

1994

Seventh Circuit Finds Federal Aviation Act Forecloses Recovery for Airline Ticket Purchasers

Judith Gorske

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>

 Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Judith Gorske *Seventh Circuit Finds Federal Aviation Act Forecloses Recovery for Airline Ticket Purchasers*, 6 Loy. Consumer L. Rev. 65 (1994).

Available at: <http://lawcommons.luc.edu/lclr/vol6/iss2/7>

This Recent Case is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

sifies persons on the basis of birth, age, sex, culture, physical condition, or political affiliations, unless such classification furthers a legitimate state purpose; and 3) when any other classification is made which does not further an appropriate state interest.

The Louisiana Supreme Court found that the plaintiffs could not show that the law fell into any of the three classifications. The court determined that the nondisclosure law did not conform to any of the categories in the first two situations under the plain language of the classifications. The court further concluded that the third situation did not apply because, under the court's First Amendment analysis, the nondisclosure law furthered the legitimate state interest of protecting an individual's right to privacy. Therefore, the court held that the nondisclosure law did not violate the plaintiffs' right to equal protection under the law.

Accident Reports No Longer Public Documents

Finally, the plaintiffs contended that the nondisclosure law violated their right under the Louisiana Constitution to examine public documents. The Louisiana Constitution, under Article XII, Section 3, provides that "[n]o person shall be denied the right ... to examine public documents, except in cases established by law." Under the exception contained in the constitutional provision, the court found that access could be denied only where the law states the bar on access to public records "specifically and unequivocally." Here, the nondisclosure law clearly exempted accident reports from the provisions of public records law, and limited their availability to a narrow class of individuals. Finding no ambiguity in the law, the supreme court held that the nondisclosure law withstood a constitutional challenge on public access grounds.

Disagreement over Public Documents

The majority's opinion triggered concurring and dissenting opinions,

both focusing on the public nature of accident reports. In his concurring opinion, Justice Watson stated that the nondisclosure law set a "dangerous and questionable precedent" by restricting such fundamentally public documents from public examination, although granting access to the press. Nevertheless, Watson agreed with the majority's finding that the plaintiffs had not carried their burden of showing that the law violated their constitutional rights.

In a dissent, Justice Kimball agreed with the majority that protecting the privacy rights of individuals is a significant state interest. However, Kimball found that the majority's analysis demonstrated that the law did not further that interest since it allowed the press access to the accident reports. Furthermore, Kimball argued that by enacting the nondisclosure law, the legislature had intruded upon the exclusive province of the Louisiana Supreme Court to regulate lawyers. As a result, the justice concluded that the nondisclosure law violated the First Amendment, the equal protection clause, and the separation of powers principle. ❖

— *Christy Thouvenot*

Seventh Circuit Finds Federal Aviation Act Forecloses Recovery for Airline Ticket Purchasers

In *Statland v. American Airlines, Inc.*, 998 F.2d 539 (7th Cir. 1993), the United States Court of Appeals for the Seventh Circuit held that Section 411(b) of the Federal Aviation Act, 49 U.S.C. app. Section 1381(b), which allows airlines to engage in certain ticketing practices, does not create a private right of action for airline ticket purchasers. The court also found that the Federal Aviation Act of 1958, as amended by the Airline Deregulation

Act, 49 U.S.C. app. Section 1305(a), pre-empts state law claims challenging airline ticket refund policies.

Plaintiff Seeks Damages of \$1.25

Iris Statland purchased an American Airlines ticket with a 10 percent cancellation penalty. Upon cancellation, American Airlines withheld 10 percent of the federal tax paid on the canceled ticket, or \$1.25, in addition to the cancellation fee. Statland subsequently brought a class action suit in the District Court for the Northern District of Illinois to recover her \$1.25, as well as similar refunds on behalf of thousands of other ticket purchasers.

Statland claimed that the ticket she purchased violated Section 411(b) of the Federal Aviation Act, as it did not incorporate any contract provisions allowing American Airlines to keep 10 percent of the federal tax upon cancellation. She also brought four supplemental state law claims: breach of fiduciary duty; violation of the Illinois Consumer Fraud and Deceptive Practices Act; conversion; and breach of contract.

The district court held that Section 411(b) did not give Statland a federal cause of action and dismissed the state claims for lack of supplemental jurisdiction. Statland appealed to the Court of Appeals for the Seventh Circuit.

Section 411(b) Does Not Create a Private Right of Action

Addressing Statland's federal law claim, the Seventh Circuit began with an analysis of the statutory language. The court noted that Section 411(b), describing the Department of Transportation's (DOT) power to regulate airlines ticket practices, is framed as a general command to a federal agency. As such, Section 411(b) does not purport to create rights for airline ticket purchasers. There exists a strong presumption against creating an implied private right of action. Statland's suit seeks to enforce personal rights that are unnecessary to effect congressional intent. The court reasoned that even though

Recent Cases

consumers benefit when a business follows the law, it is insufficient to infer congressional intent in order to give those consumers a private cause of action. As the court noted, "Statland cannot bootstrap consumers' rights into a law that does not mention them."

