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Passenger Claims – Consumer Rights & EU 261 In the US Courts

2d Travel Law Forum
Titania Hotel
Athens

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Agenda

- Aviation Consumer Rights in the US
- EU 261 in the US Courts
- Damages in the US

Aviation Consumer Rights in the US



US DOT Aviation Consumer Protection Regulations

- Over the past 40 years, the US Congress has enacted numerous Acts aimed at protecting the airline consumer.
- The US DOT implements this legislation by issuing consumer protection regulations.
- While US DOT initially slow to issue regulations, the pace and scope of these regulations quickened in mid-2000s.

US aviation consumer regulations address a vast array of issues

- Accounting & reporting – mishandling of baggage/wheelchairs/animals: 14 CFR Parts 241 & 249
- Disabilities & Discrimination: 14 CFR Part 382
- Enhancing Airline Passenger Protections: 14 CFR Parts 234, 250, 253, 259 and 399 (Consumer Rule I, II & III)
 - Fare Advertising & Price Increases
 - Disclosure of Baggage Fees & Damages
 - Bumping and Oversales
 - Tarmac Delays & Flight Delays
 - Air Carrier Customer Service/Contingency Plans
- Ticket Refunds: 14 CFR Part 374
- Charters & Codeshare Disclosures: 14 CFR Parts 212, 257 & 280
- Air Carrier Family Support/Assistance Acts (1996/1997) (NTSB – 49 U.S.C. § 41313 & § 41705).

See <https://www.transportation.gov/airconsumer>

DOT Enforcement Actions

- The DOT may commence an investigation based upon a complaint or on its own initiative. See 14 CFR Part 302; 49 U.S.C. § 46101.
- The DOT has the authority to issue civil penalties and other remedies if its investigation reveals a violation – “unfair or deceptive practice.”
- Usually, violations result in the issuance of consent orders
 - without admitting culpable conduct, the alleged violator is ordered/agrees to (1) cease and desist from continuing the prohibited conduct, and (2) also is assessed a civil penalty.
 - the civil penalty component can be significant with the maximum penalty allowable against an air carrier being over \$33,000 per day per violation. See 49 U.S.C. § 46301 and 14 CFR § 383.2.

Airline Consumer Rights Regulations In the Works

- Obama Administration was very active in expanding airline Consumer Rights Rules
- Trump Administration has slowed things down
 - Suspended or deferred action on various rules
 - Exception – Service Animals

Why Are New Rules Required for Service Animals?



US vs EU Approach to Passenger Rights Rules

- Agree on need, but can differ as to approach
- For Example:

Topic	THE US	THE EU
PRMs	ACAA, 14 CFR Part 382 <ul style="list-style-type: none">▪ very detailed and extensive	EC 1107/2006 <ul style="list-style-type: none">▪ less detailed and broad guidelines
Flight Delays, Cancellations & Overbooking	DBC, 14 CFR Part 250 <ul style="list-style-type: none">▪ limited to overbooking	EC 261/2004 <ul style="list-style-type: none">▪ very broad and extensive
Exclusivity of Montreal Convention	Yes – Convention preempts regulations if there is a conflict	Yes/No (?)

EU 261 in the US Courts



EU REGULATION 261/2004 - SCOPE

Flights departing from an EU airport:

- Applies to all passengers and carriers (EU & non-EU carriers)

Flights departing to an EU airport:

- Applies only to EU carriers

Application of EU 261 in the US

- Numerous lawsuits filed in the US courts (mostly in the Northern District of Illinois) against US and non-US air carriers for failure to pay EU 261 compensation arising out delay or cancelled flights to/from Europe

