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The Montreal Convention and the Passenger Bill of Rights

by Scott D. Cunningham and Julia K. Doyle

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A simple search of news headlines turns up dozens of stories of passengers trapped on board aircraft, awaiting takeoff, for seven hours or longer, without food, drinking water, or functioning lavatories. Various personal accounts span the horror spectrum, with passenger descriptions likening on-board delay to being trapped in a "sound-proofed coffin."¹ Kate Hanni, the head of the Coalition for an Airline Passengers' Bill of Rights, has compared the feeling of powerlessness during her nine-hour wait on the tarmac in an MD-80 jet to being assaulted by a rapist.²

Many passengers have come to accept delays as a routine part of air travel. In 2007, however, a series of highly publicized weather-related delays at New York's JFK International Airport prompted the New York legislature to enact the "Consumer Bill of Rights Regarding Airline Passengers." Many other states followed suit, creating a hodgepodge of state laws and regulations, all aimed at providing stranded airline passengers with various protections.

The United States is not the first government to tackle the issue of airline passenger rights. In 2004, the European Union introduced a regulation that requires air carriers to assist delayed passengers by offering meals and refreshments, hotel accommodations, free access to telecommunication devices, and cash compensation.³ In October of 2007, Russia enacted a comprehensive regulation governing carriage by air.⁴ Russia's regulation provides, in part, that in the event of a disruption or delay in travel as a result of unfavora-

ble weather conditions, technical or other difficulties, air carriers are required to provide passengers with various services at the point of departure and at any stopping points during the transportation.⁵ The services include provision of refreshments during delays of two hours or more, and hot meals during delays of four hours or more, and every six to eight hours thereafter.⁶

This article will discuss the most recent developments in the area of federal preemption of state-level legislation concerning airline passenger rights in the U.S. Furthermore, this article will examine the potential for preemption of any federal legislation on the subject by an international treaty commonly known as the Montreal Convention.⁷

A. State Passenger Bills of Rights

In February of 2007, hundreds of passengers of a discount air carrier were stuck aboard its aircraft at New York's JFK International Airport for up to 10 hours during an ice storm. This event became the impetus behind New York's version of a Passenger Bill of Rights, which was swiftly signed into law by the then-Governor Eliot Spitzer in August of 2007.

The Consumer Bill of Rights Regarding Airline Passengers required all passenger airlines operating from New York airports to provide passengers, as needed, with the following:

- (a) electric generation service to provide temporary power for fresh air and lights;
- (b) waste removal service in order to service the holding tanks for on-board restrooms; and
- (c) adequate food and drinking water and other refreshments.⁸

In addition to providing passengers with basic services, the law set forth several consumer protection guidelines, including: (1) establishing the Office of the Airline Consumer Advocate within the Consumer Protection Board to oversee compliance with the airline passenger bill of rights; (2) mandating that all air carriers provide consumers with notice of complaint contact information to be posted at all service desks and other appropriate areas; and (3) providing the public with a New York State-based consumer advocate and contact person who can help to coordinate with the appropriate airline industry officials, federal agencies, and the Port Authority of New York and New Jersey in the event that an incident occurs.⁹

Finally, the law authorized New York's Attorney General to recover from air carriers a civil penalty of up to \$1,000 per passenger per violation, together with costs and attorneys' fees.¹⁰

The justification provided by the New York State Assembly for the law recounted the numerous winter and spring 2007 airline delays, which prompted the statute:

Several incidents that occurred during the winter of 2007 involved airline passengers who were detained on the runway for many hours. On Valentine's Day, passengers were held aboard a JetBlue flight at JFK for 10 hours without food, water, fresh air, or the ability to use the rest room. Several other JetBlue flights were similarly stalled on the runway. Subsequently, on St. Patrick's Day, at JFK passengers were stuck on board a Royal Air Maroc flight at JFK for more than 14 hours. People on a Swiss Air flight to Zurich were trapped on board for eight hours, a Virgin Atlantic flight to London left 9 hours late, and a Cathay Pacific flight to Vancouver was finally canceled after more than nine hours of waiting at JFK. Passengers were also stuck for seven hours at JFK on board a Korea-bound Asiana Airlines flight.¹¹

Notably, the lawmakers specifically mentioned several international flights, operated by foreign air carriers. As discussed below, New York legislators' misguided attempt to regulate international carriage by air has already been quashed by the preemptive effect of U.S. federal law. In addition, it remains subject to further preemption by an international treaty commonly known as the Montreal Convention.

