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SUPREME COURT OF THE UNITED STATES

No. 02-1348

OLYMPIC AIRWAYS, PETITIONER v. RUBINA HUSAIN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ABID M. HANSON, DECEASED, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[February 24, 2004]

JUSTICE THOMAS delivered the opinion of the Court.

Article 17 of the Warsaw Convention (Convention)¹ imposes liability on an air carrier for a passenger's death or bodily injury caused by an "accident" that occurred in connection with an international flight. In *Air France* v. *Saks*, 470 U. S. 392 (1985), the Court explained that the term "accident" in the Convention refers to an "unexpected or unusual event or happening that is external to the passenger," and not to "the passenger's own internal reaction to the usual, normal, and expected operation of the aircraft." *Id.*, at 405, 406. The issue we must decide is whether the "accident" condition precedent to air carrier liability under Article 17 is satisfied when the carrier's unusual and unexpected refusal to assist a passenger is a link in a chain of causation resulting in a passenger's pre-existing medical condition being aggravated by exposure

 $^{^1\}mathrm{Convention}$ for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T. S. No. 876 (1934), note following 49 U. S. C. §40105.

to a normal condition in the aircraft cabin. We conclude that it is.

T

The following facts are taken from the District Court's findings, which, being unchallenged by either party, we accept as true. In December 1997, Dr. Abid Hanson and his wife, Rubina Husain (hereinafter respondent), traveled with their children and another family from San Francisco to Athens and Cairo for a family vacation. During a stopover in New York, Dr. Hanson learned for the first time that petitioner allowed its passengers to smoke on international flights. Because Dr. Hanson had suffered from asthma and was sensitive to secondhand smoke, respondent requested and obtained seats away from the smoking section. Dr. Hanson experienced no problems on the flights to Cairo.

For the return flights, Dr. Hanson and respondent arrived early at the Cairo airport in order to request non-smoking seats. Respondent showed the check-in agent a physician's letter explaining that Dr. Hanson "has [a] history of recurrent anaphylactic reactions," App. 81, and asked the agent to ensure that their seats were in the non-smoking section. The flight to Athens was uneventful.

After boarding the plane for the flight to San Francisco, Dr. Hanson and respondent discovered that their seats were located only three rows in front of the economy-class smoking section. Respondent advised Maria Leptourgou, a flight attendant for petitioner, that Dr. Hanson could not sit in a smoking area, and said, "You have to move him." 116 F. Supp. 2d 1121, 1125 (ND Cal. 2000). The flight attendant told her to "have a seat." *Ibid*. After all the passengers had boarded but prior to takeoff, respondent again asked Ms. Leptourgou to move Dr. Hanson, explaining that he was "allergic to smoke." *Ibid*. Ms. Leptourgou replied that she could not reseat Dr. Hanson

because the plane was "'totally full'" and she was "too busy" to help. *Ibid*.

Shortly after takeoff, passengers in the smoking section began to smoke, and Dr. Hanson was soon surrounded by ambient cigarette smoke. Respondent spoke with Ms. Leptourgou a third time, stating, "You have to move my husband from here." *Id.*, at 1126. Ms. Leptourgou again refused, stating that the plane was full. Ms. Leptourgou told respondent that Dr. Hanson could switch seats with another passenger, but that respondent would have to ask other passengers herself, without the flight crew's assistance. Respondent told Ms. Leptourgou that Dr. Hanson had to move even if the only available seat was in the cockpit or in business class, but Ms. Leptourgou refused to provide any assistance.²

About two hours into the flight, the smoking noticeably increased in the rows behind Dr. Hanson. Dr. Hanson asked respondent for a new inhaler because the one he had been using was empty. Dr. Hanson then moved toward the front of the plane to get some fresher air. While he was leaning against a chair near the galley area, Dr. Hanson gestured to respondent to get his emergency kit. Respondent returned with it and gave him a shot of epinephrine. She then awoke Dr. Umesh Sabharwal, an allergist, with whom Dr. Hanson and respondent had been traveling. Dr. Sabharwal gave Dr. Hanson another shot of epinephrine and began to administer CPR and oxygen. Dr. Hanson died shortly thereafter. Id., at 1128.

²Dr. Hanson and respondent did not know at the time that, despite Ms. Leptourgou's representations, the flight was actually not full. There were 11 unoccupied passenger seats, most of which were in economy class, and 28 "non-revenue passengers," 15 of whom were seated in economy class rows farther away from the smoking section than Dr. Hanson's seat. 116 F. Supp. 2d, at 1126.

