at 515. Swissair is obligated to inspect, repair, and properly maintain its fleet of planes, both by Swiss law and in the interest of providing the best, safest, and most thorough carriage services pursuant to the performance of its contract with its customers. SR Technics, in performing those same services pursuant to its contract with Swissair, became an agent of Swissair and therefore is entitled to the protections of the Convention. See Roselawn, 1997 WL 572898, at \*2 (stating the services provided for the carrier in its operations rendered the other defendants agents of the carrier for those services); Lear, 597 N.Y.S.2d at 412, 415 (inspection, maintenance, and repair of helicopter and its components were in furtherance of the contract of carriage and therefore entitled the defendants to the protections afforded by the Convention).

Plaintiffs attempt to distinguish Lear by attempting to narrow the role of SR Technics to the installation of the IFEN system that allegedly was a primary cause of the disaster. Plaintiffs argue that the installation of the IFEN system was not a routine maintenance matter, but rather constituted a major aircraft modification requiring a Supplemental Type Certificate (“STC”)

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<sup>3</sup> SR Technics does not perform such work only for Swissair, although Swissair accounted for nearly half of SR Technics business in 1997 and 1998.

from the FAA.<sup>4</sup> Therefore, they argue, for purposes of the installation of the IFEN system, SR Technics stands in the same legal position as the manufacturer of the airplane (McDonnell-Douglas and Boeing) or the other defendants (IFT, HI, and SBA) involved in the IFEN system manufacture and installation, none of which falls within the scope and protections of the Convention.

This court finds plaintiffs' argument to be without merit. IFT developed, designed, built the components (or contracted for the building of components) for, and marketed the IFEN system. IFT contracted with Swissair to provide, install, and maintain the IFEN system in Swissair's fleet of MD-11 and Boeing 747 aircraft. HI acted as the airplane/IFEN system integrator. HI contracted with IFT to perform the integration engineering and design, to obtain the necessary certification for the installation of the IFEN system, and to physically install the system onto Swissair aircrafts. HI then subcontracted with SBA to have SBA act as the certifying organization for the issuance of the STC from the FAA, as well as to review and approve test plans and results in support of the environmental testing of IFEN system components. These defendants are not carriers, even as broadly defined under Reed and its progeny. None of these defendants joined this motion for that very reason.

IFT, HI, and SBA performed the major modification to the aircraft, acting as manufacturer and installer of the optional equipment onto the airplane. Thereafter, Swissair would have been obligated, in furtherance of the performance of its contracts with passengers, to oversee and provide facilities and support necessary to that installation, to ensure the overall

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<sup>4</sup> See 14 C.F.R. § 21.113 (“Any person who alters a product by introducing a major change in type design . . . shall apply to the Administration for a supplemental type certificate.”).

quality of that installation, and to certify the airworthiness of the craft upon completion of the installation and the return of the plane to service. There can be no argument that, had Swissair performed those oversight functions itself, it would not have lost its status as a carrier under the Convention. Rather than performing these services itself, Swissair contracted separately with SR Technics to have SR Technics do the very work that Swissair would have been required to perform. As with general maintenance, inspection, and service, this oversight function rendered SR Technics an agent of Swissair. Cf. Roselawn, 1997 WL 572898, at \*2 (stating the services provided for the carrier in its operations rendered the other defendants agents of the carrier for those services). The rationale of Reed and its progeny has consistently been that when a carrier contractually delegates its responsibilities and obligations, it is illogical to withhold the protections of the Convention from the company acting in the carrier's stead. See Waxman, 13 F. Supp. 2d at 514; see also Baker, 590 F. Supp. at 170 ("The uncontroverted fact that [the contractor] had an agreement with [the airline] to perform a service . . . that [the airline] would otherwise be required by law to perform itself is dispositive of the issue."). If Swissair would have been protected from punitive damages under the Warsaw Convention had it itself overseen the quality and completion of the installation of the IFEN system, SR Technics logically also must be protected for its actions undertaken in the place of Swissair pursuant to contract.

