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IN THE **SUPREME COURT** OF FLORIDA

CASE NO.: **78,957**

THE WACKENHUT CORPORATION, a Florida corporation, **and** DELTA AIR LINES, INC.,

Petitioners,

vs.

FELICE LIPPERT,

Respondent.

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ON REVIEW FROM THE DISTRICT COURT **OF** APPEAL OF FLORIDA, **FOURTH** DISTRICT, CASES NO. 90-0917 & **90-0932**

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# PETITIONERS' INITIAL BRIEF ON **THE** MERITS

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Bonita L. Kneeland, Esquire
FOWLER, WHITE, GILLEN, **BOGGS, VILLAREAL** & BANKER, P.A.
Attorneys **for The** Wackenhut corporation
**Post** Office Box **1438**
Tampa, Florida **33601**
**(813) 228-7411**
Florida Bar **No.: *607355***

**Shelley H.** Leinicke, Esquire
WICKER, SMITH, BLOMQVIST, TUTAN, O'HARA, McCOY, GRAHAM & **LANE**
**Attorneys for** Delta Air **Lines,** Inc.
Post Office **Box 14460**
Fort Lauderdale, **Florida 33302**
**(305) 467-6405**
**Florida Bar No.: 230170**

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## STATEMENT OF THE CASE

Felice Lippert claimed that she lost a Louis Vuitton handbag containing approximately $431,000 in mostly uninsured jewelry in the x-ray scanner at Palm Beach International Airport.[1] (R. 1562-1564)[2] Mrs. Lippert and her husband held tickets on a Delta Airlines flight to New York and had to pass through a security checkpoint **before** going to the gate.

**Mrs.** Lippert's complaint alleged that her property disappeared after going through the x-ray scanner while in the custody of Wackenhut Corp., a security company. Wackenhut, she claimed, **was** acting as an agent of Delta Airlines **"for** the purpose of check carry on baggage, security and passengers boarding Delta Airline flights from the terminal..." (R. 1562-1564)

Mrs. Lippert claimed that she placed her bag with its valuables on the conveyor belt for the x-ray, then proceeded through the magnetometer, (R. **648)** Mrs. Lippert set off the alarm and had to go through the magnetometer a second time. (R. 78, 649) Her husband had the same experience when he followed her through

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[1] Albert Lippert, who was not the actual owner of the jewelry was dropped from the lawsuit. The Plaintiff/Appellee/Respondent, Felice Lippert, will be referred to as **"the** Plaintiff," or "Mrs. Lippert." The Defendants/Appellants/Petitioners, Delta Air **Lines,** Inc. and Wackenhut Corporation, will be referred **to** respectively as **"Delta"** and **"Wackenhut"** or collectively as **"the** Defendants."

[2] All references to the record on appeal will be referred to by the capital letter **"R"** followed by the page in the record. All emphasis is added unless noted to be in the original. The symbol **"app."** refers to the attached appendix.

the equipment. (R. 78, 155-156) When Mrs. Lippert walked forward to collect her portable vault of jewelry at the end of the conveyor, it was missing. (R. 97)

After Lippert reported that her jewels and Louis Vuitton bag were missing, both Delta and sheriff department personnel arrived. The restrooms in the area and the plane were checked. (R. 961, 1089) A Delta supervisor called/wired to the destinations of other planes which had left the airport around that time. (R. 1006, 1028) Although Lippert suggest that a thief could have utilized a nearby stairway, there was no evidence that anyone was seen.

Out of all the valuable jewelry allegedly carried in the satchel, only one piece was insured.[3] (R. 755, 2452) Both Mrs. Lippert and her spouse were experienced travelers. Lippert traveled approximately once a month, her husband traveled two to three times a month. (R. 113) She always traveled with her jewelry and had never had a prior problem. (R. 117, 769) Although Mrs. Lippert and her husband knew she was carrying a substantial amount of valuable, uninsured jewelry, neither took any precautions, and did not obtaining excess valuation insurance. (R. 776, 793, 795, 797) Mrs. Lippert never gave this bag to her husband to guard while she went through the metal detector. She never asked her spouse to keep her bag and send it through the

[3] Curiously, only this single, insured piece of jewelry was ever recovered. (R. 19) Mrs. Lippert testified at trial that the police had recovered these earrings which were insured for $75,000 (although altered because the "rare Burma rubies" in the center had been replaced with yellow diamonds) and that they had been returned to her. (R. 661)

scanner after she was free to wait for it on the "sterile" side. (R. 773)

There was no testimony that either Wackenhut or Delta personnel took the jewelry. (R. 239, 471-472, 1090) Indeed, Lippert's expert readily admitted that there was absolutely no indication that any Delta or Wackenhutemployees were involved with this loss. (R. 473) Further, there was no evidence there had ever been any prior baggage theft. (R. 389, 1044) The area of the checkpoint is generally staffed with five Wackenhut guards. (R. 117) At the time of this incident, there were six people on duty: a stair guard and five people at the security checkpoint. (R. 238, 421) The Wackenhut personnel who review the bag scanner rotate off this position every thirty minutes to insure their unbroken attention to the job. (R. 435-436, 585) One sheriff's department deputy was also in the area and was six to eight feet away when the bag was taken. (R. 99, 421-423, 586, 587, 997) The scanning equipment is owned by Delta and is located on property which Delta leases from the airport authority. (R. 227, 1142)

There is no one stationed at the end of the magnetometer to watch who picks up a particular parcel or property. (R. 236, 260, 276) The evidence established that there is no FAA requirement to do this and, in any event, it would be impractical because one cannot see past the scanner machine to determine who placed any given item on the conveyor belt in the first place. (R. 279, 427, 597, 598, 610, 611, 619) The Lipperts did not expect any Delta or Wackenhut employee to be at the end of the conveyor belt. (R. 143)

Similarly, there is no mirror arrangement overhead for passengers to try to keep track of their bags. Again, there is no FAA requirement to do so. (R. 602) Additionally, the testimony established that overhead mirrors would create a hazard by diverting people's attention while walking through the metal detector and therefore would make them more likely to trip or bump into other people. (R. 602)

The FAA conducts both announced and unannounced inspections several times per year. (R. 574, 577, 588) The checkpoint procedures and the scanning equipment always passed these inspections. (R. 576, 589) At the time of this incident in 1986, the scanning equipment was state of the art. The FAA representative at trial, a man with seventeen years' experience, said that Delta's operation of its security checkpoint was as good or better than most carriers. (R. 607) Approximately 2,700 to 2,800 people (R. 1037) go through this checkpoint daily, or 2,966,500per year. (R. 1059, 1060) In the eleven years since the airport opened, more than 32,521,000 people had gone through this checkpoint and there had never been any prior incident of theft of loss. (R. 289, 1044, 1061)

The airline TICKET which Mrs. Lippert had purchased provided:

DELTA AIRLINES' CONDITIONS OF CONTRACT

The following conditions of contract supersede the Conditions of Contract on the reverse side of the Passenger's Coupon and apply on all flight segments via Delta Airlines.

1. Definitions - As used in this contract,

**"ticket"** means this passenger ticket **and** baggage check of which these conditions and notices form part: **"carriage"** is equivalent to **"transportation"**; **"baggage"** means any article or other **property** of passengers which is acceptable for transportation under the conditions of contract stated herein, whether checked in the cargo compartment or carried in the cabin of the aircraft: "Delta ticket office" means a ticket sales location of Delta or the office of one of its appointed Travel Agents: **"tariffs"** mean printed or electronically stored rules and regulations established by Delta governing the acceptance and carriage of Passengers and baggage including applicable fares, rates and charges for such carriage; **"WARSAW CONVENTION"** means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, 12th October 1929, and applicable amendments thereto. (R.2219 and App. p.9).

. . .

7.C. Baggage Claim **Limits** and Procedures

(1) DOMESTIC (including U.S.A.-Puerto Rico) Total liability for each passenger's checked baggage--including liability for provable direct or consequential damages--is limited to $1250.00 in the event of loss, **damage** or **delay**, unless a higher value is declared in advance and additional charges are paid. No action shall be maintained **far** any lass, damage, or delay of checked baggage unless notice is given in writing to the carriers involved within 21 days from the date of the incident and unless the action is commenced within 1 year **from** date of the incident. Delta assumes no responsibility or liability **for** unchecked baggage. Special rules may apply to valuables and to fragile or perishable articles. (R.2223 and **App.** p.10).

. . .

## NOTICE OF BAGGAGE LIABILITY LIMITATIONS

Liability for loss, delay or damage to baggage is limited as follows unless a higher value is declared in advance and additional charges are paid: (1) For most international travel (including domestic portions of

international journeys) to approximately $9.07 per pound ($20.00 per kilo) for checked baggage and $400 per passenger for unchecked baggage; (2) For travel wholly between U.S. points to $1,250 per passenger on most carriers (a few have lower limits). Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier. (R.2207 and App. p.6).

## NOTICE OF INCORPORATED TERMS

Air transportation to be provided between points in the U.S. (including its overseas territories and possessions) is subject to the individual contract terms (including rules, regulations, tariffs and conditions) of the transporting air carriers, which are herein incorporated by reference and made part of the contract of carriage. Foreign air transportation is governed by applicable tariffs on file with the U.S. and other governments. Incorporated terms may include, but are not restricted to:

1. Limits on liability for personal injury or death:

2. Limits on liability for baggage, including fragile or perishable goods and availability of excess valuation coverage;

3. Claims restrictions, including time periods in which passengers must file a claim or bring an action against the air carrier;

4. Rights of the air carrier to change terms of the contract:

5. Rules on reconfirmation of reservations, check-in times, and refusal to carry; and

6. Rights of the air carrier and limits on liability for delay or failure to perform service, including schedule changes, substitution of alternate air carriers or aircraft, and rerouting.

You can obtain additional information on items 1 through 6 above at any U.S. location where the transporting air carrier's tickets are sold.

You have the right to inspect the full text of each transporting air carrier's rules at its airport and city

ticket offices. You also have the right, upon request, to receive free of charge the full text of the applicable terms incorporated by reference from each of the transporting air carriers. Information on ordering the full text of each carrier's terms is available at any U.S. location where the air carrier's tickets are sold. (R.2217-2218 and App. **pp.7-8).**

* * *

Delta's published airline TARIFF states, in pertinent part:

**J) BAGGAGE LIABILITY**

1) a) DL shall be liable for the loss of, damage to, or delay in the delivery of a fare-paying passenger's baggage, or other property (including carry-on baggage, if tendered to DL's in flight personnel for storage during flight or otherwise delivered into the custody of DL). Such liability, if any, for the loss, damage or delay in the delivery of a fare-paying passenger's baggage or other property (whether checked or otherwise delivered into the custody of DL), shall be limited to an amount equal to the value of the property, plus consequential damages, if any, and shall not exceed the maximum limitation of USD 1250.00 for all liability for each fare-paying passenger (unless the passenger elects to pay for higher liability as provided for in paragraph 3) below). The passenger shall not be automatically entitled to USD 1,250.00 but must prove the value of losses or damages. Actual value for reimbursement of all lost or damaged property shall be determined by the documented original purchased price less any applicable depreciation for prior usage. These limitations also shall apply to baggage or personal property accepted by DL for temporary storage at a city or airport ticket office or elsewhere **before** or after the passenger's trip.

EXCEPTION: The above maximum liability shall be waived for an individual claimant where it can be shown that with respect to that claimant DL failed to provide notice of limited liability for baggage.

