

Russian Association of Aviation and Space Insurers (RAASI) – 20 February 2019



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Russia Is Not America - Overview

- Differences between Russian damages law and American damages law
- Comparison of damages awards in wrongful death and personal injury cases
- Exploring the differences: unique aspects of the American litigation system
- Attempts to recover American-level damages: the rise of foreign aviation accident cases in American courts

Damages Awards

Russia v. America

Russian Damages Law

- What categories of damages are allowed for wrongful death in Russia?
 - Moral damages
 - Lost earnings
 - Funeral expenses
 - Baggage/personal belongings
 - Legal services
- Damages typically determined by the court

American Damages Law

- What categories of damages are allowed for wrongful death in America?
 - Lost past and future earnings
 - Lost “services” from the decedent
 - Lost guidance, care and companionship of decedent to children and spouse – even adult children
 - Some states allow “loss of the value of life”
 - American law encourages large awards for moral damages
- Damages typically determined by a jury

Recent Russian Damages Awards in Death Cases

- Saravia Airlines Flight AN-148 Accident (2018)
 - 65 passengers and 6 crew members died
 - Hearings held in Russian Courts depending on the location of relatives
 - RUB 2,025,000 paid to all families
 - Full settlement achieved with a large proportion of families
 - Settlement negotiations with some families were delayed as the relatives were reluctant to enter money discussions before the remains of their close ones had been put to ground and the identification and release of remains in this case has taken many months
 - There were several court hearings that confirmed the level of compensations offered by insurers

Recent Russian Damages Awards in Death Cases

- FlyDubai Boeing 737 accident in Rostov-on-Don (2016)
 - 55 passengers and 7 crew members died
 - Foreign aspect
 - 34 civil claims were considered by the district court of Rostov-on-Don

Recent Russian Damages Awards in Injury Cases

- *E. Action (2018)*
 - Passenger severely injured in helicopter accident, rendering him disabled
 - Insurance indemnity was RUB 1,860,000
 - Court awarded compensation, including RUB 1,200,000 for moral damages
 - Hearings related to compensation of lost earnings are ongoing

Recent Russian Damages Awards in Injury Cases

- *Z. Action (2017)*
 - Passenger sustained cuts in her throat while eating a salad that contained pieces of shell
 - Passenger demanded moral damages in the amount of RUB 2,000,000
 - The Court awarded compensation in the amount of RUB 100,000

Recent Russian Damages Awards in Injury Cases

- *Turbulence onboard flight Moscow - Bangkok (2017)*
 - 30 passengers injured to varying degrees as the result of strong and unexpected turbulence mid-flight
 - Airline and insurer paid for medical treatment of passengers in Thailand and Russia, and provided transfer and accommodation
 - The majority of claims were resolved by amicable settlement agreement

Recent Russian Damages Awards in Injury Cases

- *S. Action (2017)*
 - Passenger sustained injuries to his knee after being struck by trolley during meal service
 - Passenger played hockey for an amateur team in the United States and claimed that his injuries cut his hockey career short
 - Passenger was represented by Russian and American attorneys, and threatened to commence an action in the United States
 - During proceedings in the Russian Court, the parties reached settlement

Recent Russian Damages Awards in Injury Cases

St. Action (2018)

- Passenger sustained injuries to his knee as result of a fall from the stairs
- Passenger demands moral damages in the amount of RUB 1,000,000
- Passenger demands material damages in the amount of RUB 6,000,000

What Are The Trends In Russian Damage Awards?

- Amount of compensation is constantly increasing due to the amount of compensation being demanded by passengers and the overall increase in the number of passengers making demands
- There has been an increase in Russian actions arising from “unusual” demands (diseases allegedly caused by air conditioning, overload during takeoff or landing of an aircraft)
- Generally, the increase in compensation is connected to increases in the amount of material damages being awarded, rather than moral damages
- Fine in the amount of 50 % of the recovered sum according to Law on Consumer Protection
- Recent changes in Russian legislation related to damages compensation are connected with Russia entering into the Montreal Convention

What Are The Trends In Russian Damage Awards?

- American lawyers are indeed active in Russia
- The threat of non - American claims being “exported” to US jurisdiction is a major risk
- American exposure is not only about flights to the America

Recent American Jury Verdicts In Death Cases

- *Dobbs v. Bell Helicopter Textron* (2017)
 - Kansas state court
 - Medical transport helicopter crash caused by main rotor blade failure
 - All three occupants were killed
 - Jury awarded \$21.7 million (RUB 1,440,934,332) for three deaths

Recent American Jury Verdicts In Death Cases

- *Brokaw v. National Air Cargo* (2017)
 - Cook County (Chicago)
 - B757 cargo accident in Afghanistan
 - Three crew members killed
 - Jury awarded \$115 million (RUB 7,636,287,939) for three deaths

Recent American Jury Awards In Personal Injury Cases

- *Guzman v. The Boeing Company* (2018)
 - Rapid decompression on B757 caused by a hole in the fuselage
 - Crew declared emergency and made a safe landing
 - Passenger allegedly suffered post-traumatic stress disorder requiring psychological counseling
 - No physical injury
 - Jury awarded \$2.2 million (RUB 146,086,175) in damages

Recent American Jury Awards In Personal Injury Cases

- *Darden v. City of Chicago* (2017)
 - Plaintiff was severely injured at O’Hare Airport when a parking structure collapsed on top of her
 - Plaintiff became a paraplegic
 - Permanent internal injuries
 - Chronic pain and depression
 - Jury awarded \$41 million (RUB 2,722,515,085) in economic damages and \$107 million (RUB 7,103,832,146) in non-economic damages

