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February 27, 2013

VIA EMAIL

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

Dear Madam Secretary:

**Re: Dr. Gábor Lukács v. WestJet
Complaint about WestJet's International Tariff Rule 110**

Please accept the following submissions as a formal complaint against WestJet for violations of ss. 111 and 122 of the *Air Transportation Regulations*, SOR/88-58 (the "ATR"), pursuant to Rule 40 of the *Canadian Transportation Agency General Rules*.

The Applicant submits that:

1. WestJet's International Tariff Rule 110(B), governing denied boarding compensation, contradicts Rule 75, and thus the Tariff fails to be clear, contrary to s. 122 of the *ATR*;
2. WestJet's International Tariff Rule 110(B) is unreasonable, contrary to s. 111 of the *ATR*;
3. part of Rule 110(E) is unreasonable, contrary to s. 111 of the *ATR*;
4. WestJet's International Tariff Rule 110(G) is unreasonable, contrary to s. 111 of the *ATR*.

Copies of WestJet's current International Tariff Rules 75 and 110 are attached and marked as Exhibits "A" and "B", respectively.

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I. Applicable legal principles

(a) Tariff provisions must be just and reasonable: s. 111(1) of the *ATR*

Section 111(1) of the *ATR* provides that:

All tolls and terms and conditions of carriage, including free and reduced rate transportation, that are established by an air carrier shall be just and reasonable and shall, under substantially similar circumstances and conditions and with respect to all traffic of the same description, be applied equally to all that traffic.

Since neither the *Canada Transportation Act*, S.C. 1996, c. 10 (the “*CTA*”) nor the *ATR* define the meaning of the phrase “unreasonable,” a term appearing both in s. 67.2(1) of the *CTA* and in s. 111(1) of the *ATR*, the Agency defined it 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.

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 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*, 250-C-A-2012.

(b) Tariff provisions must be clear: s. 122(c) of the ATR

Section 122 of the *ATR* states that:

Every tariff shall contain

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(c) the terms and conditions of carriage, clearly stating the air carrier's policy in respect of at least the following matters, namely,

[Emphasis added.]

The legal test for clarity has been established by the Agency in *H. v. Air Canada*, 2-C-A-2001, and has been applied most recently in *Lukács v. WestJet*, 418-C-A-2011:

[...] the Agency is of the opinion that an air carrier's tariff meets its obligations of clarity when, in the opinion of a reasonable person, the rights and obligations of both the carrier and passengers are stated in such a way as to exclude any reasonable doubt, ambiguity or uncertain meaning.

(c) Provisions that are inconsistent with the legal principles of the *Montreal Convention* cannot be just and reasonable

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. It governs, among other things, the liability of air carriers in the case of delay of passengers and their baggage in international carriage.

Article 26 prevents carriers from contracting out or altering the liability provisions of the *Montreal Convention* to the passengers' detriment:

Article 26 - Invalidity of contractual provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

In *Lukács v. Air Canada*, 250-C-A-2012, 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 .]

(i) Itineraries where the *Montreal Convention* applies

Article 26 of the *Montreal Convention* renders null and void any tariff provision tending to relieve a carrier of liability or to fix a lower limit than what is provided for by the Convention.

In *McCabe v. Air Canada*, 227-C-A-2008, the Agency held (at para. 29) that a tariff provision that is null and void by Article 26 of the *Montreal Convention* is not just and reasonable as required by s. 111(1) of the *ATR*. This principle was applied by the Agency in *Lukács v. Air Canada*, 208-C-A-2009 (at paras. 38-39), and in *Lukács v. WestJet*, 477-C-A-2010 (at para. 43; leave to appeal denied by the Federal Court of Appeal; 10-A-41).

Thus, it is settled law that a tariff provision that is inconsistent with the legal principles of the *Montreal Convention* cannot be just and reasonable within the meaning of s. 111(1) of the *ATR*.

