



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

**Issued by the Department of Transportation  
On the 7th day of October, 2011**

**Aerovias de Intergración Regional,  
AIRES S.A.**

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

**Docket OST 2011-0003**

**Served October 7, 2011**

**CONSENT ORDER**

This consent order involves violations by Aerovias de Intergración Regional, AIRES, S.A. (AIRES) of Article 17 of the Montreal Convention (Convention)<sup>1</sup> and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712, in connection with monetary claims resulting from the loss of checked baggage and the pilferage of certain items out of checked baggage on flights to and from the United States. It directs AIRES to cease and desist from future similar violations of Article 17 and section 41712, and assesses the carrier a compromise civil penalty of \$25,000.

**Applicable Law**

Article 22 of the Convention currently sets the liability limit for damages associated with lost, damaged, or delayed baggage at 1,131 Special Drawing Rights (SDRs) for each passenger.<sup>2</sup> Article 17 of the Convention provides that carriers are liable for loss of or damage to checked baggage, up to the limit set by Article 22, if “the destruction, loss or damage” occurred while the checked baggage was within the custody of the carrier except to the extent that the damage “resulted from the inherent defect, quality, or vice of the baggage.” Further, Article 26 states that any contractual provision tending to relieve a carrier of liability or to fix a lower limit than that which is laid down in the Convention is null and void. Nothing in the Convention permits blanket exclusions or otherwise allows carriers to disclaim liability for any class or category of item, such as jewelry, electronics, or high value items. Such exclusions have the effect of limiting liability to

<sup>1</sup> *Convention for the Unification of Certain Rules for International Carriage by Air*, adopted on May 28, 1999, at Montreal.

<sup>2</sup> *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](http://airconsumer.dot.gov/rules/Notice_11_09_09.pdf) (November 9, 2009).

less than the limit set by Article 22 in contravention of Article 17 of the Convention. Violations of the Convention constitute unfair or deceptive business practices and unfair methods of competition in violation of 49 U.S.C. § 41712.<sup>3</sup>

### **Background**

AIRES is a Colombian air carrier.<sup>4</sup> Based on a consumer complaint, the Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated AIRES's policies and practices in connection with its handling of monetary claims regarding loss, damage, and delay of checked baggage. That investigation found that in a number of instances arising out of flights to and from the United States, AIRES was disclaiming as a matter of course liability for various classes of items. Specifically, on its website and in written responses to consumers, AIRES stated that it was not liable for "cameras, video cameras, video components, sound equipment, portable computers, articles of value generally, valuable titles, money, jewelry, glass bottles (liquor, perfumes), dinner sets (china), ceramics, pocket calculators, palms (palm pilots), computers, cells, walkmen, discmen, (and) personal documents." In reviewing claims submitted to AIRES, the Enforcement Office found that it was AIRES' practice to deny all liability for the loss or pilferage of these enumerated items in a passenger's checked baggage.

### **Mitigation**

In mitigation, AIRES states that it takes seriously its responsibility to comply with all applicable laws and regulations, including the Montreal Convention and the Department's rules, and has cooperated fully with the Department on this matter. Although AIRES acknowledges that certain passenger response letters may have contained potentially ambiguous language, AIRES states that it had no intention of misstating its policies or misinforming passengers as to their rights under the Montreal Convention. After receiving the Department's inquiry, AIRES further states that it conducted a thorough review of its baggage liability policies and practices, revised its internal guidelines, and revised documents used when responding to passenger baggage claims to ensure greater clarity and conformity with company policy. AIRES notes that it also conducted additional trainings of its employees to ensure that they understand and correctly apply the company's baggage liability policies.

### **Decision**

The Enforcement Office has carefully considered the information provided by AIRES and continues to believe that enforcement action is warranted. The Enforcement Office and AIRES have reached a settlement of this matter in order to avoid litigation. Without

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<sup>3</sup> See *Societe Air France, Violations of Article 17 of the Montreal Convention and 49. U.S.C. §41712*, Order 2010-12-26 (December 23, 2010).

<sup>4</sup> Colombia signed the Montreal Convention on December 15, 1999. The Convention entered into force with respect to Colombia on November 4, 2003.

admitting or denying the violations described above, AIRES consents to the issuance of this order to cease and desist from future violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712, and to the assessment of \$25,000 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 above and serves the public interest. It serves as a deterrent to future noncompliance with the Montreal Convention by AIRES, 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 Aerovias de Intergración Regional, AIRES, S.A., violated Article 17 of the Montreal Convention by excluding as a matter of course liability for certain classes and categories of baggage that it accepted for transport to and from the United States;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Aerovias de Intergración Regional, AIRES, S.A., has engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Aerovias de Intergración Regional, AIRES, S.A., and all other entities owned or controlled by or under common ownership with Aerovias de Intergración Regional, AIRES, S.A., and their successors and assignees, to cease and desist from violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712. Failure to comply with this cease and desist order shall subject Aerovias de Intergración Regional, AIRES, S.A., and its successors and assignees to further enforcement action;
5. We assess Aerovias de Intergración Regional, AIRES, S.A., a compromise civil penalty of \$25,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total amount \$12,500 shall become due and payable in two equal installments of \$6,250. The first installment of \$6,250 shall be due and payable within thirty (30) days of the date of issuance of this order. The second installment of \$6,250 shall be due and payable within ninety (90) days of the date of issuance of this order. The remaining \$12,500 shall be due and payable immediately if Aerovias de Intergración Regional, AIRES, S.A., violates this order's cease and desist or

payment provisions during the twelve (12) months following the service date of this order; and

6. We order Aerovias de Intergración Regional, AIRES, S.A., to remit the payment ordered in paragraph 5 above, 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 instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Aerovias de Intergración Regional, AIRES, S.A., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with 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 motion.

**BY:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**

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