



July 15, 1996

THIS LETTER WAS SENT TO THE U.S. AIR CARRIERS LISTED AT THE END OF THE LETTER.

«name»
«title»
«company»
«address»
«moreaddress»
«city», «state» «zip»

Dear «salutation»

We are sending you and other airlines this letter to advise you of several of the more problematic practices we have noted in reviewing certain air carrier operations and their contracts of carriage and international tariff submissions and to seek your help in eliminating them. It is our view that these kinds of practices violate 49 U.S.C. 41712, which prohibits unfair and deceptive practices and unfair methods of competition in the airline industry. This is to advise you that we will pursue enforcement action in the future if we determine that these kinds of practices continue to exist. Later this year after completing several additional carrier operational reviews, our Aviation Consumer Protection Division will be providing your airline with information on any other practices it finds that require correction and may exist with other carriers.

Our first area of concern involves choice-of-forum provisions in contracts of carriage and tariffs. Those provisions purport to designate the court or jurisdiction where any lawsuit against the carrier concerning the purchased air transportation must be brought. We have noted choice-of-forum provisions that purport to limit a passenger's right to sue to the courts of the one county, city, or state where the airline is headquartered. We view such provisions to be unlawful under 49 U.S.C. 41712 and, with respect to international transportation, they may also be unlawful under the Warsaw Convention. It is our view that for air transportation sold in the U.S., a passenger must be able to seek legal redress in any court of competent jurisdiction. Trying to force passengers to file what are generally small claims in courts that may be thousands of miles from their homes effectively deprives them unfairly of legal recourse. Such provisions are unconscionable and we will take immediate enforcement action to preclude their use.^[1]

[Note: This policy was codified in the second Enhancing Airline Passenger Protections rule issued April 25, 2011, 76 FR 23163, 14 CFR 253.10. See the Proposed and Final Aviation Rules area of our website.]

The second problem we wish to bring to your attention concerns passengers holding nonrefundable tickets or tickets that require the payment of a penalty for a change of flight time or travel date. It is our understanding that at least one carrier has been applying its nonrefundability/penalty provisions in situations in which the change of flight time or travel date has been necessitated by carrier action or "an act of god", e.g., where the carrier cancels a flight for weather or mechanical reasons. Imposing monetary penalties on passengers in these kinds of situations is grossly unfair and it violates 49 U.S.C. 41712, as would any contract of carriage or tariff provision mandating such a result. We will aggressively pursue any cases of this type that come to our attention.

[Note: the preamble to the April 25, 2011 rule cited in the Note above states on Federal Register page 23129 "We reject some carriers' and carrier associations' assertions that carriers are not required to refund a passenger's fare when a flight is cancelled if the carrier can accommodate the passenger with other transportation options after the cancellation. We find it to be manifestly unfair for a carrier to fail to provide the transportation contracted for and then to refuse to provide a refund if the passenger finds the offered rerouting unacceptable (e.g., greatly delayed or otherwise inconvenient) and he or she no longer wishes to travel. Since at least the time of an Industry Letter of July 15, 1996, the Department's Aviation Enforcement Office has advised carriers that refusing to refund a non-refundable fare when a flight is canceled and the passenger wishes to cancel is a violation of 49 U.S.C. 41712 (unfair or deceptive practices) and would subject a carrier to enforcement action." Although this 2011 rule did not include any regulatory text on this issue, the preamble statement reaffirms the policy in the instant guidance document. See also the guidance document on this issue dated September 25, 2011.]

We would appreciate your disseminating the information in this letter to appropriate officials in your company. In addition we would ask that they conduct a review of your company's contract of carriage, tariffs, and internal procedures to ensure that the troublesome practices noted above do not exist in your operations. If you have any questions, please call Hoyte Decker, Director of our Aviation Consumer Protection Division, at (202) 366-5957 or Dayton Lehman, my deputy, at (202) 366-9349.