**NOTE:** Any failure to enforce the maximum limitations of liability at USD **1250.00** shall not be construed as a waiver of the right to limit liability at some higher amount.

b) When the transportation is over the lines of DL and one or more carriers with a limitation of liability of more than USD 1250.00 for each fare-paying passenger and responsibility for loss, damage, or delay in delivery of baggage cannot be determined, the liability limit of USD **1250.00** for each fare-paying passenger will be applied to all carriers.

c) DL shall be liable for fragile and perishable personal property, including baggage, not contained within a suitcase or other container customarily intended for use in the personal transportation of clothing, unless the passenger has executed a document releasing DL from liability from the fragile or perishable nature of a particular item, as provided in paragraph D) above.

2) Exclusions From Liability

e) DL is not responsible for jewelry, cash, camera equipment, or other similar valuable items contained in checked or unchecked baggage, unless ***excess*** valuation has been purchased. These items should be carried by the passenger. **(R.2228-2229** and App. pp.13-14).

Based upon the applicable tariffs and facts of this case, Wackenhut and Delta filed motions for partial summary judgment on the grounds that their liability, if any, was limited to a maximum of **$1,250.** (R. **2105-2158, 2198-2229)** The trial court initially **entered** a partial summary judgment for Wackenhut and Delta finding that the tariff formed a basis for the contract of carriage and had the force and effect of law. (R. **2274-2276)** The trial court **ruled** that Mrs. Lippert had delivered her property into Delta's custody, through its agent Wackenhut, and had thereby invoked the liability

limitation. (R. 2273)

By the time of trial, a new judge was assigned to the case. The trial court, with this second judge presiding, permitted the jury to consider the total amount of damages claimed by Mrs. Lippert and further instructed the jury to apportion the damages between the Defendants. (R. 1333) Throughout the trial, this judge repeatedly remarked that he was bound to enter final judgment in a maximum amount of **$1,250** notwithstanding whatever verdict might be returned. (R. **2454, 286, 498, 1333)** Over Wackenhut and Delta's objection, the jury was instructed that a bailment for mutual benefit was formed. (R. 1295-1303) This led the judge to instruct the jury that the Defendants could be held liable for ordinary negligence rather than requiring a finding of gross negligence. **(R. 1479-1480)**

The jury returned a $431,609 verdict for Mrs. Lippert which found Delta ***65%*** at fault and Wackenhut **35%** liable. **(R. 2680-2681)** In the Final Judgment, dated March 1, 1990, the trial court acknowledged the partial summary judgment limiting recovery to $1,250. **(R.2794-2795).** The court further ruled that the damages and liability were so interwoven in the case that it was tried on both **issues. (R.2794-2795).** The judge then awarded final judgment for **$431,609** in favor of the Plaintiff, but stayed the award to allow the Plaintiff time to appeal the partial summary judgment. **(R.2794-2795).** Following various post-trial motions the trial court **sua sponte** vacated the earlier partial summary judgment and entered final judgment for Mrs. Lippert in the full amount of the

verdict. (R. 2810-2811)

On appeal Delta and Wackenhut challenged, inter alia, the jury instructions as well as the decision of the trial court to sua sponte vacate the earlier partial summary judgment. It was argued that the trial court erred in ruling that the security checkpoint created a bailment for mutual benefit (which was subject to ordinary negligence standards) rather than a gratuitous bailment by operation of law (requiring a finding of gross negligence to impose liability). It was also asserted that the tariff and contractual limitation of liability clearly established a $1,250 cap for Mrs. Lippert's claim which applied to any type of baggage or property carried by a traveler. This restriction was argued to be appropriate because it is unlikely that anyone other than a ticketed passenger will have substantial valuables in any of their baggage and, further, frequently airports and/or Airlines permit only passengers to proceed beyond the security checkpaint.

The Fourth District Court of Appeal reversed the final judgment and remanded for a new trial. The court further ruled that the original partial summary judgment limiting Wackenhut and Delta's liability to $1,250 was erroneous. The court explained that in its view a bailrnent for mutual benefit, rather than a bailment as a matter of law, was created at the time the passenger relinquishes possession of hand luggage when approaching the magnetometer at the security checkpoint. The court disagreed with the proposition that the bailment was gratuitous simply because it was required by federal regulation. The Fourth District

specifically held that "the tariff and its limitations on liability do not apply where the passenger is forced to relinquish possession of his or her valuables for the purpose of a security magnetometer check."[4]

In issuing its opinion, the Fourth District certified the following question:

> WHERE A POSTED TARIFF IN CONJUNCTION WITH THE TICKET FOR CARRIAGE ON A COMMON CARRIER LIMITS LIABILITY FOR CHECKED BAGGAGE OR BAGGAGE ULTIMATELY DELIVERED TO A FLIGHT ATTENDANT FOR STOWAGE IN THE CABIN, BUT THE PASSENGER CHOOSES INSTEAD TO RETAIN CUSTODY OF A PACKAGE, PURSE, HANDBAG, ETC., AND THE PASSENGER IS THEN REQUIRED TO RELINQUISH POSSESSION OF THE ITEM FOR THE PURPOSES OF X-RAY OR OTHER EXAMINATION OR INSPECTION, DOES THE CARRIER'S TARIFF LIMITS ITS LIABILITY, OR THAT OF ITS AGENTS, FOR ORDINARY NEGLIGENCE RESULTING IN LOSS TO THE PASSENGER DURING THE X-RAY OR INSPECTION PROCESS?

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[4] A copy of the opinion of the Fourth District Court of Appeal is attached to this Brief as Appendix A.

## CERTIFIED QUESTION

WHERE A POSTED TARIFF IN CONJUNCTION WITH THE TICKET FOR CARRIAGE ON A COMMON CARRIER LIMITS LIABILITY FOR CHECKED BAGGAGE OR BAGGAGE ULTIMATELY DELIVERED TO A FLIGHT ATTENDANT FOR STOWAGE IN THE CABIN, BUT THE PASSENGER CHOOSES INSTEAD TO RETAIN CUSTODY OF A PACKAGE, PURSE, HANDBAG, ETC., AND THE PASSENGER IS THEN REQUIRED TO RELINQUISH POSSESSION OF THE ITEM FOR THE PURPOSES OF X-RAY OR OTHER EXAMINATION OR INSPECTION, DOES THE CARRIER'S TARIFF LIMITS ITS LIABILITY, OR THAT OF ITS AGENTS, FOR ORDINARY NEGLIGENCE RESULTING IN LOSS TO THE PASSENGER DURING THE X-RAY OR INSPECTION PROCESS?

## DELTA's AND WACKENHUT'S ANSWER TO CERTIFIED QUESTION

DELTA'S AND ITS AGENT, WACKENHUT'S $1,250 LIMIT OF LIABILITY IS ESTABLISHED BY THE CLEAR AND UNAMBIGUOUS TERMS OF THE CONTRACT OF CARRIAGE (TICKET) WHICH INCORPORATED, BY REFERENCE, THE LAW AS SET FORTH IN DELTA'S VALIDLY FILED TARIFF. FURTHERMORE, ANY BAILMENT CREATED BY THE SCREENING OF PROPERTY BEING CARRIED INTO THE STERILE AREA OF AN AIRPORT ARISES BY FORCE AND OPERATION OF LAW AND CONSTITUTES A CONSTRUCTIVE OR GRATUITOUS BAILMENT FOR WHICH A GROSS NEGLIGENCE STANDARD APPLIES.

## SUMMARY OF ARGUMENT

Airline tariffs and tickets are established pursuant to federal law and are controlled by federal law. The Fourth District prejudicially erred when it refused to apply Delta's tariff and ticket limitations in the instant case. The filed tariff, as well as the contract of carriage between Lippert and Delta which was printed on the ticket, unambiguously established a $1,250 limit of liability applicable to all property which a passenger intends to carry onto the aircraft. The limitation applies at any stage of embarkment when a ticketed passenger's carry-on items are tendered to Delta or its agents, including the federally mandated security check.

The court further erred when it ruled that the federally mandated security check of passengers and property they carry onto aircraft creates a bailment for mutual benefit rather than a gratuitous bailment as an operation of law. The erroneous ruling that a mutual bailment was created enabled Lippert to recover against Delta and Wackenhut upon a substantially more lenient burden of proof (simple negligence rather than gross negligence). This error was compounded by the use of improper jury instructions which did not inform the jury about the law governing gratuitous bailments but instead instructed the jury only about a mutual bailment and its standard of care.

## ARGUMENT

### I.

**DELTA'S AND ITS AGENT'S $1,250 LIMIT OF LIABILITY IS ESTABLISHED BY THE CLEAR AND UNAMBIGUOUS TERMS OF THE CONTRACT OF CARRIAGE (TICKET) WHICH INCORPORATED, BY REFERENCE, THE LAW AS SET FORTH IN DELTA'S VALIDLY FILED TARIFF.**

**A. THE TARIFF:**

Chapter 49 of the United States Code requires an air carrier to file a tariff. The record unequivocally established that Delta filed, pursuant to the federal statute, a tariff with the Civil Aeronautics Board (C.A.B.) which included a plainly worded limitation of liability for all passengers' property ("baggage") whether checked, unchecked, or otherwise delivered into the custody of Delta Airlines.

A tariff filed by an air carrier has the force and effect of law. Bella Boutique Corporation v. Venezolana Internacional De Aviacion, S.A., 459 So.2d 440 (3d DCA 1984). The law is well settled that a duly filed tariff which limits liability for loss of baggage is not only incorporated into the contract with the passenger, but also constitutes the law which governs the air carrier's liability for any loss or damage to property. Blair v. Delta Airlines, Inc., 344 F.Supp. 360 (S.D. Fla.), reh. den., 344 F.Supp. 367 (S.D. Fla. 1972), affirmed, 477 F.2d 564 (5th Cir. 1973); Feinstein v. Northeast Airlines. Inc., 150 So.2d 487 (Fla. 3d DCA 1963).

The statement in footnote 1 on page 5 of the Fourth District Court's opinion, "that the issues presented herein must be resolved in accordance with Florida law" is clearly erroneous. Federal law preempts state law. Congress has expressly preempted baggage liability limitations in this case by enacting Section 105 of the Federal Aviation Act. The FAA--through section 105 headed "Federal Pre-emption"--expressly preempts state regulations as follows:

> no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier...

49 U.S.C.App. § 1305(a)(1)(Supp. IV 1986). Congressional intent to transfer authority to the Department of Transportation (D.O.T.) through the dismantling of the C.A.B. appears in House Report No. 98-793 (474 U.S. Aviation Reports 198). The committee expressed its desire for a continued federal role by saying:

> In addition to protecting consumers, federal regulation insures a uniform system of regulation and preempts regulation by the states. If there was no federal regulation, the states might begin to regulate these areas, and the regulations could vary from state to state. This would be confusing and burdensome to airline passengers as well as to airlines.

Department of Transportation Order 87-12-2[5] should control (App. B) because it is an agency order construing the agency's own policy. Udall v. Tallman, 85 S. Ct. 792,801 (1965); Pan Am World

[5] A public record attached as App. B for this court's judicial notice.

Airways v. Florida Public Service Commission, 427 So.2d 716, 719 (Fla. 1983). D.O.T. Order 87-12-2 states that items of high value such as jewelry add significantly to carrier insurance costs and that a carrier may reasonably expect passengers to make their own insurance arrangements. The D.O.T. has authority to regulate baggage liability. C.A.B. Sunset Act, Pub. L. 98-443 (January 1, 1985). This Act dismantled the Civil Aeronautics Board in accordance with the Airline Deregulation Act of 1978. Pub. L. 95-504, 92 Stat. 1705. The D.O.T. was authorized to regulate baggage because Congress considered baggage regulation to be an important area of consumer protection and wanted to insure a strong uniform federal policy. House Report No. 98-793, 474 U.S. Avi. Reports 198 construing sections 404(a) and 411 of the 1958 Federal Aviation Act, 49 U.S.C. 1421 et. seq.

