I. SUMMARY OF ISSUE

Kuwait Airways Corporation ("KAC") is the national airline of Kuwait. KAC refuses to sell airline tickets to Israeli passport holders, arguing that it is obligated to comply with Kuwaiti law, specifically Article 1 of Law No. 21 of 1964, which criminalizes the action of any Kuwaiti individual or corporation

> enter[ing] into an agreement, personally or indirectly, with entities or persons residing in Israel, of Israeli citizenship, or working for or in the interest of Israel, regardless of their domicile, whenever the object of the agreement is to conduct commercial deals, financial transactions or any other dealings, regardless of nature. Corporations and facilities, regardless of nationality, that have interests, branches or general agencies in Israel are considered among the entities and persons covered by the prohibition, in accordance with the preceding item and the decision of the Overseer of Boycott Affairs pursuant to the recommendations of the Conference of Liaison Officers.

Entering into such agreements may result in "punish[ment] [by imprisonment] with hard labor . . . ."

Kuwait also does not recognize Israel as a state and therefore does not recognize Israeli passports as legitimate travel documents, so an Israeli passenger entering into Kuwait would not be permitted to pass through border control. However, KAC operates direct flights from John F. Kennedy International Airport ("JFK") in New York, New York, United States to London Heathrow Airport in London, England. At no point would a passenger on this flight be under the jurisdiction of Kuwaiti law, or be subject to Kuwaiti customs. The issue in question is whether an individual traveling with an Israeli passport and attempting to purchase a ticket on this KAC flight—which does not pass through Kuwaiti territory—can be denied the opportunity to purchase a ticket or to enjoy the services provided by KAC to other passengers, due to the ethnicity (Jewish) and national origin (Israel) of that individual.

In a letter to the U.S. Department of Transportation ("DOT"),[1] KAC argues that it cannot sell airline tickets to Israeli passport holders, regardless of the origination or destination of the flight, because the aforementioned provisions of Kuwaiti law mandate that KAC "not enter into any contract of airline carriage with an Israeli national even if the flight neither originates nor lands in Kuwait. Thus, an Israeli national would not be permitted to fly on KAC's JFK-London flight."

Due to the fact that KAC leases commercial space from the Port Authority of New York and New Jersey to service its flights out of JFK, and because KAC's operations in the United States are subject to U.S. law under the U.S.-Kuwait Open Skies Agreement, both KAC and the Port Authority may be subject to liability as a result of the intentional

[1] Attached.

discrimination against potential ticket-purchasers on the basis of their race, ethnicity, and/or national origin.

Further, the Kuwaiti law is part of the broader Arab League boycott regime originally declared in 1948 at the conclusion of the Israel-Arab war that broke out following Israel's declaration of independence. As part of the Arab League boycott, however, any adherence to the law by a Kuwaiti company doing business in the United States is a violation of U.S. anti-foreign boycott laws and regulations, many of which were implemented with the stated purpose of preventing commercial activities within the United States from discriminating against Israeli persons and corporations.

II. KUWAIT AIRWAYS CORPORATION LIABILITY

Kuwait Airways is likely to face liability pursuant to a host of federal and state laws for discrimination based on race, national origin, and/or ethnicity. Specifically, potential claimants may bring successful actions under the Airline Deregulation Act ("ADA"),[2] 42 U.S.C. § 1981 ("Section 1981"), and New York state human rights, property, and contract laws. KAC's discriminatory actions also violate U.S. anti-foreign boycott laws and regulations.

A. Airline Deregulation Act (ADA)

The ADA provides an implied private right of action[3] to victims of discriminatory conduct, such as individuals precluded from purchasing a ticket on a flight departing from a U.S. airport because of their national origin or race. In two separate anti-discrimination provisions, the ADA expressly prohibits "an air carrier or foreign air carrier" from subjecting an individual to "unreasonable discrimination,"[4] and, more specifically, to any discrimination "based upon race, color, national origin, religion, sex, or ancestry."[5]

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[2] 49 U.S.C. § 40101 et seq.

