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VIA EMAIL

The Secretary
Canadian Transportation Agency
Ottawa, Ontario, K1A 0N9

Dear Madam Secretary:

**Re: Gábor Lukács v. British Airways
Complaint about rules governing liability and denied boarding compensation**

Please accept the following submissions as a formal complaint against British Airways for violations of ss. 18(b), 111, and 122 of the *Air Transportation Regulations*, SOR/88-58 (the “*ATR*”), pursuant to Rule 40 of the *Canadian Transportation Agency General Rules*.

The Applicant is asking the Agency to disallow and/or substitute certain tariff provisions of British Airways pursuant to s. 113 of the *ATR*.

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I. Applicable legal principles

(a) Tariff provisions must be just and reasonable: s. 111(1) of the *ATR*

Section 111(1) of the *ATR* provides that:

All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

Since neither the *Canada Transportation Act*, S.C. 1996, c. 10 (the “*CTA*”) nor the *ATR* define the meaning of the phrase “unreasonable,” a term appearing both in s. 67.2(1) of the *CTA* and in s. 111(1) of the *ATR*, the Agency defined it in *Anderson v. Air Canada*, 666-C-A-2001, as follows:

The Agency is, therefore, of the opinion that, in order to determine whether a term or condition of carriage applied by a domestic carrier is “unreasonable” within the meaning of subsection 67.2(1) of the *CTA*, a balance must be struck between the rights of the passengers to be subject to reasonable terms and conditions of carriage, and the particular air carrier’s statutory, commercial and operational obligations.

The balancing test was strongly endorsed by the Federal Court of Appeal in *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95. The test was applied in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011.

In *Griffiths v. Air Canada*, 287-C-A-2009, the Agency underscored the importance of applying the balancing test due to the unilateral nature of terms and conditions set by carriers, which often are based only on the carrier’s commercial interests:

[25] The terms and conditions of carriage are set by an air carrier unilaterally without any input from future passengers. The air carrier sets its terms and conditions of carriage on the basis of its own interests, which may have their basis in statutory or purely commercial requirements. There is no presumption that a tariff is reasonable. Therefore, a mere declaration or submission by the carrier that a term or condition of carriage is preferable is not sufficient to lead to a determination that the term or condition of carriage is reasonable.

The Agency applied this principle in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011 and *Lukács v. Air Canada*, 250-C-A-2012.

(b) Tariff provisions must be clear: s. 122(c) of the ATR

Section 122 of the *ATR* states that:

Every tariff shall contain

⋮

(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

[Emphasis added.]

The legal test for clarity has been established by the Agency in *H. v. Air Canada*, 2-C-A-2001, and has been applied most recently in *Lukács v. WestJet*, 418-C-A-2011:

[...] the Agency is of the opinion that an air carrier's tariff meets its obligations of clarity when, in the opinion of a reasonable person, the rights and obligations of both the carrier and passengers are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning.

(c) Provisions that are inconsistent with the legal principles of the *Montreal Convention* cannot be just and reasonable

The *Montreal Convention* is an international treaty that has the force of law in Canada by virtue of the *Carriage by Air Act*, R.S.C. 1985, c. C-26. It governs, among other things, the liability of air carriers in case of delay of passengers and their baggage in international carriage.

Article 26 prevents carriers from contracting out or altering the liability provisions of the *Montreal Convention* to the passengers' detriment:

Article 26 - Invalidity of contractual provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

In *Lukács v. Air Canada*, 250-C-A-2012, the Agency explained the dual role of the *Montreal Convention* in determining the reasonableness of a tariff provision:

[23] [...] Past Agency decisions reflect the two distinct ways in which the Convention might be considered: by looking at whether a tariff is in direct contravention of the Convention, thereby rendering the provision null and void and unreasonable [Footnote: See for example: *Balakrishnan v. Aeroflot*, Decision No. 328-C-A-2007 at para. 20 and *Lukács v. WestJet*, Decision No. 477-C-A-2010 at paras.

39-40 (Leave to appeal to Federal Court of Appeal denied, FCA 10-A-41).]; or by referring to the principles of the Convention when considering the reasonableness of a tariff provision. [Footnote: See for example: *Lukács v. WestJet*, Decision No. 313-C-A-2010 and Decision No. LET-C-A-51-2010 .]

(i) Itineraries where the *Montreal Convention* applies

Article 26 of the *Montreal Convention* renders null and void any tariff provision tending to relieve a carrier of liability or to fix a lower limit than what is provided for by the Convention.

In *McCabe v. Air Canada*, 227-C-A-2008, the Agency held (at para. 29) that a tariff provision that is null and void by Article 26 of the *Montreal Convention* is not just and reasonable as required by s. 111(1) of the *ATR*. This principle was applied by the Agency in *Lukács v. Air Canada*, 208-C-A-2009 (at paras. 38-39), and in *Lukács v. WestJet*, 477-C-A-2010 (at para. 43; leave to appeal denied by the Federal Court of Appeal; 10-A-41).

Thus, it is settled law that a tariff provision that is inconsistent with the legal principles of the *Montreal Convention* cannot be just and reasonable within the meaning of s. 111(1) of the *ATR*.

(ii) Itineraries where the *Montreal Convention* is not applicable

In *Pinksen v. Air Canada*, 181-C-A-2007, the Agency recognized that international instruments in general, and the *Montreal Convention* in particular, are persuasive authorities in interpreting domestic rules and determining their reasonableness. The same reasoning was affirmed by the Agency in *Kipper v. WestJet*, 309-C-A-2010.

In *Lukács v. WestJet*, 483-C-A-2010, the Agency used the *Montreal Convention* as a persuasive authority for determining the reasonableness of WestJet's domestic tariff provisions, and ordered WestJet to revise its tariff to provide for a limit of liability equivalent to that set out in the *Montreal Convention* (leave to appeal denied by the Federal Court of Appeal; 10-A-42).

In *Lukács v. Air Canada*, 291-C-A-2011, the Agency considered Air Canada's Rule 55(C)(7), which stated that "[s]ubject to the Convention, where applicable, carrier is not liable for loss, damage to, or delay in delivery of...". The Agency held that passengers ought to be afforded the same protection against loss, damage or delay of baggage as in the *Montreal Convention*, regardless of whether the convention applies, and disallowed the provision.

II. Rule 55(C) is unclear and unreasonable

A copy of the relevant parts of Tariff Rule 55 of British Airways is attached and marked as Exhibit "A". Rule 55(C) is found on page 30 of the present document. Rule 55(C) starts as follows

EXCEPT AS THE CONVENTION OR OTHER APPLICABLE LAW MAY OTHERWISE REQUIRE:

- (1) CARRIER IS NOT LIABLE FOR ANY LOSS OR CLAIM OF WHATSOEVER NATURE (HEREINAFTER IN THIS TARIFF COLLECTIVELY REFERRED TO AS "DAMAGE") ARISING OUT OF OR IN CONNECTION WITH CARRIAGE OR OTHER SERVICES PERFORMED BY CARRIER INCIDENTAL THERETO, UNLESS SUCH DAMAGE IS PROVED TO HAVE BEEN CAUSED BY THE NEGLIGENCE OR WILLFUL FAULT OF CARRIER AND THERE HAS BEEN NO CONTRIBUTORY NEGLIGENCE OF THE PASSENGER.

The Applicant submits that Rule 55(C) is unclear, and that it is unreasonable because it is a blanket exclusion of liability and it contradicts the legal principles of the *Montreal Convention*.

(a) Clarity

The Agency considered the phrase "Subject to the Convention, where Applicable" found in Air Canada's International Tariff Rule 55(C)(7), and in its Preliminary Decision No. LET-C-A-29-2011 held (at para. 65) that:

The substantive wording of Rule 55(C)(7), on its face, indicates that Air Canada has no liability for loss, damage or delay of baggage and only in exceptional situations (i.e., "Subject to the Convention") will some other provisions concerning Air Canada liability apply and provide compensation rights to passengers. In fact, it is the reverse which applies, namely Air Canada does have liability for loss, damage or delay of baggage and only in exceptional circumstances is Air Canada able to raise a defence to a claim for liability or invoke damage limitations. The wording of the existing and proposed Rule 55(C)(7) is more likely to confuse passengers, rather than clearly inform passengers, regarding the applicability of Air Canada's limit of liability. Accordingly, the Agency finds Rule 55(C)(7) in itself is unclear and that the phrase "Subject to the Convention where applicable" renders the application of Rule 55(C)(7) unclear.

Similarly, in *Lukács v. Porter*, 16-C-A-2013, the Agency held (at para. 62) that the phrase "Subject to the Warsaw Convention or the Montreal Convention" in Porter's International Tariff Rule 18(e) renders the rule unclear, contrary to s. 122 of the *ATR*.

It is submitted that these findings of the Agency equally apply to British Airways' Rule 55(C), and thus Rule 55(C) fails to be clear.

(b) Reasonableness

In *Lukács v. Air Canada*, 291-C-A-2011, the Agency considered Air Canada's Rule 55(C)(7), which stated that "[s]ubject to the Convention, where applicable, carrier is not liable for loss, damage to, or delay in delivery of...". The Agency held that passengers ought to be afforded the same protection against loss, damage or delay of baggage as in the *Montreal Convention* regardless of whether the convention applies, and disallowed the provision as unreasonable. The Agency reached the same conclusion in its recent decision in *Lukács v. Porter*, LET-C-A-2013 with respect to Porter's Rule 18(e).

(i) The Montreal Convention

Article 17(2) of the *Montreal Convention* establishes a regime of strict liability for carriers for loss, destruction and damage to checked baggage. The carrier can avoid liability only in the case and to the extent that the damage to the baggage resulted from the inherent defect, quality or vice of the baggage:

Article 17 - Death and injury of passengers - damage to baggage

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. [...]

[Emphasis added.]

Article 19 of the *Montreal Convention* establishes a regime of strict liability for carriers for delay of passengers and their baggage. The carrier can avoid liability only if it demonstrates that it took all measures that could reasonably be required to avoid the delay, or that it was impossible to take such measures:

Article 19 - Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 19 creates a presumption of liability of the carrier, and places the burden of proof of the presence of extenuating circumstances on the carrier.

In the same vein, Article 20 allows the carrier to exonerate itself from liability in the context of contributory negligence, but only to the extent that the damage was caused by the contributory negligence:

Article 20 - Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

[Emphasis added.]

Article 20 places the burden of proof upon the carrier to demonstrate the presence and extent of contributory negligence.

(ii) Application of the law to the present case

The effect of Rule 55(C) is to exclude British Airways' liability for a wide range of damages arising in a wide range of events, at least in cases where the *Montreal Convention* does not apply. Rule 55(C)(1) is of particular concern, because it purports to displace the strict liability regime of Articles 17(2) and 19 of the *Montreal Convention* (which presumes the airline's liability unless it is proven otherwise) with a blanket exclusion of liability, which exonerates British Airways from every liability unless it was caused by negligence or wilful misconduct of the carrier. Moreover, Rule 55(C)(1) appears to be placing the onus of demonstrating fault of the airline and the lack of contributory negligence of the passenger upon the passenger, contrary to Article 20.

Thus, it is submitted that Rule 55(C) reverses, to a great extent, the burden of proof prescribed by the *Montreal Convention*, and excludes British Airways' liability in a wide range of situations where the *Montreal Convention* imposes liability.

Therefore, it is submitted that Rule 55(C), and Rule 55(C)(1) in particular, is inconsistent with the principles of the *Montreal Convention*, and hence unreasonable.

III. Liability caps: Rules 115(H), 116(H), and 55(C)(6)-(8) are unreasonable

(a) Liability caps under the *Montreal Convention*

Articles 22(1) and 22(2) of the *Montreal Convention* govern the carrier's liability in the case of delay of passengers and destruction, loss, damage or delay of baggage:

Article 22 - Limits of liability in relation to delay, baggage and cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights.
2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

Article 22(5) also provides that these liability limits are not absolute, but can be exceeded in the case of damage resulting from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result:

5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

Article 24 of the *Montreal Convention* provides a mechanism to review and update these liability limits:

Article 24 - Review of limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of

the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 percent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 percent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

In accordance with Article 24, in 2009, the International Civil Aviation Organization (ICAO) increased the liability limits set out in the *Montreal Convention* by 13.1%, bringing the liability under Article 22(1) to 1,131 SDR and under 22(2) to 4,694 SDR. (In November 2009, the Agency also published a notice entitled “Notification to Air Carriers of Upward Revision of the Limits of Liability for International Transportation Governed by the Montreal Convention,” advising carriers to amend their tariffs accordingly.)

(b) Rules 115(H) and 116(H) misstate the liability caps under the *Montreal Convention*

Tariff Rules 115(H) and 116(H) of British Airways, copies of which are attached and marked as Exhibits “D” and “F”, respectively, state (see pages 40 and 42):

THE MONTREAL CONVENTION LIMITS BRITISH AIRWAYS'
LIABILITY FOR COST, DAMAGED OR DELAYED BAGGAGE TO 1,000
SPECIAL DRAWING RIGHTS (SDRS). [...]

[Emphasis added.]

Since the current liability cap for destruction, loss, damage or delay of baggage is 1,131 SDR, it is submitted that Rules 115(H) and 116(H) misstate British Airways' obligations under the *Montreal Convention*, and as such they are unreasonable.

Thus, it is submitted that British Airways ought to amend Rules 115(H) and 116(H) to reflect the updated liability caps.

(c) 55(C)(7) misstates the liability caps under the *Montreal Convention*

Tariff Rule 55(C)(7) of British Airways, a copy of which is attached and marked as Exhibit “A”, states (see page 32):

ANY LIABILITY OF CARRIER IS LIMITED TO 250 FRENCH GOLD FRANCS, USD 20.00, CAD 20.00, PER KILOGRAM IN THE CASE OF CHECKED BAGGAGE, AND 5,000 FRENCH GOLD FRANCS, USD 400.00, CAD 400.00, PER PASSENGER IN THE CASE OF UNCHECKED BAGGAGE OR OTHER PROPERTY, UNLESS HIGHER VALUE IS DECLARED IN ADVANCE AND ADDITIONAL CHARGES ARE PAID PURSUANT TO CARRIER'S TARIFF. IN THAT EVENT, THE LIABILITY OF CARRIER SHALL BE LIMITED TO SUCH HIGHER DECLARED VALUE. IN NO CASE SHALL THE CARRIER'S LIABILITY EXCEED THE ACTUAL LOSS SUFFERED BY THE PASSENGER. ALL CLAIMS ARE SUBJECT TO PROOF OF AMOUNT OF LOSS.

These limits seem to reflect some incarnation of the *Warsaw Convention*, the predecessor of the *Montreal Convention*. It certainly does not reflect the liability caps set out by the *Montreal Convention*, and it is submitted that these liability caps are unreasonably low. Indeed, they result in a liability cap of CAD\$490.00 for a 23 kg suitcase or \$640.00 for a 32 kg suitcase.

At the same time, in *Lukács v. WestJet*, 483-C-A-2010, the Agency held that WestJet's proposed liability cap of CAD\$1,000 was unreasonable (leave to appeal denied by the Federal Court of Appeal; 10-A-42).

Therefore, it is submitted that Rule 55(C)(7) is inconsistent with the *Montreal Convention* and provides unreasonably low liability caps for British Airways.

Hence, it is submitted that Rule 55(C)(7) ought to be disallowed.

(d) Rule 55(C)(6) contradicts Article 22(5) of the *Montreal Convention* and is unreasonable

Tariff Rule 55(C)(6) of British Airways, a copy of which is attached and marked as Exhibit “A”, states (see page 32):

IN ANY EVENT LIABILITY OF CARRIER FOR DELAY OF PASSENGER SHALL NOT EXCEED THE LIMITATION SET FORTH IN THE CONVENTION.

It is submitted that Rule 55(C)(6) contradicts and/or misrepresents British Airways's obligations under Article 22(5) of the *Montreal Convention*, which explicitly permits "breaking" the liability caps set out in Articles 22(1) and 22(2) of the *Montreal Convention* in certain cases; for greater clarity, Article 22(5) allows for unlimited liability in these circumstances.

Thus, it is submitted that Rule 55(C)(6) is both unreasonable and misleading, contrary to s. 18(b) of the *ATR*.

Therefore, it is submitted that Rule 55(C)(6) ought to be disallowed.

(e) Rule 55(C)(8) is unreasonable

Tariff Rule 55(C)(8) of British Airways, a copy of which is attached and marked as Exhibit "A", states (see page 32):

IN THE EVENT OF DELIVERY TO THE PASSENGER OF PART BUT NOT ALL OF HIS CHECKED BAGGAGE (OR IN THE EVENT OF DAMAGE TO PART BUT NOT ALL OF SUCH BAGGAGE) THE LIABILITY OF THE CARRIER WITH RESPECT TO THE NOT DELIVERED (OR DAMAGED) PORTION SHALL BE REDUCED PROPORTIONATELY ON THE BASIS OF WEIGHT, NOTWITHSTANDING THE VALUE OF ANY PART OF THE BAGGAGE OR CONTENTS THEREOF.

British Airways appears to be confusing here the provisions of the *Montreal Convention* governing cargo with those governing checked baggage. (Indeed, this provision is very similar to Article 22(4).) However, liability under the *Montreal Convention* is no longer based on the weight of the checked baggage (as in the *Warsaw Convention*), but rather the liability cap applies to "per passenger," subject to proof of loss.

Thus, it is submitted that Rule 55(C)(8) is a provision tending to relieve British Airways from liability and/or set a lower liability limit for British Airways than what is prescribed by the *Montreal Convention*.

Therefore, Rule 55(C)(8) is inconsistent with the *Montreal Convention*, and is unreasonable.

Hence, it is submitted that Rule 55(C)(8) ought to be disallowed.

IV. Blanket exclusions of liability for baggage: Rules 55(C)(10), 115(N), and 116(N) are unreasonable

Tariff Rule 55(C)(10) of British Airways, a copy of which is attached and marked as Exhibit “A”, states (see page 32):

CARRIER IS NOT LIABLE FOR LOSS, DAMAGE TO OR DELAY IN THE DELIVERY OF FRAGILE OR PERISHABLE ARTICLES, MONEY, JEWELRY, SILVERWARE, NEGOTIABLE PAPERS, SECURITIES OR OTHER VALUABLES, BUSINESS DOCUMENTS OR SAMPLES WHICH ARE INCLUDED IN THE PASSENGERS' CHECKED BAGGAGE, WHETHER WITH OR WITHOUT THE KNOWLEDGE OF CARRIER.

Tariff Rules 115(N) and 116(N) of British Airways, a copy of which are attached and marked as Exhibits “E” and “G”, respectively, state (see pages 41 and 43):

IN ACCORDANCE WITH THE BRITISH AIRWAYS CONDITIONS OF CARRIAGE, ITEMS THAT ARE FRAGILE, PERISHABLE OR OF SPECIAL VALUE MUST NOT BE INCLUDED IN CHECKED BAGGAGE. IF ANY OF THESE ITEMS, OR ANY OTHER ITEMS FORBIDDEN UNDER THE BRITISH AIRWAYS CONDITIONS OF CARRIAGE, ARE INCLUDED IN CHECKED BAGGAGE, BRITISH AIRWAYS WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO THEM. THESE ITEMS INCLUDE MONEY, JEWELRY, PRECIOUS METALS, COMPUTERS, PERSONAL ELECTRONIC DEVICES, SHARE CERTIFICATE, BONDS AND OTHER VALUABLE DOCUMENTS, BUSINESS DOCUMENTS OR PASSPORTS AND OTHER IDENTIFICATION DOCUMENTS. THE PAYING OF THIS CHARGE INDICATES THAT THESE TERMS AND CONDITIONS HAVE BEEN ACCEPTED.

It is submitted that these provisions, insofar as they concern liability for the contents of checked baggage, are unreasonable.

(a) The *Montreal Convention*

(i) Loss of baggage - absolute liability

Loss of checked baggage is governed by Article 17(2) of the *Montreal Convention*:

The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent

defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

[Emphasis added.]