The D.O.T. has disposed of unnecessary baggage regulations. The D.O.T. no longer requires air carriers to make excess valuation insurance available. Passengers can make private insurance arrangements. Domestic Baggage Liability, 49 FR 5065-01, February 10, 1984. The risk of loss for jewelry now falls on the passenger rather than the airlines and hence the general public. Any contrary rule would raise the cost of all airline tickets to provide a service which would benefit only a few. This D.O.T. policy is expressed in Order 87-12-2.

This D.O.T. policy limiting jewelry liability is in accord with the law that the passenger is bound by the tariff as the contract of carriage. Tishman v. Lipp, Inc. V. Delta Airlines, 413

F.2d 1401 (2d Cir. 1969); Blair v. Delta Airlines. Inc., 344 F.Supp. 360 (S.D. Fla. 1972)). A passenger may not receive benefits beyond those established in the tariff.

In addition, the following language, which addressed the C.A.B.'s raising the limitation of liability from the previous $750 to $1,000 is found in 52990 Federal Register Volume 47 No. 227, published on Wednesday, November 24, 1982. There, the reason for increasing the liability limitations states as follows:

> The rules impose little burden on air carriers, and confer a number of distinct benefits. Carriers cannot under the common law totally exculpate themselves from all liability, and may indeed be subject to higher limitations absent poor regulation of this area. Carriers will not have to speculate about what liability limitation levels courts would find reasonable. Without federal regulation, states, municipalities, and courts might apply differing standards of liability, which would result in unnecessary confusion and complexity for this reason. A uniform system facilitates interlining and makes notice of differing terms unnecessary. Finally, the rule encourages the settlement of claims and makes litigation unnecessary in most cases.

The Fourth District's ruling is exactly the type of state interference which the federal preemption was designed to avoid. The district court's decision creates confusion and a unique standard for liability and damages that applies only to airline travel through certain Florida airports. By its opinion and interpretation of federal law, the district court has destroyed the uniformity of federal law governing airline travel.

The limitation of liability filed by an airline also extends to agents and/or independent contractors of the airline. See

Feature Enterprises, Inc. v. Continental Airlines, 745 F.Supp. 198 (S.D.N.Y. 1990); Chutter v. KLM Roval Dutch Airlines, 132 F.Supp. 611 (S.D.N.Y. 1955) and Julius Young Jewelry Manufacturing Company v. Delta Airlines, 414 N.Y.S.2d 528 (App. Div. 1979). Moreover, this limitation has been expressly held to apply to a security company providing an airport screening service such as the service provided by Wackenhut in the case at hand. See, Baker v. Lansdell Protective Agency, 590 F.Supp. 165 (S.D.N.Y. 1984).

Baker involves a case factually similar to the case at bar. There, the Plaintiff sought the recovery of approximately $200,000 worth of jewelry that disappeared between the time she handed her bag to a security agent for passage through an x-ray scanner and the time that the property would have been returned to the Plaintiff on the other side of the screening area. The bag was screened prior to the Plaintiff's boarding a British Airways flight from New York to London, England. The security check point was manned by employees of Lansdell Protection Agency, Inc. Lansdell filed a motion for partial summary judgment seeking to limit its liability to $400 based upon the limitations imposed by the Warsaw Convention. In holding Lansdell's liability to a limit of $400, the trial court noted that Chapter 49 U.S.C. §1356 required security checks to be performed either by employees or agents of the air carrier and that the federal statute required all passengers and property intended to be carried in an aircraft cabin to be screened for weapons prior to boarding. The court noted that Lansdell was entitled to invoke the limitations of liability of the

Warsaw Convention because the plaintiff was engaged in an activity that was a legally mandated prerequisite to boarding an airplane.

Cases controlled by the Warsaw Convention are analogous to cases involving tariffs governing interstate air travel. As noted in Chutter, 132 F.Supp at 615 the rights of a plaintiff and defendant on an international flight are governed by the contract of transportation and the terms of the Warsaw Convention. Similarly, an interstate flight, the rights of the plaintiffs and defendants are governed by the contract of transportation and the terms of the tariff. Julius Young, 414 N.Y.S.2d at 529 also illustrates that the purpose of the Warsaw Convention is analogous to the purpose of tariffs, in that the court notes that "the fundamental purposes of the Convention are to limit liability so as to fix costs to airlines at a definite level and to establish a uniform body of world-wide liability rules to govern international aviation to aid recovery by users."

In interpreting air tariffs, the terms of the tariff should be given their ordinary commercial meaning. Emery Air Freight Corporation v. United States, 499 F.2d 1255, 1259 (Ct. Cl. 1974). The terms of the tariff must be taken in the sense in which they are generally used and accepted and must be construed in accordance with the meaning of the words used. Penn Central Company v. General Mills, Inc., 439 F.2d 1338, 1341 (8th Cir. 1971) (and cases cited therein). Although an ambiguity in a tariff is to be construed against the drafter, the ambiguity must be a reasonable one and not "the result of a straining of the language." Most

important, "there must be a substantial and not a mere arguable basis in order to justify resolving the doubt against the carrier." Id. at 1341 (and cases cited therein). See also, Bella Boutique, 459 So.2d at 442. Rules relating to tariffs "should be interpreted in such a way as to avoid unfair, unusual, absurd or improbable results." Id. at 1341 (and cases cited therein). Finally, "a strict construction of a tariff against a carrier is not justified where such a construction ignores a permissible and reasonable construction which conforms to the intentions of the framers of the tariff, avoids possible violations of law, and accords with the practical application given by shippers and carriers alike." Id. at 1341 (and cases cited therein).

The Delta airline tariff clearly states that liability to a "passenger's baggage or other property including carry-on baggage, if tendered to Delta's in-flight personnel for storage during a flight or otherwise delivered into the custody of Delta" shall be limited to $1,250. The Plaintiff alleged (and argued to the jury) that the property was tendered to an agent of Delta, Wackenhut, and was in the custody of Wackenhut at the time that it disappeared. According to the clear language of the tariff, liability for the Louis Vuitton bag and its contents was limited under the tariff by law to $1,250. (R.2229). Because this tariff operates as the controlling law, the Fourth District erred in refusing to apply this legally binding limitation of liability.

B. THE TICKET:

Pursuant to 49 U.S.C.A. §1301 et seq., an airline's tariff can

constitute part of the contract of carriage between the airline and its passengers. Both 14 CFR 253 (1986) Notice of Terms of Contract of Carriage (R.2201-2202 and App. pp.1-2) and Federal Statute 49 U.S.C.A. §1381(b) (1984) (R.2227 and App. p.12) enable any air carrier to incorporate by reference in any ticket or other written instrument, without stating in full text, any of the terms of the contract of carriage in interstate transportation if proper notice is given to the passenger. Furthermore, 14 CFR 254 (1986), Domestic Baggage Liability permits an airline to limit its liability for lost or damaged baggage if the airline provides notice to the passenger by conspicuous written material included on or with the passenger's ticket. (R.2203 and App. p.3).

Delta was in compliance with 49 U.S.C.A. §1381(b) and 14 CFR 253 by providing in every Delta passenger's ticket a "Notice of Incorporated Terms" which specifically notified the passengers that Delta incorporated its tariff provisions as a condition of its contract of carriage, including limits on liability for baggage. (R.2217 and App. p.7). Furthermore, Delta was in full compliance with 14 CFR 254 (1986) by providing written information on Delta's passenger ticket at "Notice of Baggage Liability Limitations" which clearly states and gives notice to passengers that the airline's liability on domestic flights is limited to $1,250 per passenger. (R.2223-2224 and App. p.10-11). See New York C. & H.R.R. Co. V. Beaham, 242 U.S. 148, 151-52 (1916) ("[A]cceptance and use of the ticket sufficed to established an agreement prima facie valid which limited the carrier's liability). See also Deiro v. American

Airlines, Inc., 816 F.2d 1360 (9th Cir. 1987).

The contract between Delta and the Lipperts specifically provided that any liability for loss or damage to baggage was limited to $1250. This plain and unequivocal limitation appeared in multiple references throughout the agreement. It is Hornbook law that a court must enforce a contract in accordance with its plain and unequivocal terms. B.M.W. of North America, Inc. v. Rrathen, 471 So.2d 585, rev. den., 484 So.2d 7 (Fla. 4th DCA 1985). A true ambiguity does not exist merely because a contract can possibly be interpreted in more than one manner. American Medical Intern, Inc. v. Scheller, 462 So.2d 1 (Fla. 4th DCA 1984), rev. den., 471 So.2d 44 (Fla. 1985), cert. den., 474 U.S. 947 (1985). Furthermore, words in a contract should be given their natural meaning or meaning most commonly understood in relation to the contracts, subject matter and circumstances, with a reasonable construction preferred to one that is unreasonable. Gamble v. Mills, 483 So.2d 826 (Fla. 4th DCA 1986); Thompson V. C.H.B., Inc., 454 So.2d 55 (Fla. 4th DCA 1984). The court was bound, as the original judge recognized, to enforce the terms and conditions of the contract and limit any recovery by Lippert to the agreed upon $1250.

The United State Supreme Court has commented on the federal law permitting carriers to limit liability. In Southeastern Express Company v. Pastime Amusement Company, 299 U.S. 28, 29 (1936), the court reasoned as follows:

> The underlying principle is that the carrier is entitled to base rates upon value and that its compensation should

> bear a reasonable relation to the **risk** and responsibility assumed . . . The broad purpose of the federal act is to compel the establishment of reasonable rates and to provide for their uniform application.

See ~~also~~, Blair v. Delta Airlines, Inc., **344** F.Supp. **360, 367** (S.D. Fla.), reh. denied, **344** F.Supp. 367 (S.D. Fla. 1972), affirmed, 477 F.2d 564 (5th Cir. 1973). (citing Southeastern for the proposition that "public policy favors the right of **a** carrier to determine its rates according to the **risk assumed**.").

To ignore Delta's and its agents' valid limitation of liability by contract would violate public policy as approved by the United States Supreme Court and recognized by the federal courts. To do so sets a the dangerous precedent by imposing liability on an airline **and** its agents for the millions of dollars worth of valuable items which are, by law, required to be delivered into the custody of the airline and/or its agents for pre-boarding inspection. Carving such a massive exception into the balance of "risk and rates" in existence plays havoc with congressional intent to encourage reasonable rates by the airlines for domestic air travel.

Delta and its agents should not be made the insurer of Mrs. Lippert, who chose to carry a portable vault of uninsured jewelry with her on her travels. Her actions fall within the type of risk that the federal government has permitted the airlines and their agents to avoid so that airlines may charge reasonable rates and avoid unreasonable losses. An airline can foresee that ticketed passengers may transport valuables on a trip. It is not likely, however, that people who are merely seeing others off at airports

would bring along large caches of jewelry or other valuables. This is the very risk (carrying valuables) that the airlines are permitted to avoid by the terms of their tariff and ticket. The fact that the federal government has established that embarking begins at a security area further establishes that there should be no open-ended liability on the airlines because a everyone must submit his or her valuables to a security search. Any property, including carry-on satchels belonging to a fare-paying passenger is, by the terms of the contract of carriage, subject to the limits of liability of $1,250.

