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TIME IS OF THE ESSENCE IN INSURANCE CLAIMS: SOME LEGAL ASPECTS OF THE CARRIAGE OF HORSES BY AIR

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IN OUR CONTINUING SERIES OF ARTICLES ON LEGAL ISSUES RELATED TO HORSES AND THE EQUINE WORLD, IN THIS ISSUE WE SHARE AN ARTICLE ON SOME LEGAL ASPECTS OF THE CARRIAGE OF HORSES BY AIR, PREPARED IN COLLABORATION WITH PROF. PETER HAANAPPEL. PROF. HAANAPPEL IS A WELL-KNOWN EXPERT ON AVIATION LAW AND AN AVID HORSEMAN. IN THE PAST HE PARTICIPATED IN THE DRAFTING OF AVIATION LAWS IN A NUMBER OF THE MIDDLE EASTERN COUNTRIES.

Some countries in the Middle East, for instance Egypt, the United Arab Emirates, Qatar, Oman, and Saudi Arabia, have ratified the Convention for the Unification of Certain Rules for International Carriage by Air executed in Montreal on 28 May 1999 (the "Montreal Convention 1999"). The convention has been ratified by 119 countries in the world giving its provisions a universal character. The full list of the current members of the Montreal Convention 1999 can be found on www.icao.int. Within the framework of this article we would like to review some legal aspects of the carriage of horses by air.

Probably the most publicised air crash involving horses was the crash at London's Heathrow Airport, on 3 July 1968, of an Airspeed Ambassador aircraft of BKS Air Transport, arriving from Deauville, France with, amongst others, eight race horses on board. All horses perished, along with three out of the five grooms. Obviously, such an accident is what we all wish to avoid.

The carriage of horses by air, given their nature and value, is a very specialised business, requiring great care. Not all airlines transport horses and only larger aircraft - mixed passenger / cargo aircraft or all cargo aircraft - can accommodate them. Only one US domestic airline (at the same time forwarder) is reported to carry horses exclusively, in a single aircraft Boeing 727 fleet. In addition to specialised airlines and airports, also specialised intermediaries,

shippers and freight forwarders are involved. The International Air Transport Association (IATA), to which most international airlines in the world belong, has been instrumental in developing the IATA Live Animals Regulations (LAR) which govern the matter, in addition to each carrier's own handling rules.

Like other animals, we owe horses our care and respect, as evidenced by, for instance, the European Convention for the Protection of Animals during International Transport. In law, however, horses remain "moveables" in civil law; or "chattels corporea", in common law. That increasingly they are being recognised as "sentient living beings", such as in the EU's Lisbon Treaty and soon, probably, in the French Civil Code, does not change much in practice. Since horses cannot be carried by air as "accompanying baggage" in the passenger cabin of an aircraft because of their size, their carriage by air is as cargo, as freight. Depending on the length of the flight, they must be watered and fed during the flight, and must be secured in special flight stalls. Importantly, horses need to be accompanied by air grooms, whether servants of the airline, of the owner or of the forwarder, or any combination thereof. Sometimes tranquilisation of horses traveling by air is necessary to avoid undue stress. Upon arrival of the horse at destination after international travel, quarantine regulations may apply.

The Montreal Convention 1999, consolidating and revising the old Warsaw Convention 1929 (with nearly the same title) and its various protocols and amendments, governs the liability of the air carrier for death, injury of, or other damage to horses, carried by air as cargo, in international as well as often in domestic air transportation. It should be noted that in the large US domestic market, the liability of the air carrier is not governed by "Montreal" or "Warsaw", but by applicable State (contract) law. The carrier's liability under Warsaw / Montreal applies whilst the horse is in the "charge" of the airline. Basically the liability is strict and the carrier will be liable for loss, destruction or damage, unless, translating the Convention into terms applicable to horses, the damage is caused by the state of health of the horse prior to travel, or by defective flight stalls (other than those provided by the carrier). Carrier's liability may be strict, but it is limited, under Montreal 1999, to 17 Special Drawing Rights per kilogram (17 SDR = € 20 or US \$ 25) for horse and stall.