Following New York's example, at least ten other states have taken steps to enact their own version of the Passenger Bill of Rights.¹² While some states, like California,¹³ have chosen to closely track the provisions of New York's Passenger Bill of Rights, other states intend to impose additional requirements on air carriers.

For instance, Michigan's proposed statute would guarantee passengers the right to disembark, failing to consider whether or not federal regulations and/or air traffic control would permit the aircraft to return to the gate, and whether or not a gate may be available.

Washington's proposed Passenger Bill of Rights would require all air carriers to compensate bumped or delayed passengers with a refund of one hundred fifty percent of the ticket price, and to notify passengers within ten minutes of known delays and diversions via overhead announcements and airport television monitors.

B. Preemption by the ADA

After the enactment of the New York Passenger Bill of Rights, the Air Transport Association of America (ATAA) filed a lawsuit in the U.S. District Court for the Northern District of New York, arguing that New York's Passenger Bill of Rights is a regulation "related to a price, route, or service of an air carrier," and is thus preempted by the Airline Deregulation Act of 1978.¹⁴

District Judge Lawrence Kahn disagreed, finding that the State of New York has the authority to promulgate regulations related to health and safety. Judge Kahn reasoned that "the provision of fresh air, water, food and lavatory access to passengers trapped for hours on a motionless plane is a health and safety issue" that has no bearing on the "service" provided by airlines.¹⁵ As a result, the court held that New York's Passenger Bill of Rights was not preempted by federal laws such as the Airline Deregulation Act.

The ATAA appealed the district court's decision to the U.S. Court of Appeals for the Second Circuit. With nearly a dozen proposed state laws in the works, all eyes turned to New York, as air carriers, air travelers, and lawmakers waited for the appellate decision.

On March 25, 2008, a three-judge panel of the Second Circuit resoundingly overturned the lower court's decision, finding that New York's Passenger Bill of Rights was expressly preempted by the Airline Deregulation Act of 1978. The court also demonstrated concern regarding the potential of giving free reign to state regulation of the airline industry. "If New York's view regarding the scope of its regulatory authority carried the day," the court observed, "another state could be free to enact a law prohibiting the service of soda on flights departing from its airports, while another could require allergen-free food options on its outbound flights, unraveling the centralized federal framework for air travel."¹⁶

Commenting on the Second Circuit's decision, the ATAA said that striking down New York's Passenger Bill of Rights "vindicates the position of [the association] and the airlines—that airline services are regulated by the federal government, and that a patchwork of laws by states and localities would be impractical and harmful to consumer interests."¹⁷

In the wake of the Second Circuit's decision, the new crop of state laws concerning airline passenger rights will likely be abandoned or invalidated by the courts due to preemption by the Airline Deregulation Act. However, Congress has indicated an intention to create a federal law to accomplish the same purpose.

C. A Federal Bill of Rights

To date, the response on Capitol Hill to the popular movement supporting passenger bills of rights has been sluggish.

On February 17, 2007, spurred by the reports of JetBlue's tarmac delays in New York, U.S. Senators Barbara Boxer (D-Cal.) and Olympia Snowe (R-Me.) introduced the "Airline Passenger Bill of Rights Act of 2007."¹⁸ The legislation would require air carriers to provide adequate food, potable water, and restroom facilities to passengers during a tarmac delay. The proposed bill also includes a provision that would require air carriers to offer passengers the option of safely disembarking after the aircraft has sat on the ground three hours after its door was closed. This option would be provided to passengers once every three hours that the plane remains on the ground.

