



**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 February, 2014

Asiana Airlines, Inc.

**Violations of
49 U.S.C. §§ 41313 and 41712**

Served: February 25, 2014

Docket OST-2014-0001

CONSENT ORDER

This consent order concerns violations by Asiana Airlines, Inc., (Asiana) of the Foreign Air Carrier Family Support Act of 1997 (Act), as amended, codified in part at 49 U.S.C. § 41313, as well as the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. This order directs Asiana to cease and desist from future similar violations of 49 U.S.C. §§ 41313 and 41712, and assesses the carrier \$500,000 in civil penalties.

Applicable Law

The Act, as amended, applies to aircraft accidents¹ involving foreign air carriers and resulting in a major loss of life. The Act requires that foreign air carriers assure the U.S. Department of Transportation and the National Transportation Safety Board (NTSB) by way of a "family assistance plan" that they will provide various services to passengers and their families. The family assistance plan must contain 18 assurances, each of which is described at 49 U.S.C. § 41313(c).

This consent order concerns three of those assurances. First, foreign air carriers must possess and implement a "plan for publicizing a reliable, toll-free telephone number and

¹ 49 U.S.C. § 41313(a)(1) defines "aircraft accident" as "any aviation disaster, regardless of its cause or suspected cause, that occurs within the United States."

staff to take calls to such number from families of passengers involved in an aircraft accident.” 49 U.S.C. § 41313(c)(1). Second, foreign air carriers notify the families of passengers involved in an aircraft accident “as soon as practicable after the foreign air carrier has verified the identity of a passenger on the foreign aircraft, whether or not the names of all of the passengers have been verified.” 49 U.S.C. § 41313(c)(3). Third, foreign air carriers must “commit sufficient resources to carry out the [family assistance] plan.” 49 U.S.C. § 41313(c)(13).

A foreign air carrier’s failure to comply with the assurances required by section 41313(c) and as contained in the carrier’s family assistance plan constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

Facts and Conclusions

On July 6, 2013, Asiana flight 214, operating from Seoul Incheon International Airport to San Francisco International Airport (SFO), crashed while landing. Three passengers died. Because the crash was an “aircraft accident” pursuant to section 41313 and resulted in a major loss of life, the Act’s requirements are therefore applicable.

Publication of a Reliable, Toll-Free Telephone Number and Staff to Take Calls

Pursuant to 49 U.S.C. § 41313(c)(1), Asiana was required to possess and implement a “plan for publicizing a reliable, toll-free telephone number and staff to take calls to such number from families of passengers involved in an aircraft accident.” For 18 hours and 32 minutes following the crash of flight 214, Asiana failed to establish, publicize, and staff a reliable toll-free telephone number for the families of the passengers to call. During that time, Asiana failed to widely publicize any telephone number and the only number generally available to the public that family members could call was Asiana’s toll-free reservations line. Locating this phone number on Asiana’s website required significant effort. Moreover, callers were required to navigate through cumbersome automated menus (there was no separate menu option for calls related to the crash) before being connected to an Asiana employee.

After 18 hours and 32 minutes, Asiana publicized a dedicated toll-free telephone number established by another entity and staffed by members of Asiana’s special assistance team. Nevertheless, until that point, Asiana failed to comply with 49 U.S.C. § 41313(c)(1). Asiana’s violation of section 41313(c)(1) constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Notification of Families as Soon as Practicable

Pursuant to 49 U.S.C. § 41313(c)(3), Asiana was required to notify the families of passengers involved in the aircraft accident “as soon as practicable after the foreign air carrier has verified the identity of a passenger on the foreign aircraft, whether or not the names of all of the passengers have been verified.” Asiana required two full days to successfully contact the families of just three-quarters of the passengers. The families of several passengers were not contacted until five days following the crash.² Because of Asiana’s serious delays in contacting the families of the passengers of flight 214, the carrier violated section 41313(c)(3). Asiana’s violation of section 41313(c)(2) constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Sufficient Resources to Carry Out the Plan

