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February 28, 2013

**VIA EMAIL**

The Secretary  
Canadian Transportation Agency  
Ottawa, Ontario, K1A 0N9

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. Sunwing Airlines  
Complaint concerning Sunwing Airlines' domestic baggage liability policy (Rule 10)**

Please accept the following formal complaint pursuant to s. 67.2(1) of the *Canada Transportation Act*, 1996, c. 10 and Rule 40 of the *Canadian Transportation Agency General Rules* concerning Sunwing Airlines' baggage policy, and specifically its Domestic Tariff Rules 10(a) and 10(iv) that read as follows:

- a) Subject to subsection (2), the liability of the carrier in respect of loss, or damage to, baggage, whether caused directly or indirectly by the act, neglect or default of the carrier or not, the maximum liability is limited to the sum of **CAD\$250.00** per passenger.
  
- (iv) Notwithstanding paragraphs a) & b) of this rule, in the case of delayed baggage upon the passenger's arrival at a point in the itinerary other than the place of residence, the Carrier's liability shall be limited to **CAD25.00** per day per bag, until the passenger receives the bag(s) or up to a maximum of **CAD75.00** whichever comes first. Subject to all of the above stated monetary limits. Carrier shall only reimburse expenses incurred for necessary items purchased. Any claims for reimbursement must be supported by original receipts and any amounts payable under this paragraph shall not be payable to a passenger whose baggage is delayed upon arrival at his place of residence. Any amounts paid to a passenger to compensate for expenses incurred as a result of delayed baggage as set out in this rule shall be deducted from the compensation covered under paragraphs a) or b) of this rule in the event the baggage is deemed lost.

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## **I. Applicable legal principles**

### **(a) The balancing test – meaning of “unreasonable” in s. 67.2(1)**

The *Canada Transportation Act* provides that:

**67.2** (1) If, on complaint in writing to the Agency by any person, the Agency finds that the holder of a domestic licence has applied terms or conditions of carriage applicable to the domestic service it offers that are unreasonable or unduly discriminatory, the Agency may suspend or disallow those terms or conditions and substitute other terms or conditions in their place.

However, neither the *Canada Transportation Act* nor the *Air Transportation Regulations*, S.O.R./88-58 define the meaning of the phrase “unreasonable”. This issue was settled by the Agency in *Anderson v. Air Canada*, 666-C-A-2001, as follows:

The Agency is, therefore, of the opinion that, in order to determine whether a term or condition of carriage applied by a domestic carrier is “unreasonable” within the meaning of subsection 67.2(1) of the CTA, a balance must be struck between the rights of the passengers to be subject to reasonable terms and conditions of carriage, and the particular air carrier’s statutory, commercial and operational obligations.

The balancing test was strongly endorsed by the Federal Court of Appeal in *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95. The test was applied in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011 and *Lukács v. Air Canada*, 251-C-A-2012.

### **(b) There is no presumption of reasonableness**

In *Griffiths v. Air Canada*, 287-C-A-2009 the Agency underscored the importance of applying the balancing test due to the unilateral nature of terms and conditions set by carriers, which often are based only on the carrier’s commercial interests:

[25] The terms and conditions of carriage are set by an air carrier unilaterally without any input from future passengers. The air carrier sets its terms and conditions of carriage on the basis of its own interests, which may have their basis in statutory or purely commercial requirements. There is no presumption that a tariff is reasonable. Therefore, a mere declaration or submission by the carrier that a term or condition of carriage is preferable is not sufficient to lead to a determination that the term or condition of carriage is reasonable.

The Agency applied this principle in *Lukács v. WestJet*, 483-C-A-2010 (leave to appeal was denied by the Federal Court of Appeal; 10-A-42), and more recently in *Lukács v. Air Canada*, 291-C-A-2011 and *Lukács v. Air Canada*, 251-C-A-2012.

**(c) The *Montreal Convention* as a persuasive authority for reasonableness**

The *Montreal Convention* is an international treaty that has the force of law in Canada by virtue of the *Carriage by Air Act*, R.S.C. 1985, c. C-26. The *Montreal Convention* governs the liability limitations for loss, damage, or delay of baggage applicable to international carriage by air.

