

## AVIATION REGULATORY UPDATE

### **DOT ISSUES MISTAKEN FARES POLICY AHEAD OF THIRD FINAL RULE ON ENHANCING AIRLINE PASSENGER PROTECTIONS**

On May 8, 2015, DOT issued its long-awaited Enforcement Policy Regarding Mistaken Fares. The newly published enforcement policy is temporary pending issuance of the Department's third Enhancing Airline Passenger Protections Rulemaking (i.e. "Transparency of Airline Ancillary Fees and Other Consumer Protection Issues") which will specifically address the issue of mistaken fares.

As background, DOT issued a final rule enhancing passenger protections on April 25, 2011. One of the provisions in that rule, aptly named the "Post-Purchase Price Increase rule", prohibited airlines and other sellers of tickets for air transportation from increasing the cost of a ticket after a the purchase has occurred. Under 14 C.F.R. § 399.88, a purchase occurs when the consumer pays the full agreed upon price.

On June 15, 2012, DOT responded to questions regarding the applicability of the post-purchase price increase rule to mistaken fares by stating that "if a consumer purchases a fare and receives confirmation of the purchase and the purchase appears on the consumer's credit card statement and/or online account summary, then there has been a purchase whether or not it was a mistaken fare and the post purchase price prohibition in section 399.88 applies". Since then, a number of mistaken fare incidents have occurred and the Enforcement Office has generally enforced the post purchase price increase rule to such fares. Noting how quickly mistaken fares are spread through postings on various websites and blogs, DOT's May 8, 2015 Enforcement Policy advises that the Department has discretion to decide whether to pursue enforcement action in a mistake fare situation and, as a matter of "prosecutorial discretion," will not enforce the post-purchase price increase rule in the case of erroneous fares if the carrier:

1. Demonstrates that the fare was a mistaken fare (the burden is on the carrier); and
2. Reimburses all consumers who purchased a mistaken fare ticket for "any reasonable, actual, and verifiable out-of-pocket expenses that were made in reliance upon the ticket purchase, in addition to refunding the purchase price of the ticket." These expenses include, but are not limited to, non-refundable hotel reservations, destination tour packages or activities, cancellation fees and visa or other international travel fees.

A final rule on this issue is expected once DOT completes its review of all comments filed in response to its Transparency of Airline Ancillary Fees and Other Consumer Protection Issues rulemaking.

### **FAA LAUNCHES NATIONAL CAPITAL REGION NO DRONE ZONE CAMPAIGN**

The airspace around Washington, D.C. is extremely restricted by rules put in place after the 9/11 attacks, which establish "national defense airspace" over the area and limit aircraft operations to those with an FAA and Transportation Security Administration authorization. Violators face stiff fines and criminal penalties.

The FAA announced on May 13, 2015 that the Federal rules prohibiting aircraft from operating in the Flight Restricted Zone in and around Washington, D.C. will also apply to unmanned aircraft. In addition to the District of Columbia, the "No Drone Zone" includes cities and towns within a 15-mile radius of

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Ronald Reagan National Airport. In this zone all unmanned aircraft systems are prohibited. In an effort to help recreational unmanned aircraft operators be aware of the restricted areas, the FAA is developing a GPS-driven smartphone app which will be released later this year.

### **DOT FINES SRILANKAN AIRLINES FOR UNFAIR AND DECEPTIVE PRACTICES**

In response to a third-party complaint alleging a violation of the Department's full-fare advertising rule, DOT recently fined SriLankan Airlines Limited ("SriLankan") \$20,000. The DOT consent order in the case alleges that the price SriLankan displayed on its website for travel from New York City to Colombo was listed as \$954.00 plus "taxes" of \$587.60. The breakdown of "taxes" revealed that \$500.00 was a fuel surcharge (YQAP) imposed by the airline. SriLankan's mischaracterization of its surcharge as a "tax" constituted, in the Department's opinion, an unfair and deceptive practice. DOT has previously issued guidance stating that carrier-imposed surcharges and other fees must be listed separately from taxes in fare advertisements and SriLankan has since changed its method of displaying such charges. Although SriLankan does not operate service to the U.S., it is still subject to DOT regulation since 1) it places its code on flights operated by another foreign carrier between a third country and the U.S.; and 2) its website is accessible to U.S. consumers.