[3] *See King v. Am. Airlines*, 284 F.3d 352 (2d Cir. 2002) (dismissing claim of discrimination under § 40127 pursuant to the Warsaw Convention statute of limitations but implicitly assuming such an implied right-of-action was valid); *see also DeGirolamo v. Alitalia-Linee Aeree Italiane, S.p.A*., 159 F. Supp. 2d 764, 766-67 (D.N.J. 2001) ("Defendants argue that, as a threshold matter, Plaintiff has no private right of action under 49 U.S.C. § 41310(a). However, federal courts have consistently held that persons discriminatorily denied access to travel have an implied right of action under § 404(b) of the Federal Aviation Act, the statutory predecessor to 49 U.S.C. § 41310(a). Therefore, the Court will not belabor the issue and simply finds that Plaintiff's allegations do indeed give rise to a private right of action under 49 U.S.C. § 41310(a)."). Federal courts have similarly found a private right-of-action under § 40127. See *Farash v. Cont'l Airlines, Inc.*, 574 F. Supp. 2d 356, 365 (S.D.N.Y. 2008) (finding that a claim of discrimination in reseating pursuant to 49 U.S.C. § 40127 is not "reasonably necessary to the provision of an airline service" and thus not preempted by the ADA, but dismissing the complaint on the grounds that the plaintiff did not make out a claim for relief); *Malik v. Cont'l Airlines, Inc*., 305 F. App'x 165, 169-70 (5th Cir. 2008) (implicitly finding a private right-of-action under § 40127 but dismissing for failing to state a claim for discrimination).

[4] 49 U.S.C. § 41310.

[5] 49 U.S.C. § 40127.

The applicability of the aforementioned federal law to KAC arises from the U.S.-Kuwait bilateral Open Skies Agreement ("Open Skies Agreement"), which expressly provides that

> while entering, within, or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft . . . [and] relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft . . . shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's airlines.

In other words, a Kuwaiti airline operating in the United States is obligated to comply with U.S. law in all of its U.S. operations.

A successful ADA claim would demonstrate that a plaintiff member of a protected class (e.g., Israeli national origin), who is legally within the jurisdiction of the United States, was denied a passenger ticket on a New York-London KAC flight, which was otherwise available to non-members of the protected class, because of his or her protected status. KAC twice admits in its own letter to the DOT that it refuses to sell tickets to "Israeli nationals." By refusing to sell tickets to Israeli passport holders, i.e. Israeli nationals, it can easily be argued that KAC is acting in direct violation of the ADA. Indeed, the impact of KAC's discrimination against Israeli passport holders is overwhelmingly felt by individuals of Israeli national origin. Since citizenship is primarily a consequence of where a person is born, by denying its services to Israeli citizens, KAC's is engaging in direct discrimination against persons of Israeli national origin. This is true regardless of the fact that some persons may be able to obtain the citizenship of, and possess a passport belonging to, more than one country. In effect, KAC is forcing Israeli nationals to obtain citizenship elsewhere if they wish to fly on their airline. Denying the enjoyment of a publicly available service to members of a protected class is inherently discriminatory. Available damages under these provisions include compensatory, punitive, and equitable relief.

B. Section 1981

The Open Skies Agreement further mandates that KAC abide by 42 U.S.C. § 1981. Section 1981(a) provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to the like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

The statute expressly extends liability under Section 1981 to private, non-governmental

offenders. [6] Available relief includes equitable and legal remedies, including compensatory damages and, under certain circumstances, punitive damages, which may be awarded for emotional distress and humiliation, as well as out-of-pocket expenses.