Article 17(2) distinguishes between destruction or loss, and damage to checked baggage. While this article allows the carrier to relieve itself from liability for damage to baggage that is a result of "inherent defect, quality or vice of the baggage," Article 17(2) contains no provision to relieve a carrier from liability for the loss of such baggage. On the contrary, Article 17(3) of the *Montreal Convention* provides that once the loss of baggage is established, the passenger may enforce their rights under the contract of carriage against the air carrier:

If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Therefore, the Applicant submits that the carrier's liability for loss of checked baggage is absolute, and the carrier cannot exonerate itself of that liability under any circumstance.

(ii) Destruction and damage to baggage - strict liability

Destruction and damage to checked baggage is also governed by Article 17(2) of the *Montreal Convention*. A carrier that wishes to exonerate itself from liability in the case of damage to a particular piece of baggage must prove that: (1) the baggage had a particular inherent defect, quality or vice, and; (2) the damage in question was a result of the demonstrated inherent defect, quality or vice.

Article 17(2) provides a defense (i.e., "shield") against claims, and thus it is up to the adjudicator or trial judge to determine whether a particular piece of baggage has an "inherent defect, quality or vice" that is relevant to Article 17(2). Any attempt of a carrier to contractually define this phrase in its tariffs would result in relieving the carrier of liability which is laid down in the *Montreal Convention*, and thus would be null and void by Article 26.

Therefore, the defense provided by Article 17(2) is not a blanket defense that can be applied to entire categories and classes of baggage, but rather a case-by-case one, which can be invoked only after a careful analysis of the nature of the damage and the characteristics of the baggage.

(iii) Delay of baggage - strict liability

Article 19 of the *Montreal Convention* states:

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage

occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

[Emphasis added.]

Article 19 creates a presumption of liability of the carrier, and places the burden of proof of the presence of extenuating circumstances on the carrier.

Thus, whether the baggage contains some “excluded items” is not relevant to the matter of liability in the case of delay. The relevant question is whether the carrier has taken all measures that could reasonably be required in order to avoid the delay, and whether such measures were available.

(b) Caselaw

(i) Canada

The question of liability for “excluded” items has long been settled by the Agency’s landmark decision in *McCabe v. Air Canada*, 227-C-A-2008, where the Agency ruled based on the *Montreal Convention* that:

[24] The Agency therefore is of the opinion that if a carrier accepts checked baggage for transportation and the checked baggage is under the care and control of the carrier, the carrier assumes liability for the baggage in the event of loss and damage, notwithstanding the carrier has not agreed to carry items and the items are contained in checked baggage with or without the carrier’s knowledge.

In *Lukács v. Air Canada*, 208-C-A-2009, the Agency held that:

[25] The Agency finds that, to exempt a carrier from liability for damage to baggage under Article 17(2) of the Convention, there must be a causal relationship between the damage and an inherent defect, quality or vice of the baggage. As Rule 55(C)(12) is not formulated in a manner that establishes this relationship, the Agency finds that Rule 55(C)(12) of the Tariff, as it relates to liability for damage to baggage, is not consistent with the Convention.

The same principle was reiterated and extended by the Agency to domestic carriage in *Kipper v. WestJet*, 309-C-A-2010. In *Lukács v. WestJet*, 477-C-A-2010, the Agency reaffirmed the principle of “causal relationship” in the context of Article 17(2), and disallowed a disclaimer of liability with respect to “excluded items”. Leave to appeal was denied by the Federal Court of Appeal (File No.: 10-A-41).

The principles set out in *McCabe* were reaffirmed in *Kouznetchik v. American Airlines*, 99-C-A-2011, where the Agency disallowed Rule 55(C)(12) of American Airlines, which exonerated the carrier for liability for loss, damage or delay of excluded items.

(ii) United States

In April 2009, the Department of Transport of the United States published an advisory (74 Fed. Reg 14837-38) to address tariff provisions such as “certain specific items, including: * * * antiques, documents, electronic equipment, film, jewelry, keys, manuscripts, medication, money, paintings, photographs * * *.” The advisory states that:

Such exclusions, while not prohibited in domestic contracts of carriage, are in contravention of Article 17 of the Montreal Convention (Convention), as revised on May 28, 1999. Article 17 provides that carriers are liable for damaged or lost baggage 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.” Article 19 provides that a carrier is liable for damage caused by delay in the carriage of baggage, except to the extent that it proves that it took all reasonable measures to prevent the damage or that it was impossible to take such measures. Although carriers may wish to have tariff terms that prohibit passengers from including certain items in checked baggage, once a carrier accepts checked baggage, whatever is contained in the checked baggage is protected, subject to the terms of the Convention, up to the limit of 1000 SDRs (Convention, Article 22, para. 2.). Carriers should review their filed tariffs on this matter and modify their tariffs and their baggage claim policies, if necessary, to conform to the terms of the Convention.

The *Muoneke v. Compagnie Nationale Air France*, 5th Cir. Tex. (May 12, 2009) case concerned a passenger whose checked baggage was lost during international carriage from Houston to Lagos in 2004. When the passenger changed planes in Paris for her onward flight to Lagos, Air France personnel forced her to check her carry-on bag. When the bag was returned to her in Lagos, it was missing \$900 in cash and a digital camera. The appellate court rejected Air France’s argument that the contract of carriage expressly disclaimed liability for the items in question:

Article 17 of the Montreal Convention provides for strict liability in the case of damage to or loss of baggage. If Air France could contract out of liability under Article 27 of the Montreal Convention, as it claims it did in its contract of carriage with Muoneke, then Articles 17 and 26 would be meaningless. Under Air France’s proffered reading, a contract of carriage providing that “no items in checked baggage are covered” could effectively eliminate all carrier liability for damage to baggage. Air France provides no limiting principle that would harmonize an expansively construed Article 27 with Articles 17 and 26. Its reading is therefore unpersuasive, and we decline to adopt it.

[Emphasis added.]

In 2010, Air France consented to a civil penalty of US\$100,000 for violating Article 17 of the *Montreal Convention* by denying liability for certain items in the checked baggage of passengers (see *Société Air France, Violation of Article 17 of the Montreal Convention and 49 U.S.C. §41712*, Docket OST 20110-0005).

(c) Application of the law to the case at bar

Rules 55(C)(10), 115(N), and 116(N) are blanket exclusions of liability, which purport to relieve British Airways from liability for the loss, damage or delay of a broad class of items included in checked baggage.

The exclusion of liability is based solely on whether the item is “excluded,” and is related neither to the “inherent defect, quality or vice” of the baggage in the context of damage nor to the measures taken by British Airways to avoid delay. In particular, the exclusion of liability is not based on any “causal relationship” between the damage and the contents of the baggage.

Rules 55(C)(10), 115(N), and 116(N) are similar in wording and are identical in their effect to:

1. Rule 230(B)(2) of Air Canada, which was disallowed by the Agency in *McCabe v. Air Canada*, 227-C-A-2008;
2. Rule 17(a)(1) of WestJet, which was disallowed (in part) by the Agency in *Lukács v. WestJet*, 477-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-41);
3. Rule 55(C)(12) of American Airlines, which was disallowed by the Agency in *Kouznetchik v. American Airlines*, 99-C-A-2011; and
4. Rule 55(C)(7) of Air Canada, which was disallowed by the Agency in *Lukács v. Air Canada*, 291-C-A-2011.

Therefore, it is submitted that Rules 55(C)(10), 115(N), and 116(N) (insofar as they concern liability) are unreasonable, because they are inconsistent with Articles 17(2) and 19 of the *Montreal Convention* in that they are tending to exonerate British Airways from liability pursuant to these articles, and as such they are null and void by Article 26.

Hence, it is submitted that Rule 55(C)(10), and the portions of Rules 115(N) and 116(N) that govern liability, ought to be disallowed.

V. Blanket exclusions of liability for delay of passengers: Rules 85(A) and 85(B)(2) are unreasonable

Tariff Rules 85(A) and 85(B)(2) of British Airways, copies of which are attached and marked as Exhibit “B”, state (see page 34):

THE TIMES SHOWN IN TIMETABLES OR ELSEWHERE ARE APPROXIMATE AND NOT GUARANTEED, AND FORM NO PART OF THE CONTRACT OF CARRIAGE. SCHEDULES ARE SUBJECT TO CHANGE WITHOUT NOTICE AND CARRIER ASSUMES NO RESPONSIBILITY FOR MAKING CONNECTIONS. CARRIER WILL NOT BE RESPONSIBLE FOR ERRORS OR OMISSIONS EITHER IN TIMETABLES OR OTHER REPRESENTATIONS OF SCHEDULES. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF CARRIER IS AUTHORIZED TO BIND CARRIER AS TO THE DATES OR TIMES OF DEPARTURE OR ARRIVAL OR OF THE OPERATION OF ANY FLIGHT.

⋮

CARRIER MAY, WITHOUT NOTICE CANCEL, TERMINATE, DIVERT, POSTPONE OR DELAY ANY FLIGHT OR THE FURTHER RIGHT OF CARRIAGE OR RESERVATION OF TRAFFIC ACCOMMODATIONS AND DETERMINE IF ANY DEPARTURE OR LANDING SHOULD BE MADE, WITHOUT ANY LIABILITY EXCEPT TO REFUND IN ACCORDANCE WITH ITS TARIFFS THE FARE AND BAGGAGE CHARGES FOR ANY UNUSED PORTION OF THE TICKET IF IT WOULD BE ADVISABLE TO DO SO: [...]

[Emphasis added.]

The Applicant submits that the underlined portions of these rules are unreasonable, and ought to be disallowed.

(a) Passengers are entitled to notice of schedule change

In *Lukács v. Porter*, 16-C-A-2013, the Agency held (at para. 87):

In this regard, the Agency notes that some Canadian carriers, including Air Canada, have tariff provisions that provide that passengers have a right to information on flight times and schedule changes, and that carriers must make reasonable efforts to inform passengers of delays and schedule changes, and the reasons for them. The Agency finds that such provisions are reasonable, and that, in this regard, the rights of passengers to be subject to reasonable terms and conditions of carriage

outweigh any of the carrier's statutory, commercial or operational obligations. The Agency therefore finds that the absence of similar provisions in Porter's Existing Tariff Rules would render Proposed Tariff Rule 18(a) unreasonable, if filed with the Agency.

[Emphasis added.]

Thus, based on the Agency's decision in *Lukács v. Porter*, it is submitted that the words "without notice" ought to be deleted from Rule 85(A), and substituted with a provision requiring British Airways to provide passengers notice about schedule changes.

(b) Liability for delay of passengers depends on how the carrier reacts to a delay

In *Lukács v. Porter*, 16-C-A-2013, the Agency explained the correct interpretation of Article 19 of the *Montreal Convention* as follows:

[104] [...] In short, the first sentence of Article 19 states clearly that the carrier is liable for delay. Article 19 only brings the carrier's servants and agents into play in terms of avoidance of liability when it has proved that these personnel took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

[105] Accordingly, what is at issue, in terms of avoiding liability for delay, is not who caused the delay but, rather, how the carrier **reacts** to a delay. In short, did the carrier's servants and agents do everything they reasonably could in the face of air traffic control delays, security delays on releasing baggage, delays caused by late delivery of catered supplies or fuel to the aircraft and so forth, even though these may have been caused by third parties who are not directed by the carrier?

[Emphasis in the original.]

The underlined portion of Rule 85(B)(2) purports to limit the liability of British Airways to refund of the unused portion of the ticket in certain cases, regardless of how British Airways reacts to the delay caused, and regardless of whether British Airways has taken all measures that could reasonably be required to avoid the damage.

Thus, it is submitted that the underlined portion of Rule 85(B)(2) purports to lower the liability and/or exonerate British Airways from liability under Article 19 of the *Montreal Convention*. Therefore, the impugned portion of Rule 85(B)(2) is null and void under Article 26; hence, it is unreasonable, and ought to be disallowed.

(c) Carrier cannot exclude liability for making connections

Rule 85(A) also purports to exclude liability for making connections. The most obvious and immediate result of missing a connecting flight is delay, for which British Airways is liable under Article 19 of the *Montreal Convention*, unless it is able to demonstrate the presence of the affirmative defence set out in Article 19.

The Agency considered a similar blanket exclusion of liability in *Lukács v. Porter*, 16-C-A-2013, where the Agency considered the following provision of Porter's Rule 18(c):

The carrier is not responsible or liable for failure to make connections, or for failure to operate any flight according to schedule, or for a change to the schedule of any flight.

The Agency held that this provision was unreasonable, because it was silent as to the airline's liability in case it is unable to provide the proof required by Article 19 of the *Montreal Convention* to relieve itself of liability for delay (para. 51 of *Lukács v. Porter*).

It is submitted that the same reasons are applicable to the impugned portion of Rule 85(A). While British Airways may exonerate itself from liability under Article 19 of the *Montreal Convention* in some cases, it does not mean that British Airways can exonerate itself from liability for delay arising from missing a connection in every case.

Moreover, connecting flights are simply the means of transportation; they are not the ends. Thus, the question, for the purpose of liability under Article 19, is not about making or missing connecting flights, but rather whether passengers suffered a delay in reaching their destinations.

Therefore, it is submitted that the words "carrier assumes no responsibility for making connections" ought to be disallowed and deleted from Rule 85(A).

VI. Denied boarding compensation: Rule 87(B)(3)(B) is unreasonable

Rule 87 of British Airways governs denied boarding compensation. Rule 87 has two subrules marked with (B). The present complaint concerns the one labelled as “APPLICABLE BETWEEN POINTS IN CANADA AND POINTS IN THE UNITED KINGDOM SERVED BY BRITISH AIRWAYS”. A copy of the relevant portions of Rule 87 is attached and marked as Exhibit “C”.

In the present complaint, the Applicant challenges the reasonableness of Rule 87(B)(3)(B) that governs the amount of denied boarding compensation payable, which states (see page 37):

SUBJECT TO THE PROVISIONS OF PARAGRAPH (B) (3) (A) OF THIS RULE, CARRIER WILL TENDER LIQUIDATED DAMAGES IN THE AMOUNT OF 100 PERCENT OF THE SUM OF THE VALUES OF THE PASSENGER'S REMAINING FLIGHT COUPONS OF THE TICKET TO THE PASSENGER'S NEXT STOPOVER, OR IF NONE TO HIS DESTINATION, BUT NOT LESS THAN \$50.00 AND NOT MORE THAN \$200.00 PROVIDED THAT IF THE PASSENGER IS DENIED BOARDING IN THE UNITED KINGDOM, THE AMOUNT OF COMPENSATION IN THIS SUBPARAGRAPH WILL READ NOT LESS THAN UKL 10.00 NOR MORE THAN UKL 100.00. SUCH TENDER IF ACCEPTED BY THE PASSENGER AND PAID BY CARRIER, WILL CONSTITUTE FULL COMPENSATION FOR ALL ACTUAL OR ANTICIPATORY DAMAGES INCURRED OR TO BE INCURRED BY THE PASSENGER AS RESULT OF CARRIER'S FAILURE TO PROVIDE PASSENGER WITH CONFIRMED RESERVED SPACE.

It is further submitted that the Tariff of British Airways ought to reflect its legal obligations to provide denied boarding compensation in accordance with *Regulation (EC) 261/2004*.

(a) Rule 87(B)(3)(B) is inconsistent with the Agency's decision in *Anderson v. Air Canada*

The amount of denied boarding compensation set out by Rule 87(B)(3)(B) of British Airways is proportionate to the fare paid by the passenger. While a similar compensation scheme is used in the United States, in *Anderson v. Air Canada*, 666-C-A-2001, the Agency dismissed a challenge to Air Canada's denied boarding compensation policy that was seeking to introduce such a “proportionate” compensation scheme. Indeed, in *Anderson*, the Agency held that:

Contrary to an air carrier's policies on refunds for services purchased but not used, whereby the fare paid by a passenger is inherently linked to the design and implementation of the compensation, the fare paid by a passenger is unrelated to the amount of compensation that the passenger is entitled to receive upon being denied boarding. Further, any passenger who is denied boarding is entitled to compensation; evidence of specific damages suffered need not be provided.

Thus, it is submitted that Rule 87(B)(3)(B) is inconsistent with the principle of a flat rate of denied boarding compensation, which is equal for all passengers, regardless of the fare they paid.

(b) Competitors of British Airways apply Regulation (EC) 261/2004

One of the three factors in the balancing test for reasonableness of tariff provisions is the ability of the carrier to meet its commercial obligations. In this context, the policies of competitors may be of some relevance (although it is not a determinative factor, because one carrier's unreasonable policy does not justify another carrier's unreasonable policy).

A copy of *Regulation (EC) 261/2004* is attached and marked as Exhibit "H". *Regulation (EC) 261/2004* applies to every flight departing from an airport in the United Kingdom, regardless of the destination and carrier. Furthermore, it also applies to every flight operated by Community carriers departing from an airport outside the European Community to an airport in the United Kingdom.

For example, a copy of Part II of Rule 87 of Air France, which governs denied boarding compensation for flights to and from Canada, is attached and marked as Exhibit "I"; and a copy of Lufthansa's tariff rules governing denied boarding compensation for flights to and from Canada is attached and marked as Exhibit "J".

Both Air France and Lufthansa are large European airlines, well comparable to British Airways. As Exhibits "I" and "J" show, these airlines have been consistently applying the provisions of *Regulation (EC) 261/2004* for determining the amount of denied boarding compensation, and they were able to remain as profitable as other airlines.

Therefore, it is submitted that replacing Rule 87(B)(3)(B) of British Airways with provisions similar to those found in Exhibits "I" and "J" would not adversely affect the ability of British Airways to meet its commercial obligations.

(c) Current practice of British Airways

British Airways is a Community carrier within the meaning of *Regulation (EC) 261/2004*, and thus it is subject to the regulations of the European Community governing denied boarding compensation. Unless it is proven to the contrary, it is more probable than not that British Airways complies with such statutory obligations. Consequently, it is more probable that the compensation amounts set out in Rule 87(B)(3)(B) are simply outdated, and do not reflect the current practice of British Airways than that British Airways breaches its obligations under *Regulation (EC) 261/2004* on a regular basis.

Thus, it is submitted that the very first step in determining whether Rule 87(B)(3)(B) is reasonable is inquiring about the denied boarding compensations paid by British Airways to passengers departing from Canada to the United Kingdom and from the United Kingdom to Canada.

Therefore, pursuant to Rules 16 and 19 of the Agency's General Rules, the Applicant directs the following questions to British Airways:

- Q1. Provide the list of the amounts of denied boarding compensation paid by British Airways to individual passengers departing from Canada to the United Kingdom in the years 2010, 2011, and 2012.
- Q2. Provide the list of the amounts of denied boarding compensation paid by British Airways to individual passengers departing from the United Kingdom to Canada in the years 2010, 2011, and 2012.
- Q3. What competitive disadvantage will British Airways suffer if Rule 87(B)(3)(B) is replaced by the amounts prescribed by *Regulation (EC) 261/2004* and/or a language similar to Exhibits "I" and "J"?

Relevance: These questions are relevant to the balancing test in order to establish that changing Rule 87(B)(3)(B) to reflect the denied boarding compensation amounts set out in *Regulation (EC) 261/2004* will not affect the ability of British Airways to meet its commercial obligations. Indeed, if British Airways already compensates passengers according to *Regulation (EC) 261/2004*, then making its tariff rules reflect the current practice cannot adversely affect it.

(d) "Sole remedy" provision is unreasonable

Rule 87(B)(3)(B) also purports to preempt the rights of passengers who accept denied boarding compensation to seek damages under any other law, including the *Montreal Convention*. Indeed, Rule 87(B)(3)(B) refers to "FULL COMPENSATION FOR ALL ACTUAL OR ANTICIPATORY DAMAGES".

In *Lukács v. WestJet*, 249-C-A-2012, the Agency has reviewed in great detail a tariff provision with the identical effect as Rule 87(B)(3)(B), and concluded that it was unreasonable:

[148] It is clear that by the terms unilaterally imposed by WestJet under Proposed Tariff Rule 15.6, a passenger must decide between two options when their flight has been overbooked or cancelled: either accept the carrier's alternative remedies and give up any rights they may have under the Convention or at law; or refuse the alternative remedies and be forced to find alternative travel on their own and incur any related expenses in order to retain their legal rights.

