THE MONTREAL CONVENTION: INTERNATIONAL TRAVEL AND AIR CARRIER LIABILITY

By Regan Sieperda

In the everyday world of international travel, passengers are constantly faced with minor and major inconveniences: lost baggage, layovers, cancelled trips, and actual physical injury. Many travelers are unaware of the allowance of recovery the Montreal Convention provides.

To sum it up, the Montreal Convention holds air carriers strictly liable for injuries arising out of an accident that takes place on a Defendant carriers flight. Both the Warsaw Convention and the Montreal Convention provide that an air carrier may be liable for claims for bodily injury to a passenger of an international flight if "the accident which caused the injury took place on board the aircraft."[1] An "accident" has been defined in this context as the "unexpected or unusual event or happening that is external to the passenger."[2] As you are aware, an injured passenger is only required to prove that some link in the chain of causes was an unusual or unexpected event external to the passenger.[3]

This being said, the courts have refused to implement a bright-line test regarding the classification system of turbulence and its' categorization of whether such a classification makes it an "accident" or not. The Court has continued to interpret this notion broadly, finding in *Saks* that the test should be applied flexibly, taking into account an assessment of all the circumstances surrounding a passenger's injuries.[4]

The recovery of damages in instances of personal injury greatly differ from that of normal recovery in most jurisdictions. When attempting to recover under the Montreal Convention, a plaintiff is automatically entitled to recover 128,821 Special Drawing Rights (SDR's) under the strict liability theory which applies.[5] Any plaintiff wishing to recovery anything in excess of 128,821 SDR must satisfy the elements of prima facie negligence.[6]

Transitioning from personal injury recovery, airlines may also compensate international travelers for any lost baggage. Baggage is considered lost if it has not arrived within twenty-one days. Airlines may be liable up to 1,288 in Special Drawing Rights, anything more than this amount may be recovered by filing a special declaration, with an associated fee.[7]

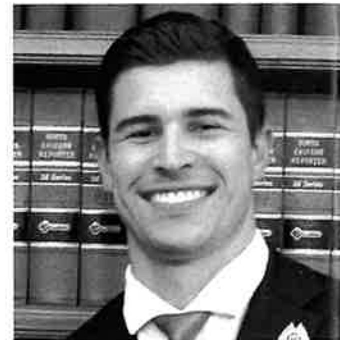
Lastly, under the Montreal Convention, international travelers have a right to recover damages for flight delays as well. Though for delayed flights a traveler cannot recover punitive damages or other non-compensatory damages, passengers are able to recover up to 4,694 in Special Drawing Rights which may cover hotel, food and beverage expenses.[8] In conclusion, the Montreal Convention provides travelers with various options for recovery in travel related claims. O

References:

1 Montreal Convention, Art. 17(1). Convention for the Unification of Certain Rules for International Carriage by Air - Montreal, 28 May 1999.
2 Doe v. Etihad Airways, P.J.S.C., 870 F.3d 406 (6th DCA 2017).
3 *Id.*
4 Air France v. Saks, 470 U.S. 392 (1985).
5 Montreal Convention, Art. 21.
6 *Id.*
7 Montreal Convention, Art 22.
8 Montreal Convention, Art 19.

FLORIDA CONSTRUCTION LITIGATION: THIRD-PARTY NOTICE IMPLICATIONS OF CHAPTER 558

By Benjamin Johnson



Chapter 558 provides guidance for those looking to navigate the waters of construction law in the state of Florida. Unfortunately, these statutory waters are not always clear, especially when it comes to notice requirements. Chapter 558 requires claimants of construction defect actions to provide written notice to parties with whom they have contracted. Chapter 558 typically comes into play when a property owner hires a contractor to perform construction work. The statute expressly directs how construction defects should be handled with respect to this relationship.

However, construction defects cases often involve multiple sub-contractors who have been hired by the general contractor to assist in a project. Here, is where the unclear and problematic language of Chapter 558 leaves Florida in a state of uncertainty regarding the statutes requirements as they apply to "downstream" subcontractors. This predicament is especially concerning when considering that Florida construction defects cases have risen exponentially over the past decade, approaching annual averages of roughly one thousand cases per year.[1] Therefore, it is critical that the Florida judiciary use its power to clarify the ambiguous statutory language of Chapter 558 to protect the rights of property owners.

Section 558.003(1) provides that a claimant cannot file a construction defect action "without first complying with the requirements of this chapter."[2] Further, if a claimant initiates a suit without first complying with Chapter 558, upon timely motion, "the court shall stay the action, without prejudice, and the action may not proceed until the claimant has complied with such requirements."[3]

Section 558.004 provides: "If the construction defect claim arises from work performed under a contract, the written notice of claim must be served on the person with whom the claimant