

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

DEITRA SYKES : CIVIL ACTION
 :
 v. :
 :
 JOHN DOES, FLIGHT ATTENDANTS :
 c/o AIR JAMAICA LTD. :
 AND AIR JAMAICA, LTD. : NO. 96-CV-7071

M E M O R A N D U M

WALDMAN, J.

January 21, 1998

Background

This is a personal injury case. Plaintiff alleges that she was injured aboard a commercial airplane on which she was a passenger due to the negligence of defendant Air Jamaica which owned and operated the aircraft. Plaintiff has never identified the "John Doe" flight attendants whose allegedly negligent conduct led to the injuries.

The court recently conducted a nonjury trial. The court has reviewed the testimony and documentary evidence offered at that trial, as well as the subsequent submissions of the parties. The case as presented is quite straightforward. Its resolution necessarily turns on the weight accorded to the testimony of plaintiff regarding how and where she sustained certain injuries.

The court makes the following findings of fact and conclusions of law.

Findings of Fact

Plaintiff is 37 years old. She has worked over a period of years as a program coordinator, data coordinator and meeting planner. She resides in Philadelphia and is a citizen of Pennsylvania.

Defendant is a corporation which operates international commercial aircraft. It is organized under the laws of Jamaica where it maintains its principal place of business. At all pertinent times, defendant was owned by the government of Jamaica.

In September 1994, defendant took a vacation trip to Montego Bay, Jamaica. She secured Air Jamaica tickets through a travel agency in Philadelphia. She was booked first class on direct round-trip flights between Philadelphia and Montego Bay.

Plaintiff returned from Jamaica on September 11, 1994. She was late in arriving at the Montego Bay airport and missed her flight home. Defendant issued plaintiff new tickets in Montego Bay for an Air Jamaica flight to Atlanta and a Delta flight from that city to Philadelphia which departed at 9:22 p.m.

Plaintiff's flight was somewhat late in arriving at Atlanta. She had approximately a half hour to board the Delta flight to Philadelphia.

Plaintiff had stored carry-on items in a cabin closet on the flight from Montego Bay to Atlanta. Plaintiff states that once the plane landed she asked a flight attendant who would open the closet door and was told she could do so herself if she

wished. Plaintiff opened the closet door and retrieved her belongings. She states that she then "stumbled," looked down and saw a walking stick which she placed in the closet. Plaintiff did not see the walking stick fall out of the closet into the aisle but assumed this is what occurred.

Plaintiff did not alert or complain to anyone aboard the flight or any Air Jamaica employee. The attendant with whom plaintiff states she spoke regarding the retrieval of her belongings has never been identified.

Plaintiff was able to reach the Delta gate without assistance. She states, however, that once she was onboard the Delta flight she began to experience pain and some swelling in her left foot or ankle.

On September 14, 1994, plaintiff sought medical attention at the emergency room of the Hospital of the University of Pennsylvania ("HUP"). She was found to have a severe sprain and swelling of the left ankle. She was placed in a fiberglass cast and a week later in a posterior cast.

Plaintiff was referred to the HUP orthopedics department where she was examined by Dr. Enyi Okereke on September 29, 1994. He found that plaintiff had a severe left ankle sprain and probable partial tear of a ligament. She was placed in a cast which was removed on November 2, 1994. She had an aircast through June 1995 and was given crutches to use as needed. Plaintiff took Motrin for pain.

Dr. Okereke referred plaintiff to the HUP outpatient physical therapy department. She reported for scheduled physical therapy on 24 occasions between November 7, 1994 and May 3, 1995. Plaintiff canceled or failed to appear for scheduled therapy on eleven occasions during that period and did not schedule any appointments for therapy in January or the first three weeks of February 1995.

Plaintiff remained out of work from September 14, 1994 to June 1995. At the time she stopped working, plaintiff was earning \$14.96 per hour from CIGNA Corporation as a meeting planner.

In a handwritten note of October 10, 1994 to a CIGNA personnel office employee, plaintiff stated that she stopped working on September 12, 1994 because of a "broken ankle" and would return to work "when the doctor releases me," and asked the employee to send a verification of plaintiff's inability to work to the Philadelphia County Assistance Office. Plaintiff, however, presented no medical testimony or documentation that she was unable or advised not to return to work for nine months.

On December 20, 1994, plaintiff had elective cosmetic surgery from which she was largely incapacitated for one month.

Plaintiff was injured in two prior accidents. She hurt her back and shoulders in July 1989 when the driver of a SEPTA bus on which she was a passenger jammed on the brake. She sought medical treatment, was out of work for several months and filed a lawsuit against SEPTA. In the early 1990s, plaintiff injured her

back and neck when she tripped on the floor at her sister's home. She filed a lawsuit against her sister's landlord.

Plaintiff was also injured in a subsequent accident. She hurt her left knee in February 1997 while riding as a passenger on a SEPTA bus. She has filed a lawsuit against SEPTA.

Plaintiff told the admitting nurse at HUP on September 14, 1994 that she injured her ankle while "I was running at an airport and trying to catch a plane." Plaintiff later told an emergency room doctor who evaluated her that she had "tripped going onto an airplane." Plaintiff told Dr. Okereke at the time of his initial examination that she had "tripped over a briefcase in an airplane." At her initial meeting with the physical therapist on November 7, 1994, plaintiff related that she had "tripped over several walking sticks which fell out of a closet."