EU 261 in the US Courts

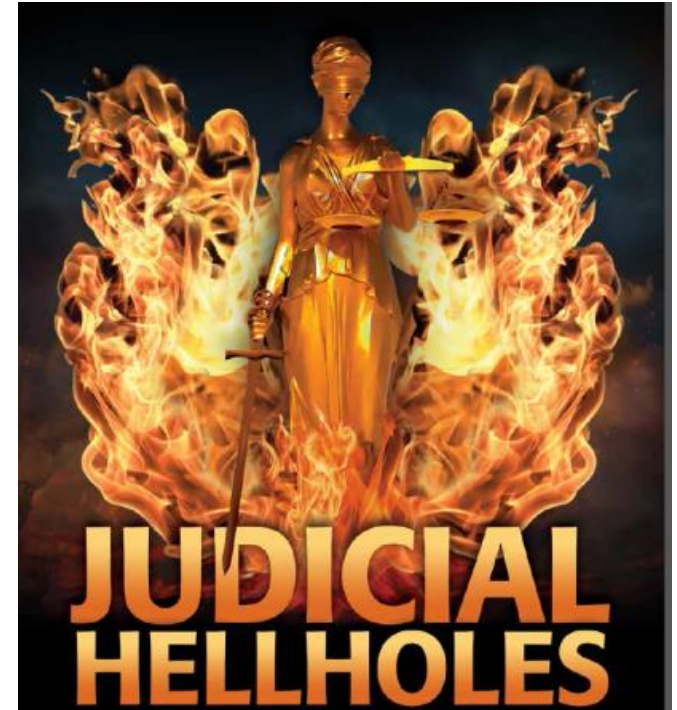
- **EU 261 text limits enforcement to the courts of the EU Member States**
 - EU 261 does not provide a private right of action against the airline in US Courts
 - Thus, EU 261 not enforceable outside the courts of the EU member states
 - **However, pax can maintain a breach of contract claim if EU 261 is “incorporated” into airline’s conditions of carriage**
 - Simply providing notice of pax rights under EU 261 (“passengers are entitled to rights provided for in EU 261”) is not enough
 - Must be clear evidence of intent to incorporate the entirety of EU 261
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- *Baumeister v. Deutsche Lufthansa*, 811 F.3d 963 (7th Cir, 2016)
 - *Volodarskiy v. Delta Air Lines*, 784 F.3d 349 (7th Cir.2015)
 - *Kogan v. Scandinavian Airlines System*, 253 F. Supp. 3d 1022 (N.D. Ill. 2017)
 - *Dochak v. Polskie Linie Lotnicze LOT S.A.*, 189 F. Supp. 3d 798 (2016)
 - *Bystka v. Swiss International Airlines*, 2016 WL 792314 (N.D. Ill. Mar. 1, 2016)
 - *Bergman v. United Airlines Inc.*, 2014 WL 12775668 (N.D. Ill. Jun. 18, 2014)

Damages in the US



TOP 8 JUDICIAL HELLHOLES (2018-2019)

- #1 California
- #2 Florida
- #3 New York City
- #4 St Louis, Missouri
- #5 Philadelphia, Pennsylvania
- #6 New Jersey
- #7 Cook & Madison Counties, Illinois
- #8 Minnesota



Exemplar Jury Awards – Recent Aviation Cases

Illinois, Cook County

Death Case: Brokaw v. Nat'l Air Cargo (Jun 2017) – Jury Award \$115,000,000

- 3 crew members killed in NAC B747 cargo crash in Afghanistan in 2013.

Injury Case: Darden v. City of Chicago (Aug 2017) – Jury Award \$148,000,000

- Plaintiff a 24-year-old female former dancer and college student.
- Suffered severed spinal cord/fractures resulting in permanent paraplegia when 700 pound pedestrian shelter fell on her at O'Hare Airport.

Exemplar Jury Awards – Last Year (non-aviation)

California (San Francisco)

Injury Case: Johnson v. Monsanto (Aug 2018) – Jury Award \$289,000,000

- 46 year old former school groundskeeper diagnosed with cancer in 2014.
- Monsanto failed to provide adequate warnings of Roundup's cancer risks.
- \$39.25M compensatory damages & \$250M in punitive damages.

Court: October 23, 2018: Punitive damages remitted to \$39M

- Punitive damages more than seven times as large as the compensatory award are not legally justified. Court found that under constitutional law, the ratio should be one-to-one.
- Plaintiff accepted punitive damages reduction
- Total award over \$78M
- Appeal by defendant pending

Exemplar Jury Awards – This Year (non-aviation)

California (San Francisco)

- Injury Case: Monsanto (March 2019) – Jury Award **\$80,000,000**

California (Oakland)

- Injury Case (2 plaintiffs): Monsanto (May 13, 2019) – Jury Award **\$2,055,000,000**
 - \$55M compensatory
 - \$2 Billion punitive

Thank You

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