Plaintiffs rely on the recent decision in Alleyn v. Port Auth. Of New York, 58 F. Supp. 2d 15, 22 (E.D.N.Y. 1999), to argue that extension of the Convention to include those involved in the installation of the IFEN would "enlarge the coverage of the Convention beyond its reasonable and intended scope." That case is inapposite. In Alleyn, the plaintiff passenger suffered severe personal injuries when a step on an airport terminal elevator collapsed while the passenger was

moving with an escort from the airline from the plane itself to the Immigration and Customs area in the terminal following an international flight. See id. at 17. Defendants included the company with which the airline had contracted to maintain the terminal's elevators, escalators, moving sidewalks, and automatic doors, and a subcontractor. See id. at 18. After reviewing Reed and its progeny, the court rejected the argument that the Convention's liability limitations should apply to a company responsible for the lack of safe maintenance of the terminal escalator. The court held that the airline, although obligated to maintain control of the passengers until they reached Customs, was not obligated to lease space in the terminal or to contract out that work. See id. at 24. More importantly, the maintenance of escalators was not flight-related and not a necessary part of the contract of carriage. The accident related to terminal maintenance and it was "purely fortuitous" that the person harmed had been a passenger on the airline's flight, rather than a passenger on another flight or an airport worker. See id. Alleyn did not reject the extensions of Reed to include the agents of carriers. Rather, it relied on the same controlling standard discussed supra; it simply held under the facts presented that the Reed rule did not apply.

Without agreeing or disagreeing with Lear's result, this court finds that the plaintiffs' reliance on Alleyn is misplaced and the case is easily distinguished

Oversight for SwissAir of the installation of the IFEN system was related to and in furtherance of the contract of carriage. The system was intended to enhance the passengers' enjoyment of the flight and therefore was flight-related and part of Swissair's efforts to provide the best and most thorough carriage services to its passengers. An agent overseeing that system's installation would necessarily come within the scope of the protections afforded Swissair under the Convention. Moreover, given that plaintiffs allege that the IFEN system caused the crash, it

is impossible to conclude that the oversight of the installation of the IFEN was not flight-related. Cf. Roselawn, 1997 WL 572898, at \*2 (holding that the Warsaw Convention applies to companies that performed those services that are one source of the potential liability in the case). Similarly, it cannot be said that it was purely fortuitous that the party harmed by the alleged failure of the IFEN system was a Swissair passenger on the flight in question.

In arguing that the IFEN system was a cause of the crash, but that SR Technics is not protected as an agent of the carrier, the plaintiffs assert contradictory positions. They cannot argue, on the one hand, that SR Technics is at least partly responsible for the plane crash due to its involvement with the IFEN system and, on the other, that SR Technics' conduct is not flight-related. SR Technics' role—overseeing installation and certifying that the plane was airworthy and ready to return to service following that installation—shares an essential nexus to the flight carriage as contrasted with terminal maintenance.

This court concludes, therefore, that SR Technics acted as an independent agent of Swissair, pursuant to a contract, and performed services related to flight and in furtherance of the carriage enterprise that the carrier would be bound to perform, either by law or in the interest of providing the best, safest, and most thorough carriage services pursuant to the performance of its contract with its customers. See Waxman, 13 F. Supp. 2d at 514. Under the rule of Reed and its progeny, which this court adopts, the Warsaw Convention applies to the claims brought against SR Technics. Therefore, punitive damages are not available against SR Technics and the punitive damage claim must be dismissed.

### 3. SAirGroup

The evidence of record shows that SAirGroup is a holding company and the parent of

both Swissair and SR Technics, and performs no operational tasks relative to the airline operations of Swissair.<sup>5</sup> Plaintiffs do not suggest that SAirGroup is or does anything more relative to the IFEN system or to the operation of Flight 111. Because neither of its wholly owned companies, Swissair and SR Technics, can be liable for punitive damages under the Warsaw Convention, SAirGroup cannot be liable for punitive damages under the Convention, and claims for such damages must be dismissed.

*C. Fed. R. Civ. P. 56(f)*

Finally, plaintiffs ask this court to defer decision on this motion and to permit them to take discovery, limited to certain issues. See Fed. R. Civ. P. 56(f) (stating that a court may continue consideration of a motion for summary judgment to permit discovery). A party seeking a continuance under Rule 56(f) must demonstrate with specificity what particular information is sought and how, if uncovered, this information would preclude summary judgment. See D’Alessandro v. Ludwig Honold Mfg. Co., Civ. No. 95-5299, 1997 WL 738863, \*2 (E.D. Pa. 1997) (Van Artsdalen, J.); see also Jeffries v. Deloitte Touche Tohmatsu Int’l, 893 F. Supp. 455, 458 (E.D. Pa. 1995) (Joyner, J.) (stating that where a Rule 56(f) motion is based on pure speculation and raises merely a colorable claim regarding potential liability, a court acts within its discretion in denying the continuance).