Originally, the U.S. Supreme Court interpreted Section 1981 to apply only to traditional racial discrimination, insofar as the statute was born out of the Civil War and the racial animus toward the freed slaves. Subsequently, in the *Saint Francis College* case, the Court expanded "racial" to include conduct relating to more than literally the color of one's skin but, based upon the use of the term "race" in the 19th Century when the law was enacted, a much broader ethnic connotation:

Based on the history of § 1981, we have little trouble in concluding that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics. Such discrimination is racial discrimination that Congress intended § 1981 to forbid, whether or not it would be classified as racial in terms of modern scientific theory. The Court of Appeals was thus quite right in holding that § 1981, "at a minimum, reaches discrimination against an individual "because he or she is genetically part of an ethnically and physiognomically distinctive subgrouping of homo sapiens." It is clear from our holding, however, that a distinctive physiognomy is not essential to qualify for § 1981 protection. If respondent on remand can prove that he was subjected to intentional discrimination based on the fact that he was born an Arab, rather than solely on the place or nation of his origin, or his religion, he will have made out a case under § 1981.[7]

The Court specifically included in its legislative historical review the mention of Jews as ethnically distinct.[8] Similarly, in a companion case, the Court made clear that Jews could also make out a claim under Section 1982, a "sister statute"[9] to Section 1981 dealing with real and personal property rights, citing to the *Saint Francis College* decision.[10]

There is a very strong argument that "Israeli Jew" is a protected class under Section 1981, given the *sui generis* nature of what it means to be an Israeli national and even to reside in Israel juxtaposed against the ethnic nature of the political-diplomatic-military hostilities that gave rise to the Arab boycott in the first instance. Israel is considered the national homeland of the Jewish People as an ethnic group (as much as a religious group), which was the basis for the discrimination in Europe and the Soviet Union that

[6] 42 U.S.C. § 1981(c) ("The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.").
[7] *St. Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613 (1987).
[8] *Id*. at 611-13.
[9] *CBOCS W., Inc. v. Humphries*, 553 U.S. 442, 448 (2008).
[10] *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617-18 (1987) ("It is evident from the legislative history of the section reviewed in *Saint Francis College*, a review that we need not repeat here, that Jews and Arabs were among the peoples then considered to be distinct races and hence within the protection of the statute. Jews are not foreclosed from stating a cause of action against other members of what today is considered to be part of the Caucasian race."); see also *Weiss v. La Suisse, Societe D'Assurances Sur La Vie*, 131 F. Supp. 2d 446, 448-50 (S.D.N.Y. 2001) (relying on Saint Francis College and denying motion to dismiss § 1981 discrimination against Chassidic Jewish group).

led to the mass exodus after World War II. For its part, the Arab League boycott is predicated upon the claim that Palestinians are ethnically tied to the land Israel claims as its own ethnic birthright. That is to say, the Israel-Arab (or Israel-Palestinian) conflict is a clash of ethnicities claiming their own respective birthrights to the same piece of real estate. Further, Israelis consider themselves bound by ethnicity even more than religion, which is why many of the early Zionists were ardent atheists and why the Law of Return codified in Israeli law granting Jews automatic citizenship is based less one's religious belief than on one's ethnic familial ties.[11]

The animus underlying the Arab League boycott giving rise to the Kuwaiti law is driven by a discriminatory and bigoted hatred of Jews as an ethnic group, and extends to Israel as the homeland of the Jewish people. A brief overview of the history behind the Arab League boycott renders this an obvious fact. When the Arab League boycott was first enacted in 1945, it targeted all Jewish businesses in the British-controlled mandate territory of Palestine.[12] When the boycott was formally and publicly declared by the Arab League Council (ALC), on December 2, 1945, the statement released by the ALC contained the following language: "*Jewish* products and manufactured goods shall be considered undesirable to the Arab countries."[13] The ALC declared in the same statement that all Arab "institutions, organizations, merchants, commission agents and individuals" are called upon "to refuse to deal in distribute or consume *Zionist* products of manufactured goods."[14] As was the case then, and still is now, the terms "Jewish" and "Zionist" are used synonymously by the Arab League and by the Arab world.