The Fourth District incorrectly held that, under the definition of **"baggage"** in the ticket (R. 2219), the carry-on bag was not **"baggage"** until it reached the cargo compartment or the cabin of the aircraft. Such a strained interpretation of the contract would make every airline liable beyond its $1,250 limit in **cases** where luggage is in transit between the check-in point to the actual airplane or during loading and unloading procedures. To limit an airline's liability **for** luggage to only that period of time during which it is actuallv located in the cargo Compartment or located in the cabin of the plane would result in an unreasonable construction of the contract. In fact, the definition of **"baggage"** states that it consists of the following:

> **...** any article or other property of passengers which is acceptable for transportation under the conditions of contract stated herein, whether checked in the cargo compartment or carried in the cabin of the aircraft.

(R.2219 and **App. p.9).** Obviously, **Mrs.** Lippert's satchel of jewels

was a passenger's "article or property" ... acceptable for transportation ... whether checked or carried. The passenger's property does not metamorphose into "baggage" only when it has entered the plane itself.

In Feature Enterprises, fnc. V. Continental Airlines, 745 F.Supp. 198 (S.D.N.Y. 1990), a ticketed passenger checked his bags "at curbside" with a skycap employed by International Total Services, Inc., an agent of Continental Airlines. Among his bags was a jewelry case allegedly containing $175,000 in jewelry. All of the evidence indicated that "the sample case was stolen by a third party in the short period while it was 'at curbside' and that it was never loaded by the airline or its agents." Id. at 200. The court granted summary judgment limiting the airline's liability to $1,250. The fact that the jewelry case had not been actually loaded into the cargo compartment of the plane did not prevent it from becoming property defined as "baggage" for purposes of the limitation of liability.

The Fourth District clearly erred when it failed to follow the preemptive federal law. Even if Florida law was applicable, principles of contractual limitation of liability coupled with the unambiguous terms of the tariff and the contract of carriage, require imposition of a $1,250 limit for Lippert's property loss. The limitation of liability, by its terms, applies at any stage of embarkment when a ticketed passenger's carry-on items are tendered to Delta or its agents, including the federally-mandated security check.

## II.

### *ANY* BAILMENT CREATED BY THE SCREENING OF PROPERTY BEING CARRIED INTO THE STERILE AREA OF *AN* AIRPORT ARISES BY FORCE AND OPERATION OF LAW AND CONSTITUTES A CONSTRUCTIVE OR GRATUITOUS BAILMENT UPON WHICH A GROSS NEGLIGENT STANDARD SHOULD BE APPLIED.

The case law is clear that a bailment may take more than one form: A bailment for mutual benefit arises where the parties "contemplate some price or compensation in return for the benefits flowing from the fact of bailment." Armored Car Service, Inc. v. First National Bank of Miami, 114 So.2d 431, 434 (3d DCA 1959). A gratuitous or constructive bailment arises where the possession of personal property passes by mistake, accident, or operation of law and in the absence of any voluntary undertaking. Id.

The standard of care owed by the bailee to the bailor differs significantly depending on whether the bailment is for mutual benefit or is a constructive bailment imposed by law. When both parties are benefiting from the bailment, the bailee is liable for ordinary negligence.[6] In contrast, a gratuitous bailee is not liable unless there is a showing of gross negligence.[7] Armored Car, 114 So.2d at 434-435; City of Clearwater v. Thomas, 446 So.2d

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[6] "Simple negligence" is "that course of conduct which a reasonable and prudent man would know might possibly result in injury to persons or property." Clements v. Deeb, 88 So.2d 505 (Fla. 1956).

[7] "Gross negligence" is that course of conduct which a reasonable and prudent man would know would probably and most likely result in injury to person or property. Clements, supra.

1160 (Fla. 2d DCA 1984); Insurance Company of State of Pennsylvania v. Estate of Guzman, 421 So.2d 597 (Fla. 4th DCA 1982).

A finding of liability is therefore controlled by the degree of care required by the nature of the bailment. Clermont Marine Sales, Inc. v. Harmon, 347 So.2d 839 (Fla. 2d DCA 1977); Marine Office-Appleton & Cox Corp. V. Aqua Dynamics, Inc., 295 So.2d 370 (Fla. 3d DCA 1975). For example, in Martin v. Bell, 368 So.2d 600 (Fla. 1st DCA 1978), a house sitter who was uncompensated left a pan of grease unattended on the stove and a resulting fire badly damaged the house. The court ruled that a gratuitous bailment existed and there would be no liability absent a finding of gross negligence. Id. at 601.

The instant facts clearly establish bailment arising by force and operation of law. Delta's possession of carry-on hand luggage for screening as a pre-requisite to permitting it to be allowed on a plane is not voluntary, but is imposed by federal law and regulations. Airlines are required to screen passengers pursuant to 49 U.S.C. 51356. The purpose of this screening is found at 14 CFR §108.9(a) which provides:

> [E]ach certificate holder required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described in its approved security program to prevent or deter the carriage aboard airplanes of any explosives, incendiary device or a deadly or dangerous weapon on or about each individual person or accessible property, and the carriage of any explosive or incendiary device in checked baggage. (App. p.15)

As noted by the Third District in Armored Car, 114 So.2d at 434,

a gratuitous bailment arises under just this sort of condition, for example:

> Where the possession of one's personal property passes to another . . . through force of circumstances under which the law imposes upon the recipient thereof the duty and obligation of a bailee.

Furthermore, Delta and its agent, Wackenhut, received no compensation for the momentary holding of Lippert's property. The sole purpose in taking this bag was to comply with the federal regulations which require that all persons and their property must be screened prior to access to a sterile area of the airport. Thus, the possession of the Plaintiff's property arose solely through a force of circumstances imposed upon the Defendants by federal law requiring the screening of carry-on baggage. The Defendants' possession of Mrs. Lippert's property, under this scenario, constitutes (at best) a constructive bailment.

Even if the cost of purchasing the screening devices and paying security personnel was incorporated into the price of the tickets, Delta receives no compensation in exchange for the responsibility of taking a person's luggage into custody briefly for the purpose of screening. This custody arises by operation of law and is not a duty for which Delta volunteered. Delta does not profit from this bailment simply because the law which requires Delta to take on this duty was enacted to promote public safety in general. The court erred in denying the defendants' request for a gross negligence standard of care and in charging the jury under a mutual bailment standard.

Research has disclosed only one case discussing this general rule of bailment under the factual scenario presented by this case. In the case of Tremaroli v. Delta Airlines, 458 N.Y.S. 2d 159 (1983) the court stated "it seems clear that an implied bailment is involved. An implied bailment arises when one comes into lawful possession of personal property of another, other than by mutual contract of bailment; such possessor may be treated as a bailee of property by operation of law and may reasonably be referred to as a constructive bailee." This same rationale is applicable in the instant case. The fact that the Tremaroli court then applied a simple negligence standard in determining the bailee's liability is of no moment because of differences between New York and Florida law. The Florida decisions have clearly announced that in a constructive or gratuitous bailment situation, the bailor can recover only upon a showing of gross negligence by the bailee. (See cases cited at pp. 25-26 of this brief).

Although Florida law required the Plaintiff to show gross negligence on the part of the Defendants in order to recover, the record is devoid of any evidence of gross negligence. Delta and its agent Wackenhut were in full compliance with all of the Federal Aviation Administration regulations and passed every inspection of its security procedures, whether the inspection had been scheduled or unannounced. Delta clearly had sufficient personnel in the area to properly and completely inspect all carry on luggage for weapons or incendiary devices. A sheriff's deputy was also stationed in the area. There was no evidence that any similar incident had ever

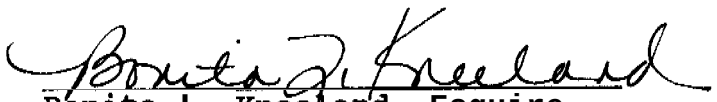
occurred. The facts were wholly insufficient to suggest that the Defendants were guilty of gross negligence because there was no evidence to show that they knew that their course of conduct would most likely result in the loss of this property. A bailee is not "an insurer of property" and cannot be held liable for the loss of the bailed property unless there is a breach of duty of the appropriate degree of care. City of Clearwater V. Thomas, 446 So.2d at 1161. Had Mrs. Lippert been held to the proper burden of proof (liability only in the event of gross negligence) liability would not have attached.

The Fourth District erroneously decided that the bailment at the security checkpoint is for mutual benefit because the magnetometer exam allows airline personnel and other passengers to avoid the distress of exploding bombs. This position fails to recognize that a bailment for mutual benefit considers only the interests of the parties to the bailment without regard to bystanders or other third parties. Further, a bag inspection does not benefit the individual who is trying to illegally transport a bomb or other hazardous substance. By common sense, as well as by operation of law, the bailment created at the security checkpoint is gratuitous.

## CONCLUSION

It is respectfully submitted that for the reasons stated herein the certified question as to the applicability of the airlines' federally approved tariff limit should be answered in the affirmative. Under this standard, a ticketed passenger whose property is lost duringthe federally mandated security check would have a maximum property damage recovery of $1,250. It is further requested that the portion of the response to the certified question seeking guidance on the applicable bailment standard should direct the court to apply a gratuitous bailment standard where liability is imposed only upon a finding of gross negligence, Because of the absence of gross negligence in this case, Wackenhut and Delta are not liable.

Respectfully Submitted,



Bonita L. Kneeland, Esquire
FOWLER, WHITE, GILLEN, BOGGS, VILLAREAL AND BANKER, P.A.
Attorneys for The Wackenhut Corporation
Post Office Box 1438
Tampa, FL 33601
(813) 228-7411
Florida Bar No.: 607355

Shelley H. Leinicke, Esquire
WICKER, SMITH, BLOMQVIST, TUTAN, O'HARA, McCOY, GRAHAM & LANE
Attorneys for Delta Air Lines, Inc.
Post Office Box 14460
Fort Lauderdale, Florida 33302
(305) 467-6405
Florida Bar No.: 230170

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Joseph D. Barish, Esquire, Post Office Box 3887, West Palm Beach, Florida 33402 on December 17, 1991.**

Bonita L. Kneeland
**Attorney**

# APPENDIX

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 1991

THE WACKENHUT CORPORATION and DELTA AIRLINES, INC., a foreign corporation,

Appellants,

v.

ALBERT LIPPERT and FELICE LIPPERT, his wife,

Appellees.

CASE NOS. 90-0917 and 90-0932.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

Opinion filed June 12, 1991

Consolidated appeals from the Circuit Court for Palm Beach County; Edward D. Rodgers, Judge.

Bonita L. Kneeland of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Tampa, for appellant The Wackenhut Corporation.

Shelley H. Leinicke of Wicker, Smith, Blomqvist, Tutan, O'Hara, McCoy, Graham & Lane, Fort Lauderdale, for appellant Delta Airlines, Inc.

Joseph D. Farish, Jr., and Kenneth J. Miller of Farish, Farish & Romani, West Palm Beach, for appellees Albert Lippert and Felice Alpert, his wife.

POLEN, J.

While on her way to board a Delta Airlines flight from West Palm Beach to New York, the appellee and plaintiff below, Felice Lippert, took a handbag containing approximately $431,000 worth of jewelry through a security checkpoint at Palm Beach International Airport. The security checkpoint was operated by



JUL 13 1991

The Wackenhut Corporation which was alleged by the plaintiff to be the agent of Delta. The checkpoint consisted of a magnetometer scan of baggage and other carry-on items as well as a scan of the person which occurs as the person walks through a specially designed archway. Mrs. Lippert placed her bag on the conveyer belt as required and she walked through the archway. The archway magnetometer alarm sounded and Mrs. Lippert was briefly inspected by Wackenhut personnel. After being cleared by Wackenhut, Mrs. Lippert discovered her handbag with the jewelry to be missing.