Plaintiffs submit the Rule 56(f) affidavit of Robert Spragg, Esquire, an attorney for some plaintiffs in this case and a member of the Plaintiffs’ Committee. Spragg states that the plaintiffs have but limited information regarding the installation of the IFEN system and the participation

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<sup>5</sup> Evidence shows that Swissair is one hundred percent owned by SAirLines, which in turn is one hundred percent owned by SAirGroup. SR Technics is one hundred percent owned by SAirServices, which also is one hundred percent owned by SAirGroup.

of Swissair, SR Technics, and SAirGroup in that installation process, that is, only documents obtained from the FAA and from various web pages and the documents submitted by the moving defendants in support of this motion. The affidavit lists several areas in which the plaintiffs would like to take discovery, including the installation of the IFEN system and the participation of the moving defendants in that installation; the corporate relationship among Swissair, SR Technics, and SAirGroup; the business relationship between SR Technics and Swissair and between SR Technics and other airlines with which it contracted to perform maintenance work. Plaintiffs also submitted proposed Requests for Production of Documents, seeking materials in twenty categories.

Plaintiffs have failed to show how that information, if discovered, could conceivably preclude grant of this motion. First, there really is only one material issue of fact for purposes of this motion: whether SR Technics was an agent of Swissair, performing flight-related tasks. If the answer to that question is yes, then punitive damages are unavailable against SR Technics. Therefore, discovery going to details about the corporate structure and arrangements between Swissair and SR Technics would not be relevant and could not affect the grant of summary judgment. See Baker, 590 F. Supp. at 171 (“The precise nature of the parties’ arrangement is not material under Reed and Julius Young to [the contractor’s] right to avail itself of the liability protections of the Convention.”). Equally irrelevant is anything going to SR Technics’ business relationship and contacts with any companies other than Swissair and anything going to the merits of the plaintiffs’ claim that the IFEN system was a cause of the accident. The only question for the resolution of the agency question is whether SR Technics and Swissair had a contractual relationship. Plaintiffs do not, and cannot, argue that the two companies did not.

Second, the plaintiffs do not specify what information they seek or expect to find through discovery and how that information might preclude the entry of summary judgment. See D'Alessandro, 1997 WL 736863, at \*3. Evidence presented on this motion includes the FAA report granting the STC for the installation of the system, which the plaintiffs themselves submitted. That report describes the roles that SR Technics and Swissair, and other, non-moving defendants, played in the installation of the IFEN system and the return of the MD-11 to flight service. That evidence establishes that SR Technics had a contractual relationship with Swissair and was acting as an agent of Swissair in performing a flight-related function. This evidence is corroborated by the affidavits presented by the defendants. The plaintiffs do not deny, and it therefore is uncontested, that there was contractual relationship between SR Technics and Swissair. Cf. Baker, 590 F. Supp. at 170-71 (suggesting that the existence of a contract to perform a service was dispositive of the question of the application of the Convention to an agent). Plaintiffs do not suggest that the FAA Report and the affidavits submitted by the moving defendants are incorrect, untrue, or inaccurate. In short, plaintiffs do not present anything to suggest that discovery will reveal any documents or other evidence that could contradict this information. Therefore, plaintiffs have not shown that discovery could produce any evidence that would create a genuine issue of material fact, and therefore preclude summary judgment as to SR Technics's contractual relationship with Swissair and as to its role in the installation of the IFEN system.

#### **IV. CONCLUSION**

For the foregoing reasons, the court addresses the motion for summary judgment on punitive damages under the Warsaw Convention and dismisses with prejudice all claims of

punitive damages against the moving defendants.

An appropriate order follows.

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

IN RE AIR CRASH DISASTER : MDL NO. 1269  
NEAR PEGGY'S COVE, NOVA :  
SCOTIA ON SEPTEMBER 2, 1998 : THIS DOCUMENT RELATES TO:  
: ALL CASES

**ORDER**

Giles, C.J.

AND NOW, this \_\_\_ day of February 2002, upon consideration of Defendants' Motion to Dismiss Claims for Punitive Damages, on the ground that such claims are precluded by the Warsaw Convention, 49 Stat. 3000, reprinted at 49 U.S.C. § 40105 (note), for the reasons outlined in the attached memorandum, it is hereby ORDERED that the Defendants' Motion is GRANTED. Accordingly, all claims for punitive damages asserted against Defendants are hereby DISMISSED WITH PREJUDICE.

BY THE COURT:

\_\_\_\_\_  
JAMES T. GILES C.J.

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to