In 1948, the boycott was formalized against the state of Israel and broadened to include non-Israelis who maintain economic relations with Israel or who merely express their support for the Jewish state. Tellingly, the Arab League boycott applies to companies that the Arab League identifies as having "Zionist sympathizers" in executive positions or on the board of the company. By "Zionist sympathizers" the Arab League is using a recognized phrase to describe those who sympathize with the Jewish right to self-determination. Further, U.S. state courts have recognized the nature of the Arab League boycott of Israel as ethnically motivated, including the New York Court of Appeals which noted in a 1995 decision that New York's own Anti-Boycott legislation "found its impetus in the Arab boycott of Jewish businesses (and) was draft[ed] more broadly to prohibit not only boycotts imposed by foreign entities, but any business tactics . . . which are driven by 'religious or racial bigotry' . . . ."[15] Moreover, former U.S. President Jimmy Carter declared in 1977, when he signed the anti-boycott law, that the "issue goes to the very heart of free trade among nations" and that the anti-boycott law was designed to "end the divisive effects on American life of foreign boycotts aimed at Jewish members

[11] *See, e.g.,* 1970 Amendment to the Law of Return (expanding the range of familial relations granted coverage under the law).
[12] Martin A. Weiss, *Arab League Boycott of Israel*, CRS Report for Congress, Apr. 12, 2007, *available at* http://fpc.state.gov/documents/organization/84319.pdf.
[13] Emphasis added.
[14] Emphasis added.
[15] *Scott v. Massachusetts Mut. Life Ins. Co.*, 86 N.Y.2d 429, 435-36 (1995) (internal citations omitted).

of our society."[16] Aside from the historical fact that the Arab League boycott began as a boycott of Jewish persons and businesses before the state of Israel was even established, it is overwhelmingly clear that the bigoted motivation of the current Arab League boycott of Israeli nationals and companies, as well as anyone who "sympathizes" or does business with the "Zionist regime," is predicated on an animus towards Jews and the Jewish character of the state of Israel.

By complying with the Arab League Boycott of Israel and refusing to enter into "any contracts of airline carriage with an Israeli national," KAC, the national airline of the state of Kuwait, is in effect and intent, discriminating against the Jewish state and its people because of their ethnicity. Indeed, Kuwait, as a member of the Arab League boycott not only discriminates against Jews, but discriminates against people and companies who sympathize with Jews, and discriminates against those who do business with the Jewish state. The grotesque and over-reaching nature of the discrimination, which even includes non-Jewish residents of Israel as well as non-Jewish business partners of Israeli corporations, in no way negates the essence of the boycott as motivated by an intense Jew hatred.

The fact that KAC may fly Jewish persons who buy tickets using non-Israeli passports is irrelevant in determining the motive behind the boycott. First, KAC, by its own admission, does not inquire into the religion of its passengers using non-Israeli passports. Turning a blind eye, so to speak, to Jews purchasing tickets does not negate KAC's stated policy of discrimination. Second, the underlying purpose of the Kuwaiti law and the Arab League boycott of Israel, to which KAC adheres, is to target, isolate, and punish the country (and its inhabitants) because Israel is the sovereign homeland of the Jewish people. That is, Kuwait boycotts Israel because of ethnic animus toward Jews, who compromise the majority of the Israeli population.

Hence, KAC's actions—taken consistent with these racial and ethnic biases, and under the authority of Kuwaiti laws promulgated in furtherance of the Arab League boycott—are discriminatory under Section 1981.

C. U.S. Federal Anti-Foreign Boycott Law

KAC is clearly operating in violation of U.S. anti-foreign boycott laws and regulations, which are designed to prohibit or penalize cooperation with international economic boycotts in which the United States does not participate. U.S. anti-boycott legislation adopted in 1965 initially required persons exporting from the United States to report to the Commerce Department the receipt of any request to take action or provide information supportive of an international boycott directed against a country friendly to the United States. Following the Arab oil embargo crisis in 1973 and the intensification of the Arab League boycott of Israel, in 1979 Congress amended the existing anti-boycott reporting laws to extend these reporting requirements to all entities controlled by U.S.

[16] Mitchell Bard, *Arab League Boycott: Background & Overview*, Jewish Virtual Library, Sept. 2007, http://www.jewishvirtuallibrary.org/jsource/History/Arab_boycott.html.

firms and, for the first time, prohibited certain boycott-related conduct.[17] The Commerce Department is charged with administering these laws.

