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SUPREME COURT OF THE UNITED STATES

No. 93–1286

AMERICAN AIRLINES, INC., PETITIONER *v.* MYRON WOLENS ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

[January 18, 1995]

JUSTICE GINSBURG delivered the opinion of the Court.

The Airline Deregulation Act of 1978 (ADA) prohibits States from "enact[ing] or enforc[ing] any law . . . relating to [air carrier] rates, routes, or services." 49 U. S. C. App. §1305(a)(1). This case concerns the scope of that preemptive provision, specifically, its application to a state-court suit, brought by participants in an airline's frequent flyer program, challenging the airline's retroactive changes in terms and conditions of the program. We hold that the ADA's preemption prescription bars state-imposed regulation of air carriers, but allows room for court enforcement of contract terms set by the parties themselves.

Until 1978, the Federal Aviation Act of 1958 (FAA), 72 Stat. 731, as amended, 49 U. S. C. App. §1301 *et seq.* (1988 ed. and Supp. V), empowered the Civil Aeronautics Board (CAB) to regulate the interstate airline industry. Although the FAA, pre-1978, authorized the Board both to regulate fares and to take administrative action against deceptive trade practices, the federal legislation originally contained

no clause preempting state regula-

tion. And from the start, the FAA has contained a "saving clause," §1106, 49 U. S. C. App. §1506, stating: "Nothing . . . in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies."

In 1978, Congress enacted the Airline Deregulation Act (ADA), 92 Stat. 1705, which largely deregulated domestic air transport. "To ensure that the States would not undo federal deregulation with regulation of their own," *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. ___ (1992) (slip op., at 2), the ADA included a preemption clause which read in relevant part:

> "[N]o State . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier . . . ." 49 U. S. C. App. §1305(a)(1).[1]

This case is our second encounter with the ADA's preemption clause. In 1992, in *Morales*, we confronted detailed Travel Industry Enforcement Guidelines, composed by the National Association of Attorneys General (NAAG). The NAAG guidelines purported to govern, *inter alia*, the content and format of airline fare advertising. See *Morales*, 504 U. S., at ___–___ (slip op., at 15–42) (appendix to Court's opinion setting out NAAG guidelines on air travel industry advertising and marketing practices). Several States had endeavored to enforce the NAAG

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[1]Reenacting Title 49 of the U. S. Code in 1994, Congress revised this clause to read:

"[A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier . . . ." 49 U. S. C. A. §41713(b)(1).

Congress intended the revision to make no substantive change. Pub. L. 103–272, §1(a), 108 Stat. 745.

guidelines, under the States' general consumer protection laws, to stop allegedly deceptive airline advertisements. The States' initiative, we determined, "`relat[ed] to [airline] rates, routes, or services,'" *id.*, at ___ (slip op., at 8) (quoting 49 U. S. C. App. §1305(a)(1)); consequently, we held, the fare advertising provisions of the NAAG guidelines were preempted by the ADA. *Id.*, at ___ (slip op., at 14).

For aid in construing the ADA words "relating to rates, routes, or services of any air carrier," the Court in *Morales* referred to the Employee Retirement Income Security Act of 1974 (ERISA), which provides for preemption of state laws "insofar as they . . . relate to any employee benefit plan." 29 U. S. C. §1144(a). Under the ERISA, we had ruled, a state law "relates to" an employee benefit plan "if it has a connection with or reference to such a plan." *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 97 (1983). *Morales* analogously defined the "relating to" language in the ADA preemption clause as "having a connection with or reference to airline `rates, routes, or services.'" *Morales*, 504 U. S., at ___ (slip op., at 7).

The *Morales* opinion presented much more, however, in accounting for the ADA's preemption of the state regulation in question. The opinion pointed out that the concerned federal agencies—the Department of Transportation (DOT)[2] and the Federal Trade Commission (FTC)—objected to the NAAG fare advertising guidelines as inconsistent with the ADA's deregulatory purpose; both agencies, *Morales* observed, regarded the guidelines as state regulatory measures preempted by the ADA. See *Morales*, 504

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[2]Deceptive trade practices regulatory authority formerly residing in the CAB was transferred to the DOT when the CAB was abolished in 1985. Civil Aeronautics Board Sunset Act of 1984, Pub. L. 98–443, §3, 98 Stat. 1703; 49 U. S. C. App. §1551.

