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Airplane Trip Insurance

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tends to kindle the jury's curiosity and preoccupation with the question.

Even to hold that, while such statements are improper, they can be cured by proper instruction to disregard them does not solve the problem since the effect of such an instruction is to accentuate the matter.

A modern approach to the problem would allow the introduction of casual references to the fact of liability coverage, where such references are not made for the clear purpose of influencing the jury to return an improper or excessive verdict. In each instance, the control of such argument should be left to the discretion of the trial judge. The California District Court of Appeals appears to have adopted this view in the recent case of *Douglass v. Webb*.²⁸ There, the court said:

"[T]oday, due to common knowledge among laymen that in cases of this kind the real defendant is the insurance company, prejudice can hardly result from mere mention of insurance, if the circumstances are not aggravated . . . , if it could have made no difference in the final outcome of the case or award, and if the verdict is not excessive."²⁹

ROBERT GREER BANNON

AIRPLANE TRIP INSURANCE

With the increased use of the airplane as a means of passenger travel, there developed a new type of accident insurance, commonly referred to as "air trip travel insurance."¹ Most purchasers of these policies do not fully understand the various coverage limitations and qualifications, and, as a consequence, legal complications are sometimes encountered when recovery is sought.²

²⁸26 Cal. Repr. 60 (Dist. Ct. App. 1962).

²⁹Id. at 67.

¹In recent years air trip travel insurance has developed into a business of tremendous volume. For example, a recent annual report filed by a group of underwriters who handle a large portion of air trip insurance business in the United States, showed total premium collections for the year to be \$3,382,561. In the same year the group wrote air trip insurance for \$84,564,025,000 and paid out \$1,388,839 in losses. Meade, *How Secure Is Air Trip Insurance?*, 68 Virginia State Bar Association Reports 215, 218 (1957).

²It has been argued that these difficulties are due largely to the fact that in most states there is an absence of legislative regulation in the air trip insurance field. Meade, *How Secure Is Air Trip Insurance?*, 68 Virginia State Bar Association Reports 215, 221 (1957).

Steven v. Fidelity & Cas. Co.,³ a recent California case, shows the problems of construction that can arise in connection with an air trip policy. At the Los Angeles International Airport, George Steven purchased a round trip airplane ticket from Los Angeles to Dayton, Ohio and, at the same time, obtained from a vending machine a \$62,500 accident insurance policy to cover the trip. The top of the policy carried the following warning:

"Do Not Purchase More Than A Total Of \$62,500 Principal Sum—Nor For Travel On Other Than Scheduled Air Carriers. This Policy Covers On One-Way Trip Only Unless Round Trip Ticket Is Purchased Before Departure."⁴

After writing the required information⁵ on the policy, Mr. Steven, using the envelope provided, mailed it to his wife, the beneficiary.

Mr. Steven's return itinerary from Dayton included a stopover in Terre Haute, Indiana where he was to meet a Lake Central Airlines flight which would take him to Chicago. This flight was cancelled after an eight-hour delay. In attempting to arrange for substitute transportation, a Lake Central Airlines agent contacted railroads, bus lines, and an automobile rental company, but was unable to find anything which would permit a connection with the scheduled flight from Chicago to Los Angeles. The agent then took Mr. Steven and some others to the office of the Turner Aviation Corporation, where it was concluded that the only way to make the scheduled connection would be by chartering a Turner plane to Chicago. Turner agreed to fly the men to Chicago for \$21 per person, and accordingly, this amount was paid by each of the passengers. Shortly after taking off from Terre Haute, the plane crashed, and Mr. Steven was killed.

Turner Aviation Corporation operated out of Terre Haute under a federal air taxi certificate,⁶ but did not hold the Certificate of Pub-

³27 Cal. Rptr. 172, 377 P.2d 284 (1962).

⁴27 Cal. Rptr. at 174, 377 P.2d at 286.

⁵Below the printed warning "a box form provided for the insertion on appropriate lines of the insured's name, the name and address of the beneficiary, the point of departure and destination, the extent of the trip as on a one-way or round-trip ticket, the date, the principal sum of insurance (\$62,500), the amount of the premium (\$2.50), and the insured's signature." Ibid.

⁶Air Taxi Classification. "(a) There is hereby established a classification of air carriers, designated 'air taxi operators' which engage in the direct air transportation of passengers and/or property and which:

(1) Do not utilize aircraft having a maximum take-off weight of more than 12,500 pounds in air transportation.

