

INTERNATIONAL CONFERENCE

Skyward Bound: Innovating the FUTURE OF AVIATION

FRIDAY, 20 SEPTEMBER 2024

Room "Castoldi", Campus Sant'Agostino, Città Alta - Bergamo



UNIVERSITÀ
DEGLI STUDI
DI BERGAMO

Department
of Law



Co-funded by
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Passenger Rights — A worldwide update

20.09.2024 – Bergamo, Italy

Gonzalo Torres Picazo

Internal

Africa: The world's fastest-growing continent, still falling behind in passenger rights

Africa

01

- Africa represents 17% of the world's population, but only 3% of the world's air traffic.
- Weak Civil Aviation Authorities / Consumer Protection Agencies.
- Inefficient consumer protection rights. Heavy reliance on:
 - EU/US law
 - Airlines' T&C govern most claims
 - 1929 reminiscences

REPUBLIC OF LIBERIA) IN THE CIVIL LAW COURT, SIXTH JUDICIAL CIRCUIT
MONTERRADO COUNTY) MONTERRADO COUNTY, SITTING IN ITS SEPTEMBER
TERM A.D. 2023

BEFORE HIS HONOUR: [REDACTED] **ASSIGNED CIRCUIT JUDGE**

Mrs. [REDACTED] by & thru her)
Attorney-In-Fact, [REDACTED] of the City of Monrovia)
Liberia.....PLAINTIFFS)

VERSUS

Brussels Airlines Liberia by & thru its Country Manager)
And all authorized Officers, all of the City of Monrovia,)
Liberia.....DEFENDANT)

ACTION OF
DAMAGES FOR
WRONG

PLAINTIFF'S EXPENSES

For superintending the Preparation of complaint with exhibits,
filing/docketing of case, issuance of writ of summons and service and returns
.....US\$30.00
For the issuance of notices of Assignment.....US\$200.00
For Superintending the issuance and service of Bill of Costs in triplicate..... US \$200.00
6% of legal interest per annual for 2 years (2021-2023).....US\$1,800.00
Judgment amount.....US\$15,000.00

Latin America

Latin America

02

Argentina

- Delay <4h (-), 4h-8h (right to care).
- No fixed compensation, but MC limits are respected.
- Moral damages are compensable.

Mexico

- Delays (2-4h): right to care and compensation (>7,5% of ticket value).
- Long delays and cancellation:
 - Refund + compensation (>25% ticket)
 - Re-routing + compensation (>25% ticket)

Colombia

- Delays: right to care.
- Cancellations & delays > 5h: compensation based on value of ticket (30%)

Brazil

- Strong air transport consumer protection regime
 - EU261 inspired: compensation for delays, cancellations, denied boarding, refunds, re-routing, right to care, etc. However ..
 - Except denied boarding (250-500 SDR), amounts of compensation are based on individual circumstances.
- Non-exclusivity of WC29/MC99
 - National consumer law prevails over WC29/MC99
 - Treaty limits are not respected: limitation of liability infringes Brazilian Constitution (“unrestricted indemnity”). Indemnity is quantified based on the “extent of the damage”.
 - Moral damages are compensable (delay, baggage, ..)
- Highly digitalized judicial system
 - Data collection facilitates increasing awareness

Compensation Industry averages Brazil

Baggage loss	1,450 EUR
Flight cancellation	1,190 EUR
Baggage delay	1,150 EUR
Flight delay	1,090 EUR

USA: latest DOT rules

USA

03

- Passenger protection mainly based on contract law/airline's T&C: most don't directly compensate for delays or cancellations.
- USA does not have one regulation covering all air passenger right:
 - Passengers protected against overbooking (\$1,350), luggage issues (\$3,800) and tarmac delays → Pax rely on EU261 for other types of disruptions (cancellations and delays), or the airline's goodwill.
- In 2024, the DOT has passed several rules, affecting passenger rights and airlines' handling procedures .

Ticket Refunds

- Airlines are now required to **process refunds automatically** and promptly (7-20 days) in the event of a flight cancellation or a significant change **without having to wait for passenger's request.**
- Obligation to provide travel credits / vouchers valid for at least 5 years when passengers are affected by public health emergencies, even when the flight leaves on time and without significant itinerary change.