(ii) Itineraries where the *Montreal Convention* is not applicable

In *Pinksen v. Air Canada*, 181-C-A-2007, the Agency recognized that international instruments in general, and the *Montreal Convention* in particular, 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 considered Air Canada's Rule 55(C)(7), which stated that "[s]ubject to the Convention, where applicable, carrier is not liable for loss, damage to, or delay in delivery of...". The Agency held that passengers ought to be afforded the same protection against loss, damage or delay of baggage as in the *Montreal Convention*, regardless of whether the convention applies, and disallowed the provision.

II. The Tariff is unclear: Rule 110(B) contradicts Rule 75

Rule 75, a copy of which is attached and marked as Exhibit “A”, imposes a wealth of obligations upon WestJet in respect to passengers denied boarding. Furthermore, Rule 75(F) explicitly recognizes that the rights of passengers are also governed by Article 19 of the *Montreal Convention*. Rule 75 used to be Rule 15, and its provisions came under the Agency’s scrutiny in *Lukács v. WestJet*, Decision No. 249-C-A-2012.

In sharp contrast with these obligations, Rule 110(B) (Exhibit “B”) states that:

The Carrier shall not be liable to any passenger in respect of such overbooking, whether or not resulting from an Event of Force Majeure, provided that, the Carrier will, at the carrier’s discretion, provide any passengers affected by such denied boarding with:

- (1) A credit, valid for one year from the cancellation date, towards the provision of a fare relating to a future flight or flights if booked as a round trip and the originating sector is cancelled, which credit shall be equal to the original fare(s) which was/were cancelled)

or

- (2) To otherwise refund to such passenger, an amount which shall not be greater than the fare paid by the passenger in respect of that flight or flights if booked as a round trip and the originating sector is cancelled.

[Emphasis added.]

It is submitted that the blanket exclusion of liability in Rule 110(B) contradicts and negates the provisions of Rule 75, which does recognize the liability of WestJet.

Clarity of the tariff of a carrier is a statutory obligation enshrined in s. 122 of the *ATR*. A tariff that contains contradictory provisions or provisions that appear to be contradicting each other obviously cannot be clear, contrary to s. 122 of the *ATR*.

Therefore, it is submitted that WestJet’s International Tariff fails to be clear due to the contradiction between Rule 110(B) and Rule 75.

III. Rule 110(B) is unreasonable

The effect of Rule 110(B) is to relieve WestJet from every liability in respect of denied boarding as a result of overbooking if WestJet provides a full refund or future credit to the passenger.

As it has been noted by the Agency's decision in *Lukács v. WestJet*, 249-C-A-2012 and incorporated as Rule 75(F) into WestJet's tariffs, most cases of denied boarding fall within the scope of Article 19 of the *Montreal Convention*, which imposes a regime of strict liability upon WestJet.

It is submitted that Rule 110(B) is a contractual provision tending to relieve WestJet from liability for delay under Article 19 of the *Montreal Convention*, and as such it is null and void pursuant to Article 26 of the *Montreal Convention*.

Furthermore, Rule 110(B) is a blanket exclusion of liability that is inconsistent with the legal principles of the *Montreal Convention*, and therefore it is unreasonable even on itineraries where the *Montreal Convention* is not applicable.

Hence, it is submitted that Rule 110(B) is unreasonable, contrary to s. 111 of the *ATR*.

IV. Part of Rule 110(E) is unreasonable

The Applicant challenges the reasonableness of the underlined portion of Rule 110(E), which reads as follows:

Passengers who are eligible for denied boarding compensation for flights departing from the US must be offered a payment equal to 200% the sum of the fare values of their ticket coupons, with a \$650 USD maximum if WestJet is able to place you on another flight or flights that are planned to reach your final destination or first stopover less than four hours of the scheduled arrival of your original flight. However, if WestJet cannot arrange “alternate transportation (see below) the passenger must be offered a payment equal to 400% the sum of the fare values of their ticket coupons, with a \$1,300 USD maximum. For flights to/from Canada (except flights from USA), as WestJet does not commercially oversell its aircraft, no denied boarding compensation will be provided. “Alternate transportation” is air transportation (by an airline licensed by the D.O.T.) or transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger’s next scheduled stopover (of 4 hours or longer) (for international flights) after the passenger’s originally scheduled arrival time.