³ For religious reasons, no autopsy was performed to determine the

Respondents filed a wrongful-death suit in California state court. Petitioner removed the case to federal court, and the District Court found petitioner liable for Dr. Hanson's death. The District Court held that Ms. Leptourgou's refusal to reseat Dr. Hanson constituted an "accident" within the meaning of Article 17. Applying Saks' definition of that term, the court reasoned that the flight attendant's conduct was external to Dr. Hanson and, because it was in "blatant disregard of industry standards and airline policies," was not expected or usual. 116 F. Supp. 2d, at 1134.

The Ninth Circuit affirmed. Applying *Saks*' definition of "accident," the Ninth Circuit agreed that the flight attendant's refusal to reseat Dr. Hanson "was clearly external to Dr. Hanson, and it was unexpected and unusual in light of industry standards, Olympic policy, and the simple nature of Dr. Hanson's requested accommodation." 316 F. 3d 829, 837 (2002). We granted certiorari, 538 U.S. 1056 (2003), and now affirm.

II A

We begin with the language of Article 17 of the Convention, which provides:⁴

"The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." 49

cause of death.

⁴The Warsaw Convention's governing text is in French. We cite to the official English translation of the Convention, which was before the Senate when it consented to ratification of the Convention in 1934. See 49 Stat. 3014; *Air France* v. *Saks*, 470 U. S. 392, 397 (1985).

Stat. 3018.5

In *Saks*, the Court recognized that the text of the Convention does not define the term "accident" and that the context in which it is used is not "illuminating." 470 U. S., at 399. The Court nevertheless discerned the meaning of the term "accident" from the Convention's text, structure, and history as well as from the subsequent conduct of the parties to the Convention.

Neither party here contests *Saks*' definition of the term "accident" under Article 17 of the Convention. Rather, the parties differ as to which *event* should be the focus of the "accident" inquiry. The Court's reasoning in *Saks* sheds light on whether the flight attendant's refusal to assist a passenger in a medical crisis is the proper focus of the "accident" inquiry.

In *Saks*, the Court addressed whether a passenger's "'loss of hearing proximately caused by normal operation of the aircraft's pressurization system'" was an "'accident." *Id.*, at 395. The Court concluded that it was not, because the injury was her "own internal reaction" to the normal pressurization of the aircraft's cabin. *Id.*, at

⁵After a plaintiff has established a prima facie case of liability under Article 17 by showing that the injury was caused by an "accident," the air carrier has the opportunity to prove under Article 20 that it took "all necessary measures to avoid the damage or that it was impossible for [the airline] to take such measures." 49 Stat. 3019. Thus, Article 17 creates a presumption of air carrier liability and shifts the burden to the air carrier to prove lack of negligence under Article 20. Lowenfeld & Mendelsohn, The United States and the Warsaw Convention, 80 Harv. L. Rev. 497, 521 (1967). Article 22(1) caps the amount recoverable under Article 17 in the event of death or bodily injury, and Article 25(1) removes the cap if the damage is caused by the "wilful misconduct" of the airline or its agent, acting within the scope of his employment. See 49 Stat. 3019, 3020. Additionally, Article 21 enables an air carrier to avoid or reduce its liability if it can prove the passenger's comparative negligence. See *id.*, at 3019.

406. The Court noted two textual clues to the meaning of the term "accident." First, the Convention distinguishes between liability under Article 17 for death or injuries to passengers caused by an "accident" and liability under Article 18 for destruction or loss of baggage caused by an "occurrence." Id., at 398. The difference in these provisions implies that the meaning of the term "accident" is different from that of "occurrence." Ibid. Second. the Court found significant the fact that Article 17 focuses on the "accident which caused" the passenger's injury and not an accident that is the passenger's injury. Ibid.Court explained that it is the cause of the injury—rather than the occurrence of the injury—that must satisfy the definition of "accident." Id., at 399. And recognizing the Court's responsibility to read the treaty in a manner "consistent with the shared expectations of the contracting parties," ibid., the Court also looked to the French legal meaning of the term "accident," which when used to describe the cause of an injury, is usually defined as a "fortuitous, unexpected, unusual, or unintended event." Id., at 400.