The bill contains two exceptions to the three-hour disembarking provisions: (1) the pilot may exercise discretion in prohibiting passengers from disembarking if he or she reasonably believes that passenger safety or security may be at risk; and (2) if the pilot reasonably determines that the flight will depart in 30 minutes after the three-hour period, he or she may delay the disembarking option by an additional 30 minutes.¹⁹

Since its introduction in February of 2007, the Airline Passenger Bill of Rights Act has remained largely dormant, and has not been scheduled for a debate or a vote in the U.S. Senate.²⁰ Although the Senate Commerce Committee passed the Act as part of the FAA reauthorization bill in May of 2007, the legislation has not progressed beyond this initial lawmaking step.²¹

Immediately following the Second Circuit Court's decision in *Cuomo*, Senators Boxer and Snowe, in a March 25, 2008 press release, urged their fellow lawmakers to bring the Airline Passenger Bill of Rights Act to the Senate floor. "Today's decision places the onus on the federal government to take immediate action to pass our Passenger Bill of Rights bill," said Senator Snowe.²²

However, to the extent the Act's scope would include international flights, whether operated by U.S. or foreign air carriers, preemption may once again bar the path to effective regulation. Claims arising under local law, including a federal law, which purport to regulate international air transportation, may be subject to preemption by an international treaty commonly known as the Montreal Convention.

D. Preemption by the Montreal Convention

The Montreal Convention, drafted in 1999, is a treaty that exclusively governs the rights and liabilities of passengers and carriers in "international" transportation by air.²³

The Montreal Convention was the product of an effort by the International Civil Aviation Organization ("ICAO"), a specialized agency of the United Nations, to update and "harmonize the hodgepodge of supplementary amendments and intercarrier agreements" of which the Warsaw Convention system of liability consisted.²⁴ The Warsaw Convention had two primary goals: (1) to establish worldwide uniform laws for claims arising out of international carriage of passengers, baggage, and cargo; and (2) to limit the liability of air carriers for such claims.²⁵ The Montreal Convention is the successor treaty to the Warsaw Convention,²⁶ and unifies and replaces the system of liability that derives from the Warsaw Convention.²⁷

To date, there are 86 parties to the Montreal Convention, including the U.S., China, Japan, the Republic of Korea, Canada, and the member-nations of the European Union.²⁸ Over 150 nations are signatories to the Warsaw Convention and/or its modifying protocol, signed at the Hague in 1955.²⁹ U.S. courts have found that, because many of the provisions are similar between the Montreal Convention and the Warsaw Convention, when interpreting the provisions of the Montreal Convention, it is appropriate to refer to the large body of established Warsaw Convention jurisprudence.³⁰

Article 29 of the Montreal Convention and a firmly established body of U.S. jurisprudence outline the broad preemptive effect of the Convention. The express language of Article 29 of the Convention makes clear that any action arising out of international carriage by air can only be brought subject to the conditions and limits of the Convention. Article 29 provides, in pertinent part, that:

In the carriage of passengers, baggage and cargo, any action for damages, *however founded*, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention. . . .³¹

Article 29 makes it clear that the Montreal Convention, like the Warsaw Convention, completely preempts claims arising under local law whether "in contract or tort" and exclusively governs the rights and liabilities of the parties.³² The U.S. Supreme Court examined the issue of preemption in detail in *El Al Israel Airlines v. Tseng*, concluding that the Warsaw Convention "precludes a pas-

senger from maintaining an action for personal injury damages under local law when her claim does not satisfy the conditions for liability under the Convention."³³

Other U.S. courts have followed *Tseng*, holding that, where the Convention applies, all common law claims that fall within its scope—including those for negligence, assault, false imprisonment, intentional infliction of emotional distress, fraud, and breach of contract—were preempted.³⁴ The Convention's preemptive effect has also been held to extend to claims arising under federal statutes, such as 42 U.S.C. §1981,³⁵ and the Air Carrier Access Act of 1986.³⁶

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Should Congress enact the Airline Passenger Bill of Rights Act, an argument against the applicability of the Montreal Convention may be supported by the U.S. Supreme Court holding that if a treaty and a federal statute conflict, "the last in date will control the other."³⁷ However, more recently, the Supreme Court has held that "[a] treaty will not be deemed to have been abrogated or modified by a later statute unless such purpose on the part of Congress has been clearly expressed."³⁸