(2) Do not hold a certificate of public convenience and necessity or other economic authority issued by the Board.

(b) A person who does not observe the conditions set forth in paragraph (a) of

lic Convenience and Necessity⁷ required of scheduled air carriers and did not maintain and publish schedules or tariffs for regular passenger service.

The trial court denied recovery on the insurance policy because the deceased was traveling on a chartered plane and therefore, was not a passenger on a regularly scheduled airline as defined in the policy.⁸ The district Court of Appeal affirmed this decision.⁹

The Supreme Court of California, in a four to three decision, reversed the lower court and held that the fact that Mr. Steven failed to exchange his regular airline ticket prior to taking the substituted flight on a non-scheduled airline did not relieve the insurer of liability under the policy because: the machine prevented him from reading the policy prior to purchase; he could not have practically consulted the policy later due to the instruction to mail it to the beneficiary; and the policy provisions were not sufficiently explicit to afford necessary notice of noncoverage.

The three dissenting judges agreed with the decision of the District Court of Appeals¹⁰ which held that there was no ambiguity in the provisions of the policy restricting coverage to death or injury resulting from travel on scheduled air carriers, that the aircraft involved was non-scheduled, and that at the time of the accident "the insured was not 'traveling on a transportation ticket or pass covering the whole of said airline trip' as set forth in the policy."¹¹ One judge further commented that an ordinary traveler would not reasonably believe that the policy covered travel on other than scheduled air carriers, and that the insurer should not be required to cover risks which it does not wish to cover.

The questionable provisions of the policy confronting the court in this case concerned limitation of the coverage to scheduled air carriers and qualifications in case of substituted transportation. The policy's detailed definition of "Aircraft Operated By A Scheduled Air Carrier"¹² covered planes operated by an airline holding a Certificate

this section shall not be an air taxi operator within the meaning of this part with respect to any operations conducted by him while such conditions are not being observed, and during such periods is not entitled to any of the exemptions set forth in this part." 14 C.F.R. § 298.3 (1962).

⁷14 C.F.R. pts. 201-202 (1962).

⁸Note 12 *infra*.

⁹Steven v. Fidelity & Cas. Co., 22 Cal. Rptr. 83 (Dist. Ct. App. 1962).

¹⁰27 Cal. Rptr. at 186, 377 P.2d at 298.

¹¹22 Cal. Rptr. at 87.

¹²"4. DEFINITION OF AIRCRAFT OPERATED BY A SCHEDULED AIR CARRIER. The words "Aircraft Operated by a Scheduled Air Carrier" as used in this policy, mean and are defined as follows: (1) aircraft of United States registry,

of Public Convenience and Necessity and making regularly scheduled passenger flights between specified cities. Excluded were aircraft operated by scheduled military air carriers and by irregular or non-scheduled air carriers. Turner, being an air taxi carrier, did not fall under this definition.¹³ The clause describing substituted transportation¹⁴ did not give clear notice that a chartered flight was not covered. The court's liberal interpretation of these two provisions in favor of the insured was based on Mr. Steven's knowledge and understanding as a reasonable layman and on his normal expectation that he would be covered for the entire trip, even though emergency substituted transportation might have to be employed. As a result, it was felt that the provisions failed to apprise him of the asserted noncoverage.

This contract of insurance was made before the purchaser had a chance to read the policy, and the inanimate machine could not answer any questions the insured may have had. Further, even if Mr. Steven had read the policy before leaving Los Angeles, it is unlikely that he would have remembered the details and intricacies of the limiting provisions three days later in Terre Haute. It is plain that a logical solution was reached in allowing the beneficiary to recover under such circumstances, since common sense should be used in construing the terms of an insurance contract.¹⁵

Considering the large quantity of air trip insurance purchased

operated on a regular, special or chartered flight by a scheduled air carrier holding a certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board of the United States of America, or its successor, and which in accordance therewith files, prints, maintains and publishes schedules and tariffs for regular passenger service between named cities at regular and specified times, or (2) aircraft of foreign registry... or (3) aircraft of United States registry operated on a regular scheduled flight solely within the boundaries of a State of the United States by a scheduled air carrier legally authorized to conduct such operation, and which files, prints, maintains and publishes schedules and tariffs for regular passenger service between named cities solely within the boundaries of such State at regular and specified times. Specifically excluded from the above definition... are any and all aircraft operated by scheduled military airlines and any and all aircraft operated by air carriers recognized, designated, licensed or determined by the governmental authority having jurisdiction over civil aviation as being irregular or non-scheduled air carriers.'" 27 Cal. Rptr. at 175-76 n.1, 377 P.2d at 287-88 n.1.

