



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

**Issued by the Department of Transportation
On the Twenty-First day of November, 2012**

Malaysia Airline System Bhd

Docket OST 2012-0002

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

Served November 21, 2012

CONSENT ORDER

This consent order involves violations by Malaysia Airline System Bhd (MAS) of Article 17 of the Montreal Convention¹ (Convention) and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712, in connection with monetary claims resulting from loss of checked baggage on MAS flights to or from the United States. It directs MAS 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 22 of the Convention currently sets the liability limit for lost, delayed, or damaged checked baggage, at 1,131 Special Drawing Rights (SDRs) for each passenger.² The Convention sets forth rules on certain international flights that govern air carrier liability for lost, delayed, and damaged checked baggage. Article 17 of the Convention provides that carriers are liable for loss of or damage to checked baggage in the custody of the carrier, except to the extent that the loss or damage “resulted from an inherent defect, quality, or vice” of the baggage. 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 goods that they have accepted for transport as checked baggage. Rather, such exclusions contravene Article 17 because they have the effect of

¹ Convention for the Unification of Certain Rules for International Carriage by Air, adopted on May 28, 1999. The Convention entered into force for the United States of America on November 4, 2003, and for Malaysia on February 29, 2008.

² Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009, 74 Fed. Reg. 59017 (Nov. 16, 2009) available at <http://airconsumer.dot.gov/rules/guidance.htm>.

limiting—with respect to items falling within their ambit—a carrier’s liability to an amount lower, i.e., zero, than the minimum level required by Article 22. (By notice dated March 26, 2009, the Department reminded all airlines engaged in foreign air transportation of this proscription and gave them 90 days from the date of the notice to revise their tariffs, statements, and policies related to baggage liability.) Under Departmental enforcement case precedent, violations of Articles 17 also constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.³ In addition, Article 26 prescribes that any contractual provision tending to relieve the carrier of liability or to fix a lower liability than set forth in the Convention is null and void.

Facts

According to MAS’ contract of carriage on its website, the carrier states in Article 16.4.8, in apparent violation of the Convention that it is “not liable for damage to fragile or perishable items, artwork, cameras, money, jewelry, precious metals, silverware, negotiable papers, securities, or other valuables, business documents, passports and other identification documents, or samples, which are included in [a passenger’s] checked baggage, whether with or without our knowledge.” In addition, in a number of instances, MAS applied this blanket exclusion to deny passenger claims.

Mitigation

In mitigation, MAS states that it is committed to complete compliance with all applicable laws and regulations, including the Montreal Convention and the Department’s enforcement policies. MAS also prides itself on providing excellent customer service. Despite the unintentional misstatement of its baggage policy in its contract of carriage, MAS notes that the Department received no passenger complaints regarding denial of liability.

MAS states that it has no enforcement history with the Department. MAS also states that upon receiving DOT’s inquiry, MAS immediately conducted a thorough review of its internal baggage policies, website and contract of carriage, and issued a reminder of its policy to all of its customer service teams to ensure absolute clarity. MAS has fully cooperated with the Department in this matter and is committed to ensuring full compliance going forward.

Decision

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by MAS but continues to believe that enforcement action is warranted. The Enforcement Office and MAS have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, MAS consents to the issuance of an order to cease and desist from future

³ 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).

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 a strong deterrent against future noncompliance with the Montreal Convention by MAS, as well as by other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

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 Malaysia Airline System Bhd 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, Malaysia Airline System Bhd has also violated 49 U.S.C. § 41712;
4. We order Malaysia Airline System Bhd and all other entities owned or controlled by or under common ownership with Malaysia Airline System Bhd, and its successors, affiliates, and assignees, to cease and desist from further similar violations of Article 17 of the Montreal Convention and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Malaysia Airline System Bhd and its successors and assignees to additional enforcement action;
5. We assess Malaysia Airline System Bhd a compromise civil penalty of \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$15,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$15,000 shall become due and payable immediately if Malaysia Airline System Bhd violates this order's cease and desist provision within one year following the date of issuance of this order or fails to comply with the order's payment provisions; and
6. We order Malaysia Airline System Bhd to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Malaysia Airline System Bhd Limited 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

(SEAL)

An electronic version of this document is available at
www.regulations.gov