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## Warsaw Convention - Liability Limits - Enforceability (Franklin Mint Corp. v. Trans World Airlines, Inc.)

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dants was feasible under Executive Order 12,294. Consequently, the district court was not required to dismiss the entire action under Rule 19(b)<sup>7</sup> regarding non-joinder of indispensable parties.

In support of its conclusions, the court cited the actions taken by three other district courts in similar cases against Uiterwyk in which the leasing agent had moved to implead Iran and IEL.<sup>8</sup> These courts severed and stayed the third-party claims and proceeded to trial on the main action. The Eleventh Circuit agreed that such action was the best means to balance, on the one hand, the implementation of the Iran-United States agreements and Executive Order 12,294 suspending claims by United States nationals against Iran and, on the other hand, the plaintiff's demand for justice in a legitimate claim involving two American corporations.

WARSAW CONVENTION—LIABILITY LIMITS—ENFORCEABILITY—*Franklin Mint Corp. v. Trans World Airlines, Inc.*, 690 F.2d 303 (2d Cir. 1982).

The Franklin Mint Corporation contracted with Trans World Airlines (TWA) for shipment to London of numismatic materials. No special declaration of value was made by Franklin Mint. The goods were either lost, stolen or destroyed, and liability was imposed on TWA in accordance with the parties' contractual stipulation that the strict liability provision of the Warsaw Convention<sup>1</sup> would apply. Franklin Mint sought to recover \$250,000 in damages. TWA claimed that its liability was limited by article 22 of the Convention to 250 francs per kilogram with each franc equal to 65.5 milligrams of fine gold. TWA moved for summary judgment, arguing that the francs must be converted either on the basis of the International Monetary Fund's (IMF) reserve unit of account, the Special Drawing Right (SDR), the former official United States price of gold or the current value of the French franc. Franklin Mint cross-moved for summary

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7. FED. R. CIV. P. 19(b).

8. *NIC Leasing, Inc. v. Uiterwyk Corp.*, No. 81 Civ. 3866 (S.D.N.Y. Jan. 1, 1982); *Cotco Leasing Co. v. Uiterwyk Corp.*, No. 80-706 (E.D. Pa. Nov. 9, 1981); *Xtra, Inc. v. Uiterwyk Corp.*, No. 79-1021-Civ.-T-H (M.D. Fla. Aug. 25, 1981).

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1. Convention for the Unification of Certain Rules Relating to International Transportation by Air, art. 18, *opened for signature*, October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 U.N.T.S. 11 (adherence of the United States proclaimed October 29, 1934).

judgment on the issue of liability, contending that the francs should be converted into dollars on the basis of the free market price of gold.

The United States District Court for the Southern District of New York found the former official United States price of gold to be the most appropriate conversion standard. That court also acknowledged the persuasiveness of the arguments in favor of the SDR. The United States Court of Appeals for the Second Circuit affirmed the decision but indicated that the liability limitations placed on cargo by the Warsaw Convention would be unenforceable in the United States courts in the future.

In discussing the appropriateness of the conversion standards, Judge Winter, writing for a unanimous panel, stated that each of the conversion standards had a "devastating argument against it."<sup>2</sup> Although the official United States price of gold might have been the conversion standard contemplated by the framers of the Convention, Congress had expressly repealed the legislation establishing this official price in 1976. The court reasoned that neither law nor logic supported the use of this standard.

The SDR was also faulted by the court. Judge Winter acknowledged that the SDR seemed to provide a conversion unit in accord with the safeguards that the Convention's framers sought to incorporate by the introduction of a gold standard: it had a slowly fluctuating value and was a step removed from the vagaries of a national monetary policy. He noted, however, that the court did not have the power to choose a conversion unit not mentioned in the treaty.

The same considerations that militated for the selection of the SDR militated against the selection of the free market price of gold. The court discounted the free market price because it did not want to choose a unit the characteristics of which were at variance with the characteristics of the unit chosen by the framers. Similar flaws plagued the French franc, and it was discounted as well.

Ultimately, the court's decision turned upon its view of the proper role of the judiciary. Judge Winter wrote that the court was being asked to choose "upon the basis of our judgment as to what is best as a matter of policy, a new unit of conversion. We are without authority to do so."<sup>3</sup> The court affirmed the district court's decision, however, because air carriers had relied on pronouncements of the Civil Aeronautics Board that the last official price of gold would continue in use on tariffs filed with that agency. As no other court had declared the liability limits of the Convention unenforceable, the court

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2. 690 F.2d at 306.

3. *Id.* at 311.

declared that its ruling would be prospective and apply to cases in which liability was incurred 60 days from "the issuance of the mandate in this case."<sup>4</sup>

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4. *Id.*