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November 28, 2016

Honorable Carol Bagley Amon
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: Maribel Martinez, et. Ano v. JetBlue Airways Corp.
No. 1:16-cv-06326 (CBA) (RML)**

Your Honor:

We represent plaintiffs in the above matter. This letter serves as our response to defendant's pre-motion conference letter with respect to defendant's intention to file a pre-answer motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6).

This action seeks damages for the infant plaintiff, who, while under the supervision of JetBlue as an unaccompanied minor, was erroneously handled, boarded and transported from Cibao International Airport in the Dominican Republic to Logan Airport in Boston, Massachusetts, in lieu of JFK Airport in Queens, New York, where his mother Maribel Martinez awaited his arrival.

This action further seeks damages for the negligent infliction of emotional distress of plaintiff, Maribel Martinez, who was presented an alternate child while waiting in the terminal, claimed by defendant to be her son. And, who believed her son to be missing before being notified of his whereabouts by defendant several hours later and subsequently reunited.

A. Montreal Convention

As cited by defendant, the Montreal Convention is an international treaty that addresses private international air law.

The Montreal Convention Article 17 speaks of the carrier's liability for a passenger's injury "on board the aircraft...or during embarking or disembarking."

Here, the Montreal Convention does not apply to Maribel Martinez. Plaintiff Martinez was not a passenger on any international flight, thus is not bound by the treaty. Plaintiff Martinez, a New York resident, was simply awaiting her son's arrival at JFK Airport when approached by JetBlue employees, at which time the events which led to her emotional distress evolved. Her state claims are not pre-empted.

Moreover, a question exists as to whether the infant plaintiff's claim is governed by the Montréal Convention. The error and clear negligence of JetBlue employees, which resulted in the infant plaintiff being placed on the wrong flight, did not occur while on the flight or even arguably during the embarkation process. Rather, the mislabeling of the infant plaintiff and his purported final destination occurred pre-embarkation by the JetBlue employees to which his care was entrusted. The injury claimed by the infant plaintiff was as a result of negligent, reckless acts of defendant's employees prior to the placement of the infant plaintiff upon this international flight, as such the Montreal Convention does not pre-empt the infant plaintiff's claims.

B. ADA

The ADA preemption clause cited by defendant is inapplicable to the present matter.

The pre-boarding procedures and the negligence claimed herein, which led to the erroneous placement of the infant plaintiff onto a flight to another state, has no bearing upon the "price, route or service of an air carrier" within the meaning of the ADA. Biscone v. JetBlue, 103 AD3d 158 (2d Dept. 2012).

The "service" of an air carrier as decided by courts dealing with the application of this act relates to issues such as: frequent flyer programs (American Airlines v. Wolens, 513 US219; Northwest v. Ginsburg, 134 S. Ct. 1422 (2014) and providing facilities and beverages for delayed travel (Air Transportation v. Cuomo, 520 F3d 218 (2d Cir. 2008)).

Plaintiffs' state law claims cannot be pre-empted by the ADA.

C. State Law Claims

In summary, plaintiffs' state law claims are viable and adequately pled. Defendant had a direct duty to plaintiffs and breached that duty causing emotional harm (Johnson v. State of New York, 37 NY2d 378; Batalla v. State of New York, 10 NY2d 237). Moreover, punitive damages are proper as "conduct warranting an award of punitive damages need not be intentionally harmful but may consist of actions which constitute willful or wanton negligence or recklessness" (Fordham-Coleman v. National Fuel Gas Distribution Corp., 42 Ad3d 106). Lastly, specific information concerning the hiring, retention, training and supervision of employees is solely within the knowledge of defendant, which will be elicited during the course of discovery. Thank you for your consideration.

Respectfully submitted,
Rubenstein & Ryneeki

Sanford Rubenstein, Esq.