In *Pinksen v. Air Canada*, 181-C-A-2007, the Agency recognized that international instruments are persuasive authorities in interpreting domestic rules and determining their reasonableness. The same reasoning was affirmed by the Agency in *Kipper v. WestJet*, 309-C-A-2010.

In *Lukács v. WestJet*, 483-C-A-2010, the Agency used the *Montreal Convention* as a persuasive authority for determining the reasonableness of WestJet's domestic tariff provisions, and ordered WestJet to revise its tariff to provide for a limit of liability equivalent to that set out in the *Montreal Convention* (leave to appeal denied by the Federal Court of Appeal; 10-A-42).

In *Lukács v. Air Canada*, 291-C-A-2011, the Agency held that passengers ought to be afforded the same protection against lost, damaged or delayed baggage as in the *Montreal Convention* regardless of whether the convention applies.

In *Lukács v. Air Canada*, LET-C-A-129-2011, the Agency reaffirmed the doctrine that the underlying principles of the *Montreal Convention* are also applicable to domestic carriage, and provided a wealth of of authorities in support of its finding (paras. 35-45).

In *Lukács v. Air Canada*, 250-C-A-2012, which affirmed *Lukács v. Air Canada*, LET-C-A-129-2011, the Agency explained the dual role of the *Montreal Convention* in determining the reasonableness of a tariff provision:

[23] [...] Past Agency decisions reflect the two distinct ways in which the Convention might be considered: by looking at whether a tariff is in direct contravention of the Convention, thereby rendering the provision null and void and unreasonable [Footnote: See for example: *Balakrishnan v. Aeroflot*, Decision No. 328-C-A-2007 at para. 20 and *Lukács v. WestJet*, Decision No. 477-C-A-2010 at paras. 39-40 (Leave to appeal to Federal Court of Appeal denied, FCA 10-A-41).]; or by referring to the principles of the Convention when considering the reasonableness of a tariff provision. [Footnote: See for example: *Lukács v. WestJet*, Decision No. 313-C-A-2010 and Decision No. LET-C-A-51-2010 .]

## II. Is Sunwing Airlines' baggage liability cap of \$250 reasonable?

Sunwing Airlines' Domestic Tariff Rule 10(a) limits Sunwing Airlines' liability in respect of loss or damage to baggage to \$250.00. The Applicant submits that this liability cap is unreasonably low.

### (a) International standards for baggage liability

#### 1. *Montreal Convention*: 1,131 SDR

Article 22(2) of the *Montreal Convention* provides a monetary limit for the carrier's liability in case of destruction, loss, damage or delay of baggage. This cap was established at 1,000 Special Drawing Rights (SDR) at the time the convention was drafted. However, Article 24 provides for a periodic review of the limits contained in the *Montreal Convention*, and consequently, in 2009, the said limit was raised to 1,131 SDR.

#### 2. Australia (domestic carriage): AUD\$1,600

The limit of liability for domestic carriage of registered (checked) baggage in Australia is governed by s. 31(2) of the *Civil Aviation (Carriers' Liability) Act 1959*, and the *Civil Aviation (Carriers' Liability) Regulations 1991* promulgated by the Act, which provides a statutory minimum limit of AUD\$1,600.

#### 3. European Union (also in domestic carriage): 1,131 SDR

Article 3(1) of *Regulation (EC) No 2027/97*, as amended by *Regulation (EC) No 889/2002*, adopts the baggage liability regime of the *Montreal Convention* as the domestic law of the European Union, applicable also to carriage by air within a single state.

#### 4. New Zealand (domestic carriage): NZD\$1,500

The statutory liability of carriers in domestic carriage of baggage in New Zealand is provided by s. 15 of the *Carriage of Goods Act 1979*, as amended by the *Carriage of Goods Amendment Act 1989*, and is fixed at NZD\$1,500 for each unit (piece) of goods lost or damaged.