The Seventh Circuit then examined Section 411(b)'s position within the Aviation Act. In the original Aviation Act, Section 411 appeared as a single paragraph granting the Civil Aeronautics Board (CAB) express power to regulate deceptive practices or unfair methods of competition in the airline industry. The Airline Deregulation Act amended the Aviation Act, transferring CAB's duties to other agencies. Section 411(b), as amended, contains two provisions, 411(a) (411 as originally written) and 411(b). Both provisions deal with the CAB's authority over commercial practices of the airline industry.

In *Polansky v. Trans World Airlines, Inc.*, 523 F.2d 332, 338-40 (3rd Cir. 1975), the Third Circuit determined that Section 411(a) does not create a private right to sue. The Seventh Circuit, finding nothing suggesting Section 411(b) should be read differently, also interpreted Section 411(a) as failing to create a private right to sue.

Finally, the Seventh Circuit read the legislative history of Section 411(b) as indicating Congress' intent to give the DOT, not private parties, the right to enforce its provisions. Pointing to statements in the House Report highlighting the importance of consumer protection and the DOT's regulatory role in this area, the court concluded that the DOT, not private parties, will enforce consumer protection rules against airlines.

In affirming the district court's decision regarding Statland's federal claim, the Seventh Circuit held that Section 411(b)'s language, structure, and legislative history all indicate Congress' intent to establish the DOT's regulatory power over airlines without implying a private right of action for consumers. Since a private

right of action need not be implied to further this intent, the court held that Section 411(b) does not create one.

State Claims Pre-empted

The Seventh Circuit also addressed Statland's state law claims. Having held that Section 411(b) did not give Statland a federal cause of action, the court retained jurisdiction over Statland's state law claims to conserve state court resources.

Turning to the state claims, the court noted that the Airline Deregulation Act added an express pre-emption clause to the Aviation Act, providing that states shall not "enact or enforce any law, rule, regulation, stand, or other provision having the force and effect of law relating to rates, rules or services of any carrier." 49 U.S.C. App. Section 1305(a). These words "express a broad preemptive purpose," *Morales v. Trans World Airlines, Inc.*, ___ U.S. ___, ___, 112 S.Ct. 2031, 2037, 119 L.Ed.2d 157 (1992), whereby canceled ticket refunds relate to rates. Thus, Statland's state law claims, falling within this ambit, were pre-empted. ♦

— *Judith Gorske*

Spiller, but Not Shipper of Spilled Chemical, Liable for Environmental Cleanup Under CERCLA

In *Amcast Indus. Corp. v. Detrex Corp.*, 2 F.3d 746 (7th Cir. 1993), the United States Court of Appeals for the Seventh Circuit held that a chemical manufacturer is a "responsible person" under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9601, et. seq. (1980). As a consequence, the Seventh Circuit extended liability under CERCLA to a manufacturer for chemicals spilled from its own trucks, but not for chemicals spilled from trucks owned by a

common carrier the manufacturer hired for delivery of the chemicals.

Chemical Spill Harms Environment

Plaintiff, Elkhart Products Corporation (Elkhart), a subsidiary of Amcast Industrial Corporation, manufactures copper fittings at its Indiana plant. It uses the solvent trichloroethylene (TCE) in the manufacturing process. Elkhart purchased TCE from a number of chemical manufacturers, including defendant Detrex Corporation (Detrex). Detrex often delivered TCE to Elkhart in its own tanker trucks. However, Detrex also frequently hired a common carrier, Transport Services, to deliver the solvent to Elkhart.

In 1984, the groundwater beneath a pharmaceutical plant adjacent to Elkhart's facility was contaminated with TCE. An investigation revealed that both Detrex's and Transport Services' drivers spilled TCE accidentally on Elkhart's premises while filling Elkhart's storage tanks. Some of this spillage seeped into the groundwater beneath the pharmaceutical plant.

Elkhart spent more than \$1 million to clean up the TCE contamination. Elkhart later sued Detrex in order to recover from the cost of eliminating the TCE contamination to Detrex. The trial court granted partial summary judgment for each party and entered judgment against Detrex for the entire cleanup cost Elkhart had incurred. Detrex appealed the trial court's decision to the United States Court of Appeals for the Seventh Circuit. Detrex also filed a separate action in district court for contribution against Elkhart.

Response Costs, Facilities, and Responsible Persons

CERCLA Section 9607(a)(1) imposes response costs, the costs of eliminating an environmental hazard, on the "owner and operator of a . . . facility" from which a hazardous substance has been released. CERCLA Section 9607(a)(3) also places liabil-