U. S., at ___ (slip op., at 2) (DOT and FTC); *id.*, at ___ (slip op., at 10) (DOT); *id.*, at ___ (slip op., at 13) (FTC). *Morales* emphasized that the challenged guidelines set "binding requirements as to how airline tickets may be marketed," and "imposed [obligations that] would have a significant impact upon . . . the fares [airlines] charge." *Id.*, at ___, ___ (slip op., at 11, 13). The opinion further noted that the airlines would not have "*carte blanche* to lie and deceive consumers," for "the DOT retains the power to prohibit advertisements which in its opinion do not further competitive pricing." *Id.*, at __ (slip op., at 14). *Morales* also left room for state actions "too tenuous, remote, or peripheral . . . to have pre-emptive effect." *Ibid.* (internal quotation marks omitted).

The litigation now before us, two consolidated state-court class actions brought in Illinois, was *sub judice* when we decided *Morales*. Plaintiffs in both actions (respondents here) are participants in American Airlines' frequent flyer program, AAdvantage. AAdvantage enrollees earn mileage credits when they fly on American. They can exchange those credits for flight tickets or class-of-service upgrades. Plaintiffs complained that AAdvantage program modifications, instituted by American in 1988, devalued credits AAdvantage members had already earned. Plaintiffs featured American's imposition of capacity controls (limits on seats available to passengers obtaining tickets with AAdvantage credits) and blackout dates (restrictions on dates credits could be used). Conceding that American had reserved the right to change AAdvantage terms and conditions, plaintiffs challenged only the retroactive application of modifications, *i. e.*, cutbacks on the utility of credits previously accumulated. These cutbacks, plaintiffs

maintained, violated the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act), 815 Ill. Comp. Stat. §505 (1992) (formerly codified at Ill. Rev. Stat., ch. 121½, ¶261 *et seq*. (1991)), and constituted a breach of contract. Plaintiffs currently seek only monetary relief.[3]

In March 1992, several weeks before our decision in *Morales*, the Illinois Supreme Court rejected plaintiffs' prayer for an injunction. Such a decree, the Illinois court reasoned, would involve regulation of an airline's current rendition of services, a matter preempted by the ADA. That court, however, allowed the breach of contract and Consumer Fraud Act monetary relief claims to survive. The ADA's preemption clause, the Illinois court said, ruled out "only those State laws and regulations that specifically relate to and have more than a tangential connection with an airline's rates, routes or services." *American Airlines, Inc.* v. *Wolens*, 147 Ill. 2d 367, 373, 589 N. E. 2d 533, 536 (1992). After our decision in *Morales*, American petitioned for certiorari. The airline charged that the Illinois court, in a decision out of sync with *Morales*, had narrowly construed the ADA's broadly preemptive §1305(a)(1). We granted the petition, vacated the judgment of the Supreme Court of Illinois, and remanded for further consideration in light of *Morales*. *American Airlines, Inc.* v. *Wolens*, 506 U. S. ___ (1992).

On remand, the Illinois Supreme Court, with one dissent, adhered to its prior judgment. Describing

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[3]Plaintiffs no longer pursue requests they originally made for injunctive relief, or for punitive damages for alleged breach of contract. See Brief for Respondent 2, n. 2 (plaintiffs do not here contest holding of Illinois courts that injunctive relief is preempted); *id.*, at 6, n. 9 (plaintiffs "concede that punitive damages traditionally have not been recoverable for a simple breach of contract").

frequent flyer programs as not "essential," 157 Ill. 2d 466, 472, 626 N. E. 2d 205, 208 (1993), but merely "peripheral to the operation of an airline," *ibid.*, the Illinois court typed plaintiffs' state law claims for money damages as "relat[ed] to American's rates, routes, and services" only "tangential[ly]" or "tenuous[ly]." *Ibid.*

We granted American's second petition for certiorari, 511 U. S. ___ (1994), and we now reverse the Illinois Supreme Court's judgment to the extent that it allowed survival of plaintiffs' Consumer Fraud Act claims; we affirm that judgment, however, to the extent that it permits plaintiffs' breach of contract action to proceed. In both respects, we adopt the position of the DOT, as advanced in this Court by the United States.