#### 5. United States (large aircraft): USD\$3,300

The liability of domestic carriage of baggage in the United States is governed by C.F.R. Title 14, Part 254. According to §254.4, carriers cannot limit their liability for destruction, loss, damage or delay to baggage to less than USD\$3,300, and by §254.6, this limit is reviewed biannually by the Department of Transportation. (The Applicant concedes that this limit applies only to carriage by "large aircraft," which are defined in §254.3 as an aircraft designed to have a maximum passenger capacity of more than 60 seats.)

**(b) Canadian standards for baggage liability in domestic carriage**

1. Air Canada (domestic carriage): CAD\$1,500

Air Canada's Domestic Tariff Rule 230(A)(1) (Exhibit "B") provides for a liability cap of \$1,500 in case of loss, damage, or delay of baggage.

2. Porter Airlines (domestic carriage): CAD\$1,800

As of February 14, 2012, Porter Airline's Domestic Tariff Rule 9(a) provides a liability of \$1,800 in case of loss, damage or delay of baggage.

3. WestJet (domestic carriage): 1,131 SDR

WestJet's liability limit in carriage of domestic baggage has been the subject of extensive litigation before the Agency. In Decision No. 313-C-A-2010, the Agency held that WestJet's original baggage liability limit of \$250 was unreasonable, and directed WestJet to propose a higher limit. In its response, WestJet proposed to raise its liability cap to \$1,000.

In final Decision No. 483-C-A-2010, the Agency rejected WestJet's proposal, held that the proposed liability cap of \$1,000 was still unreasonably low, and ordered WestJet to raise its domestic liability cap to 1131 Special Drawing Rights. WestJet's application to the Federal Court of Appeal for leave to appeal the Agency's final decision was dismissed (10-A-42).

**(c) Conclusions**

It is submitted that Sunwing Airlines' liability cap of \$250 is substantially below both international and Canadian standards applicable to domestic carriage of baggage by air, and as such it fails to strike the balance between the passengers' rights to be subject to reasonable terms and conditions and the carrier's statutory, commercial, and operational obligations.

In light of the Agency's finding in Decision No. 483-C-A-2010, that \$1,000 was not a reasonable cap of baggage liability, it is submitted that it is plain and clear that Sunwing Airlines' liability cap of \$250 is unreasonable within the meaning of s. 67.2(1) of the *Canada Transportation Act*.

As Air Canada, Porter Airlines, and WestJet all apply a significantly higher baggage liability limit, Sunwing Airlines will not suffer any commercial or competitive disadvantage by raising its liability cap.

Therefore, it is submitted that Sunwing Airlines' liability cap of \$250 ought to be disallowed and substituted with the liability limit equivalent to that set out in the *Montreal Convention*.

**III. Is Sunwing Airlines's baggage delay liability cap of \$25.00/day, up to a maximum of \$75.00, reasonable?**

Sunwing Airlines' Domestic Tariff Rule 10(iv) limits Sunwing Airlines' liability in respect of delay of baggage to a total of \$75.00, and to \$25.00 per day of delay.

**(a) The liability cap of \$75.00 is unreasonable**

The liability cap of \$75.00 for delay of baggage is no more than a token, and it effectively serves the purpose of relieving Sunwing Airlines from almost any liability for delay of checked baggage.

It is submitted that relieving a carrier from liability for delay of checked baggage is inconsistent with the legal principles of the *Montreal Convention*, and as such it is unreasonable.

Furthermore, in light of the Agency's finding in Decision No. 483-C-A-2010, that \$1,000 was not a reasonable cap of baggage liability, it is submitted that it is plain and clear that Sunwing Airlines' liability cap of \$75 is unreasonable within the meaning of s. 67.2(1) of the *Canada Transportation Act*.

