

## Corporate & Financial Weekly Digest

December 9, 2011 by [Bruce M. Sabados](#)

### **Seventh Circuit Gives Guidance on McCaskill-Bond Amendment to Federal Aviation Act**

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The McCaskill-Bond Amendment to the Federal Aviation Act provides that a merger of air carriers requires the new entity to merge the seniority lists of the two carriers' employees. Republic Airways acquired Midwest Airlines, and thereafter the Teamsters Union, which represented the flight attendants at Republic's older carriers, refused to integrate the seniority lists for flight attendants and placed Midwest's flight attendants at the bottom of the seniority roster. A group of Midwest flight attendants challenged the action, asserting that it violated the amendment. The Teamsters argued that, at the time of acquisition, Midwest was on the verge of bankruptcy, that Republic abandoned Midwest's regulatory certificate, and therefore Midwest was not an "air carrier" for the purpose of the amendment. The U.S. District Court for the Eastern District of Wisconsin characterized the transaction as merely Republic's acquisition of some of Midwest's assets, but not the acquisition of an air carrier for the purposes of the amendment, thus holding that integration of seniority lists was not required.

The U.S. Court of Appeals for the Seventh Circuit reversed. First, it found that the transaction "involved" transferring ownership of an air carrier, despite the fact that the merger took place between two parent (holding) companies. Second, the result of the merger was a single air carrier, as operations and schedules were integrated, Republic began to fly Midwest's routes with its own planes, and abandoned Midwest's certificate to operate as an independent air carrier itself. Finally, regardless of whether Midwest was experiencing financial difficulty, Republic acquired more than 50% of Midwest – it in fact acquired 100%. These facts satisfied the requirements of the amendment. The Seventh Circuit contrasted the facts with the United and Continental Airlines merger, where those airlines continue to operate as separate businesses, and are therefore not subject to the McCaskill-Bond requirement to combine seniority lists.

*Committee of Concerned Midwest Flight Attendants for Fair and Equitable Seniority Integration v. International Brotherhood of Teamsters Airline Division*, No. 10-C-379 (7th Cir. Nov. 30, 2011).