We need not dwell on the question whether plaintiffs' complaints state claims "relating to [air carrier] rates, routes, or services." *Morales*, we are satisfied, does not countenance the Illinois Supreme Court's separation of matters "essential" from matters unessential to airline operations. Plaintiffs' claims relate to "rates," *i. e.*, American's charges in the form of mileage credits for free tickets and upgrades, and to "services," *i. e.*, access to flights and class-of-service upgrades unlimited by retrospectively applied capacity controls and blackout dates. But the ADA's preemption clause contains other words in need of interpretation, specifically, the words "enact or enforce any law" in the instruction: "[N]o state . . . shall enact or enforce any law . . . relating to [air carrier] rates, routes, or services." 49 U. S. C. App. §1305(a)(1). Taking into account all the words Congress placed in §1305(a)(1), we first consider whether plaintiffs' claims under the Illinois Consumer Fraud Act are preempted, and then turn to plaintiffs' breach of contract claims.

The Illinois Consumer Fraud Act declares unlawful

> "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the `Uniform Deceptive Trade Practices Act' . . . in the conduct of any trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby." 815 Ill. Comp. Stat. §505/2 (1992) (formerly codified at Ill. Rev. Stat., ch. 121½, ¶262 (1991)).

The Act is prescriptive; it controls the primary conduct of those falling within its governance. This Illinois law, in fact, is paradigmatic of the consumer protection legislation underpinning the NAAG guidelines. The NAAG Task Force on the Air Travel Industry, on which the Attorneys General of California, Illinois, Texas, and Washington served, see *Morales*, 504 U. S., at ___ (slip op., at 16), reported that the guidelines created no

> "new laws or regulations regarding the advertising practices or other business practices of the airline industry. They merely explain in detail how existing state laws apply to air fare advertising and frequent flyer programs." *Ibid.*

The NAAG guidelines highlight the potential for intrusive regulation of airline business practices inherent in state consumer protection legislation typified by the Illinois Consumer Fraud Act. For example, the guidelines enforcing the legislation instruct airlines on language appropriate to reserve rights to alter frequent flyer programs, and they

include transition rules for the fair institution of capacity controls. See Brief for United States as *Amicus Curiae* 13–14, n. 7.

As the NAAG guidelines illustrate, the Illinois Consumer Fraud Act serves as a means to guide and police the marketing practices of the airlines; the Act does not simply give effect to bargains offered by the airlines and accepted by airline customers. In light of the full text of the preemption clause, and of the ADA's purpose to leave largely to the airlines themselves, and not at all to States, the selection and design of marketing mechanisms appropriate to the furnishing of air transportation services,[4] we conclude that §1305(a)(1) preempts plaintiffs' claims under the Illinois Consumer Fraud Act.

American maintains, and we agree, that "Congress could hardly have intended to allow the States to hobble [competition for airline passengers] through the application of restrictive state laws." Brief for Petitioner 27. We do not read the ADA's preemption clause, however, to shelter airlines from suits alleging no violation of state-imposed obligations, but seeking recovery solely for the airline's alleged breach of its own, self-imposed undertakings. As persuasively argued by the United States, terms and conditions

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[4]We note again, however, that the DOT retains authority to investigate unfair and deceptive practices and unfair methods of competition by airlines, and may order an airline to cease and desist from such practices or methods of competition. See FAA §411, 49 U. S. C. App. §1381(a); *Morales*, 504 U. S., at ___ (slip op., at 14); see also Brief for United States as *Amicus Curiae* 3, and n. 2 (reporting that in 1993, the DOT issued 34 cease and desist orders and assessed more than $1.8 million in civil penalties in aviation economic enforcement proceedings).