**(b) The liability cap of \$25.00/day is unreasonable**

Sunwing Airlines is not the only airline that attempted in the past to implement a "per day" liability cap in respect of delay of baggage. In *Dandoy v. Corsair*, 107-C-A-2007, the Agency rejected a policy of the carrier that limited the carrier's liability in the case of delay to 24 EUR per day, up to a maximum of seven days:

[22] The Agency notes that Corsair indicated that its maximum liability in cases of delayed delivery is EUR 24 per day per late suitcase, up to a maximum of seven days, and that this maximum applies only to the replacement of essential items. The Agency also notes that Corsair indicated that pursuant to the Montreal Convention, a carrier can compensate a passenger between 0 and 1000 SDR.

[23] After reviewing Corsair's tariff, the Agency notes that the tariff does not support Corsair's arguments relating to the limits of its liability. In fact, Corsair's tariff refers to the provisions of the Montreal Convention, which states that the carrier is liable for damages occasioned by delay in the carriage by air of baggage, up to a maximum of 1000 SDR per passenger. The Agency notes that the Montreal Convention does not set out a maximum of EUR 24 per day per late baggage or a restriction requiring a passenger to purchase only "essential" items.

Similarly, in *Lukács v. Porter Airlines*, 16-C-A-2013, the Agency held that a tariff provision limiting the carrier's liability for delay of baggage to \$25.00 per day was unreasonable.

In addition to the inconsistency of a “per day” liability cap with the principles of the *Montreal Convention* (which is already sufficient to render the provision unreasonable), there is another reason for rejecting such a provision: Often, passengers incur the greatest expenses in the first 24-48 hours of the day.

For example a businessman, a lawyer, or an accountant travelling to an important meeting may be required to purchase or rent a suit if her or his baggage containing the usual business attire is delayed. Similarly, a passenger travelling to a wedding or a funeral cannot appear in a T-shirt and jeans, and thus may be required to purchase or rent a tuxedo or other attire that is socially expected at a particular type of event.

This common knowledge and experience was recognized by the Agency in *Shetty v. Air Canada*, 353-C-A-2012, where it was held that the passenger was entitled to compensation in the amount of \$800.52 in relation to a 14-hour delay of baggage in domestic carriage.

Passengers can reasonably expect Sunwing Airlines to deliver their baggage to them at the time of their arrival at the destination. Thus, it is submitted that limiting Sunwing Airlines’ liability for delay of baggage to \$25.00 per day deprives passengers of compensation for reasonable expenses incurred as a result of the delay.

Therefore, it is submitted that Sunwing Airlines’ Domestic Tariff Rule 10(iv) is unreasonable both because it is inconsistent with the principles of the *Montreal Convention*, and because it fails to strike the balance between the rights of passengers to be subject to reasonable terms and conditions of carriage and Sunwing Airlines’ statutory, commercial and operational obligations.

Hence, it is submitted that Rule 10(iv) ought to be disallowed.

All of which is most respectfully submitted.

Dr. Gábor Lukács  
Applicant

Cc: Mr. Mark Williams, President of Sunwing Airlines



## LIST OF AUTHORITIES

### Legislation

1. *Canada Transportation Act*, S.C. 1996, c. 10.
2. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.
3. *Carriage by Air Act*, R.S.C. 1985, c. C-26.

### International instruments

4. *Montreal Convention: Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal, 28 May 1999).

### Case law

5. *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95.
6. *Anderson v. Air Canada*, Canadian Transportation Agency, 666-C-A-2001.
7. *Dandoy v. Corsair*, Canadian Transportation Agency, 107-C-A-2007.
8. *Griffiths v. Air Canada*, Canadian Transportation Agency, 287-C-A-2009.
9. *Kipper v. WestJet*, Canadian Transportation Agency, 309-C-A-2010.
10. *Lukács v. Air Canada*, Canadian Transportation Agency, LET-C-A-129-2011.
11. *Lukács v. Air Canada*, Canadian Transportation Agency, 291-C-A-2011.
12. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2012.
13. *Lukács v. WestJet*, Canadian Transportation Agency, 313-C-A-2010.
14. *Lukács v. Air Canada*, Canadian Transportation Agency, 250-C-A-2012.
15. *Lukács v. Air Canada*, Canadian Transportation Agency, 251-C-A-2012.
16. *Lukács v. Porter Airlines*, Canadian Transportation Agency, 16-C-A-2013.
17. *Lukács v. WestJet*, Canadian Transportation Agency, 483-C-A-2010.
18. *Lukács v. WestJet*, Federal Court of Appeal, 10-A-42.

