



IATA Legal Symposium

Update on Consumer Protection and Airline Passenger Issues

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Panelists

- Maria da Cunha, General Counsel, **BRITISH AIRWAYS, PLC** (London)
- Laura Pierallini, Partner, **STUDIO LEGALE PIERALLINI E ASSOCIATI** (Rome)
- Carlos Martins, Partner, **BERSENAS JACOBSEN CHOUEST THOMSON BLACKBURN LLP** (Toronto)
- Claude Thibeault, M.D., Medical Advisor, **IATA**
- Roy Goldberg, Partner, **SHEPPARD MULLIN RICHTER & HAMPTON LLP** (Washington, D.C.) (Moderator)



Update on the United Kingdom/E.U. Maria da Cunha



EU Activism in the consumer protection arena will continue

- Expect to see strong focus on this issue over the next four years from all EU institutions
- Commissioner has strong track record as consumer champion (roaming charges)
- European Parliament is targeting airline practices
- ECJ is acting as legislator to fill perceived gaps in the law

Recent developments and current initiatives

- Denied boarding compensation
 - Revision of Regulation 261/2004
 - ECJ decision in **Sturgeon**
- Passengers with reduced mobility (Regulation 1107/2006)
- Baggage liability and groundhandling (Regulations 889/2002 and 96/97)
- Airline Bankruptcy protection
- Package Travel Directive revision
- Compliance with EU law on airline websites, online reservation and check-in
- Body scanners



Update on Italy/E.U. Laura Pierallini



- Italian Authorities' competences on passengers and consumers protection, namely: (i) Italian Civil Aviation Authority - ENAC (supervising air carriers, applying fines); (ii) Italian Antitrust Authority – "*Autorità Garante della Concorrenza e del Mercato*" (preventing unfair commercial practices and advertising, applying fines); (iii) Administrative Courts (having jurisdiction upon ENAC's and Antitrust's decisions); (iv) Civil Courts and Judges (having jurisdiction upon passengers' claims).

- Italian experience on passengers' claims: (i) heavy burden of proof for air carriers; (ii) attitude of the judges to admit indemnification of the so called "moral damages"; (iii) competence of the courts of passengers' residence or domicile.

- Impact of the recent judgement of the European Court of Justice on 19 November 2009: (i) practical effect of the ECJ judgement on the Italian experience; (ii) measures taken by the Italian air carriers.



Update on Canada Carlos Martins

- Posting Tariffs on Website
- Compensation for Flight Delays/
Cancellations to/from EU
- Accommodation of Passengers with
Allergies
- Passenger Bill of Rights



Update on the United States Roy Goldberg

- New DOT rule on lengthy airport tarmac delays and various airline consumer “rights” (74 F.R. 68,983) (Dec. 30, 2009)
 - Effective April 29, 2010
 - Applies only to U.S. airlines (so far)
 - Requires airlines to adopt and publicize
 - Contingency Plan for Lengthy Tarmac Delays
 - Customer Service Plan
 - Prohibits tarmac delays in excess of 3 hours for domestic flights
 - Requires airlines to set and abide by time limits for tarmac delays for international flights
 - Food and water required for tarmac delays more than 2 hours
 - Habitually tardy flights constitute a deceptive trade practice
 - DOT to enforce new rules with steep fines



U.S. Update Continued

- Tarmac-delay contingency plans and customer service plans must be published on airline website but do not need to be incorporated in airline “contract of carriage”
- Exclusion of consumer protections from “contract of carriage” can be important in preventing consumer lawsuits (or at least in defending against them).
- Airline Deregulation Act preempts claims relating to airline price, route or service, but there is exception for breach of contract claims.
- Recent Examples: Hanni v. American Airlines, Sanchez v. Aeromexico/Mexicana and McMullen v. Delta Air Lines.

Cabin Health Issues Claude Thibeault, M.D.

- Medical issues and denied boarding
- Applicable regulations
- Critical definitions
- Communicable disease
- Medical clearance