The Supreme Court has long recognized that a treaty "is in the nature of a contract between nations."³⁹ To that end, the Court has noted that the Warsaw Convention expressly permits a Convention signatory to withdraw by giving timely notice.⁴⁰ The Montreal Convention contains a similar provision. Article 54 of the Montreal Convention provides that:

(1) Any State Party may denounce this Convention by written notification to the Depositary. (2) Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.⁴¹

The Supreme Court cited to the analogous provision of the Warsaw Convention in holding that the 1978 repeal of the Par Value Modification Act did not render the Convention's cargo liability limit unenforceable in the U.S.⁴² Consequently, unless Congress and the Executive Branch take steps to notify other signatories that the U.S. intends to abrogate the Convention, the passage of the Airline Passenger Bill of Rights Act should not affect the Convention's exclusive applicability to claims arising under its provisions.

Accordingly, any claims that fall within the scope of the Montreal Convention brought under U.S. state or federal law, including the proposed Airline Passenger Bill of Rights Act, would likely be preempted by the Convention, and the rights and liabilities of the parties would be governed exclusively by the Convention.

E. Applicability of the Montreal Convention

The Montreal Convention's applicability to claims arising from the delay of a passenger during "international carriage" as that term is defined under Article 1(2) of the Convention cannot reasonably be disputed. Article 19 of the Montreal Convention specifically provides that:

[t]he carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents *took all measures that could reasonably be required* to avoid the damage or that it was impossible for it or them to take such measures.⁴³

The language of Article 19 represents a change from the corresponding provision of the Warsaw Convention, which exonerated an air carrier from liability for delay so long as the carrier had "taken *all necessary measures* to avoid the damage or that it was impossible for [the carrier] to take such measures."⁴⁴ However, U.S. courts have previously interpreted the phrase "all necessary measures" to mean "all reasonable measures."⁴⁵ Using this interpretation of Article 20, courts have exonerated air carriers from all liability for delays caused by weather conditions on the grounds that a weather-related delay is not the fault of the air carrier.⁴⁶ However, even if the air carrier fails to meet the criteria for exoneration under Article 19, a plaintiff's recovery of any damages caused by delay under Article 19 is generally limited to 4,150 Special Drawing Rights⁴⁷ per passenger.⁴⁸

The provisions of the Montreal Convention may also apply in the event of an alleged personal injury sustained as the result of the delay of a passenger during international carriage. Article 17 of the Convention provides that:

[t]he carrier is liable for damage sustained in the case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury *took place on board the aircraft* or in the course of any of the operations of embarking or disembarking.⁴⁹

Whereas courts consider various factors in deciding whether an accident took place in the course of embarking or disembarking, the question of whether the accident took place on board the aircraft is relatively straightforward—"either the passenger was on the aircraft at the time or he was not."⁵⁰ In the event of a delay, any claims for a personal injury allegedly arising from a passenger's confinement on board an aircraft necessarily fall within the scope of Article 17 of the Convention.

Accordingly, any passenger claims for damages arising from the delay of a passenger during international carriage, whether initially brought under state or federal law, would be preempted and governed exclusively by the Montreal Convention.

F. Conclusion

In addition to several U.S. states, Russia and the European Union have enacted laws designed to afford some protections to airline passengers in the event of a lengthy flight delay. Similar legislation is being demanded by the National Democratic Party in Canada.⁵¹ Other nations may follow, creating an amalgam of regulations, which once again would move the airline industry away from the unified system of international air carrier liability sought by the drafters of the Warsaw and Montreal Conventions. The application of these laws to international transportation by air contravenes the exclusivity of the Warsaw/Montreal Convention cause of action, which has long been established by courts in the U.S., Australia, and Europe.⁵²

To serve the Convention's purpose of uniformity, the High Contracting Parties to the Montreal and Warsaw Conventions should make a joint effort to harmonize passenger rights with the airline industry's need for uniformity of laws applicable to international carriage. Such a solution may be possible by means of a protocol to the Montreal Convention which would require air carriers providing international carriage to follow certain agreed-upon procedures in the event of a lengthy delay. As global air traffic

becomes increasingly more congested, such an international solution may be the only effective measure to address the mounting concerns associated with air transportation delays during international carriage.