19. *Pinksen v. Air Canada*, Canadian Transportation Agency, 181-C-A-2007.
20. *Shetty v. Air Canada*, Canadian Transportation Agency, 353-C-A-2012.

**Foreign legislation**

21. Australia: *Civil Aviation (Carriers' Liability) Act 1959*, No. 2, 1959.
22. Australia: *Civil Aviation (Carriers' Liability) Regulations 1991*, SR 1991 No 6.
23. European Union: *Regulation (EC) No 889/2002 of the European Parliament and of the Council* of 13 May 2002.
24. European Union: *Council Regulation (EC) No 2027/97* of 9 October 1997.
25. New Zealand: *Carriage of Goods Act 1979*, Public Act 1979 No 43.
26. New Zealand: *Carriage of Goods Amendment Act 1989*, Public Act 1989 No 100.

SUNWING AIRLINE INC

LOCAL DOMESTIC TARIFF

## **RULE 9. LIMITATION OF LIABILITY - PASSENGERS**

- a) The liability of the carrier in respect of the death of, or injury to, a passenger is limited to the sum of **\$100,000** exclusive of legal fees and costs, per passenger, per incident.
- b) In no cases shall the carrier's liability exceed the actual loss suffered by the passenger. All claims are subject to proof of amount of loss.
- c) The carrier is not liable
  - (i) In the case of any passenger whose age or mental or physical condition, including pregnancy, is such as to involve an unusual risk or hazard, for any damages sustained by that passenger that would not have been sustained but for his/her age or mental or physical condition; or
  - (ii) In the case of a pregnant passenger, for any damages in respect of the unborn child of that passenger.

## **RULE 10. LIMITATION OF CARRIER RESPECTING BAGGAGE**

- a) Subject to subsection (2), the liability of the carrier in respect of loss, or damage to, baggage, whether caused directly or indirectly by the act, neglect or default of the carrier or not, the maximum liability is limited to the sum of **CAD\$250.00** per passenger.
- b) The liability of the carrier is limited to the declared value of baggage except if the passenger or charterer does elect to declare a higher value an additional charge shall be payable and the carrier's liability will not exceed the higher value declared. The additional charge shall be calculated as follows:
  - The amount of the carrier's liability calculated in accordance with the parts of this rule set out above shall be referred to as "basic carrier liability";
  - No charge shall be payable on that part of the declared value which does not exceed basic carrier liability;
  - For that part of the declared value which does exceed basic carrier liability, a charge shall be payable at the rate of CAD 0.50 cents for each CAD \$100.00 or fraction thereof.

For explanation of abbreviations, reference marks and symbols used but not explained hereon, see Page 3.

- (i) Whether the passenger or charterer declares value or not, in no case shall the carrier's liability exceed the actual loss suffered by the passenger. All claims are subject to proof of amount of loss.
- a) No action shall be maintained for any loss, or partial loss of or damage to baggage or for any delay in the carriage thereof unless notice of a claim is presented in writing to the head office of the carrier within 30 days from the date the baggage should have been delivered.
  - b) In no cases shall the carrier's liability exceed the actual loss of the passenger. All claims are subject to proof of amount of loss.

In the case of damage or partial loss, the person entitled to delivery must complain to the carrier forthwith after discovery of the damage or partial loss, and, at the latest, within seven days from the date of receipt of the baggage. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage has been placed at his disposal. In the case of loss, the complaint must be made at the latest within 30 days from the date the baggage should have been delivered. The passenger must notify the carrier immediately upon arrival in the case of missing checked-in baggage. Every complaint, whether for loss, partial loss, damage or delay, must be made in writing and must be dispatched within the times aforesaid. Failing complaint within the times aforesaid, no action shall lie against the carrier.

