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Litigators of the Week: 11th Circuit Vacates DOT Order Targeting Delta's Joint Venture With Aeromexico

By Ross Todd

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Our Litigators of the Week are **Eugene Scalia** and **Amir Tayrani** of **Gibson, Dunn & Crutcher**, who have represented Delta Air Lines in challenging the U.S. Department of Transportation's order withdrawing approval of the company's joint venture with Aeromexico.

Last week, a unanimous Eleventh Circuit panel vacated DOT's decision to terminate approval of the airlines' antitrust-immunized partnership, finding that the agency failed to adequately explain its departure from longstanding practices. The ruling leaves intact a joint venture covering the largest international air travel market for the United States and provides a noteworthy rebuke to the DOT's decision-making process.

The opinion closely tracked themes that Scalia pressed during oral argument, particularly his contention that DOT abandoned its traditional practice of evaluating airline joint ventures across broader country-pair and city-pair markets and instead focused narrowly on competitive conditions at Mexico City's Benito Juárez International Airport—conditions created by Mexico's government rather than the joint venture itself. The court also embraced the argument that DOT's treatment of the Delta-Aeromexico venture couldn't be reconciled with its approval of comparable joint ventures in Japan, where Tokyo's Haneda Airport has similar competitive constraints as Mexico City's.


Courtesy photos

Eugene Scalia (L) and Amir C. Tayrani (R) of Gibson, Dunn & Crutcher.

Lit Daily: What was at stake for Delta Air Lines and its joint venture partner at Aeromexico? What would have happened if DOT's order had gone into effect?

Amir Tayrani: The future of Delta's decade-old joint venture with Aeromexico hung in the balance in this case. Airline joint ventures are “virtual mergers” between airlines that allow U.S. and foreign carriers to effectively operate as a single airline on their joint-venture routes—here, routes between the U.S. and Mexico as well as flights connecting to U.S.-Mexico routes. Joint venture partners can coordinate their flight schedules and share revenues—which benefits the traveling public by producing lower fares, expanded route networks, additional flight options and improved flight schedules. The Department of Transportation has the authority to approve airline joint ventures and grant them antitrust immunity. DOT approved and granted immunity to the Delta-Aeromexico joint venture in 2016, finding that it would “deliver substantial public benefits to the traveling public.” That is precisely what happened in the ensuing years, with Delta and Aeromexico adding dozens of routes between the U.S. and Mexico and positioning themselves as a viable competitor to the two previously dominant carriers in the U.S.-Mexico market, American and United. Nonetheless, DOT issued an order in September 2025 terminating approval of the Delta-Aeromexico joint venture based on concerns about policies that the Government of Mexico had instituted at Benito Juarez Airport in Mexico City. DOT’s disapproval order was set to take effect on January 1, 2026, giving Delta and Aeromexico less than four months—over the busy holiday travel season—to unwind their closely entwined joint operations.

How did this matter come to you and the firm?

Eugene Scalia: DOT had been indicating that it might disapprove the Delta-Aeromexico joint venture since early 2024, issuing a series of orders to show cause proposing disapproval. Delta asked us to advise them in crafting responses to those DOT orders. Amir and I are not aviation lawyers but Delta wanted to be well-positioned in case litigation ultimately occurred. That longstanding involvement in the matter proved to be valuable in the litigation because it gave us the opportunity to help build a strong administrative record on which to litigate in the Eleventh Circuit.

Who all was on your team and how did you divide the work among yourselves and Aeromexico’s legal team?

Tayrani: We were fortunate to be able to field a team with expertise spanning administrative law, aviation, and antitrust—each of which proved to be a core component of our winning arguments in the Eleventh Circuit. Delta’s in-house team—**Meg Taylor**, **Steve Seiden**, **Chris Walker** and **Micah Moon**—were essential partners from day one. Their assistance was particularly invaluable in marshaling the evidence of impending irreparable harm to Delta and its customers from unwinding the joint venture, which we submitted in support of our successful stay motion to the Eleventh Circuit. Overall legal strategy was directed by Delta President **Peter Carter**, who also is CLO, and therefore understood the legal and business consequences thoroughly. On the Gibson Dunn team, of counsel **Christine Buzzard** and associates **Michael Corcoran**, **Lavi Ben Dor** and **Tamara Skinner** were likewise instrumental in securing the stay—interviewing members of Delta’s operations team to compile multiple detailed affidavits documenting the joint venture’s consumer benefits—and in crafting the winning legal arguments on the merits. The **Pillsbury** lawyers representing Aeromexico—**Matt MacLean**, **Charlie Donley**, **Ed Sauer** and **Nicole Steinberg**—were also integral components of the team, bringing to bear a deep expertise in aviation law that informed our overall legal strategy and the arguments developed in our joint briefs.

The opinion repeatedly criticizes DOT for changing its analytical framework and abandoning its traditional country-pair/city-pair analysis and focusing on slots at Mexico City's Benito Juarez International Airport. At what point did you decide that was a strong path to vacating the DOT order?