Conclusions of Law

Defendant is an instrumentality of a foreign state. See 28 U.S.C. § 1603(b)(2). Defendant was engaged in commercial activity having substantial contact with the United States. See 28 U.S.C. §§ 1603(d) & (e). Defendant is subject to suit in this action in courts of the United States. See 28 U.S.C. § 1605(a)(2). This court has subject matter jurisdiction over this case. See 28 U.S.C. § 1330(a).

A federal court applies the choice of law rules of the state in which it sits. See LeJeune v. Bliss-Salem, Inc., 85 F.3d 1069, 1071 (3d Cir. 1996). Pennsylvania employs a flexible conflicts methodology which combines the traditional significant

relationships analysis with a qualitative assessment of the interests and policies of the respective states regarding the particular controversy. See Carrick v. Zurich-American Insurance Group, 14 F.3d 907, 909 (3d Cir. 1994); Smith v. Walter C. Best, Inc., 756 F. Supp. 878, 880-89 (W.D. Pa. 1990); Breskman v. BCB, Inc., 708 f. Supp. 655, 656 (E.D. Pa. 1988); Griffith v. United Air Lines, Inc., 203 A.2d 796, 805 (Pa. 1964); Laconis v. Burlington County Bridge Com'n., 583 A.2d 1218, 1222-23 (Pa. Super. 1990), app. denied, 600 A.2d 532 (Pa. 1991), cert. disp'd., 503 U.S. 901 (1992).

Where only one state has an interest in the application of its law or where the interests of only one state implicated by the controversy would be impaired if the law of another interested state were applied, of course, there is no true conflict. Lacey v. Cessna Aircraft Co., 932 F.2d 170, 187-88 (3d Cir. 1991); Parker v. State Farm Insurance Co., 543 F. Supp. 806, 809 (E.D. Pa. 1982). If the law of either jurisdiction may be applied without impairing the interests of the states whose law would not be applied, then the court generally applies the substantive law of the forum. Austin v. Dionne, 909 F. Supp. 271, 274 (E.D. Pa. 1995).

Pennsylvania has an interest in ensuring compensation for tortious injury to its citizens and in enforcing standards of care governing relationships undertaken in the state. Plaintiff is a Pennsylvania citizen and entered into a relationship with

defendant in Philadelphia by which it undertook to transport her from and back to that city.

Georgia has an interest in ensuring the safety of persons traveling to or through its facilities. The alleged negligent omission and injury occurred in Atlanta.

Jamaica has an interest in defining and delimiting the legal obligations of its resident corporations. Jamaica also has an interest in promoting tourism and use of its national airline which could be impaired if the right of a foreign passenger to recover for tortious injury were unduly circumscribed.

The interests of Pennsylvania and Georgia would be satisfied by the application of the law of either. Under the law of both states, a common carrier owes the utmost duty of care to its passengers and is liable for any injury proximately caused by a breach of that duty. See Kabo v. UAL, Inc., 764 F. Supp. 1190, 1994 (E.D. Pa. 1991) (airline owes "highest degree of care" to passengers); Griffith, 203 A.2d at 799 (rules of negligence are same for airlines as other common carriers); Ga. Code § 46-9-132 (common carrier must exercise "extraordinary diligence" to protect safety of passengers); Delta Air Lines, Inc. v. Millirons, 73 S.E.2d 598, 603 (Ga. App. 1952) (airline owes passengers duty of "extraordinary diligence"). While the precise standard of care may be different, Jamaican substantive law is derived from the common law and is "akin to our own." Reid-Walen v. Hansen, 933 F.2d 1390, 1401 (8th Cir. 1991); id. at 1406 (Timbers, J. dissenting). General negligence principles are

employed in Jamaica, id., and defendant is presumably aware of the heightened duty of care imposed on carriers in many jurisdictions in which it operates and solicits passengers.

Moreover, it seems reasonable to permit a party voluntarily to waive the potential benefit of the law of a jurisdiction which might otherwise be applicable. Both parties have asked the court to apply Pennsylvania law in deciding this case. The court will do so.

The burden is on plaintiff to prove by a fair preponderance of the evidence that defendant Air Jamaica through an agent or employee was negligent in breaching its duty of the highest care for her safety as a passenger and that this breach proximately caused the injuries for which she seeks an award of damages.

If defendant failed to ensure that the cabin closet could be safely opened without dislodging items which could create a hazard for disembarking passengers, it breached its duty to plaintiff. If plaintiff was injured as a result of stumbling on a walking stick which fell from the closet because of such breach, defendant would be liable.

Verdict and Judgment

The court concludes that plaintiff did sustain a severe ankle sprain and related injuries on the evening of September 11, 1994.

The court believes that plaintiff may have been injured in the manner she testified to. The court believes that she may

also have been injured while hurrying through the Atlanta Airport to make her connection to the Philadelphia flight, or as a result of tripping while going onto the Delta flight or in some other manner.

The court cannot conscientiously find by a preponderance of the evidence, i.e. that it is more likely than not, that plaintiff was injured as a result of stumbling on a walking stick aboard defendant's airline because of the negligence of one or more of the unidentified attendants.

Accordingly, judgment will be rendered in this case for the defendants. An appropriate order will be entered.

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O R D E R

AND NOW, this day of January, 1998, consistent with the court's findings of fact, conclusions of law and verdict in this case as set forth in the accompanying memorandum, **IT IS HEREBY ORDERED** that **JUDGMENT is ENTERED** in the above action for the defendants and against the plaintiff.

BY THE COURT:

JAY C. WALDMAN, J.