- (ii) The Carrier shall not be liable for loss, damage or delay of fragile items including any kinds of electronic equipment, electrical appliances, cameras & camera accessories, laptops etc or perishable articles, money, jewellery, silverware, ceramics, statues, art and art supplies, musical instruments, negotiable papers, securities or other valuables, samples or business documents and tools of business and trade, whether the non-acceptable property is included in the passengers' checked baggage with or without the knowledge of the carrier. The Carrier shall have no liability for any damage to baggage in the form of scratches, dents, scuffs, soiling, nicks, or to handles, straps, seams, zippers, wheels and wheel compartments, or locks, or resulting from manufacturer's defects, normal wear and tear or adverse weather conditions. In addition Carrier shall not be liable when damage, or partial loss occurs after the completion of a limited release tag as set forth thereon and further, Carrier shall not be liable for any item stolen or missing from bags that were not locked with a combination or key lock..
- (iii) No claim shall be eligible under this Rule unless the person presents a valid baggage tag issued by the Carrier for the lost, damaged or delayed bag.

For explanation of abbreviations, reference marks and symbols used but not explained hereon, see Page 3.

- (iv) Notwithstanding paragraphs a) & b) of this rule, in the case of delayed baggage upon the passenger's arrival at a point in the itinerary other than the place of residence, the Carrier's liability shall be limited to **CAD25.00** per day per bag, until the passenger receives the bag(s) or up to a maximum of **CAD75.00** whichever comes first. Subject to all of the above stated monetary limits. Carrier shall only reimburse expenses incurred for necessary items purchased. Any claims for reimbursement must be supported by original receipts and any amounts payable under this paragraph shall not be payable to a passenger whose baggage is delayed upon arrival at his place of residence. Any amounts paid to a passenger to compensate for expenses incurred as a result of delayed baggage as set out in this rule shall be deducted from the compensation covered under paragraphs a) or b) of this rule in the event the baggage is deemed lost.
- (v) Notwithstanding paragraphs a) & b) of this rule, in the case of damaged baggage, the carrier's liability shall be limited to repairing the damaged bag, paying the cost of the repair, if such were pre-approved by the Carrier on the basis of an estimate or replacing the bag if it is not repairable. The Carrier shall have the discretion to determine which, if any of the three above methods to use to compensate the passenger.
- (vi) In the case of unclaimed baggage which cannot be identified, the carrier will hold the baggage and items therein for up to 30 days, subsequent to which it will dispose of the bag and its contents as it sees fit. If the baggage can be identified by a name, address, telephone number, the Carrier will make reasonable efforts to inform the passenger that his/her bag is in the possession of the Carrier and that he/she should make arrangements at his/her own cost and expense for collecting the said baggage within 30 days after which time the Carrier will dispose of the bag and its contents as it sees fit.
- (vii) In the event of loss or partial loss the passenger must submit receipts when filing a claim. The Carrier may disallow any and all claims when the passenger fails to provide proof of loss in the form of receipts of purchase.

#### **RULE 11. SUBSTITUTION OF AIRCRAFT\***

- a) When, due to causes beyond the control of the carrier, the aircraft contracted for is unavailable at the time the air transportation commences or becomes unavailable while carrying out such transportation the carrier may furnish another aircraft of the same type or, with the consent of the party contracting for the use of the aircraft, substitute any other type of aircraft if the rates and charges for the new aircraft are the same as for the original aircraft, except as provided in paragraphs (b) and (c).

For explanation of abbreviations, reference marks and symbols used but not explained hereon, see Page 3.