(a) Part of Rule 110(E) is inconsistent with the Agency’s decision in *Anderson v. Air Canada*

The Agency considered the principles governing the amount of denied boarding compensation payable to passengers in *Anderson v. Air Canada*, 666-C-A-2001, and held that:

Contrary to an air carrier’s policies on refunds for services purchased but not used, whereby the fare paid by a passenger is inherently linked to the design and implementation of the compensation, the fare paid by a passenger is unrelated to the amount of compensation that the passenger is entitled to receive upon being denied boarding. Further, any passenger who is denied boarding is entitled to compensation; evidence of specific damages suffered need not be provided.

[Emphasis added.]

It is submitted that the impugned portion of Rule 110(E), which states that no denied boarding compensation will be provided for flights to/from Canada, which the exception of flights from the United States, violates the principle that “any passenger who is denied boarding is entitled to compensation”.

Thus, it is submitted that the impugned portion of Rule 110(E) is inconsistent with the Agency’s decision in *Anderson v. Air Canada*, and it is unreasonable.

(b) The balancing test

The obligations of a carrier to a passenger who is denied boarding have two components: denied boarding compensation (which is equal for all passengers), and compensation for damages specific to the passenger's situation (such as meals, accommodation, transportation by another carrier, etc.). In particular, the "denied boarding compensation" is not meant to replace or displace the carrier's liability for reasonable out-of-pocket expenses of passengers. Indeed, for example, in *Kirkham v. Air Canada*, 268-C-A-2007, the passenger was awarded his reasonable out-of-pocket expense and the denied boarding compensation prescribed by the carrier's tariff.

As the Agency correctly recognized in *Anderson v. Air Canada*, passengers who are denied boarding suffer damages that are common to all passengers in such situations, and they are entitled to compensation without evidence of specific damages suffered.

On the other hand, it is unclear how the obligation of paying denied boarding compensation would affect WestJet's ability to meet its statutory, commercial and operational obligations, given that WestJet represents in Rule 110(E) that it does not engage in the practice of overselling its flights.

If WestJet's representations are true in this respect, then WestJet would never have to pay any compensation to any passengers, and so replacing the impugned provision of Rule 110(E) with a reasonable monetary compensation would not have any impact on WestJet at all.

However, if WestJet does overbook its flights from time to time (perhaps inadvertently and/or as a result of a computer glitch), then the current Rule 110(E) deprives passengers of being compensated for denied boarding.

In either case, the impugned portion of Rule 110(E) adversely affects the rights of passengers, and it is not necessary for WestJet to meet its statutory, commercial and operational obligations.

Therefore, it is submitted that by the balancing test established by the Agency, the impugned portion of Rule 110(E) is unreasonable.

V. Rule 110(G) is unreasonable

WestJet's International Tariff Rule 110(G) (see Exhibit "B") states that:

Acceptance of the compensation (by endorsing the cheque or draft within 30 days) relieves WestJet from any further liability to the passenger caused by the failure to honour the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.

The Applicant submits that Rule 110(G) is unreasonable, contrary to s. 111 of the *ATR*.

(a) The Agency disallowed a similar rule in Decision No. 249-C-A-2012

In *Lukács v. WestJet*, 249-C-A-2012, the Agency considered Rule 15.6 of WestJet, which read as follows:

If a passenger accepts the alternative remedies offered by the Carrier, that acceptance shall be in full and final satisfaction of all claims the passenger may have had against the Carrier by reason of the overbooking or cancellation.

The Agency held that this provision was unreasonable:

[154] WestJet has argued that obtaining a release, in itself, is permissible under the Convention. However, it has not demonstrated why unilaterally imposing the terms of a release in its tariff does not tend to relieve it from liability under Article 26 of the Convention. The Agency is therefore of the opinion that WestJet has not shown that Proposed Tariff Rule 15.6 is consistent with Article 26 of the Convention.

