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September 2, 2015

VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, ON K1A 0N9

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. SkyGreece Airlines
Emergency application for an Order to reprotect and protect stranded passengers
Request for an interim order**

Please accept the following request for an interim order.

I. RELIEF SOUGHT

The Applicant requests that the Agency make an interim order, pending final disposition of the application, directing SkyGreece Airlines to arrange for transportation, at its own cost, for all of its stranded passengers on flights of other airlines within a reasonable amount of time, and no later than 24 hours.

The request is based on the following legislative provisions:

1. sections 26 and 28(2) of the *Canada Transportation Act*, S.C. 1996, c. 10 (“CTA”);
2. section 113.1(a) of the *Air Transportation Regulations*, S.O.R./88-58 (“ATR”); and
3. Rule 27(1) of the *Canadian Transportation Agency Rules (Dispute Proceedings and Certain Rules Applicable to All Proceedings)*, S.O.R./2014-10 (“Dispute Rules”).

II. SUMMARY OF THE FACTS

1. On the week of August 17, 2015, SkyGreece Airlines left hundreds of passengers stranded for several days by cancelling its flights and failing to offer passengers transportation on flights of other airlines, contrary to its International Tariff Rule 85.

**“Important message to all passengers travelling between August 17 and August 20, 2015,”
SkyGreece Airlines’ website, Document No. 3**

SkyGreece Airlines International Tariff Rules 85(E) and 85(F), Document No. 2

2. On August 27, 2015, late at night, SkyGreece Airlines issued a press release informing the public that it would “temporarily cease all operations” due to its financial difficulties. The press release goes on to state, contrary to the obligations set out in SkyGreece Airlines’ International Tariff Rule 85, that:

Passengers should contact their travel agent to arrange for alternate travel
and/or accommodations.

Press release of SkyGreece Airlines, dated August 27, 2015, Document No. 5

SkyGreece Airlines International Tariff Rules 85(E) and 85(F), Document No. 2

3. Over one thousand passengers have been stranded as a result of SkyGreece Airlines’ cessation of operations, and their number continues to grow at the rate of approximately 100 to 400 passengers per day as SkyGreece Airlines continues to fail to operate its flights in September 2015, and continues to ignore its obligation under International Tariff Rule 85.
4. Stranded passengers have suffered and continue to suffer irreparable financial and/or psychological damages as a result of SkyGreece Airlines’ actions and/or omissions.
5. On August 28, 2015, the present Application was brought for:
 - (a) a permanent order directing SkyGreece Airlines to arrange for transportation, at its own cost, for all of its stranded passengers on flights of other airlines forthwith, and within 24 hours at the latest; and
 - (b) an order directing SkyGreece Airlines to provide security for anticipated claims of passengers.
6. On September 1, 2015, in Decision No. LET-C-A-54-2015, the Agency abridged the standard timelines for the present proceeding. Consequently, pleadings are expected to close on September 21, 2015.

III. ARGUMENTS IN SUPPORT OF THE REQUEST

1. Section 26 of the *CTA* provides that:

The Agency may require a person to do or refrain from doing any thing that the person is or may be required to do or is prohibited from doing under any Act of Parliament that is administered in whole or in part by the Agency.

Canada Transportation Act, s. 26

2. Section 28(2) of the *CTA* confers upon the Agency broad powers to make interim orders, pending disposition of an application:

The Agency may, instead of making an order final in the first instance, make an interim order and reserve further directions either for an adjourned hearing of the matter or for further application.

Canada Transportation Act, s. 28(2)

3. The Agency has broad powers to offer remedies in the case of failure of a carrier to apply the terms and conditions set out in its tariff:

113.1 If an air carrier that offers an international service fails to apply the fares, rates, charges or terms and conditions of carriage set out in the tariff that applies to that service, the Agency may direct it to

- (a) take the corrective measures that the Agency considers appropriate;

Air Transportation Regulations, s. 113.1(a)

4. Stranded passengers are, obviously, unable to make the present application by virtue of their being stranded in foreign countries and away from their homes.