In addition, a 1976 law created a separate tax return reporting requirement and imposed tax burdens on U.S. taxpayers if they or members of their controlled groups participate in certain international economic boycotts. ("Ribicoff Amendment" to the Tax Reform Act of 1976, adding 26 U.S.C. § 999 [part of Internal Revenue Code]). The Treasury Department is charged with administering the Ribicoff Amendment. Detailed regulations have been promulgated by the Commerce Department to administer the anti-boycott laws under its charge, and these are located in Part 760, entitled "Restrictive Trade Practices and Boycotts," contained within the Export Administration Regulations ("Regulations").[18]

Specifically, the anti-boycott laws under the Export Administration Act ("EAA") prohibit U.S. persons and companies from furthering or supporting the boycott of Israel sponsored by the Arab League.[19] U.S. companies must report requests to engage in activities that further or support the boycott of Israel. Conduct that may be penalized under the EAA includes: agreements to refuse or actual refusal to do business with or in Israel or with blacklisted companies; agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality; agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies; agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person. The EAA specifies criminal and other penalties for violations including imprisonment for up to ten years and fines up to $50,000 for each "willful" violation.

KAC, as a foreign corporation registered as such in New Jersey and doing business in New York, is considered a "United States person" by all of the federal anti-boycott and is forbidden to intentionally cooperate in any way with any unsanctioned foreign boycott against a U.S. ally.[20] KAC has admitted all of the requisite elements of a violation of the U.S. anti-boycott laws and regulations in its letter of response to the DOT.

D. New York State Law

Additionally, KAC could face liability under New York contract law. Pursuant to the Port Authority-KAC lease ("the Lease"),[21] a third-party beneficiary claim likely exists against KAC, resulting from its discrimination against prospective passengers on the basis of their national origin. Declaratory and injunctive relief may be available.

[17] Section 8 of the Export Administration Act of 1979, as amended, 50 U.S.C. app. §§ 2401-20; International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-07.
[18] 15 C.F.R. Part 760.
[19] https://www.bis.doc.gov/index.php/enforcement/oac
[20] 15 C.F.R Part 760.1(b)(iv)&(e).
[21] Attached.

Section 18(a) of the Lease states that "the furnishing of services" on the leased premises—in this case, the sale of airline tickets and the provision of airline services—cannot be denied to anyone "on the grounds of race, color, creed, national origin or sex," and that "the Airline shall use any space and the exercise of any rights or privileges under this Agreement in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964." The contract also states in Section 18(c) that the "Airline's non-compliance with the provisions of this Section shall constitute a material breach of this Agreement" and that "in the event such non-compliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority shall have the right to terminate this Agreement." In Section 18(d) of the Lease, KAC agrees to "indemnify and hold harmless the Port Authority from any claims and demands of third persons including the United States of America resulting from the Airline's non-compliance with any of the provisions of this Section and the Airline shall reimburse the Port Authority for any loss or expense incurred by reason of non-compliance."

An individual bringing suit under contract law could claim an enforceable right as an intended third-party beneficiary. The New York Court of Appeals has adopted the standard set forth under the Restatement (Second) of Contracts.[22] According to the Restatement, a third party is an intended beneficiary if

> recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either (a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or (b) if the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.[23]

New York courts have declared that a determination of third-party beneficiary standing will be based on the broad circumstances of the contract.[24]

The language and context of the Lease between the Port Authority and KAC suggest that an individual precluded from purchasing a ticket on a KAC flight from New York to London, due to his or her race, national origin or ethnicity, would be considered a third-party beneficiary under New York law. First, the Lease specifically provides that

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[22] *Fourth Ocean Putnam Corp. v. Interstate Wrecking Co., Inc.*, 66 N.Y.2d 38, 44-45, 495 N.Y.S.2d 1, 5 (1985); see *Nat'l Westminster Bank plc v. Grant Prideco, Inc*., 261 F. Supp. 2d 265, 272 (S.D.N.Y. 2003) ("New York has embraced the Restatement (Second) of Contracts approach to determining whether a party is an intended beneficiary.").

