

Fortuitous Injury Rule in Aviation Cases

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The battle cry of the choice of law revolution five decades ago railed against the inflexibility and unfairness of the *lex loci delicti* rule. In the watershed 1961 case of *Kilberg v. Northeast Airlines*,¹ the New York Court of Appeals described the place of injury in an aviation death case as "entirely fortuitous" and refused to cap the plaintiff's recovery by applying the damage limitation of a Massachusetts statute. Over the years, courts have frequently repeated the axiom that the place of injury in a plane crash is "largely fortuitous,"² "most often fortuitous"³ or "almost always fortuitous"⁴ and therefore should be given less weight in determining the choice of law. Yet, courts have not clearly defined what constitutes a "fortuitous" accident for choice of law purposes. To this day, the application of the fortuitous place of injury rule remains inconsistent and unpredictable.



Considerations

The classic "fortuitous" crash site occurs when a plane crossing through numerous jurisdictions crashes in a random location. Thus, the liability issues in litigation involving a United Airlines flight from Denver to Chicago that suffered a sudden mid-flight mechanical failure and crash landed in Iowa were properly governed by laws other than Iowa, the *lex loci*.⁵ Similarly, the U.S. Court of Appeals for the Second Circuit held that the location of the terrorist bombing of Pan Am flight 103 over Scotland on a flight from London to New York was "random" and applied the law of each passenger's domicile to the issue of damages.⁶

Most plane accidents, however, are not like the Sioux City crash or the Pan Am bombing. The majority of crashes occur on takeoff and landing at the place of a scheduled departure or arrival. In these situations courts have reached conflicting interpretations of whether the crash site is "fortuitous." Should the interests of the location of the airport where an aviation crash occurs necessarily be subordinate to other jurisdictions, such as the parties' domiciles? Is it fortuitous that when a plane crashes while attempting to land at its scheduled destination?

The seminal case of *In re Air Crash Near Chicago*,⁷ addressed the availability of punitive damages in death actions arising out of the crash of an American Airlines DC-10 which lost an engine and crashed on takeoff from Chicago. The U.S. Court of Appeals for the Seventh Circuit concluded:

That the injury in our case occurred in Illinois can only be described as fortuitous. Had the DC-10's engine fallen off later, the injury might have occurred in one of any number of states. Because the place of injury is much more fortuitous than the place of misconduct or the principal place of business, its interest in and ability to control behavior by deterrence or punishment, or to protect defendants from liability, is lower than that of the place of misconduct or principal place of business.⁸

Similarly the district court in *In re Air Crash at Belle Harbor*,⁹ addressing whether punitive damages were recoverable in death actions involving an American Airlines jet that broke apart in mid-air shortly after takeoff from Kennedy Airport and crashed in a Queens neighborhood, concluded that the "accident location was fortuitous as to the passengers." And the court in *In re Air Crash Near Clarence Center*,¹⁰ involving the crash of a Continental Connection airliner on approach to its destination in Buffalo, stated that "[e]xcept as it relates to the ground victims, the crash [site] of Flight 3407 was largely fortuitous." The court explained that: "[n]othing about the crash suggests that it could only have occurred where it did; it could just as likely have occurred in New Jersey, Pennsylvania, or any other state where Colgan's allegedly ill-trained flight crews operated a Q400 aircraft."

Other courts, however, have found that the place of departure or destination was not fortuitous. As the district court in *In re Disaster at Detroit Metro. Airport*, found with regard to a Northwest Airlines crash on takeoff from Detroit:

Northwest chose Michigan to serve as a regional "hub" through which it would conduct substantial flight operations. Certainly, a crash at the "hub" of an airline company, the destination and point of departure of substantial air traffic, is not fortuitous, in that it is foreseeable that an accident might occur there.¹¹

Likewise, the district court addressing product claims regarding the crash of a Boeing 737 jet on takeoff from National Airport in Washington, D.C. rejected claims that the accident location was fortuitous:

Boeing has a much more substantial relationship to the District of Columbia than a manufacturer generally has to the site of injury in a typical "fortuitous crash" case. Boeing had to foresee that its small, short-haul 737 aircraft would be used for departures from Washington National Airport, one of the nation's busiest airports and a station limited by federal regulation to domestic flights of 1,000 statute miles or less.¹²

Beyond Fortuitous

A blanket categorization of aviation crashes as fortuitous will lead to unprincipled results in choice of law decisions. Any accident by its very nature as an unplanned occurrence is fortuitous. The proper question, as defined by the Restatement (Second) of Conflict of Laws, is whether the location of the injury bears a "relation to the occurrence and the parties with respect to the particular issue."¹³

While the Chicago case found the accident site to be "fortuitous," the Seventh Circuit ultimately applied the law of Illinois, the *lex loci*, in the case. This was because of a stalemate between the laws of the two states with interests that the court viewed as more significant than the *lex loci*: Missouri, where the defendant was headquartered and, California, where it manufactured the plane. But in applying Illinois law, the court observed that Illinois had "very strong interests in not suffering air crash disasters and also in promoting airplane safety."¹⁴ Why were the interests of the locations of the defendant's business activities viewed as necessarily greater in importance than those of the *lex loci*?

In *Kilberg*, the New York Court of Appeals described aviation accidents as "fortuitous" and completely overlooked any genuine consideration of the interests of Massachusetts in applying its law. The passenger in *Kilberg* was travelling from LaGuardia to Nantucket on a Massachusetts airline. Massachusetts surely had some interest in applying its damage limitation to accidents on scheduled flights by a Massachusetts carrier to destinations within the state. Had the passenger been injured by the airline's negligence inside the terminal building in Massachusetts, there is little question that Massachusetts law would have been applied. Should the result be different simply because the death occurred on the plane just off the airport runway?

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Endnotes:

1. 172 N.E.2d 526 (N.Y. 1961).
2. *In re Air Crash Disaster Near Chicago*, 644 F.2d at 615.
3. *Cousins v. Instrument Flyers*, 44 N.Y.2d 698, 699, 405 N.Y.S.2d 441, 442 (1978).
4. *Foster v. United States*, 768 F.2d 1278, 1282 (11th Cir. 1985) ("in aircraft accident cases the place of injury is almost always fortuitous and thus not entitled to its usual weight in the choice of laws decision").
5. *In re Air Crash Disaster at Sioux City*, 734 F.Supp. 1425 (N.D. Ill. 1990).
6. *Pescatore v. Pan Am. World Airways*, 97 F.3d 1 (2d Cir. 1996).
7. 644 F.2d 594 (7th Cir. 1981).
8. 644 F.2d at 615.
9. 2006 U.S. Dist. LEXIS 27387 (S.D.N.Y. 2006).

10. 2011 U.S. Dist. LEXIS 78464 (W.D.N.Y. 2011).

11. 750 F.Supp. 793, 807 (E.D. Mich. 1989); see also *In re Air Crash Disaster at Monroe, Michigan on January 9, 1997*, 20 F.Supp.2d 1110, 1112 (E.D.Mich. 1998) (under Michigan choice-of-law rules, plane crash on final approach to Detroit airport where Kentucky airline conducted regular flights could not be called fortuitous and Michigan law applied to punitive damage claims).

12. *In re Air Crash at Washington, D.C.*, 559 F.Supp. 333, 350 (D.D.C. 1983). A statute mile is 5,280 feet.

13. 145, cmt. e

14. 644 F.2d at 615.
