Client Alert

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Ventress III Provides Another Tool for Airlines: Ninth Circuit Says Federal Aviation Act Preempts Pilot's State Law Employment Claims

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On March 28, 2014, the Ninth Circuit strengthened its Federal Aviation Act (the "Act") preemption jurisprudence, holding that state law claims for retaliation and constructive termination are preempted under the Act when they require "the fact finder to intrude upon the federally occupied field of aviation safety[.]" *Ventress v. Japan Airlines*, No. 12-15066 (9th Cir. 2014). *Ventress* thus provides another useful tool for airlines defending state-law tort claims that touch upon aviation safety.

BACKGROUND

Pro se plaintiff Martin Ventress, a former flight engineer, brought statutory and common law retaliation and constructive discharge claims against defendant Japan Airlines (JAL) after Japanese psychiatrists deemed him "medically disqualified" to fly. Ventress alleged that JAL retaliated against him for reporting safety concerns, and constructively terminated him for reasons related to his medical and mental fitness.[1] Specifically, he alleged that JAL subjected him to unnecessary psychiatric evaluations and prevented him from working after he raised safety concerns regarding a specific pilot's medical fitness to operate an aircraft during a June 2001 flight. One of JAL's defenses to Ventress's claims was that JAL had a legitimate business reason for suspending Ventress's ability to fly: Ventress was medically disqualified under applicable regulations.

The district court held that the Act preempted Ventress's state law claims because ruling on the claims would necessarily require the finder of fact to consider whether or not Ventress was medically fit to carry out his duties as flight engineer. Specifically, the district court held that "[d]etermining whether Ventress was medically qualified to work as a flight engineer would intrude in the area of airmen medical standards, which Congress intended to occupy exclusively." After his motion for reconsideration was denied by the district court, Ventress appealed.

NINTH CIRCUIT'S PREEMPTION ANALYSIS

After repeating the oft-noted principles that the Act does not contain an express preemption clause and that any preemption under the Act must be implied in the form of conflict or field preemption, the opinion focused on field preemption, which "can be inferred either where there is a regulatory framework so pervasive . . . that Congress left no room for the States to supplement it [] or where the federal interest is so dominant that the federal system

[1] This was the third trip the parties had taken to the Ninth Circuit. In *Ventress I*, the Ninth Circuit held that Ventress's state law claims were not preempted by the Friendship, Commerce, and Navigation Treaty. 486 F.3d 1111 (9th Cir. 2007). In *Ventress II*, the court held that Ventress's claims were not preempted by the Airlines Deregulation Act. 603 F.3d 676 (9th Cir. 2010). Because of the summary nature of this alert, a detailed procedural history of this case (now known as *Ventress III*) has been omitted.

will be assumed to preclude enforcement of state laws on the same subject."

The court then looked back on its key aviation preemption decisions, starting with *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007). In *Montalvo*, the court held that claims based on an airline crew's failure to warn about travel-related deep vein thrombosis were preempted by the Act because the Act and the Federal Aviation Regulations (FARs) demonstrated that Congress "clearly indicated its intent to be the sole regulator" of aviation safety. The court then considered *Martin v. Midwest Express Holdings, Inc.*, 555 F.3d 806 (9th Cir. 2009), which "circumscribed the preemptive effect" of the Act, holding that state law tort claims involving airplane stairs were not preempted by federal law because they were not subject to "pervasive regulation or other grounds for preemption."

With this background, the court undertook a review of the applicable FARs, which it held "confirm that pilot qualifications and medical standards for airmen, unlike aircraft stairs, are pervasively regulated." The court noted that the Act specifically authorizes the FAA to issue airmen certificates, which can be granted or denied based on whether applicants "meet certain medical standards." The FARs extensively govern medical standards for mental, neurological, and general medical conditions. *See* 14 C.F.R. § 67.101-67.113; 67.201-67.313.

"In light of this statutory and regulatory backdrop," and guided by *Montalvo* and *Martin*, the court "conclude[d] that the [Act] and accompanying FARs preempt Ventress's retaliation and constructive termination claims" for two reasons: (1) "the pervasiveness of federal safety regulations for pilots," and (2) "the congressional goal of a uniform system of aviation safety." The court noted that Ventress's claims were merely "backdoor challenges to JAL's safety-related decisions" regarding pilot "physical and mental fitness to operate civil aircraft." This "inquiry into medical fitness . . . intrudes upon the federally occupied field of pilot safety and qualifications that Congress has reserved for the [FAA] and impermissibly subjects federal law to 'supplementation by, [and] variation among, state laws.'" (Citations omitted.)

The court was careful to limit its holding, however, noting that it did not "suggest that the [Act] preempts all retaliation and constructive termination claims brought under California law." It recognized that "Congress has not occupied the field of employment law in the aviation context and that the [Act] does not confer upon the [FAA] the exclusive power to regulate all employment matters involving airmen." Instead, the court concluded that the Act "preempts state law claims that encroach upon, supplement, or alter the federally occupied field of aviation safety[.]"[2]

CONCLUSION

The *Ventress III* decision—consistent with the Ninth Circuit's decision in *Montalvo*—correctly affirms years of preemption jurisprudence holding that state law claims that intrude upon the federally regulated area of aviation safety will be preempted. This well-reasoned approach furthers Congress' goal of creating a uniform system of aviation safety, and provides airlines with another tool in their kit to combat state law claims, employment and otherwise.

[2] Judge Bea filed a concurrence related to a procedural aspect of the case.

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