



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

**Issued by the Department of Transportation
On the Twenty-Fifth day of August, 2011**

**The Craig Evan Corporation d/b/a Flightexec
Violations of 49 U.S.C. §§ 41301, 41703,
and 41712**

Docket OST 2011-0003

Served August 25, 2011

CONSENT ORDER

This order concerns unauthorized passenger air service between points in the United States by The Craig Evan Corporation doing business as Flightexec (Flightexec), a Canadian air carrier authorized by the Department to engage in foreign air transportation¹ pursuant to an exemption² from the permit requirement in 49 U.S.C. § 41301. The carriage of local traffic for compensation or hire by foreign air carriers between two points in the United States, a practice commonly referred to as cabotage, violates 49 U.S.C. § 41703, which prohibits cabotage except under very limited circumstances that do not apply here.³ In addition, a foreign air carrier that holds out to the public without authorization, either expressly or by course of conduct, that it provides cabotage service violates 49 U.S.C. § 41301. Violations of sections 41301 and 41703 also constitute an unfair and deceptive trade practice and unfair method of competition in violation of 49 U.S.C. §41712. This consent order directs Flightexec to cease and desist from such further violations and assesses the carrier a compromise civil penalty of \$10,000.

Background

The violations that are the subject of this order occurred between February 11, 2011, and February 14, 2011, when a Flightexec-operated Beech BE200 aircraft (registration C-GCET) transported a passenger for compensation or hire between Fulton County, Georgia, and

¹ Foreign air transportation is “the transportation of passengers or property by aircraft as a common carrier for compensation... between a place in the United States and a place outside the United States... .” 49 U.S.C. § 40102(a)(23).

² See Docket DOT-OST-2004-17388 re The Craig Evan Corporation d/b/a Flightexec.

³ 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... .”

Thomasville, Georgia, without having carried that passenger between the United States and a foreign point.

On February 11, 2011, the chartered aircraft entered the United States at Fulton County from Toronto, carrying two crewmembers and five passengers. At Fulton County, a sixth passenger boarded the aircraft and accompanied the party to Thomasville. On February 14, 2011, those same six passengers boarded the aircraft in Thomasville and returned to Fulton County, where the sixth passenger terminated her journey. The flights were performed pursuant to a single-entity charter⁴ contract between Flightexec and the charterer, a Canadian company. All of the passengers were guests of the charterer.

For purposes of determining whether a violation of 49 U.S.C. § 41703 occurred, the relevant analytical perspective here is not that of the charterer, i.e., the entity that contracted and paid for the air transportation provided by Flightexec, but that of each individual passenger and his or her particular journey, as discussed below. If, for the purposes of such analysis, the movements of individual passengers were deemed as collectively comprising a single continuous international journey of the charterer, then foreign air carriers could transport potentially large numbers of passengers on journeys solely between United States points pursuant to “stopovers” by the charterer at those points, so long as the aircraft being used were operated pursuant to a single-entity charter agreements for operations that began and/or ended outside the United States. As a consequence, foreign air carriers could circumvent the cabotage prohibition simply by styling their charter contracts as being international in character when, in fact, the actual movement of most or all of the passengers resulting from those contracts occurred entirely within the United States. Such a result would eviscerate the statutory prohibition against cabotage and permit the diversion of domestic traffic to foreign air carriers.

In the instant case, there was a single charterer contracting in Canada for air transportation for its guests. The resulting movements involved six passengers to, from, or between points in the United States. We will look at each in turn. With respect to the Toronto-originating passengers, their movements did not constitute cabotage. Rather, each passenger’s transport constituted that passenger’s single continuous international journey originating and terminating in Canada with three stopovers in the United States (Toronto, Fulton County, Thomasville, Fulton County, Toronto). Since Flightexec flew these passengers into the United States from Canada, it could lawfully transport them to other United States points, provided that there was no break in each passenger’s journey at any point prior to the terminal point. However, with respect to the passenger who boarded the flight from Fulton County to Thomasville and then returned to Fulton County, her transport constituted cabotage because she was carried only between points in the United States on flights operated by Flightexec for compensation.⁵

⁴ A single-entity charter is a charter in which the cost is borne by the charterer and not directly or indirectly by the individual passengers.

⁵ Other foreign air carriers have been found to have engaged in cabotage under circumstances similar to those of the instant case, i.e., the carrier moved a number of passengers on journeys entirely between United States points pursuant to single-entity charters that began or ended in foreign countries. *See, e.g., 926724 Ontario Ltd., d/b/a President Air Charter*, Violations of 49 U.S.C. §§ 41703 and 41712 and 14 CFR Parts 205 and 294, Order 2010-10-9 (Oct. 18, 2010); *I.M.P. Group Ltd. d/b/a Execaire*, Violations of 49 U.S.C. §§ 41301, 41712 and 14 CFR Part 294, Order 2006-1-17 (Jan. 1, 2006).

For purposes of its future operations, Flightexec should take care to ensure 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 pleasure), his or her country of citizenship, whether the passenger or another party (e.g., the passenger's host or employer) paid for the transportation, or whether the transportation was arranged or paid for in Canada, is transported by Flightexec to Canada or another country⁶ as part of a single continuous international journey.

In mitigation, Flightexec states that it makes every effort to adhere to the relevant statutes and Department regulations and had no intention to circumvent or disregard those statutes or regulations. Flightexec explains that the flight in question resulted from a combination of circumstances including an unplanned flight involving transport of a medical team and the resulting unavailability of another aircraft. Although Flightexec believed at the time of the flight in question that it was a permissible flight, it now has a better understanding of the relevant statutes and Department regulations. Flightexec further states that it has obtained legal counsel to provide guidance should similar circumstances arise in the future.

Decision

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered all of the information provided by Flightexec, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Flightexec have reached a settlement of this matter. Without admitting or denying the violations described above, Flightexec agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301, 41703, and 41712 and to the assessment of US\$10,000 in compromise of potential civil penalties otherwise assessable. The Enforcement Office believes this compromise is appropriate in view of the nature and extent of the violations in question, serves the public interest, and creates an incentive for all foreign air carriers to comply fully with the requirements of sections 41301, 41703, and 41712.

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 The Craig Evan Corporation d/b/a Flightexec violated 49 U.S.C. §§ 41301 and 41703 by holding out and performing air transportation for compensation or hire on journeys between points entirely within the United States.

⁶ Transportation from the United States to a third country may be provided to the extent that transportation is permissible under the aviation agreement between the United States and Canada then in effect.

3. We find that, by engaging in the conduct and violations described in paragraph 2, above, The Craig Evan Corporation d/b/a Flightexec, engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712.
4. We order that The Craig Evan Corporation and all other entities owned and controlled by, or under common ownership and control with, The Craig Evan Corporation and their successors and assignees, cease and desist from future violations of 49 U.S.C. §§ 41301, 41703, and 41712.
5. We assess The Craig Evan Corporation d/b/a Flightexec a civil penalty of US\$10,000 in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Of this total amount, \$5,000 is due and payable within 30 days after the service date of this order. The remaining \$5,000 shall become due and payable if The Craig Evan Corporation d/b/a Flightexec violates this order's cease and desist provisions or the payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately. Failure to pay as ordered shall subject The Craig Evan Corporation d/b/a Flightexec to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order.
6. We order The Craig Evan Corporation d/b/a Flightexec to make the payment set forth in ordering paragraph 5, above, by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the United States 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 ten days after its service 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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