Mrs. Lippert sued Delta and Wackenhut for the value c her jewelry on a theory of negligence. Delta and Wackenhu asserted Delta's limitations of liability as their affirmativ defense. The limitations of liability are expressed by referenc on the back of Delta's ticket and in full in a governmentall required tariff which is posted according to federal regulations The limitation contained in the tariff [illegible]

part) that:

> J) **BAGGAGE LIABILITY**
>
> 1) a) DL shall be liable for the loss of, damage to, or delay in the delivery of a fare paying passenger's baggage, or other property (including carry on baggage, if tendered to DL's in flight personnel for storage during flight or otherwise delivered into the custody of DL). Such liability, if any, for the loss damage or delay in the delivery of a fare paying passenger's baggage or other property (Whether checked or otherwise delivered in to the custody of DL), shall be limited to an amount equal to the value of the property, plus consequential damages, if any, and shall not exceed the maximum limitation of USD

> $1250 for all liability for each fare paying passenger (unless the passenger elects to pay for higher liability as provided for in paragraph 3 below). The passenger shall not be automatically entitled to USD $1250 but must prove the value of losses or damages. Actual value for reimbursement of all lost or damaged property shall be determined by the documented original purchase price less any applicable depreciation for prior usage. These limitations also shall apply to baggage or personal property accepted by DL for temporary storage at a city or airport ticket office or elsewhere before or after the passenger's trip.
>
> 2) Exclusions From Liability
>
> e) DL is not responsible for jewelry, cash, camera equipment, or other similar valuable items contained in checked or unchecked baggage, unless excess valuation has been purchased. These items should be carried by the passenger.

The limitation of liability for baggage damaged, lost or delayed to $1250 was also clearly stated on the ticket held by Mrs. Lippert. Baggage was defined on that ticket as: "any article or other property of passengers which is acceptable for transportation under the conditions of contract stated herein, whether checked in the cargo compartment or carried in the cabin of the aircraft."

The trial court initially entered partial summary judgment for Delta and Wackenhut, upholding the limitation on liability to the maximum amount of $1250. The trial court found that under Bella Boutique Corp. v. Venezolana Internacional de Aviacion, S.A., 459 So.2d 440 (Fla. 3d DCA 1984), the tariff forms the basis for the contract of carriage and has the force

and effect of law. Thus, the trial court found that Mrs. Lippert had delivered her handbag into the custody of Delta through their agents Wackenhut, thereby invoking the limitation on liability.

A new judge was assigned to the case by the time of trial. The trial court, with the second judge presiding, allowed the jury to consider the total amount of damages sustained by the plaintiff and the court further instructed the jury to apportion the damages among the defendants. The judge remarked throughout the trial that he would be bound to enter final judgment in the amount of $1250 at a maximum, notwithstanding what the jury might find. The judge also instructed the jury that the defendants could be held liable for ordinary negligence rather than gross negligence as the defendants had argued.

The jury returned a verdict for the plaintiff in the amount of $431,609, apportioning damages with Delta 65 percent liable and Wackenhut 35 percent liable. After several post-trial motions the trial court, sua sponte, vacated the earlier partial summary judgment and entered final judgment for the plaintiff in the amount of $431,609. The court refused to allow a setoff of this amount or a remittitur despite the fact that Mrs. Lippert recovered $75,000 in insurance proceeds from the loss of a particular pair of earrings which were in the handbag, as well as recovering the earrings themselves in a significantly altered state. The earrings had a trial date value of approximately $40,000.

Delta and Wackenhut appealed the final judgment arguing that the partial summary judgment should have been given its

natural effect in limiting liability to $1250. The appellants also argued that the trial court should have either given them the earrings or ordered a set off based on the insurance recovery by Mrs. Lippert. We reverse the final judgment entered by the trial court, and remand for a new trial. We also find, however, that the original partial summary judgment, limiting appellant's liab lity to $1250, was erroneous.

While the tariff posted by Delta might form the basis for the contract of carriage and have the force and effect of law under Bella Boutique, we find that the limitation of liability contained in the tariff does not apply under the circumstances of this case.[1] The tariff provides that the passenger should carry valuables such as jewelry rather than check such valuables as "baggage." The tariff provides that the passenger is not required to obtain excess value coverage but may elect to do so, thus the passenger can assume sole responsibility for the valuables and is encouraged to do so by the airline.

The problem arises when the passenger must relinquish possession of the valuables upon approaching the magnetometer at the security checkpoint. The passenger then is separated from his or her valuables and it is at this time that a bailment is

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[1] We considered many cases from other jurisdictions including the often cited Tremaroli v. Delta Airlines, 117 Misc. 2d 484, 458 N.Y.S. 2d 159 (N.Y. Civ. Ct. 1983). All of the foreign cases were distinguishable, some involving the Warsaw Pact which is clearly inapplicable to the case at bar. As for Tremaroli we find it unnecessary to rely on the equivalent of a county court case from New York. We feel that the issues presented herein must be resolved in accordance with Florida law and the use of analogy, while not inappropriate, was less effective in this case than in others due to the disparity between the authorities cited and the circumstances surrounding the instant appeal.

created. The bailment is obviously for the mutual benefit of the passenger and the airline, and anyone else on or around the airplane or airport for that matter. A bomb exploding the plane or harming other passengers would certainly cause great distress to the airline as well as the passengers who have paid the fare. We are not convinced that the bailment is gratuitous just because federal regulations require the security check to exist. It is for this reason that the trial court was correct in applying the ordinary negligence standard in the case at bar. Armored Car Service Inc. v. First National Bank of Miami, 114 So.2d 431 (Fla. 3d DCA 1959).

At the time of the creation of the bailment the passenger is in a "Catch-22" situation. The tariff has mandated that the valuables be carried and not placed in "baggage" either checked or unchecked. The tariff has immunized the airline from liability for all baggage including carry-on baggage as soon as the items are in the "custody of DL." The ticket provides that baggage is only baggage when it is either checked or carried into the cabin of the aircraft. Now, the airlines and the security companies working for tne airlines attempt to assert these conflicting and confusing limitations at the point before the passenger and his or her "baggage" enters the airplane. There is virtually no responsibility placed on the airline or the security companies to act for the protection of the passenger's belongings. This is not acceptable as a matter of law.

The passenger wants to take his or her valuables on a trip somewhere and the passenger knows that if the airline loses

or damages the valuables en route then there is a limitation on liability. The appellant argues that in this case the tariff places the limitations on liability at a point before the bags enter the aircraft, thereby absolving the airline's agents of any real responsibility for their own operations. It must be kept in mind that the passenger, in carrying the handbag, is acting in compliance with the provision of the tariff which states that valuables should be carried.

We hold that the tariff and its limitations on liability do not apply where the passenger is forced to relinquish possession of his or her valuables for the purpose of a security magnetometer check. The airline and the security companies must exercise reasonable care in handling the belongings of the passengers who are merely exercising their right to retain possession of such belongings.

In this case Wackenhut was established as the agent of Delta, which remained undisputed throughout the proceedings below. We realize that in other cases security companies may not stand in this relationship but may rather be independent contractors. If any liability is found it should be apportioned accordingly, depending on the facts of each case which will establish the relationships of the parties. In the case at bar the jury was able to apportion damages after finding that the appellants were both negligent in their handling of Mrs. Lippert's handbag, and but for the prejudicial error discussed below, there would be no reason for another trial on this matter.

It appears that the second trial judge vacated the partial summary judgment previously entered by another judge for no particular reason other than his opinion that the order would be appealed from anyway. The second judge misled the appellant throughout the pretrial proceedings and the trial itself by declaring that the judgment could be entered only in the amount of $1250 at most. This disturbs us, and we hold that the appellants were unduly prejudiced in the trial of their cause, by relying on the partial summary judgment (albeit an erroneous one), and the second judge's frequent pronouncements that the $1250 limitation would prevail.

Finally, we find that the trial court erred in failing to take into consideration the insurance recovery and the recovery of the earrings by the plaintiff. Appellees have conceded that appellants are entitled to some offset. The court should have ordered some offset of the final judgment for all or part of the amounts plaintiff recovered from collateral sources. The damages awarded to the plaintiff should be equal to and precisely commensurate with the loss sustained. Hanna v. Martin, 49 So.2d 585 (Fla. 1950). On remand, if appellee prevails on her primary claim, the trial court is instructed to then conduct an evidentiary hearing, and to grant an offset for whatever amount it determines is legally appropriate after considering the evidence and the legal positions of the parties.

The final judgment is reversed and the cause remanded for a new trial, with the proviso that the tariff limitation of liability to $1250 does not apply in this case.

We deem the issues presented in this case to be ones of great public importance, and we therefore certify the following question to the Florida Supreme Court:

> WHERE A POSTED TARIFF IN CONJUNCTION WITH THE TICKET FOR CARRIAGE ON A COMMON CARRIER LIMITS LIABILITY FOR CHECKED BAGGAGE OR BAGGAGE ULTIMATELY DELIVERED TO A FLIGHT ATTENDANT FOR STOWAGE IN THE CABIN, BUT THE PASSENGER CHOOSES INSTEAD TO RETAIN CUSTODY OF A PACKAGE, PURSE, HANDBAG, ETC., AND THE PASSENGER IS THEN REQUIRED TO RELINQUISH POSSESSION OF THE ITEM FOR THE PURPOSES OF X-RAY OR OTHER EXAMINATION OR INSPECTION, DOES THE CARRIER'S TARIFF LIMIT ITS LIABILITY, OR THAT OF ITS AGENTS, FOR ORDINARY NEGLIGENCE RESULTING IN LOSS TO THE PASSENGER DURING THE X-RAY OR INSPECTION PROCESS?

ANSTEAD and GARRETT, JJ., concur.

# CERTIFICATE OF TRUE COPY

I HEREBY CERTIFY that the attached { is a true copy / ~~are true copies~~ } of the orig

87-12-2 issued by the Department *of* Transportation on December 2, 1967, ding order dismissing complaint against limitation of liability tariffs NIFF AIRWAYS INC., and NORTHWEST AIRLINES, INC., Docket *40373,*

the Coordination Section, Documentary Services Division, Office of eral Counsel, Department of Transportation.

Signed and dated at Washington, D.C

this 13th day of August, 1991

Irmajean V. Treadwell

by Irmajean V. Treadwell

Coordination Assistant
*(Title)*

I HEREBY CERTIFY that Irmajean V. Treadwell

who si[gned] th[e] going certificate is now, and was, at the time of signing, Coordination Assist[ant] C[oordi]nation Section, Documentary Services Division, Office of the Genera[l Co]un[sel] Department of Transportation and of[ficial] [cust]odian of the subject record, and that [no] credit should be given his certificate as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the Department of Transportation *to* be affixed this 13th day of August, 1991 at Washington, D.C.

Phyllis T. Kaylor
*(Signature)*

Phyllis T. Kaylor, Chief, Documentary Services Division, Office of the General Counsel, Department of Transportation
*(Title)*

Form DOT 2100.1 (9-69)

Appendix B

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

SERVED DEC 8 1987

Issued by the Department of Transportation
on the 2nd day of December, 1987

| | |
|---|---|
| Complaint against limitation of liability tariffs of Braniff Airways, Inc., and Northwest Airlines, Inc. | Docket 40373 |

ORDER DISMISSING COMPLAINT

On January 11, 1982, Donald L. Pevsner, Esq., filed a complaint 1/ with the Civil Aeronautics Board 2/ seeking suspension and investigation of numerous exculpatory provisions in the baggage liability tariffs of Braniff *Airways*, Inc., and Northwest Airlines, Inc. The provisions at issue generally disclaim the carrier's liability for the loss or damage of various items, under certain circumstances, when such items are included in a passenger's baggage. 3/ In essence, Mr. Pevsner charges that the provisions are unjust, unreasonable and discriminatory because their ambiguity allows a carrier to make arbitrary judgments as to the extent of its liability and *to* disclaim liability for *any* baggage, under *any* circumstances, whenever it chooses to do so. Mr. Pevsner also alleges that *any* carrier's failure to provide passengers with notice of its liability limitations constitutes a deceptive practice.

