United States Court of Appeals for the Fifth Circuit

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Fifth Circuit
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Lyle W. Cayce
Clerk

No. 25-10606

MELISSA SUZETTE ARZU, *As an individual and as the Administrator of* THE ESTATE OF KEVIN GREENIDGE,

Plaintiff—Appellant,

versus

AMERICAN AIRLINES, INCORPORATED,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:24-CV-433

Before ELROD, *Chief Judge*, and HIGGINBOTHAM, and GRAVES, *Circuit Judges*.

JAMES E. GRAVES, JR., *Circuit Judge*:

At 14, Kevin Greenidge tragically died on an American Airlines flight after his heart stopped. His aunt, Melissa Arzu, sued to hold American liable under the Montreal Convention, an international treaty that holds an airline strictly liable for an injury caused by an "accident"—an unexpected or unusual event external to the passenger—on an international flight.

Arzu maintains that the flight crew's arguably imperfect medical response, which allegedly violated American policy, was an accident under

Article 17 of the Convention. But a deviation from internal policy is not relevant. Nor can an imperfect medical response alone sustain Article 17 liability. So we AFFIRM summary judgment on Arzu's Article 17 and derivative loss of consortium claims to the extent they rely on these theories.

But Arzu's accident theory based on American's allegedly malfunctioning Automatic External Defibrillator (AED) should proceed. Compliance with Federal Aviation Administration (FAA) regulations informs whether an event is unexpected or unusual. And the FAA required American to equip Kevin's flight with a functional AED. Because a reasonable jury could find that the aircraft's AED malfunctioned, we REVERSE summary judgment on Arzu's Article 17 and derivative loss of consortium claims to the extent they rely on her AED-malfunction theory.

I. Background

A. Despite efforts to resuscitate him, Kevin died on an American Airlines flight.

In June 2022, Kevin Greenidge boarded an American flight from Honduras to Florida with his family. Kevin was in poor health. At 14, he weighed 319 pounds, and was only 5'6" tall. He had asthma, high blood pressure, Type II diabetes, and sleep apnea.

Forty-five minutes after takeoff, Kevin began struggling to breathe and asked for his inhaler. The inhaler did not help. Swiftly, he clutched his chest and lost consciousness. His aunt and uncle cried for help.

Arguably, the initial response was chaotic. Kevin lost consciousness during the drink service. This meant that the drink carts obstructed the flight attendants' paths toward Kevin. Attendant Judy Gilbert-Blanchard responded first. Attendant De Fitzpatrick arrived second, after clambering over a cart. They found Kevin unresponsive. So Blanchard called a Code Red—a medical emergency.

With difficulty, attendant Fitzpatrick and two passengers extricated Kevin from his seat. At the same time, attendant Brooke Anderson fetched an AED and a medical kit. Cabin crew also sought medical help over the intercom. Two medical professionals responded: a nurse, Karenna Thatcher, and a surgical resident, Dr. Rachel Amador.

When Dr. Amador arrived, she saw "a lot of commotion . . . [and] nothing was really being done." She took charge. She directed the flight attendants and nearby passengers to move Kevin to the aft galley. It took at least three people several minutes to carry him there. Once they arrived, Dr. Amador and nurse Thatcher began Cardiopulmonary Resuscitation (CPR) with attendant Fitzpatrick's help. Attendant Anderson soon arrived with the AED.

The parties dispute whether the AED malfunctioned. Its pads initially had trouble sticking to Kevin. Once they attached, the AED analyzed his heart rhythm. Because Kevin was asystolic (no cardiac electric activity), it advised continued CPR.[1] After eight minutes, the AED detected a shockable rhythm and advised a shock. Attendant Fitzpatrick pressed the shock button. The AED's internal data recorded a shock. But four witnesses, including Dr. Amador and nurse Thatcher, testified that Kevin received no shock.

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[1] An AED will defibrillate (shock) a patient only if they have a "shockable rhythm." Asystole does not respond to defibrillation. So when a patient is asystolic, the AED will advise CPR to induce a shockable rhythm. Only then will the machine advise a shock.

Only after retrieving the AED did attendant Anderson alert the pilots. Although the pilots never contacted the Physician on Call,[2] they diverted to Cancun immediately. The flight landed seventeen minutes later. By then, Kevin was dead.

