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International Air Transport)
Association: Agreement Relating)
to Liability Limitations of the)
Warsaw Convention)

Docket 49152

OST-95-232-14

REQUEST FOR EXTENSION OF DISCUSSION AUTHORITY
WITH ANTITRUST IMMUNITY, MODIFICATION OF CONDITIONS AND
SHORTENED ANSWER PERIOD

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December 22, 1995

IATA December 22, 1995

NOTE: Shortened Response
Time Requested

12 pgs.

U.S. DEPARTMENT OF TRANSPORTATION
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International Air Transport Association: Agreement Relating to Liability Limitations of the Warsaw Convention)
Docket 49152)

REQUEST FOR EXTENSION OF DISCUSSION AUTHORITY
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SHORTENED ANSWER PERIOD

The International Air Transport Association (IATA) hereby requests that Order 95-7-15 be modified: (1) to extend the deadline in ordering paragraph 1, until April 1, 1996; and (2) to clarify that the obligation imposed on U.S. carrier representatives by ordering paragraph 3(d) runs directly to those representatives and is not a condition subsequent to the immunity of any discussion. IATA further requests that the answer period under 14 C.F.R. 5303.42 be shortened from 21 to five days.

1. By Order 95-7-15, issued July 12, 1995, the Department of Transportation granted **IATA's** June 26, 1995 request for immunized discussion authority "**directed toward producing** an acceptable passenger liability regime under the Warsaw **Convention.**" The Department also exempted discussion participants from the operation of the antitrust laws

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pursuant to 49 U.S.C. §41309. Discussion authority was granted through December 31, 1995.

2. Pursuant to Order 95-7-15, IATA convened Working Groups of the Airline Liability Conference (ALC) which had been held June 19 - 23, 1995 in Washington, D.C. pursuant to Order 95-2-44 which was the predecessor of Order 95-7-15. The IATA Secretariat, taking account of the results of the ALC and the Working Groups, then prepared a draft intercarrier agreement on passenger liability.
3. The draft agreement, in the format of an "umbrella accord", was designed to provide a flexible, appropriate and effective means to secure full recoverable compensatory damages and was submitted to the IATA Annual General Meeting (AGM) in Kuala Lumpur on October 30, 1995. The AGM, by Resolution, unanimously endorsed the draft agreement and called upon IATA Member airlines to sign it as soon as possible. The agreement, now denominated the IATA Intercarrier Agreement (IIA), was opened for signature on October 31, 1995 and to date has been signed by more than 20 airlines from all areas of the world. The IIA and the final Resolution of the AGM were provided to DOT by IATA on November 27, 1995.

4. The **"umbrella"** agreement which constitutes the IIA is intended to permit signatory airlines to employ a variety of implementing actions compatible with their interests and those of their respective governments throughout the world. However, the IIA requires each signatory carrier **"[t]o** take action to waive the limitations of liability on recoverable compensatory damages in Article 22 paragraph 1 of the Warsaw Convention" so that the Article 22 paragraph 1 limitation would not preclude recoverable compensatory damages from being "determined and awarded by reference to the law of the domicile of the passenger." It was noted at the AGM, and prior discussions, that a complete waiver of Article 22 paragraph 1 limitations would satisfy this objective by removing any limitation on the ability of courts to determine and award damages under the law of the domicile or any other applicable choice of law. IIA paragraph 1. The IIA also required each signatory carrier **"[t]o** encourage other airlines involved in the international carriage of passengers to apply the terms of this Agreement to such carriage." IIA paragraph 4. IATA notes that the DOT has recognized **"that** IATA has made remarkable progress toward achieving a liability system

that will benefit passengers and carriers alike by removing artificial liability limitations which have been a constant source of litigation and have deprived international airline passengers of full recoveries for their proven damages": Order 95-12-14, page 3.

