

NEW YORK COURTS TO PASSENGER VICTIMS OF 11 HOUR TARMAC CONFINEMENT: DROP DEAD

IT'S AN AIRLINE "SERVICE", NO RECOVERY ALLOWED EXCEPT FOR PHYSICAL INJURY OR DEATH

New York City, January 21, 2013

Three New York based courts have ruled that even though US DOT rules now prohibit as an unfair and deceptive practice holding airline passengers more than 3 hours on the tarmac and require that they be provided with basic sustenance after 2 hours, passengers held for 7 to 11 hours cannot sue for damages, unless they were physically injured or killed.

Prior to enactment of the DOT Three Hour Rule in 2009, which was proposed and advocated for mainly by FlyersRights.org and a coalition it formed in 2007, up to 250,000 were being held on the tarmac for over 3 hours for reasons of commercial convenience by airlines.

www.msnbc.msn.com/id/35766268/ns/travel-rob_lovitt_columns

www.faa.gov/documentLibrary/media/Notice/N7110.524.pdf

In *Biscone v JetBlue Airways Corporation*, a midlevel appeal court for Brooklyn, Queens and Long Island on December 26, 2012 upheld a lower court decision dismissing a complaint by the plaintiff and about 1,300 others who were held for 11 hours on the tarmac at JFK Airport on Valentine's Day 2007, with inadequate food, water, bathroom facilities or breathable air. The court found this was an airline "service" immune from lawsuits, even though the plaintiff alleged that the confinement was based on knowing, repeated false statements motivated by pecuniary gain for the airline and its employees: i.e. that the flight was about to take off and the confinement was weather related. A passenger who demanded to exit the aircraft was loudly threatened with 20 years imprisonment under the Patriot Act by the flight crew. These courts accepted the airline argument that in enacting the Airline Deregulation Act of 1978 which deregulated air fares and scheduling and prohibited state re-regulation, Congress also intended to bar all tort lawsuits such as false imprisonment, fraud or infliction of emotional distress where an airline's conduct relates to its operations, unless the passenger was injured or killed. See www.courts.state.ny.us/Reporter/3dseries/2012/2012_09019.htm

Jetblue's CEO and founder David Neeleman, who has been named as a witness in the Biscone case, publicly apologized profusely for the snafu and admitted the airline did a "horrible job" in not deplaning its passengers as other airlines had done that day. Within a month he had lost his position as CEO. www.cnbc.com/id/17165981/JetBlue_CEO_Tells_CNBC_We_Didn...

usatoday30.usatoday.com/travel/flights/2007-05-10-jetblue...

In *Joseph v JetBlue* a US District in upstate New York reached a similar conclusion in a case involving a 7 hour confinement in October 2011 in Hartford Connecticut.

lawyersusaonline.com/wp-files/pdfs-4/joseph-v-jetblue.pdf

The Plaintiff passenger Katharine Biscone, a New York City comedy writer and television performer, has appealed to the New York Court of Appeals, the state's highest court. Her attorney Paul Hudson noted that in similar circumstances no other appeal court and nearly all other lower courts have refused to dismiss complaints involving extended tarmac confinements based on federal preemption grounds, and that another federal court had previously declined to dismiss her case and remanded it to state court finding there was no federal jurisdiction.

www.leagle.com/xmlResult.aspx?xmlDoc=ln%20FDCO...

Ms Biscone also appealed another order of the court which held that by filing a lawsuit in New York, she had waived all rights to personal privacy of her medical records, psychological records and tax returns which the court found could be disseminated without the restrictions provided for in commonly used confidentiality protective orders for electronically filed cases.

In a previous case involving 7,000 passengers trapped on the tarmac by Northwest Airlines passengers in Detroit in 1999 for 3 to 9 hours received, settlements paid passengers up to several thousand dollars each. In another recent case involving Continental Airlines and ExpressJet, a DOT consent order a required compensation to passengers.

abcnews.go.com/Business/story?id=88807&page=1

www.dot.gov/briefing-room/us...tarmac-delay-rule-violations

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