

Posted: August 24, 1998
10:00 a.m.

ORDER 98-8-28

Served: August 28, 1998



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation
on the 24th day of August, 1998

INTERNATIONAL AIR TRANSPORT ASSOCIATION:

AGREEMENT RELATING TO
LIABILITY LIMITATIONS OF THE
WARSAW CONVENTION

Docket OST-95-232

AIR TRANSPORT ASSOCIATION OF AMERICA:

AGREEMENT RELATING TO
LIABILITY LIMITATIONS OF THE
WARSAW CONVENTION

Docket OST-96-1607

ORDER EXTENDING DISCUSSION AUTHORITY

In our Order on Reconsideration in these proceedings (Order 97-1-2) the Department approved, subject to revised conditions,¹ two IATA Agreements (the MIA and IIA Agreements) and the ATA Agreement (the IPA Agreement) *inter-alia* waiving the passenger liability limits of the Warsaw Convention in their entirety. The Order also provided for substitution of the MIA or IPA Agreements for the 1966 Montreal Interim Agreement in all DOT regulations and authority conditions for carriers implementing either of those Agreements in accordance with tariffs filed with the Department and meeting the requirements of that Order. Carrier parties to the IIA, MIA and IPA Agreements were further exempted to the extent otherwise necessary to implement those Agreements.

In addition Order 97-1-2 granted discussion authority, through June 30, 1998, and anti-trust immunity, subject to

¹ The Order revised the conditions in the Department's earlier approval in Order 96-11-6.

conditions, to ATA, IATA, the Victims Families Associations, all US and foreign air carriers and carriers by air, or other interested persons or organizations, "to hold discussions looking toward a modification of the Agreements or other measures to accomplish the objectives sought by the Department in its Order to Show Cause 96-10-7, and the guidelines set forth in Order 95-2-44, to further provide for implementation of these agreements, and to encourage widespread adherence to the IPA, MIA, or IIA as approved by the Department."

By Application filed June 24, 1998, ATA seeks extensions, for at least one year, of the discussion authority and immunity granted in Order 97-1-2. In support of its application, ATA urges that extension of the discussion authority is in the public interest because it will facilitate the efforts of ATA member carriers to continue to improve the international passenger liability regime; to promote the efforts of ATA member carriers to enhance public understanding of the new international passenger liability regime through clear, comprehensible ticket notices; and to continue their collaboration with other carriers to improve and expand their success in encouraging widespread adherence to the three intercarrier regimes. ATA further alleges that the public interest supports the extension of discussion authority and immunity to facilitate development of a new passenger notice to reflect the new regime. No answers to the Application have been filed.

We have decided to extend the discussion authority and anti-trust immunity granted pursuant to ordering paragraphs 8 and 9 of Order 97-1-2 through September 30, 1999. According to IATA, as of June 17, 1988, some 106 U.S. and foreign carriers had subscribed to at least one of the three Agreements, and some 50 carriers had implemented at least one such Agreement. The 50 carriers represent most of the major scheduled carriers throughout the world, although there are some important exceptions. Implementation of the IPA or MIA Agreements through tariffs filed with the Department in accordance with DOT's Order 97-2-1, however, represents only a small fraction of the carriers signing the Agreements. Clearly, much work remains to be done if voluntary adherence to the IATA Agreements is to constitute the means of preserving the Warsaw system.

We are also sympathetic to ATA's efforts to work with other carriers to establish a uniform notice applicable to carriers filing tariffs with the Department implementing the IPA or MIA Agreements in accordance with Order 97-1-2. The IPA included such a notice, which was approved by DOT. In addition the provisions of Order 97-1-2 which provided for substitution of the IPA or MIA Agreement upon the filing of tariffs implementing those Agreements with the Department, and the exemptions from the notice regulatory requirements and authority conditions to the extent otherwise necessary to implement any of the three Agreements, are consistent with the development of a single uniform notice for carriers implementing the IPA, MIA or IIA Agreements through accepted tariffs filed with the Department.² Moreover, as ATA points out, the somewhat different Notice requirements of the European Commission Regulations, justifies discussions as to a uniform notice requirement that would satisfy the requirements of both countries, for those carriers which have implemented the IPA or MIA Agreements through tariffs filed with the Department and also satisfy the requirements of the EC regulations. These additional implementation requirements as to notice, clearly fall within, and justify an extension of the discussion authority and anti-trust immunity provided for in ordering paragraphs 8 and 9 of Order 97-1-2.

ACCORDINGLY:

1. The date June 30, 1998 shall be deleted from ordering paragraph 8 of Order 97-1-2, and the date September 30, 1999 substituted in place thereof.
2. Except as provided in paragraph 1 of this Order, ordering paragraphs 8 and 9 of Order 97-1-2 shall remain in

² Tariffs implementing the IIA Agreement, which may be implemented without the filing of a tariff, except those provisions waiving the passenger liability limits in their entirety, and/or waiver of the Warsaw Article 20(1) carrier defense of proof of non-negligence up to 100,000 SDRs (*i.e.*, strict liability), would be effective only to the extent accepted by the Department. (See, Order 97-1-2.) For carriers implementing only the IIA (except as otherwise directed by the Department), the notice provisions of 14 CFR Part 121.175 would continue to apply. However, that regulation itself provides that the notice there prescribed shall be modified to reflect any higher liability limit accepted by the carrier, which would include waiver of the passenger liability limits in their entirety.

full force and effect according to their terms, without other modification.

3. We will serve a copy of this order on all parties in the above-titled dockets, and on the Departments of State and Justice.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the
World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>*