



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Issued by the Department of Transportation
on the 30th day of September, 2010**

EL AL Israel Airlines, Ltd.

**Violations of Article 17 of the
Montreal Convention and 49 U.S.C. § 41712**

Docket OST 2010-0005

Served September 30, 2010

CONSENT ORDER

This consent order results from the policy of EL AL Israel Airlines, Ltd., (EL AL) to refuse reimbursement for certain items of luggage lost in international transit to or from the United States in violation of Article 17 of the Montreal Convention and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712. It directs EL AL to cease and desist from future similar violations of Article 17 and section 41712, and assesses the carrier a compromise civil penalty of \$30,000.

Applicable Law

Article 17 of the Montreal Convention states that carriers are liable, up to a certain monetary limit, for loss of or damage to baggage “upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier.”¹ Article 17 does not make an exception for any class or category of baggage, such as jewelry, electronics, or high-value items. Although the Montreal Convention allows carriers to require a Special Declaration of Interest if the value of the checked items exceeds the liability limitations, blanket exclusions from liability are not permitted. Thus, Article 17, in effect, mandates that, once a carrier accepts checked baggage, it may not limit its liability for any of the contents therein to less than the limit set by the Convention, which is currently 1,131 Special Drawing Rights.² Further, Article 26 of the Montreal Convention states that any provision tending to relieve the carrier of liability or to fix a

¹*Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999.

²*Id.* at Article 22(2) and *Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009*, 74 FR 59017, available at http://airconsumer.dot.gov/rules/Notice_11_09_09.pdf (November 9, 2009).

lower limit than that which is laid down in the Convention is null and void. In an industry guidance document dated March 26, 2009, the Department reminded all airlines that in foreign air transportation, Article 17 prohibits them from applying blanket liability exclusions to any class or category of baggage that they have accepted for transport.³ The guidance also reminded carriers that violations of Article 17 constitute unfair or deceptive business practices and unfair methods of competition in violation of 49 U.S.C. § 41712.⁴

Background

In 2010, the Office of Aviation Enforcement and Proceedings (Enforcement Office) received a consumer complaint that indicated that EL AL had a baggage policy and practice in place that contravened Article 17 of the Montreal Convention. Specifically, EL AL's e-ticket terms stated that EL AL is:

[N]ot liable for loss of or delay in receipt of or damage to fragile or perishable items, medication, money, jewellery (sic) including watches, cameras, electronic equipment including computers, precious metals, silverware, negotiable papers, securities, or other valuables, business documents, or samples or goods intended for trade, passports and other identification documents, which are included in the passenger's baggage or damage to overpacked or oversized baggage or to minor exterior damage to your suitcase or baggage parts such as wheels, handles, pockets, locks, zippers, attached items or scratches.

EL AL's General Conditions of Carriage, section 15.3.10, contained the same exclusionary language. Since this language contravened Article 17, the provision is null and void under Article 26 of the Montreal Convention. Based upon this information, the Enforcement Office initiated an investigation, reviewing consumer complaints received by EL AL concerning liability exclusions related to lost or damaged baggage. Despite the explicit terms of Article 17, more than a year after the Enforcement Office's March 2009 guidance, the Enforcement Office found a number of complaints indicating that it was EL AL's practice to completely deny liability for the loss or pilferage of certain checked items in a passenger's checked baggage, in contravention of Article 17.

Mitigation

In mitigation, EL AL states that it is committed to complying with the Department's consumer protection requirements. Indeed, EL AL asserts that it was, at the time it received the initial inquiry from the Department, already in the process of changing its General Conditions of Carriage and the terms and conditions applicable to EL AL's

³*Guidance on Airline Baggage Liability and Responsibilities of Code-Share Partners Involving International Itineraries*, 74 FR 14837, available at http://airconsumer.ost.dot.gov/rules/webnotice_04012009.pdf (March 26, 2009). The notice gave air carriers ninety (90) days from the date of the notice to revise their tariffs, statements, and policies related to baggage liability.

⁴ *Id.*

electronic tickets to respond to the determinations previously made by the Canadian Transportation Agency in May 2009 and the Department in March 2009 concerning checked baggage under the Montreal Convention. EL AL also points out that the resolution of these matters was complicated by the fact that Israel had not yet ratified the Montreal Convention, and that the amendments to these documents had to be translated into ten different languages (other than English and Hebrew). Lastly, EL AL indicates that it has expended, and will continue to expend, significant resources to ensure compliance with the Department's consumer protection regulations, including a recent review of its entire Contract of Carriage to assure that EL AL is acting in a manner consistent with those requirements.

Decision

The Enforcement Office has carefully considered the information provided by EL AL but continues to believe that enforcement action is warranted. The Enforcement Office and EL AL have reached a settlement of this matter in order to avoid litigation. EL AL consents to the issuance of an order to cease and desist from future violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712 of the Department's regulations, and to the assessment of \$30,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents an adequate deterrence to future noncompliance with the Montreal Convention by EL AL as well as by other air carriers and foreign air carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

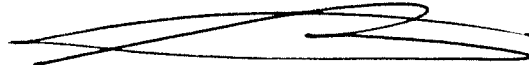
ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that EL AL Israel Airlines, Ltd., violated Article 17 of the Montreal Convention by having in place a policy of applying a blanket liability exclusion to certain classes and categories of baggage that it accepted for transport;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, EL AL Israel Airlines, Ltd., has also violated 49 U.S.C. § 41712;
4. We order EL AL Israel Airlines, Ltd., and all other entities owned or controlled by or under common ownership with EL AL Israel Airlines, Ltd., and their successors and assignees, to cease and desist from violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712;

5. EL AL Israel Airlines, Ltd., is assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$15,000 shall be due and payable within 15 days from the date of issuance of this order. The remaining \$15,000 shall become due and payable if EL AL Israel Airlines, Ltd., violates this order's cease and desist or payment provisions within one year following the date of issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and EL AL Israel Airlines, Ltd., may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject EL AL Israel Airlines, Ltd., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:



SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

(SEAL)

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