[149] The Agency is of the opinion that this Proposed Tariff Rule is unreasonable. Proposed Tariff Rule 15.6 does not provide the passenger with a reasonable opportunity to fully assess their options. Instead, the passenger must decide between two options as determined by the carrier, both of which have legal consequences on the passenger's rights without a reasonable period of time to assess the full potential of the impact of selecting one over another. In such situations, the rights of a passenger

should remain available as prescribed by the Convention.

[150] In addition, although WestJet might, in appropriate circumstances, in situations of delay give the passenger the option to choose among one or more remedies, this does not necessarily mean that the carrier will have met the requirements of Article 19. In effect, WestJet's Proposed Tariff Rule 15.6 is a predetermination by WestJet that the alternative measures offered by it are reasonable measures pursuant to Article 19, and that offering these measures relieves WestJet from liability under that Article.

[151] The Agency is of the opinion that WestJet is depriving the passenger of their rights under the law through a contract of adhesion which it has unilaterally developed and imposed on the passenger.

[152] The Proposed Tariff Rule leaves to WestJet the determination as to what is a reasonable remedy for delay, which might be appropriate for circumstance-focused determinations pursuant to that Proposed Tariff Rule, but might not be appropriate for the purposes of Article 19.

[153] WestJet has argued that there is nothing in the Convention or applicable jurisprudence that prevents a party who has suffered a loss from giving a release to the carrier after the loss has occurred. While WestJet argues that nothing in the authorities prevents it from obtaining such a release, WestJet has not directed the Agency to any authorities to support its position that Proposed Tariff Rule 15.6 does not tend to relieve it from liability under Article 26 of the Convention.

[154] WestJet has argued that obtaining a release, in itself, is permissible under the Convention. However, it has not demonstrated why unilaterally imposing the terms of a release in its tariff does not tend to relieve it from liability under Article 26 of the Convention. The Agency is therefore of the opinion that WestJet has not shown that Proposed Tariff Rule 15.6 is consistent with Article 26 of the Convention.

[155] Accordingly, the Agency finds that this provision would be considered unreasonable under the ATR if filed with the Agency.

The Agency's aforementioned decision is also consistent with *Regulation (EC) 261/2004*, whose Article 12 states that:

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.

Therefore, it is submitted that Rule 87(B)(3)(B) is unreasonable.

(e) Conclusion

Passengers are entitled to a compensation if they are involuntarily denied boarding (provided they complied with the check-in and boarding requirements). The amount of denied boarding compensation profoundly affects passengers.

It is difficult to see how the denied boarding compensation policy of British Airways would affect its ability to meet its statutory and operational obligations. The only issue is the financial one, which affects the airline's ability to meet its commercial obligations.

Bringing the denied boarding compensation amounts of British Airways in line with those of other European airlines, which happen to be identical to what is prescribed by *Regulation (EC) 261/2004*, will not adversely affect the ability of British Airways to meet its commercial obligations; nor will it put British Airways at an unfair competitive disadvantage.

Hence, based on the balancing test developed by the Agency, it is submitted that Rule 87(B)(3)(B) is unreasonable, and ought to be disallowed and substituted.

VII. Relief sought

The Applicant prays the Agency that the Agency:

- A. disallow Rule 55(C), and in particular Rules 55(C)(1), 55(C)(4), 55(C)(6), 55(C)(7), 55(C)(8), and 55(C)(10);
- B. direct British Airways to amend Rules 115(H) and 116(H) to reflect the updated liability caps under the *Montreal Convention*;
- C. disallow the portions of Rules 115(N) and 116(N) that concern liability;
- D. disallow Rules 85(A) and 85(B)(2) in part, and direct British Airways to incorporate into its rules the obligation to notify passengers about schedule changes;
- E. disallow Rule 87(B)(3)(B), and direct British Airways to incorporate into its rules the obligations set out in *Regulation (EC) 261/2004*.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Mr. James B. Blaney, Senior Counsel (Americas), British Airways Plc

LIST OF AUTHORITIES

Legislation

1. *Air Transportation Regulations*, S.O.R./88-58.
2. *Canada Transportation Act*, S.C. 1996, c. 10.
3. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.
4. *Carriage by Air Act*, R.S.C. 1985, c. C-26.

International instruments

5. *Montreal Convention: Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 28 May 1999).

Case law

6. *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95.
7. *Anderson v. Air Canada*, Canadian Transportation Agency, 666-C-A-2001.
8. *Griffiths v. Air Canada*, Canadian Transportation Agency, 287-C-A-2009.
9. *H. v. Air Canada*, Canadian Transportation Agency, 2-C-A-2001.
10. *Kipper v. WestJet*, Canadian Transportation Agency, 20-C-A-2011.
11. *Kouznetchik v. American Airlines*, Canadian Transportation Agency, 99-C-A-2011.
12. *Lukács v. Air Canada*, Canadian Transportation Agency, 208-C-A-2009.
13. *Lukács v. WestJet*, Canadian Transportation Agency, 477-C-A-2010.
14. *Lukács v. WestJet*, Federal Court of Appeal, 10-A-41.
15. *Lukács v. WestJet*, Canadian Transportation Agency, 483-C-A-2010.
16. *Lukács v. WestJet*, Federal Court of Appeal, 10-A-42.
17. *Lukács v. WestJet*, Canadian Transportation Agency, 418-C-A-2011.

18. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-29-2011.
19. *Lukács v. Air Canada*, Canadian Transportation Agency, 291-C-A-2011.
20. *Lukács v. WestJet*, Canadian Transportation Agency, 249-C-A-2012.
21. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2012.
22. *Lukács v. Porter*, Canadian Transportation Agency, 16-C-A-2013.
23. *McCabe v. Air Canada*, Canadian Transportation Agency, 227-C-A-2008.
24. *Muoneke v. Compagnie Nationale Air France*, 5th Cir. Tex. (May 12, 2009).
25. *Pinksen v. Air Canada*, Canadian Transportation Agency, 181-C-A-2007.
26. *Société Air France, Violation of Article 17 of the Montreal Convention and 49 U.S.C. §41712*, Docket OST 20110-0005.

Foreign regulation

27. United States: *Guidance on Airline Baggage Liability and Responsibilities of Code-Share Partners Involving International Itineraries* issued by the Department of Transport, 74 Fed. Reg. 14837-38.

**Exhibit "A" to the complaint
of Dr. Gábor Lukács**

January 30, 2013
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BA IS NOT LIABLE TO THE PASSENGER FOR LOSS OR EXPENSE DUE TO THE PASSENGER'S FAILURE TO COMPLY WITH THIS PROVISION.

- (2) SUBJECT TO APPLICABLE LAWS AND REGULATIONS, THE PASSENGER AGREES TO PAY THE APPLICABLE FARE WHENEVER BA ON GOVERNMENT ORDER IS REQUIRED TO RETURN PASSENGER TO HIS POINT OF ORIGIN OR ELSEWHERE DUE TO THE PASSENGER'S INADMISSIBILITY INTO COUNTRY, WHETHER OF TRANSIT OR OF DESTINATION. BA WILL APPLY TO THE PAYMENT OF SUCH FARES ANY FUNDS PAID BY THE PASSENGER TO BA FOR UNUSED CARRIAGE OR ANY FUNDS OF THE PASSENGER IN THE POSSESSION OF BA. THE FARE COLLECTED FOR CARRIAGE TO THE POINT OF REFUSAL OR DEPORTATION WILL NOT BE REFUNDED BY BA.

CUSTOMS INSPECTION - 72

- (C) CUSTOMS INSPECTION
IF REQUIRED, THE PASSENGER MUST ATTEND INSPECTION OF HIS BAGGAGE, CHECKED OR UNCHECKED BY CUSTOMS OR OTHER GOVERNMENT OFFICIALS. BA ACCEPTS NO RESPONSIBILITY TOWARD THE PASSENGER IF THE LATTER FAILS TO OBSERVE THIS CONDITION. IF DAMAGE IS CAUSED TO BA BECAUSE OF THE PASSENGER'S FAILURE TO OBSERVE THIS CONDITION THE PASSENGER SHALL INDEMNIFY BA THEREFOR.

GOVERNMENT REGULATION - 73

- (D) GOVERNMENT REGULATION
NO LIABILITY SHALL ATTACH TO BA IF BA IN GOOD FAITH DETERMINES THAT WHAT IT UNDERSTANDS TO BE APPLICABLE LAW, GOVERNMENT REGULATION, DEMAND, ORDER OR REQUIREMENT REQUIRES THAT IT REFUSE AND IT DOES REFUSE TO CARRY PASSENGER.

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LIABILITY OF CARRIERS

- (A) SUCCESSIVE CARRIERS
CARRIAGE TO BE PERFORMED UNDER ONE TICKET OR UNDER TICKET AND ANY CONJUNCTION TICKET ISSUED IN CONNECTION THEREWITH BY SEVERAL SUCCESSIVE CARRIERS IS REGARDED AS SINGLE OPERATION.

LAWS APPLICABLE - 71

- (B) LAWS AND PROVISIONS APPLICABLE
(1) CARRIAGE HEREUNDER IS SUBJECT TO THE RULES AND LIMITATIONS RELATING TO LIABILITY ESTABLISHED BY THE CONVENTION (SEE RULE 1-- (DEFINITIONS), HEREIN) UNLESS SUCH CARRIAGE IS NOT "INTERNATIONAL CARRIAGE" AS DEFINED BY THE CONVENTION.
(2) TO THE EXTENT NOT IN CONFLICT WITH THE PROVISIONS OF PARAGRAPH (1) ABOVE, ALL CARRIAGE UNDER THIS TARIFF AND OTHER SERVICES PERFORMED BY EACH CARRIER ARE SUBJECT TO:
(A) APPLICABLE LAWS (INCLUDING NATIONAL LAWS IMPLEMENTING THE CONVENTION OR EXTENDING THE

- RULES OF THE CONVENTION TO CARRIAGE WHICH IS NOT "INTERNATIONAL CARRIAGE" AS DEFINED IN THE CONVENTION), GOVERNMENT REGULATIONS, ORDERS AND REQUIREMENTS,
- (B) PROVISIONS SET FORTH IN THE PASSENGER'S TICKET,
 - (C) APPLICABLE TARIFFS, AND
 - (D) EXCEPT IN TRANSPORTATION BETWEEN PLACE IN THE UNITED STATES AND ANY PLACE OUTSIDE THEREOF, AND ALSO BETWEEN PLACE IN CANADA AND ANY PLACE OUTSIDE THEREOF, CONDITIONS OF CARRIAGE, REGULATIONS AND TIMETABLES (BUT NOT THE TIMES OF DEPARTURE AND ARRIVAL THEREIN SPECIFIED) OF CARRIER, WHICH MAY BE INSPECTED AT ANY OF ITS OFFICES AND AT AIRPORTS FROM WHICH IT OPERATES REGULAR SERVICES.
- (3) CARRIER'S NAME MAY BE ABBREVIATED IN THE TICKET AND CARRIER'S ADDRESS SHALL BE THE AIRPORT OF DEPARTURE SHOWN OPPOSITE THE FIRST ABBREVIATION OF CARRIER'S NAME IN THE TICKET, AND FOR THE PURPOSE OF THE CONVENTION, THE AGREED STOPPING PLACES ARE THOSE PLACES, EXCEPT THE PLACE OF DEPARTURE AND THE PLACE OF DESTINATION SET FORTH IN THE TICKET AND ANY CONJUNCTION TICKET ISSUED THEREWITH OR AS SHOWN IN CARRIER'S TIMETABLE AS SCHEDULED STOPPING PLACES ON THE PASSENGER'S ROUTE. LIST GIVING THE FULL NAME, AND ITS ABBREVIATION OF EACH CARRIER CONCURRING IN THIS TARIFF IS SET FORTH IN THE LIST OF PARTICIPATING CARRIERS.

LIMITATION OF LIABILITY - 72

- (C) LIMITATION OF LIABILITY
EXCEPT AS THE CONVENTION OR OTHER APPLICABLE LAW MAY OTHERWISE REQUIRE:
- (1) CARRIER IS NOT LIABLE FOR ANY LOSS OR CLAIM OF WHATSOEVER NATURE (HEREINAFTER IN THIS TARIFF COLLECTIVELY REFERRED TO AS "DAMAGE") ARISING OUT OF OR IN CONNECTION WITH CARRIAGE OR OTHER SERVICES PERFORMED BY CARRIER INCIDENTAL THERETO, UNLESS SUCH DAMAGE IS PROVED TO HAVE BEEN CAUSED BY THE NEGLIGENCE OR WILLFUL FAULT OF CARRIER AND THERE HAS BEEN NO CONTRIBUTORY NEGLIGENCE OF THE PASSENGER.
 - (2) UNDER NO CIRCUMSTANCES WILL CARRIER BE LIABLE FOR DAMAGE TO UNCHECKED BAGGAGE NOT ATTRIBUTED TO NEGLIGENCE OF CARRIER. ASSISTANCE RENDERED THE PASSENGER BY CARRIER'S EMPLOYEES IN LOADING, UNLOADING OR TRANSSHIPPING UNCHECKED BAGGAGE SHALL BE CONSIDERED AS GRATUITOUS SERVICE TO THE PASSENGER.
 - (3) CARRIER IS NOT LIABLE FOR ANY DAMAGE DIRECTLY AND SOLELY ARISING OUT OF ITS COMPLIANCE WITH ANY LAWS OR WITH GOVERNMENTAL REGULATIONS, ORDERS OR REQUIREMENTS, OR FROM FAILURE OF THE PASSENGER TO COMPLY WITH SAME, OR OUT OF ANY CAUSE BEYOND THE CARRIER'S CONTROL.
 - (4) (NOT APPLICABLE TO BA)
THE CARRIER SHALL AVAIL ITSELF OF THE LIMITATION OF LIABILITY PROVIDED IN THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR SIGNED AT WARSAW, OCTOBER 12, 1929 OR PROVIDED IN THE SAID CONVENTION AS AMENDED BY THE PROTOCOL SIGNED AT THE HAGUE SEPTEMBER 28, 1955. IN ACCORDANCE WITH ARTICLE 22(L) OF SAID CONVENTION OR SAID CONVENTION AMENDED BY SAID PROTOCOL, CARRIER

AGREES THAT, AS TO ALL INTERNATIONAL TRANSPORTATION BY CARRIER AS DEFINED IN THE SAID CONVENTION OR SAID CONVENTION AS AMENDED BY SAID PROTOCOL, WHICH, ACCORDING TO THE CONTRACT OF CARRIAGE, INCLUDES POINT IN THE UNITED STATES OF AMERICA AS POINT OF ORIGIN, POINT OF DESTINATION, OR AGREED STOPPING PLACE.

- (A) THE LIMIT OF LIABILITY FOR EACH PASSENGER FOR DEATH, WOUNDING, OR OTHER BODILY INJURY SHALL BE THE THEN DOLLAR EQUIVALENT OF 130,000 SPECIAL DRAWING RIGHTS (USD 159,984.50 ON MARCH 26, 1981) INCLUSIVE OF LEGAL FEES AND COSTS, EXCEPT THAT, IN THE CASE OF CLAIM BROUGHT IN STATE WHERE PROVISION IS MADE FOR SEPARATE AWARD OF LEGAL FEES AND COSTS, THE LIMIT SHALL BE 100,000 SPECIAL DRAWING RIGHTS (USD 123,065.00 ON MARCH 26, 1981) EXCLUSIVE OF LEGAL FEES AND COSTS.
- (B) THE CARRIER SHALL NOT, WITH RESPECT TO ANY CLAIM ARISING OUT OF THE DEATH, WOUNDING OR OTHER BODILY INJURY OF PASSENGER, AVAIL ITSELF OF ANY DEFENSE UNDER ARTICLE 20(L) OF SAID CONVENTION OR SAID CONVENTION AS AMENDED BY SAID PROTOCOL. NOTHING HEREIN SHALL BE DEEMED TO AFFECT THE RIGHTS AND LIABILITIES OF THE CARRIER WITH REGARD TO ANY CLAIM BROUGHT BY, OR ON BEHALF OF OR IN RESPECT OF, ANY PERSON WHO HAS WILLFULLY CAUSED DAMAGE WHICH RESULTED IN DEATH, WOUNDING OR OTHER BODILY INJURY OF PASSENGER.
- (C) CARRIER SHALL AVAIL ITSELF OF THE LIMITATION OF LIABILITY TO PASSENGERS AS PROVIDED IN THE CONVENTION, AND IN THE INTERNATIONAL TRANSPORTATION OF PASSENGERS, EXCEPT AS PROVIDED IN (C) (4) (A) ABOVE, THE LIABILITY OF THE CARRIER FOR PERSONAL INJURY OR DEATH OF EACH PASSENGER SHALL BE LIMITED TO THE SUM OF 125,000 FRENCH GOLD FRANCS (USD 10,000.00) (CAD 10,000.00) OR 250,000 FRENCH GOLD FRANCS (USD 20,000.00) (CAD 20,000) IF THE HAGUE PROTOCOL AMENDMENT OF THE CONVENTION IS APPLICABLE.

EXCEPTION: AS TO ALL INTERNATIONAL TRANSPORTATION BY THE CARRIER TO WHICH THE WARSAW CONVENTION AMENDED BY THE HAGUE PROTOCOL IS APPLICABLE, EXCEPT AS PROVIDED IN (C) (4) (A) ABOVE, THE LIMITS OF LIABILITY FOR EACH PASSENGER FOR DEATH, WOUNDING OR OTHER BODILY INJURY SHALL BE THE STERLING EQUIVALENT OF 100,000 SPECIAL DRAWING RIGHTS EXCLUSIVE OF COSTS OR AT THE OPTION OF THE CLAIMANT THE UNITED STATES DOLLAR EQUIVALENT OF 100,000 SPECIAL DRAWING RIGHTS EXCLUSIVE OF COSTS.