Russian Damages v. American Damages

- Why are compensatory damage awards lower in Russia?
 - Lower salaries in Russia
 - Lower levels of compulsory indemnity by insurers in Russia
 - Damages typically determined by court, not a jury

Russian Damages Law v. American Damages Law

- Why are moral damage awards lower in Russia?
 - Historically, there were no moral damages permitted in USSR
 - Establishment of moral damages in 1990s was done conservatively using low levels
 - Increased attention in the media and in Russian courts on the disparity between Russian damage levels and American/European damage levels
 - Trend in Russia today is for increases in levels of moral damages

Russian Damages v. American Damages

- Why are American jury verdicts so high?
 - Damages are decided by a jury of ordinary citizens
 - Jury decides on the amount of damages independent of the judge based on their own judgment and their own view of justice
 - The level of moral damages is independently set by the jury
 - American law has more categories of damages, especially for moral damages

Unique Aspects of the American Litigation System

The American Jury System

- Average jury verdicts keep increasing at rates well above inflation
- A recent study found that jury verdicts are reaching into the tens of millions—and even billions—of dollars for personal injury cases and cited the following contributing factors:
 - Jurors’ distrust in big corporations
 - Rise of social media
 - Short attentions spans; jurors pay less attention to lengthy testimonies and complex explanations
 - Emotional stories impact the way a jury thinks
 - Jurors look at every case with a ‘What if it were me?’ attitude

American Jury Determination in Minor Personal Injury Cases

- Recent jury focus group study in California to evaluate juror attitudes about damages in airline case
- *The Case:* In-flight engine shutdown leading to safe emergency landing
 - Smoke in the cabin for several minutes
 - No physical injuries
 - Three juries awarded \$190,000 – \$250,000 (RUB 12,614,281 – 16,596,818) per passenger for emotional injuries

America's Legal System is More Litigious

- American laws and regulations provide path to the courthouse
 - Emotional support animals on flights
 - Consumer dissatisfaction
- American plaintiffs' lawyers typically work on a contingency basis
 - Fee arrangement where lawyer gets percentage (typically one-third) of the plaintiff's damages award

Emotional Support Animals on Flights

- American law permits passengers to bring emotional support animals on flights
 - United States Department of Transportation (DOT) Rules for foreign air carriers
 - 14 CFR§382.118(g) only requires carriage of dogs as service animals
 - Expressly excluded: snakes, reptiles, ferret and spiders are never considered service animals

Emotional Support Animals on Flights

- What types of animals are permitted?
 - Expressly excluded: snakes, reptiles, ferret and spiders are never considered service animals
 - But: Miniature horses, pigs, monkeys, peacocks are not expressly forbidden



Increase in Passenger Claims and Lawsuits Over Service Animals

- Trend is for passengers to file U.S. Department of Transportation (DOT) complaints against passengers or file lawsuits based on denied boarding of service animals
- Our firm has seen 400% increase in denied boarding claims over service animals
- Defense of air carriers in such cases in the United States exceeds \$25,000 in defense costs

Consumer Rights Protections In America

- American law also provides much more opportunities for filing of lawsuits for consumer protection
- Examples:
 - “Twizzlers” lawsuit: *Goldberg v. The Hershey Company*



- Plaintiff alleges “permanent health effects” caused by eating large amounts of Twizzlers black licorice candy
- Claims high blood pressure and atrial fibrillation

Consumer Rights Protections In America

- *Faison v. Russell Stover Chocolates LLC*
 - Class action lawsuit against chocolate company alleging they deliberately under-fill the boxes of chocolate
 - Accused of misrepresenting the weight to mislead consumers into paying more money for less chocolate



Attempts to Recover American-Level Damages: *The Rise of Foreign Aviation Accident Cases in American Courts*

Who has exposure to American damages levels?

- Aviation plaintiffs' lawyers in America and in other countries evaluate all commercial aviation accidents to evaluate possibility of U.S. jurisdiction

Recent Non-U.S. Accidents Confirm This Trend

- Malaysia Airlines Flight 370 (MH 370)
- Air Asia Flight 8501
- Lion Air Flight 610

MH 370 “Accident”

- March 8, 2014 flight from Kuala Lumpur, Malaysia to Beijing, China
- Boeing 777 aircraft operated by a 12-person, all Malaysian crew
- 227 passengers, including 152 Chinese citizens, 38 Malaysian citizens, and 3 American citizens
- Disappeared somewhere in the southern Indian Ocean 39 minutes after takeoff
- 40 actions filed in American courts
- On November 21, 2018, American court dismissed all 40 actions on *forum non conveniens* (“FNC”) grounds

Air Asia Flight 8501

- December 28, 2014 flight from Surabaya, Indonesia, to Singapore
- Airbus A320 aircraft operated by a 6-person crew, five Indonesian citizens and one French citizen
- 156 passengers, no Americans
- Crashed into the Java Sea, killing all 162 people on board
- 36 actions filed in American courts
- On December 9, 2016, the federal court in the Northern District of Illinois dismissed the actions based on FNC

Lion Air Flight 610

- October 29, 2018 domestic Indonesian Flight (Jakarta to Pangkal Pinang)
- 181 passengers and 8 crew
- All passengers except one were Indonesian citizens and all crew except one were Indonesian citizens
- Accident aircraft was a new Boeing 737 Max

Thank You for Attending.

