



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

Issued by the Department of Transportation
On the 18th day of October, 2010

**926724 Ontario Limited, d/b/a President Air
Charter**

**Violations of 49 U.S.C. §§ 41703 and 41712 and
14 CFR Parts 205 and 294**

Docket OST 2010-0005

Served October 18, 2010

CONSENT ORDER

This consent order concerns unauthorized passenger air service between points in the United States by 926724 Ontario Limited, d/b/a President Air Charter (President Air), a Canadian air taxi operator registered with the Department pursuant to 14 CFR Part 294. This consent order also concerns President Air's failure to file with the Department an up-to-date certificate of insurance, as required by 14 CFR Parts 205 and 294. This order directs President Air to cease and desist from such further violations and assesses President Air a compromise civil penalty of \$20,000.

The carriage of local traffic for compensation or hire by foreign carriers, including Canadian air taxi operators, between two points in the United States, a practice commonly referred to as cabotage, is a violation of 49 U.S.C. § 41703,¹ which prohibits cabotage except under very limited circumstances that do not apply here. Registered Canadian charter air taxi operators that engage in cabotage without Departmental authorization also violate 14 CFR 294.81, which applies the general statutory prohibition in section 41703 specifically to them as a class of foreign air carrier. Violations of section 41703 and Part 294 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

¹ The pertinent language of 49 U.S.C. § 41703 states that foreign aircraft may "take on for compensation, at a place in the United States, passengers or cargo destined for another place in the United States only if – (1) specifically authorized under section 40109(g) of this title... ." See also 14 CFR 375.1 defining "foreign civil aircraft."

The cabotage violations that are the subject of this order occurred on August 13 and August 15, 2010, when a Beechcraft BE 30 aircraft (C-FDTP) operated by President Air transported two passengers for compensation or hire between Bradley International Airport, Winsor Locks, Connecticut, (BDL) and Boston, Massachusetts, (BOS).

On August 13, 2010, the chartered aircraft entered the United States at BDL from Hamilton, Ontario, Canada (YHM) carrying four passengers. At BDL, it dropped off one YHM-originating passenger and picked up two passengers and then continued to BOS with five passengers onboard. On August 15, 2010, the aircraft flew back from BOS to BDL with the same five passengers onboard, i.e., the remaining three YHM-originating passengers and the two BDL-originating passengers. At BDL, the two BDL-originating passengers deplaned and terminated their journeys. The aircraft then picked up the YHM-originating passenger who left the aircraft on August 13, 2010, and flew back to Toronto, Canada (YKZ) with all four YHM-originating passengers onboard. The flights were performed pursuant to a single-entity charter² agreement. All of the passengers were employees of the charterer and their family members.

It is a violation of 49 U.S.C. § 41703 for a foreign civil aircraft to transport passengers or cargo solely between two points in the United States for compensation or hire, even if the aircraft is being operated pursuant to a single entity charter that, in other respects, begins or ends outside the United States.³ Thus, for purpose of 49 U.S.C. § 41703, where a single-entity charter involves the operation of a foreign aircraft in U.S. airspace, as in this case, the journey of each passenger carried on the chartered aircraft, rather than the entire itinerary paid for by the charterer, is considered a separate act of providing air transportation for compensation or hire. If the journey of any individual on such a charter is entirely between U.S. points, then the carriage of that passenger constitutes cabotage.

In this instance, the charterer contracted in Canada for air transportation for its employees and their family members. The resulting movements involved six passengers to, from, or between points in the United States. We will look at each in turn:

1. The carriage of the three YHM-originating passengers who remained with the aircraft did not constitute cabotage. Rather, their movements (YHM-BDL-BOS-BDL-YKZ) constituted a single (as to each individual) continuous international journey originating and terminating in Canada with three stopovers in the United States (two in BDL and one in BOS). Since President Air flew these passengers into the U.S. from Canada, it could lawfully transport them to other U.S. points,

² A single-entity charter is a charter in which the cost is borne directly by the charterer and not directly or indirectly by the individual passengers.

³ Our focus on the itinerary of each individual passenger, rather than the chartering entity as a whole, is not merely required by a strict reading of the statute. If the movements of individual passengers were ignored in favor of the single continuous international journey of the single-entity charterer, then foreign air carriers could routinely circumvent our restrictions on cabotage by designating the points between which it provided transportation within the United States as mere “stopovers” by the charterer. Such a result would eviscerate the statutory prohibition against cabotage and permit the diversion of domestic traffic to foreign air carriers.

provided that there was no break in each passenger's journey at any point prior to the terminal point.⁴

2. The carriage of the one YHM-originating passenger who was not on the BDL-BOS-BDL legs did not constitute cabotage. Rather, his movement (YHM-BDL-YKZ) was conducted pursuant to the carrier's lawful exercise of its Third and Fourth Freedom rights.⁵