Braniff and Northwest have filed answers to the complaint. The carriers maintain that the complaint represents a "strained reading" of the tariff provisions in question and merely speculates on how the provisions could conceivably be abused without citing any actual instances of such abuse. In this regard, the carriers pint *out* that they have little incentive for using the provisions in the manner feared by Mr. Pevsner, which would damage customer goodwill. The carriers also defend specific provisions disclaiming liability for particularly valuable items and for the baggage *of* free and redud-rate passengers, The liability costs for these kinds of baggage, the carriers say, should he borne directly by the few passengers tendering such baggage, rather than by all passengers generally. If the carriers were to assume the liability for such items, the cost to consumers would inevitably rise, Finally, Northwest states tbat it "already provides clear and explicit notice of its liability limitations to all passengers. Notice is clearly printed an every Northwest ticket,"

1/ On January 18, 1982, Mr. Pevsner filed an amendment supplementing his complaint.

2/ The Civil Aeronautics Board Sunset Act of 1984 (P.L. 98-443) transferred the Board's authority for reviewing such tariff complaints to the Department as of January 1, 1985.

3/ The specific tariff provisions against which Mr. Pevsner complains previously appeared in Rule 25 of Tariff C.A.B. No. 55, and are now found in Rule 55(C) of Tariff C.A.B. No. 493 for Braniff and Rule 55(C) of Tariff C.A.B. No. 491 for Northwest. Many other carriers have similar liability limitation provisions. Mr. Pevsner's complaint also involves a tariff provision of Northwest regarding liability for the carriage of pets. Northwest, however, removed that provision in April 1986; this part of Mr. Pevsner's complaint is therefore moot.

We have decided to dismiss the complaint.

As the carriers state, the complaint largely speculates on how the tariff provisions might be read to achieve an unfair or deceptive result from the passenger's perspective. However, it provides scant indication of how the provisions are interpreted and applied in practice. It does not document any particular cases of interpretive abuse, and it does not support its contention that passengers are unaware of the existence of such liability limitations. As emphasized by Northwest, carriers provide explicit notice of the existence of baggage liability limitations on each ticket, and we believe that such notice is adequate to alert the consumer. Current stock, for example, includes notice that "Excess valuation may be declared on certain types of articles. Some carriers assume no liability for fragile, valuable or perishable articles. Further information may be obtained from the carrier."

Beyond potential abuses, Mr. Pevsner also complains of carriers' disclaiming liability for certain kinds of baggage—i.e., particularly valuable items (such as money, jewelry or securities) and the baggage of free and reduced-rate passengers (generally carrier employees). Small items of high value add significantly to carrier insurance costs, and it is not unreasonable to expect passengers traveling with such items to keep them in their personal custody or to make specific insurance arrangements for them. As the Board found in dismissing similar complaints, the approach employed by the carriers is certainly no less reasonable than raising fares for all passengers to accommodate the costs uniquely associated with a limited class of users. 4/ This approach, moreover, is consistent with carrier pricing approaches accepted elsewhere, such as the imposition of excess-baggage charges above a "free" allowance.

Under these circumstances, we do not find sufficient grounds for undertaking an investigation of the carriers' tariff provisions.

ACCORDINGLY,

1. We dismiss the complaint filed by Donald L. Pevsner, Esq., in Docket 40373; and

2. We will serve this order on Donald L. Pevsner, Esq., Braniff Airways, Inc., and Northwest Airlines, Inc.

By:

MATTHEW V. SCOCOZZA
Assistant Secretary
for Policy and International Affairs

(SEAL)

4/ See Orders 81-8-19, August 5, 1981, and 81-10-19, October 1, 1981.

EXHIBIT "A"



§ 252.3

able in the established no-smoking section, however, a carrier shall seat there any complaining passenger who so requests, regardless of boarding time or reservation status.

[ER-1248, 46 FR 44930, Sept. 14, 1981, as amended at 48 FR 24694, Jan. 3, 1983; ER-1283, 49 FR 25430, June 21, 1984]

§ 252.5 Ventilation systems.

(a) Carriers shall adopt and enforce rules prohibiting the smoking of tobacco whenever the ventilation system is not fully functioning. Fully functioning for this purpose means operating so as to provide the level and quality of ventilation specified and designed by the manufacturer for the number of persons currently in the passenger compartment.

(b) Carriers shall adopt and enforce rules prohibiting the smoking of tobacco whenever the aircraft is on the ground.

[ER-1283, 49 FR 25430, June 20, 1984]

§ 252.6 Cigars and pipes.

Carriers shall adopt and enforce rules prohibiting the smoking of cigars and pipes aboard aircraft.

[ER-1283, 49 FR 25430, June 20, 1984]

§ 252.8 Small aircraft.

Carriers shall adopt and enforce rules prohibiting the smoking of tobacco on aircraft designed to have a passenger capacity of less than 30 seats.

[ER-1283, 49 FR 25430, June 20, 1984]

§ 252.9 Enforcement.

Each air carrier shall take such action as is necessary to ensure that smoking by passengers or crew is not permitted in no-smoking sections and to enforce its rules with respect to the banning of smoking or the separation of passengers in smoking and no-smoking areas.

[ER-1283, 49 FR 25430, June 20, 1984]

§ 252.7 Waivers.

Air carriers may file with the Board's Docket Section applications for waivers of one or more of the requirements of this part, in order to experiment with other methods of achieving the public policy objectives of this part.

[ER-1248, 46 FR 44930, Sept. 14, 1981. Redesignated by ER-1283, 49 FR 25430, June 20, 1984]

## PART 253—NOTICE OF TERMS OF CONTRACT OF CARRIAGE

Sec.

253.1 Purpose.
253.2 Applicability.
253.3 Definitions.
253.4 Incorporation by reference in the contract of carriage.
253.5 Notice of incorporated terms.
253.6 Explanation of incorporated terms.
253.7 Direct notice of certain terms.
253.8 Qualifications to notice requirements.

AUTHORITY: Secs. 204, 403, 404, and 411, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 766, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

SOURCE: ER-1262, 47 FR 52124, Nov. 19, 1982, unless otherwise noted.

§ 253.1 Purpose.

The purpose of this rule is to set uniform disclosure requirements, which preempt any State requirements on the same subject, for terms incorporated by reference into contracts of carriage for scheduled service in interstate and overseas passenger air transportation.

§ 253.2 Applicability.

This rule applies to all scheduled direct air carrier operations in interstate and overseas air transportation. It applies to all contracts with passengers, for those operations, that incorporate terms by reference.

[ER-1333, 48 FR 6218, Feb. 11, 1983]

§ 253.3 Definitions.

"Large aircraft" means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

"Passenger" means any person who purchases, or who contacts a ticket office or travel agent for the purpose of purchasing, or considering the purchase of, air transportation.

"Ticket office" means station, office, or other location where tickets are sold that is under the charge of a



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EXHIBIT App. 1 R. 2201

person employed exclusively by the carrier, or by it jointly with another person.

§ 253.4 Incorporation by reference in the contract of carriage.

(a) A ticket or other written instrument that embodies the contract of carriage may incorporate contract terms by reference (i.e., without stating their full text), and if it does so shall contain or be accompanied by notice to the passenger as required by this part. In addition to other remedies at law, an air carrier may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to that passenger in accordance with this part.

(b) Each air carrier shall make the full text of each term that it incorporates by reference in a contract of carriage available for public inspection at each of its airport and city ticket offices.

(c) Each air carrier shall provide free of charge by mail or other delivery service to passengers, upon their request, a copy of the full text of its terms incorporated by reference in the contract. Each carrier shall keep available at all times, free of charge, at all locations where its tickets are sold within the United States information sufficient to enable passengers to order the full text of such terms.

[The notice requirements contained in paragraphs (b) and (c) were approved by the Office of Management and Budget under control number 3024-0061]

[ER-1302, 47 FR 52134, Nov. 19, 1982, as amended by ER-1309, 47 FR 54764, Dec. 6, 1982]

§ 253.5 Notice of incorporated terms.

Except as provided in § 253.6, each air carrier shall include on or with a ticket, or other written instrument given to a passenger, that embodies the contract of carriage and incorporates terms by reference in that contract, a conspicuous notice that:

(a) Any terms incorporated by reference are part of the contract, passengers may inspect the full text of each term incorporated by reference at the carrier's airport or city ticket offices, and passengers have the right, upon request at any location where the carrier's tickets are sold within the United States, to receive free of charge by mail or other delivery service the full text of each such incorporated term;

(b) The incorporated terms may include and passengers may obtain from any location where the carrier's tickets are sold within the United States further information concerning:

(1) Limits on the air carrier's liability for personal injury or death of passengers, and for loss, damage, or delay of goods and baggage, including fragile or perishable goods.

(2) Claim restrictions, including time periods within which passengers must file a claim or bring an action against the carrier for its acts or omissions or those of its agents.

(3) Rights of the carrier to change terms of the contract. (Rights to change the price, however, are governed by § 253.7).

(4) Rules about reconfirmation of reservations, check-in times, and refusal to carry.

(5) Rights of the carrier and limitations concerning delay or failure to perform service, including schedule changes, substitution of alternate air carrier or aircraft, and rerouting.

[Approved by the Office of Management and Budget under control number 3024-0061]

[ER-1302, 47 FR 52134, Nov. 19, 1982, as amended by ER-1309, 47 FR 54764, Dec. 6, 1982; ER-1378, 48 FR 54581 Dec. 6, 1983; ER-1375, 49 FR 5064, Feb. 10, 1984]

§ 253.6 Explanation of incorporated terms.

Each air carrier shall ensure that any passenger can obtain from any location where its tickets are sold within the United States a concise and immediate explanation of any terms incorporated by reference, concerning the subjects listed in § 253.5(b).

[Approved by the Office of Management and Budget under control number 3024-0061]

[ER-130.., 47 FR 52134, Nov. 19, 1 2, as amended by ER-1309, 47 FR 54764, ..., 6, 1982]



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§ 253.7 Direct notice of certain terms.

A passenger shall not be bound by any terms restricting refunds of the ticket price, imposing monetary penalties on passengers, or permitting the carrier to raise the price, unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.

(Approved by the Office of Management and Budget under control number 3024-0061)

[ER-1302, 47 FR 53134, Nov. 19, 1982, as amended by ER-1308, 47 FR 54764, Dec. 6, 1982]

§ 253.8 Qualifications to notice requirements.

(a) If notice is not provided in accordance with § 253.5 at a ticket sales location outside of the United States that is not a U.S. air carrier ticket office, the price paid for the portion of such ticket that is for interstate and overseas air transportation shall be refundable without penalty if the passenger refuses transportation by the carrier. Each air carrier shall ensure that passengers who have bought tickets at those locations without the notice required in § 253.5 are given that notice not later than check-in for the travel in interstate or overseas air transportation, and that conspicuous notice is included on or with the ticket stating that the price for that travel is refundable without penalty.

(b) An air taxi operator (including a commuter air carrier) not operating under Subpart I of Part 298 of this chapter shall not be considered to have incorporated terms by reference into its contract of carriage merely because a passenger has purchased a flight segment on that carrier that appears on ticket stock that contains a statement that terms have been incorporated by reference. However, such an air taxi operator may not claim the benefit as against the passenger of, and the passenger shall not be bound by, any contract term incorporated by reference if notice of the term has not been provided to the passenger in accordance with this part.

