If you missed the Supreme Court's decision in *Northwest v. Ginsberg* it is understandable. The case had been much overshadowed by the Court's decision the same day in the campaign finance case discussed [here](http://knowledgecenter.csg.org/kc) in this blog.

In *Northwest v. Ginsberg* the Supreme Court held unanimously that an implied covenant of good faith and fair dealing claim related to Northwest terminating membership in its frequent flyer miles program was preempted by the Airline Deregulation Act (ADA) because the implied covenant claim was based on a state-imposed obligation.

Northwest revoked Rabbi Ginsberg’s membership in its frequent flyer program claiming that he “abused” the program by contacting Northwest 24 times in an 18-month period regarding travel problems, including nine incidents of his bag arriving late at the luggage carousel, and continually asking for compensation above the guidelines. Ginsberg claimed that Northwest violated the implied covenant of good faith and fair dealing because it “terminated his membership in a way that contravened his reasonable expectations with respect to the manner in which Northwest would exercise its discretion.”

The ADA preempts laws, regulations, and provisions that relate to air carrier “price, route, or service.” The Court first concluded the ADA can preempt common-law rules like the implied covenant of good faith and fair dealing because “[i]t is routine to call common-law rules ‘provisions.’” The Court next concluded that the frequent flyer miles program relates to “rates” and “services” because miles can be redeemed for tickets and upgrades. Finally, the Court considered whether the claim in this case related to a state-imposed obligation or was a voluntary agreement between the parties. Under Minnesota law, which applied in this case, the covenant applies to all contracts, except employment contracts. So the Court held the implied covenant of good faith and fair dealing claim was preempted in this case but rejected the argument that such claims would be preempted in all jurisdictions.

*Northwest v. Ginsberg* is one of only two preemption case the Court will decide this term. In *CTS Corp. v. Waldburger* the Court will decide whether the Superfund statute, the Comprehensive Environmental Response, Compensation, and Liability Act, preempts state statutes of repose in addition to state statutes of limitations.

By:

Tuesday, April 8, 2014 at 11:47 AM

Tags:

*Airline Deregulation Act* [5]*Supreme Court* [6]*Policy Area* [7]›*Transportation* [8]*Aviation* [9]*Capacity and Use* [10]