B. Arzu sued and the district court granted summary judgment.

In 2024, Arzu sued American in federal court. She alleged claims for liability and loss of consortium under the Montreal Convention, and for Texas-law breach of contract. After discovery, the parties cross-moved for summary judgment. The district court granted American's motion. *Arzu v. Am. Airlines, Inc.*, 782 F. Supp. 3d 361, 370 (N.D. Tex. 2025) ("*Summary Judgment Ord.*").

II. Standard of Review

We review a grant of summary judgment de novo. *First Am. Bank v. First Am. Transp. Title Ins. Co.*, 585 F.3d 833, 836–37 (5th Cir. 2009). We affirm if the moving party shows that no genuine dispute of material fact remains, and it is entitled to judgment as a matter of law. *Id.* at 837. "We view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in [their] favor." *Harrison Co. v. A-Z Wholesalers, Inc.*, 44 F.4th 342, 346 (5th Cir. 2022) (citation modified).

III. Discussion

Arzu appeals the district court's grant of summary judgment on her Montreal Convention and breach of contract claims. To the extent Arzu's

[2] The Physician on Call is a ground-based service with physicians "specially trained in handling inflight medical emergencies and advising which diversion city is most capable of handling the ill/injured person's condition."

Article 17 claim relies on her AED-malfunction theory, we reverse. On all other issues, we affirm.

A. We partially reverse summary judgment on Arzu's Article 17 claim.

Article 17 of the Montreal Convention holds a carrier strictly liable for "death or bodily injury of a passenger caused by an accident on" an international flight. Convention for the Unification of Certain Rules for International Carriage by Air art. 17(1), May 28, 1999, S. TREATY DOC. NO. 106-45, 1999 WL 33292734 ("the Montreal Convention"). This is not a negligence standard. *See Air Fr. v. Saks*, 470 U.S. 392, 396–408 (1985). Instead, an accident is "an unexpected or unusual event . . . external to the passenger." *Id.* at 405.[3] We apply the definition "flexibly," assessing all of "the circumstances surrounding a passenger's injuries." *Id.*

The injury's cause, not its occurrence, must satisfy the accident inquiry. *Olympic Airways v. Husain*, 540 U.S. 644, 650 (2004). So a reaction to the "usual, normal, and expected operation of [an] aircraft" is not an accident. *Saks*, 470 U.S. at 406. But when an external, unexpected or unusual event causes a passenger's injury, the airline is liable. *See Husain*, 540 U.S. at 649–52.

Arzu advances two accident theories, based on: (1) the flight attendants' allegedly ineffective medical response, and (2) the inflight AED's alleged malfunction. The former theory fails, because absent unusual circumstances and willing inaction, an ineffective response to a medical emergency is not an Article 17 accident. The latter prevails because the FAA

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[3] Some cases explaining the term *accident* interpreted the earlier Warsaw Convention. *E.g.*, *Saks*, 470 U.S. at 396–408. Because the Montreal Convention adopted Article 17 from the Warsaw Convention, those cases still inform the accident inquiry. *See White v. Emirates Airlines, Inc.*, 493 F. App'x 526, 529 (5th Cir. 2012).

required American to equip the flight with a functional AED, and a genuine dispute remains whether it functioned.

1. We affirm summary judgment on Arzu's Article 17 claim to the extent it relies on her ineffective response theory.

Arzu seeks to hold American liable for the crew's allegedly ineffective response to Kevin's medical emergency. She frames this theory as three "egregious policy deviations": (a) the failure to immediately notify the flight deck, (b) the failure to contact the on-call physician, and (c) the failure to begin CPR immediately.

To the extent Arzu advances a *per se* accident theory, it fails. We first rejected a *per se* approach in *Blansett v. Continental Airlines, Inc.*, 379 F.3d 177 (5th Cir. 2004). Blansett suffered a Deep Vein Thrombosis (DVT) episode on a Continental flight. *Id.* at 178. Inflight pressurized conditions exacerbate DVT risk. *Id.* Blansett argued Continental's failure to warn of this risk was necessarily an accident because it unreasonably deviated from industry standards. *Id.* at 179.