[ER-1378, 48 FR 54491, Dec. 6, 1983]

## PART 254—DOMESTIC BAGGAGE LIABILITY

Sec.
254.1 Purpose.
254.2 Applicability.
254.3 Definitions.
254.4 Carrier liability.
254.5 Notice requirement.

AUTHORITY: Secs. 204, 403, 404, and 411, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

SOURCE: ER-1374, 49 FR 5971, Feb. 16, 1984, unless otherwise noted.

§ 254.1 Purpose.

The purpose of this part is to establish rules for the carriage of baggage in interstate and overseas air transportation. The part sets permissible limitations of air carrier liability for loss, damage, or delay in the carriage of passenger baggage and requires air carriers to provide certain types of notice to passengers.

§ 254.2 Applicability.

This part applies to any air carrier that provides charter or scheduled passenger service in interstate or overseas air transportation.

§ 254.3 Definitions.

"Large aircraft" means any aircraft designed to have a maximum passenger capacity of more than 60 seats.

§ 254.4 Carrier liability.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $1250 for each passenger.

§ 254.5 Notice requirement.

In any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide in



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passengers, by conspicuous written material included on or with its ticket, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: "Federal rules require any limit on an airline's baggage liability to be at least $1250 per passenger."

## PART 255—CARRIER-OWNED COMPUTER RESERVATION SYSTEMS

Sec.
255.1 Purpose.
255.2 Applicability.
255.3 Definitions.
255.4 Display of information.
255.5 Contracts with participating carriers.
255.6 Contracts with subscribers.
255.7 Service enhancements.
255.8 Marketing information.
255.9 Exceptions.
255.10 Review and termination.

AUTHORITY: Secs. 102, 204, 404, 411, 416, 1102, Pub. L. 85-726 as amended, 72 Stat. 740, 743, 760, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1382, 1502.

SOURCE: ER-1288, 49 FR 32542, Aug. 15, 1984, unless otherwise noted.

### § 255.1 Purpose.

(a) The purpose of this part is to set forth requirements for operation by air carriers of computer reservation systems used by subscribers so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

### § 255.2 Applicability.

This rule applies to air carriers and foreign air carriers that own, control or operate computerized reservations systems for subscribers in the United States, and the sale in the United States of interstate, overseas, and foreign passenger air transportation through such systems.

### § 255.3 Definitions.

"Affiliate" means any person owned by, controlled by, or under common control with a carrier.

"Availability" means information provided in display with respect to the seats a carrier holds out as available for sale on a particular flight.

"Carrier" means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 1301(4), 49 U.S.C. 1301(22), and 14 CFR 298.2(f), respectively that are engaged directly in the operation of aircraft in passenger air transportation.

"Discriminate", "discrimination," and "discriminatory" mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

"Display" means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

"Participating carrier" means a carrier that has an agreement with a system vendor for display of its flight schedules, fares, or seat availability, or for the making of reservations or issuance of tickets through a system.

"Primary display" means any display presented by a system vendor to comply with § 255.4.

"Service enhancement" means any product or service offered to subscribers or passengers in conjunction with a system other than the display of information on schedules, fares, rules, and availability, and the ability to make reservations or to issue tickets for air transportation.

"Subscriber" means a ticket agent, as defined in 49 U.S.C. 1301(40) of the Act, that holds itself out as a neutral source of information about, or tickets for, the air transportation industry and that uses a system.

"System" means a computerized airline reservation system offered by a carrier or its affiliate to subscribers for use in the United States that contains information about schedules, fares, rules or availability of other carriers and that provides subscribers with the ability to make reservations and to issue tickets.

"System vendor" means a carrier or its affiliates that owns, controls or operates a system.



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Exhibit "B"

006 4851 573 172

PASSENGER TICKET AND BAGGAGE CHECK

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0412 - 705 17

DELTA AIR LINES

## ADVICE TO INTERNATIONAL PASSENGERS ON LIMITATION OF LIABILITY

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to the entire journey, including those portions entirely within the countries of departure and destination. For such passengers special contracts of carriage embodied in applicable tariffs provide that the liability of Delta Air Lines, Inc. and certain other carrier parties to such special contracts for death or personal injury to passengers is limited in most cases to proven damages not to exceed US $75,000 per passenger,* and that each carrier's liability up to such limit shall not depend on negligence on the part of the carrier. For such passengers traveling by a carrier not having such special contracts of carriage or on a journey not to, from, or having an agreed stopping place in the United States of America, liability of the carrier for death or personal injury to passengers is limited in most cases to approximately US $10,000 or US $20,000."

"The names of carriers parties to such special contracts are available at all ticket offices of such carriers and may be examined on request."

"Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative."

*Note: The limit of liability of US $75,000 is inclusive of legal fees and costs, except that in jurisdictions where provision is made for separate award of legal fees and costs the limit shall be the sum of US $58,000 exclusive of such fees and costs, but in no event shall the amount to which liability is limited exceed US $75,000 including such fees and costs.

DELTA AIR LINES, INC.

## NOTICE OF BAGGAGE LIABILITY LIMITATIONS

Liability for loss, delay, or damage to baggage is limited as follows unless a higher value is declared in advance and additional charges are paid: (1) For most international travel (including domestic portions of international journeys) to approximately $9.07 per pound ($20.00 per kilo) for checked baggage and $400 per passenger for unchecked baggage; (2) **For travel wholly between U** points, to $1,250 per passenger on most carriers (a few have lower limits). **Excess valuation may not be declared on certain types** valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

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## NOTICE OF INCORPORATED TERMS

Air transportation to be provided between points in the U.S. (including its overseas territories and possessions) is subject to the individual contract terms (including rules, regulations, tariffs and conditions) of the transporting air carriers, which are herein incorporated by reference and made part of the contract of carriage. Foreign air transportation is governed by applicable tariffs on file with the U.S. and other governments. Incorporated terms may include, but are not restricted to:

1. Limits on liability for personal injury or death;
2. Limits on liability for baggage, including fragile or perishable goods and availability of excess valuation coverage;
3. Claims restrictions, including time periods in which passengers must file a claim or bring an action against the air carrier;
4. Rights of the air carrier to change terms of the contract;

5. Rules on reconfirmation of reservations, check-in times, and refusal to carry; and

6. Rights of the air carrier and limits on liability for delay or failure to perform service, including schedule changes, substitution of alternate air carriers or aircraft, and rerouting.

You can obtain additional information on items 1 through 6 above at any U.S. location where the transporting air carrier's tickets are sold.

You have the right to inspect the full text of each transporting air carrier's rules at its airport and city ticket offices. You also have the right, upon request, to receive free of charge the full text of the applicable terms incorporated by reference from each of the transporting air carriers. Information on obtaining the full text of each carrier's terms is available at any U.S. location where the air carrier's tickets are sold.

## WARSAW CONVENTION NOTICE

If the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage. See also notice headed "Advice to International Passengers on Limitation of Liability."

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## DELTA AIR LINES' CONDITIONS OF CONTRACT

The following conditions of contract supersede the Conditions of Contract on the reverse side of the Passenger's Coupon and apply on all flight segments via Delta Air Lines.

1. Definitions - As used in this contract, "ticket" means this passenger ticket and baggage check of which these conditions and notices form part; "carriage" is equivalent to "transportation"; "baggage" means any article or other property of passengers which is acceptable for transportation under the conditions of contract stated herein, whether checked in the cargo compartment or carried in the cabin of the aircraft; "Delta ticket office" means a ticket sales location of Delta or the office of one of its appointed Travel Agents; "tariffs" mean printed or electronically stored rules and regulations established by Delta governing the acceptance and carriage of passengers and baggage including applicable fares, rates and charges for such carriage; "WARSAW CONVENTION" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, 12th October 1929, and applicable amendments thereto.
2. Delta's Liability - With the exception of passenger baggage (as provided below), Delta is not liable for any special or consequential damages resulting from its performance of or failure to perform transportation of passengers and other services incidental thereto whether or not Delta had knowledge that such damages might be incurred.

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outside dimensions does not exceed 106 inches, provided that the outside linear dimensions of each bag do not exceed 62 inches, plus one additional piece not to exceed 45 inches which must be carried on board provided it can be stowed under a passenger seat or in an approved overhead compartment. Maximum weight per piece is 70 pounds. An extra charge applies for additional or oversize pieces.

All Classes of Service

Children under 2 years of age paying 10 percent of the normal adult fare are allowed one piece of checked baggage not to exceed 45 inches in outside linear dimensions, plus one fully collapsible child's stroller or push-chair.

C. Baggage Claim Limits and Procedures

(1) DOMESTIC (including U.S.A.-Puerto Rico)

Total liability for each passenger's checked baggage--including liability for provable direct or consequential damages--is limited to $1250.00 in the event of loss, damage or delay, unless a higher value is declared in advance and additional charges are paid. No action shall be maintained for any loss, damage, or delay of checked baggage unless notice is given in writing to the carriers involved within 21 days from the date of the incident and unless the action is commenced within 1 year from date of the incident. Delta assumes no responsibility or liability for unchecked baggage. Special rules

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may apply to valuables and to fragile or perishable articles. 8 8

(2) INTERNATIONAL

For international travel on Delta (including domestic portions of international journeys), liability is limited to $9.07 per pound ($20.00 per kilogram) for checked baggage and $400.00 per passenger for unchecked baggage, unless a higher value is declared in advance and additional charges are paid. In case of damage to baggage moving in international transportation, complaint must be made in writing to carrier forthwith after discovery of damage and at the latest, within 14 days from receipt; in case of delay, complaint must be made within 21 days from the date the baggage was delivered. No action shall be maintained for any loss, damage, or delay of checked baggage unless the action is commenced within two years from the date of the incident, as defined by the Warsaw Convention. Unless otherwise stated on the passenger ticket and baggage check, the maximum weight of 70 pounds (32 kilograms) will apply to each piece of baggage and Delta's liability is limited to $640.00 per piece of checked baggage. Special rules may apply to valuables and to fragile or perishable articles.

D. Excess Valuation

Baggage liability is limited to those amounts set forth in the above paragraphs of this contract unless an additional charge is paid. Contact any Delta ticket office for information on the maximum value that can be declared and for specific charges.

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stock in, or control of, any other person substantially engaged in the business of aeronautics.

(5) For any air carrier, knowingly and willfully, to have and retain an officer or director who has a representative or nominee who represents such officer or director as an officer, director, or member, or as a stockholder holding a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person substantially engaged in the business of aeronautics.

(6) For any person who is an officer or director of an air carrier to hold the position of officer, director, or member, or to be a stockholder holding a controlling interest, or to have a representative or nominee who represents such person as an officer, director, or member, or as a stockholder holding a controlling interest, in any person whose principal business, in purpose or in fact, is the holding of stock in, or control of, any other person substantially engaged in the business of aeronautics.

(As amended Pub.L. 95-504, § 27(b) to (d), Oct. 24, 1978, 92 Stat. 1728.)

**Termination of Authority of Secretary of Transportation**

*Section 1551(a)(7) of this title provides that this section, and the authority of the Secretary of Transportation hereunder, to the same extent, shall cease to be in effect on Jan. 1, 1989.*

**1978 Amendment.** Pub.L. 95-504 struck out subsection designation preceding provisions comprising former subsec. (a), and as so redesignated, substituted "substantially engaged in the business of" for "engaged in any phase of" wherever appearing, and struck out former subsec. (b), relating to an air carrier receiving money for his own benefit.

