Legal Update: Aviation Law **October 2018**

Dear Clients,

We are pleased to provide you with important recent updates from the international transport and tourism sector.

Air Transport – When is take-off time for the purposes of the Aviation Services Law – the Court accepted an airline's position that the "flight take-off time" is when the aircraft pushes back from the terminal gate.

Our firm successfully represented the Spanish airline AlbaStar S.A. in legal proceedings brought against it for compensation including punitive damages under the Aviation Services Law (Compensation and Assistance for Flight Cancellation or Change of Conditions), 5772-2012 (the "**Aviation Services Law**").

The Aviation Services Law establishes that a flight which takes-off from Israel (or to Israel) with a delay that is greater than eight hours from the time stipulated on the flight ticket, shall be deemed to be a flight which has been cancelled. Under such a situation and in the absence of circumstances which may give rise to a legal exemption, the air carrier may be obligated to pay statutorily mandated compensation to the passengers in accordance with the distance of the flight.

In the matters at hand, indeed there was a delay in the take-off time from Ben Gurion Airport of the flight which the airline operated, however the airline proved that the aircraft pushed back from the gate **a number of minutes before** eight hours had elapsed from the time stipulated on the flight ticket.

The Courts agreed with the airline's position and established that the correct conclusion was that flight take-off time should be determined in accordance with the time when the aircraft detached from the departure gate connected to the terminal (known in the professional terminology as off-blocks or push-back from parking position), and not, as

the Plaintiffs argued, when the flight in fact take-off from the ground. Under these circumstances, the Court established that the flight should not be considered to be a "cancelled flight" and as a result, the Plaintiffs were not entitled to statutory compensation and the claims were denied.

(Small Claims Matters: Cohen *et al.* v. AlbaStar S.A. (The Hon. Judge Harvey Groves); Weiss *et al.* v. AlbaStar S.A. (The Hon. Judge Adenko Sabhat-Haimovich).

Maritime Transport – The Running of the Substantive Statute of Limitations

The Magistrates Court in Haifa denied a motion to dismiss which was filed in the framework of Civil Claim 10139-02-16 Miloubar Central Feedmill Ltd. *et al*. v. The Phoenix Insurance Company Ltd. *et al.* The Court established that in general the statute of limitations period begins to run for a new litigant at the time of the filing of the amended statement of claim, but at the same time a substantive evaluation must be carried out beyond the formal evaluation which assesses the substance of the amendment and the purpose of the shortened statute of limitations.

In the motion to dismiss, the company Feyha Maritime Ltd. argued that the claim against it should be dismissed because the company Miloubar Central Feedmill Ltd. does not have standing to sue it, and the entity that has the right to sue is the company Miloubar Agricultural Cooperative Society Ltd. Since this defendant was not originally included in the claim, Miloubar Agricultural Cooperative Society Ltd.'s right to amend the statement of claim and sue the new defendant expired due to the shorter substantive statute of limitations period established in the law. The Court denied the motion and held that in general an amendment to a statement of claim that involves the addition of a new defendant will not be allowed if the shorter statute of limitations date established under the law has passed. However, the Court added that the amendment test should not be applied in a formal manner alone, and where the purpose of the shorter statute of limitations is not harmed because the amendment does not alter the cause of action or the ability of the litigant to defend against it, then the amendment must be permitted and a motion to dismiss in this context should be rejected.

Relations Between Airlines, Travel Agents and Passengers –The European Court of Justice's decision on the reimbursement of travel agent fees in the event of the airline's "flight cancellation"

The European Court of Justice (the "**ECJ**") accepted the claim of passengers who sued the airline Vueling which concerned the amount of reimbursement they were entitled to receive from the airline including when purchasing flight tickets through travel agents.

In the case at hand there was no dispute that the airline was obligated to refund the passengers with the total consideration which was transferred to it from the travel agent through which the passengers purchased their flight tickets. However, the airline argued that it was not obligated to return the travel agent fees which the passengers paid to the travel agents.

The ECJ considered the question of whether the term "reimbursement" under EU Regulation 261/2004 includes the obligation of an airline to directly refund the **additional costs** that passengers paid to the airline's authorized travel agent, including the fees (or any other payment) made to the travel agent and which were never transferred to the airline.

The ECJ established that when the travel agent involved is the airline's authorized travel agent, in the case of a flight cancellation by the airline, **the airline is obligated to reimburse the passenger with the total compensation that the passenger paid** – including the fees paid to the travel agent.

The ECJ also established that an exception to the above described reimbursement rule – meaning the reimbursement including the travel agent fees – would be a case where the payment made to the travel agent was paid without the airline's knowledge.

International Tourism – Amendment to Regulation 500(7) of the Civil Procedure Regulations 1984 – Commencing in September 2019

The Minister of Justice Ayelet Shaked recently signed an amendment to the Civil Procedure Regulations 1984 (hereinafter: the "**Regulations**") which is set to come into force in September 2019. One of the changes to the law concerns regulation 500(7) which deals with the court's authority to grant leave for service of pleadings outside of the jurisdiction of the State.

The regulation in its current form enables the court to grant leave for service of pleadings on a foreign defendant only where "the claim is based on an act or omission carried out with within the State." The new regulation establishes that in order to receive leave for service outside of the jurisdiction under regulation 500(7) it is sufficient to demonstrate that the **damage** caused to the plaintiff was sustained in Israel provided that the defendant could foresee that the damage could occur in Israel.

This is a significant amendment to the current law which also displaces the leading Supreme Court precedent of Mizrahi v. Nobel Explosives Co. Inc., PD (32)115 (1978) in which the Court held that it is not sufficient to show that the **damage** was caused in Israel in order to receive leave for service outside of the jurisdiction under regulation 500(7), but rather it is necessary to show that the act or omission was carried out in

Israel.

Sincerely,

Fischer Behar Chen Well Orion & Co

Updated written by: Adv. Shirly Kazir

For further information, please contact:

Adv. Shirly Kazir **skazir@fbclawyers.com** **+972-3-6941348**

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