

Nerve Poison in Cabin Air and Statutory Accident Insurance

Labour & Social Law Court Gießen(Germany)

Press Release

Gießen, 09.05.2019

Statutory Accident Insurance - Nerve Poison in Cabin Air

The occurrence of an odor (so-called "fume" event) during commercial flights in civil aviation does not in itself constitute an influence within the meaning of § 8 para. 1 sentence 2 SGB VII. Rather, in order to fulfill the offense of an "accident at work" if a chemical "toxic" load associated with this odor is to be secured in full evidence. In case of doubt, the insured person shall bear the burden of proof as to the fact justifying the claim. In the case of flights with a large number of crew members and several hundred passengers, an easing of the burden of proof or reversal of the burden of proof may only be considered if a large number of insured persons or passengers fall ill in a close temporal connection with the flight.

Background

Pilots and flight attendants have been reporting more and more illnesses caused by cabin air for several years now. In airplanes, odors occur again and again from different causes, which the affected persons find unpleasant and which they cannot avoid in the airplane. On most commercial aircraft, the fresh air for the cabin and cockpit is tapped at the engines as so-called bleed air. This can lead to the introduction of small quantities of oils or their decomposition products into the air flow. Special occurrences in which a biting, musty smell is suddenly perceived in the cabin are called "fume events" by scientists. It is controversial whether this process or smells of other causes can endanger the health of crew members and passengers. The cause is Tricresylphosphate (TCP), an organophosphate and chemical additive of turbine oil suspected of causing health problems.

The facts of the case

The plaintiff, who was born in 1979 and lives in Giessen, worked for Lufthansa AG as a flight attendant. She received medical treatment in October 2011. According to her, a Fume (event on board her aircraft) had occurred on 09.10.2011 during a long-haul flight.

In June 2012, the applicant applied to the competent accident insurance body, the Berufsgenossenschaft Verkehrswirtschaft Post, for recognition of an occupational accident. By decisions of 28 May 2013 and 14 November 2013, the defendant rejected the application because it was not established that hazardous substances had entered the aircraft. In its action brought in December 2012, the plaintiff asserted that it had an occupational accident.

The decision

After further extensive medical investigations, the First Chamber of the Sozialgerichts Gießen dismissed the action. It could not be established that a toxic effect had taken place on the flight. The prerequisite for the determination of an occupational accident is that the insured activity, the harmful effects as well as the illness, because of which compensation is claimed, are proven. On the other hand, the probability of the causal link is sufficient for the recognition of a health disorder as a result of harmful effects.

The full proof is provided if the fact requiring proof is proved with certainty. This was lacking. The Court did not overlook the fact that numerous aspects of this complex issue, such as the possibility that the occurrence of so-called fume events are related to the procedure for obtaining cabin air, had so far not been clarified or were disputed. However, this does not lead to an easing of the burden of proof or even a reversal of the burden of proof for all subjectively or objectively perceived changes in smell during a flight. This would only be conceivable if a large number of passengers and insured persons were demonstrably ill on such a flight, which was not the case here. It was only certain that an unpleasant smell had been perceived by the plaintiff and other crew members. A chemical (toxic) load was neither secured during the flight nor afterward.

Social court judgment of 01.02.2019, Az.: S 1 U 61/15, not legally binding. The judgment will be posted on the Internet at www.lareda.hessenrecht.hessen.de

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