Sincerely,

/s/

Samuel Podberesky

Assistant General Counsel for

Aviation Enforcement and Proceedings

| name | title | company | address | moreaddress | city | state | zip | salutati o |
|-------------------------|---|------------------------------|-----------------------------------|--|----------------|--------------|------------|-------------------|
| Mr. Geoffrey T. Crowley | President & CEO | Air Wisconsin Airlines Corp. | W6390 Challenger Dr., Suite 203 | | Appleton | WI | 54915 | Mr. Crowley |
| Mr. Robert Swenson | President | AirTran Airways, Inc. | 6280 Hazeltine National Dr. | Suite 100 | Orlando | FL | 32822 | Mr. Swenson |
| Mr. Izad Djahanshahi | President | Airways International | P.O. Box 1244 | | Miami Springs | FL | 33266-1244 | Mr. Djahansh |
| Mr. Steven G. Hamilton | V P-Legal and General Counsel | Alaska Airlines, Inc. | | P.O. Box 68900 | Seattle | WA | 98168 | Mr. Hamilton |
| Mr. Glenn R. Zander | President & CEO | Aloha Airlines, Inc. | PO Box 30028 | | Honolulu | HI | 96820 | Mr. Zander |
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| Ms. Anne H. McNamara | Sr V P-Administration & General Counsel | American Airlines, Inc. | Mail Drop 5618 | Post Office Box 619616 | DFW Airport | TX | 75261-9616 | Ms. McNamara |
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| Ms. Cheryl Grue | President | AV Atlantic | 1170 Lee Wagener Blvd., Suite 201 | | Ft. Lauderdale | FL | 33315 | Ms. Grue |
| Mr. John Catsimatidis | President | Capitol Air Express, Inc. | 823 Eleventh Ave. | | New York | NY | 10019 | Mr. Catsimatidis |
| Mr. Daniel Ratti | President | Carnival Air Lines, Inc. | 1815 Griffin Road, Suite 205 | | Dania | FL | 33004 | Mr. Ratti |
| Mr. Tod McClaskey | President | Casino Express Airlines | JC Harris Field | 803 Murray Way | Elko | NV | 89801 | Mr. McClaskey |
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| Mr. Robert S. Harkey | Sr V P, General Counsel, and Secretary | Delta Airlines, Inc. | | Hartsfield Atlanta International Airport | Atlanta | GA | 30320 | Mr. Harkey |

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|-------------------------|---------------------------------|--|-------------------------------------|-----------------------|-----------------|----|------------|---------------|
| Mr. Donald Rhoads | General Manager | Eagle Airlines | 175 East Reno Ave., Suite C9 | | Las Vegas | NV | 89119 | Mr. Rhoads |
| Mr. Steven Davis | VP-Operations, Inc. | Eastwind Airlines | Trenton-Mercer Airport | Building 1 Scotch Rd. | W. Trenton | NJ | 08628 | Mr. Davis |
| Mr. Mel Spelde | President | Empire Airlines, Inc. | 11101 Airport Drive | | Hayden Lake | ID | 83835 | Mr. Spelde |
| Mr. Larry K. Lane | President | Evergreen International Airlines, Inc. | 3850 Three Mile Lane | | McMinnville | OR | 97128 | Mr. Lane |
| Mr. James Wikert | Chief Executive Officer | Express One International, Inc. | 3890 West NW Highway, #700 | | Dallas | TX | 75220 | Mr. Wikert |
| Mr. Sam Addoms | President & CFO | Frontier Airlines, Inc. | 12015 East 46th Ave. | | Denver | CO | 80239 | Mr. Addoms |
| Mr. Robert Stephan | President | Great American Airways | Box 10165 Reno-Cannon Int'l Airport | | Reno | NV | 89510 | Mr. Stephan |
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| Ms. John Kelly | Chairman, President & CEO | Horizon Air | PO Box 48309 | | Seattle | WA | 98148 | Mr. Kelly |
| Mr. David Clark | President | International Charter Xpress | 3800 Rodney Parham Rd. | | Little Rock | AR | 72212 | Mr. Clark |
| Mr. Jerry Murphy | President & CEO | KIWI International Airlines | Hemisphere Center | U.S. Route 1-9 South | Newark | NJ | 07114 | Mr. Murphy |
| Mr. Dennis Berry | Vice President-Customer Service | Mesa Airlines, Inc. | 2325 E. 30th Street | | Farmington | NM | 87401 | Mr. Berry |
| Mr. Robert Gould | President | MGM Grand Air, Inc. | 1500 Rosencrans Ave. | Suite 350 | Manhattan Beach | CA | 90266 | Mr. Gould |
| Mr. Ross Fischer | President | Miami Air International, Inc. | PO Box 660880 | | Miami Springs | FL | 33266-0880 | Mr. Fischer |
| Mr. John Selvaggio | President | Midway Airlines | 300 W. Morgan St. | | Durham | NC | 27701 | Mr. Selvaggio |
| Mr. Timothy E. Hoeksema | Chairman, President & CEO | Midwest Express Airlines, Inc. | 6744 S. Howell Ave. | | Oak Creek | WI | 53154 | Mr. Hoeksema |
| Mr. Daniel McKinnon | President | North American Airlines, Inc. | Building 75, JFK Int'l Airport | Suite 250 | Jamaica | NY | 11430 | Mr. McKinnon |

