CONTRIBUTED CONTENT & PRESENTATIONS

# Airline Passenger Mistreatment Claim Dismissed

JULY 25, 2017

Recently, airlines have been subject to intense public scrutiny over several high-profile incidents over alleged mistreatment of passengers. These reports are not limited to one particular incident where a customer was forcibly removed from an airline, but also include non-forcible incidents over alleged mistreatment of passengers.

Despite the spat of negative press and recent lawsuits, however, air carriers are not necessarily liable for alleged mistreatment of passengers, as illustrated by the recent decision in *Sanches-Naek v. Tap Port.*, No. 16-cv-1843, 2017 U.S. Dist. LEXIS 66444 (D. Conn. May 2, 2017). In *Sanches-Naek*, the plaintiffs, all family members, booked round trip international tickets from John F. Kennedy Internal Airport to Lisbon, Portugal for vacation through air carrier TAP Portugal, Inc. ("TAP"). After boarding and before takeoff, one of the plaintiffs seated in economy class went into first class to speak with her husband and son. The plaintiff alleged that a TAP flight attendant began "rudely and loudly berating and screaming" to return to her seat. After she refused, the flight attendant called airport security, who instructed the plaintiffs to leave the airplane.

After departing the airplane, the Port Authority Police Department ("PAPD") arrived on scene, but ultimately concluded "that there was no legitimate reason for [TAP] to have summoned the police." By this point, however, the plaintiffs had missed their flight. The plaintiffs filed suit against TAP, alleging a host of claims including intentional infliction of emotional distress, breach of contract, negligence, and discrimination.

TAP moved to dismiss the complaint on the grounds that the plaintiffs' claims were precluded by the Montreal Convention, an international treaty to which the United States is a signatory, which governs "all international carriage of persons, baggage or cargo performed by aircraft for reward."

The Montreal Convention broadly preempts state laws and causes of action, including alleged discrimination, against air carriers, except in cases of death or bodily injury of a passenger. While the incident in *Sanches-Naek* occurred prior to take off, Article 17 of the Montreal Convention provides that the convention applies to events that "took place on board the aircraft or in the course of any of the operations of embarking or disembarking" in international travel.

Despite the alleged verbal mistreatment of the plaintiffs, and despite the allegation that PAPD concluded there was "no legitimate reason" they were called, the Court held that the plaintiffs' claims were preempted by the Montreal Convention, concluding:

No TAP employee, Global Security officer, or PAPD officer is alleged to have physically harmed any of the Plaintiffs in any way, much less made physical contact with any of the Plaintiffs. Any injury that Plaintiffs allegedly suffered is therefore purely psychological, rather than related to physical injuries.

The district court therefore dismissed the case, with prejudice. In this time of public scrutiny of air travel, the District of Connecticut's decision is a clear reminder that not all incidents of alleged passenger mistreatment may subject air carriers to liability.