5. The Agency has, on a number of occasions, exercised its powers under s. 113.1(a) of the *ATR* on its own motion, without the participation of any individual who was adversely affected by the carrier's unlawful conduct.

**Decision No. 232-A-2003 (affirmed in *Northwest Airlines Inc. v. CTA*, 2004 FCA 238)
Order No. 2005-A-8**

6. For the reasons set out below, it is submitted that the test for granting an interim order is met in the present case:

- (a) there is a serious question to be tried;
- (b) stranded passengers will suffer irreparable harm if the interim order is not granted; and
- (c) the balance of inconvenience favours granting the order.

RJR – MacDonald Inc. v. Canada (Attorney General), [1994] 1 SCR 311

(a) Serious issue to be tried

7. It is undisputed that on July 27, 2015, SkyGreece Airlines ceased operations, resulting in a large number of passengers being stranded without being offered any form of alternative transportation by SkyGreece Airlines.
8. SkyGreece Airlines' failure to rebook its stranded passengers on flights of other airlines is, at least *prima facie*, contrary to its International Tariff Rule 85.
9. The Applicant agrees with and adopts the Agency's findings in Decision No. LET-C-A-54-2015 that:

[...] the Agency considers this matter to be very serious and reminds SkyGreece that it must apply the terms and conditions of its tariff at all times. SkyGreece has a statutory obligation, pursuant to subsection 110(4) and section 113.1 of the ATR, to apply the fares, rates, charges or terms and conditions of carriage set out in its tariff: [...]

Decision No. LET-C-A-54-2015, p. 5

10. Based on these findings, the Applicant submits that there is a serious issue to be tried.

(b) Irreparable harm

11. Harm can be established by applying reason and logic.

***A.B. v. Bragg Communications Inc.*, 2012 SCC 46, para. 16**

12. Stranded passengers have suffered and will continue to suffer damages as a result of SkyGreece Airlines' conduct:
 - (i) it is logical to infer that being stranded in a foreign country and facing uncertainty about one's ability to return home causes excessive stress, anxiety, loss of enjoyment, and mental anguish to passengers; and
 - (ii) passengers whom SkyGreece Airlines has left stranded must incur significant out-of-pocket expenses for alternative travel arrangements (transportation, accommodation, and meals) in order to return home.
13. The non-pecuniary damages suffered by stranded passengers are irreparable: the Agency has no jurisdiction to order payment of compensation for non-pecuniary damages, such as pain and suffering or loss of enjoyment, and consequently the Agency can offer no remedy for such damages after the fact.

***Enisz v. Air Canada*, Decision No. 18-C-A-2015**

14. According to SkyGreece Airlines' own public statement, the airline is facing financial difficulties of such magnitude that required it to cease operations, at least temporarily. In similar circumstances, the Federal Court held that:

Even if the harms complained of are compensable by way of damages, they would be irreparable by virtue of the fact that Fortunair is a fledgling, financially unstable company that would not likely be in a position to pay a damage award against it.

Fednav Ltd. v. Fortunair Canada Inc., [1994] F.C.J. No. 1969, para. 16

15. Thus, in the present case, the financial damages suffered by stranded passenger would also be irreparable by virtue of SkyGreece Airlines being a "fledgling, financially unstable company that would not likely be in a position" to satisfy the Agency's orders to reimburse passengers for their out-of-pocket expenses relating to their alternative travel arrangements.

(c) Balance of convenience

16. As the Agency correctly noted in Decision No. LET-C-A-54-2015, SkyGreece Airlines has a statutory obligation, pursuant to s. 110(4) of the *ATR*, to apply the terms and conditions of carriage set out in its tariff.

Decision No. LET-C-A-54-2015, p. 5

17. The interim order sought would only bring SkyGreece Airlines into compliance with the law, pending final determination of the application. Since compliance with the law is not optional but mandatory, the balance of convenience clearly favours granting the interim order.

IV. DOCUMENTS RELIED ON

The Applicant relies on the documents submitted in support of the Application, dated August 28, 2015, which have already been filed with the Agency and served upon SkyGreece Airlines.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. Massimo (Max) Starnino, counsel for SkyGreece Airlines