airlines offer and passengers accept are privately ordered obligations "and thus do not amount to a State's `enact[ment] or enforce[ment] [of] any law, rule, regulation, standard, or other provision having the force and effect of law' within the meaning of [§]1305(a)(1)."[5] Brief for United States as *Amicus Curiae* 9. Cf. *Cipollone* v. *Liggett Group, Inc.*, 505 U. S. ___, ___ (1992) (slip op., at 20) (plurality opinion) ("[A] common law remedy for a contractual commitment voluntarily undertaken should not be regarded as a `requirement imposed under State law' within the meaning of [Federal Cigarette Labeling and Advertising Act] §5(b)."). A remedy confined to a contract's terms simply holds parties to their agreements—in this instance, to business judgments an airline made public about its rates and services.[6]

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[5]The United States recognizes that §1305(a)(1), because it contains the word "enforce" as well as "enact," "could perhaps be read to preempt even state-court enforcement of private contracts." Brief for United States as *Amicus Curiae* 17. But the word series "law, rule, regulation, standard, or other provision," as the United States suggests, "connotes official, government-imposed policies, not the terms of a private contract." *Id.*, at 16. Similarly, the phrase "having the force and effect of law" is most naturally read to "refe[r] to binding standards of conduct that operate irrespective of any private agreement." *Ibid*. Finally, the ban on enacting or enforcing any law "relating to rates, routes, or services" is most sensibly read, in light of the ADA's overarching deregulatory purpose, to mean "States may not seek to impose their own public policies or theories of competition or regulation on the operations of an air carrier." *Ibid*.

[6]American notes that in *Norfolk & Western R. Co.* v. *Train Dispatchers*, 499 U. S. 117, 129 (1991), the Court read the word "law" in a statutory exemption,

The ADA, as we recognized in *Morales*, 504 U. S., at ___ (slip op., at 2), was designed to promote "maximum reliance on competitive market forces." 49 U. S. C. App. §1302(a)(4). Market efficiency requires effective means to enforce private agreements. See Farber, Contract Law and Modern Economic Theory, 78 Nw. U. L. Rev. 303, 315 (1983) (remedy for breach of contract "is necessary in order to ensure economic efficiency"); R. Posner, Economic Analysis of Law 90–91 (4th ed. 1992) (legal enforcement of contracts is more efficient than a purely voluntary system). As stated by the United States: "The stability and efficiency of the market depend fundamentally on the enforcement of agreements freely made, based on needs perceived by the contracting parties at the time." Brief for United States as *Amicus Curiae* 23. That reality is key to

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49 U. S. C. §11341(a), to include "laws that govern the obligations imposed by contract." But that statute and case are not comparable to the statute and case before us. *Norfolk & Western* concerned the authority of the Interstate Commerce Commission (ICC) to approve rail carrier consolidations. A carrier participating in an ICC-approved consolidation is exempt "from the antitrust laws and from all other law . . . as necessary to let [the participant] carry out the transaction." 49 U. S. C. §11341(a). We read the exemption clause to empower the ICC to override, individually, a carrier's obligations under a collective-bargaining agreement. Our reading accorded with the ICC's and "ma[de] sense of the consolidation provisions," 499 U. S., at 132: "If §11341(a) did not apply to bargaining agreements . . . , rail carrier consolidations would be difficult, if not impossible, to achieve." *Id.*, at 133. Similarly in this case, our reading of the statutory formulation accords with that of the superintending agency, here, the DOT, and is necessary to make sense of the statute as a whole.

sensible construction of the ADA.

