

**EDITORIAL. WE WILL SEAT YOU AND THEN BEAT YOU!**

*David Grant*

Sitting in the departure lounge at Chicago Airport waiting to board a United Airlines flight and watching the images of a passenger being forcibly removed from a United flight is not the most comfortable of experiences. This was especially so as we had a tight schedule and had already been warned that the airline was looking for 'volunteers' to accept a later flight.

In the event we were not bumped and enjoyed a stress free flight to Tampa. But what would have been the position if it was us that had been dragged off the plane kicking and screaming? Would we be compensated for the reconstructive surgery we needed?

United's immediate justification for 're-accommodating' Dr Dao was that they had a denied boarding policy which permitted them to take anyone off the plane if it was overbooked. But Dr Dao was not denied boarding, he had already boarded when they decided to remove him. It would appear that their denied boarding policy would not protect them in these circumstances.

United also had a term in their terms and condition which permitted them to refuse transportation, but only for certain reasons such as drunkenness or disruptive behaviour, none of which applied to Dr Dao.

The captain may have had some discretionary authority to remove the passenger but presumably this would have only applied to extreme situations or for safety reasons, again which did not apply in this case.

However even if Dr Dao could prove breach of contract or have an action in tort for battery for the use of unreasonable force he would be faced with another hurdle - the Airline Deregulation Act which may pre-empt a claim like this. I am not qualified to comment upon the case law in this area but suffice to say it is complicated and ultimately Dr Dao might be left with no legal remedy at all.

The public outcry is such however that United may be persuaded to settle rather than let the matter drag on through the courts attracting further bad publicity.

Dr Dao has of course access to the full resources of the American legal system, which has already swung into action, but assuming a less dramatic event, a simple bumping, and absent the social media storm how would us three Brits have fared? Airlines are not noted for their philanthropy and out of the eye of the media storm would be much more likely to dig their heels in. Would they compensate us if we had missed the departure of our cruise? I doubt it. And how would we set about getting redress? As I have indicated before in this column, tourists are at a natural disadvantage when wishing to assert their legal rights for incidents that occur while they are away from home. How do they access a foreign legal system, often for a very small claim, and often in a foreign language? The answer is probably not to try and instead rely upon a comprehensive travel insurance policy or to have bought a package holiday and thus be able to seek redress from the tour operator – one reason at least to recognise the benefits of EU membership.