[155] Accordingly, the Agency finds that this provision would be considered unreasonable under the *ATR* if filed with the Agency.

(b) Payment of denied boarding compensation is an obligation and not a negotiating tool

Section 122(c)(iii) of the *ATR* requires carriers to clearly state their policies with respect to denied boarding compensation. In *Anderson v. Air Canada*, 666-C-A-2001, the Agency held that any passenger who is denied boarding is entitled to compensation without evidence of specific damages suffered.

It is submitted that given the disparity between the negotiating powers, positions, and resources of a carrier and passengers affected by denied boarding, permitting a carrier to condition payment of denied boarding compensation upon release of the carrier from any further liability to the passenger undermines the purpose of the obligation to pay denied boarding compensation.

Indeed, the Agency's decision in *Anderson v. Air Canada*, 666-C-A-2001 confirms that the purpose of denied boarding compensation is to address in a standardized manner damage that is common to all passengers affected by denied boarding, and it is not subject to the requirement of proof of specific damages suffered.

Therefore, it is submitted that the obligation of a carrier to pay denied boarding compensation is independent of its obligation to compensate passengers for out-of-pocket expenses or other damages specific to the passenger's circumstances. Hence, it is submitted that it is unreasonable for WestJet to unilaterally impose the terms of a release from every liability in its tariff as a precondition for payment of denied boarding compensation.

(c) The balancing test

There is no reason why WestJet should be able to avoid liability for damages to victims of denied boarding and effectively circumvent the provisions of Rule 75 by only paying a fixed sum of denied boarding compensation.

Rule 110(G) preempts passengers' rights of action against WestJet if they accept denied boarding compensation. This clearly adversely affects the rights of passengers. At the same time, Rule 110(G) is not necessary for WestJet to meet its statutory, commercial and operational obligations.

Therefore, it is submitted that Rule 110(G) is unreasonable, contrary to s. 111 of the *ATR*.

All of which is most respectfully submitted.

Dr. Gábor Lukács
Applicant

Cc: Andrew Kay, Senior Legal Counsel for WestJet
Lorne Mackenzie, Director of Regulatory and Government Affairs for WestJet

LIST OF AUTHORITIES

Legislation

1. *Air Transportation Regulations*, S.O.R./88-58.
2. *Canada Transportation Act*, S.C. 1996, c. 10.
3. *Canadian Transportation Agency General Rules*, S.O.R./2005-35.

Case law

4. *Air Canada v. Canadian Transportation Agency*, 2009 FCA 95.
5. *Anderson v. Air Canada*, Canadian Transportation Agency, 666-C-A-2001.
6. *Griffiths v. Air Canada*, Canadian Transportation Agency, 287-C-A-2009.
7. *H. v. Air Canada*, Canadian Transportation Agency, 2-C-A-2001.
8. *Kipper v. WestJet*, Canadian Transportation Agency, 309-C-A-2010.
9. *Kirkham v. Air Canada*, Canadian Transportation Agency, 268-C-A-2007.
10. *Lukács v. Air Canada*, Canadian Transportation Agency, 208-C-A-2009.
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, 477-C-A-2010.
14. *Lukács v. WestJet*, Canadian Transportation Agency, 483-C-A-2010.
15. *Lukács v. WestJet*, Federal Court of Appeal, 10-A-41.
16. *Lukács v. WestJet*, Federal Court of Appeal, 10-A-42.
17. *Lukács v. WestJet*, Canadian Transportation Agency, 418-C-A-2011.
18. *Lukács v. WestJet*, Canadian Transportation Agency, 249-C-A-2012.
19. *McCabe v. Air Canada*, Canadian Transportation Agency, 227-C-A-2008.
20. *Pinksen v. Air Canada*, Canadian Transportation Agency, 181-C-A-2007.

