

AVIATION ADVISOR

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DOT Notice Re Baggage Liability and Code-Share Obligations

The U.S. Department of Transportation (DOT) has released a notice which provides new guidance to air carriers based on its authority to prohibit unfair and deceptive practices (74 Fed. Reg. 14837 (April 1, 2009)). The DOT notice specifically addresses: (1) tariffs relating to liability for lost, stolen, delayed or damaged baggage, and (2) tariffs that assign obligations to the operating carrier and not the ticketing carrier on code-share flights.

(1) Baggage Liability. DOT observes that many air carriers' tariffs exclude liability for certain items in checked baggage – such as electronics, camera, jewelry and antiques – if they are lost, stolen, delayed or damaged. DOT states that exclusions such as these are permitted for domestic transportation, but are not permitted for international transportation that is subject to the 1999 Montreal Convention. If international transportation is subject to the 1999 Montreal Convention, an air carrier generally is liable for the contents of checked baggage up to the treaty's liability limit of 1000 SDR per passenger (approximately US\$1500).

The 1999 Montreal Convention does not apply to all international itineraries. As the U.S. interprets the treaty, it applies to passengers traveling

on itineraries that both begin and end in the U.S. But if an itinerary involves one-way travel, or travel that begins/ends in a country that has not ratified the 1999 Montreal Convention, the older Warsaw Convention may still apply.

However, in 1977 the Civil Aeronautics Board (CAB), DOT's predecessor, issued an order which similarly held that air carriers could not exclude liability for valuable items in checked baggage under the Warsaw Convention. Thus, as a practical matter, air carriers now may not exclude liability for valuables in checked baggage on any international flight, regardless of which treaty may apply to a passenger.

(2) Code-Share Obligations. DOT observes that many air carriers' tariffs for code-share flights state that the operating carrier's contract of carriage applies, either generally or with respect to specific issues (i.e., baggage charges, check-in time limits, unaccompanied minors, carriage of animals, refusal to transport, oxygen service, irregular operations, denied boarding compensation, and baggage acceptance, allowance and liability). DOT states that it requires that the ticketing carrier for a code-share flight accept responsibility for all obligations in the contract of carriage with a passenger, and that this requirement may not be

circumvented by tariff provisions which allocate responsibility differently.

DOT indicates that air carriers should update their tariffs and websites to reflect its notice within 90 days. DOT also notes that the requirements of its notice extend to ticket agents in addition to air carriers.

If you have any questions concerning these changes, please do not hesitate to contact any of the members of our Aviation Group.

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