Accordingly, the Court held in *Saks* that an "accident" under Article 17 is "an unexpected or unusual event or happening that is external to the passenger," and not "the passenger's own internal reaction to the usual, normal, and expected operation of the aircraft." *Id.*, at 405, 406.6

⁶The term "accident" has at least two plausible yet distinct definitions. On the one hand, as noted in *Saks*, "accident" may be defined as an unintended event. See Webster's New World College Dictionary 8 (4th ed. 1999) ("a happening that is not . . . intended"); see also American Heritage Dictionary 10 (4th ed. 2000) ("[l]ack of intention; chance"); *Saks*, 470 U. S., at 400. On the other hand, as noted in *Saks*, the term "accident" may be defined as an event that is "unusual" or "unexpected," whether the result of intentional action or not. *Ibid*. See Black's Law Dictionary 15 (6th ed. 1990) ("an unusual, fortuitous, unexpected, unforeseen, or unlooked for event, happening or occur-

The Court emphasized that the definition of "accident" "should be flexibly applied after assessment of all the circumstances surrounding a passenger's injuries." *Id.*, at 405. The Court further contemplated that intentional conduct could fall within the "accident" definition under Article 17,7 an interpretation that comports with another provision of the Convention.⁸ As such, *Saks* correctly characterized the term "accident" as encompassing more than unintentional conduct.

The Court focused its analysis on determining "what causes can be considered accidents," and observed that Article 17 "embraces causes of injuries" that are "unexpected or unusual." *Id.*, at 404, 405. The Court did not suggest that only one event could constitute the "accident," recognizing that "[a]ny injury is the product of a chain of causes." *Id.*, at 406. Thus, for purposes of the "accident" inquiry, the Court stated that a plaintiff need only be able to prove that "some link in the chain was an unusual or

rence" and "if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens"); see also American Heritage Dictionary, supra, at 10 ("[a]n unexpected and undesirable event," "[a]n unforeseen incident"). Although either definition of "accident" is at first glance plausible, neither party contests the definition adopted by the Court in Saks, which after careful examination discerned the meaning of "accident" under Article 17 of the Convention as an "unexpected or unusual event or happening that is external to the passenger." 470 U. S., at 405.

⁷The Court cited approvingly several lower court opinions where intentional acts by third parties—namely, torts committed by terrorists—were recognized as "accidents" under a "broa[d]" interpretation of Article 17. *Ibid*. (citing lower court cases).

⁸Specifically, Article 25 removes the cap on air carrier liability when the injury is caused by the air carrier's "wilful misconduct." 49 Stat. 3020. Because there can be no liability for passenger death or bodily injury under the Convention in the absence of an Article 17 "accident," such "wilful misconduct" is best read to be included within the realm of conduct that may constitute an "accident" under Article 17.

unexpected event external to the passenger." *Ibid*.

В

Petitioner argues that the "accident" inquiry should focus on the "injury producing event," Reply Brief for Petitioner 4, which, according to petitioner, was the presence of ambient cigarette smoke in the aircraft's cabin. Because petitioner's policies permitted smoking on international flights, petitioner contends that Dr. Hanson's death resulted from his own internal reaction—namely, an asthma attack—to the normal operation of the aircraft. Petitioner also argues that the flight attendant's failure to move Dr. Hanson was inaction, whereas Article 17 requires an action that causes the injury.

We disagree. As an initial matter, we note that petitioner did not challenge in the Court of Appeals the District Court's finding that the flight attendant's conduct in three times refusing to move Dr. Hanson was unusual or unexpected in light of the relevant industry standard or petitioner's own company policy. 116 F. Supp. 2d, at 1133. Petitioner instead argued that the flight attendant's conduct was irrelevant for purposes of the "accident" inquiry and that the only relevant event was the presence of the ambient cigarette smoke in the aircraft's cabin. Consequently, we need not dispositively determine whether the flight attendant's conduct qualified as "unusual or unexpected" under *Saks*, but may assume that it was for purposes of this opinion.

