

12-315 AIR WISCONSIN AIRLINES CORP. V. HOEPER

DECISION BELOW: 2012 WL 907764

LOWER COURT CASE NUMBER: 09SC1050

QUESTION PRESENTED:

The Aviation and Transportation Security Act (ATSA) requires airlines and their employees to report to the Transportation Security Administration (TSA) any and all potential security threats to the Nation's air transportation system. To encourage such reports, the ATSA provides a broad grant of immunity from suit, shielding airlines and their employees from all liability, including liability for state-law defamation. 49 U.S.C. § 44941. The only exception to this immunity is for reports made "with actual knowledge that the disclosure was false, inaccurate, or misleading" or "with reckless disregard as to the truth or falsity of that disclosure." *Id.* § 44941(b).

The questions presented are:

1. Whether a court can deny ATSA immunity without deciding whether the airline's report was true.
2. Whether the First Amendment requires a reviewing court in a defamation case to make an independent examination of the record before affirming that a plaintiff met its burden of proving a statement was false.

GRANTED LIMITED TO THE FOLLOWING QUESTION: WHETHER ATSA IMMUNITY MAY BE DENIED WITHOUT A DETERMINATION THAT THE AIR CARRIER'S DISCLOSURE WAS MATERIALLY FALSE.

CERT. GRANTED 6/17/2013