

Client Bulletin

January 2010

ADA Preemption—Ninth Circuit Rules that State Law Claims Relating to Airline Collection of Mexican Tourism Tax are Preempted by Federal Law

The Ninth Circuit Court of Appeals in San Francisco rendered a decision on January 5, 2010 which has significant implications for airlines facing potential class-action litigation over the collection of fees and taxes. In *Sanchez v. Aerovias De Mexico, S.A. De C.V.*, the Court of Appeals upheld the lower court's decision that the plaintiff's claims, which were based upon alleged improper collection of a tourism tax, were preempted by federal law, specifically the Airline Deregulation Act ("ADA").

The plaintiff, Maria Sanchez, flew on Aeromexico from Los Angeles to Mexico City. When she purchased her ticket the airline collected a Mexican tourism tax of \$22, which was charged to her as part of the price of her ticket. Ms. Sanchez claimed that she was exempt from paying the tourism tax because she was a Mexican citizen. She filed a class action lawsuit as the representative of a putative class which would have included all passengers who paid the tax but who were exempt from the tax on various grounds, including their citizenship.

Ms. Sanchez filed her lawsuit in the United States District Court for the Central District of California in Los Angeles. In her complaint, Ms. Sanchez alleged claims for breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, and "money had been received." Aeromexico filed a motion to dismiss on grounds that the claims were preempted by the provisions of The Airline Deregulation Act. The District Court agreed and dismissed the claims. Ms. Sanchez appealed.

The essential issue presented to the Court of Appeals was whether the ADA preempted all of the plaintiff's claims. It is well established that all claims relating to airline "prices, routes, or services" are governed by the ADA and are federally preempted. The issue on appeal was whether the ADA applied to this plaintiff's claims in the context of this case.

The plaintiff argued that the ADA did not apply to her claims on two grounds. First, the plaintiff argued that the collection of the tourism tax was not governed by the ADA because it was not related to the "price" of Ms. Sanchez's passenger ticket. She argued that the tax was separate from the airfare and could not have been part of the airfare because she was exempt from paying the tax. The plaintiff's second argument was that the language used by Aeromexico on their website constituted a contractual obligation which the airline assumed voluntarily, to collect only those taxes which the passengers were legally required to pay.

The Court of Appeals dealt summarily with the issue of whether the ADA applied, holding that the collection of the tax was obviously related to the price of the passenger ticket. The court held that: "[W]e see no need to dwell on whether Sanchez's claims relate to the air carriers 'price'. The ticket price included the tourism tax and other fees and surcharges." Since the court found that the collection of the tax "related to price," the court held that ADA would preempt Ms. Sanchez's claims unless Aeromexico had voluntarily agreed to collect the tax only from those passengers who were obligated to pay it.

The Court of Appeals recognized, that even in cases otherwise governed by the ADA, claims would not be preempted if the airline breached an obligation to the passenger which it had voluntarily assumed by contract. The court then turned to the language of the Aeromexico website to decide whether Aeromexico voluntarily agreed to collect the tax only from

those from whom it was due. The court held that the language on the Aeromexico website did not constitute such an undertaking.

The Aeromexico case was a companion to a virtually identical lawsuit brought by Ms. Sanchez against Mexicana. The Court of Appeals also upheld the dismissal of the lawsuit against Mexicana. However, since Ms. Sanchez's claims against Mexicana were held to be time-barred, the Court of Appeals did not reach the contractual issues in that case. However, the District Court's dismissal of Mexicana concluded that the language of the Mexicana website was not sufficient to constitute a contractual undertaking to screen passengers to determine if they were exempt from the tax.

A third case involving another plaintiff and Delta Airlines was filed and dismissed by another District Court following the dismissal of the Aeromexico and Mexicana cases. The District Court Judge who dismissed the Delta case referred to the language on the Mexicana website concluding that it did not constitute a contractual undertaking by the airline to screen passengers.

This decision is significant because it reinforces the broad preemptive effect of the ADA in all cases which relate to airline "prices, routes, and services." It is consistent with decisions in other courts in other jurisdictions which have held that various claims relating to the collection of taxes are preempted. The Ninth Circuit Court of Appeals has historically been regarded as having a somewhat more restrictive view of the preemptive effect of the ADA.

Aeromexico and Mexicana were represented by Condon & Forsyth partners Frank Silane and Jennifer Johnston.

If you have any questions about the January Client Bulletin or would like further information, please contact:



Frank A. Silane, Esq.
Condon & Forsyth LLP
1901 Avenue of the Stars, Suite 850
Los Angeles, California 90067
Tel.: (310) 557-2030
Fax: (310) 557-1299
E-mail:
fsilane@condonlaw.com