



Legal Update

May 2018

Aviation, Maritime & Tourism Department

Class Action 47374-12-15 Hacoheh v. Delta Air Lines Inc.

Dear Clients,

We write to update you regarding a significant recent decision in the field of Aviation Law.

Class Action 47374-12-15 Hacoheh v. Delta Air Lines Inc.

Our firm successfully represented Delta Air Lines Inc. ("**Delta**") in regard to a motion to certify a class action that was brought against Delta (the "**Motion to Certify**"). The Motion to Certify was withdrawn consensually and with the court's approval.

The Motion to Certify concerned the "failure to appear" condition (no show) that is included in Delta's international contract of carriage, which provides that a passenger who does not appear for one of the flight segments on his ticket without giving advance notice to Delta will have the continuing flight segments on his ticket cancelled. The Motion to Certify argued that the failure to appear condition is an "oppressive" condition in a standard form contract, which unjustly enriches the airline, and therefore should be voided and removed from Delta's international contract of carriage.

Delta's response to the Motion to Certify turned principally on the following arguments:

1. The Applicants breached their obligations to the airline when they failed to appear for the flight and make use of all of the flight segments on their ticket.
2. In accordance with Delta's policy, when a passenger fails to appear for a flight on time, the continuing flight segments on the passenger's ticket are indeed cancelled, but the passenger is entitled to be credited in full for the unused segments.

3. The failure to appear condition is a fundamental condition of Delta's business model and the application of the condition prevents attempts to circumvent Delta's pricing system. Delta has a legitimate interest to apply the condition and hence it should not be viewed as an oppressive condition in a standard form contract.

4. The application of the condition increases overall social welfare because the current pricing system allows Delta to offer a wide variety of prices for its tickets, for different types of passengers and different markets. Without the failure to appear condition, Delta's pricing model would be less effective and Delta would be required to raise prices.

In light of these arguments, the Applicants withdrew their Motion to Certify and the claim against Delta were dismissed. The consensual withdrawal motion that Delta would take steps to improve the disclosure of Delta's failure to appear condition.

The withdrawal established that the failure to appear condition, including the cancellation of the remaining flight segments and the collection of an additional payment as a result, would remain unchanged and no modification to Delta's international conditions of carriage would be required

FBC attorneys who represented Delta in this matter: Adv. Gil Orion; Adv. Shirly Kazir and Adv. Amir Varon

Sincerely,

Aviation, Maritime & Tourism Department

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