Scott Cunningham is a partner with the Los Angeles office of Condon & Forsyth LLP. He has extensive experience representing international air carriers, aircraft manufacturers, and their insurers in complex litigation in California and in various other jurisdictions throughout the U.S. Mr. Cunningham has been directly involved in the defense of several major air disaster cases, complex commercial litigation involving international air carriers, and the DVT Multidistrict litigation pending in California. He has been closely involved in the defense of the IATA air carriers for the alleged violations of the California Health and Safety Code which is commonly known as the "Proposition 65" litigation.

Julia Doyle is an associate with the Los Angeles office of Condon & Forsyth LLP. Her practice encompasses all aspects of aviation, business and commercial law, litigation and appeals.

Endnotes

¹ Katy Byron, et al, *Passengers Trapped on Runway for 8 Hours*, Feb. 15, 2007, CNN.COM, at <http://www.cnn.com/2007/TRAVEL/02/15/passengers.stranded/index.html>.

² See George Raine, *One Woman's Flight or Fight Response: Trapped Passenger Seeks Travelers' Rights*, SAN FRANCISCO CHRONICLE, July 31, 2007, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/07/31/BUHFR9TN22.DTL>.

³ EC Regulation No. 261/2004 of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and cancellation or long delay of flights, and repealing EC Regulation No. 295/91. Despite a major legal challenge by the International Air Transport Association, Regulation 261/2004 has been upheld by the European Court of Justice, and remains in application today. See Judgment of the Court of Justice in Case C-344/04, 10 January 2006.

⁴ Rossiiskaia Gazeta, Order of the Ministry of Transportation of the Russian Federation (Mintrans Russia) of 28 June 2007 No. 82, Moscow regarding the enactment of Federal aviation regulations "General regulations concerning air transportation of passengers, baggage, cargo, and requirements concerning service of passengers, cargo shippers and cargo recipients," available at <http://www.rg.ru/2007/10/10/pravila-dok.html> (Oct. 10, 2007).

⁵ *Id.* at ¶ 99.

⁶ *Id.*

⁷ Convention for the Unification of Certain Rules for International Air Carriage by Air, May 28, 1999 (entered into force on November 4, 2003), reprinted in S. Treaty Doc. No. 106-45, 1999 WL 33292734 [hereinafter "Montreal Convention"].

⁸ 4 AV. L. REP. (CCH) ¶ 75,519; New York General Business Law § 251-g.

⁹ *Id.*

¹⁰ *Id.*

¹¹ New York State Assembly, Bill Summary—A08406, available at <http://assembly.state.ny.us/leg/?bn=A08406> (last visited Apr. 15, 2008).

¹² Arizona (HB 2149), California (AB 1943), Indiana (SB N161), Missouri (HCR 10), Maryland (Section 5-1401 through 5-1406 of Transportation Article), New Jersey (A4516/A967), Pennsylvania (HB 2055), Rhode Island (H 7092), Michigan (SB 911/HB 5475), and Washington (SB 6269).

¹³ On May 1, 2008, the California Assembly, by a 54-16 vote, approved California's Passenger Bill of Rights (Assembly bill 1943). AB1943 currently awaits approval by the state Senate.

¹⁴ *Air Transport Association of America v. Cuomo*, 528 F. Supp. 2d 62 (N.D.N.Y. 2007).

¹⁵ See *id.*

¹⁶ *Air Transport Association of America v. Cuomo*, 520 F.3d 218 (2d Cir. 2008).

¹⁷ David Lazarus, *A Bill of Rights Could Be A Cure For the Headaches of Flying Coach*, L.A. TIMES, Apr. 13, 2008, at A1, C4.

¹⁸ Press Release, B. Boxer, Boxer and Snowe Introduce Passenger's Bill of Rights (Feb. 17, 2007), <http://boxer.senate.gov/news/releases/record.cfm?id=269529>.

¹⁹ See S. 678, Airline Passenger Bill of Rights Act of 2007, 110th Cong. (Feb. 17, 2007)

²⁰ See GovTrack.us, Status of S.678: Airline Passenger Bill of Rights Act of 2007, available at <http://www.govtrack.us/congress/bill.xpd?bill=s110-678&page-command=print>.

