



**U.S. Department  
of Transportation**

Office of the Secretary  
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE  
Washington, DC 20590

**AUG 31 2009**

**Certified Mail -Return Receipt Requested**

Greg Walden, Esq.  
Patton Boggs LLP  
2550 M Street, N.W.  
Washington, DC 20037

Re: Cabotage

Dear Mr. Walden:

Thank you for consulting us regarding the incident last month involving Asiana's refusal to transport a passenger on a flight from Seoul to Saipan because of the carrier's concern that doing so would violate 49 U.S.C. § 41703, which prohibits transportation by foreign air carriers for compensation or hire between points within the United States, a practice known as cabotage.

From our conversations with the passenger and with you, we understand the facts of the incident to be as follows:

- 1) In June 2009, the subject passenger, an American citizen, arrived in Seoul on a Korean Airlines (KAL) flight from the U.S. mainland with the purpose of living/working permanently in the Republic of Korea (Korea). Asiana did not hold out, arrange, operate, or otherwise participate in this transportation.
- 2) At the time the passenger booked his flight on KAL to Korea, for which he paid personally, neither he nor his new Seoul-based employer knew that he would be traveling to Saipan in July for business purposes.
- 3) Sometime after his arrival in Seoul in June, the passenger's new employer, through its local travel agency, booked a ticket for the passenger on Asiana from Seoul to Saipan.
- 4) In July 2009, nearly 30 days after arriving in Korea, the passenger attempted to use the ticket to Saipan purchased by his employer, but was denied boarding by Asiana because of concerns that transporting him "onward" to Saipan would create a single U.S.-U.S. movement, pursuant to a stopover in Seoul, performed by non-U.S. carriers.

Based on these facts, transportation of the passenger by Asiana from Korea to Saipan would not have been an extension of his journey from the U.S. to Korea. Rather, given the totality of the circumstances—the passenger's reason for traveling to Korea (to live and work), the length of time he was in Korea before attempting to travel to Saipan (nearly 30 days), the fact

that the transportation to Korea did not involve Asiana, the fact that there were separate bookings (one of which occurred *after* the passenger had arrived in Korea and had begun living and working there), which were paid from different sources—indicates that the passenger terminated his journey from the U.S. mainland when he arrived in Seoul in June. It follows then that his attempted journey to Saipan from Seoul on Asiana in July would have been a new journey, this time from a non-U.S. point to a U.S. point, and therefore would not have constituted cabotage.

Subsequent to this incident, you have requested via email that we provide further guidance for Asiana's personnel to prevent the denial of transportation in the future to passengers who could be lawfully transported. In your e-mail, you posited numerous hypothetical scenarios involving a passenger who presents himself at Seoul for transportation on Asiana to a U.S. point and who, at some time in the past, was transported to Korea by air from a U.S. point. In addressing several of those below, we assume that Asiana has not held out cabotage service (including codeshare) directly, indirectly, or via reputation.

**Scenario 1.** You ask how the Enforcement Office would respond if 1) the passenger's stay in Korea, regardless of reason (e.g., business, pleasure, live/work), has been at least five days, 2) the passenger's transportation to Korea from the U.S. was pursuant to a booking/ticket that was transacted separately from his booking/ticket on Asiana, and 3) Asiana did not know of, arrange, operate, or otherwise participate or collude in the passenger's flight to Korea. Under these circumstances, it is unlikely that the Enforcement Office would institute an investigation of the matter.

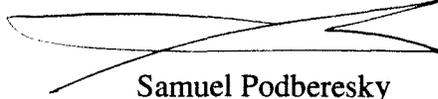
**Scenario 2.** The passenger who presents himself at Seoul for transportation on Asiana to a U.S. point makes it known that he lives and works in Korea and there is no reason to question the veracity of his statement. You ask how the Enforcement Office would respond if 1) the passenger's transportation to Korea from the U.S. was pursuant to a booking/ticket that was transacted separately from his booking/ticket on Asiana and 2) Asiana did not know of, arrange, operate, or otherwise participate or collude in the passenger's flight to Korea. Under these circumstances, it is unlikely that the Enforcement Office would institute an investigation of the matter.

**Scenario 3.** The passenger who presents himself at Seoul for transportation on Asiana to a U.S. point makes it known that he lives and works in Korea and there is no reason to question the veracity of his statement, but, as distinct from Scenario 2, above, he was transported by Asiana to Korea. You ask how the Enforcement Office would respond if the passenger's stay in Korea has been at least five days. Under these circumstances, it is unlikely that the Enforcement Office would institute an investigation of the matter.

**Scenario 4.** The passenger who presents himself at Seoul for transportation on Asiana to a U.S. point makes it known that he is in Korea on business or pleasure. You ask how the Enforcement Office would respond if the passenger is returning to the same U.S. point from which he departed for Korea. Under these circumstances, regardless of the carrier that transported the passenger to Korea, the proposed journey would not constitute cabotage since the passenger would not be transported between two U.S. points.

If you have additional questions, please contact Jonathan Dols, of my staff, or me at (202) 366-9342. You may also reach us by fax at (202) 366-7152.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel Podberesky', written over a horizontal line.

Samuel Podberesky  
Assistant General Counsel for  
Aviation Enforcement and Proceedings