- (5) (APPLICABLE TO BA ONLY)
- (A) IN ACCORDANCE WITH ARTICLE 22(L) OF SAID CONVENTION OR SAID CONVENTION AMENDED BY SAID PROTOCOL, BA AGREES THAT, AS TO ALL INTERNATIONAL TRANSPORTATION BY BA AS DEFINED IN THE SAID CONVENTION OR SAID CONVENTION AS AMENDED BY SAID PROTOCOL, WHICH, ACCORDING TO THE CONTRACT OF CARRIAGE, INCLUDES POINT IN THE UNITED STATES OF AMERICA OR POINT IN CANADA AS POINT OF ORIGIN, POINT OF

- DESTINATION, OR AGREED STOPPING PLACE, BA SHALL NOT INVOKE THE LIMITATION OF LIABILITY IN ARTICLE 22(L) OF THE CONVENTION AS TO ANY CLAIM FOR RECOVERABLE COMPENSATORY DAMAGES ARISING UNDER ARTICLE 17 OF THE CONVENTION.
- (B) BA SHALL NOT AVAIL ITSELF OF ANY DEFENSE UNDER ARTICLE 20(L) OF THE CONVENTION WITH RESPECT TO THAT PORTION OF SUCH CLAIM WHICH DOES NOT EXCEED 100,000 SDRS.
- (C) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (A) AND (B) HEREOF, BA RESERVES ALL DEFENSES AVAILABLE UNDER THE CONVENTION TO ANY SUCH CLAIM. WITH RESPECT TO THIRD PARTIES, BA ALSO RESERVES ALL RIGHTS OF RECOURSE AGAINST ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, RIGHTS OF CONTRIBUTION AND INDEMNITY.
- (D) NEITHER THE WAIVER OF LIMITS NOR THE WAIVER OF DEFENSES SHALL BE APPLICABLE IN RESPECT OF CLAIMS MADE BY PUBLIC SOCIAL INSURANCE OR SIMILAR BODIES (EXCEPT WITH RESPECT TO ANY SUCH BODIES LOCATED IN UNITED STATES) HOWEVER ASSERTED. SUCH CLAIMS SHALL BE SUBJECT TO THE LIMIT IN ARTICLE 22(L) AND TO THE DEFENSES UNDER ARTICLE 20(L) OF THE CONVENTION.
- NOTE: (APPLICABLE ONLY TO TRANSPORTATION TO AND FROM THE UNITED STATES) IN THE UNITED STATES, PARAGRAPH (C) (5) OF RULE 55 SHALL EXPIRE UPON ANY FINAL ACTION OF THE DEPARTMENT OF TRANSPORTATION WHICH DOES NOT MAKE PROVISION FOR TARIFFS IDENTICAL TO THAT PARAGRAPH.
- (6) IN ANY EVENT LIABILITY OF CARRIER FOR DELAY OF PASSENGER SHALL NOT EXCEED THE LIMITATION SET FORTH IN THE CONVENTION.
- (7) ANY LIABILITY OF CARRIER IS LIMITED TO 250 FRENCH GOLD FRANCS, USD 20.00, CAD 20.00, PER KILOGRAM IN THE CASE OF CHECKED BAGGAGE, AND 5,000 FRENCH GOLD FRANCS, USD 400.00, CAD 400.00, PER PASSENGER IN THE CASE OF UNCHECKED BAGGAGE OR OTHER PROPERTY, UNLESS HIGHER VALUE IS DECLARED IN ADVANCE AND ADDITIONAL CHARGES ARE PAID PURSUANT TO CARRIER'S TARIFF. IN THAT EVENT, THE LIABILITY OF CARRIER SHALL BE LIMITED TO SUCH HIGHER DECLARED VALUE. IN NO CASE SHALL THE CARRIER'S LIABILITY EXCEED THE ACTUAL LOSS SUFFERED BY THE PASSENGER. ALL CLAIMS ARE SUBJECT TO PROOF OF AMOUNT OF LOSS.
- (8) IN THE EVENT OF DELIVERY TO THE PASSENGER OF PART BUT NOT ALL OF HIS CHECKED BAGGAGE (OR IN THE EVENT OF DAMAGE TO PART BUT NOT ALL OF SUCH BAGGAGE) THE LIABILITY OF THE CARRIER WITH RESPECT TO THE NOT DELIVERED (OR DAMAGED) PORTION SHALL BE REDUCED PROPORTIONATELY ON THE BASIS OF WEIGHT, NOTWITHSTANDING THE VALUE OF ANY PART OF THE BAGGAGE OR CONTENTS THEREOF.
- (9) CARRIER IS NOT LIABLE FOR DAMAGE TO PASSENGER'S BAGGAGE CAUSED BY PROPERTY CONTAINED IN THE PASSENGER'S BAGGAGE. ANY PASSENGER WHOSE PROPERTY CAUSED DAMAGE TO ANOTHER PASSENGER'S BAGGAGE OR TO THE PROPERTY OF CARRIER SHALL INDEMNIFY CARRIER FOR ALL LOSSES AND EXPENSES INCURRED BY CARRIER AS RESULT THEREOF.
- (10) LIABILITY FOR FRAGILE, IRREPLACEABLE OR PERISHABLE ARTICLES
CARRIER IS NOT LIABLE FOR LOSS, DAMAGE TO OR DELAY IN THE DELIVERY OF FRAGILE OR PERISHABLE ARTICLES,

MONEY, JEWELRY, SILVERWARE, NEGOTIABLE PAPERS, SECURITIES OR OTHER VALUABLES, BUSINESS DOCUMENTS OR SAMPLES WHICH ARE INCLUDED IN THE PASSENGERS' CHECKED BAGGAGE, WHETHER WITH OR WITHOUT THE KNOWLEDGE OF CARRIER.

- (11) CARRIER WILL REFUSE TO ACCEPT ANY ARTICLES WHICH DO NOT CONSTITUTE BAGGAGE AS SUCH TERM IS DEFINED HEREIN, BUT IF DELIVERED TO AND RECEIVED BY CARRIER, SUCH ARTICLES SHALL BE DEEMED TO BE WITHIN THE BAGGAGE VALUATION AND LIMIT OF LIABILITY AND SHALL BE SUBJECT TO THE PUBLISHED RATES AND CHARGES OF CARRIER.
- (12) LIABILITY - SERVICES OF OTHER AIRLINES
- (A) CARRIER ISSUING TICKET OR CHECKING BAGGAGE FOR CARRIAGE OVER THE LINES OF OTHERS DOES SO ONLY AS AGENT.
- (B) NO CARRIER SHALL BE LIABLE FOR THE DELAY OF PASSENGER, OR THE LOSS, DAMAGE OR DELAY OF UNCHECKED BAGGAGE, NOT OCCURRING ON ITS OWN LINE; AND NO CARRIER SHALL BE LIABLE FOR THE LOSS, DAMAGE OR DELAY OF CHECKED BAGGAGE NOT OCCURRING ON ITS OWN LINE, EXCEPT THAT THE PASSENGER SHALL HAVE RIGHT OF ACTION FOR SUCH LOSS, DAMAGE OR DELAY ON THE TERMS HEREIN PROVIDED AGAINST THE FIRST CARRIER OR THE LAST CARRIER UNDER THE AGREEMENT TO CARRY.
- (C) NO CARRIER SHALL BE LIABLE FOR THE DEATH OR INJURY OF PASSENGER NOT OCCURRING ON ITS OWN LINE (SEE NOTE).

NOTE: EXCEPT TO THE EXTENT PROVIDED IN PARAGRAPH (C) (4 AND 5) ABOVE, RULES AFFECTING LIABILITY OF CARRIERS FOR PERSONAL INJURY OR DEATH ARE NOT PERMITTED TO BE INCLUDED IN TARIFFS FILED PURSUANT TO THE LAWS OF THE UNITED STATES, AND PARAGRAPH (C) (12) (C) IS INCLUDED HEREIN AS PART OF THE TARIFF FILED WITH GOVERNMENTS OTHER THAN THE UNITED STATES AND NOT AS PART OF BA-1 TARIFF C.A.B. NO. 505 ISSUED BY AIRLINE TARIFF PUBLISHING COMPANY, AGENT FILED WITH THE DEPARTMENT OF TRANSPORTATION.

- (13) CARRIER SHALL NOT BE LIABLE IN ANY EVENT FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGE ARISING FROM CARRIAGE SUBJECT TO THIS TARIFF, WHETHER OR NOT CARRIER HAD KNOWLEDGE THAT SUCH DAMAGE MIGHT BE INCURRED.
- (14) WHENEVER THE LIABILITY OF CARRIER IS EXCLUDED OR LIMITED UNDER THESE CONDITIONS, SUCH EXCLUSION OR LIMITATION SHALL APPLY TO AGENTS, SERVANTS OR REPRESENTATIVES OF THE CARRIER AND ALSO ANY CARRIER WHOSE AIRCRAFT IS USED FOR CARRIAGE AND

GRATUITOUS TRANSPORTATION - 73

- (D) GRATUITOUS TRANSPORTATION
- (1) GRATUITOUS TRANSPORTATION BY CARRIER OF PERSONS AS HEREINAFTER DESCRIBED SHALL BE GOVERNED BY ALL THE PROVISIONS OF THIS RULE, EXCEPT SUBPARAGRAPHS (2) AND (3) BELOW AND WHICH FOLLOW, AND BY ALL OTHER APPLICABLE RULES OF THIS TARIFF.
- (A) TRANSPORTATION OF PERSONS INJURED IN AIRCRAFT ACCIDENTS ON THE LINES OF CARRIER AND

**Exhibit "B" to the complaint
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08:56:05
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SCHEDULES, DELAYS AND CANCELLATIONS

(A) SCHEDULES

THE TIMES SHOWN IN TIMETABLES OR ELSEWHERE ARE APPROXIMATE AND NOT GUARANTEED, AND FORM NO PART OF THE CONTRACT OF CARRIAGE. SCHEDULES ARE SUBJECT TO CHANGE WITHOUT NOTICE AND CARRIER ASSUMES NO RESPONSIBILITY FOR MAKING CONNECTIONS. CARRIER WILL NOT BE RESPONSIBLE FOR ERRORS OR OMISSIONS EITHER IN TIMETABLES OR OTHER REPRESENTATIONS OF SCHEDULES. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF CARRIER IS AUTHORIZED TO BIND CARRIER AS TO THE DATES OR TIMES OF DEPARTURE OR ARRIVAL OR OF THE OPERATION OF ANY FLIGHT.

(B) CANCELLATIONS

- (1) CARRIER MAY, WITHOUT NOTICE, SUBSTITUTE ALTERNATE CARRIERS OR AIRCRAFT.
- (2) CARRIER MAY, WITHOUT NOTICE CANCEL, TERMINATE, DIVERT, POSTPONE OR DELAY ANY FLIGHT OR THE FURTHER RIGHT OF CARRIAGE OR RESERVATION OF TRAFFIC ACCOMMODATIONS AND DETERMINE IF ANY DEPARTURE OR LANDING SHOULD BE MADE, WITHOUT ANY LIABILITY EXCEPT TO REFUND IN ACCORDANCE WITH ITS TARIFFS THE FARE AND BAGGAGE CHARGES FOR ANY UNUSED PORTION OF THE TICKET IF IT WOULD BE ADVISABLE TO DO SO:
 - (A) BECAUSE OF ANY FACT BEYOND ITS CONTROL (INCLUDING, BUT WITHOUT LIMITATION, METEOROLOGICAL CONDITIONS, ACTS OF GOD, FORCE MAJEURE, STRIKES, RIOTS, CIVIL COMMOTIONS, EMBARGOES, WARS, HOSTILITIES, DISTURBANCES, OR UNSETTLED INTERNATIONAL CONDITIONS) ACTUAL, THREATENED OR REPORTED OR BECAUSE OF DELAY DEMAND CONDITIONS CIRCUMSTANCE OR REQUIREMENT DUE, DIRECTLY OR INDIRECTLY, TO SUCH FACT; OR
 - (B) BECAUSE OF ANY FACT NOT TO BE FORESEEN, ANTICIPATED OR PREDICTED; OR
 - (C) BECAUSE OF ANY GOVERNMENT REGULATION, DEMAND OR REQUIREMENT; OR
 - (D) BECAUSE OF SHORTAGE OF LABOR, FUEL OR FACILITIES, OR LABOR DIFFICULTIES OF CARRIER OR OTHERS.
- (3) CARRIER WILL CANCEL THE RIGHT OR FURTHER RIGHT OF CARRIAGE OF THE PASSENGER AND HIS BAGGAGE UPON THE REFUSAL OF THE PASSENGER, AFTER DEMAND BY CARRIER, TO PAY THE FARE OR THE PORTION THEREOF SO DEMANDED, OR TO PAY ANY CHARGE SO DEMANDED AND ASSESSABLE WITH RESPECT TO THE BAGGAGE OF THE PASSENGER WITHOUT BEING SUBJECT TO ANY LIABILITY THEREFOR EXCEPT TO REFUND, IN ACCORDANCE HERewith, THE UNUSED PORTION OF THE FARE AND BAGGAGE CHARGE(S) PREVIOUSLY PAID, IF ANY.

AREA: ZZ TARIFF: IPRG CXR: BA RULE: 0087 CAT: 70 EFFECT: 05MAY10
08:56:07
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DENIED BOARDING COMPENSATION

DEFINITIONS - 71

(A) DEFINITIONS

FOR THE PURPOSE OF THIS RULE, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN:

AIRPORT MEANS THE AIRPORT AT WHICH THE DIRECT OR CONNECTING FLIGHT, ON WHICH THE PASSENGER HOLDS CONFIRMED RESERVED SPACE, IS PLANNED TO ARRIVE OR SOME OTHER AIRPORT SERVING THE SAME METROPOLITAN AREA, PROVIDED THAT TRANSPORTATION TO THE OTHER AIRPORT IS

ALTERNATE TRANSPORTATION IS AIR TRANSPORTATION (BY AN AIRLINE LICENSED BY THE DEPARTMENT OF TRANSPORTATION) OR OTHER TRANSPORTATION USED BY THE PASSENGER WHICH AT THE TIME THE ARRANGEMENT IS MADE IS PLANNED TO ARRIVE AT THE PASSENGER'S NEXT SCHEDULED STOPOVER (OF 4 HOURS OR LONGER) OR IF NONE AT THE AIRPORT OF FINAL DESTINATION NO LATER THAN 4 HOURS AFTER THE PASSENGER'S ORIGINALLY SCHEDULED ARRIVAL TIME.

CARRIER MEANS

- (1) DIRECT AIR CARRIER, EXCEPT HELICOPTER OPERATOR HOLDING CERTIFICATE ISSUED BY THE DEPARTMENT OF TRANSPORTATION PURSUANT TO SECTION 401(D) (1), 401(D) (2), 401(D) (5), OR 401(D) (8) OF THE ACT, OR AN EXEMPTION FROM SECTION 401(A) OF THE ACT, AUTHORIZING THE TRANSPORTATION OF PERSONS, OR
- (2) FOREIGN ROUTE AIR CARRIER HOLDING PERMIT ISSUED BY THE DEPARTMENT OF TRANSPORTATION PURSUANT TO SECTION 402 OF THE ACT, OR AN EXEMPTION FROM SECTION 402 OF THE ACT, AUTHORIZING THE SCHEDULED FOREIGN AIR TRANSPORTATION OF PERSONS.

COMPARABLE AIR TRANSPORTATION MEANS TRANSPORTATION PROVIDED TO PASSENGER AT NO EXTRA COST BY CARRIER AS DEFINED ABOVE.

CONFIRMED RESERVED SPACE MEANS SPACE ON SPECIFIC DATE AND ON SPECIFIC FLIGHT AND CLASS OF SERVICE OF CARRIER WHICH HAS BEEN REQUESTED BY PASSENGER AND WHICH THE CARRIER OR ITS AGENT HAS VERIFIED, BY APPROPRIATE NOTATION ON THE TICKET OR IN ANY OTHER MANNER PROVIDED THEREFORE BY THE CARRIER AS BEING RESERVED FOR THE ACCOMMODATION OF THE PASSENGER.

STOPOVER MEANS DELIBERATE INTERRUPTION OF JOURNEY BY THE PASSENGER, SCHEDULED TO EXCEED FOUR HOURS, AT POINT BETWEEN THE PLACE OF DEPARTURE AND THE PLACE OF FINAL DESTINATION.

THE SUM OF THE VALUES OF THE REMAINING FLIGHT COUPONS MEANS THE SUM OF THE APPLICABLE ONE-WAY FARES INCLUDING ANY SURCHARGES AND AIR TRANSPORTATION TAXES, LESS ANY APPLICABLE DISCOUNTS.

VOLUNTEER MEANS PERSON WHO RESPONDS TO CARRIER'S REQUEST FOR VOLUNTEERS AND WHO WILLINGLY ACCEPTS CARRIER'S OFFER OF COMPENSATION, IN ANY AMOUNT, IN EXCHANGE FOR RELINQUISHING HIS CONFIRMED RESERVED SPACE. ANY OTHER PASSENGER DENIED BOARDING IS CONSIDERED FOR THE PURPOSES OF THIS RULE TO HAVE BEEN DENIED BOARDING INVOLUNTARILY, EVEN IF HE ACCEPTS DENIED BOARDING COMPENSATION.

- AIRLINE'S TICKETING, CHECK-IN, AND RECONFIRMATION REQUIREMENTS, OR YOU ARE NOT ACCEPTABLE FOR TRANSPORTATION UNDER THE AIRLINE'S TARIFF FILED WITH THE D.O.T.; OR
- (B) YOU ARE DENIED BOARDING BECAUSE THE FLIGHT IS CANCELLED; OR
- (C) YOU ARE DENIED BOARDING BECAUSE SMALLER CAPACITY AIRCRAFT WAS SUBSTITUTED FOR SAFETY OR OPERATIONAL REASONS; OR
- (D) YOU ARE OFFERED ACCOMMODATIONS IN SECTION OF THE AIRCRAFT OTHER THAN THAT SPECIFIED ON YOUR TICKET, AT NO EXTRA CHARGE. (A PASSENGER WHO IS SEATED IN SECTION FOR WHICH LOWER FARE IS CHARGED MUST BE GIVEN AN APPROPRIATE REFUND.)
- (E) THE AIRLINE IS ABLE TO PLACE YOU ON ANOTHER FLIGHT OR FLIGHTS THAT ARE PLANNED TO REACH YOUR FINAL DESTINATION WITHIN ONE HOUR OF THE SCHEDULED ARRIVAL OF YOUR ORIGINAL FLIGHT.

AMOUNT OF DENIED BOARDING COMPENSATION
PASSENGERS WHO ARE ELIGIBLE FOR DENIED BOARDING COMPENSATION MUST BE OFFERED PAYMENT EQUAL TO THE SUM OF THE FACE VALUE OF THEIR TICKET COUPONS, WITH \$200.00 MAXIMUM. HOWEVER, IF THE AIRLINE CANNOT ARRANGE "ALTERNATE TRANSPORTATION" FOR THE PASSENGER, THE COMPENSATION IS DOUBLED (\$400.00 MAXIMUM). THE "VALUE" OF TICKET COUPON IS THE ONE-WAY FARE FOR THE FLIGHT SHOWN ON THE COUPON, INCLUDING ANY SURCHARGE AND AIR TRANSPORTATION TAX, MINUS ANY APPLICABLE DISCOUNT. ALL FLIGHT COUPONS, INCLUDING CONNECTING FLIGHTS, TO THE PASSENGER'S DESTINATION OR FIRST 4-HOUR STOPOVER ARE USED TO COMPUTE THE COMPENSATION.

METHOD OF PAYMENT

THE AIRLINE MUST GIVE EACH PASSENGER WHO QUALIFIES FOR DENIED BOARDING COMPENSATION, PAYMENT BY CHECK OR DRAFT FOR THE AMOUNT SPECIFIED ABOVE, ON THE DAY AND PLACE THE INVOLUNTARY DENIED BOARDING OCCURS. HOWEVER, IF THE AIRLINE ARRANGES ALTERNATE TRANSPORTATION FOR THE PASSENGER'S CONVENIENCE THAT DEPARTS BEFORE THE PAYMENT CAN BE MADE, THE PAYMENT WILL BE SENT TO THE PASSENGER WITHIN 24 HOURS. THE CARRIER MAY OFFER FREE TICKETS IN PLACE OF THE CASH PAYMENT. THE PASSENGER MAY, HOWEVER, REFUSE ALL COMPENSATION AND BRING PRIVATE LEGAL ACTION.

PASSENGER'S OPTIONS

ACCEPTANCE OF THE COMPENSATION (BY ENDORSING THE CHECK OR DRAFT WITHIN 30 DAYS) RELIEVES CARRIER (THE APPLICABLE CARRIER ABBREVIATION WILL BE SUBSTITUTED FOR THE TERM "CARRIER" IN THE NOTICE DISTRIBUTED TO THE PASSENGER FROM ANY FURTHER LIABILITY TO THE PASSENGER) CAUSED BY ITS FAILURE TO HONOR THE CONFIRMED RESERVATION. HOWEVER, THE PASSENGER MAY DECLINE THE PAYMENT AND SEEK TO RECOVER DAMAGES IN COURT OF LAW OR IN SOME OTHER MANNER.