Transparency of Ancillary Service Fees

- Enhance transparency for ancillary services critical to consumer's purchasing decision (baggage and cancellation policies).
- Disclosure of fees directly during the itinerary search process, whenever a fare and schedule is provided. Airlines cannot omit carry-on, second bag fees, etc.

Family Seating & More

- Current proposal on adjacent seating for children.
- Water and toilet usage.
- Rules applicable to US and foreign airlines, including non-US feeder traffic.

Canada: EU261 on steroids

04

Canada

The

- The Canadian Transport Authority (CTA) issued the Air Passenger Protection Regulations (APPR), Accessible Transportation for Persons with Disabilities Regulation (ATPDR) and the Accessible Canada Act in 2019
 - APPR: compensation in relation to (lost or damaged baggage, flight delays and cancellations, denied boarding, refunds, tarmac delays, seating of minors, communication with passengers, etc.

Flight Irregularities (Delay and Cancellations)

- Notification <12h and waiting time at airport >2h:
 - Right to care
 - Pax must complete itinerary (re-routing): 3-9h (own flight), 9-48h (other airlines), <48h (other airline & airport), free of charge.
- Compensation conditions:
 - Delays & cancellation within airline's control;
 - Pax notified within 14 days of departure, and
 - If arrival is delayed +3h:

Arrival time behind original STA	Amount
≥ 3 hrs < 6 hrs	CAD 400
≥ 6 hrs < 9 hrs	CAD 700
≥ 9 hrs	CAD 1000

Refund + CAD 400 if loss of travel purpose



Denied Boarding (overbooking)

- Payment is due within 48h

Arrival time behind original scheduled arrival time	Amount
< 6 hrs	CAD 900
≥ 6 hrs < 9 hrs	CAD 1,800
≥ 9 hrs	CAD 2,400

Legal Implications

- The CTA has implemented a complaint portal to treat pax complaints. This is a costly, lengthy and time sensitive process. Cost per case filed with the CTA start at \$1,200.
- Legal deadline to respond in under 30 days: (1) all points in pax complaint have been addressed, (2)reason for irregularity, (3) legal basis for airline's decision, etc.
- Failure to adhere to the Regulations: \$25,000/incident, and up to \$250,000. Repeated penalties may lead to binding compliance agreement and potential for loss of license to fly.

Intermodality

ESSENTIAL NEEDS OF INTERMODAL PRODUCTS



Equal quality standard & customer experience



Solutions in case of irregularities



Specific IT systems & data protection



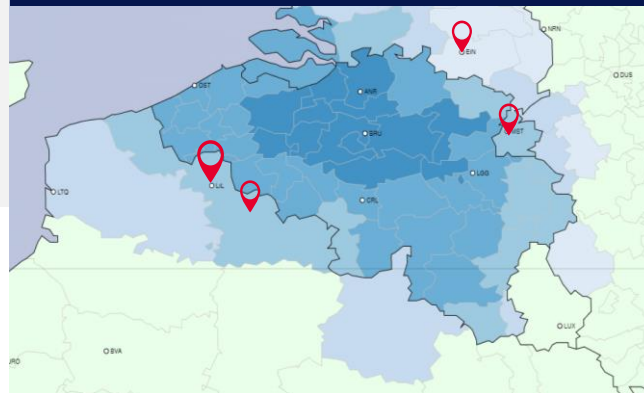
Operation tailored to pax with baggage



Infrastructure developments



Example: catchment area of BRU



20 million people within 90 minutes drive

- Unequal travel conditions between transport modes:
 - Baggage, service, standards, PRM, etc.
- Unequal passenger rights → EC Proposal on pax rights in the context of multimodal journeys (COM/2023/752 final)
 - In the meantime, airlines and partners offer protection
 - Low litigation due to low pax volumes

▪ Positive Reg. developments.

- Existence of intermediaries is acknowledged in regulation e.g. Refunds
- PRM

▪ Negative Reg. developments.

- Liability for missing connexions: refund + compensation based on cost of ticket (75%). However, exclusion of liability if “*ticket consists of separate transport contracts*”.
- Unequal penalty system



Thank you
for your attention