²¹ In addition to Senator Boxer's proposed legislation, on November 20, 2007, the U.S. Department of Transportation published an Advance Notice of Proposed Rulemaking, 72 FR 65233, seeking comments on whether the Department should enact a rule requiring air carriers to adopt contingency plans for lengthy tarmac delays, and to deem operating a chronically delayed flight to be unfair and deceptive. As of the date of this writing, the Proposed Rulemaking was largely limited in scope to domestic airlines, with only one provision proposing that foreign air carriers report on-time performance on international flights.

²² Press Release, B. Boxer, Senators Boxer and Snowe Renew Call for Federal Passenger's Bill of Rights Following Court Ruling (Mar. 25, 2008), <http://boxer.senate.gov/news/releases/record.cfm?id=295116>.

²³ See *Ehrlich v. American Airlines*, 360 F.3d 366 (2d Cir. 2004).

²⁴ *Ehrlich v. American Airlines*, 360 F.3d 366, 371 n.4 (2d Cir. 2004); see also P. DEMPSEY and M. MILDE, *International Air Carrier Liability: The Montreal Convention of 1999* at 41-43 (McGill University, Centre for Research in Air & Space Law 2005).

²⁵ See *id.*; see also *Eastern Airlines v. Floyd*, 499 U.S. 530, 546, 552-53 (1991).

²⁶ Convention for the Unification of Certain Rules Relating to the International Transportation by Air, October 1, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11 (1934), reprinted in 49 U.S.C. § 40105 (note) (1997) [hereinafter "Warsaw Convention"].

²⁷ See *Ehrlich*, 360 F.3d at 371.

²⁸ ICAO, Convention for the Unification of Certain Rules for International Carriage by Air Done at Montreal on 18 May 1999, List of signatories, available at <http://www.icao.int/icao/en/leb/mtl99.pdf>.

²⁹ ICAO, Contracting Parties to the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 And the Protocol Modifying the Said Convention Signed at the Hague on 28 September 1955, available at <http://www.icao.int/icao/en/leb/wc-hp.pdf>.

³⁰ *Baah v. Virgin Atlantic Airways Ltd.*, 473 F. Supp. 2d 591, 595-596 (S.D.N.Y. 2007).

³¹ Warsaw Convention, Art. 29 (emphasis added).

³² See *Paradis v. Ghana Airways Ltd.*, 348 F. Supp.2d 106, 114 (S.D.N.Y. 2004), *aff'd*, 194 Fed. Appx. 5 (2d Cir. 2006) (holding that the Montreal Convention has "substantially the same preemptive effect" as the Warsaw Convention); *Kruger*

v. United Airlines, Inc., 481 F. Supp. 2d 1005, 1008 (N.D. Cal. 2007); *In re Air Crash at Lexington, KY*, 501 F. Supp. 2d 902, 912 (E.D. Ky. June 26, 2007); *Booker v. BWIA West Indies Airways Ltd.*, 32 Av. CAS. (CCH) 15,134, 15,136, 2007 WL 1351927, *2 (E.D.N.Y. May 8, 2007); *Baah v. Virgin Atlantic Airways Limited*, 473 F. Supp. 2d 591, 593 (S.D.N.Y. 2007); *Knowlton v. American Airlines, Inc.*, 31 Av. CAS. (CCH) 18,486, 18,489-90, 2007 WL 273794, *4 (D. Md. Jan. 31, 2007); *Igwe v. Northwest Airlines, Inc.*, 31 Av. CAS. (CCH) 18,431, 18,434, 2007 WL 43811, *3 (S.D. Tex. Jan. 4, 2007); *Sobol v. Continental Airlines*, 31 Av. CAS. (CCH) 18,168, 18,170 n.2 (S.D.N.Y. Sept. 26, 2006); *Moss v. Delta Airlines*, 31 Av. CAS. (CCH) 17,417, 17, 418 (N.D. Ga. January 31, 2006); see also *El Al Israel Airlines v. Tseng*, 525 U.S. 155 (1999) (Warsaw Convention) and *Carey v. United Airlines*, 255 F.3d 1044 (9th Cir. 2001) (same).