- (B) APPLICABLE BETWEEN POINTS IN CANADA AND POINTS IN THE UNITED KINGDOM SERVED BY BRITISH AIRWAYS
WHEN CARRIER IS UNABLE TO PROVIDE PREVIOUSLY CONFIRMED SPACE DUE TO MORE PASSENGERS HOLDING CONFIRMED RESERVATIONS AND TICKETS ON FLIGHT THAN THERE ARE AVAILABLE SEATS ON THAT FLIGHT, SUCH CARRIER WILL:
- (1) TRANSPORT PERSONS WHO ARE DENIED CONFIRMED RESERVED SPACE, WHETHER VOLUNTARILY OR

- INVOLUNTARILY, ON ITS NEXT FLIGHT ON WHICH SPACE IS AVAILABLE, AT NO ADDITIONAL COST TO THE PASSENGER REGARDLESS OF CLASS OF SERVICE, OR;
- (2) IF THE CARRIER CAUSING SUCH DELAY IS UNABLE TO PROVIDE ONWARD TRANSPORTATION ACCEPTABLE TO THE PASSENGER, THE CARRIER WILL PROVIDE SUCH TRANSPORTATION ON THE SERVICE OF ANY OTHER CARRIER OR COMBINATION OF CARRIERS IN THE SAME CLASS OF SERVICE AS PASSENGER'S OUTBOUND FLIGHT OR IN DIFFERENT CLASS OF SERVICE AT NO ADDITIONAL COST TO THE PASSENGER AND SUBJECT TO THE AVAILABILITY OF SPACE AND ACCEPTABILITY OF THE PASSENGER PROVIDING SUCH FLIGHTS WILL BE USED WITHOUT STOPOVER AND WILL PROVIDE AN EARLIER ARRIVAL TIME AT THE PASSENGER'S DESTINATION OR NEXT POINT OF STOPOVER OR TRANSFER POINTS; AND
- (3) CARRIER CAUSING SUCH DELAY WILL COMPENSATE SUCH PASSENGER FOR CARRIER'S FAILURE TO PROVIDE CONFIRMED SPACE AS FOLLOWS:
- (A) CONDITIONS FOR PAYMENT OF COMPENSATION SUBJECT TO THE EXCEPTIONS IN THIS SUBPARAGRAPH, CARRIER WILL TENDER TO THE PASSENGER THE AMOUNT OF COMPENSATION SPECIFIED IN SUBPARAGRAPH (B) WHEN:
- (I) PASSENGER HOLDING TICKET FOR CONFIRMED RESERVED SPACE PRESENTS HIMSELF FOR CARRIAGE AT THE APPROPRIATE TIME AND PLACE, HAVING COMPLIED FULLY WITH THE CARRIER'S REQUIREMENTS AS TO TICKETING, CHECK-IN AND RECONFIRMATION PROCEDURE, AND BEING ACCEPTABLE FOR TRANSPORTATION UNDER CARRIER'S TARIFF; AND
- (II) THE FLIGHT FOR WHICH THE PASSENGER HOLDS CONFIRMED RESERVED SPACE IS UNABLE TO ACCOMMODATE THE PASSENGER AND DEPARTS WITHOUT HIM.
- EXCEPTION 1: THE PASSENGER WILL NOT BE ELIGIBLE FOR COMPENSATION IF THE FLIGHT ON WHICH THE PASSENGER HOLDS CONFIRMED RESERVED SPACE IS UNABLE TO ACCOMMODATE HIM BECAUSE OF:
- (AA) GOVERNMENT REQUISITION OF SPACE, OR
- (BB) SUBSTITUTION OF EQUIPMENT OF LESSER CAPACITY WHEN REQUIRED BY OPERATIONAL OR SAFETY REASONS.
- EXCEPTION 2: THE PASSENGER WILL NOT BE ELIGIBLE FOR COMPENSATION IF HE IS OFFERED ACCOMMODATIONS OR IS SEATED IN SECTION OF THE AIRCRAFT OTHER THAN THAT SPECIFIED ON HIS TICKET AT NO EXTRA CHARGE, EXCEPT THAT PASSENGER SEATED IN SECTION FOR WHICH LOWER FARE APPLIES SHALL BE ENTITLED TO AN APPROPRIATE REFUND.
- (B) AMOUNT OF COMPENSATION PAYABLE
- (I) SUBJECT TO THE PROVISIONS OF PARAGRAPH (B) (3) (A) OF THIS RULE, CARRIER WILL TENDER LIQUIDATED DAMAGES IN THE AMOUNT OF 100 PERCENT OF THE SUM OF THE VALUES OF THE PASSENGER'S REMAINING FLIGHT COUPONS OF THE TICKET TO THE PASSENGER'S NEXT STOPOVER, OR IF NONE TO HIS DESTINATION, BUT NOT LESS THAN \$50.00

- AND NOT MORE THAN \$200.00 PROVIDED THAT IF THE PASSENGER IS DENIED BOARDING IN THE UNITED KINGDOM, THE AMOUNT OF COMPENSATION IN THIS SUBPARAGRAPH WILL READ NOT LESS THAN UKL 10.00 NOR MORE THAN UKL 100.00. SUCH TENDER IF ACCEPTED BY THE PASSENGER AND PAID BY CARRIER, WILL CONSTITUTE FULL COMPENSATION FOR ALL ACTUAL OR ANTICIPATORY DAMAGES INCURRED OR TO BE INCURRED BY THE PASSENGER AS RESULT OF CARRIER'S FAILURE TO PROVIDE PASSENGER WITH CONFIRMED RESERVED SPACE.
- (II) FOR THE PURPOSE OF THIS RULE, THE VALUE OF THE REMAINING FLIGHT COUPONS OF THE TICKET SHALL BE THE SUM OF THE APPLICABLE ONE-WAY FARES OR FIFTY PERCENT OF THE APPLICABLE ROUND TRIP FARES, AS THE CASE MAY BE, INCLUDING ANY SURCHARGES AND AIR TRANSPORTATION TAXES, LESS ANY APPLICABLE DISCOUNT.
- (III) SAID TENDER WILL BE MADE BY CARRIER ON THE DAY AND AT THE PLACE WHERE THE FAILURE OCCURS, AND IF ACCEPTED WILL BE RECEIPTED FOR BY THE PASSENGER. PROVIDED, HOWEVER, THAT WHEN CARRIER ARRANGES, FOR THE PASSENGER'S CONVENIENCE, ALTERNATE MEANS OF TRANSPORTATION WHICH DEPARTS PRIOR TO THE TIME SUCH TENDER CAN BE MADE TO THE PASSENGER, TENDER SHALL BE MADE BY MAIL OR OTHER MEANS WITHIN 24 HOURS AFTER THE TIME THE FAILURE OCCURS.
- (4) CARRIER SHALL FURNISH ALL PASSENGERS WHO ARE DENIED BOARDING INVOLUNTARILY FROM FLIGHTS ON WHICH THEY HOLD CONFIRMED RESERVED SPACE COPY OF THE FOLLOWING WRITTEN STATEMENT:
- COMPENSATION FOR DENIED BOARDING
IF YOU HAVE BEEN DENIED RESERVED SEAT ON BRITISH AIRWAYS, YOU ARE PROBABLY ENTITLED TO MONETARY COMPENSATION. THIS NOTICE EXPLAINS THE AIRLINE'S OBLIGATIONS AND THE PASSENGER'S RIGHTS IN THE CASE OF AN OVERSOLD FLIGHT.
- COMPENSATION FOR INVOLUNTARY DENIED BOARDING
IF YOU ARE DENIED BOARDING INVOLUNTARILY, YOU ARE ENTITLED TO PAYMENT OF "DENIED BOARDING COMPENSATION" FROM THE AIRLINE UNLESS:
- (A) YOU HAVE NOT FULLY COMPLIED WITH THE AIRLINE'S TICKETING, CHECK-IN, AND RECONFIRMATION REQUIREMENTS, OR YOU ARE NOT ACCEPTABLE FOR TRANSPORTATION UNDER THE AIRLINE'S TARIFF FILED WITH THE C.T.C.; OR
- (B) YOU ARE DENIED BOARDING BECAUSE THE FLIGHT IS CANCELLED; OR
- (C) YOU ARE DENIED BOARDING BECAUSE OF GOVERNMENT REQUISITION OF SPACE OR BECAUSE SMALLER CAPACITY AIRCRAFT WAS SUBSTITUTED FOR SAFETY OR OPERATIONAL REASONS; OR
- (D) YOU ARE OFFERED ACCOMMODATIONS IN SECTION OF THE AIRCRAFT OTHER THAN THAT SPECIFIED IN YOUR TICKET, AT NO EXTRA CHARGE. (A PASSENGER SEATED IN SECTION FOR WHICH LOWER FARE IS CHARGED MUST BE GIVEN AN APPROPRIATE REFUND.)
- AMOUNT OF DENIED BOARDING COMPENSATION
PASSENGERS WHO ARE ELIGIBLE FOR DENIED BOARDING COMPENSATION MUST BE OFFERED PAYMENT EQUAL TO THE SUM OF THE FACE VALUE OF THEIR TICKET COUPONS,

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WITH CAD 50.00 MINIMUM AND CAD 200.00 MAXIMUM OR UKL 10.00 MINIMUM AND UKL 100.00 MAXIMUM IN THE CASE OF PASSENGERS DENIED BOARDING IN THE UNITED KINGDOM. THE "VALUE" OF TICKET COUPON IS THE ONE-WAY FARE FOR THE FLIGHT SHOWN ON THE COUPON, INCLUDING ANY SURCHARGE AND AIR TRANSPORTATION TAX, MINUS ANY APPLICABLE DISCOUNT. ALL FLIGHT COUPONS, INCLUDING CONNECTING FLIGHTS, TO THE PASSENGER'S DESTINATION OR FIRST 4-HOUR STOPOVER ARE USED TO COMPUTE THE COMPENSATION.

METHOD OF PAYMENT

THE AIRLINE MUST GIVE EACH PASSENGER WHO QUALIFIES FOR DENIED BOARDING COMPENSATION PAYMENT BY CHECK OR DRAFT FOR THE AMOUNT SPECIFIED ABOVE, ON THE DAY AND PLACE THE INVOLUNTARY DENIED BOARDING OCCURS. HOWEVER, IF THE AIRLINE ARRANGES ALTERNATE TRANSPORTATION FOR THE PASSENGER'S CONVENIENCE THAT DEPARTS BEFORE THE PAYMENT CAN BE MADE, THE PAYMENT WILL BE SENT TO THE PASSENGER WITHIN 24 HOURS.

(C) APPLICABLE ONLY TO FLIGHTS OR PORTIONS OF FLIGHTS ORIGINATING IN THE UNITED STATES

(1) BOARDING PRIORITY

IN THE EVENT OF AN OVERSOLD FLIGHT, CARRIER WILL INITIALLY REQUEST PASSENGERS TO VOLUNTEER FOR DENIED BOARDING. IF THERE ARE AN INSUFFICIENT NUMBER OF VOLUNTEERS, PASSENGERS WILL BE INVOLUNTARILY DENIED BOARDING IN ACCORDANCE WITH THE FOLLOWING ORDER OF PRIORITY.

- (A) STANDBY PASSENGERS AND AIRLINE OR TRAVEL INDUSTRY RELATED EMPLOYEES TRAVELING ON REDUCED OR CONCESSIONAL FARE BASIS.
- (B) PASSENGERS PAYING LESS THAN THE FULL PUBLISHED ECONOMY CLASS FARE.
- (C) PASSENGERS PAYING THE FULL PUBLISHED ECONOMY CLASS FARE.
- (D) PASSENGERS PAYING THE FULL CLUB CLASS FARE.
- (E) PASSENGERS PAYING THE FULL PUBLISHED FIRST CLASS FARE.
- (F) UNACCOMPANIED YOUNG PASSENGERS, STRETCHER CASES AND ESCORTS AND CARRIER EMPLOYEES WHOSE MOVEMENT IS OF HIGH DEGREE OF URGENCY SUCH AS REPOSITIONING CREWS, ENGINEERS TRAVELING TO URGENT OPERATIONAL DUTY OR TRAVELING TO OR FROM THE SCENE OF AN AIRCRAFT ACCIDENT.

(2) CONDITIONS FOR PAYMENT OF COMPENSATION

SUBJECT TO THE EXCEPTIONS IN THIS SUBPARAGRAPH, CARRIER WILL TENDER TO PASSENGER DENIED BOARDING INVOLUNTARILY THE AMOUNT OF COMPENSATION SPECIFIED IN SUBPARAGRAPH 3 WHEN:

- (A) PASSENGER HOLDING TICKET FOR CONFIRMED RESERVED SPACE PRESENTS HIMSELF/HERSELF FOR CARRIAGE AT THE APPROPRIATE TIME AND PLACE, HAVING COMPLIED FULLY WITH CARRIER'S REQUIREMENTS AS TO TICKETING, CHECK-IN AND RECONFIRMATION PROCEDURES AND BEING ACCEPTABLE FOR TRANSPORTATION UNDER CARRIER'S TARIFF; AND
- (B) THE FLIGHT FOR WHICH THE PASSENGER HOLDS CONFIRMED RESERVED SPACE IS UNABLE TO ACCOMMODATE THE PASSENGER AND DEPARTS WITHOUT HIM/HER.

NOTE: CHECK-IN MEANS THAT THE PASSENGER MUST PRESENT HIMSELF AT THE AIRPORT FOR CHECK-IN AT LEAST 60 MINUTES PRIOR TO THE SCHEDULED DEPARTURE OF THE FLIGHT ON WHICH HE HOLDS CONFIRMED RESERVED SPACE:

EXCEPTION: THE PASSENGER WILL NOT BE

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- WHERE TWO OR MORE PASSENGERS TRAVELING AS ONE PARTY TO COMMON DESTINATION OR POINT OF STOPOVER BY THE SAME FLIGHT, PRESENT THEMSELVES AND THEIR BAGGAGE FOR TRAVELING AT THE SAME TIME AND PLACE, THEY SHALL BE PERMITTED TOTAL FREE BAGGAGE ALLOWANCE EQUAL TO THE COMBINATION OF THEIR INDIVIDUAL FREE BAGGAGE ALLOWANCE.
- (G) COLLECTION OF EXCESS WEIGHT/OVERSIZE AND/OR ADDITIONAL PIECE CHARGES
AT THE PASSENGER'S OPTION, EXCESS WEIGHT, OVERSIZE AND/OR ADDITIONAL PIECE CHARGES WILL BE PAYABLE EITHER AT THE POINT OF ORIGIN FOR THE ENTIRE JOURNEY TO FINAL DESTINATION, OR AT THE POINT OF ORIGIN TO THE POINT OF STOPOVER, IN WHICH EVENT, WHEN CARRIAGE IS RESUMED, CHARGES WILL BE PAYABLE FROM THE POINT OF STOPOVER TO THE NEXT POINT OR DESTINATION. WHEN ON JOURNEY FOR WHICH THROUGH EXCESS BAGGAGE TICKET HAS BEEN ISSUED THERE IS AN INCREASE IN THE AMOUNT OF EXCESS BAGGAGE CARRIED, CARRIER WILL ISSUE SEPARATE EXCESS BAGGAGE TICKET FOR SUCH INCREASE AND COLLECT CHARGES TO DESTINATION OR STOPOVER POINT AS THE CASE MAY BE.
- (H) SPECIAL DECLARATION AND EXCESS VALUE CHARGE
THE MONTREAL CONVENTION LIMITS BRITISH AIRWAYS' LIABILITY FOR COST, DAMAGED OR DELAYED BAGGAGE TO 1,000 SPECIAL DRAWING RIGHTS (SDRS). IF THE PASSENGER HAS MORE VALUABLE BAGGAGE, THE PASSENGER CAN MAKE SPECIAL DECLARATION OF INTEREST AND PAY SUPPLEMENTARY CHARGE TO HAVE THE LIMIT OF BRITISH AIRWAYS' LIABILITY RAISED UP TO 2,000 SDRS. THIS CHARGE IS KNOWN AS THE "EXCESS VALUE CHARGE" OR "SPECIAL DECLARATION CHARGE". THIS CHARGE IS NOT AN INSURANCE PREMIUM SINCE THE AIRLINE WILL MEET CLAIMS ONLY IF LEGALLY LIABLE UNDER THE MONTREAL CONVENTION. THIS EXCESS VALUE CHARGE RELATES TO THE ADDITIONAL COSTS INVOLVED IN TRANSPORTING AND INSURING THE BAGGAGE CONCERNED OVER AND ABOVE THOSE FOR BAGGAGE VALUED AT OR BELOW THE LIABILITY LIMIT. THE TARIFF SHALL BE MADE AVAILABLE TO PASSENGERS ON REQUEST.
- (I) ASSESSMENT OF CHARGE
THE SPECIAL DECLARATION WILL BE CHARGED AT FLAT RATE OF USD 25/CAD 31/GBP 14 OR EUR 21. THE MAXIMUM VALUATION PER PASSENGER IS 2,000 SDRS.
- (J) COLLECTION
EXCESS VALUE CHARGE MUST BE COLLECTED AT THE START OF THE JOURNEY. THE PASSENGER NEEDS TO MAKE THEIR REQUEST TO THE CHECK IN AGENT BEFORE THE BAG IS CHECKED IN. THE CHECK IN AGENT WILL THEN SHOW THE PASSENGER PRINTED NOTICE DETAILING THE TERMS AND CONDITIONS AND LISTING ITEMS THAT SHOULD NOT BE INCLUDED IN CHECKED BAGGAGE. IF THE PASSENGER AGREES TO THE TERMS AND WANTS TO PROCEED, THE AGENT WILL ISSUE AN EXCESS BAGGAGE TICKET. SEPARATE EXCESS BAGGAGE TICKET MUST BE ISSUED TO COVER EACH EXCESS VALUE CHARGE. THE EXCESS BAGGAGE TICKET MUST SHOW THE AMOUNT OF DECLARED VALUE IN THE SPECIAL ITEMS BOX IN SDRS (MAXIMUM 2,000 SDRS) AND THE EXCESS VALUE CHARGE COLLECTED IN THE CHARGE BOX. THE CARRIER BOX SHOULD SPECIFY BA. THE PASSENGER WILL PAY THE CHARGE AT EITHER THE BRITISH AIRWAY CASHIER COUNTER OR TICKET DESK, DEPENDING ON STATION AND LOCAL PAYMENT COLLECTION PROCEDURES.
- (K) JOURNEYS WHICH INCLUDE SECTORS BY SURFACE TRANSPORT SECTORS TRAVELLED WHOLLY OR PARTIALLY BY SURFACE ARE NOT COVERED BY THE SPECIAL DECLARATION. COMPLETE AIR SECTORS BY BRITISH AIRWAYS MAY BE COVERED BY DECLARATION AT THE START OF THE JOURNEY. IF THIS HAS NOT BEEN DONE, SEPARATE DECLARATION MUST BE MADE AT THE POINT WHERE AIR TRAVEL IS RESUMED, IRRESPECTIVE OF WHETHER CHANGE OF CARRIER OCCURS.

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- (L) JOURNEYS WHICH INCLUDE TRAVEL BY MORE THAN ONE AIRLINE
SPECIAL DECLARATION OF INTEREST SHOULD BE MADE AT THE
POINT WHERE THE JOURNEY STARTS WITH EACH CARRIER.
WHERE SPECIAL DECLARATION OF INTEREST HAS BEEN MADE,
BAGS CANNOT BE THROUGH CHECKED ONTO ANOTHER CARRIER,
EVEN IF THAT CARRIER IS FRANCHISEE ONEWORLD CARRIER.
THIS IS BECAUSE EACH CARRIER WILL HAVE IT'S OWN
ARRANGEMENTS FOR EXCESS VALUE.
NOTE ALL AIRLINES DO NOT HAVE THE SAME CHARGES AND
LIMITS. THEIR TARIFFS SHOULD BE CONSULTED IF DETAILS
ARE REQUIRED.
- (M) ROUND TRIP JOURNEYS
THE SPECIAL DECLARATION OF INTEREST MADE AT THE START
OF THE OUTBOUND JOURNEY DOES NOT COVER THE RETURN
UNLESS SPECIFICALLY REQUESTED BY THE PASSENGER AT THE
TIME THE SPECIAL DECLARATION OF INTEREST IS MADE.
- (N) EXCLUDED ITEMS
IN ACCORDANCE WITH THE BRITISH AIRWAYS CONDITIONS OF
CARRIAGE, ITEMS THAT ARE FRAGILE, PERISHABLE OR OF
SPECIAL VALUE MUST NOT BE INCLUDED IN CHECKED BAGGAGE.
IF ANY OF THESE ITEMS, OR ANY OTHER ITEMS FORBIDDEN
UNDER THE BRITISH AIRWAYS CONDITIONS OF CARRIAGE, ARE
INCLUDED IN CHECKED BAGGAGE, BRITISH AIRWAYS WILL NOT
BE LIABLE FOR ANY LOSS OR DAMAGE TO THEM. THESE ITEMS
INCLUDE MONEY, JEWELRY, PRECIOUS METALS, COMPUTERS,
PERSONAL ELECTRONIC DEVICES, SHARE CERTIFICATE, BONDS
AND OTHER VALUABLE DOCUMENTS, BUSINESS DOCUMENTS OR
PASSPORTS AND OTHER IDENTIFICATION DOCUMENTS. THE
PAYING OF THIS CHARGE INDICATES THAT THESE TERMS AND
CONDITIONS HAVE BEEN ACCEPTED.
- (O) EXCESS WEIGHT/OVERSIZE AND/OR ADDITIONAL PIECE AND
VALUE CHARGES ON REROUTINGS AND CANCELLATIONS
WHEN PASSENGER IS REROUTED OR HIS CARRIAGE CANCELLED,
THE PROVISIONS WHICH GOVERN WITH RESPECT TO THE PAYMENT
OF ADDITIONAL FARES OR THE REFUNDING OF FARES SHALL
LIKEWISE GOVERN THE PAYMENT OR THE REFUNDING OF EXCESS
WEIGHT CHARGES AND THE PAYMENT OF EXCESS VALUE CHARGES,
BUT NO REFUND OF VALUE CHARGES WILL BE MADE WHEN
PORTION OF THE CARRIAGE HAS BEEN COMPLETED.
- (P) CHECKING OF BAGGAGE BY CARRIER
EXCEPT AS OTHERWISE PROVIDED IN THIS RULE, EACH
PARTICIPATING CARRIER WILL, UPON PRESENTATION BY
FARE-PAYING PASSENGER OF VALID TICKET COVERING
TRANSPORTATION OVER THE LINES OF SUCH CARRIER, OR OVER
THE LINES OF SUCH CARRIER AND ONE OR MORE OTHER
PARTICIPATING CARRIERS, CHECK PERSONAL PROPERTY WHICH
IS TENDERED BY THE PASSENGER FOR TRANSPORTATION AS
BAGGAGE, WHEN TENDERED AT THE CITY OR AIRPORT OFFICE
DESIGNATED BY THE CARRIER AND WITHIN THE TIMES
PRESCRIBED BY SUCH CARRIER, BUT NO PARTICIPATING
CARRIER WILL CHECK PROPERTY SO TENDERED:
- (1) BEYOND THE DESTINATION, OR NOT ON THE ROUTING,
DESIGNATED ON SUCH TICKET.
 - (2) BEYOND POINT OF STOPOVER.
 - (3) BEYOND POINT OF TRANSFER TO ANY OTHER CARRIER,
IF THE PASSENGER HAS DECLARED VALUATION IN
EXCESS OF THE AMOUNTS SPECIFIED IN PARAGRAPH (H)
OF THIS RULE EXCEPT BETWEEN POINTS WHERE THROUGH
INTERLINE SERVICE IS PROVIDED WITHOUT CHANGE OF
AIRCRAFT BY TWO OR MORE PARTICIPATING CARRIERS.
 - (4) BEYOND POINT BEYOND WHICH THE PASSENGER HOLDS NO
RESERVATION.
 - (5) BEYOND POINT AT WHICH THE PASSENGER IS TO
TRANSFER TO CONNECTING FLIGHT, AND SUCH FLIGHT
IS SCHEDULED TO DEPART FROM DIFFERENT AIRPORT
THAN THAT AT WHICH THE PASSENGER IS SCHEDULED TO

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SPECIFIED ABOVE WILL BE ASSESSED BY EACH CARRIER PARTICIPATING IN THE CARRIAGE AT THE RATE OF USD 1.00 /CAD 1.00 PER EACH USD 100.00/CAD 112.00 OR FRACTION THEREOF.