### **DOT PENALTIES**

#### ***INTER ISLAND AIRWAYS INC. FINED \$20,000***

On May 12, 2015, DOT directed Inter Island Airways Inc. ("Inter Island") to pay a civil penalty of \$20,000 for failing to comply with the Department's accounting and reporting requirements. As a commuter air carrier, Inter Island must file Bureau of Transportation Statistics Form 298-C, "Report of Financial Data" and BTS Schedule T-100, "US Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market." Despite repeated requests by DOT for the information, Inter Island failed to make its required reports on time and was fined. Inter Island alleged that the delay in submitting the information was due to the fact that the information was submitted by email rather than using the BTS e-Submit web-application.

#### ***HAWAIIAN AIRLINES, INC. FINED \$160,000***

On May 21, 2015, DOT assessed Hawaiian Airlines Inc. (Hawaiian) \$160,000 in civil penalties for failing to adhere to domestic baggage liability rules and engaging in unfair and deceptive practices regarding advertising.

- **Domestic Baggage Liability:** Hawaiian by virtue of its operations is subject to the requirements in 14 C.F.R. Parts 254 and 259. Part 254 states that "an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's baggage to an amount less than \$3,300 per passenger for travel before June 6, 2013, and \$3,400 for travel on or after June 6, 2013."

In response to a consumer complaint, DOT investigated Hawaiian's procedures regarding handling claims for mishandled checked baggage on domestic flights. DOT found numerous occasions where Hawaiian limited reimbursement for damages associated with delayed baggage to \$30 per day with a maximum of three days regardless of the facts of the claim. DOT also

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found that the carrier did not comply with its Customer Service Plan, which is available on the carrier's website and states Hawaiian will compensate passengers for all reasonable expenses that result due to delay in delivery according to domestic and international agreements.

- Advertising Requirements: DOT investigated a promotional program associated with the Hawaiian Visa Signature credit card program and found that between May 2013 and July 2013 the carrier advertised fares that could not be purchased. As part of a promotion to promote its Visa Signature credit program, Hawaiian advertised a "one-time 50% round-trip companion travel discount" for flights between North America and Hawaii to consumers who signed up for the credit card. The promotion could be redeemed by searching for and booking the flight through the carrier's website and entering an eCertificate code prior to payment. When passenger searched the site, the website initially advertised fares that were the lowest fare supposedly available. However, after entering the code, a much higher price was presented and the discount was applied to the higher price.

### ***FAA PROPOSED PENALTIES***

- \$150,000 against Ameriflight, LLC of Burbank, California for operating a Beech BE-99 while not in compliance with FAA regulations. Ameriflight mechanics allegedly patch sealed a windshield in two instances due to water leakage, rendering the aircraft unairworthy, but nevertheless continued to operate flights.
- \$227,000 against Amplachem Inc., of Carmel, Indiana for violating Hazardous Materials Regulations. FAA alleges that on April 10, 2013, AmplaChem for shipment via FedEx air transportation an undeclared shipment that included Boron Tribomide. Boron Tribomide is a corrosive material and toxic inhalation hazard that is forbidden from being transported aboard a commercial aircraft. The shipment also included two other corrosive materials. The material was discovered smoldering and burning when unloaded at the destination.

If you have any questions, please contact Evelyn Sahr (esahr@eckertseamans.com, 202-659-6622) or Drew Derco (dderco@eckertseamans.com, 202-659-6665).

*This Aviation Regulatory Update is intended to keep readers current on matters affecting the industry, and is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at esahr@eckertseamans.com or 202.659.6622 or Drew Derco at dderco@eckertseamans.com or 202.659.6665.*

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