

Georgia has Jurisdiction over Claims Arising from Airplane Crash Overseas

A Georgia state court has jurisdiction to hear a lawsuit between a New Jersey insurance carrier and Delaware-based owners of an airplane that was destroyed in a crash in the Democratic Republic of Congo ("DRC"), according to a recent decision by the Georgia Court of Appeals.

The insurance carrier filed suit in a Georgia state court against all named insureds and owners of the airplane under a broad horizon aviation insurance policy ("the Policy"). In the complaint, the carrier sought legal and equitable rescission of the Policy, based on alleged fraudulent misrepresentations contained in the application for insurance. The complaint also requested an order or declaratory judgment that no coverage exists under the Policy at the time the airplane was destroyed in the DRC, while being used by a mining company under an aircraft owner trust and operating agreement. At the time of the crash, the named insureds in Delaware held legal title to the airplane and the mining company located in the DRC was the authorized user of the airplane.

The insureds wanted the insurance carrier to pay for the destroyed plane, and accordingly moved to dismiss the complaint on grounds that the trial court in Georgia did not have personal jurisdiction over the insureds who were located in Delaware. According to the insureds, the Georgia state court could not hale them into court within the state of Georgia because the insured never transacted business in the state. The trial court disagreed and the Court of Appeals affirmed the decision of the trial court.

According to the Court of Appeals, jurisdiction over a non-resident exists on the basis of transacting business in Georgia (1) if the non-resident defendant has purposefully done some act or consummated some transaction in this [S]tate, (2) if the cause of action arises from or is connected with such act or transaction, and (3) if the exercise of jurisdiction by the courts of this [S]tate does not offend traditional notions of fairness and substantial justice.

The entire case hinged on whether the insureds had transacted business in Georgia. In this regard, the insureds argued that their employee who applied for and purchased the insurance policy never was physically present in Georgia. He used only the internet and telephone from locations throughout the US to close the deal and get the insurance coverage for the airplane.

Payment for the premium was sent to a Texas address and they accepted physical delivery of the policy in Delaware where it was mailed to them. Thus, no contacts or business was conducted in Georgia, according to the insureds.



The Court of Appeals disagreed, reasoning first that physical presence of the employee is not required, but even if it was, the insureds' employee used an Atlanta-based company to work with him in procuring the insurance policy. The Atlanta-based company was deemed by the Court of Appeals to be an agent of the insureds. All of the Atlanta-based company's acts done within the state to obtain the insurance was accordingly imputed to the insureds and these acts, which included several solicitations for an insurance policy while physically in Georgia, were sufficient to show that the insureds purposefully performed some act or consummated some transaction within the state.

The Court of Appeals found the second prong for exercising personal jurisdiction over the Delaware insureds had been met since the action was for rescission of the policy that was part of the parties' Georgia business transaction.

Turning to the third prong, the Court of Appeal addressed the question of whether Georgia's exercise of jurisdiction over the insureds comported with "traditional notions of fairness and substantial justice." The insureds identified no logistical or financial difficulties in defending the case in Georgia that would unduly burden them. This among other factors resulted in the third prong being met. The result was that the insureds had to litigate this case in Georgia.

If you have any questions concerning this article, do not hesitate to contact Chris Denison at 678-367-8672, cdenison@denisonandassociates.com

The contents of ALN are published solely for informational purposes, and should not be construed as legal advice. Receipt of this publication does not establish an attorney-client relationship. The opinions of legal counsel should be sought concerning specific facts and circumstances. In some states, this publication may be considered ATTORNEY ADVERTISING. TENNESSEE NOTICE: **THIS IS AN ADVERTISEMENT.**