- (H) SPECIAL DECLARATION AND EXCESS VALUE CHARGE
THE MONTREAL CONVENTION LIMITS BRITISH AIRWAYS' LIABILITY FOR COST, DAMAGED OR DELAYED BAGGAGE TO 1,000 SPECIAL DRAWING RIGHTS (SDRS). IF THE PASSENGER HAS MORE VALUABLE BAGGAGE, THE PASSENGER CAN MAKE SPECIAL DECLARATION OF INTEREST AND PAY SUPPLEMENTARY CHARGE TO HAVE THE LIMIT OF BRITISH AIRWAYS' LIABILITY RAISED UP TO 2,000 SDRS. THIS CHARGE IS KNOWN AS THE "EXCESS VALUE CHARGE" OR "SPECIAL DECLARATION CHARGE". THIS CHARGE IS NOT AN INSURANCE PREMIUM SINCE THE AIRLINE WILL MEET CLAIMS ONLY IF LEGALLY LIABLE UNDER THE MONTREAL CONVENTION. THIS EXCESS VALUE CHARGE RELATES TO THE ADDITIONAL COSTS INVOLVED IN TRANSPORTING AND INSURING THE BAGGAGE CONCERNED OVER AND ABOVE THOSE FOR BAGGAGE VALUED AT OR BELOW THE LIABILITY LIMIT. THE TARIFF SHALL BE MADE AVAILABLE TO PASSENGERS ON REQUEST.
- (I) ASSESSMENT OF CHARGE
THE SPECIAL DECLARATION WILL BE CHARGED AT FLAT RATE OF USD 25/CAD 31/GBP 14 OR EUR 21. THE MAXIMUM VALUATION PER PASSENGER IS 2,000 SDRS.
- (J) COLLECTION
EXCESS VALUE CHARGE MUST BE COLLECTED AT THE START OF THE JOURNEY. THE PASSENGER NEEDS TO MAKE THEIR REQUEST TO THE CHECK IN AGENT BEFORE THE BAG IS CHECKED IN. THE CHECK IN AGENT WILL THEN SHOW THE PASSENGER PRINTED NOTICE DETAILING THE TERMS AND CONDITIONS AND LISTING ITEMS THAT SHOULD NOT BE INCLUDED IN CHECKED BAGGAGE. IF THE PASSENGER AGREES TO THE TERMS AND WANTS TO PROCEED, THE AGENT WILL ISSUE AN EXCESS BAGGAGE TICKET. SEPARATE EXCESS BAGGAGE TICKET MUST BE ISSUED TO COVER EACH EXCESS VALUE CHARGE. THE EXCESS BAGGAGE TICKET MUST SHOW THE AMOUNT OF DECLARED VALUE IN THE SPECIAL ITEMS BOX IN SDRS (MAXIMUM 2,000 SDRS) AND THE EXCESS VALUE CHARGE COLLECTED IN THE CHARGE BOX. THE CARRIER BOX SHOULD SPECIFY BA. THE PASSENGER WILL PAY THE CHARGE AT EITHER THE BRITISH AIRWAY CASHIER COUNTER OR TICKET DESK, DEPENDING ON STATION AND LOCAL PAYMENT COLLECTION PROCEDURES.
- (K) JOURNEYS WHICH INCLUDE SECTORS BY SURFACE TRANSPORT SECTORS TRAVELLED WHOLLY OR PARTIALLY BY SURFACE ARE NOT COVERED BY THE SPECIAL DECLARATION. COMPLETE AIR SECTORS BY BRITISH AIRWAYS MAY BE COVERED BY DECLARATION AT THE START OF THE JOURNEY. IF THIS HAS NOT BEEN DONE, SEPARATE DECLARATION MUST BE MADE AT THE POINT WHERE AIR TRAVEL IS RESUMED, IRRESPECTIVE OF WHETHER CHANGE OF CARRIER OCCURS.
- (L) JOURNEYS WHICH INCLUDE TRAVEL BY MORE THAN ONE AIRLINE
SPECIAL DECLARATION OF INTEREST SHOULD BE MADE AT THE POINT WHERE THE JOURNEY STARTS WITH EACH CARRIER. WHERE SPECIAL DECLARATION OF INTEREST HAS BEEN MADE, BAGS CANNOT BE THROUGH CHECKED ONTO ANOTHER CARRIER, EVEN IF THAT CARRIER IS FRANCHISEE ONEWORLD CARRIER. THIS IS BECAUSE EACH CARRIER WILL HAVE IT'S OWN ARRANGEMENTS FOR EXCESS VALUE.
NOTE ALL AIRLINES DO NOT HAVE THE SAME CHARGES AND LIMITS. THEIR TARIFFS SHOULD BE CONSULTED IF DETAILS ARE REQUIRED.
- (M) ROUND TRIP JOURNEYS
THE SPECIAL DECLARATION OF INTEREST MADE AT THE START OF THE OUTBOUND JOURNEY DOES NOT COVER THE RETURN UNLESS SPECIFICALLY REQUESTED BY THE PASSENGER AT THE TIME THE SPECIAL DECLARATION OF INTEREST IS MADE.
- (N) EXCLUDED ITEMS

IN ACCORDANCE WITH THE BRITISH AIRWAYS CONDITIONS OF CARRIAGE, ITEMS THAT ARE FRAGILE, PERISHABLE OR OF SPECIAL VALUE MUST NOT BE INCLUDED IN CHECKED BAGGAGE. IF ANY OF THESE ITEMS, OR ANY OTHER ITEMS FORBIDDEN UNDER THE BRITISH AIRWAYS CONDITIONS OF CARRIAGE, ARE INCLUDED IN CHECKED BAGGAGE, BRITISH AIRWAYS WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO THEM. THESE ITEMS INCLUDE MONEY, JEWELRY, PRECIOUS METALS, COMPUTERS, PERSONAL ELECTRONIC DEVICES, SHARE CERTIFICATE, BONDS AND OTHER VALUABLE DOCUMENTS, BUSINESS DOCUMENTS OR PASSPORTS AND OTHER IDENTIFICATION DOCUMENTS. THE PAYING OF THIS CHARGE INDICATES THAT THESE TERMS AND CONDITIONS HAVE BEEN ACCEPTED.

- (O) EXCESS WEIGHT/OVERSIZE AND/OR ADDITIONAL PIECE AND VALUE CHARGES ON REROUTINGS AND CANCELLATIONS WHEN PASSENGER IS REROUTED OR HIS CARRIAGE CANCELLED, THE PROVISIONS WHICH GOVERN WITH RESPECT TO THE PAYMENT OF ADDITIONAL FARES OR THE REFUNDING OF FARES SHALL LIKEWISE GOVERN THE PAYMENT OR THE REFUNDING OF EXCESS WEIGHT CHARGES AND THE PAYMENT OF EXCESS VALUE CHARGES, BUT NO REFUND OF VALUE CHARGES WILL BE MADE WHEN PORTION OF THE CARRIAGE HAS BEEN COMPLETED.
- (P) CHECKING OF BAGGAGE BY CARRIER
EXCEPT AS OTHERWISE PROVIDED IN THIS RULE, EACH PARTICIPATING CARRIER WILL, UPON PRESENTATION BY FARE-PAYING PASSENGER OF VALID TICKET COVERING TRANSPORTATION OVER THE LINES OF SUCH CARRIER, OR OVER THE LINES OF SUCH CARRIER AND ONE OR MORE OTHER PARTICIPATING CARRIERS, CHECK PERSONAL PROPERTY WHICH IS TENDERED BY THE PASSENGER FOR TRANSPORTATION AS BAGGAGE, WHEN TENDERED AT THE CITY OR AIRPORT OFFICE DESIGNATED BY THE CARRIER AND WITHIN THE TIMES PRESCRIBED BY SUCH CARRIER, BUT NO PARTICIPATING CARRIER WILL CHECK PROPERTY SO TENDERED:
- (1) BEYOND THE DESTINATION, OR NOT ON THE ROUTING, DESIGNATED ON SUCH TICKET.
 - (2) BEYOND POINT OF STOPOVER.
 - (3) BEYOND POINT OF TRANSFER TO ANY OTHER CARRIER, IF THE PASSENGER HAS DECLARED VALUATION IN EXCESS OF THE AMOUNTS SPECIFIED IN PARAGRAPH (H) OF THIS RULE EXCEPT BETWEEN POINTS WHERE THROUGH INTERLINE SERVICE IS PROVIDED WITHOUT CHANGE OF AIRCRAFT BY TWO OR MORE PARTICIPATING CARRIERS.
 - (4) BEYOND POINT BEYOND WHICH THE PASSENGER HOLDS NO RESERVATION.
 - (5) BEYOND POINT AT WHICH THE PASSENGER IS TO TRANSFER TO CONNECTING FLIGHT, AND SUCH FLIGHT IS SCHEDULED TO DEPART FROM DIFFERENT AIRPORT THAN THAT AT WHICH THE PASSENGER IS SCHEDULED TO ARRIVE AT SUCH POINT.
 - (6) BEYOND POINT AT WHICH THE PASSENGER DESIRES TO RESUME POSSESSION OF SUCH PROPERTY OR ANY PORTION THEREOF, OR
 - (7) BEYOND POINT BEYOND WHICH ALL APPLICABLE CHARGES HAVE NOT BEEN PAID.
 - (8) (APPLICABLE ONLY FOR THROUGH TRANSPORTATION). TO

POINT TO WHICH THE PASSENGER HOLDS NO RESERVATION, UNLESS THE PASSENGER'S NAME OR INITIALS ARE ON THE OUTSIDE OF SUCH BAGGAGE.
- (Q) DELIVERY OF CHECKED BAGGAGE BY CARRIER
- (1) CHECKED BAGGAGE WILL BE DELIVERED TO THE BEARER OF THE BAGGAGE CHECK UPON PAYMENT OF ALL UNPAID SUMS DUE CARRIER UNDER CONTRACT OF CARRIAGE AND UPON RETURN TO CARRIER OF THE BAGGAGE (CLAIM) TAG(S) ISSUED IN CONNECTION WITH SUCH BAGGAGE. CARRIER IS UNDER NO OBLIGATION TO ASCERTAIN THAT THE BEARER OF THE BAGGAGE CHECK AND BAGGAGE (CLAIM)

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 261/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 February 2004
establishing common rules on compensation and assistance to passengers in the event of denied
boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91
(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Economic and
Social Committee ⁽²⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽³⁾, in the light of the joint text approved by
the Conciliation Committee on 1 December 2003,

Whereas:

- (1) Action by the Community in the field of air transport should aim, among other things, at ensuring a high level of protection for passengers. Moreover, full account should be taken of the requirements of consumer protection in general.
- (2) Denied boarding and cancellation or long delay of flights cause serious trouble and inconvenience to passengers.
- (3) While Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport ⁽⁴⁾ created basic protection for passengers, the number of passengers denied boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays.

(4) The Community should therefore raise the standards of protection set by that Regulation both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

(5) Since the distinction between scheduled and non-scheduled air services is weakening, such protection should apply to passengers not only on scheduled but also on non-scheduled flights, including those forming part of package tours.

(6) The protection accorded to passengers departing from an airport located in a Member State should be extended to those leaving an airport located in a third country for one situated in a Member State, when a Community carrier operates the flight.

(7) In order to ensure the effective application of this Regulation, the obligations that it creates should rest with the operating air carrier who performs or intends to perform a flight, whether with owned aircraft, under dry or wet lease, or on any other basis.

(8) This Regulation should not restrict the rights of the operating air carrier to seek compensation from any person, including third parties, in accordance with the law applicable.

⁽¹⁾ OJ C 103 E, 30.4.2002, p. 225 and OJ C 71 E, 25.3.2003, p. 188.

⁽²⁾ OJ C 241, 7.10.2002, p. 29.

⁽³⁾ Opinion of the European Parliament of 24 October 2002 (OJ C 300 E, 11.12.2003, p. 443), Council Common Position of 18 March 2003 (OJ C 125 E, 27.5.2003, p. 63) and Position of the European Parliament of 3 July 2003. Legislative Resolution of the European Parliament of 18 December 2003 and Council Decision of 26 January 2004.

⁽⁴⁾ OJ L 36, 8.2.1991, p. 5.

(9) The number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding.

- (10) Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (11) Volunteers should also be able to cancel their flights, with reimbursement of their tickets, or continue them under satisfactory conditions, since they face difficulties of travel similar to those experienced by passengers denied boarding against their will.
- (12) The trouble and inconvenience to passengers caused by cancellation of flights should also be reduced. This should be achieved by inducing carriers to inform passengers of cancellations before the scheduled time of departure and in addition to offer them reasonable re-routing, so that the passengers can make other arrangements. Air carriers should compensate passengers if they fail to do this, except when the cancellation occurs in extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.
- (13) Passengers whose flights are cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and should be adequately cared for while awaiting a later flight.
- (14) As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.
- (15) Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.
- (16) In cases where a package tour is cancelled for reasons other than the flight being cancelled, this Regulation should not apply.
- (17) Passengers whose flights are delayed for a specified time should be adequately cared for and should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions.
- (18) Care for passengers awaiting an alternative or a delayed flight may be limited or declined if the provision of the care would itself cause further delay.
- (19) Operating air carriers should meet the special needs of persons with reduced mobility and any persons accompanying them.
- (20) Passengers should be fully informed of their rights in the event of denied boarding and of cancellation or long delay of flights, so that they can effectively exercise their rights.
- (21) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that these sanctions are applied. The sanctions should be effective, proportionate and dissuasive.
- (22) Member States should ensure and supervise general compliance by their air carriers with this Regulation and designate an appropriate body to carry out such enforcement tasks. The supervision should not affect the rights of passengers and air carriers to seek legal redress from courts under procedures of national law.
- (23) The Commission should analyse the application of this Regulation and should assess in particular the opportunity of extending its scope to all passengers having a contract with a tour operator or with a Community carrier, when departing from a third country airport to an airport in a Member State.
- (24) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries. Such arrangements have yet to enter into operation.
- (25) Regulation (EEC) No 295/91 should accordingly be repealed,
- HAVE ADOPTED THIS REGULATION:
- Article 1*
- Subject**
1. This Regulation establishes, under the conditions specified herein, minimum rights for passengers when:
- (a) they are denied boarding against their will;
- (b) their flight is cancelled;
- (c) their flight is delayed.

2. Application of this Regulation to Gibraltar airport is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

3. Application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation. The Governments of Spain and the United Kingdom will inform the Council of such date of entry into operation.

Article 2

Definitions

For the purposes of this Regulation:

- (a) ‘air carrier’ means an air transport undertaking with a valid operating licence;
- (b) ‘operating air carrier’ means an air carrier that performs or intends to perform a flight under a contract with a passenger or on behalf of another person, legal or natural, having a contract with that passenger;
- (c) ‘Community carrier’ means an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers ⁽¹⁾;
- (d) ‘tour operator’ means, with the exception of an air carrier, an organiser within the meaning of Article 2, point 2, of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours ⁽²⁾;
- (e) ‘package’ means those services defined in Article 2, point 1, of Directive 90/314/EEC;
- (f) ‘ticket’ means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorised by the air carrier or its authorised agent;
- (g) ‘reservation’ means the fact that the passenger has a ticket, or other proof, which indicates that the reservation has been accepted and registered by the air carrier or tour operator;
- (h) ‘final destination’ means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected;
- (i) ‘person with reduced mobility’ means any person whose mobility is reduced when using transport because of any physical disability (sensory or locomotory, permanent or temporary), intellectual impairment, age or any other cause

of disability, and whose situation needs special attention and adaptation to the person's needs of the services made available to all passengers;

- (j) ‘denied boarding’ means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;
- (k) ‘volunteer’ means a person who has presented himself for boarding under the conditions laid down in Article 3(2) and responds positively to the air carrier's call for passengers prepared to surrender their reservation in exchange for benefits.
- (l) ‘cancellation’ means the non-operation of a flight which was previously planned and on which at least one place was reserved.

Article 3

Scope

1. This Regulation shall apply:
 - (a) to passengers departing from an airport located in the territory of a Member State to which the Treaty applies;
 - (b) to passengers departing from an airport located in a third country to an airport situated in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.
2. Paragraph 1 shall apply on the condition that passengers:
 - (a) have a confirmed reservation on the flight concerned and, except in the case of cancellation referred to in Article 5, present themselves for check-in,
 - as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent,or, if no time is indicated,
 - not later than 45 minutes before the published departure time; or
 - (b) have been transferred by an air carrier or tour operator from the flight for which they held a reservation to another flight, irrespective of the reason.
3. This Regulation shall not apply to passengers travelling free of charge or at a reduced fare not available directly or indirectly to the public. However, it shall apply to passengers having tickets issued under a frequent flyer programme or other commercial programme by an air carrier or tour operator.

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

⁽²⁾ OJ L 158, 23.6.1990, p. 59.

4. This Regulation shall only apply to passengers transported by motorised fixed wing aircraft.

5. This Regulation shall apply to any operating air carrier providing transport to passengers covered by paragraphs 1 and 2. Where an operating air carrier which has no contract with the passenger performs obligations under this Regulation, it shall be regarded as doing so on behalf of the person having a contract with that passenger.

6. This Regulation shall not affect the rights of passengers under Directive 90/314/EEC. This Regulation shall not apply in cases where a package tour is cancelled for reasons other than cancellation of the flight.

Article 4

Denied boarding

1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.

2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.

