



FLIGHT-WATCH



VOLUME 174

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November 2006

**CERTIFICATION OF AIRCRAFT BY THE
FAA DOES NOT PRECLUDE STATE
COURT ACTIONS FOR DESIGN DEFECTS
OR FAILURE
TO WARN**

The case involved the death of a pilot and his passenger in a plane that crashed following a bird strike. The survivors brought actions against the manufacturer claiming the aircraft was defectively designed and the pilot was not properly warned about the danger to the airframe caused by bird strikes. The defendant moved to dismiss claiming that the matter was preempted by federal law and the certification of the aircraft by the Federal Aviation Administration (FAA). The defendant relied upon the Federal Aviation Act and its amendments codified at 49 U.S.C. §40101, et seq. The trial court denied the defendants' motion to dismiss finding that the certification by the FAA merely stated requirements and not a specific design or safety standard. For this reason, the trial court reasoned that the state common law claims were not preempted by the Federal Aviation Act.

Monroe v. Cessna Aircraft Co., 417 F.Supp. 2d 824 (E.D. Tex. 2006).

**AIRLINE COULD BE SUED FOR RACIAL
DISCRIMINATION WHERE PASSENGER
WAS REQUESTED TO PURCHASE A SEC-
OND TICKET**

The plaintiff was an African American and was also overweight. She bought a Southwest Airlines ticket and was allowed to board the aircraft. Once in her seat, she was approached by a Southwest employee who requested that she purchase that she purchase a second ticket. The employee, allegedly, did not explain to the passenger that the request was due to a Southwest policy requiring that customer of size (i.e., who cannot put their armrest fully down) buy a second ticket.

The passenger declined to purchase a second ticket and left the aircraft. She then sued Southwest Airlines under 42 U.S.C. §1981, and the air-

line brought a motion for summary judgment. The trial court determined that (1) the plaintiff was the member of a protected class, (2) to attempt to make or enforce a contract for services the defendant ordinarily provided, and (3) was denied the benefits of the contract when similarly situated persons outside the protected class were not, or that the passengers received services in a "markedly hostile manner."

The trial court found that the passenger had a standard of a prima facie case of discrimination in that she is a member of a protected class who attempted to enforce a contractual relationship and the benefits were denied her. Although the pleadings did not specifically allege that similarly situated persons outside the class were treated differently, the trial court found that there was a sufficient number of disturbing factors suggesting hostility directed toward the passenger in the encounter. Also, it appeared that the passenger was not so large that the armrest could be placed in the fully down position. The trial court reasoned that the plaintiff had met her burden and the allegations contained in her pleadings and denied the motion for summary judgment.

Thompson v. Southwest Airlines Co., Case No. -4-CV-00313, 2006 WL 287850 (D.N.H. February 6, 2006).



Alan Armstrong is engaged in the general practice of law with an emphasis in the following areas:

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Alan piloting the Kate
during the Greater
Georgia Air Show—
10/15/06

Photo Courtesy of
Neil Estes