Our court disagreed. A *per se* rule departs from the proper inquiry: "whether there was an 'unexpected or unusual event.'" *Id.* at 182 (quoting *Husain*, 540 U.S. at 657). Because "Continental's policy was far from unique in 2001 and [complied] with [FAA] expectations . . . [i]ts procedures were neither unexpected nor unusual." *Id.* In other words, the accident inquiry depends on the frequency of the practice in the industry, and whether it complies with regulations. *See id.* at 181–82.

A frequency approach comports with the plain meanings of *unexpected* and *unusual*. An event is *unexpected* if it is not "consider[ed] probable or certain." *Expect*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2020). An event is *unusual* if it is "uncommon" or "rare." *Id.* And FAA standards provide a commonsense measure of whether an event is

unexpected or unusual. Passengers should expect an airline to comply with regulations, and violations should be unusual.

Of course, *Blansett* addressed whether an internal policy's departure from an industry standard constitutes an Article 17 accident, whereas Arzu relies on a flight crew's departure from internal policy. *See Blansett*, 369 F.3d at 180–82. But our court has relied on *Blansett* to reject similar arguments twice. *See White v. Emirates Airlines, Inc.*, 493 F. App'x 526, 532–35 (5th Cir. 2012) (per curiam) (no accident: failing to monitor passenger's breathing and pulse during CPR, as airline policy required); *Nguyen v. Kor. Air Lines Co.*, 807 F.3d 133, 138–40 (5th Cir. 2015) (no accident: failing to adhere to a policy to search for passengers on the wheelchair list with no wheelchair).

So *Blansett* and subsequent decisions foreclose any argument that the flight crew's alleged deviations from American's policy are *per se* Article 17 accidents. Indeed, a crew's deviations from airline policy are not relevant at all. To assess a policy, we consider its prevalence in the flight industry and its compliance with regulations. *See Blansett*, 379 F.3d at 181–82. Whether a crew complies with internal airline policy adds little.

The inquiry is whether the underlying events are "unexpected or unusual." *See Saks*, 470 U.S. at 405. Even crediting Arzu's version, the crew's response does not meet that standard.

Crew inaction can be an Article 17 accident. *Blansett*, 379 F.3d at 181. But "unusual circumstances" must "elevate the willing inaction of airline personnel from mere inertia—from *a non-event*—to an event both unexpected and unusual." *Id.* In other words, crew inaction is an accident only when: (1) unusual circumstances elevate it to an unexpected and unusual event, and (2) the inaction is willing. *See id.*; *Husain*, 540 U.S. at 651–57.

Husain illustrates this standard. There, a passenger with asthma was sensitive to cigarette smoke. *Husain*, 540 U.S. at 648–49. Over his protests,

flight attendants seated him near the aircraft's smoking section. *Id.* at 647. They refused his multiple requests for a new seat. *Id.* at 647–48. Eventually, he succumbed to his asthma and died. *Id.* at 648. Because the flight attendant's willing refusal to reseat him was unexpected and unusual, it was an Article 17 accident. *Id.* at 651.

Relying on *Husain*, our court in *White* rejected a passenger's claim that the crew's imperfect medical response was an Article 17 accident. 493 F. App'x at 531–32. There, during the final descent, attendants found a passenger collapsed inside the lavatory. *Id.* at 527. Although White quibbled with the crew's emergency response, they removed the passenger from the lavatory, laid her on the floor, gave her oxygen, and "alerted the captain, who notified [airport] medical personnel." *Id.* at 528, 530. As a matter of law, these "actions were not so unexpected or unusual" as to be an Article 17 accident. *Id.* at 532.

White joined a chorus of previous decisions rejecting Article 17 claims based on a crew's imperfect medical response. *See Krys v. Lufthansa Ger. Airlines*, 119 F.3d 1515, 1518–22 (11th Cir. 1997) (no accident: crew failed to divert plane after passenger's heart attack because a physician passenger assured the crew that "there was nothing to worry about"); *Hipolito v. Nw. Airlines, Inc.*, 15 F. App'x 109, 111–12 (4th Cir. 2001) (per curiam) (no accident: crew provided imperfect medical aid but passenger died of asthma attack); *Rajcooar v. Air India Ltd.*, 89 F. Supp. 2d 324, 326–28 (E.D.N.Y. 2000) (no accident: airline employees failed to timely respond to passenger's heart attack).