**Termination of Civil Aeronautics Board and Transfer of Certain Functions.** All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by Pub.L. 95-504, § 40(a), Oct. 24, 1978, 92 Stat. 1744, effective on or before Jan. 1, 1985. See section 1551 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 95-504, see 1978 U.S.Code Cong. and Adm.News, p. 3737.

## § 1380. Omitted

Section, Pub.L. 85-726, Title IV, § 410, Aug. 23, 1958, 72 Stat. 769; Pub.L. 87-820, § 8, Oct. 15, 1962, 76 Stat. 936, which related to authority of the Civil Aeronautics Board over loans and financial aid and aircraft loan guarantees, has been omitted pursuant to section 1551(a)(5)(B) of this title, which provides that section 1380 and the authority of the Board with respect thereto shall cease to be in effect on Jan. 1, 1985.

## § 1381. Methods of competition; incorporation by reference

(a) The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

(b) Any air carrier may incorporate by reference in any ticket or other written instrument any of the terms of the contract of carriage in interstate and overseas air transportation, to the extent such incorporation by reference is in accordance with regulations issued by the Board.

(As amended Pub.L. 98-443, § 7(a), Oct. 4, 1984, 98 Stat. 1706.)

EXHIBIT C

**1984 Amendment.** Subsec. (a). Pub.L. 98-443 designated existing provisions as subsec. (a).

were terminated or transferred by Pub.L. 95-504, § 40(a), Oct. 24, 1978, 92 Stat. 1744, effective on

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EXHIBIT "D"

BSTANTIVE CHANGE ON THIS PAGE.

Airline Tariff Publishing Company
DOMESTIC GENERAL RULES TARIFF NO. DGR-1 — 19th Revised Page DL-23

DELTA AIR LINES, INC.

SECTION V — BAGGAGE

190 BAGGAGE (Continued)

I) EXCESS BAGGAGE CHARGES
Baggage in excess of the maximum allowance specified in paragraph H) above will be accepted for transportation only upon payment of excess baggage charges specified in this rule. Excess baggage charges will apply from the point at which baggage is accepted for transportation to the point to which baggage is checked or transported in the passenger compartment. Baggage connecting to other airlines will also be subject to the connecting airline's excess charges and/or oversize, overweight charges in addition to DL's excess, oversize, and overweight charges.

1) Applicable Charges
Where the provisions indicate a maximum acceptable number of pieces of baggage that will be carried free, the piece(s) in excess of that maximum will be subject to the charges prescribed in paragraph 2) below, and oversize pieces will be subject to the charges prescribed in paragraph 3) below. Where the provisions indicate a maximum acceptable weight that will be carried free, the weight in excess of that maximum will be subject to the charges prescribed in paragraph 4) below.

2) Excess Piece Charges
Where the free baggage allowance is a piece allowance, the charge for each excess piece will be:
a) Through Dec. 14, 1985: USD 20.00.
b) On/after Dec. 15, 1985: USD 25.00.

3) Oversize Baggage Charges
The charge for each piece of checked baggage that exceeds a maximum outside linear dimension of 62 in. will be:
a) Through Dec. 14, 1985: USD 20.00.
b) On/after Dec. 15, 1985: USD 25.00.
These charges are in addition to any charges assessed pursuant to Paragraph (2) above.
NOTE: No piece of checked baggage whose maximum outside linear dimensions exceed 80 in. will be accepted.

4) Overweight Piece Charge
The charge for each piece of baggage that exceeds 70 lb. will be:
a) Through Dec. 14, 1985: USD 20.00.
b) On/after Dec. 15, 1985: USD 25.00.
These charges are in addition to any charges assessed pursuant to Paragraph 2) above.
NOTE: Except as specified in Paragraph (B)(2) above, pieces weighing more than 100 lb. will not be accepted as checked baggage.

J) BAGGAGE LIABILITY
1) a) DL shall be liable for the loss of, damage to, or delay in the delivery of a fare-paying passenger's baggage, or other property (including carry-on baggage, if tendered to DL's inflight personnel for storage during flight or otherwise delivered into the custody of DL.) Such liability, if any, for the loss, damage or delay in the delivery of a fare-paying passenger's baggage or other property (whether checked or otherwise delivered in to the custody of DL), shall be limited to an amount equal to the value of the property, plus consequential damages, if any, and shall not exceed the maximum limitation of USD 1250.00 for all liability for each fare-paying passenger (unless the passenger elects to pay for higher liability as provided for in paragraph 3) below). The passenger shall not be automatically entitled to USD 1,250.00 but must prove the value of losses or damages. Actual value for reimbursement of all lost or damaged property shall be determined by the documented original purchased price less any applicable depreciation for prior usage. These limitations also shall apply to baggage or personal property accepted by DL for temporary storage at a city or airport ticket office or elsewhere before or after the passenger's trip.
EXCEPTION: The above maximum liability shall be waived for an individual claimant where it can be shown that with respect to that claimant DL failed to provide notice of limited liability for baggage.
NOTE: Any failure to enforce the maximum limitations of liability at USD 1250.00 shall not be construed as a waiver of the right to limit liability at some higher amount.
b) When the transportation is over the lines of DL and one or more carriers with a limitation of liability of more than USD 1250.00 for each fare-paying passenger and responsibility for loss, damage, or delay in delivery of baggage cannot be determined, the liability limit of USD 1250.00 for each fare-paying passenger will be applied to all carriers.
c) DL shall be liable for fragile and perishable personal property, including baggage, not contained within a suitcase or other container customarily intended for use in the personal transportation of clothing, unless the passenger has executed a document releasing DL from liability from the fragile or perishable nature of a particular item, as provided in paragraph D) above.

(Continued on next page)

EXHIBIT "D" P.1

ISSUED: NOVEMBER 19, 1985 | EFFECTIVE: NOVEMBER 20, 1985

RULE

## DELTA AIR LINES, INC.

## SECTION V — BAGGAGE

190 BAGGAGE (Continued)

J) BAGGAGE LIABILITY (Continued)

2) Exclusions from Liability

a) The owner of a pet shall be responsible for compliance with all governmental regulations and restrictions, including furnishing valid health and rabies vaccination certificates when required. The carrier will not be liable for loss or expense due to the passenger's failure to comply with this provision, and the carrier will not be responsible if any pet is refused passage into or through any country, state, or territory.

b) When the carrier has exercised the ordinary standard of care, it shall not be liable for spoilage resulting from delay in delivery of any perishables described in paragraph D) above, nor for damage to, or damage caused by, fragile articles described in paragraph D) above, that are unsuitably packed and that are included in the passenger's checked baggage without the carrier's knowledge. The carrier shall not be liable for the damage or delay in delivery of a passenger's checked baggage and property accepted pursuant to the execution of a release as set forth in paragraph D) above, to the extent that such release relieves the carrier of liability. This exclusion shall not apply to personal eye glasses or contact lenses contained in a case, 4X, and reasonable quantities of personal toiletries.

c) Whenever responsibility for loss, damage, or delay in delivery of baggage cannot be determined and when transportation is via DL and one or more carriers which exclude certain items in checked baggage from their liability, DL will not be liable for the excluded items.

d) On Delta Connection flights numbered 1770-1899, items considered unacceptable for transportation in checked baggage with/without carrier's knowledge include: money, securities, negotiable papers, irreplaceable business documents/books/manuscripts/ publications/jewelry/silverware, precious metals, paintings and/or works of art, life-saving medication, samples, animals, fragile articles, and other similar valuable items and commercial effects. Carrier operating the above stated flight series will assume no liability for loss, damage, or delay of the aforementioned items.

e) DL is not responsible for jewelry, cash, camera equipment, or other similar valuable items contained in checked or unchecked baggage, unless excess valuation has been purchased. These items should be carried by the passenger.

3) Declaration of Higher Value

a) A passenger may, when checking in for a flight and presenting property for transportation, pay an additional charge (see chart below) for each carrier on which the property is to be transported and declare a value higher than the maximum amounts specified in 1) above and up to the maximum specified in b) below, in which event, the carrier's liability shall not exceed such higher declared value.

| CHARGE | ADDITIONAL AMOUNT OF LIBILITY |
|---|---|
| USD 1.00 per | USD 100.00, or fraction thereof |

b) Limits on Declared Higher Values

The declared value for personal property, including baggage, shall not exceed USD 5,000.00.

K) BAGGAGE CLAIMS

No action shall be maintained for any loss of, or damage to, or any delay in the delivery of baggage arising out of or in connection with transportation of, or failure to transport any passenger or baggage unless notice of the claim is presented in writing to an office of DL within 21 days after the alleged occurrence of the events giving rise to the claim, and unless the action is commenced within one year after such alleged occurrence. Any written notification received by DL within 21 days which informs the carrier of the nature of the claim is sufficient to meet the requirements for timely notice. Failure to give the above notice shall not be a bar if the claimant can show good cause for his/her failure to bring his/her claim within 21 days.

EXHIBIT "D"

P.2



ADD. 14

§ 108.20 regarding explosives detection systems.

(c) Each certificate holder having an approved security program shall—

(1) Maintain at least one complete copy of the approved security program at its principal business office;

(2) Maintain a complete copy or the pertinent portions of its approved security program or appropriate implementing instructions at each airport where security screening is being conducted;

(3) Make these documents available for inspection upon request of any Civil Aviation Security Inspector;

(4) Restrict the availability of information contained in the security program to those persons with an operational need-to-know; and

(5) Refer requests for such information by other persons to the Director of Civil Aviation Security of the FAA.

[Doc. No. 108, 46 FR 3786, Jan. 15, 1981, as amended by Amdt. 108-3, 50 FR 28893, July 16, 1985; Amdt. 108-7, 54 FR 36946, Sept. 5, 1989]

### § 108.9 Screening of passengers and property.

(a) Each certificate holder required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its approved security program to prevent or deter the carriage aboard airplanes of any explosive, incendiary, or a deadly or dangerous weapon on or about each individual's person or accessible property, and the carriage of any explosive or incendiary in checked baggage.

(b) Each certificate holder required to conduct screening under a security program shall refuse to transport—

(1) Any person who does not consent to a search of his or her person in accordance with the screening system prescribed in paragraph (a) of this section; and

(2) Any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by paragraph (a) of this section.

(c) Except as provided by its approved security program, each certificate holder required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its approved security program for detecting explosives, incendiaries, and deadly or dangerous weapons to inspect each person entering a sterile area at each preboarding screening checkpoint in the United States for which it is responsible, and to inspect all accessible property under that person's control.

[Doc. No. 108, 46 FR 3786, Jan. 15, 1981, as amended by Amdt. 108-4, 51 FR 1352, Jan. 10, 1986; Amdt. 108-5, 52 FR 48509, Dec. 22, 1987]

### § 108.10 Prevention and management of hijackings and sabotage attempts.

(a) Each certificate holder shall—

(1) Provide and use a Security Coordinator on the ground and in flight for each international and domestic flight, as required by its approved security program; and

(2) Designate the pilot in command as the inflight Security Coordinator for each flight, as required by its approved security program.

(b) *Ground Security Coordinator.* Each ground Security Coordinator shall carry out the ground Security Coordinator duties specified in the certificate holder's approved security program.

(c) *Inflight Security Coordinator.* The pilot in command of each flight shall carry out the inflight Security Coordinator duties specified in the certificate holder's approved security program.

[Doc. No. 24719, 50 FR 28893, July 16, 1985]

### § 108.11 Carriage of weapons.

(a) No certificate holder required to conduct screening under a security program may permit any person to have, nor may any person have, on or about his or her person or property, a deadly or dangerous weapon, either concealed or unconcealed, accessible to him or her while aboard an airplane for which screening is required unless:

(1) The person having the weapon is—

(i) An official or employee of the United States, or a State or political subdivision of a State, or of a munici-



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