

Client Alert

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Appeals Court Overturns New York “Passenger Bill of Rights” Act

A New York state law imposing penalties on air carriers who fail to provide adequate food, water, and other amenities to passengers subject to ground delays has been struck down by a federal appellate court on grounds of federal preemption in *Air Transport Association of America v. Cuomo, et al.*, Case No. 07-5771-CV (March 25, 2008).

Following a series of well-publicized incidents during the winter of 2006-2007 in which airline passengers endured lengthy delays on aircraft grounded on New York runways, the New York legislature enacted a “Passenger Bill of Rights” (PBR), which became effective January 1, 2008. Among other provisions, the PBR required air carriers to provide boarded passengers with adequate food and drinking water, waste removal service for on-board restrooms, and sufficient electric power for fresh air and lights on aircraft delayed three hours or more.

The Air Transport Association of America (ATAA), the principal trade and service organization of the United States airline industry, commenced an action in the United States District Court for the Northern District of New York seeking declaratory and injunctive relief against enforcement of the PBR. The ATAA argued that the New York state PBR related to “services” and therefore was preempted by the federal Airline Deregulation Act of 1978 (ADA), which expressly prohibits states from enacting or enforcing laws “related to a price, route or service of an air carrier that may provide air transportation under this subpart.”

The District Court disagreed and granted summary judgment to the defendants, namely, the New York Attorney General and Executive Director of the New York State Consumer

Protection Board. The ATAA thereupon appealed to the United States Court of Appeals for the Second Circuit.

On March 25, 2008, the Second Circuit reversed and remanded the case to the District Court with orders to enter summary judgment in favor of the ATAA.

Congress enacted the ADA in 1978 in order to loosen economic regulation of the airline industry after determining that maximum reliance on competitive market forces are the best means to advance “efficiency, innovation, and low prices” as well as the “variety [and] quality...of air transportation.” The express preemption provision was included to ensure individual states would not undo the deregulation program by enacting regulations of their own, and the Supreme Court has “repeatedly emphasized the breadth of the ADA’s preemption provision.” The Second Circuit accordingly found “little difficulty concluding that requiring airlines to provide food, water, electricity, and restrooms to passengers during lengthy ground delays relates to the service of an air carrier.”

According to the Second Circuit, a majority of circuits have construed “services” as referring to “the provision or anticipated provision of labor from the airline to its passengers,” encompassing such matters as “boarding procedures, baggage handling, and food and drink.” The Third and Ninth Circuits have adopted a narrower construction restricted to point-to-point transportation without reference to in-flight services, but the Second Circuit concluded the majority rule was more consistent with the most recent U.S. Supreme Court rulings on the ADA and analogous provisions in other statutes.¹ Allowing the substantive provisions of the PBR to stand would “substitute[] New York’s commands for competitive market forces, requiring airlines to provide the services that New York specifies during lengthy delays, threatening to create the ‘patchwork of state

service-determining laws, rules and regulations” Congress had intended to avoid.

The Second Circuit suggested the PBR also might be impliedly preempted by the Federal Aviation Act (FAA), based on a perceived Congressional intent to “occupy the field” on issues related to air safety. The FAA, however, has a savings clause that expressly preserves some tort actions founded on state law. The Second Circuit elected not to address the scope of FAA implied preemption and to rely instead exclusively on ADA express preemption.

The Second Circuit’s decision relates only to the New York statute, and has no direct effect on proposed legislation pending in at least nine other states related to passenger accommodations during lengthy ground delays. On the federal side, the U.S. Department of Transportation has sought comment on several similar passenger protection measures that could provide uniform federal standards.²



If you have any questions or would like a complimentary copy of the Second Circuit’s decision, please contact:

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¹ In particular, the Second Circuit cited *Rowe v. New Hampshire Motor Transport Ass’n*, 552 U.S. ---, 128 S. Ct. 989 (2008), which struck down a Maine statute that required retailers shipping tobacco products to customers in Maine to use a delivery service that requires age verification of recipients as inconsistent with a preemption provision in a law applicable to motor carriers of property.

² See *Enhancing Airline Passenger Protections*, 72 Fed. Reg. 65,233 (Nov. 20, 2007) (to be codified at 14 C.F.R. pts. 234, 253, 259, & 399).