Even crediting Arzu's version (as we must), she shows only an arguably imperfect response to Kevin's emergency. There is no genuine dispute that the crew: (1) removed Kevin to the aft galley, (2) secured medical professionals' help, (3) assisted with CPR, (4) fetched an AED promptly,

and (5) alerted the captain, who (6) diverted to the closest airport immediately. These facts track *White* neatly. 493 F. App'x at 527–28.

True, some evidence suggests that attendant Blanchard could have responded faster. Or Anderson could have alerted the pilots sooner. Or the pilots could have contacted the on-call physician. Yet Arzu identifies no circumstances that elevate the crew's inaction to "an event both unexpected and unusual." *See Blansett*, 379 F.3d at 181 (citation modified). There is no evidence that the flight crew's response was unusually slow or chaotic compared to other crew's responses to similar emergencies.

The only unusual circumstance here is the challenge Kevin's size posed to the response. Although Arzu claims that CPR should have begun immediately, a team performing effective CPR on a 315-pound person in an airplane aisle is implausible. And Kevin's large frame meant that it took at least three people several minutes to extricate him from his seat and transport him to the aft galley. Even so, the crew provided extensive aid.

Besides, while Arzu alleges crew inaction, no evidence suggests that the inaction was willing. In *Blansett*, we read *Husain* to restrict Article 17 claims based on inaction to claims of willing inaction. *Blansett*, 379 F.3d at 181. Here though, no evidence shows that the crew willingly denied appropriate medical care, for example, by specifically refusing a request for aid. Without willing inaction, Arzu's claims based on the crew's response cannot succeed.

Arzu counters that rejecting her ineffective-response allegations would require us to resolve factual disputes. But she fails to identify a fact dispute that, resolved in her favor, would elevate the crew's response to an Article 17 accident. Unlike a negligence standard, Article 17 sharply restricts which events create liability. *See Saks*, 470 U.S. at 405–08. An arguably ineffective medical response is not one of those events, without unusual

circumstances and willing inaction. *See Blansett*, 379 F.3d at 181; *Husain*, 540 U.S. at 649–57. Because Arzu offers no evidence of these requirements, her ineffective-response theory fails as a matter of law.

There is no genuine dispute that American's crew provided extensive aid under challenging circumstances. Nor is there evidence of unusual circumstances or willing inaction that might elevate the response to an Article 17 accident. Hence no reasonable jury could find that the crew's response was an Article 17 accident. We thus affirm summary judgment on Arzu's Article 17 and loss of consortium claims to the extent they rely on the crew's allegedly ineffective response.

2. We reverse summary judgment on Arzu's Article 17 claim to the extent it relies on her AED-malfunction theory.

But we reverse on Arzu's Article 17 claim to the extent it relies on her AED-malfunction theory. Whether an airline complied with FAA regulations informs the accident inquiry. And a genuine dispute remains whether American equipped Kevin's flight with a functional AED, in violation of FAA regulations.

Recall that we have generally rejected *per se* approaches to Article 17 liability. *See Nguyen*, 807 F.3d at 140. But as *Blansett* instructs, FAA expectations *are* relevant to whether an event is unexpected or unusual. 379 F.3d at 182. The FAA did not require Deep Vein Thrombosis warnings, which bolstered the conclusion that failure to provide such warnings was not an Article 17 accident. *Id.* (citing *Witty v. Delta Air Lines, Inc.*, 366 F.3d 380, 385 (5th Cir. 2004)). It follows that a failure to comply with an FAA regulation is material evidence that an event was unusual or unexpected. *See id.* at 181–82.

This is the theory Arzu advances. The FAA required Kevin's flight to carry "an approved [AED]." *See* 14 C.F.R. § 121.803(c). Yet four

witnesses, two medically trained, testified that the AED never shocked Kevin. This evidence suggests that American failed to equip the plane with a functional AED. Because FAA regulations are relevant, a reasonable jury could find that this failure was "unusual or unexpected"—and thus an Article 17 accident.

American urges us to credit its "objective evidence" that the AED functioned over Arzu's witness testimony that it did not.

