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*What Every Travel Buyer and Supplier Needs to Know About
Travel Law*

9:00 a.m.-10:a.m.

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Biography of Jeffrey R. Miller, Esquire

Jeff Miller is a principal of Miller Law, LLC based in Columbia, Maryland. His practice involves the travel, tourism and hospitality industries and he represents corporations, consortiums, agents at home, and travel agencies throughout the country.

He is also a full time instructor in the Hospitality Management program at Florida Atlantic University in Boca Raton, Florida teaching courses in hospitality law, marketing and introduction to travel and tourism. Jeff is also the Legal Editor and has a monthly column in *Agent@Home Magazine* and is widely quoted in the trade, daily and business press.

He has a Juris Doctor degree from Catholic University in Washington, DC and a MBA from Loyola University (Maryland) and a BS in Business Administration from the University of Maryland, College Park. He is admitted to practice law in Maryland, Florida and the District of Columbia. He has presented workshops, seminars, panels on travel related issues throughout the world.

Miller is also the author of *The Airline Deregulation Handbook, Legal Aspects of Travel Agency Operation and Legal Forms for Travel Agents*. Jeff has also previously taught at the University of Maryland, College Park, Bowie State College and George Washington University in Washington, DC.

Biography of Peter Ricci, EdD

Dr. Peter Ricci, CHA, CHSE, CRME is director of the hospitality management program at Florida Atlantic University (FAU) in Boca Raton, Florida.

Peter has published over 35 articles on various lodging management topics and has co-authored *The Little Book of Big Cases for the Hospitality Manager*.

Peter holds the designations of Certified Hotel Administrator (CHA) by the American Hotel & Lodging Association, the Certified Hospitality Sales Executive (CHSE) from the Hospitality Sales and Marketing Association International, and the Certified Revenue Management Executive (CRME) also from the Hospitality Sales and Marketing Association International. Dr. Ricci is a two-time graduate of the University of Florida with a bachelor's degree in sociology and a master's degree in recreation studies with a commercial recreation and tourism emphasis. Additionally, Dr. Ricci was awarded the University of Florida's distinguished alumnus in the year 2000. Peter completed his doctoral studies in educational leadership at the University of Central Florida in 2005.

What Every Travel Buyer and Supplier Needs to Know About Travel Law

Passengers traveling in international air transportation, i.e. between the United States and a foreign country, or any two foreign countries, will find a litany of issues to be addressed in the event accidents or injuries are sustained while traveling aboard an aircraft.

Most US flag carriers and airlines flagged in foreign countries are governed by a host of statutes, regulations, international treaties as well as private contracts (contract of carriage) with the traveling public. While airline crashes in the United States are generally few and far between they do occur and generally result in significant injuries or death for all of the passengers and crew. In February 2009, Continental commuter flight crashed on approach to Buffalo, NY which resulted in the death of more than four dozen people and also led to some Federal legislation with regard to the operations of commuter airlines that operate as “feeder” for larger air carriers.

In the United States, by Federal statute, all aviation accidents are investigated by the National Transportation Safety Board (NTSB) which is an independent agency of the United States’ government with the mission to improve the safety of transportation in many different fields including aviation, rail, train and road among others. Indeed the NTSB, the parent carrier (airline), and/or the manufacturer are often invited to investigate international accidents as well due to the NTSB’s long-standing record of thorough accident investigation.

While the number of passengers flying within the United States has dramatically increased over the last several decades, the safety has continued to improve which has resulted in fewer crashes and death. When the ValuJet flight crashed into the Everglades many years ago the Federal government changed many of the requirements as to what could be handled by the carrier as opposed to subcontractors and it is unlikely that there will ever be another airline operating as ValuJet did with essentially everything contracted out from the carrier. A second example which occurred internationally, but had subsequent and widespread consequences here in the United States, was the crash of a Partnair flight off the coast of Denmark. The ensuing investigation found forged aircraft parts as the cause. In partnership with the Accident Investigation Board Norway (AIBN), the Federal Aviation Administration (FAA) examined the scope of spare parts in the United States that were unregulated during construction. The FAA investigated false parts through a sting operation finding thousands of worn or inadequate parts refurbished to look new and up to airline standards. More stringent parts broker standards were implemented almost immediately afterward.

