

# Passenger flow management and airline's responsibility

**Gianluca Rossoni**

**[www.tourismlaw.it](http://www.tourismlaw.it)  
20<sup>th</sup> January 2017**

## *Passenger flow management and airline's responsibility*

### Facts, procedure and questions referred to the case:

- family (2 adults + 1 child) lost the flight from MUC to BRI
- no show at gate for boarding due to long queue at the security control of hand-baggage
- airline sued for infringement of transport contract and request of reimbursement of tkt paid to another carrier (1500 €) plus moral damage (1000 €)
- jurisdiction: Justice of the Peace ( $\leq 5000$  €) of BRI (C-204/08)
- assessment of airlines' obligations in guiding passengers to departures gates

Host



Main Sponsor

**SITA**

# *Passenger flow management and airline's responsibility*

## Legal context:

- Terms and conditions of airline: you must be present at the boarding gate not later than the time specified by us when you check in
- art. 1175 c.c. + art. 1227 c.c. + art. 1375 c.c. + art. 946 c.n.: obligation to cooperate of the creditor
- art. 1228 c.c + art.1678 c.c.: obligation of the carrier to transport passenger
- Reg. (EC) 300/2008 - art. 12.1 + art. 13.1: airport security programme
- Commission Implementing Reg. (EU) 2015/1998 Annex – art. 1.0.1 + art. 3.0.1 + art. 4.0.1: responsibility of authority, airport operator, air carrier in the implementation of the security measures
- Convention for the Unification of Certain Rules for International Carriage by Air of Montreal of 1999 Article 19: ..upon condition only that the accident.. took place on board the aircraft or in the course of any of the operations of embarking or disembarking..

Host



Main Sponsor

**SITA**

## *Passenger flow management and airline's responsibility*

### Arguments of the parts:

#### Plaintiff:

- lodged boarding cards and tkt
- interrogatory of tkt holder to confirm the facts (but risk of cross-examination)
- consider the case as mere denied boarding according to art. 4 of Reg. (EC) 261/04

#### Defendant:

- lodged general declaration of civil aviation authority (*Luftamt SüdBayern Luftsicherheitsstelle*) of responsibility for security checks (subcontracted by *Sicherheitsgesellschaft am Flughafen München mbH*)
- lodged flight's report (61 out of 64 passengers regularly boarded)
- Munich Europe's Top Award Airport 2014 by Skytrax (no culpa in eligendo)
- consider the claimed obligation out of the transport contract

Host



Main Sponsor

**SITA**

# *Passenger flow management and airline's responsibility*

## Justice of the Peace findings:

- 1) abstain from assessment of the rule of law to be applied in this case
- 2) declaration that burden of the proof should lie with the passenger (Cass. Sez. Unite 30.10.2001 n. 13533)
- 3) plaintiff “*..did not prove the arrival's time at airport and closing time of the gate [!].*”
- 4) dismissal of lawsuit and compensation of proceeding costs [?]

Host



Main Sponsor

**SITA**

# *Passenger flow management and airline's responsibility*

## Final considerations from the judgement:

- 1) reverse burden of the proof up to carrier was not applied, as occurs in Regulation (EC) 261/04
- 2) from passenger perspective: right to care means assistance in guiding to departure gates which includes obligation to verify reasons of no show at boarding gate
- 3) from airlines perspective: passenger flow management is out of transport contract or right to seek reimbursement from competent body with whom the air carrier has a contract

Host



Main Sponsor

**SITA**