Granted, if the record "blatantly contradict[s]" a party's story, "so that no reasonable jury could believe it," that story cannot create a genuine factual dispute. *See Scott v. Harris*, 550 U.S. 372, 380–81 (2007). This principle arose in *Scott*, where the plaintiff's claims of lawful driving were untenable, when a video showed a high-speed car chase. *See id.* Yet *Scott* is "an exceptional case with an extremely limited holding." *Aguirre v. City of San Antonio*, 995 F.3d 395, 410 (5th Cir. 2021). Indeed, our court has declined to apply *Scott*'s principle to medical records that cast doubt on plaintiff's claims. *See Anderson v. McCaleb*, 480 F. App'x 768, 771–72 (5th Cir. 2012).

American maintains that the AED's internal data contradicts the testimony that it malfunctioned. The AED's data recorded a shock eight minutes after its activation. From the data, American's expert opined that "there is no evidence that the AED was faulty." But two medically trained fact witnesses contradict this opinion. Dr. Amador averred that "[a]t no point did the AED . . . deliver a shock." Nurse Thatcher could "not recall any . . . signs from Kevin that would lead [her] to believe he received a shock." Two of Kevin's relatives testified that they saw no movement when the defibrillator supposedly shocked Kevin.

American seeks to undermine this testimony. For instance, it highlights that Kevin's uncle's belief that the AED malfunctioned rests on his experience watching films. That and similar quibbles are for

cross-examination, not a summary-judgment motion. And the AED data cannot "show . . . whether the input is accurate, whether the AED pad[s] . . . malfunction[ed] . . . or whether a shock . . . was actually delivered." With this conflicting evidence and uncertainty, we cannot say that American's AED data "blatantly contradicts" the witnesses' accounts. *Cf. Scott*, 550 U.S. at 380.

Nor does *Gunter v. Township of Lumberton* support a different approach. 535 F. App'x 144 (3d Cir. 2013). There, Gunter alleged that police officers delayed more than ten minutes before rendering medical care. *Id.* at 146. The dispatch records and the AED activation time contradicted this timeline, so Gunter's testimony could not raise a genuine fact dispute. *Id.* at 149–50.

Naturally, objective evidence can contradict a witness's subjective timeline. If Kevin's uncle claimed that the crew never activated the AED until the plane landed, its internal time data would prevail. But the dispute here is more complex. American urges us to disregard four witnesses' testimony that the AED malfunctioned. It does so relying on data from the allegedly malfunctioning AED. If we credit Arzu's version, it would hardly be surprising that the AED's data was inaccurate. This assuredly differs from *Gunter*, where the AED's function was undisputed.

While violating an FAA regulation is not itself an Article 17 accident, it informs whether an event is unexpected or unusual. *Blansett*, 379 F.3d at 181–82. And a genuine dispute remains whether American equipped Kevin's flight with a functional AED, as the FAA requires.[4] From this, a reasonable jury could find that the alleged AED malfunction was an Article 17 accident.

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[4] Arzu also maintains that American failed to train its crew to properly use the AED—another FAA requirement. This theory finds no support in the record. All flight

Thus, we reverse summary judgment on Arzu's Article 17 claim to the extent it relies on the alleged AED malfunction. Because the district court granted summary judgment on the same basis for Arzu's loss of consortium claim, we reverse summary judgment on that claim too.

B. We do not affirm on causation grounds.

Because the district court granted summary judgment on Article 17-accident grounds, it never considered causation. *Summary Judgment Ord.*, 782 F. Supp. 3d at 367 n.7. But American urges us to affirm on causation grounds. We decline.

Mostly, American conflates evidentiary admissibility with evidentiary sufficiency. American argues that Arzu's medical expert's opinion misapprehended survival statistics for patients who receive defibrillation. And it argues that the expert's opinion relies on the faulty assumption that the AED malfunctioned.

But whether expert testimony has "a reliable basis" challenges its admissibility. *See Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592 (1993). If American wished to do so, it should have moved under Evidence Rule 701 in the district court. *See* FED. R. EVID. 701. Indeed, the defendants did just that in the Texas-law case American cites to support its reliability challenge. *See Johnston v. Ferrellgas, Inc.*, 96 F.4th 852, 858 (5th Cir. 2024) (quoting *Whirlpool Corp. v. Camacho*, 298 S.W.3d 631, 637 (Tex. 2009)). We do not consider these arguments further.

