

# Sydney Pen Club

Advantage Partnership  
Lawyers

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This Month:



## Watch Out for Your Cabin Baggage

### **Bomanski v. US Airways Group Inc.**

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## ■ Watch Out for Your Cabin Baggage



*Bomanski v. US Airways Group Inc.,*

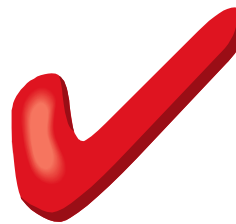
Ms Bomanski was a passenger on US Airways Flight 346, scheduled to travel from Orlando, Florida to Philadelphia. She was injured when she was struck on the head by another passenger's luggage, which fell out of an overhead storage compartment before the plane departed.



She was sitting in her aisle seat at the time of the accident, according to court records. Ms Bomanski, who refused further treatment from paramedics and opted to fly on to Philadelphia, and she claimed that her injuries were due to the airline's negligence. She specifically argued that the defendant was negligent in operating and maintaining its aircraft.

Ms Bomanski failed to present evidence that US Airways breached its standard of care when another passenger's bag fell from the overhead compartment and hit her, a Pennsylvania Federal judge has held.

Judge Slomsky found that Bomanski failed to specify a pertinent federal regulation applicable to the facts of her case that would support a negligence claim under a federal standard of care. Rather, the plaintiff merely made a passing reference to Federal Aviation Administration laws, regulations and guidelines.



The plaintiff therefore failed to establish a federal law claim and her state law claim was federally pre-empted, the district court noted. In addition, the judge held that Bomanski did not provide facts sufficient to prove a breach of the 'careless or reckless' standard under Federal Aviation Regulations.

'Here, the plaintiff's injury occurred while the aircraft was parked at the gate,' Judge Slomsky said. He added that the flight attendants did not handle the bag that fell nor assist in operating the overhead compartments; therefore, there was no evidence that the airline failed to prevent a known danger. The accident happened before the flight attendants were required to make their routine pre-takeoff inspection to ensure the overhead compartments were secure, the court added.

Source: Lawyer Pilots Bar Association Journal, Volume XXXI No. 2, 2009, Cleveland, Ohio

**Our Comment:** When storing hand luggage in the overhead compartment, leave it up to the flight attendants. If Ms Bomanski had requested the assistance of a flight attendant the court may have made a different decision.

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