

Insurance Insights

Claims Against International Airlines

When has an ‘Accident’ occurred? Does a failure to provide water during a flight constitute an ‘accident’?

Key takeaways

- An ‘accident’ is an unusual event or happening, that is external to the passenger.
- An ‘accident’ is not where the injury results from:-
 - the passenger’s own internal reaction
 - to the usual, normal and expected operation of the aircraft.
- Issue will be governed by Section 9E of the *Civil Aviation (Carriers’ Liability) Act 1959*.

Claims for bodily injuries to passengers on international flights are governed in Australia by the *Civil Aviation (Carriers’ Liability) Act 1959 (Carriers’ Act)*, which gives effect to the Montreal Convention.

[Lina DiFalco v Emirates \(No 2\)\[2019\] VSC 654 \(DiFalco\)](#)

The Plaintiff, Ms DiFalco, made a claim under the Carriers’ Act following an injury sustained on a flight operated by the Defendant, Emirates. The Plaintiff gave evidence that she made requests to the cabin crew for water, and shortly after her fourth request, feeling nauseous and dizzy she got up to walk to the toilet and fainted, fracturing her ankle as a result of the fall.¹ The necessary external event, she submitted, was the failure to provide adequate hydration that was unusual and unexpected.

Under Section 9E of the Carriers’ Act, the occurrence of an ‘accident’ which causes injury, will engage strict liability of the carrier. Any claims based upon a common law duty of care or statutory or contractual liability are no longer available.²

¹ *DiFalco v Emirates (No 2)* [2019] VSC 654, [23].

² *DiFalco*, [8].

The Defendant submitted that the failure to provide adequate hydration was not an event of omission, and if the failure to provide water could be viewed as an event, the circumstances of that failure occurred in the expected, usual manner in accordance with airline practice.

The Judge held that an omission can amount to event. Considering all the evidence, Her Honour found that the requirement that an event be 'external to the passenger' is measured by reference to an objective standard of usual, normal aircraft operations, not by reference to the subjective expectations of the passenger. The Plaintiff's claim was dismissed.

These principles can be summarised to apply in a determination of whether an 'accident' has occurred:³

- (a) A passenger's own internal reaction to the usual, normal and expected operation of the aircraft is not an accident
- (b) An accident that is a cause of an injury is different to the occurrence of injury itself
- (c) It is necessary to identify an event or happening that is external to the passenger
- (d) Identifying an event requires flexible application. An event may arise from acts, omissions or from a combination of acts and omissions
- (e) The event must be unexpected or unusual
- (f) There may be a chain of events that lead to injury
- (g) It is sufficient that some link in the chain of causal events was an unexpected or unusual event external to the passenger
- (h) If the event is described as inaction or as a failure to do something, the absence of action will not amount to an event unless it can be shown to be an omission by reference to some legal standard requiring action
- (j) Whether an accident has occurred is a question of fact.

³ *DiFalco*, [18], Forbes J.

Conclusion

In this case, the fact that nothing unusual or unexpected had occurred during the flight, resulted in the Judge finding that no accident had occurred and the Plaintiff's claim was dismissed. In order to engage the strict liability provisions of the Carriers' Act, and succeed in a damages claim against an airline, a Plaintiff must establish the requirements of an 'accident'.

This article was written by Principals Rob Minc and David Randazzo, and Lawyer Rosemary Blanden. If you would like details on the implications of this case on your business, please contact us for further information.



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