

# Client Bulletin

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## Third Circuit Limits Federal Preemption of Air Safety to In-Flight Operations

In a decision announced on July 6, 2010, *Elassaad v. Independence Air Inc.*, \_\_\_ F.3d \_\_\_, 2010 WL 2653206 (3d Cir. July 6, 2010), the Court of Appeals for the Third Circuit clarified and narrowed its seminal 1999 decision in *Abdullah v. American Airlines, Inc.*, 181 F.3d 363 (3d Cir. 1999), which held that the Federal Aviation Act covers the entire field of aviation safety and preempts state law regulation. In *Elassaad*, the Court of Appeals found that the duties of a flight crew in overseeing disembarkation of passengers once an aircraft has come to a complete stop at its destination are subject to state law tort principles and are not preempted by federal law. The Court of Appeals rejected the claim that the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, provides the standard of care owed to passengers and concluded that the Act did not preclude a personal injury action brought by a disabled person injured while disembarking an aircraft.

Mr. Elassaad, whose right leg was amputated above the knee and, as a result relied on crutches, fell while trying to descend the stairs of a commuter aircraft. He claimed that although he did not ask the crew for assistance in carrying him down the stairs, he would have accepted the assistance of a wheelchair or electronic lift device had he known that type of assistance was available. While descending the stairs, he lost his balance, fell and struck his shoulder on the pavement causing orthopedic injuries requiring surgery.

Mr. Elassaad brought a personal injury lawsuit against the commuter operator, Independence Air, which moved for summary judgment on the grounds that, under the ACAA, its only duty was to provide assistance upon request and that this federal standard preempted state law negligence standards. Plaintiff argued that the

ACAA was intended only to prevent discrimination against disabled passengers, not establish standards for the safe operation of aircraft. The lower court granted summary judgment and the resulting appeal centered on the Third Circuit's earlier decision in *Abdullah* concerning federal preemption of the standard of care that an airline owes to its passengers in the field of air safety.

In rejecting Independence Air's contention that a federal standard of care preempted the common law negligence claim asserted by Elassaad, the Third Circuit re-examined its holding in *Abdullah*, where it had held the Federal Aviation Act vested sole responsibility for supervising the aviation industry with the Federal Government and that Congress intended the Administrator of the FAA to exercise sole discretion in regulating air safety. *Abdullah* further held that while the standard of care used in adjudicating personal injury claims was preempted by federal law, state law remedies were available to passengers. Accordingly, passengers injured during a flight due to a violation of federal safety standards could recover damages under state or territorial law.

The *Elassaad* Court first concluded that its holding in *Abdullah* was applicable only "in the context of in-flight safety." This included the Federal Aviation Act's goals of regulation of pilot certification, pilot pre-flight duties, pilot flight responsibilities and flight rules. 2010 WL 2653206, at \*5. The Court then considered whether in-flight safety extended to disembarkation, such as the occurrence involving Mr. Elassaad, and concluded that there was no preemption of state tort law standards with respect to accidents that occur when a passenger is disembarking an aircraft.

The Court determined that the federal safety regulations with respect to unloading or loading passengers did not specifically set any standard of care for crew members and that it did not appear that the disembarkation of passengers fell within the broad standard articulated by 14 CFR § 91.13, which provides rules for safe operation

of the aircraft when the aircraft “is being operated for the purpose of air navigation.” Because the Court determined, in light of these definitions in the statute and regulations, that the Independence Air aircraft was not “being operated for the purposes of air navigation” at the time of Mr. Elassaad’s accident, it concluded that the standard of care provisions, *i.e.* 14 CFR § 91.13(a), did not apply since the aircraft had stopped and its doors had been opened for deplaning by passengers.

As a result, the Third Circuit concluded that there was no federal preemption and that a state law standard of care was applicable to Mr. Elassaad’s personal injury action against Independence Air.

The Court of Appeals also made short work of the argument that the Air Carrier Access Act regulations provided the applicable standard of care, agreeing with plaintiff that the purpose of the Air Carrier Access Act was to prevent discrimination as to disabled persons and not provide the standard of care that needed to be applied in transporting disabled passengers. “At most, the ACAA might preempt non-discrimination laws as they apply to discrimination by air carriers against disabled passengers.” *Elassaad*, 2010 WL 2653206, at \*10.

The *Elassaad* decision is important because it clarifies the holding in *Abdullah* and holds that the federal standard of care is applicable (and thus preemptive) in certain, specific circumstances. Examples of preempted activities in the field of air safety include pilot certification, pilot pre-flight duties, pilot flight responsibilities, flight rules, air space management, flight operations and aviation noise.



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