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RULE	SECTION I - GENERAL RULES
C75	<p><u>IN CARRIER CANCELLATION, CHANGE, AND REFUND TERMS</u> (See Rules 60, 100, 105 and 110 for additional Information)</p> <p>(A) The provisions of this Rule are not intended to make the Carrier responsible in all cases for the acts of nature, or for the acts of third parties that are not deemed servants and/or agents of the Carrier per applicable law or international conventions and all the rights here described are subject to the following exception: The Carrier shall not be liable for damage occasioned by overbooking or cancellation if it, and its employees and agents, took all measures that could reasonably be required to avoid the damage or if it was impossible for the Carrier, and its employees or agents, to take such measures.</p> <p>(B) Subject to the exception stated in (A), if a flight is overbooked or cancelled, with the result that a ticketed passenger is not transported on a flight for which he held confirmed space, the Carrier will define a remedy or remedies to mitigate the impact of the overbooking or cancellation upon the passenger. In defining the remedy or remedies appropriate in a particular case, the Carrier will consider the transportation needs of the passenger and any damages the passenger may have suffered by reason of the overbooking or cancellation. In cases where the passenger is offered alternative remedies, the choice among the alternatives shall rest with the passenger. In particular, the Carrier will offer one or more of the following remedies: <ol style="list-style-type: none"> (1) Transportation, without further charge and within a reasonable time, to the passenger's intended destination on a transportation service which service will be identified by the Carrier; (2) Transportation, without further charge and within a reasonable time, to the passenger's point of origin on a transportation service which service will be identified by the Carrier; (3) A monetary payment in an amount to be defined by the Carrier which shall in no case be less than the value of the unused portion of the passenger's ticket; (4) A credit, to be defined by the Carrier, towards the purchase of future transportation on a service operated by the Carrier. </p> <p>(C) In identifying the transportation service to be offered to the passenger, the Carrier will not limit itself to considering its own services or the services of carriers with which it has interline agreements.</p> <p>(D) In defining the alternative remedies to be offered, the Carrier will consider, to the extent they are known to the Carrier, the circumstances of the passenger affected by the overbooking or cancellation, including any expenses which the passenger, acting reasonably, may have incurred as a result of the overbooking or cancellation as, for example, costs incurred for accommodation, meals or additional transportation.</p> <p>(E) In defining the alternative remedies to be offered, the Carrier will make a good faith effort to fairly recognize, and appropriately mitigate, the impact of the overbooking or cancellation upon the passenger.</p> <p>(F) The rights of a passenger against the Carrier in the event of overbooking or cancellation are, in most cases of international carriage, governed by an international convention known as the Montreal Convention, 1999. Article 19 of that convention provides that an air carrier is liable for damage caused by delay in the carriage of passengers and goods unless it proves that it did everything it could be reasonable expected to do to avoid the damage. There are some exceptional cases of international carriage in which the rights of passengers are not governed by an international convention. In such cases only a court of competent jurisdiction can determine which system of laws must be consulted to determine what those rights are.</p> <p>(G) For the purpose of this Rule, a passenger whose journey is interrupted by a flight cancellation or overbooking, and to whom the Carrier is not able to present a reasonable transportation option which takes into account all known circumstances, may surrender the unused portion of his/her ticket. In such a case the value of that unused portion shall be calculated as follows: <ol style="list-style-type: none"> (1) When no portion of the trip has been made, when due to a cancellation or denied boarding within the Carrier's control, if the passenger chooses to no longer travel and return to the point of origin, the amount of refund will be the fare and charges paid. (2) When a portion of the trip has been made, the refund will be calculated as follows: Either an amount equal to the one-way fare less the same rate of discount, if any, that was applied in calculating the original one-way fare, or on round-trip tickets, one half of the round-trip fare and charges applicable to the unused transportation from the point of termination to the destination or stopover point named on the ticket. </p>
<p>For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.</p>	
<p>ISSUED: November 29, 2012</p>	<p>EFFECTIVE: January 13, 2013</p>