Exhibit "B" to the complaint  
of Dr. Gábor Lukács

February 28, 2013  
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No Change on this Page

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CANADIAN DOMESTIC GENERAL RULES TARIFF NO.  
CDGR-1

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AIR CANADA  
SECTION V - BAGGAGE

RULE 230AC LIABILITY--BAGGAGE

- (A) (1) (Applicable for transportation solely within Canada only and not in conjunction with any international travel.) Liability for the loss of, damage to, or the delay in delivery of, baggage or other personal property shall not be more than 1500.00 dollars per passenger unless a higher value is declared in advance and charges are paid pursuant to carriers regulations as defined in paragraph (C). In such a case, the liability of the carrier shall be limited to such higher declared value. In no case shall the carriers liability exceed the actual loss suffered by the passenger. All claims are subject to proof of amount of loss. These limitations shall also apply to baggage or other personal property (as previously defined in Rule 195) accepted by the carrier for temporary storage at a city or airport office or elsewhere before or after the passengers trip.
- (2) International transportation shall be subject to the Rules relating to the liability established by the Convention whereby any liability of the carrier, is limited, with some exceptions, to 250 French Gold Francs, approximately \$20.00 per kilogram, in the case of checked baggage and 5,000 French Gold Francs, approximately \$400.00 per passenger in the case of unchecked baggage or other property, unless a higher value is declared in advance and additional charges are paid pursuant of carrier's regulations. In that event, the liability of the carrier shall be limited to such higher declared value. In no case shall the carrier's liability exceed the actual loss suffered by the passenger. All claims are subject to proof of amount of loss.

NOTE: In Canada the French Gold Franc shall be converted into Canadian dollars in accordance with the provisions of the carriage by Air Act Gold Franc conversion Regulations, SOR/83-79.

(Continued on next page)

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EFFECTIVE: May 26, 2012

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CANADIAN DOMESTIC GENERAL RULES TARIFF NO.  
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AIR CANADA  
SECTION V - BAGGAGE

RULE 230AC LIABILITY--BAGGAGE

(A) (Continued)

- (3) The carrier may disallow any claim for loss or damage which contains misrepresentations, including false statements concerning whether or not the passenger has made previous claims with AC or other carriers and/or where the passenger fails to have the carriers' baggage claim declaration form notarized. Carrier may also disallow claims when the passenger fails to provide proof of loss in the form of receipts of purchase.
- (4) For the purpose of international carriage governed by the Montreal Convention, the liability rules set out in the Montreal Convention are fully incorporated herein and shall supersede and prevail over any provisions of this tariff which may be inconsistent with those rules.

(B) EXCLUSIONS FROM LIABILITY

- (1) Carrier shall not be liable for loss, damage, or delay, in the delivery of items the carrier has not agreed to carry pursuant to Rules 190 and 195 when such items are contained in checked baggage with or without the knowledge of the carrier. In addition, carrier shall not be liable for damage to fragile items, for damage or spoilage to perishable items resulting from delay, or for loss of unsuitably or inadequately packed items, when such damage, spoilage or loss occurs [X].
- (2) Carrier shall not be liable for loss, damage, or delay in the delivery of passenger's carry-on items or cabin baggage unless caused solely by the carrier's negligent handling or as a consequence of damage to the aircraft.
- (3) Normal carrier baggage liability as contained in Rule 230 will be waived for substantiated claims involving the loss, damage or delay in delivery of mobility aids such as wheelchairs, walkers, crutches, etc., when such items have been accepted into the care of the carrier as checked baggage or otherwise.
- (4) In case of damaged or delayed mobility aids, e.g. wheelchairs and walkers, a temporary replacement will be obtained without undue delay while the passenger's mobility aid is being repaired or returned.
- (5) Carrier is not liable for damages or loss of baggage and contents resulting from overpacking for the style, size and quality of the luggage. Carrier does not accept liability for losses resulting from the use of cardboard boxes as checked baggage.

(C) DECLARATION OF HIGHER VALUE

- (1) (a) A passenger may, when checking in for a flight and presenting property for transportation, pay an additional charge for each carrier on which the property is to be transported and declare a value higher than the maximum amounts specified in (A). The additional charge is CAD \$ 0.50 per each CAD \$100.00 or fraction thereof of excess declared value. This additional charge must be paid in advance for each carrier and for each leg. In which event, carrier's liability shall not exceed such higher declared value.
- (2) Limits on Declared Higher Values  
The declared value for personal property, including baggage, shall not exceed the limits of 2,500.00 CAD.

