

Dear Sirs:

This is further to the undersigned's email dated December 12, 2006 as well as Mr. Mike Redmond's email dated November 7, 2006 and Ms. Kate Kempton's email dated September 22, 2006 with respect to the above captioned matter.

Firstly, the undersigned, on behalf of Air Canada, wishes to thank the Agency for its patience in awaiting Air Canada's written submissions in response to Ms. Kempton's email dated September 22, 2006.

Having said that, Air Canada position as regards the points raised in Ms. Kempton's email and in Mr. Redmond's email are as follows:

1) The wording of Air Canada's notice disclaiming liability (i.e. the additional wording suggested by Ms. Kempton for such notice)

Air Canada respectfully submits that it has fully complied with the Agency's Decision No 319-C-A-2006 as it has set out a timely notice to advise its passenger of its limitation of liability with respect to the carriage of pets.

Secondly, the limitation of liability is set out in a clear and unambiguous language as it clearly indicates that "Air Canada WILL NOT be responsible in the event of loss, delay, injury, sickness or death of an animal accepted for transportation". We respectfully submit that the addition of the words "*whether or not AC is at fault*" will not better serve the interests of the passengers given that **a)** this is implied by the current wording since same does not contain any restrictions and/or limitations as regards the extent of the carrier's exclusion of the liability **b)** the wording suggested by Ms. Kempton would have the effect of excluding the carrier's liability even in the case of an intentional fault. Needless to say that this would not be in the passenger's best interests.

Thirdly, Ms., Kempton relies on the Supreme Court decision's Crocker vs. Sundance Northwest Resort Ltd [1988] 1 SCR 1186 to support her view for the requirement additional wording. Ms. Kempton refers the Agency to to paragraph 42 of her factum. Air Canada respectfully submits that **a)** Ms. Kempton's interpretation of the Crocker decision is incorrect and **b)** the issues raised in Ms. Kempton's email dated September 22, 2006 and the ones raised in the Crocker case are very different and consequently, the Crocker case cannot be successfully relied on.

As regards Ms. Kempton's interpretation of the Crocker decision, Air Canada is of the view that the Crocker decision does not dictate how an exclusionary clause must be drafted. Indeed, one of the issues addressed in this decision was whether Crocker had voluntarily assumed the risk associated with the ski competition he had registered himself to participate to. In this case, the Court came to the conclusion that the organizer of the competition could not rely on the terms of the exclusionary clause because it had not been brought to the attention of Mr. Crocker when he signed the waiver in favor of the organizer. Therefore, the principle set out by this decision is that a party cannot rely on an exclusionary clause which has not been brought to the attention of the other party. Unlike what is argued by Ms. Kempton, this decision does not in any way dictate how an exclusionary clause must be drafted. Furthermore, the issue raised by Ms, Kempton in her email dated

September 22, 2006 is whether the wording of the exclusionary clause which is brought to the passenger's attention on Air Canada's website and through its Itinerary Receipt is sufficient. Instead, in the Crocker case, the issue was whether the clause had even been brought to Crocker's attention.

In the light of the foregoing, Air Canada respectfully submits that **a)** it has fully complied with the Agency's Decision No319-C-A-2006 **b)** the notice posted in AC's Tariffs, on its website and through its Itinerary Receipts is a timely one **c)** the wording of said notice is adequate, clear, unambiguous, fair and does not exclude the carrier's liability in the case of intentional fault.

2) References to "pets" or "pet animals" in provisions respecting limitations of liability

Tariff Rule 5 of Air Canada's Domestic Tariff defines animals as follows: "*in addition to the usual connotation, include reptiles, birds, poultry and fish*". Based on the foregoing decision, "pets" qualify as "animals". However, animals are not limited to pets. Ms. Kempton is inquiring as to whether Air Canada's rules as regards animals other than "pets animals" have changed. Air Canada respectfully submits that the issue raised by Ms. Kempton is academic given that only "pet animals" are accepted as checked baggage. Other species have to be carried as cargo. Thus, their carriage will be governed by the Cargo Tariff Rules, not the Passenger Domestic Tariff Rules.

3) The wording of Air Canada's tariff provisions regarding liability (the Agency's decision requires Air Canada "to revise its tariff so as to clearly set out that adequate and timely notice of Air Canada's limitations of liability for the carriage of animals shall be provided")

AC respectfully submits that the Agency's Decision requires that a "timely and adequate notice" be given. However, it does not require that these specific words (i.e. "timely and adequate notice") form part of the amendment. Air Canada respectfully submits that the amendment brought to Tariff Rule 230 (B) (1) achieves the goal and the spirit of the Agency's Order. Nevertheless, if the Agency is of the opinion that the suggested wording should be incorporated to Tariff Rule 230 (B) Air Canada will be pleased to comply with such request.

Please do not hesitate to contact the undersigned should you have any questions.

Best Regards,

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