³³ See *El Al Israel Airlines v. Tseng*, 525 U.S. 155, 161 (1999).

³⁴ P. DEMPSEY AND M. MILDE, *International Air Carrier Liability: The Montreal Convention of 1999* at 211 (McGill University, Centre for Research in Air & Space Law 2005) (citations omitted); see also *Weiss v. El Al Israel Airlines, Ltd.*, 433 F. Supp. 2d 361, 365 (S.D.N.Y. 2006) ("The Convention preempts all claims whether based on federal or state law, that fall within its scope.") (citing *Paradis v. Ghana Airways Ltd.*, 348 F. Supp. 2d 106, 111 (S.D.N.Y. 2004)).

³⁵ See *Gibbs v. American Airlines, Inc.*, 191 F. Supp. 2d 144, 149 (D.D.C. 2002); see also *King v. American Airlines, Inc.*, 146 F. Supp. 2d 159 (N.D.N.Y. 2001).

³⁶ See *Turturro v. Continental Airlines*, 128 F. Supp. 2d 170 (S.D.N.Y. 2001); see also *Brandt v. American Airlines*, 2000 WL 288393 (N.D. Cal. 2000).

³⁷ *Whitney v. Robertson*, 124 U.S. 190, 194 (1888); see also *Reid v. Covert*, 354 U.S. 1 (1957).

³⁸ *Trans World Airlines, Inc. v. Franklin Mint Corp., et al.*, 466 U.S. 243, 252 (1984) (citations omitted).

³⁹ *Id.* at 253; *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court*, 482 U.S. 522, 533 (1987); *Zicherman v. Korean Air Lines Co., Ltd.*, 516 U.S. 217, 226 (1996) (observing with regard to treaty interpretation that a treaty is "an agreement among sovereign powers").

⁴⁰ *Trans World Airlines, Inc. v. Franklin Mint Corp., et al.*, 466 U.S. 243, 253 n. 24 (1984).

⁴¹ Montreal Convention, Art. 54.

⁴² *Trans World Airlines, Inc. v. Franklin Mint Corp., et al.*, 466 U.S. 243, 252 (1984).

⁴³ Montreal Convention, Art. 19 (emphasis added).

⁴⁴ Warsaw Convention, Art. 20 (emphasis added).

⁴⁵ See *Manufacturer's Hanover Trust Co. v. Alitalia Airlines*, 429 F. Supp. 964, 967 (S.D.N.Y. 1977); *Obuzor v. Sabena Belgian World Airlines*, 1999 WL 223162 (S.D.N.Y. 1999).

⁴⁶ See *De Vera v. Japan Airlines*, 1994 WL 698330 at *2 (S.D.N.Y. 1994); see also *Jahanger v. Purolator Sky Courier*, 615 F. Supp. 29, 32-33 (E.D. Pa. 1985).

⁴⁷ Special Drawing Rights ("SDRs") are an artificial basket of currency created by the International Monetary Fund ("IMF"). The value of the SDR fluctuates daily and can be obtained from the IMF homepage on the internet at <http://www.imf.org>. At the time of publication, the value of one SDR equaled to approximately 1.64 U.S. dollars.

⁴⁸ Montreal Convention, Art. 22 (Article 22(5) provides that the limits of liability under Article 22(1) and (2) shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result, while said servant or agent was acting within the scope of employment.).

⁴⁹ Montreal Convention, Art. 17 (emphasis added).

⁵⁰ P. DEMPSEY AND M. MILDE, *International Air Carrier Liability: The Montreal Convention of 1999* at 158 (McGill University, Centre for Research in Air & Space Law 2005).

⁵¹ Press Release, Brian Masse, Member of Parliament Windsor West, Passenger Bill of Rights Needed to Protect Travellers: NDP (Jan. 31, 2008), <http://brianmasse.ndp.ca/page/798>.

⁵² See *El Al Israel Airlines v. Tseng*, 525 U.S. 155, 161 (1999); *Sidhu v. British Airways*, 2 LLOYD'S LAW REP. 76 (1997); *Qantas Ltd. v. Povey*, VSCA 227 [Dec. 23, 2003].

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