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**RUSSIAN ASSOCIATION OF AVIATION AND SPACE  
INSURERS AUTUMN 2012 CONFERENCE  
LEGAL LIABILITY CASES - A WORLD WIDE ROUND UP**

**BY DAVID WILLCOX, PARTNER, CLYDE & CO LLP**

# Russian Federation to implement Montreal Convention 1999?



- Speaking at the International Air Cargo Association summit in Moscow earlier this year, Valery Okulov, Russia's Deputy Minister of Transport, indicated that Russia would ratify the Montreal Convention 1999 "before the end of 2012".
- Draft law circulated by Russian Ministry of Economic Development

# Five questions to be considered

- What is an "accident" (Article 17)?
- Is SDR 113,000 (US\$175,000) payable automatically (Article 21)?
- Where can claims be brought (Article 33)?
- Time Limitation (Article 35)?
- Who is the "carrier" (Article 39)?

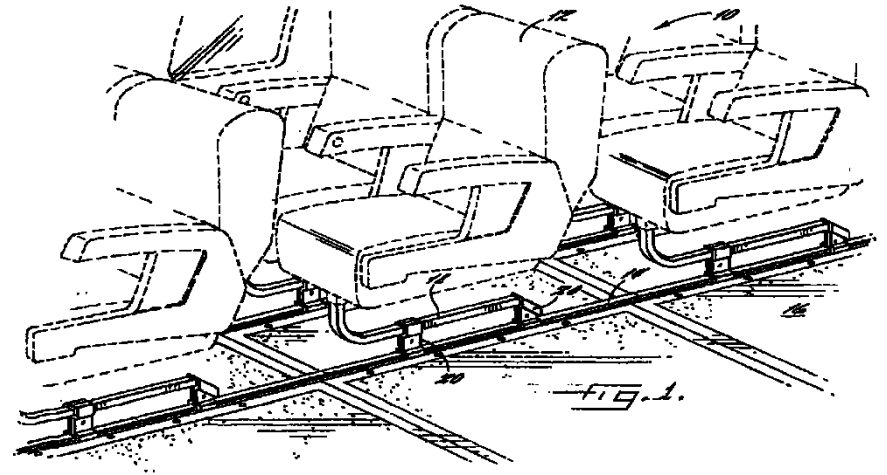
## Article 17, Montreal Convention 1999

### What is an “accident” ?

*“the carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of the operation of embarking and disembarking”.*

# Cases

- *Barclay v British Airways Plc* (2008)
- *Lamarque v Emirates Airlines* (June 2011)
- *Bomandouki v Air France* (2012)
- *Merah v Aigle Azur* (October 2011)
- *Guereiro v Air France* (2011)
- *Bianco v Iberia* (2011)



# Article 21, Montreal Convention 1999

## "Compensation in case of death or injury of passengers"

1. *"for damages arising under paragraph 1 of Article 17 not exceeding 113,000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.*
2. *the carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100,000 Special Drawing Rights if the carrier proves that:*
  - *such claim was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or*
  - *such damage was solely due to the negligence or other wrongful omission of a third party".*



# Air India Express: 22 May 2010



# Article 33, Montreal Convention 1999

## “Jurisdiction”

- “1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties:*
- either before the court of the domicile of the carrier or of its principal place of business;*
  - or where it has a place of business through which the contract has been made;*
  - or before the court at the place of destination.*
- 2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence.....*
- 3. Questions of procedure shall be governed by the law of the court seized of the case”.*



# Western Caribbean Airlines: 16 August 2005



- Western Caribbean Airlines, based in Columbia
- Passengers flying from and back to Martinique (French territory)
- Newvac Inc. – contracting carrier based in Miami

# Article 35, Montreal Convention 1999

## “Limitation of actions”

*“the right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived or from the date on which the carriage stopped”.*

# Cases

*Sucipto yono v Singapore Airlines Limited (2012)*



*Araujo v Tam Linhas Aereas S/A (2012)*



# Article 39, Montreal Convention

## Contracting carrier - actual carrier

*“The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary”.*

# Marsans v Air France (2012)



**AIR FRANCE - ISSUE TICKETS**



# Thank you

David Willcox  
Partner | Clyde & Co LLP  
Direct Dial: +44 20 7876 4126  
Mobile: +44 7768 114 331  
[david.willcox@clydeco.com](mailto:david.willcox@clydeco.com)

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