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attendants had completed the required annual AED training. And Arzu's intimation that the imperfect medical response shows that American failed to comply with the AED-training requirement is an unreasonable inference. After all, outside of a hospital, it would be difficult to find a team able to execute their AED training flawlessly.

Admissibility aside, Arzu's causation evidence creates a genuine dispute on the issue. "[T]here are often multiple interrelated factual events that combine to cause any given injury." *Husain*, 540 U.S. at 653. So long as an Article 17 accident is one of those events, causation is satisfied. *See id.* In other words, to show causation, Arzu must "prove that some link in the [causal] chain was an unusual or unexpected event." *See id.* at 652 (citation modified).

Under this standard, Arzu offers sufficient evidence. Her causation expert, Dr. Warmink, explained that "prompt . . . CPR and appropriate AED usage results in survival for a significant percentage of patients." Indeed, the fact that the AED detected a shockable rhythm, "supports that if [CPR] and . . . defibrillation had been initiated without a significant delay . . . Kevin's survival would have been several times more likely." So Dr. Warmink opined that "within a reasonable degree of medical certainty, the delay in . . . [CPR] coupled with the delayed and ineffectual [AED] usage contributed to" Kevin's death. In a later affidavit, Dr. Warmink clarified that Kevin "more likely than not would have survived his cardiac arrest" had the crew "promptly" begun CPR "and effectively utilized a functional [AED]."

So Dr. Warmink opined that the medical response on Kevin's flight caused his death, and stood by it. This is enough for a reasonable jury to find that the AED malfunction was a "link in the chain" that caused Kevin's death. *See Husain*, 540 U.S. at 653. This evidence creates a trial issue, at which American may challenge his opinion and its basis.

C. The Montreal Convention preempts Arzu's breach of contract claim.

Lastly, Arzu urges us to reverse summary judgment on her breach of contract claim. In it, she alleges that American's Conditions of Carriage

(Conditions) required an advance payment for Kevin's death. American counters that the Montreal Convention preempts this claim. We agree.

The parties rely on an outdated test. They cite authority holding that the Warsaw (not the Montreal) Convention displaces any state remedy within its "substantive scope." *See Mbaba v. Societe Air Fr.*, 457 F.3d 496, 499 (5th Cir. 2006) (quoting *El Al Isr. Airlines, Ltd. v. Tseng*, 525 U.S. 155, 172 (1999)). Yet the Montreal Convention, which superseded the Warsaw Convention, *expressly* preempts domestic-law claims. It provides that "any action for damages . . . whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and . . . limits of liability [of] this Convention." Montreal Convention art. 29. Because the Montreal Convention now expressly preempts the Warsaw Convention, the substantive scope test is now obsolete.[5]

While the distinction is important, the result is the same: the Montreal Convention preempts Arzu's contract claim. The allegedly breached terms are "materially identical to Article 28." Under that article, a carrier must, "*if required by its national law*, make advance payments . . . to a . . . person . . . entitled to . . . compensation . . . to meet [their] immediate economic needs." Montreal Convention art. 28 (emphasis added).

Because American's continued antitrust immunity is contingent on Department of Transportation (DOT) approval of the Conditions, an advance payment was "required by . . . national law." *See* Montreal Convention art. 29. When the Montreal Convention replaced the Warsaw, American joined other airlines to apply for approval of their updated

[5] This contrasts with the Article 17-accident inquiry, which persisted unchanged in the Montreal Convention.

conditions of carriage to reflect the new requirements. DOT approved these conditions, which led to their inclusion in Kevin's itinerary.

This approval requirement shows the Conditions are "required by . . . national law." *See* Montreal Convention art. 28. As a result, any claim based on their breach falls under Article 29. And if a claim falls under the Convention, it may be brought only under its "conditions and . . . limits of liability." *See* Montreal Convention art. 28. Hence the Montreal Convention expressly preempts Arzu's breach of contract claim.

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Thus, we REVERSE summary judgment on Arzu's Article 17 and derivative loss of consortium claims to the extent she relies on her AED-malfunction allegations. On all other issues, we AFFIRM.