

# Aviation Ready To Rise In 2022, But Expect Some Turbulence

By **Kevin Lewis and Bart Biggers** (February 2, 2022)

It may be an understatement to say that 2021 was much less dramatic for the airline industry than 2020.

After the worst year in its hundred-year history, the industry picked itself up and dusted itself off in 2021. Last year saw steady increases in travelers, from January through the December holiday season.

As we learned to work, connect, live and travel while coping with COVID-19 in our lives, airlines saw their businesses recover unevenly:

- Domestic travel recovered to near 2019 levels;
- Business travel only blipped upward a few times between COVID-19 variants;
- International travel was largely grounded by travel restrictions that seesawed between loosening and tightening; and
- Cargo volumes continue to trend upward.



Kevin Lewis



Bart Biggers

Coming off of such an uneven 2021, airlines are poised to continue digging themselves out in 2022, taking advantage of whatever COVID-19 recovery permits, navigating an uncertain interest rate environment with massive amounts of debt, and continuing to steer the industry toward a greener future.

## 2021 Prediction Report Card

Before we detail our 2022 predictions, we should take a moment to review the predictions we made last year. Even with the unexpected turbulence of additional COVID-19 variants in 2021, several of our anticipated trends occurred as we predicted.

We correctly opined that domestic travel would rebound much sooner than international travel, and that leisure travel would recover much faster than business travel. We have also seen the predicted trend that shrinking international demand would lead to renewed focus on codeshares, alliances and joint business arrangements.

The transformation of balance sheets in 2020, plus consumers with plenty of cash propelling at least a partial recovery, validated our prediction that financial transactions would continue unabated in 2021.

And, as we suggested, customer experience improvements to spur demand have occurred — and those innovations will continue to smooth out passenger journeys. Meanwhile, industry litigation rebounded, as we suggested, as courts began to reopen.

Where we may have gone wrong was the trend that probably has mattered most. A year ago, it seemed so likely that the pandemic would abate substantially, if not end, in 2021.

Vaccinations were on the way, and the word "variant" implied someone you didn't want to be around. But as we all know, of course, the delta and omicron variants continually interrupted the industry's — and the world's — attempts to move past COVID-19.

## **Trends for 2022 and Beyond**

Giving ourselves generous marks for last year, we now, without further ado, give you our predicted trends for 2022 and beyond.

### ***Generally***

Omicron will continue to impact the number of travelers in the first half of the first quarter. Absent another serious COVID-19 variant, business travel should start to recover in earnest in the second quarter of 2022, while leisure travel should remain strong through the summer.

This combination could set up a strong financial performance for airlines in Q2 and beyond. Those conditions should also produce the beginnings of a recovery in international travel in the second half of 2022, setting the stage for a more robust recovery in 2023.

Codeshares, alliances and joint business arrangements will continue to be important to navigating the redrawn route networks of airlines around the globe. And as the pandemic nears closer to an endemic, airlines may feel even more comfortable in 2022 in refinancing their debt stacks, deeming high cash levels less necessary and respecting the prospect of higher interest rates.

Meanwhile, airlines will continue to invest in customer experience enhancements, like electronic health passports, making customers' journeys even more inviting.

### ***Financial Stability***

Airlines took significant strides toward financial health in 2021, losing only around \$52 billion — down dramatically from \$138 billion in 2020.

For 2022, the International Air Transport Association projects a global loss of approximately \$12 billion for airlines — meaning that the industrywide loss since the pandemic began will exceed a staggering \$200 billion. IATA also predicts that U.S. airlines will be profitable in 2022.

This continued trajectory toward the black should provide airlines with the confidence to reduce their levels of free cash, which should permit deleveraging transactions. This will dovetail with concerns over interest rates.

### ***Staffing and Supply Chain Issues***

Workforce staffing problems and supply chain gaps are major issues in industries across the

globe, and both airlines and their suppliers will continue to face staffing shortages and supply hiccups.

Among the consequences to the economy generally, employee wages are rising and there is pressure to improve working conditions, while manufacturers and other suppliers may maintain more inventory as a hedge against inflation. Meanwhile, pandemic-shrunk airlines, with fewer resources and higher levels of debt, are outsourcing more.