Pursuant to 49 U.S.C. § 41313(c)(13), Asiana was required to “commit sufficient resources to carry out the [family assistance] plan.” Asiana’s response to the crash of flight 214 on July 6 and 7 indicates that the carrier failed to commit sufficient resources to carry out its family assistance plan.³ Asiana chose to rely on the assistance of another air carrier under an agreement between multiple air carriers, including assistance to secure a hotel and belatedly to establish a reliable toll-free telephone number.⁴ Not until five days following the crash did Asiana employees take over all of the air carrier’s responsibilities under the Act. Moreover, Asiana took two days to send a sufficient number of trained personnel to San Francisco, experienced significant difficulties in contacting passengers’ families, initially lacked an adequate number of staff able to communicate in the languages spoken by the flight’s passengers, and had no pre-existing contract for the cleaning and returning of passenger property. Asiana’s violation of section 41313(c)(13) constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, Asiana states that it takes seriously its family assistance obligations under the Act. Asiana acknowledges that it experienced difficulties in fulfilling its statutory

² Many of the passengers of Asiana flight 214 were able to contact their families following the crash. This did not relieve Asiana of its statutory obligation to contact those families. Many of the statute’s benefits would be subverted if a passenger’s contact with his or her family relieved a carrier of its obligation to make contact with families as well. For example, victims would not necessarily know of the services available to their families from the air carrier. Even victims aware of these services may be unable to adequately communicate them in the aftermath of an aircraft accident.

³ On March 4, 2004, Asiana filed a document entitled “Aviation Disaster Family Assistance Plan” in Docket DOT-OST-1998-3304, superseding its previous plan which had been filed in December 2000.

⁴ Air carriers are permitted to enter into contracts with other entities to carry out an air carrier’s family assistance plan. Nevertheless, air carriers are ultimately responsible for ensuring compliance with the Act.

and Family Assistance Plan obligations in a timely or adequate manner, notwithstanding the monumental efforts Asiana states that its personnel made to assist passengers and their families beginning immediately after the accident. Asiana believes its conduct should be evaluated in the context of the challenges it faced in the hours and days after the accident that occurred on the Saturday of the July 4th holiday weekend, at 11:28 a.m. local San Francisco time, 5,659 miles from and sixteen hours behind Seoul. In Seoul, where Asiana's headquarters is located, it was 3:28 a.m. Sunday.

At the time of the accident, Asiana states that it had 12 employees on duty at SFO. Asiana states that personnel in its regional headquarters in Los Angeles, upon learning of the accident and that SFO was closed indefinitely, drove the 8-hour trip, arriving later that day. Asiana states that it quickly augmented its staffing in San Francisco and sent both its Senior Vice President and Executive Vice President. Asiana's Chief Executive Officer arrived on July 9, met with the NTSB Chairman, and remained in San Francisco until July 27. Asiana believes that its CEO's personal presence ensured that passengers and families received the assistance required by law and expected of a premier service provider and good corporate citizen, as well as made it possible for all decisions to be made quickly on site without having to consult with Asiana headquarters in Seoul.

Asiana believes that, like many foreign carriers, it had few trained employees to attend to post-accident responsibilities for a crash occurring in the United States and therefore initially relied on the assistance of a U.S. airline partner to fulfill its section 41313 responsibilities. Asiana states that it and other members of its codesharing alliance recognized this reality in agreeing to assist each other in the event of an accident involving an air carrier in a foreign country. Asiana acknowledges the critical role its U.S. alliance partner played in the immediate aftermath of the accident and during the following week.

At the Family Assistance Center, Asiana states that a Special Assistance Representative was assigned to each passenger and family. Asiana further states that it flew in and provided ground transportation for family members from abroad. Asiana states that a 24-hour Family Assistance Desk was staffed, and passengers and families were offered clothing and provided specially chosen food service. Asiana states that professional crisis counseling was provided by the Red Cross, child care services were provided, and passengers were given expense money and complete freedom to utilize food and other hotel services. Asiana states that it also gave out mobile phones and calling cards to allow family members to call relatives outside of the United States.