The carrier may not pay less than this, whatever the contract of carriage says. However, the limit of 17 SDR under the Montreal Convention even applies in the case of intentional or willful misconduct of the carrier or his servants and agents. Obviously, the sum of 17 SDR is inadequate compensation in many or most cases of carriage of horses by air. Under the Convention

the consignor (sender) may “declare additional value” for the shipment, and then, in case of damage, the carrier must pay compensation up to that higher value, but then, obviously, in exchange for a higher cargo rate. This seems to be rare in practice. Different kinds of insurance contracts are used to cover the risk exceeding the carrier’s liability limit.

Under the Montreal / Warsaw conventional systems for the air carriage of horses, the airline must issue an airway bill to the consignor, with copy for the consignee (addressee). Unlike the Bill of Lading of maritime transport, the airway bill is not a negotiable instrument and, in the case of transportation of horses, the airway bill does not incorporate any right of ownership or other legal title to the horse. The closest an airway bill gets to a Bill of Lading, is when it is made out to “bearer” as consignee. But then, this says nothing about ownership of or other title to the horse. Ownership of or other legal title to the horse may change during the carriage by air, involving consignor, consignee, and / or third parties, but this does not affect the rights and duties of the air carrier. In the case of loss or damage during the air transportation, for which the carrier, for one reason or another, is not liable, the risk of loss falls upon the owner of the horse or equivalent title holder, unless contractual arrangements between consignor, consignee and third parties stipulate otherwise. This risk only seems to be insurable at very high premiums.


There is relatively little published case law on the carriage of horses by air, probably indicating that out of court settlements are more common

than litigation. Giemulla / Schmid (eds.), Montreal Convention, Kluwer Law International, loose leaf, reports a limited number of cases. A very well written judgment on the carriage of a horse by air from Canada to New Zealand, governed by the old Warsaw Convention, as amended by the Hague Protocol 1955, is Stud v. Trans International Airlines: US Court of Appeals, 9th Circ., No. 83-1543, Decided March 8, 1984, 727 F. 2d 880. We report it here for its clarity.

In April 1980, Transamerica transported the horse “Super Clint” on a flight from Canada to New Zealand. Super Clint, for whom Stud had paid \$300,000 the month before, seemed to be in good health upon arrival in New Zealand on April 4. Shortly afterwards the horse became visibly ill; he died on April 14, 1980. A veterinarian who performed an autopsy on April 15 concluded that the cause of death was “pleuro pneumonia” probably brought on by the stress of travel.” The final autopsy report was dated June 21, 1980.

Shortly after obtaining the final autopsy report, the Stud’s insurance company notified Trans International Airline s about the loss. It was, however, two months after the death of the horse. The US Court of Appeals (the “Court”) decided that the Stud complained too late. According to the Warsaw Convention, as amended by the Hague Protocol 1955, they should have complained within fourteen days following Article 26 thereof, which states that “[i]n case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within fourteen days from the date

of the receipt in the case of goods”. It needs to be noted that the same time barriers for notice of complaint regarding cargo apply under Article 31 of the Montreal Convention 1999. The Court judged that the complaint was not timely raised and that therefore the claim was barred.

An important lesson for practice is for the consignees to examine their horse forthwith and, if applicable, to give notice of any problems or issues forthwith. That would be of course the case in the event the carrier opens the cargo bay at the end of a flight and discovers together with the consignee that a horse shipped live is now dead or disabled. Both the carrier and the consignee then know that injury or death has occurred during the transportation and that the carrier may be held liable. Referring to the case of Super Clint the Court ruled that the Convention did not require Stud to prove to a certainty at the time of giving notice that Transamerica had caused Super Clint’s death. There was no need to wait for a final autopsy report before giving notice of complaint. Therefore, it must be stressed again that in such cases time is of the essence. 

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