

March, 2006
No. 5

Aviation and Space Law

In This Issue

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Gendreau v. Hyannis Air: Defending the Fear of Flying Case

By Chris Callanan

Last fall, thousands watched while Jet Blue Flight 292 circled Los Angeles International Airport with its forward landing gear rotated ninety degrees sideways. Among those watching on television were the 140 passengers on board. Passengers described the experience as “surreal.” Zachary Mascoon, a 27 year old, said “I wanted to call my dad to tell him I’m alive so far.” Diane Hamilton, 32 described the landing: “At the end it was the worst because you didn’t know if it was going to work, if we would catch fire. It was very scary. Grown men were crying.” Lisa Schiff, 34, sent a text message to her mother saying: “I love you. Don’t worry about me. If something happens, know that I am watching you and Daddy and David.”

All on board saw the problem with the landing gear on their in-seat television screens. All on board experienced an unusually stressful experience made worse by the ability to watch live news coverage of their own emergency landing. They heard discussion of the danger from on screen anchors and aviation experts. They were fully aware that the plane might crash. Anyone can imagine the horror each passenger felt during the hours the plane circled the airport. But the plane landed without incident. No one was physically harmed. Although the flight was unusually stressful, it achieved its intended result: every passenger walked off of the plane. Did the passengers experience an actionable traumatic event? Did the passengers suffer an actionable emotional injury? Do they have a cause of action? Would a jury find in their favor?

A similar case was tried to a defense verdict in Barnstable

County (Massachusetts) Superior Court in March of 2005. Albert and Doreen Gendreau sued Hyannis Air Services, Inc. alleging negligent infliction of emotional distress and resulting loss of consortium after a “white-knuckle” flight from Cape Cod to Martha’s Vineyard. Gendreau boarded an 11 seat Cessna 402C and sat in the front of the plane directly behind the co-pilot’s seat. It was rainy and windy. Other passengers testified that they expected the flight to be cancelled given the inclement weather. Shortly after take-off, the plane reached 1,000 feet. At that point, the pilot engaged the autopilot function. The plane suddenly pitched upward unexpectedly. Fearing that the plane would stall, the pilot disengaged the autopilot function, took manual control of the plane and pointed the nose down five degrees below the horizon line to maintain airspeed. Without a co-pilot and believing that the autopilot was not functioning, the pilot declared an emergency and returned to Barnstable airport.

According to Gendreau, the plane took three or four nosedives. He believed the plane would crash and he would die. He shouted encouragement to the pilot as the pilot braced himself against the control panel and fought the yoke trying to keep control of the plane. During the nosedives, he believed the plane’s nose pointed directly to the ground. He described his fellow passengers as silently stunned bracing themselves to keep themselves off the plane’s ceiling. He clenched his fists and pushed them against the plane’s ceiling to keep himself in his seat and off of the ceiling. In the lawsuit, he claimed debilitating post-traumatic stress disorder (PTSD.) He claimed that his life was completely and permanently altered. He was depressed, his marriage and relationship with his children suffered, and he was repeatedly struck with panic attacks.

After deliberating for two hours, the jury found that Hyannis Air did not breach any duty to Gendreau. While any juror can relate to a passenger’s fear during flight, the Gendreau jury

found nothing wrong with the conduct of the airline or pilot. Two important aspects of the defense strategy in Gendreau provide insight on successfully defending future fear of flying claims.

Use the Successful Result To Your Advantage.

In Gendreau, passengers testified that they assumed the pilot had made a mistake. One frequent flier hadn’t seen the pilot before and therefore assumed he was inexperienced or had some other deficiency. There was no disputing that the plane, for the brief time it was in the air, either behaved or was flown in an incredibly erratic manner. However, the fact that the ride was unusually scary does not necessarily mean that the airline or pilot performed improperly. In Gendreau, the pilot’s extensive training was used to support the conclusion that he had performed well under difficult conditions. The result – an intact plane landing with unharmed passengers is the best evidence of exemplary pilot performance under difficult, but aberrational conditions. Although the plaintiff raised issues of training and the decision to fly in difficult conditions, the jury wanted to believe that Hyannis Air trains its pilots, that its pilots cannot control every weather condition they face and that this pilot had done his job – he was able to get the plane from a dangerous situation onto the ground. No airline can guarantee a bump free ride, but its ultimate duty is to safely transport its passengers under the circumstance. This pilot did what was necessary to accomplish a safe landing under extreme conditions. Focusing the jury on the result allowed them to see success, not negligence

Dispel the Plaintiff’s “Invisible” Trauma With Concrete Evidence.

The diagnosis of post traumatic stress disorder (PTSD) applies to an individual who endures an unusually stressful experience involving real or threatened death or injury. There is little question that a person who believes themselves to be inside a plane nosediving to the

earth has experienced the type of stressor event envisioned by the PTSD diagnosis. However, by focusing on the additional required objective criteria for the PTSD diagnosis, the defense successfully dispelled Gendreau's claim. In addition to the required stressor event, a patient must demonstrate certain reactions. They include: intrusive recollection of the event; avoidant or numbing behavior, emotional or cognitive strategies to avoid exposure to the trauma-related stimuli; hyper arousal, and panic or generalized anxiety disorder. The symptoms must persist for a period of time and create significant social, occupational or other functional impairment.

Gendreau first mentioned the flight sixteen months after it occurred. In that time he experienced other stressful events including cutting his hand in the blades of a snowblower. In addition, his wife had a history of claiming PTSD. One claim was made after a work Christmas party when she alleged assault by a co-worker. Gendreau never missed a day of work as a result of his distress. The jury did not believe the emotional stress he described was as real as he suggested because they saw the absence of the concrete criteria required for the "invisible" emotional injury claimed. Together with telling evidence from the Gendreaus past, the jury understood that he may have experienced a traumatic event, but he did not suffer the traumatic emotional injury of PTSD.

In all, the Gendreau case demonstrates that the best response to claims that play on common fears is to focus on concrete, specific evidence. Focusing on the flight's successful landing, rather than its tumultuous journey and focusing on the plaintiff's real-life function and behavior, rather than the thoughts one can imagine he had inside that plane, allowed the jury to separate the real from the imagined and decide that Gendreau's fear was not actionable trauma.