Tayrani: The winning change-in-position argument was not apparent on the face of DOT's disapproval order itself. It was the product of leave-no-stone-unturned legal work by our extraordinary associate team, who examined dozens of DOT orders approving joint ventures and recognized that, in every single one of those orders, DOT had undertaken a comprehensive analysis of the overall market in which the joint venture would operate, assessing competition across networks, country pairs and city pairs within the market. For example, in approving the addition of Aer Lingus to the OneWorld Alliance, DOT examined the effect on competition in 5,593 city pairs. And in approving the Delta-Aeromexico joint venture in 2016, DOT examined the competitive impact on each of the 1,687 city pairs offering nonstop service between the United States and Mexico. In disapproving the Delta-Aeromexico joint venture in 2025, however, DOT did not examine the competitive impact on any city pairs—instead, focusing myopically on the government of Mexico's policies at a single airport, Mexico City. When the associate team reported their findings, we recognized immediately that they had identified a potentially fatal flaw in DOT's reasoning.

The panel also found that DOT held Delta and Aeromexico to a standard it didn't apply to Japanese joint ventures involving Haneda Airport in Tokyo—a point that Judge Rosenbaum homed in on at oral argument and that she cited when concurring in judgment. Was that comparison obvious from the beginning?

Tayrani: Yes, this is an issue that Gene and I put our fingers on at the outset and featured prominently in our stay briefing to the Eleventh Circuit. It is a fundamental principle of administrative law that agencies must treat like cases alike. But the DOT failed to do that in disapproving the joint venture because it treated Delta and Aeromexico less favorably than airlines operating other joint ventures. In particular, DOT asserted in its disapproval order that an Open Skies regulatory framework—one in which airlines are free to operate without governmental barriers when flying between the countries that are parties to the Open Skies agreement—"is necessary" to approval of any joint venture, and it relied on Mexico's alleged violations of its Open Skies obligations as a basis for disapproving the Delta-Aeromexico joint venture. We saw this reasoning as vulnerable because there are multiple joint ventures operating out of Tokyo Haneda airport, which is expressly carved out from the U.S.-Japan Open Skies agreement. That is textbook disparate treatment. Judge Rosenbaum quickly targeted this inconsistency when the government's counsel took the lectern, forcing a concession that Haneda is "only 'in transition to being a fully open-skies framework,'" which we saw as a pivotal moment in the argument. Judge Branch picked up on the same point in her opinion for the court, faulting DOT's order for failing to "adequately explain why the lack of open skies at MEX . . . mandated terminating approval of the joint venture when DOT has approved two joint ventures in Japan despite the lack of open skies at Haneda."

Mr. Scalia, the court's two grounds for vacatur closely tracked the themes emphasized during

argument. Were you at all surprised by how directly the opinion echoed the arguments you pressed?

Scalia: We felt that the parts of the government's approach that were hardest to justify were its exclusive focus on the Mexico City airport without assessing competitive conditions in the rest of the country, and the fact that it was requiring more open competitive conditions in Mexico than it had in Japan. We built our briefs around those points and emphasized them at argument; it was gratifying to see the judges concentrate on those same issues at argument and in their decision.

The Eleventh Circuit vacated DOT's order, but it did not direct DOT to grant any particular relief on remand. From Delta's perspective, what is the practical effect of the ruling, and what guidance do you think the opinion gives DOT if it decides to revisit the joint venture in the future?

Tayrani: The immediate practical effect of the Eleventh Circuit's ruling is that the Delta-Aeromexico joint venture can continue to operate for the foreseeable future, which is great news for travelers looking to book a Mexican vacation during the upcoming holiday season. DOT is free on remand to continue assessing the joint venture, but, in so doing, it would be required to undertake the type of comprehensive market analysis that it failed to conduct in its 2025 disapproval order; that broader analysis would require DOT to acknowledge the joint venture's many procompetitive and pro-consumer benefits in the U.S.-Mexico market. And, of course, DOT would need to afford Delta and Aeromexico the same regulatory treatment as other joint-venture participants.

What impact do you expect this decision to have on other airline joint ventures? What guidance do you think the opinion gives DOT if it decides to revisit previously approved joint ventures in the future?

Tayrani: One of the key takeaways from the opinion is that DOT must apply the same standards when disapproving an existing joint venture as when approving a new joint venture—after all, as Judge Branch recognized, the "statutory standard DOT must apply for initial approval and continuing approval of joint ventures is the same." That regulatory clarity will benefit both DOT and joint-venture participants going forward.

What will you remember most about this matter?

Tayrani: Securing the stay from the Eleventh Circuit was a very memorable moment for me. It is always a heavy lift to persuade a court to stay agency action without the benefit of full briefing and argument. Given that, it was tremendously gratifying to obtain the stay, which had a far-reaching practical benefit for Delta, Aeromexico and the traveling public. Without the stay, Delta and Aeromexico would have had to scramble to unwind their decade-old, closely integrated joint operations over the busy holiday travel season—a daunting task that would have impaired their operations and ill-served the traveling public.

Scalia: And of course, it was gratifying to then see a swift ruling on the merits that addressed the issues in the case so cogently and comprehensively.