Asiana also states that it faced challenges in obtaining information about passengers and their family members. For a majority of the U.S. citizens, Asiana states that it did not have contact information because the passengers were ticketed through a travel agent or online and at the time of the accident, the travel agencies were either closed or were unable to provide the carrier with any contact information. Asiana states that it is the practice of travel agencies in China not to provide any phone number for any passengers other than the travel agency number. Where Asiana did have passenger contact information, it states that it was often a passenger cell phone lost or left behind during the

evacuation. As a result, Asiana states that it intends to revise its website to require U.S. passengers to provide family contact information. Asiana states that it will also require all travel agents to solicit family contact information from each passenger.

Asiana states that injured passengers were sent to 13 different area hospitals and because no list was prepared at the time of transport and due to resistance from some hospitals ostensibly due to health privacy laws, Asiana experienced difficulty in identifying the passengers admitted. Asiana further states that its employees visited every hospital, working alongside the Red Cross.

Asiana states that the bulk of Asiana's family assistance workers remained at the Family Assistance Center until all hospitalized patients had been released and all families of passengers including the three decedents had left. Asiana states that it closed the Family Assistance Center on July 27, relocating the remaining passengers and families to an airport hotel, where the last passenger checked out in November.

Asiana acknowledges that it experienced difficulties with setting up dedicated phone lines immediately following the accident because it was a Saturday on a holiday weekend. By Sunday July 7 at 6:00 a.m., Asiana states that it had set up and staffed a dedicated e-mail address and toll-free number each in English, Korean, and Chinese. Asiana states that the phones were staffed twenty-four hours a day and will continue to remain active indefinitely. Asiana further states that it now has a dedicated toll-free number in the United States that is permanently available.

Asiana states that it entered into a contract on July 8 to handle the recovery and return of passenger baggage and personal belongings. This agreement is subject to automatic yearly renewal.

Decision

We view seriously Asiana's violations of 49 U.S.C. §§ 41313 and 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that Asiana failed to adhere to the assurances in its family assistance plan as required by the Act.

In order to avoid litigation, and without conceding a violation of the Act or section 41712, Asiana has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Asiana to cease and desist from future similar violations of 49 U.S.C. §§ 41313 and 41712, and assessing \$500,000 in compromise of potential civil penalties otherwise due and payable. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Asiana and 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 Asiana Airlines, Inc., violated 49 U.S.C. § 41313(c)(1) by failing to possess and implement a plan for publicizing a reliable, toll-free telephone number and staff to take calls to such number from families of passengers involved in an aircraft accident;
3. We find that Asiana Airlines, Inc., violated 49 U.S.C. § 41313(c)(3) by failing to notify the families of passengers involved in an aircraft accident as soon as practicable after the foreign air carrier has verified the identity of a passenger on the foreign aircraft, whether or not the names of all of the passengers have been verified;
4. We find that Asiana Airlines, Inc., violated 49 U.S.C. § 41313(c)(13) by failing to commit sufficient resources to carry out its family assistance plan;
5. We find that by engaging in the conduct described in ordering paragraphs 2 through 4, above, Asiana Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
6. We order Asiana Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with Asiana Airlines, Inc., its successors, affiliates, and assigns, to cease and desist from further violations of 49 U.S.C. §§ 41313 and 41712;
7. We assess Asiana Airlines, Inc., \$500,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 5, above, as follows:
 - a. \$400,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order;
 - b. Up to \$100,000 shall be credited to Asiana Airlines, Inc., for its costs in sponsoring multiple industry-wide conferences and training sessions in 2013, 2014, and 2015, to provide lessons learned. The amount credited is contingent upon the Department's receipt by December 31, 2015, of a sworn statement from an officer of Asiana Airlines, Inc., with supporting documentation substantiating the expenditures; and

- c. Any remaining portion of the civil penalty amount not credited pursuant to paragraph 7.b, above, shall become due and payable on February 28, 2016.
8. We order Asiana Airlines, Inc., to remit the payment assessed in paragraph 7, above, within 30 days of the issuance of this order. Payment shall be made through Pay.gov 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 Asiana Airlines, Inc., 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:

BLANE WORKIE
Acting Assistant General Counsel for
Aviation Enforcement and Proceedings

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