¹³14 C.F.R. §§ 291.1, 298.2 (1962).

¹⁴"This provision affirmatively extended coverage to injuries sustained 'while riding in or on a land conveyance provided or arranged for, directly or indirectly, by such scheduled air carrier... for the transportation of passengers necessitated by an interruption or temporary suspension of such scheduled air carrier's service...'" 27 Cal. Rptr. at 177, 377 P.2d at 289.

¹⁵Hall v. Mutual Benefit Health & Acc. Ass'n, 220 S.W.2d 934 (Tex. Civ. App. 1949).

yearly,¹⁶ there has been a relatively small amount of litigation.¹⁷ All reported cases, with three exceptions, deal with the general question of what particular travel is included under the policy coverage.

In each case this question presents itself in connection with the meaning of substituted transportation or scheduled air carriers. The first case to arise involving substituted transportation was *Fidelity & Cas. Co. v. Smith*,¹⁸ where an airplane round-trip accident policy covered travel on substituted approved commercial airlines if the original ticket was exchanged. After completing the outbound flight, the insured had to make an unplanned trip to a city along the return route. It was not possible to exchange his original ticket, so he purchased a new one on a different airline. After he was killed on this trip, his beneficiary was allowed recovery,¹⁹ notwithstanding the fact that the original ticket was not exchanged and that the deceased had purchased an additional policy to cover his unplanned trip. In *Tannenbaum v. Continental Cas. Co.*,²⁰ recovery was denied under a similar factual situation. In this case the insured, after his plans had changed, was able to exchange his return trip ticket. However, his new destination was not along the route of his original return itinerary, and he was killed when returning from this place to the city where his initial trip began. *Thompson v. Fidelity & Cas. Co.*²¹ dealt with whether or not the insured was a passenger on a scheduled airline. It was held that the flight was non-scheduled, and consequently, no recovery could be had.²² In contrast to the *Steven case*,²³ the insured

¹⁶Note 1 supra.

¹⁷The following is a list of all reported cases dealing with air trip policies: *Mutual Benefit Health & Acc. Ass'n v. Brunke*, 276 F.2d 53 (5th Cir. 1960); *Fidelity & Cas. Co. v. Commander*, 231 F.2d 347 (4th Cir. 1956); *Thomas v. Continental Cas. Co.*, 225 F.2d 798 (10th Cir. 1955); *Fidelity & Cas. Co. v. Smith*, 189 F.2d 315 (10th Cir. 1951); *Rosen v. Fidelity & Cas. Co.*, 162 F. Supp. 211 (E.D. Pa. 1958); *Thompson v. Fidelity & Cas. Co.*, 16 Ill. App. 2d 159, 148 N.E.2d 9 (1958); *Lachs v. Fidelity & Cas. Co.*, 306 N.Y. 357, 118 N.E.2d 555 (1954); *Slater v. Fidelity & Cas. Co.*, 277 App. Div. 79, 98 N.Y.S.2d 28 (1950); *Tannenbaum v. Continental Cas. Co.*, 28 Misc. 2d 860, 214 N.Y.S.2d 988 (Sup. Ct. 1961).

¹⁸189 F.2d 315 (10th Cir. 1951), discussed in 36 Marq. L. Rev. 109 (1952).

¹⁹*Rosen v. Fidelity & Cas. Co.*, 162 F. Supp. 211 (E.D. Pa. 1958) is a case on all fours with the *Smith* case and also allowing recovery. A major factor in the outcome of these two cases seems to have been the fact that it was impossible to exchange the original ticket.

²⁰28 Misc. 2d 860, 214 N.Y.S.2d 988 (Sup. Ct. 1961).

²¹16 Ill. App. 2d 159, 149 N.E.2d 9 (1958). This opinion contains a good discussion of the meanings of the terms "scheduled" and "non-scheduled airlines." See also, *McBride v. Prudential Ins. Co. of America*, 147 Ohio St. 461, 72 N.E.2d 98 (1947), which discusses the term "regularly scheduled aircraft."