Article 5

Cancellation

1. In case of cancellation of a flight, the passengers concerned shall:

- (a) be offered assistance by the operating air carrier in accordance with Article 8; and
- (b) be offered assistance by the operating air carrier in accordance with Article 9(1)(a) and 9(2), as well as, in event of re-routing when the reasonably expected time of departure of the new flight is at least the day after the departure as it was planned for the cancelled flight, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:
 - (i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or

- (ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or

- (iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.

2. When passengers are informed of the cancellation, an explanation shall be given concerning possible alternative transport.

3. An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.

4. The burden of proof concerning the questions as to whether and when the passenger has been informed of the cancellation of the flight shall rest with the operating air carrier.

Article 6

Delay

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

- (a) for two hours or more in the case of flights of 1 500 kilometres or less; or
- (b) for three hours or more in the case of all intra-Community flights of more than 1 500 kilometres and of all other flights between 1 500 and 3 500 kilometres; or
- (c) for four hours or more in the case of all flights not falling under (a) or (b),

passengers shall be offered by the operating air carrier:

- (i) the assistance specified in Article 9(1)(a) and 9(2); and
- (ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and
- (iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).

2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket.

Article 7

Right to compensation

1. Where reference is made to this Article, passengers shall receive compensation amounting to:

- (a) EUR 250 for all flights of 1 500 kilometres or less;
- (b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;
- (c) EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger's arrival after the scheduled time.

2. When passengers are offered re-routing to their final destination on an alternative flight pursuant to Article 8, the arrival time of which does not exceed the scheduled arrival time of the flight originally booked

- (a) by two hours, in respect of all flights of 1 500 kilometres or less; or
- (b) by three hours, in respect of all intra-Community flights of more than 1 500 kilometres and for all other flights between 1 500 and 3 500 kilometres; or
- (c) by four hours, in respect of all flights not falling under (a) or (b),

the operating air carrier may reduce the compensation provided for in paragraph 1 by 50 %.

3. The compensation referred to in paragraph 1 shall be paid in cash, by electronic bank transfer, bank orders or bank cheques or, with the signed agreement of the passenger, in travel vouchers and/or other services.

4. The distances given in paragraphs 1 and 2 shall be measured by the great circle route method.

Article 8

Right to reimbursement or re-routing

1. Where reference is made to this Article, passengers shall be offered the choice between:

- (a) — reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part or parts already made if the flight is no longer serving any purpose in relation to the passenger's original travel plan, together with, when relevant,
 - a return flight to the first point of departure, at the earliest opportunity;
- (b) re-routing, under comparable transport conditions, to their final destination at the earliest opportunity; or

(c) re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.

2. Paragraph 1(a) shall also apply to passengers whose flights form part of a package, except for the right to reimbursement where such right arises under Directive 90/314/EEC.

3. When, in the case where a town, city or region is served by several airports, an operating air carrier offers a passenger a flight to an airport alternative to that for which the booking was made, the operating air carrier shall bear the cost of transferring the passenger from that alternative airport either to that for which the booking was made, or to another close-by destination agreed with the passenger.

Article 9

Right to care

1. Where reference is made to this Article, passengers shall be offered free of charge:

- (a) meals and refreshments in a reasonable relation to the waiting time;
- (b) hotel accommodation in cases
 - where a stay of one or more nights becomes necessary, or
 - where a stay additional to that intended by the passenger becomes necessary;
- (c) transport between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.

3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.

Article 10

Upgrading and downgrading

1. If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment.

2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse

- (a) 30 % of the price of the ticket for all flights of 1 500 kilometres or less, or

- (b) 50 % of the price of the ticket for all intra-Community flights of more than 1 500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1 500 and 3 500 kilometres, or
- (c) 75 % of the price of the ticket for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.

Article 11

Persons with reduced mobility or special needs

1. Operating air carriers shall give priority to carrying persons with reduced mobility and any persons or certified service dogs accompanying them, as well as unaccompanied children.
2. In cases of denied boarding, cancellation and delays of any length, persons with reduced mobility and any persons accompanying them, as well as unaccompanied children, shall have the right to care in accordance with Article 9 as soon as possible.

Article 12

Further compensation

1. This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation.
2. Without prejudice to relevant principles and rules of national law, including case-law, paragraph 1 shall not apply to passengers who have voluntarily surrendered a reservation under Article 4(1).

Article 13

Right of redress

In cases where an operating air carrier pays compensation or meets the other obligations incumbent on it under this Regulation, no provision of this Regulation may be interpreted as restricting its right to seek compensation from any person, including third parties, in accordance with the law applicable. In particular, this Regulation shall in no way restrict the operating air carrier's right to seek reimbursement from a tour operator or another person with whom the operating air carrier has a contract. Similarly, no provision of this Regulation may be interpreted as restricting the right of a tour operator or a third party, other than a passenger, with whom an operating air carrier has a contract, to seek reimbursement or compensation from the operating air carrier in accordance with applicable relevant laws.

Article 14

Obligation to inform passengers of their rights

1. The operating air carrier shall ensure that at check-in a clearly legible notice containing the following text is displayed in a manner clearly visible to passengers: 'If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance'.
2. An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance in line with this Regulation. It shall also provide each passenger affected by a delay of at least two hours with an equivalent notice. The contact details of the national designated body referred to in Article 16 shall also be given to the passenger in written form.
3. In respect of blind and visually impaired persons, the provisions of this Article shall be applied using appropriate alternative means.

Article 15

Exclusion of waiver

1. Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.
2. If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.

Article 16

Infringements

1. Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.

2. Without prejudice to Article 12, each passenger may complain to any body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory.

3. The sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive.

Article 17

Report

The Commission shall report to the European Parliament and the Council by 1 January 2007 on the operation and the results of this Regulation, in particular regarding:

- the incidence of denied boarding and of cancellation of flights,
- the possible extension of the scope of this Regulation to passengers having a contract with a Community carrier or holding a flight reservation which forms part of a ‘package

tour’ to which Directive 90/314/EEC applies and who depart from a third-country airport to an airport in a Member State, on flights not operated by Community air carriers,

- the possible revision of the amounts of compensation referred to in Article 7(1).

The report shall be accompanied where necessary by legislative proposals.

Article 18

Repeal

Regulation (EEC) No 295/91 shall be repealed.

Article 19

Entry into force

This Regulation shall enter into force on 17 February 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 11 February 2004.

For the European Parliament

The President

P. COX

For the Council

The President

M. McDOWELL

NTA(A) No. 313 T.C.A.B. No. 516

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RULE	SECTION I - GENERAL RULES															
C87	<p>†[C]PART II DENIED BOARDING COMPENSATION (Applicable to flights or portions to flight originating in Canada)</p> <p>(A) APPLICABILITY The following rules shall apply:</p> <ol style="list-style-type: none"> (1) In respect of flights departing from an airport in the European Union (EU) and flights departing from an airport in a third country bound to an airport in the EU unless passenger received benefits or compensation and were given assistance in that third country; (2) On condition that passengers have a confirmed reservation on the flight concerned and presents himself/herself for check-in at the time indicated in advance and in writing or electronically; or; if no time is indicated; not later than 60 minutes before the published departure time; (3) Only to the passenger travelling with a valid ticket including tickets issued under a frequent flyer or other commercial programme with confirmed reservations and <ol style="list-style-type: none"> (a) Presents himself at the appropriate place and has observed published minimum check-in times (b) Has complied with Air France's ticketing and reconfirmation procedures (c) Is acceptable for transportation under the carrier's tariff and the flight for which the passenger holds confirmed reservations is unable to accommodate the passenger and departs without him/her (4) Where AF is the operating carrier of the flight EXCEPTIONS: The following passengers will not be entitled to compensations; <ol style="list-style-type: none"> (a) Passengers travelling to EU who have received benefits or compensation in a third country. (b) Passengers travelling between two airports outside the EU unless the sector is part of a flight (same flight number) that originated in the EU. (c) Passengers without confirmed reservation. (d) Passengers who have not presented themselves for check-in on time (e) Passengers on free or reduced fares not directly or indirectly available to the public, e.g. ID and AD tickets (5) The passenger is accommodated on the flight for which he/she hold's confirmed reservations, but is seated in a compartment of the aircraft other than that reserved, provided that when the passenger is accommodated in a class of service for which a lower fare is charged, the passenger will be entitled to the appropriate refund. <p>(B) PASSENGER RIGHTS</p> <ol style="list-style-type: none"> (1) Denied Boarding Volunteers Volunteers have the right of mutually agreed benefits plus the right to choose between reimbursement and rerouting with the following options: <ol style="list-style-type: none"> (a) Reimbursement within 7 days of coupons not used or (b) Rerouting to final destination at the earliest opportunity under comparable transport conditions or (c) Rerouting to final destination at a later date according to passenger's convenience but subject to availability of space. Volunteers are not entitled to care, such as phone calls, foods, accommodation etc. (2) Involuntary Denied Boarding In case of Involuntary Denied Boarding the passengers are entitled to the following: <ol style="list-style-type: none"> (a) Right to compensation according to paragraph (C) and (b) Right to choose between reimbursement/rerouting with the same options as mentioned under (A)(1) above and (c) Right to care including <ul style="list-style-type: none"> - Meals and refreshments, reasonably related to the waiting time - 2 telephone calls or telex, e-mails, fax - if necessary, hotel accommodation plus transfer between airport and hotel (3) Amount of Compensation Payable <ol style="list-style-type: none"> (a) The amount of compensation depends on the distance of the scheduled flight or the alternative flight proposed. Compensation Amounts in EUR/CAD: Flight KM between And Amount in <table border="0" style="margin-left: 20px;"> <tr> <td></td> <td>EUR</td> <td>CAD</td> </tr> <tr> <td>0-1500</td> <td>250</td> <td>400</td> </tr> <tr> <td>1500-3500</td> <td>400</td> <td>645</td> </tr> <tr> <td>Intra EU flights of more than 1500</td> <td>400</td> <td>645</td> </tr> <tr> <td>greater than 3500</td> <td>600</td> <td>965</td> </tr> </table> 		EUR	CAD	0-1500	250	400	1500-3500	400	645	Intra EU flights of more than 1500	400	645	greater than 3500	600	965
	EUR	CAD														
0-1500	250	400														
1500-3500	400	645														
Intra EU flights of more than 1500	400	645														
greater than 3500	600	965														

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For unexplained abbreviations, reference marks and symbols see Pages 21 through 29.

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(Except as Noted)

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RULE

SECTION I - GENERAL RULES

C87

+(C) **PART II DENIED BOARDING COMPENSATION** (Continued)

(B) **PASSENGER RIGHTS** (Continued)

(3) **Amount of Compensation Payable** (Continued)

(b) If an alternative flight is offered and the new scheduled arrival time does not exceed 2 hours versus the originally planned, the compensation amounts shown under (1) above can be reduced by 50 percent:

Flight KM between And	Amount in	
	EUR	CAD
0-1500	125	200
1500-3500	200	320
Intra EU flights of more than 1500	200	320
greater than 3500	300	485

(c) In lieu of cash payment of the amount mentioned in (B)(1) and (B)(2) the passenger may choose compensation in the form of a voucher valid for further travel on the services of Air France, then the compensation amount will be 150 percent of the amount mentioned in (B)(1) and (B)(2). Following conditions shall apply to such vouchers:

- validity is 1 year from the date of issue
- if, after one year the voucher has not been used, it will be refunded but only at the cash values as applicable in (B)(1) and (B)(2).
- lost vouchers will not be replaced
- a ticket may only be issued in exchange for the voucher in the same name as that on the voucher
- if the value of a desired ticket exceeds the value of the voucher, the passenger shall pay the applicable difference
- if the value of the voucher exceeds the value of a desired ticket, the difference will not be refunded.

(4) **Cancellation of Flights**

(a) In case of cancellation of a flight the passengers will be entitled to the following:

- (1) Right to compensation according to paragraph (C) and
- (2) Right to choose between reimbursement/rerouting with the same options as mentioned under (A)(1) above and
- (3) Right to care including
 - Meals and refreshments, reasonably related to the waiting time
 - 2 telephone calls or telex, e-mails, fax
 - If necessary, hotel accommodation plus transfer between airport and hotel

(b) **Amount of Compensation Payable**

(1) The amount of compensation depends on the distance of the scheduled flight or the alternative flight proposed.

Compensation Amounts in EUR/CAD:

Flight KM between And	Amount in	
	EUR	CAD
0-1500	250	400
1500-3500	400	645
Intra EU flights of more than 1500	400	645
greater than 3500	600	965

(2) If an alternative flight is offered and the new scheduled arrival time does not exceed 2 hours versus the originally planned, the compensation amounts shown under (1) above can be reduced by 50 percent:

Flight KM between And	Amount in	
	EUR	CAD
0-1500	125	200
1500-3500	200	320
Intra EU flights of more than 1500	200	320
greater than 3500	300	485

(Continued on next page)

For unexplained abbreviations, reference marks and symbols see Pages 21 through 29.

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RULE	SECTION I - GENERAL RULES
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C87	<p>+ [C] <u>PART II DENIED BOARDING COMPENSATION</u> (Continued)</p> <p>(B) <u>PASSENGER RIGHTS</u> (Continued)</p> <p>(4) <u>Cancellation of Flights</u> (Continued)</p> <p>(b) <u>Amount of Compensation Payable</u> (Continued)</p> <p>(3) In lieu of cash payment of the amount mentioned in (B)(1) and (B)(2) the passenger may choose compensation in the form of a voucher valid for further travel on the services of Air France, then the compensation amount will be 150 percent of the amount mentioned in (B)(1) and (B)(2). Following conditions shall apply to such vouchers:</p> <ul style="list-style-type: none"> - validity is 1 year from the date of issue - if, after one year the voucher has not been used, it will be refunded but only at the cash values as applicable in (B)(1) and (B)(2). - lost vouchers will not be replaced - a ticket may only be issued in exchange for the voucher in the same name as that on the voucher - if the value of a desired ticket exceeds the value of the voucher, the passenger shall pay the applicable difference - if the value of the voucher exceeds the value of a desired ticket, the difference will not be refunded. <p>(C) <u>LONG DELAY</u></p> <p>This rule is only applicable when a flight is delayed at departure, not when a flight leaves on time and is subsequently delayed. A long delay is considered a flight that is delayed according to the following parameters:</p> <table style="width:100%; border: none;"> <tr> <td style="width:50%;">Trips less than 1,500 KM</td> <td style="width:50%;">More than 2 hours</td> </tr> <tr> <td>Trips between 1,500-3,500 KM and all intra EU flights in excess of 1,500 KM</td> <td>More than 3 hours</td> </tr> <tr> <td>Trips more than 3,500 KM (non intra EU)</td> <td>More than 4 hours</td> </tr> </table> <p>In this case the passengers are entitled to the following</p> <p>(1) Right to care provided this does not result in a further delay of the flight including</p> <ul style="list-style-type: none"> - Meals and refreshments, reasonably related to the waiting time - 2 telephone calls or telex, e-mails, fax - If necessary, hotel accommodation plus transfer between airport and hotel; in case the flight is delayed until the next day hotel accommodation and transfer are mandatory. <p>(2) If flight is delayed more than 5 hours right to be reimbursed within 7 days:</p> <p>(a) Outbound passenger: Cost of ticket</p> <p>(b) Inbound passenger: Cost of Non-used coupon</p> <p>(c) Transit Passenger: Cost of Non-used coupon, if the flight no longer serves any purpose; also cost of the tickets for parts of the journey already made and if relevant return flight to the first point of departure</p> <p>(d) For package tour passengers the value of reimbursement will have to be assigned to unused flight coupon(s)</p> <p>(3) <u>Downgrading of Passengers</u></p> <p>In case of involuntary downgrading to a lower class of service passengers will be entitled to the following reimbursement within 7 days</p> <p>(a) 30 percent of the ticket price for trips less than 1,500 KM</p> <p>(b) 50 percent of the ticket price for trips between 1,500 and 3,500 KM and all intra EU flights in excess of 1,500 KM</p> <p>(c) 75 percent of the ticket price for all other trips more than 3,500 KM</p> <p><u>NOTES:</u> In all cases the relevant distance is understood to be the sector on which the passenger is downgraded. The ticket price is understood to be the one-way coupon value for the sector on which the passenger is downgraded.</p>	Trips less than 1,500 KM	More than 2 hours	Trips between 1,500-3,500 KM and all intra EU flights in excess of 1,500 KM	More than 3 hours	Trips more than 3,500 KM (non intra EU)	More than 4 hours
Trips less than 1,500 KM	More than 2 hours						
Trips between 1,500-3,500 KM and all intra EU flights in excess of 1,500 KM	More than 3 hours						
Trips more than 3,500 KM (non intra EU)	More than 4 hours						

(Continued on next page)

For unexplained abbreviations, reference marks and symbols see Pages 21 through 29.

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RULE	SECTION I - GENERAL RULES
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87 PART II DENIED BOARDING COMPENSATION (Continued)

(D) BOARDING PRIORITY

- (1) Crew Members positioning in preparation for a flight and ground personnel needed for emergency repairs on an aircraft grounded at a station.
- (2) Transit passengers continuing on the same flight
- (3) Unaccompanied children (under +[15 years of age)
- (4) Stretcher and wheelchair cases
- (5) Hardship cases as determined by the manager on duty
- (6) Transit passengers continuing on the same flight
- (7) Connecting passengers
- (8) Passengers holding confirmed reservations will be boarded before any passengers not holding confirmed reservations or any who are not entitled to confirmed reservations.
- (9) Passengers holding confirmed reservations and a valid ticket for the flight
- (10) Local passengers in the order their boarding card has been issued excluding passengers who volunteered for denied boarding.
- (11) Passengers having volunteered for denied boarding compensation in the order they volunteered.

(E) DEFINITIONS

For the purpose of this rule, except as otherwise specifically provided herein:
the following definitions shall apply:

Airport means the airport at which the direct or connecting flight, on which the passenger holds confirmed reserved space, is planned to arrive or some other airport serving the same metropolitan area, provided that transportation to the other airport is accepted (i.e. used) by the passenger.

Alternate Transportation is air transportation provided by a carrier or other transportation used by the passenger which, at the time the arrangement are made, will provided for arrival at the passenger's destinations or next point of stopover, within four hours of his originally scheduled arrival time.

Carrier means an carrier, except a helicopter operator, holding a commercial air service licence authorizing the transportation of persons.

Comparable Air Transportation is provided by air carrier to the passengers at no extra cost.

Confirmed Space (reservation) is that which applies to a specific AF flight, date and fare type as requested by the passenger and which is verified in AF reservations system and is so noted on the ticket.

Cancellation means the non-operation of a flight which was previously planned and on which at least one place was reserved.

Ticket means a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued or authorized by the air carrier or its authorized agents.

Stopover is a deliberate interruption of a journey requested by the passenger which is scheduled to exceed four hours at a place between the points of origin and destination.

Oversold is that condition which is the result of there being more passengers with confirmed reservations and tickets that there are seats available on a flight.

Volunteer means a person who responds to carrier's request for volunteers and who willingly accepts carrier's offer or compensation, in any amount, in exchange for relinquishing his confirmed reserved space. Any other passenger denied boarding is considered, for the purposes of this rule, to have been denied boarding involuntarily, even if he accepts denied boarding compensation.

For unexplained abbreviations, reference marks and symbols see IPGT1-1, C.A.B. NO. 581, NTA(A) NO. 373.

ISSUED: May 5, 2010

EFFECTIVE: June 19, 2010

(Except as Noted)

+ - Effective May 6, 2010 and issued on not less than one (1) day's notice under NTA(A) Special Permission No. 56067.

CREDIT FOR FUTURE TRANSPORTATION ON LH IN LIEU OF MONETARY COMPENSATION. THE AMOUNT OF THE TRANSPORTATION CREDIT OFFERED SHALL BE EQUAL TO OR GREATER THAN THE MONETARY COMPENSATION DUE THE PASSENGER. THE CREDIT VOUCHER SHALL BE VALID FOR TRAVEL ON LH ONLY WITHIN 365 DAYS FROM THE DATE OF ISSUE, AND SHALL BE NON-REFUNDABLE AND NON-TRANSFERABLE.