The FAA's text, we note, presupposes the vitality of contracts governing transportation by air carriers. Section 411(b), 49 U. S. C. App. §1381(b), thus authorizes airlines to "incorporate by reference in any ticket or other written instrument any of the terms of the contract of carriage" to the extent authorized by the DOT. And the DOT's regulations contemplate that, upon the January 1, 1983, termination of domestic tariffs, "ticket contracts" ordinarily would be enforceable under "the contract law of the States." 47 Fed. Reg. 52129 (1982). Correspondingly, the DOT requires carriers to give passengers written notice of the time period within which they may "bring an action against the carrier for its acts." 14 CFR §253.5(b)(2) (1994).

American does not suggest that its contracts lack legal force. American sees the DOT, however, as the exclusively competent monitor of the airline's undertakings. American points to the Department's authority to require any airline, in conjunction with its certification, to file a performance bond conditioned on the airline's "making appropriate compensation . . . , as prescribed by the [Department], for failure . . . to perform air transportation services in accordance with agreements therefor." FAA §401(q)(2), 49 U. S. C. App. §1371(q)(2).[7] But neither the DOT nor its

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[7]The preceding subsection, FAA §401(q)(1), 49 U. S. C. App. §1371(q)(1), requires an air carrier to have insurance, in an amount prescribed by the DOT, to cover claims for personal injuries and property losses "resulting from the operation or maintenance of aircraft." See Brief for United States as *Amicus Curiae* 19–20, and n. 12. American does not urge that the ADA preempts personal injury claims relating to airline operations. See Tr. of Oral Arg. 4 (acknowledgment by counsel for petitioner that

predecessor, the CAB, has ever construed or applied this provision to displace courts as adjudicators in air carrier contract disputes. Instead, these agencies have read the provision to charge them with a less taxing task: In passing on air carrier fitness under FAA §401(d), 49 U. S. C. App. §1371(d)(1), the DOT and the CAB have used their performance bond authority to ensure that, when a carrier's financial fitness is marginal, funds will be available to compensate customers if the carrier goes under before providing already-paid-for services. See, *e. g.*, *U. S. Bahamas Service Investigation*, CAB Order 79–11–116, p. 3, 84 CAB Reports 73, 75 (1979) ("We . . . find that Southeast [Airlines] is fit to provide scheduled foreign air transportation. However, because of Southeast's current financial condition its operations present an unacceptable risk of financial loss to consumers. Therefore, we shall require the carrier . . . to procure and maintain a bond for the protection of passengers who have paid for transportation not yet performed.").

The United States maintains that the DOT has neither the authority nor the apparatus required to superintend a contract dispute resolution regime. See Brief for United States as *Amicus Curiae* 22. Prior to airline deregulation, the CAB set rates, routes, and services through a cumbersome administrative process of applications and approvals. 72 Stat. 731. When Congress dismantled that regime, the United States emphasizes, the lawmakers indicated no intention to establish, simultaneously, a new administrative process for DOT adjudication of private

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"safety claims," for example, a negligence claim arising out of a plane crash, "would generally not be preempted"); Brief for United States as *Amicus Curiae* 20, n. 12 ("It is . . . unlikely that Section 1305(a)(1) preempts safety-related personal-injury claims relating to airline operations.").

contract disputes. See Brief for United States as *Amicus Curiae* 22. We agree.

Nor is it plausible that Congress meant to channel into federal courts the business of resolving, pursuant to judicially fashioned federal common law, the range of contract claims relating to airline rates, routes, or services. The ADA contains no hint of such a role for the federal courts. In this regard, the ADA contrasts markedly with the ERISA, which does channel civil actions into federal courts, see ERISA §§502(a), (e), 29 U. S. C. §§1132(a), (e), under a comprehensive scheme, detailed in the legislation, designed to promote "prompt and fair claims settlement." *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S. 41, 54 (1987); see *Ingersoll-Rand Co.* v. *McClendon*, 498 U. S. 133, 143–145 (1990) (finding ERISA's comprehensive civil enforcement scheme a "special feature" supporting preemption of common-law wrongful discharge claims).