²²*Acord, Thomas v. Continental Cas. Co.*, 225 F.2d 798 (10th Cir. 1955).

²³Note 3 supra.

was killed upon take-off from the starting point of his trip. Just prior to departure, he had purchased his air trip insurance policy and the ticket on the nonscheduled airline. In *Lachs v. Fidelity & Cas. Co.*,²⁴ recovery was allowed even though the passenger was admittedly riding on a non-scheduled airline. The decision was based largely on the fact that the vending machine from which the policy had been purchased was placed in front of an airport counter used by all non-scheduled airlines as a processing point for their passengers. It was felt that this had been misleading to the deceased.

The three cases dealing with questions other than what travel is covered by the policy are *Slater v. Fidelity & Cas. Co.*,²⁵ *Fidelity & Cas. Co. v. Commander*,²⁶ and *Mutual Benefit Health & Acc. Ass'n v. Brunke*.²⁷ In the *Slater* case, the passenger purchased a number of policies from the same vending machine and, in doing so, bought more than the aggregate amount of insurance allowed any single buyer. The policies above the maximum limit were held to be void from inception since the limit was clearly set forth on the vending machine. The *Commander* case dealt with the problem of coverage where the actual cause of death was unknown. The plane had crashed into the ocean, and the insured was not thereafter found. Under these circumstances the beneficiary was allowed to recover. The *Brunke* case involved a situation where the insured was injured in a taxicab accident while being transported to the airport on his return trip. The round trip airline policy afforded coverage for such an accident, but, since there was a delay of two years between the time of the injury and the notice to the insurer, recovery was not allowed notwithstanding that the insured was without knowledge that his injuries were covered and that his wife had lost the policy.

In view of these cases it is apparent that the underlying problem comes from a consideration confronting every insurance company when attempting to underwrite a policy. The insurer must clearly define the risk it intends to assume, for if does not, its liability may become so great as to make the issuance of such policies prohibitive when compared with the premiums paid.²⁸ The air trip insurers must provide a policy which cannot be used to cover a number of flights for the same premium as is paid for one flight or for one round trip. This

²⁴306 N.Y. 357, 118 N.E.2d 555 (1954).

²⁵277 App. Div. 29, 98 N.Y.S.2d 23 (1950).

²⁶231 F.2d 347 (4th Cir. 1956).

²⁷276 F.2d 53 (5th Cir. 1960).

²⁸Vance, Insurance § 60 (3d ed. 1951); Patterson, Essentials of Insurance Law §§ 53-55 (2d ed. 1957).

desired limitation appears to be the reason a round trip ticket must be purchased before departure if the entire trip is to be covered and the reason the original ticket must be exchanged when a substituted flight is taken. Along the same line, the insurer endeavors to limit its protection to only the safest types of air travel because of the comparatively small premiums received; and herein lies the idea behind the requirement of travel on scheduled air carriers only. The end product should be a policy attractive to travelers thinking in terms of one flight or one round trip, which is fair to purchasers and still does not provide greater coverage than can fairly be given for the premiums charged. To make the policy worthwhile for both parties, a fine balance between the benefits offered and liabilities assumed must be found.

Three companies offering trip insurance to air travelers of the type discussed in this comment are Continental Casualty Company,²⁹ Fidelity and Casualty Company of New York,³⁰ and Mutual of Omaha Insurance Company.³¹ From an examination of their policies, it is noted that the methods of sale and provisions as to coverage are essentially the same, with the individual companies differing only on minor points.³² The policies are sold either through insurance booths having an attendant who aids the traveler in obtaining the desired coverage, or through self-service vending machines which permit a quick but silent transaction.³³ In general, the policies cover accidental

²⁹Home Office: Continental Center, 310 S. Michigan Ave., Chicago 4, Ill.

³⁰Home Office: 80 Maiden Lane, New York 38, N.Y. Policies issued in the name of Fidelity and Casualty Co. of New York are sold by Associated Aviation Underwriters, which is a group of companies sharing in the profits and losses of the overall operation of their air trip insurance business.

³¹Home Office: 33rd and Farnam, Omaha 1, Nebraska. Mutual's air trip travel insurance policies are issued in the name of Mutual Benefit Health and Accident Association and the program is administered by its subsidiary, Tele-Trip Company, Inc., 1625 Eye Street N.W., Washington 6, D.C.