(E) METHOD OF PAYMENT

THE AIRLINE WILL GIVE TO EACH PASSENGER, WHO QUALIFIES FOR DENIED BOARDING COMPENSATION, A PAYMENT BY CHECK, OR CASH, OR MCO, OR VOUCHER FOR THE AMOUNT SPECIFIED, ON THE DAY AND PLACE THE INVOLUNTARY DENIED BOARDING OCCURS. HOWEVER, IF THE AIRLINE ARRANGES ALTERNATE TRANSPORTATION FOR THE PASSENGER'S CONVENIENCE THAT DEPARTS BEFORE THE PAYMENT CAN BE MADE, THE PAYMENT WILL BE SENT TO THE PASSENGER WITHIN 24 HOURS. THE AIR CARRIER MAY OFFER FREE TICKETS IN PLACE OF THE CASH PAYMENT. THE PASSENGER, MAY, HOWEVER, INSIST ON THE CASH PAYMENT, OR REFUSE ALL COMPENSATION AND BRING PRIVATE LEGAL ACTION.

(F) PASSENGER'S OPTIONS

ACCEPTANCE OF THE COMPENSATION (BY ENDORSING THE CHECK OR DRAFT WITHIN 30 DAYS) RELIEVES THE CARRIER FROM ANY FURTHER LIABILITY TO THE PASSENGER CAUSED BY ITS FAILURE TO HONOR THE CONFIRMED RESERVATIONS. HOWEVER, THE PASSENGER MAY DECLINE THE PAYMENT AND SEEK TO RECOVER DAMAGES IN A COURT OF LAW OR IN SOME OTHER MANNER.

DENIED BOARDING COMPENSATION
APPLICABLE ONLY TO FLIGHTS OR PORTIONS OF FLIGHTS
ORIGINATING AND/OR TERMINATING IN CANADA

(A) APPLICABILITY

THE FOLLOWING RULES SHALL APPLY:

- (1) IN RESPECT OF FLIGHTS DEPARTING FROM AN AIRPORT IN THE EUROPEAN UNION (EU) AND FLIGHTS DEPARTING FROM AN AIRPORT IN A THIRD COUNTRY BOUND TO AN AIRPORT IN THE EU UNLESS PASSENGER RECEIVED BENEFITS OR COMPENSATION AND WERE GIVEN ASSISTANCE IN THAT THIRD COUNTRY;
- (2) ON CONDITION THAT PASSENGERS HAVE A CONFIRMED RESERVATION ON THE FLIGHT CONCERNED AND PRESENTS HIMSELF/HERSELF FOR CHECK-IN AT THE TIME INDICATED IN ADVANCE AND IN WRITING OR ELECTRONICALLY; OR; IF NO TIME IS INDICATED; NOT LATER THAN 60 MINUTES BEFORE THE PUBLISHED DEPARTURE TIME;
- (3) ONLY TO THE PASSENGER TRAVELING WITH A VALID TICKET INCLUDING TICKETS ISSUED UNDER A FREQUENT FLYER OR OTHER COMMERCIAL PROGRAMME WITH CONFIRMED

**Exhibit "J" to the complaint
of Dr. Gábor Lukács**

January 30, 2013
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AREA: ZZ TARIFF: IPRG CXR: LH RULE: 0089

TITLE/APPLICATION - 70 (CONT)

RESERVATIONS AND

- (A) PRESENTS HIMSELF AT THE APPROPRIATE PLACE AND HAS OBSERVED PUBLISHED MINIMUM CHECK-IN TIMES
 - (B) HAS COMPLIED WITH LUFTHANSA'S TICKETING AND RECONFIRMATION PROCEDURES
 - (C) IS ACCEPTABLE FOR TRANSPORTATION UNDER THE CARRIER'S TARIFF AND THE FLIGHT FOR WHICH THE PASSENGER HOLDS CONFIRMED RESERVATIONS IS UNABLE TO ACCOMMODATE THE PASSENGER AND DEPARTS WITHOUT HIM/HER
- (4) WHERE LH IS THE OPERATING CARRIER OF THE FLIGHT EXCEPTIONS:
THE FOLLOWING PASSENGERS WILL NOT BE ENTITLED TO COMPENSATION:
- (A) PASSENGERS TRAVELLING TO EU WHO HAVE RECEIVED BENEFITS OR COMPENSATION IN A THIRD COUNTRY
 - (B) PASSENGERS TRAVELLING BETWEEN TWO AIRPORTS OUTSIDE THE EU UNLESS THE SECTOR IS PART OF A FLIGHT (SAME FLIGHT NUMBER) THAT ORIGINATED IN THE EU
 - (C) PASSENGERS WITHOUT CONFIRMED RESERVATIONS
 - (D) PASSENGERS WHO HAVE NOT PRESENTED THEMSELVES FOR CHECK-IN ON TIME
 - (E) PASSENGERS ON FREE OR REDUCED FARES NOT DIRECTLY OR INDIRECTLY AVAILABLE TO THE PUBLIC, E.G. ID AND AD TICKETS
- (5) THE PASSENGER IS ACCOMMODATED ON THE FLIGHT FOR WHICH HE/SHE HOLD'S CONFIRMED RESERVATIONS, BUT IS SEATED IN A COMPARTMENT OF THE AIRCRAFT OTHER THAN THAT RESERVED, PROVIDED THAT WHEN THE PASSENGER IS ACCOMMODATED IN A CLASS OF SERVICE FOR WHICH A LOWER FARE IS CHARGED, THE PASSENGER WILL BE ENTITLED TO THE APPROPRIATE REFUND.
- (B) PASSENGER RIGHTS
- (1) DENIED BOARDING
VOLUNTEERS
VOLUNTEERS HAVE THE RIGHT OF MUTUALLY AGREED BENEFITS PLUS THE RIGHT TO CHOOSE BETWEEN REIMBURSEMENT AND REROUTING WITH THE FOLLOWING OPTIONS:
 - (A) REIMBURSEMENT WITHIN 7 DAYS OF COUPONS NOT USED OR
 - (B) REROUTING TO FINAL DESTINATION AT THE EARLIEST OPPORTUNITY UNDER COMPARABLE TRANSPORT CONDITIONS OR
 - (C) REROUTING TO FINAL DESTINATION AT A LATER DATE ACCORDING TO PASSENGER'S CONVENIENCE BUT SUBJECT TO AVAILABILITY OF SPACE. VOLUNTEERS ARE NOT ENTITLED TO CARE, SUCH AS PHONE CALLS, FOOD, ACCOMMODATION ETC.
 - (2) INVOLUNTARY DENIED BOARDING
IN CASE OF INVOLUNTARY DENIED BOARDING THE PASSENGERS ARE ENTITLED TO THE FOLLOWING:

- (A) RIGHT TO COMPENSATION ACCORDING TO PARAGRAOH (C) AND
- (B) RIGHT TO CHOOSE BETWEEN REIMBURSEMENT/REROUTING WITH THE SAME OPTIONS AS MENTIONED UNDER (A) (1) ABOVE AND
- (C) RIGHT TO CARE INCLUDING
- MEALS AND REFRESHMENTS, REASONABLY RELATED TO THE WAITING TIME
 - 2 TELEPHONE CALLS OR TELEX, E-MAILS, FAX
 - IF NECESSARY, HOTEL ACCOMODATION PLUS TRANSFER BETWEEN AIRPORT AND HOTEL
- (3) AMOUNT OF COMPENSATION PAYABLE
- (A) THE AMOUNT OF COMPENSATION DEPENDS ON THE DISTANCE OF THE SCHEDULED FLIGHT OR THE ALTERNATIVE FLIGHT PROPOSED.
- COMPENSATION AMOUNTS IN EUR/CAD:
- | FLIGHT KM BETWEEN AND | AMOUNT IN | |
|-----------------------|-----------|-----|
| EUR | CAD | |
| 0-1500 | 250 | 400 |
| 1500 - 3500 | 400 | 645 |
| INTRA EU FLIGHTS OF | | |
| MORE THAN 1500 | 400 | 645 |
| GREATER THAN 3500 | 600 | 965 |
- (B) IF AN ALTERNATIVE FLIGHT IS OFFERED AND THE NEW SCHEDULED ARRIVAL TIME DOES NOT EXCEED 2 HOURS VERSUS THE ORIGINALLY PLANNED, THE COMPENSATION AMOUNTS SHOWN UNDER (1) ABOVE CAN BE REDUCED BY 50 PERCENT:
- | FLIGHT KM BETWEEN AND | AMOUNT IN | |
|-----------------------|-----------|-----|
| EUR | CAD | |
| 0-1500 | 125 | 200 |
| 1500-3500 | 200 | 320 |
| INTRA EU FLIGHTS OF | | |
| MORE THAN 1500 | 200 | 320 |
| GREATER THAN 3500 | 300 | 485 |
- (C) IN LIEU OF CASH PAYMENT OF THE AMOUNTS MENTIONED IN (B) (1) AND (B) (2) THE PASSENGER MAY CHOOSE COMPENSATION IN THE FORM OF A VOUCHER VALID FOR FURTHER TRAVEL ON THE SERVICES OF LUFTHANSA, THEN THE COMPENSATION AMOUNT WILL BE 150 PERCENT OF THE AMOUNT MENTIONED IN (B) (1) AND (B) (2). FOLLOWING CONDITIONS SHALL APPLY TO SUCH VOUCHERS:
- VALIDITY IS 1 YEAR FROM THE DATE OF ISSUE
 - IF, AFTER ONE YEAR THE VOUCHER HAS NOT BEEN USED, IT WILL BE REFUNDED BUT ONLY AT THE CASH VALUES AS APPLICABLE IN (B) (1) AND (B) (2).
 - LOST VOUCHERS WILL NOT BE REPLACED
 - A TICKET MAY ONLY BE ISSUED IN EXCHANGE FOR THE VOUCHER IN THE SAME NAME AS THAT ON THE VOUCHER
 - IF THE VALUE OF A DESIRED TICKET EXCEEDS THE VALUE OF THE VOUCHER, THE PASSENGER SHALL PAY THE APPLICABLE DIFFERENCE
 - IF THE VALUE OF THE VOUCHER EXCEEDS THE VALUE OF A DESIRED TICKET, THE DIFFERENCE WILL NOT

BE REFUNDED.

(4) CANCELLATION OF FLIGHTS

(A) IN CASE OF CANCELLATION OF A FLIGHT THE PASSENGERS WILL BE ENTITLED TO THE FOLLOWING:

- (1) RIGHT TO COMPENSATION ACCORDING TO PARAGRAPH (C) AND
- (2) RIGHT TO CHOOSE BETWEEN REIMBURSEMENT/REROUTING WITH THE SAME OPTIONS AS MENTIONED UNDER (A) (1) ABOVE AND
- (3) RIGHT TO CARE INCLUDING
 - MEALS AND REFRESHMENTS, REASONABLY RELATED TO THE WAITING TIME
 - 2 TELEPHONE CALLS OR TELEX, E-MAILS, FAX
 - IF NECESSARY, HOTEL ACCOMODATION PLUS TRANSFER BETWEEN AIRPORT AND HOTEL

(B) AMOUNT OF COMPENSATION PAYABLE

- (1) THE AMOUNT OF COMPENSATION DEPENDS ON THE DISTANCE OF THE SCHEDULED FLIGHT OR THE ALTERNATIVE FLIGHT PROPOSED.

COMPENSATION AMOUNTS IN EUR/CAD:

FLIGHT KM BETWEEN AND	AMOUNT IN	
	EUR	CAD
0-1500	250	400
1500 - 3500	400	645
INTRA EU FLIGHTS OF MORE THAN 1500	400	645
GREATER THAN 3500	600	965

- (2) IF AN ALTERNATIVE FLIGHT IS OFFERED AND THE NEW SCHEDULED ARRIVAL TIME DOES NOT EXCEED 2 HOURS VERSUS THE ORIGINALLY PLANNED, THE COMPENSATION AMOUNTS SHOWN UNDER (1) ABOVE CAN BE REDUCED BY 50 PERCENT:

FLIGHT KM BETWEEN AND	AMOUNT IN	
	EUR	CAD
0-1500	125	200
1500-3500	200	320
INTRA EU FLIGHTS OF MORE THAN 1500	200	320
GREATER THAN 3500	300	485

- (3) IN LIEU OF CASH PAYMENT OF THE AMOUNTS MENTIONED IN (B) (1) AND (B) (2) THE PASSENGER MAY CHOOSE COMPENSATION IN THE FORM OF A VOUCHER VALID FOR FURTHER TRAVEL ON THE SERVICES OF LUFTHANSA, THEN THE COMPENSATION AMOUNT WILL BE 150 PERCENT OF THE AMOUNT MENTIONED IN (B) (1) AND (B) (2). FOLLOWING CONDITIONS SHALL APPLY TO SUCH VOUCHERS:

- VALIDITY IS 1 YEAR FROM THE DATE OF ISSUE
- IF, AFTER ONE YEAR THE VOUCHER HAS NOT BEEN USED, IT WILL BE REFUNDED BUT ONLY AT THE CASH VALUES AS APPLICABLE IN (B) (1) AND (B) (2).
- LOST VOUCHERS WILL NOT BE REPLACED
- A TICKET MAY ONLY BE ISSUED IN EXCHANGE FOR THE VOUCHER IN THE SAME NAME AS THAT ON THE VOUCHER
- IF THE VALUE OF A DESIRED TICKET EXCEEDS THE VALUE OF THE VOUCHER, THE PASSENGER SHALL PAY

THE APPLICABLE DIFFERENCE

- IF THE VALUE OF THE VOUCHER EXCEEDS THE VALUE OF A DESIRED TICKET, THE DIFFERENCE WILL NOT BE REFUNDED.

(C) LONG DELAY

THIS RULE IS ONLY APPLICABLE WHEN A FLIGHT IS DELAYED AT DEPARTURE, NOT WHEN A FLIGHT LEAVES ON TIME AND IS SUBSEQUENTLY DELAYED. A LONG DELAY IS CONSIDERED A FLIGHT THAT IS DELAYED ACCORDING TO THE FOLLOWING PARAMETERS:

TRIPS LESS THAN 1,500 KM MORE THAN 2 HOURS

TRIPS BETWEEN 1,500-3,500 KM & ALL INTRA EU FLIGHTS IN EXCESS OF 1,500 KM MORE THAN 3 HOURS

TRIPS MORE THAN 3,500 KM (NON INTRA EU) MORE THAN 4 HOURS

IN THIS CASE THE PASSENGERS ARE ENTITLED TO THE FOLLOWING

- (1) RIGHT TO CARE PROVIDED THIS DOES NOT RESULT IN A FURTHER DELAY OF THE FLIGHT INCLUDING
 - MEALS AND REFRESHMENTS, REASONABLY RELATED TO THE WAITING TIME
 - 2 TELEPHONE CALLS OR TELEX, E-MAILS, FAX
 - IF NECESSARY, HOTEL ACCOMODATION PLUS TRANSFER BETWEEN AIRPORT AND HOTEL; IN CASE THE FLIGHT IS DELAYED UNTIL THE NEXT DAY HOTEL ACCOMMODATION AND TRANSFER ARE MANDATORY.
- (2) IF FLIGHT IS DELAYED MORE THAN 5 HOURS RIGHT TO BE REIMBURSED WITHIN 7 DAYS:
 - (A) OUTBOUND PASSENGER: COST OF TICKET
 - (B) INBOUND PASSENGER: COST OF NON-USED COUPON
 - (C) TRANSIT PASSENGER: COST OF NON-USED COUPON, IF THE FLIGHT NO LONGER SERVES ANY PURPOSE; ALSO COST OF THE TICKETS FOR PARTS OF THE JOURNEY ALREADY MADE AND IF RELEVANT RETURN FLIGHT TO THE FIRST POINT OF DEPARTURE
 - (D) FOR PACKAGE TOUR PASSENGERS THE VALUE OF REIMBURSEMENT WILL HAVE TO BE ASSIGNED TO UNUSED FLIGHT COUPON(S)
- (3) DOWNGRADING OF PASSENGERS
IN CASE OF INVOLUNTARY DOWNGRADING TO A LOWER CLASS OF SERVICE PASSENGERS WILL BE ENTITLED TO THE FOLLOWING REIMBURSEMENT WITHIN 7 DAYS
 - (A) 30 PERCENT OF THE TICKET PRICE FOR TRIPS LESS THAN 1,500 KM
 - (B) 50 PERCENT OF THE TICKET PRICE FOR TRIPS BETWEEN 1,500 AND 3,500 KM & ALL INTRA EU FLIGHTS IN EXCESS OF 1,500 KM
 - (C) 75 PERCENT OF THE TICKET PRICE FOR ALL OTHER TRIPS MORE THAN 3,500 KM

NOTE:

IN ALL CASES THE RELEVANT DISTANCE IS UNDERSTOOD TO BE THE SECTOR ON WHICH THE PASSENGER IS DOWNGRADED. THE TICKET PRICE IS UNDERSTOOD TO BE THE ONEWAY COUPON VALUE FOR THE SECTOR ON WHICH THE PASSENGER IS

- DOWNGRADED.
- (D) BOARDING PRIORITY
PASSENGERS HOLDING CONFIRMED RESERVATIONS WILL BE
BOARDED BEFORE:
(1) ANY PASSENGERS NOT HOLDING CONFIRMED RESERVATIONS.
(2) ANY WHO ARE NOT ENTITLED TO CONFIRMED
RESERVATIONS.
- PASSENGERS HOLDING CONFIRMED RESERVATIONS AND A VALID
TICKET FOR THE FLIGHT IN QUESTION WILL BE BOARDED IN
THE SEQUENCE IN WHICH THEY HAVE PRESENTED THEMSELVES
FOR CHECK-IN.
- EXCEPTIONS:
THE FOLLOWING PASSENGERS CANNOT BE LEFT BEHIND:
- LUFTHANSA CREW MEMBERS TRAVELLING WITH CONFIRMED
RESERVATIONS
- LUFTHANSA EMPLOYEES ON DUTY TRAVEL HOLDING CONFIRMED
RESERVATIONS
- SICK AND/OR HANDICAPPED PASSENGERS
- UNACCOMPANIED CHILDREN (12 YEARS AND UNDER)
- HEADS OF STATE AND OTHER LEADING STATESMEN, OFFICIAL
GOVERNMENT DELEGATIONS, DIPLOMATIC COURIERS
- HARDSHIP CASES AS DETERMINED BY THE MANAGER ON DUTY

AREA: ZZ TARIFF: IPRG CXR: LH RULE: 0090

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REFUNDS

(A) GENERAL

- (1) IN CASE OF REFUND, WHETHER DUE TO FAILURE OF
CARRIER TO PROVIDE THE ACCOMMODATION CALLED FOR BY
THE TICKET, OR TO VOLUNTARY CHANGE OF ARRANGEMENTS
BY THE PASSENGER, THE CONDITIONS AND AMOUNT OF
REFUND WILL BE GOVERNED BY CARRIER'S TARIFFS.
- (2) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (F) OF
THIS RULE, REFUND BY CARRIER FOR AN UNUSED TICKET
OR PORTION THEREOF OR MISCELLANEOUS CHARGES ORDER
WILL BE MADE TO THE PERSON NAMED AS THE PASSENGER
IN SUCH TICKET OR MISCELLANEOUS CHARGES ORDER
UNLESS AT THE TIME OF PURCHASE THE PURCHASER
DESIGNATES ON THE TICKET OR MISCELLANEOUS CHARGES
ORDER ANOTHER PERSON TO WHOM REFUND SHALL BE MADE
IN WHICH EVENT REFUND WILL BE MADE TO PERSONS SO
DESIGNATED, AND ONLY UPON DELIVERY OF THE
PASSENGER COUPON AND ALL UNUSED FLIGHT COUPONS OF
THE TICKET OF MISCELLANEOUS CHARGES ORDER. A
REFUND MADE IN ACCORDANCE WITH THIS PROCEDURE TO A
PERSON REPRESENTING HIM AS THE PERSON NAMED OR
DESIGNATED IN THE TICKET OR MISCELLANEOUS CHARGES
ORDER WILL BE CONSIDERED A VALID REFUND AND
CARRIER WILL NOT BE LIABLE TO THE TRUE PASSENGER
FOR ANOTHER REFUND.

EXCEPTION 1: REFUND IN ACCORDANCE WITH PARAGRAPH
(E) BELOW OF TICKETS FOR
TRANSPORTATION WHICH HAVE BEEN
ISSUED AGAINST A CREDIT CARD WILL