3. The carriage of the two passengers who boarded the aircraft in BDL on August 13, 2010, and who terminated their journeys in BDL on August 15, 2010, constituted cabotage. Their movements (BDL-BOS-BDL) were solely between U.S. points aboard a foreign civil aircraft, for which the operator was compensated.⁶

For purpose of its future operations, President Air should take note that any passenger it enplanes at a point in the United States, regardless of the reason for the passenger's journey (e.g., business or leisure), his or her country of citizenship, whether the passenger or another party (e.g., the employer of the passenger's family member) paid for the transportation, or whether the transportation was arranged or paid for outside the United States, must be transported by President Air to Canada⁷ as part of a single continuous international journey.

Separate from the cabotage issue as stated above, 14 CFR Part 294 requires that all Canadian air taxi operators must maintain in effect aircraft accident liability insurance coverage. In addition, evidence of such insurance, in the form of a certificate of insurance, must be maintained on file with the Department at all times, as required by 14 CFR Part 205. Pursuant to 14 CFR 205.4, each carrier shall ensure that the evidence of aircraft accident liability coverage filed with the Department is correct at all times.

⁴ We note that had a second foreign air carrier operated any of the U.S. legs of the operation, the second carrier would have engaged in unlawful cabotage service. We also note that these passengers could lawfully have terminated their journey at any of the points at which they stopped, rather than returning to Canada.

⁵ We note that President Air could permissibly have picked this passenger up at any other U.S. point prior to the second stop at BDL, so long as the passenger was ultimately transported to a terminal point in Canada.

⁶ Other Canadian air carriers have been found to have engaged in cabotage under circumstances similar to those of the instance case, i.e., the carrier moved a number of passengers on journeys entirely between U.S. points pursuant to single-entity charters that began and/or ended in Canada. *London Air Services Limited, violations of 49 U.S.C. §§ 41301 and 41712*, Order 2003-1-9 (Jan. 6, 2003) and *I.M.P. Group Limited d/b/a Execaire, Violations of 49 U.S.C. §§ 41703 and 41712 and 14 CFR Part 294*, Order 2006-1-17 (Jan.23, 2006).

⁷ The passengers may also be transported to a third country, to the extent that such transportation is permissible under the United States-Canada bilateral aviation agreement then in effect.

According to the Department's records, on May 27, 2005, President Air filed with the Department an updated certificate of insurance, which lists an insurance policy issued by Canadian Aviation Insurance Managers Ltd., with an effective date of May 6, 2005. However, on at least two instances thereafter, President Air changed its insurance company, but failed to file an updated certificate of insurance with the Department, in violation of 14 CFR Parts 205 and 294.

The Enforcement Office has carefully considered all of the information available to it and believes that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and 926724 Ontario Limited, d/b/a President Air Charter have reached a settlement of this matter. Without admitting or denying the violations described above, 926724 Ontario Limited, d/b/a President Air Charter agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41703 and 41712 and 14 CFR Parts 205 and 294, and to the assessment of \$20,000 in compromise of potential civil penalties otherwise assessable against it. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by 926724 Ontario Limited, d/b/a President Air Charter and other foreign carriers to fully comply with the requirements of sections 41703 and 41712 and, as applicable, Parts 205 and 294.

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 the order as being in the public interest;
2. We find that 926724 Ontario Limited, d/b/a President Air Charter violated 49 U.S.C. § 41703 and 14 CFR 294.81 by holding out and performing air transportation for compensation or hire between points within the United States;
3. We find that, by engaging in the conduct described in paragraph 2, above, 926724 Ontario Limited, d/b/a President Air Charter engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We find that 926724 Ontario Limited, d/b/a President Air Charter violated 14 CFR 205.4 and 14 CFR 294.40 by failing to file an up-to-date certificate of insurance with the Department;
5. We order 926724 Ontario Limited, d/b/a President Air Charter and all other entities owned and controlled by or under common ownership with 926724 Ontario Limited, d/b/a President Air Charter and its successors and assignees, to cease and desist from further violations of 49 U.S.C. §§ 41703 and 41712 and 14 CFR Parts 205 and 294;

6. We assess 926724 Ontario Limited, d/b/a President Air Charter a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total amount, \$10,000 will become due and payable within 15 days of the issuance of this order. The remaining \$10,000 will become due and payable if 926724 Ontario Limited, d/b/a President Air Charter violates this order's cease and desist provisions or the payment provision within one year following the date of the issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately. Failure to pay the penalty as prescribed in ordering paragraph 7, below, shall subject 926724 Ontario Limited, d/b/a President Air Charter to the assessment of interest, penalties, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order; and

7. 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. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order.

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 initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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