ISSUED: May 25, 2012

EFFECTIVE: May 26, 2012

PORTER AIRLINES INC.

DOMESTIC TARIFF

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Cancels 1st Revised Page 19

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**RULE 8. LIMITATION OF LIABILITY - PASSENGERS**

- (a) The liability of the carrier in respect of the death of, or injury to, a passenger is limited to the sum of CAD \$200,000.00.
- (b) In no case shall the carrier's liability exceed the actual loss suffered by the passenger. All claims are subject to proof of amount of loss.
- (c) The carrier is not liable
  - (A) In the case of any passenger whose age or mental or physical condition, including pregnancy, is such as to involve an unusual risk or hazard, for any damages sustained by that passenger that would not have been sustained but for his/her age or mental or physical condition; or
  - (B) In the case of a pregnant passenger, for any damages in respect of the unborn child of that passenger.
- (d) No action shall be maintained in respect of the death of, or injury to, a passenger unless notice of a claim is presented in writing to the head office of the carrier within thirty (30) days from the date of the death or injury.

**RULE 9. LIMITATION OF LIABILITY - BAGGAGE**

- (a) The liability of the carrier in respect of loss, or damage to or delay of, baggage, except mobility aids, whether caused directly or indirectly by the act, neglect or default of the carrier or not, is limited to the sum of CAD \$1,800.00 per passenger for all baggage.

The passenger shall be entitled to make, in writing at the time the baggage is handed over to the carrier, a special declaration of value (declared value) for each applicable bag. In any such case, the passenger shall be required to pay a supplementary charge, which shall be calculated as follows:

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- a. No charge shall be payable on that part of the declared value which does not exceed basic carrier liability;
- b. For that part of the declared value which does exceed basic carrier liability, a charge of CAD\$10.00 shall be payable per declaration.

If the passenger makes such a declaration and pays the supplementary charge, the carrier will be liable to pay a sum not exceeding the amount of the declared value, unless it proves that the amount of the declared value is greater than the passenger's actual value.

The passenger may declare a value in excess of basic carrier liability for the checked baggage to a maximum total liability of CAD\$3,000.00, including basic carrier liability.

- (b) The carrier will not accept fragile, valuable or perishable articles including money, jewelry, cameras, video and electronic equipment, silverware, negotiable instruments, business documents, samples, medications, paintings, antiques, furs, manuscripts or similar items in checked baggage or when otherwise placed in the care of the carrier. Unless otherwise specified, a valuable will be deemed any item whose value is \$1,000, or more, per kilogram or \$1.00 per gram.
- (c) Carrier shall not be liable for the destruction, loss, damage, or delay in delivery of any property which is not acceptable for transportation in accordance with subparagraph (b) above or for any other loss or damage of whatever nature resulting from any such loss or damage or from the transportation of such property, including damage or delay of unsuitably or inadequately packed items, to the extent that the destruction, loss or damage resulted from the inherent defect, quality or vice of the baggage, or, in case of delay, that the carrier, its agents, and servants took all measures that could reasonably be required to avoid the damage or that it was impossible to take such measures. This exclusion is applicable whether the non acceptable property is included in the passenger's checked baggage with or without knowledge of the carrier.
- (d) Damaged, lost or delayed baggage must be reported to the carrier in writing within twenty-four hours of the passenger's arrival at the destination airport. The carrier will not be liable for any claim or action unless a written report is filed in accordance with the terms set out above.
- (e) The limitations of liability of the carrier set out above in this Rule 9 will be waived for substantiated claims involving the loss, damage or delay in delivery of mobility aids when

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such items have been accepted into the care of the carrier as checked baggage or otherwise, but subject to the limitations, terms and conditions set out in the last paragraph of this Rule 9.

- (f) In no case shall the carrier's liability exceed the actual loss of the passenger excluding indirect, incidental and consequential damages. All claims are subject to proof of amount of loss.

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