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RULE	SECTION I - GENERAL RULES
C110	<p><u>(N) DENIED BOARDING COMPENSATION</u></p> <p>(A) If the plane is over-booked, the Carrier will make all reasonable efforts to: (1) find the passenger a seat on another flight operated by the Carrer; (2) buy the passenger a seat on another carrier; or (3) refund the unused portion of the passenger's ticket (see 2 below for details).</p> <p>(B) The Carrier shall not be liable to any passenger in respect of such overbooking, whether or not resulting from an Event of Force Majeure; provided that, the Carrier will, at the carrier's discretion, provide any passengers affected by such denied boarding with: (1) A credit, valid for one year from the cancellation date, towards the provision of a fare relating to a future flight or flights if booked as a round trip and the originating sector is cancelled, which credit shall be equal to the original fare(s) which was/were cancelled; or (2) To otherwise refund to such passenger, an amount which shall not be greater than the fare paid by the passenger in respect of that flight or flights if booked as a round trip and the originating sector is cancelled.</p> <p>(C) <u>VOLUNTEERS AND BOARDING PRIORITIES</u> If a flight is oversold (more passengers hold confirmed reservations than there are seats available), no one may be denied boarding against his/her will until airline personnel first ask for volunteers who will give up their reservations willingly, in exchange for a payment of WestJet's choosing. If there are not enough volunteers, other passengers may be denied boarding involuntarily, in accordance with the following boarding priority of WestJet: The last passenger to arrive at the ticket lift point will be the first to be denied boarding, except; - passengers traveling due to death or illness of a member of the passenger's family, or, - ages passengers, or - unaccompanied children, or - passengers with disability</p> <p>(D) <u>COMPENSATION FOR INVOLUNTARY DENIED BOARDING</u> If you are denied boarding involuntarily, you are entitled to a payment of "denied boarding compensation" from WestJet unless: - you have not fully complied with WestJet's ticketing, check-in and reconfirmation requirements, or you are not acceptable for transportation under the airline's usual rules and practices; or - you are denied boarding because the flight is cancelled; or - you are denied boarding because a small capacity aircraft was substituted for safety or operational reasons; or - you are offered accommodations in a section of the aircraft other than specified in your ticket, at no extra charge, (a passenger seated in a section for which a lower fare is charged must be given an appropriate refunds); or WestJet is able to place you on another flight or flights that are planned to reach your final destination or your next scheduled stopover within one hour of the scheduled arrival of your original flight.</p> <p>(E) <u>AMOUNT OF DENIED BOARDING COMPENSATION</u> Passengers who are eligible for denied boarding compensation for flights departing from the US must be offered a payment equal to 200% the sum of the fare values of their ticket coupons, with a \$650 USD maximum if WestJet is able to place you on another flight or flights that are planned to each your final destination or first stopover less than four hours of the scheduled arrival of your original flight. However, if WestJet cannot arrange "alternate transportation (see below) the passenger must be offered a payment equal to 400% the sum of the fare values of their ticket coupons, with a \$1,300 USD maximum. For flights to/from Canada (except flights from USA), as WestJet does not commercially oversell its aircraft, no denied boarding compensation will be provided. "Alternate transportation" is air transportation (by an airline licensed by the D.O.T.) or transportation used by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's next scheduled stopover (of 4 hours or longer) (for international flights) after the passenger's originally scheduled arrival time.</p> <p>(F) <u>METHOD OF PAYMENT</u> WestJet must give each passenger who qualifies for denied boarding compensation, a payment by cheque or draft for the amount specified above, on the day and place the involuntary denied boarding occurs. However, if WestJet arranges alternate transportation for the passenger's convenience that departs before the payment can be made, the payment will be send to the passenger within 24 hours. WestJet may offer free tickets in place of cash payment. The passenger may, however, insist on the cash payment, or refuse all compensation and bring private legal action.</p> <p>(G) <u>PASSENGER'S OPTIONS</u> Acceptance of the compensation (by endorsing the cheque or draft within 30 days) relieves WestJet from any further liability to the passenger caused by the failure to honour the confirmed reservation. However, the passenger may decline the payment and seek to recover damages in a court of law or in some other manner.</p>

For unexplained abbreviations, reference marks and symbols see IPGT-1, C.A.B. NO. 581, NTA(A) NO. 373.

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