Accident investigations and the procedures, policies, and protections implemented after thorough investigations, have led to a much safer flying environment here in the U.S. It has been estimated that between the years 1996 and 2000 the chances of a passenger being on a flight involving a fatality will be 1 in 4.2 million. The Federal Aviation Act of 1958 enacted regulations which address every aspect of aviation from engine and aircraft design to crew qualifications and operation of the air traffic control systems. By Federal law every aspect of aviation safety is subject to the exclusive control of the Federal Aviation Administration.

Federal District and Appellate courts have consistently recognized the broad pre-emption intended by Congress in the Federal Aviation Act of 1958, as amended, and have routinely turned away attempts by private litigants to impose additional state imposed burdens on the airline and aircraft industry. The airlines were also successful in having Congress preempt consumer protection, with regard to the airline industry, at the time that the Airline Deregulation Act of 1978 was enacted. Under this statute, federal courts have routinely rejected attempts at regulation by states solely with regard to consumer protection of airline passengers by saying that it is solely within the discretion of the US Department of Transportation to address consumer protection issues involving passengers.

In 1978, Congress enacted the Airline Deregulation Act which sunset the Civil Aeronautics Board several years later and transferred most of the functions of the CAB to the US Department of Transportation. The Airline Deregulation Act decided a specific preemption of authority rates, routes and service and held that these belong solely to the federal government and not to any state. In a widely reported Federal Circuit Court decision in New York State law was overturned which required airlines to provide certain types of services to passengers during extended ground delays. The 2nd Circuit Court of Appeals specifically found that these types of services were preempted by the Airline Deregulation Act and while the State of New York won at the district court level, the airline's trade association appealed and the 2nd Circuit reversed.

Without a doubt, flag carriers do not want any type of state regulations for a "passenger bill of rights" and because they were successful in lobbying that issue more than 30 years ago to have the preemption enacted in the Federal statute they typically are free from any type of consumer protection at state level. Unfortunately, the US Department of Transportation, which has exclusive jurisdiction of consumer protection issues for airline passengers does not have the resources nor the political will to enforce passengers' rights which would more likely occur on a state level.

In January 2012, the US Department of Transportation provided new regulations with regard to passengers' rights, many of which had been enacted but are on appeal again, by the airline industry to the federal courts alleging that it infringes upon the commerce clause as well as other federal provisions. The recently enacted DOT regulations also provided an increase in minimum compensation for "bumped" customers and (2) advertise only the complete fare including all taxes as opposed to a fare that does not include all taxes and other statutory fees.

The United States is a signatory to the Montreal Convention which exclusively governs the rights and liabilities of passengers and carriers in international air transportation.

The Montreal Convention specifically superseded the Warsaw Convention requirements that had existed for almost 70 years.

The Montreal Convention defines the conditions under which carriers would be liable for death or injury to passengers and for lost or damaged baggage. The Convention further states that an injury must involve a physical injury because purely mental injuries are not recoverable under the Montreal Convention.

There is also an imposition of an award when the carrier is found to be strictly liable for damages exceeding a set amount and the carrier may attempt to prove in court that the damages are not due to its own negligence or omission or that the damage is due solely to the negligence or wrongful act or omission of a third party.

The Montreal Convention also discussed lost or destroyed baggage and cargo again, set limits of liability. An official part of the Montreal Convention allows for the venue of any action to be brought where the passengers' place of residence is so long as the carrier operates passenger air service to or from that country. Under the Warsaw Convention actions can only be brought in the place where the carrier had its domicile or principal place of business, a place where the contract was made or the final destination.