The conclusion that the ADA permits state-law-based court adjudication of routine breach of contract claims also makes sense of Congress' retention of the FAA's saving clause, §1106, 49 U. S. C. App. §1506 (preserving "the remedies now existing at common law or by statute"). The ADA's preemption clause, §1305(a)(1), read together with the FAA's saving clause, stops States from imposing their own substantive standards with respect to rates, routes, or services, but not from affording relief to a party who claims and proves that an airline dishonored a term the airline itself stipulated. This distinction between what the State dictates and what the airline itself undertakes confines courts, in breach of contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement.[8]

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[8]The United States notes in this regard that "[s]ome state-law principles of contract law . . . might well be

American suggests that plaintiffs' breach of contract and Illinois Consumer Fraud Act claims differ only in their labels, so that if Fraud Act claims are preempted, contract claims must be preempted as well. See Reply Brief 6. But a breach of contract, without more, "does not amount to a cause of action cognizable under the [Consumer Fraud] Act and the Act should not apply to simple breach of contract claims." *Golembiewski* v. *Hallberg Ins. Agency, Inc.*, 262 Ill. App. 3d 1082, ___, 635 N. E. 2d 452, 460 (1st Dist. 1994). The basis for a contract action is the parties' agreement; to succeed under the consumer protection law, one must show not necessarily an agreement, but in all cases, an unfair or deceptive practice.

American ultimately argues that even under the position on preemption advanced by the United States—the one we adopt—plaintiffs' claims must fail because they "inescapably depend on state policies that are independent of the intent of the parties." Reply Brief 3. "The state court cannot reach the merits," American contends, "unless it first invalidates or limits [American's] express reservation of the right to change AAdvantage Program rules contained in AAdvantage contracts." *Ibid*.

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preempted to the extent they seek to effectuate the State's public policies, rather than the intent of the parties." Brief for United States as *Amicus Curiae* 28. Because contract law is not at its core "diverse, nonuniform, and confusing," *Cipollone*, 505 U. S., at ___ (slip op. at 23) (plurality opinion), we see no large risk of nonuniform adjudication inherent in "[s]tate-court enforcement of the terms of a uniform agreement prepared by an airline and entered into with its passengers nationwide." Brief for United States as *Amicus Curiae* 27.

American's argument is unpersuasive, for it assumes the answer to the very contract construction issue on which plaintiffs' claims turn: Did American, by contract, reserve the right to change the value of already accumulated mileage credits, or only to change the rules governing credits earned from and after the date of the change? See Brief for Respondents 5 (plaintiffs recognize that American "reserved the right to restrict, suspend, or otherwise alter aspects of the Program prospectively," but maintain that American "never reserved the right to retroactively diminish the value of the credits previously earned by members"). That question of contract interpretation has not yet had a full airing, and we intimate no view on its resolution.

Responding to our colleagues' diverse opinions dissenting in part, we add a final note. This case presents two issues that run all through the law. First, who decides (here, courts or the DOT, the latter lacking contract dispute resolution resources for the task)? On this question, all agree to this extent: None of the opinions in this case would foist on the DOT work Congress has neither instructed nor funded the Department to do. Second, where is it proper to draw the line (here, between what the ADA preempts, and what it leaves to private ordering, backed by judicial enforcement)? JUSTICE STEVENS reads our *Morales* decision to demand only minimal preemption; in contrast, JUSTICE O'CONNOR reads the same case to mandate total preemption.[9] The middle course we adopt seems to us best calculated to carry out the congressional design; it also bears the approval of the statute's experienced administrator, the DOT. And while we adhere to our holding in

[9]JUSTICE O'CONNOR's "all is preempted" position leaves room for personal injury claims, but only by classifying them as matters not "relating to [air carrier] . . . services." See *post*, at 5–6.

Morales, we do not overlook that in our system of adjudication, principles seldom can be settled "on the basis of one or two cases, but require a closer working out." Pound, Survey of the Conference Problems, 14 U. Cin. L. Rev. 324, 339 (1940) (Conference on the Status of the Rule of Judicial Precedent).

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For the reasons stated, the judgment of the Illinois Supreme Court is affirmed in part and reversed in part, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE SCALIA took no part in the consideration or decision in this case.