Petitioner's focus on the ambient cigarette smoke as the injury producing event is misplaced. We do not doubt that the presence of ambient cigarette smoke in the aircraft's cabin during an international flight might have been "normal" at the time of the flight in question. But petitioner's "injury producing event" inquiry—which looks to "the precise factual 'event' that caused the injury"—neglects the reality that there are often multiple interrelated

factual events that combine to cause any given injury. Brief for Petitioner 14. In *Saks*, the Court recognized that any one of these factual events or happenings may be a link in the chain of causes and—so long as it is unusual or unexpected—could constitute an "accident" under Article 17. 470 U. S., at 406. Indeed, the very fact that multiple events will necessarily combine and interrelate to cause any particular injury makes it difficult to define, in any coherent or non-question-begging way, any single event as *the* "injury producing event."

Petitioner's only claim to the contrary here is to say: "Looking to the purely factual description of relevant events, the aggravating event was Dr. Hanson remaining in his assigned non-smoking seat and being exposed to ambient smoke, which allegedly aggravated his preexisting asthmatic condition leading to his death," Brief for Petitioner 24, and that the "injury producing event" was "not the flight attendant's failure to act or violation of industry standards," Reply Brief for Petitioner 9-10. Petitioner ignores the fact that the flight attendant's refusal on three separate occasions to move Dr. Hanson was also a "factual 'event," Brief for Petitioner 14, that the District Court correctly found to be a "link in the chain" of causes that led to Dr. Hanson's death. F. Supp. 2d, at 1135. Petitioner's statement that the flight attendant's failure to reseat Dr. Hanson was not the "injury producing event" is nothing more than a bald assertion, unsupported by any law or argument.

An example illustrates why petitioner's emphasis on the ambient cigarette smoke as the "injury producing event" is misplaced. Suppose that petitioner mistakenly assigns respondent and her husband to seats in the middle of the smoking section, and that respondent and her husband do not notice that they are in the smoking section until after the flight has departed. Suppose further that, as here, the flight attendant refused to assist respondent and her

husband despite repeated requests to move. In this hypothetical case, it would appear that, "[l]ooking to the purely factual description of relevant events, the aggravating event was [the passenger] remaining in his assigned . . . seat and being exposed to ambient smoke, which allegedly aggravated his pre-existing asthmatic condition leading to his death." Brief for Petitioner 24. To argue otherwise, petitioner would have to suggest that the misassignment to the smoking section was the "injury producing event," but this would simply beg the question. The fact is, the exposure to smoke, the misassignment to the smoking section, and the refusal to move the passenger would all be factual events contributing to the death of the passenger. In the instant case, the same can be said: The exposure to the smoke and the refusal to assist the passenger are happenings that both contributed to the passenger's death.

And petitioner's argument that the flight attendant's failure to act cannot constitute an "accident" because only affirmative acts are "event[s] or happening[s]" under Saks is unavailing. 470 U.S., at 405. The distinction between action and inaction, as petitioner uses these terms, would perhaps be relevant were this a tort law negligence case. But respondents do not advocate, and petitioner vigorously rejects, that a negligence regime applies under Article 17 of the Convention. The relevant "accident" inquiry under Saks is whether there is "an unexpected or unusual event or happening." Ibid. (emphasis added). The rejection of an explicit request for assistance would be an "event" or "happening" under the ordinary and usual definitions of these terms. See American Heritage Dictionary 635 (3d ed. 1992) ("event": "[s]omething that takes place; an occurrence"); Black's Law Dictionary 554-555 (6th ed. 1990) ("event": "Something that happens"); Webster's New International Dictionary 885 (2d ed. 1957) ("event": "The fact of taking place or occurring; occurrence"

or "[t]hat which comes, arrives, or happens").9

Moreover, the fallacy of petitioner's position that an "accident" cannot take the form of inaction is illustrated by the following example. Suppose that a passenger on a flight inexplicably collapses and stops breathing and that a medical doctor informs the flight crew that the passenger's life could be saved only if the plane lands within one hour. Suppose further that it is industry standard and

⁹The dissent cites two cases from our sister signatories United Kingdom and Australia—Deep Vein Thrombosis and Air Travel Group Litigation, [2003] EWCA Civ. 1005, 2003 WL 21353471, *650 (July 3, 2003), and Qantas Ltd. v. Povey, [2003] VSCA 227, ¶17, 2003 WL 23000692, ¶17 (Dec. 23, 2003) (Ormiston, J. A.), respectively—and suggests that we should simply defer to their judgment on the matter. But our conclusion is not inconsistent with Deep Vein Thrombosis and Air Travel Litigation, where the United Kingdom Court of Appeals commented on the District Court and Court of Appeals opinions in this case, and agreed that Dr. Hanson's death had resulted from an accident. The United Kingdom court reasoned: "The refusal of the flight attendant to move Dr. Hanson cannot properly be considered as mere inertia, or a non-event. It was a refusal to provide an alternative seat which formed part of a more complex incident, whereby Dr. Hanson was exposed to smoke in circumstances that can properly be described as unusual and unexpected." EWCA Civ. 1005, ¶50, 2003 WL 21353471, at *664, ¶50.