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|--------------------------|--------------------------------------|-----------------------------------|-------------------------------------|---------------------------|-------------|----|------------|----------------|
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| Mr. Richard Reeve | President | Reeve Aleutian Airways, Inc. | 4700 West International Airport Rd. | | Anchorage | AK | 99502 | Mr. Reeve |
| Mr. Robert Redding | President | Reno Air, Inc. | PO Box 30059 | | Reno | NV | 89520-3059 | Mr. Redding |
| Mr. Larry Sullivan | President | Renown Aviation, Inc. | 3940 Mitchell Road | | Santa Maria | CA | 93455 | Mr. Sullivan |
| Mr. William Meenan | President | Rich International Airways, Inc. | 5400 NW 36th St. | | Miami | FL | 33152 | Mr. Meenan |
| Mr. Ron Ryan | President | Ryan International Airlines, Inc. | 6810 W. Kellogg | | Wichita | KS | 67209 | Mr. Ryan |
| Mr. Gregg Lukenbill | President | Sky King, Inc. | 3600 Power Inn Rd., Suite H | | Sacramento | CA | 95826 | Mr. Lukenbill |
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| Mr. John Skiba | President | Sun Country Airlines, Inc. | 7701 26th Ave. South | | Minneapolis | MN | 55450 | Mr. Skiba |
| Mr. Tom Kolfenbach | President | Sun Jet International, Inc. | 4700 140th Ave. | Suite 106 | Clearwater | FL | 34622 | Mr. Kolfenbach |
| Mr. Morris Nachtomi | Chairman & CEO | Tower Air, Inc. | Hangar 17 | JFK International Airport | Jamaica | NY | 11430 | Mr. Nachtomi |
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| Mr. Richard Magurno | Sr V P and General Counsel | Trans World Airlines, Inc. | One City Centre | 515 North Sixth Street | St. Louis | MO | 63101 | Mr. Magurno |
| Mr. Stuart Oran | Exec V P-Corp Affs & General Counsel | United Airlines, Inc. | P.O. Box 66100 | | Chicago | IL | 60666 | Mr. Oran |

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| Mr. Robert McAdoo | Chief Executive | Vanguard Airlines, Inc. | 30 NW Rome Circle | Terminal B Mezzanine Level | Kansas City | MO | 64153 | Mr. McAdoo |
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| Mr. Larry Risle | Chief Executive Officer | Westair, Inc. | 5570 Air Terminal Dr. | | Fresno | CA | 93727 | Mr. Risle |
| Mr. Edward R. Beauvais | Chairman, President & CEO | Western Pacific Airlines, Inc. | 2864 S. Circle Dr., Suite 1100 | | Colorado Springs | CO | 80906 | Mr. Beauvais |
| Mr. Charles W. Pollard | President | World Airways, Inc. | 13873 Park Center Rd., Suite 400 | | Herndon | VA | 22071 | Mr. Pollard |

^[1] We do not object to reasonable choice of law provisions in contracts of carriage, such as those that designate the contract law of the state where the airline is headquartered as being applicable to airline-passenger contract disputes.