As these circumstances collide, friction will grow between airlines and their contract counterparties — with provisions regarding cost escalation, force majeure, termination, damages and specific performance being the primary battlefields. These will be ameliorated, if at all, by long-term relationships.

In the end, at a time when cost-cutting remains important to all sides, even while air traffic ramps back up unsteadily, the supply chain issues may be front and center, causing more turbulence ahead.

### ***Flying to a Sustainable Future?***

We expect airline investment in sustainability to be a major trend in 2022. It has long been a topic of discussion, as aviation contributes 2% of carbon emissions globally, and sustainability is now a central part of airline planning and fleet decisions.

Multiple airlines, alliances and associations set sustainability goals in 2021, and they are pursuing multiple paths to achieve those goals. Some of those paths involve the use of sustainable aviation fuels.

However, the current supply of such fuels is far from meeting the industry's needs, and the costs are substantially more than Jet-A fuel. While there is some prospect that governments will subsidize sustainable aviation fuel production — and/or, perhaps, mandate its use — we believe that investment will be robust in this sector.

Another way to reduce carbon footprints is to retire older, less fuel-efficient aircraft and replace them with newer, more efficient aircraft. This trend should ensure continued technological development and investment on the manufacturing side.

In 2021, multiple airlines invested in, and made conditional purchases with, aviation companies that help produce a cleaner future for aviation. These include sustainable fuel producers, hydrogen-fueled engine refitters, and manufacturers of electric vertical takeoff and landing aircraft, electric regional aircraft and even sustainably-fueled supersonic aircraft.

### ***Privacy, Data Security, Cybersecurity***

While data breaches at airlines had previously made headlines, in 2021 we saw those breaches occur downstream at vendors or affiliates of airlines. While privacy laws are still developing around the globe, and regimes like the EU's General Data Protection Regulation are still being tested and refined, airlines and aviation suppliers are learning that these attacks are becoming more sophisticated and aimed at less suspecting targets.

This has garnered the attention of many, including airlines that are in the public eye when giving notices of such breaches. We expect data security and privacy will continue to be a hot topic in the industry in 2022 and beyond.

Slightly more obscure, but very concerning to industry experts, is cybersecurity. This topic garnered great attention after the Colonial Pipeline ransomware attack, which affected much of the U.S.'s fuel supply, including the supply to airports. That this attack occurred on a major national infrastructure asset drew significant media attention.

Cyber threats targeting computers and electronic equipment critical to airline operations and safety create the need for greater protections for airlines in 2022. To stay ahead of emerging security threats effectively, a more integrated approach on issues like cyber risks — including with airline partners and insider threats — may be warranted. While cybersecurity concerns have long existed in the industry, 2021 has made cybersecurity a major trend on the industry's radar for 2022.

### **Impacts for Legal Services as Aviation Industry Recovers**

So what do these trends mean for lawyers and law firms servicing the industry? First, we expect the "rising tide raises all boats" effect to mean that the demand for legal services will continue to increase in 2022.

Some projects that were deferred during the COVID-19 pandemic will be brushed off, and new projects will accelerate with increasing and, hopefully, stable demand. That means more projects generally for aviation industry in-house and outside counsel.

Our prediction of financial stability and high debt means that finance lawyers should be in high demand, as delivering transactions and/or refinancing of government debt both accelerate.

Our prediction of supply chain issues and increased staffing problems will put added pressure on in-house legal departments, as legal solutions are reviewed and/or pursued — and as cost escalation, force majeure, termination, damages and specific performance provisions come into focus. Slimmed down in-house groups are likely to reach out to outside counsel.

Our prediction of continued focus on environmental, sustainability and governance issues will mean still more transactions in that space, comprising both early-stage equity and all manner of debt investments, equipment purchase agreements, equipment development arrangements and infrastructure projects to create, move and store all manner of alternative fuels — as well as projects relating to establishing and communicating goals, determining universal metrics and related corporate governance matters.

Finally, our prediction that data security, privacy and cybersecurity issues will require the attention of airline management and boards means that in-house legal departments could need assistance from outside counsel in these complex and highly specialized areas.

As we look into our crystal ball again, while the industry rises from the destruction caused by COVID-19, we see that the aviation industry — and the lawyers who service it — will both gain altitude in 2022.

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*Kevin P. Lewis and Bart J. Biggers are partners at Sidley Austin LLP.*

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