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DISCRIMINATION

Jury finds for Southwest in U.S. border agent's race discrimination suit

A U.S. Customs and Border Protection agent failed to prove a Southwest Airlines pilot unlawfully removed him from a plane because of his national origin, a Virginia federal court jury has determined.

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JURISDICTION

California lacks jurisdiction over French plane maker, 9th Circuit says

A France-based plane maker does not have sufficient contacts in California to allow a federal court there to hear a wrongful-death suit against it, a federal appeals court has ruled.

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REUTERS/AIN-Courtesy of Cubadebate

The suit was filed by the heirs of a passenger who died in the November 2010 Aero Caribbean plane crash near Havana, Cuba. Wreckage of the plane is shown here.

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Southwest

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Shah v. Southwest Airlines et al., No. 1:13-cv-01481, verdict returned (E.D. Va. Sept. 12, 2014).

The airline's decision to remove passenger Chirag Shah from a plane was not arbitrary and capricious in violation of 42 U.S.C. § 1981, a jury in the U.S. District Court for the Eastern District of Virginia found Sept. 12.

Under Section 1981, every person enjoys equal rights under the law.

"[T]he jury verdict vindicates the critically important right of flight crews to remove passengers they believe might be adverse to safety — even if their concerns for safety turn out to be unfounded," defense attorney **Jonathan M. Stern** of **Schnader Harrison Segal & Lewis** said.

Plaintiff's counsel was not immediately available for comment.

Shah, a U.S. Customs and Border Protection contractor, was traveling from Washington Dulles International Airport to Denver on business April 15, 2013, hours after two bombs exploded near the Boston Marathon finish line, according to the parties' statement of stipulated facts.

After proceeding through security and choosing a seat on the Southwest plane, he noticed one of the flight attendants staring at

him, according to his complaint. Just before entering the runway, pilot George Cannon announced the plane was returning to the gate "due to some issue with a passenger," the suit said.

Arriving at the gate, airport security officers escorted Shah and another passenger off the plane and Transportation Security Administration officers questioned both men, the suit said. Although the TSA determined Shah was not a security risk, he was not allowed to return to the plane and was instructed to make other travel arrangements, according to his complaint.

removal. A flight attendant was concerned about the way Shah was erratically moving around in his seat and that he unbuckled his seat belt as the plane taxied toward the runway, the airline's court filings said.

Under the Federal Aviation Act, 49 U.S.C. § 44902(b), an airline may refuse transportation if a passenger is considered a safety risk unless the captain's decision to do so is arbitrary or capricious, Southwest said.

Neither Cannon's decision to return to the gate based on his flight attendant's report nor his decision to refuse Shah to reboard because the flight attendant was "genuinely

"The jury verdict vindicates the critically important right of flight crews to remove passengers they believe might be adverse to safety — even if their concerns for safety turn out to be unfounded," defense attorney Jonathan M. Stern said.

Shah, who is of Indian origin, noticed the other passenger removed from the plane was also of South Asian descent.

Shah claimed Southwest discriminated against him because of his race and violated his Section 1981 rights, among other allegations. He sought compensatory and punitive damages.

Southwest argued the plaintiff's behavior on board the plane, not his race, was the factor that prompted the crew to request his

concerned" about the plaintiff was arbitrary or capricious, the airline said.

The jury voted 6-1 in favor of Southwest. **WJ**

Attorneys:

Plaintiff: Thomas R. Breeden, Manassas, Va.

Defendant: Jonathan M. Stern, Schnader Harrison Segal & Lewis, Washington

Related Court Documents:

Complaint: 2013 WL 9676260

Answer: 2014 WL 4624015

Verdict form: 2014 WL 4624016

WESTLAW JOURNAL **AUTOMOTIVE**



This publication provides up-to-date information on developments in automotive product liability suits from around the country. Included are a tire defect report supplement, coverage of federal preemption issues, and important developments on class action claims, vehicle stability, seat belts, air bags and crashworthiness. Lemon laws, design defects, engine failure, and the efforts of the National Highway Traffic Safety Administration (NHTSA) are also reviewed in depth.

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