5. The IATA Secretariat, taking into account advice from members of **IATA's** Legal Advisory Group, has been giving consideration to the best means of securing approval of the IIA by governments, including the Government of the United States. Recognizing the interest of the DOT in an adequate response to the guidelines it had set out in Order 95-2-44 and the interest of some IATA Member carriers in harmonizing their implementation of the IIA before filing implementing tariffs, IATA believes that further discussion among airlines participating in the Airline Liability Conference would be appropriate. Those discussions, to be held on an accelerated basis, would consider: whether there is a need for a specific intercarrier agreement on implementation relating to the application of the IIA on U.S. routes and elsewhere; whether there is a sufficient consensus to develop a uniform implementing agreement on **any** routes; the possible terms of an implementing agreement; and how

consideration of such an intercarrier agreement, whether universal or involving only a voluntary group of carriers, should relate to efforts to seek approval of the IIA. IATA thus believes an extension of the current deadline in Order 95-7-15 until April 1, 1996 is necessary to conduct these discussions.' Such an extension is clearly in the public interest.

6. IATA is aware of the discussion authority conferred on IATA *sua sponte* by Order 95-12-14. However, taking into account the December 31, 1995 expiration date of the immunity granted in Order 95-7-15 and the Department's observation in Order 95-12-14, page 3, the IATA had **"not yet"** requested continued immunity, IATA is asking for a 90 day extension of the authority granted in Order 95-7-15. Also, Order 95-12-14, refers only to discussions **"to** develop an intercarrier agreement for implementation of the IATA Intercarrier Agreement" and presupposes **"the**

¹ The Air Transport Association of America (**ATA**) has indicated that this application does not represent the views of U.S. carriers and that, as reflected in the **ATA** Application dated November 22, 1995 in Docket OST-95-860, U.S. carriers strongly support the continuation of intercarrier discussions under either IATA or **ATA** auspices. Specifically, U.S. carriers oppose the request for suspension of Order 95-12-14. Nevertheless, for reasons set forth in paragraphs 6 and 7 *infra*, IATA members believe that the immunity requested is essential to the continuation of the broad-based intercarrier discussions desired by U.S. and non-U.S. carriers alike.

necessity for a uniform standard of liability applicable to and from the United States" under "a single liability regime." Order 95-12-14 paragraph 1, page 3. A number of carriers participating in the ALC have, however, not yet concluded that a universal implementing agreement is necessary or desirable for any routes, including routes to and from the United States. Thus, IATA believes that the immunity of Order 95-7-15, covering all matters "directed toward producing an acceptable passenger liability regime under the Warsaw Convention," must be extended so that the questions predicate to the scope of Order 95-12-14 immunity can be fully and fairly evaluated by the relevant international airline community. In that connection, IATA believes that the effectiveness of Order 95-12-14 and consideration of related immunities sought by AITAL, the OAA, the AEA and IACA should be temporarily suspended for the period of exempted discussions under Order 95-7-15.

7. IATA further notes that ordering paragraph 3(d) of Order 95-7-15 imposes a reporting requirement on U.S. carrier representatives but makes satisfaction of that reporting requirement a "restriction", or condition subsequent, on the immunity conferred by the Order. In granting Order

95-7-15, the DOT explained that it would "require that a U.S. carrier be included in all working groups, drafting sessions, or other discussions, and be authorized to report fully on the progress of such discussion...", p. 3 (emphasis added). By contrast, the DOT stated that it would "**anticipate** that the U.S. carriers will so report."

Id. To implement this formulation, which IATA accepts, ordering paragraph 3(d) should be amended to read:
(revisions underlined)

"(d) The U.S. carrier representatives attending all such discussion shall be authorized to report fully and continually [....] and shall be authorized to submit all drafts [....]"

8. Because IATA intends to go forward promptly, and because of the need to sustain the momentum the IIA has achieved at the AGM, IATA requests that the period for comment under 14 C.F.R. **§303.42** be shortened to five days.

WHEREFORE, IATA requests that the relief sought above be granted.

Respectfully submitted,

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