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DEEP-VEIN THROMBOSIS CLAIM BASED ON WISCONSIN LAW WAS IMPLIEDLY PREEMPTED BY THE FAA ACT

The case arose out of a passenger who developed deep-vein thrombosis (“DVT”) while flying aboard Midwest Express Airlines (“Midwest”). The passenger and his wife sued the airline for a failure to warn of the risk of DVT and failing to advise passengers to get up and move around in the cabin. The case was based on Wisconsin common law claims. The trial court granted the airline’s motion for summary judgment, holding that the FAA Act and regulations preempted the passenger’s common law claims.

The passenger appealed, and the Wisconsin Court of Appeals for the Third Circuit affirmed the trial court, reasoning that the elaborate scheme of regulations and statutes promulgated or authorized by Congress preempted state common law claims for failure to warn of the risk of DVT. The Wisconsin Court of Appeals for the Third Circuit relied upon *Witty v. Delta Airlines, Inc.*, 366 F. 3d

380 (5th Cir. 2004). In *Witty*, the United States Court of Appeals for the Fifth Circuit reasoned that the pervasive regulatory scheme enacted by Congress, which included warnings and instructions to passengers during airline flights, preempted state common law claims. Following the logic of *Witty*, the Wisconsin Court of Appeals for the Third Circuit concluded that if state courts and juries are allowed to decide that more warnings were required than those required by Federal law,

then the state decisions would conflict with the Federal statutes and regulations.

The Wisconsin Court of Appeals for the Third Circuit did not reach the question of whether or not Federal law claims would lie for failure to warn.

Miezin v. Midwest Express Airlines, Inc., Wisconsin Court of Appeals for the Third Circuit, Case No.: 2004AP868, 2005 WL 1208507 (Wis. Ct. App. May 17, 2005).



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