

Convention prohibits the recovery of punitive damages, see, e.g., In re Air Disaster at Lockerbie, Scotland, 928 F.2d 1267, 1288 (2d Cir. 1991), the Warsaw Convention is inapplicable to their injuries.

The Warsaw Convention limits an airline's liability for passengers' accidents on the aircraft or while embarking or disembarking from the plane. Convention for the Unification of Certain Rules Relating to International Transportation by Air [hereinafter "Warsaw Convention"], Oct. 12, 1929, art. 17, 49 Stat. 3000, T.S. No. 876 (1934), codified as amended at 49 U.S.C. § 40105 (1994). U.S. Airways claims that Plaintiffs still were in the process of disembarking when the injuries took place.

The case law does not support U.S. Airways' position. In Evangelinos v. Trans World Airlines, Inc., 550 F.2d 152 (3d Cir. 1977), the Third Circuit established three factors for district courts to weigh when determining liability under Article 17: 1) the location of the accident; 2) the activity in which the injured person was engaged; and 3) the control by the defendant of the injured person when and where the accident took place. Id. at 155. The court, however, focused, as had other courts of appeals, on whether the injury occurred after the passenger reached a "safe place" from the risks of air transportation with which the Warsaw Convention was concerned.¹ Id. at 157.

¹The Third Circuit listed these risks as terrorism, hijack, and sabotage. Id. at 157.

U.S. Airways is not liable under the Warsaw Convention. As Plaintiffs argue, the location of the accident and the activity in which Plaintiffs were engaged when injured were disconnected from the U.S. Airways flight from Tampa. Plaintiffs were injured after they entered the terminal, and the injury took place as Plaintiffs, using a service separate from the flight, attempted to reach a flight scheduled to depart two hours later on another airline. Further, Plaintiffs were not under the control of the airline as the court required in Evangelinos. In Evangelinos, the Third Circuit found the passengers were under the airline's control when, in preparation for boarding a flight, they moved to where the airline's personnel specifically directed them. Id. at 156. Because of this fact, the court of appeals found the embarking process had begun. Id. Here, on the contrary, while the operator of the shuttle cart was an employee of U.S. Airways, Plaintiffs were not obliged in any way to use the courtesy shuttle service U.S. Airways provided. In summary, because Plaintiffs were injured inside the "safe place" of the terminal while on a courtesy shuttle not connected to the U.S. Airways flight, U.S. Airways is not liable under the Warsaw Convention.²

² This holding is supported by substantial persuasive authority. See, e.g., Maugnie v. Compagnie Nationale Air France, 549 F.2d 1256, 1262 (9th Cir.) (holding a passenger injured when passing through a lounge to a common passenger corridor, neither of which were owned by the airline, could not recover under the Convention), cert. denied, 431 U.S. 974 (1977); Martinez Hernandez v. Air France, 545 F.2d 279, 285 (1st Cir. 1976)

(finding Warsaw Convention inapplicable to injuries sustained when plaintiffs were waiting for their luggage after the flight); MacDonald v. Air Canada, 439 F.2d 1402, 1405 (1st Cir. 1971) (finding a plaintiff injured while standing near the luggage carousel was not disembarking under the Warsaw Convention); Kantonides v. KLM Royal Dutch Airlines, 802 F. Supp. 1203, 1213 (D.N.J. 1992) (finding plaintiffs moving through the airport at their own pace, under their own control, while on a moving walkway were not disembarking under the Warsaw Convention); Knoll v. Trans World Airlines, Inc., 610 F. Supp. 844, 847 (D. Colo. 1985) (holding that a plaintiff injured while looking for immigration after leaving the airline's gate was not covered by the Convention).