[23] Restatement (Second) of Contracts §302 (1981).

[24] *Aievoli v. Farley*, 223 A.D.2d 613, 614, 636 N.Y.S.2d 833 (2d Dept. 1996), and *Encore Lake Grove Homeowners Ass'n, Inc. v. Cashin Associates, P.C.*, 111 A.D.3d 881, 882, 976 N.Y.S.2d 143, 145 (2d Dept. 2013); *Belgrave Owners, Inc. v. OR Holding Corp*., 233 A.D.2d 352, 354, 650 N.Y.S.2d 249, 250 (2d Dept. 1996) ("However, in determining third-party beneficiary status it is permissible for the court to look at the surrounding circumstances as well as the agreement itself.").

discrimination is a material breach. While the Lease only expressly provides for action by the Port Authority for breach of this provision, it includes an indemnification provision (Section 18(d)) in the event that a party should sue the Port Authority, suggesting that the parties to the contract contemplated third-party suits. Further, Section 18(b) requires KAC to include such an anti-discrimination provision in all subcontracts entered into, extending the scope of the obligations of the provision to third-party contractors of KAC.

Second, in examining whether to extend contract liability outside of the parties in privity, courts look to the policy considerations of imposing too high a burden on the breaching party by extending the zone of liability. In this case, however, policy considerations likely weigh in favor of extending the liability zone. This type of discrimination against Israeli nationals is especially odious, and in this instance KAC is acting intentionally: KAC's discriminatory behavior does not affect the public in general or even customers in general, but rather Israeli nationals and Israeli Jews in particular—a discrete group. A New York court would likely find that an individual denied the right to purchase a ticket on a KAC flight originating in New York, because of his or her race, national origin or ethnicity, is a third-party beneficiary of the Lease. Since the contract itself states that discrimination is a material breach of the Lease, the resulting claim would be very straightforward and, likely, successful.

In conjunction with a successful contract claim, the prospective passenger could bring a further action under the New York Human Rights Law ("NYHRL"), specifically New York Executive Law § 292(8),[25] for discrimination in a public accommodation. The Lease language, given the references to Title VI of the Civil Rights Act of 1964 in Section 18, would likely be interpreted by federal courts with reference to federal case law. Potential damages may include equitable and legal relief, including compensatory damages and, under certain circumstances, punitive damages, which may include emotional distress and humiliation.

III. PORT AUTHORITY LIABILITY

The Port Authority may be liable to a prospective passenger for discrimination under contract law or under tort law. Under a contract theory, the passenger would have to show two things at a minimum. First, that like KAC, the Port Authority owed the victim of discrimination a duty of care as a third-party beneficiary. If the facts demonstrate that the Port Authority was given formal notice of KAC's admission of discriminatory conduct, an argument can legitimately be made that the Port Authority was at least indirectly liable under an aiding and abetting standard for any liability attributed to KAC. If there is a contract duty of care running from the Port Authority to a prospective passenger, there would also need to be a showing that the Port Authority was notified of the breach and failed to cure the breach by taking corrective measures against KAC within a reasonable period of time.

[25] The term "national origin" shall, for the purposes of this article, include "ancestry."

In addition, there may be a claim available under New York property law for liability of the landlord for the bad acts of its tenant, which will have merit as soon as the Port Authority receives notice of the unlawful acts of the tenant, has an opportunity to cure but elects not to. There is a long-standing rule in New York, and in most other jurisdictions, that when a landlord gives up possession and control of the demised premises, liability for accidents or bad acts do not reach the landlord.[26] In *Strunk*, however, which is the classic case of the vicious-dog-bites-invitee, the court recognized that if the complaint alleges that the landlord had knowledge of the dangerous (or in this case unlawful) circumstances before the leasing of the premises and maintained control over the premises through the lease or through conduct, the claim can survive.[27] The argument can be made that the Port Authority maintains control over the premises (i.e., JFK airport) in which KAC operates.