³²The policies of the various companies have the same general format; the most noticeable difference is in the wording of the clauses. See, Continental Cas. Co. policy form TP-985-G, Fidelity & Cas. Co. policy forms ATC-5-61 and ATV-5-61, and Mutual Benefit Health & Acc. Ass'n policy forms T20AV-B and T20AV-M.

³³"When the Aviation Industry was in its infancy, air trip insurance was sold by the airlines ticket representatives and the cost was a percentage of the air fare. World War II, due to the man-power shortage, brought about the inauguration of insurance vending machines and then in 1952, fully manned insurance booths were introduced to take care of the insurance needs of the ever-increasing number of airline passengers. The insurance vending machines cannot possibly take the place of insurance booths, whose well-trained personnel provide the air traveler with personalized service. The vending machine does, however, provide an important service in supplementing a booth operation by providing the facility for insurance when the booth is closed or, in smaller airports, where it is not economical to have a booth operation." Letter from D. M. Madgett, Vice President, Mutual of Omaha Insurance Company, to Edgar H. MacKinley, Feb. 26, 1963.

death, dismemberment, and medical expenses resulting from accidental injury.³⁴ The passenger is protected while on any regular flight of a scheduled airline,³⁵ and can be insured for a round trip if the return ticket is purchased prior to the initial flight from the point of departure. The aggregate amount allowable is limited,³⁶ and the only exclusion are suicide and death or injury resulting from war.³⁷

In addition to its standard air trip policy, Mutual of Omaha offers trip accident insurance which covers passenger travel on aircraft operated by governmental branches.³⁸ This policy was custom made for the Military Air Transport Service (MATS) and gives essentially the same protection as that provided by the more common commercial airline trip policy. The companies also sell in airports an annually renewable common carrier passenger accident policy,³⁹ which covers various means of transportation including air travel; and a short term travel accident policy,⁴⁰ which provides protection for all accidents that may occur during a specified term.⁴¹

³⁴Medical expenses allowed for accidental injury are limited to \$50 for each \$1,000 of principal sum. This applies to physician, surgeon, nurse, hospital, X-ray, and ambulance expenses incurred within 1 year after the accident. Continental Cas. Policy form TP-985-G, pt. VII; Fidelity & Cas. Co. policy forms ATC-5-61, pt. 7(b) and ATV-5-61, pt. 7(b); Mutual Benefit Health & Acc. Ass'n policy forms T20AV-B, pt. D and T20AV-M, pt. D.

³⁵Coverage also extends to substituted land or water conveyances provided at the expense of the airline; to limousine service provided, or arranged for, by the airline for going to or leaving an airport; and to injuries received upon any airport premises immediately before boarding, or after alighting from any aircraft. Continental Cas. Co. policy form TP-985-G, pt. II; Fidelity & Cas. Co. policy forms ATC-5-61, pt. 4 and ATV-5-61 pt. 4; Mutual Benefit Health & Acc. Ass'n policy forms T20AV-B, pts. A(2)-(4) and T20AV-M, pts. A(2)-(4).

³⁶Individual policies have maximum limits of \$75,000 or \$100,000 principal sum. These are also the aggregate amounts allowable if more than one policy is purchased, except for Mutual of Omaha which allows \$150,000. All companies have a standard premium rate, which is \$0.25 for each \$7500 of principal sum.

³⁷Vance, Insurance § 95 at 566, § 101 (3d ed. 1951).

³⁸Mutual Benefit Health & Acc. Ass'n policy form T9AV-B. This policy covers passenger air trips on any aircraft, other than a single engine jet, which is operated by the U.S. Dept. of Defense, U.S. Coast Guard, Air National Guard, Royal Canadian Air Force Air Transport Command and Royal Air Force Air Transport Command of Great Britain. Also, coverage is provided for any scheduled aircraft of foreign registry operated by an airline which is a member of the International Air Transport Association.

³⁹Continental Cas. Co. policy form TP-908; Fidelity & Cas. Co. policy form CC 11-58.

⁴⁰Continental Cas. Co. policy form TZ 1078; Fidelity & Cas. policy form STT 1950-Rev. 2-54.

⁴¹This discussion of travel insurance is merely illustrative and is not intended to be exhaustive. There are, of course, other companies which offer travel insurance which may or may not include coverage for air travel.