To the extent that the precise reasoning used by the courts in *Deep Vein Thrombosis and Air Travel Group Litigation* and *Povey* is inconsistent with our reasoning, we reject the analysis of those cases for the reasons stated in the body of this opinion. In such a circumstance, we are hesitant to "follo[w]" the opinions of intermediate appellate courts of our sister signatories, *post*, at 2 (SCALIA, J., dissenting). This is especially true where there are substantial factual distinctions between these cases, see EWCA Civ. 1005, ¶29, 2003 WL 21353471, at *659, ¶29 (confronting allegations of a "failure to warn of the risk of [deep-vein thrombosis], or to advise on precautions which would avoid or minimize that risk"); VSCA 227, ¶3, 2003 WL 23000692, ¶3 (noting plaintiff alleged a failure to provide "any information or warning about the risk of [deep-vein thrombosis] or of any measures to reduce the risk"), and where the respective courts of last resort—the House of Lords and High Court of Australia—have yet to speak.

airline policy to divert a flight to the nearest airport when a passenger otherwise faces imminent death. If the plane is within 30 minutes of a suitable airport, but the crew chooses to continue its cross-country flight, "[t]he notion that this is not an unusual event is staggering." *McCaskey* v. *Continental Airlines, Inc.*, 159 F. Supp. 2d 562, 574 (SD Tex. 2001).¹⁰

Confirming this interpretation, other provisions of the Convention suggest that there is often no distinction between action and inaction on the issue of ultimate liability. For example, Article 25 provides that Article 22's liability cap does not apply in the event of "wilful misconduct or . . . such *default* on [the carrier's] part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct." 49 Stat. 3020 (emphasis added). Because liability can be imposed for death or bodily injury only in the case of an Article 17 "accident" and Article 25 only lifts the caps once liability has been found, these provisions read to-

¹⁰We do not suggest—as the dissent erroneously contends—that liability must lie because otherwise "harsh results," *post*, at 5 (SCALIA, J., dissenting), would ensue. This hypothetical merely illustrates that the failure of an airline crew to take certain necessary vital steps could quite naturally and, in routine usage of the language, be an "event or happening."

¹¹The Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air (1975) amends Article 25 by replacing "wilful misconduct" with the language "done with intent to cause damage or recklessly and with knowledge that damage would probably result," as long as the airline's employee or agent was acting "within the scope of his employment." S. Exec. Rep. No. 105–20, p. 29 (1998). In 1998, the United States gave its advice and consent to ratification of the protocol, and it entered into force in the United States on March 4, 1999. See *El Al Israel Airlines, Ltd.* v. *Tsui Yuan Tseng*, 525 U. S. 155, 174, n. 14 (1999). Because the facts here took place in 1997–1998, Montreal Protocol No. 4 does not apply.

gether tend to show that inaction can give rise to liability. Moreover, Article 20(1) makes clear that the "due care" defense is unavailable when a carrier has *failed* to take "all necessary measures to avoid the damage." *Id.*, at 3019. These provisions suggest that an air carrier's inaction can be the basis for liability.

Finally, petitioner contends that the Ninth Circuit improperly created a negligence-based "accident" standard under Article 17 by focusing on the flight crew's negligence as the "accident." The Ninth Circuit stated: "The failure to act in the face of a known, serious risk satisfies the meaning of 'accident' within Article 17 so long as reasonable alternatives exist that would substantially minimize the risk and implementing these alternatives would not unreasonably interfere with the normal, expected operation of the airplane." 316 F. 3d, at 837. Admittedly, this language does seem to approve of a negligence-based approach. However, no party disputes the Ninth Circuit's holding that the flight attendant's conduct was "unexpected and unusual," *ibid.*, which is the operative language under *Saks* and the correct Article 17 analysis.

For the foregoing reasons, we conclude that the conduct here constitutes an "accident" under Article 17 of the Warsaw Convention. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE BREYER took no part in the consideration or decision of this case.