The nature of an airport's operation is one where airlines are afforded the ability to use different spaces within the airport, which itself is comprised of common and public spaces as well as other facilities to which only airport personnel are granted access. A significant portion of an airport is operated as a shared space. Ticket counters, runways, airplane docking stations are shared amongst the airlines that lease the premises, with the landlord maintaining control over the premises to ensure proper security and operational measures are abided by. Accordingly, Section 27(a) of the Port Authority-KAC Lease expressly provides that the Port Authority may routinely adopt "rule[s] or regulations[s] that it knows will affect the Airline's operations at the Airport[.]" Section 27(b) provides:

The use by the Airline and its Non-signatory Qualified Affiliates, officers, employees, guests, invitees, agents and contractors, of the Public Aircraft Facilities and any and all other portions of the Airport which it may be entitled to use under this Agreement shall be subject to the Rules and Regulations of the Port Authority published in the "Air

[26] *Strunk v. Zoltanski*, 96 A.D.2d 1074, 1074, 466 N.Y.S.2d 716, 717 (2d Dept. 1983) ("The law of this State generally has precluded a landlord's liability for injuries to his tenant's invitees from a dangerous condition or nuisance on the demised premises which comes into existence after the tenant has taken possession. The rationale for this rule is grounded in property law, which regards a lease as equivalent to a sale of the land for the term of the lease.")

[27] *Id.* at 1074-75, 466 N.Y.S.2d at 717. ("Absent an allegation that the landlord was in control, the landlord's actual knowledge of any vicious propensity on the part of the animal, where said knowledge was acquired after the initial letting, is immaterial. Unlike the afore-noted cases, the alleged facts in this matter, if proven at trial, could support a finding that the appellant had prior actual knowledge that a prospective tenant intended to harbor a dog with vicious propensities at the inception of the leasehold. At such a time the landlord would still retain a measure of control over the leased premises, and by the exercise of reasonable care, could obviate a reasonably foreseeable risk of injury to the third persons lawfully upon the leased premises by the simple expedient of refusing to lease to the prospective tenant or by imposing a condition on the lease prohibiting the harboring of said animal on the demised premises. Under such circumstances, the law may impose a duty upon the landlord to exercise ordinary care to keep the leased premises in a safe condition on behalf of third parties and the failure to exercise such care may result in liability. Since plaintiff alleges the necessary elements of control and actual knowledge to bring this case outside the ambit of the general rule, a cognizable cause of action is stated against appellant and a trial is required to resolve the factual issues.")

Terminal Rules and Regulations" . . . [and that] the Port Authority may devise and implement reasonable procedures including, but not limited to, allocations among Aircraft Operators at the Airport.

Finally, as a recipient of federal funds, the Port Authority may be liable for discrimination pursuant to Title VI of the Civil Rights Act of 1964 ("Title VI"). The Lease goes to great length to impose upon the tenant KAC the anti-discrimination obligations of Title VI, codified at 42 U.S.C. § 2000(d), which forbid discrimination by entities that receive federal funding.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Liability of the Port Authority under Title VI will be predicated upon how the Port Authority responds when it receives notice of the discrimination. If the Port Authority does not take any actions to cure the behavior of its tenant or terminate the Lease, although it is aware of a material breach, it could be held liable.

In light of the claim recently filed against the Secretary of Transportation in the *Gatt* case, the Port Authority may already be aware of KAC's material breach of its contract.

IV. CONCLUSION

Based on the foregoing analysis, it is apparent that KAC is likely operating in gross contravention of U.S. federal and state law. Further the Port Authority risks liability should it fail to cure KAC's unlawful discrimination while operating on Port Authority property. Under the provisions of the Lease, the Port Authority has a 20-day opportunity to cure the discriminatory conduct of its tenant, running from the date of receipt of notice. After 20 days, the Port Authority has the ability to terminate its contract with KAC. Failure to do so will indicate an unwillingness on behalf of the Port Authority to ensure that entities operating on its premises are in compliance with U.S. law.