

COELUM

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Increase in Passenger
Death Liability in
Mexico.

by Edmundo Olivares Dufóo
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Pronunciation: 'che-l&m, is Latin for airspace or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

Increase in Passenger Death Liability in Mexico.

by Edmundo Olivares Dufóo.

“Part 1 of 2”.

Indirectly and as a consequence of the amendment to the Federal Labor Law (“FLL”) in Mexico on November 30th, 2012, the liability for carriers in case of passenger death and injury was considerably increased.

In Mexico, the liability for passenger death and injury is regulated by the Civil Aviation Law (“CAL”). The CAL has a direct cross reference to the Federal Civil Code (“FCC”) and indirectly to the FLL. In particular, article 62 of the CAL states that the right to be indemnified is subject to the provision stated in Article 1915 of the FCC with the exception that the recoverable amount shall be three times the amount provided in such Article.

The FCC states that recovery of damages for death or permanent and temporary disability will be determined pursuant to the FLL and that the base for the calculation will be four times the highest minimum wage¹ in the region (currently the highest daily minimum wage is 65 pesos that is equivalent to approximately \$5.00 USD). The FLL determines that in case of a worker’s death the liability will be 5000 times the minimum wage versus 730 times that was established before the amendments. The FLL also provides that in case of death, 60 days of minimum wage should be added to the indemnity as funerary expenses.

“In Mexico, the liability for passenger death and injury is regulated in the Civil Aviation Law (“CAL”).”

Accordingly, the figure that results, pursuant to the modifications to the FLL, is around 4 million pesos that is equivalent to approximately \$308,000 USD. Before the amendments to the FLL, the figure was around \$47,500 USD.

The change in the calculation from 790 to 5060 times constitutes the reason why the passenger death liability has increased dramatically in Mexico, even above the international flights benchmark determined by the Convention for the Unification of Certain Rules for International Carriage in Air (commonly known as the Montreal Convention of 1999). As a general rule, according to the Montreal Convention there is no limit on the liability of an airline for damages in the event of death or injury. Notwithstanding, for damages up to 113,100 SDRs (Special Drawing Rights, that is a mix of currency values), the airline cannot contest claims for compensation. Above that amount, the airline can defend itself against a claim by proving that it was not negligent or otherwise at fault. In this regard, commonly the liability for an airline when the claim cannot be contested is equivalent to approximately \$175,000 USD.

1.- Minimum wage is used as a reference in order to set penalties. This concept is established by the National Commission of Minimum Wage (Comisión Nacional de Salarios Mínimos) every year, and the amount at this moment is \$64.76 mexican pesos, (around 4.9 US dollars).

“Accordingly, the figure that results, pursuant to the modifications to the FLL, is around 4 million pesos that is equivalent to approximately \$308,000 USD.”

This dramatic increase in the liability exposure in Mexico is likely to also increase the cost of insurance policies for carriers and owners of private aircraft. It would also likely bring confusion and controversy in case of an international flight event whereby the Mexican legislation enables a claim for a higher amount than the Montreal Convention provisions. It is uncertain if the ratio legis behind the amendment to the FLL (increasing workers' indemnity in case of death) envisioned the consequences of indirectly increasing the liability for carriers and aircraft owners in Mexico's turbulent aviation industry.

Mexican Companies Looking for Business in German and European Markets.

Mexican authorities and businessmen participated in Germany in various forums and fairs in search of greater bilateral cooperation and investment. Mexican companies involved come from various sectors such as aeronautics and agribusiness. *Promexico and The Economist. November 01, 2013.*

First A400M Airbus Military makes last flight.

Nearly four years after its maiden flight, the first new-generation A400M Airbus Military was removed from service and will be put on public display. The test aircraft MSN 1 - known as Grizzly 1 - made its last flight from Toulouse on November 4, manned by exactly the same crew that did the first flight from Seville on December 11, 2009. In addition, the MSN3 has been placed in extended storage, although it is still airworthy. It is not intended to fly again, but could return to tasks related to flight testing if necessary. *Aerolatin News. November 04, 2013.*

Using Global Standards to Boost Connectivity in Latin America.

The International Air Transport Association (IATA) reinforced its call for governments to adopt and adhere to global standards and recommended practices in order to enable a safe, efficient and sustainable air transport system. Speaking at the Latin American and Caribbean Air Transport Association (ALTA) Airline Leaders Forum in Cancun, Tony Tyler, IATA Director General and CEO cautioned that many governments in the Latin American/Caribbean region may be inadvertently undermining the connectivity provided by global aviation through a patchwork of non-standard rules and regulations. *IATA. November 14, 2013.*

Rise in Jet fuel tax.

The International Air Transport Association (IATA) predicts that with the new tax on jet fuel in Mexico, there will be an increase in the costs and consequently a decrease in the movement of passengers. This will cause an impact of 480 million dollars annually to the country's airlines. This tax is not respecting the provisions of the Agreement on International Civil Aviation, known as the Chicago Convention, which state governments will not impose tax on fuel. *Informador. November 15, 2013.*

Chinese determined to boost airline travel.

Chinese and U.S officials signed up a massive partnership that aims in facilitating airline travel between Chinese and American territory. The Chinese tourism last year accounted for \$102 billion dollars spent abroad, of which largest percentage is for to airline travel. One of the main focuses of the partnership includes an easier electronic air ticket buying system for the Chinese, said Victoria Day from Airlines for America Association. However, benefits are not limited to airlines as estimates seem to be mind-blowing for airplane manufacturers, as the demand for air tickets seems to sky rocket. For example Boeing Co. estimated that Chinese airlines would buy nearly 6,000 new planes in the next twenty years, to triple their fleets. *USA Today. November 18, 2013.*

Too big, to grow.

Mexico City's International Airport can no longer handle the ever growing demands for additional operations. As Alexandro Argudín, Director of the Mexican Civil Aeronautical General Direction (DGAC in Spanish) stated that airlines will have to grow in other airports of the country. Many Mexican airlines that are expecting new aircraft can no longer "open" new routes into Mexico City's International airport. This obliges them to utilize the new aircraft in different routes and airports around the country. The government airplanes have also been subject to a new regulation, so they will no longer be allowed to land at any time of their choosing. The passengers who have traveled through Mexico City in 2013 reach an estimate of over 31 million people, way over the airport's capacity. Therefore, airlines are now obliged to decentralize their operations from Mexico City; which they have done, but still at a very slow rate. *Reforma. November 20, 2013.*

In this month extract was prepared by Vera García, Mauricio Castillo, osé Manuel Muñoz, Miguel Ruelas and Patricia González.

International Airport of Mexico City celebrates its 61st birthday.

The International Benito Juárez Airport of Mexico City (AICM this acronym in Spanish), celebrated 61 years this November 19, 2013, and in accordance with the preliminary data, from January to October it has handled 297,751 operations. Among the principal objectives of the General Manager, Alfonso Sarabia de la Garza is: Offering mayor security and attention to the users and passengers, increasing the quality of the services and also the infrastructure and, also to provide a passenger-friendly airport. Among the relevant facts during the year is that the Airport satisfactorily fulfilled the security requirements for the transport of merchandise and passengers that the United States require all national and international airlines that operate flights that originate in Mexico and terminate in the United States. *SDP Noticias. November 24, 2013.*

Air lines will pay compensations for theft or destruction of baggage.

Mexico City. The Commission of Transport approved additional reforms to some articles of the Aviation Civil Law, in order to update the amounts of coverage of compensation because of destruction, breakage, or losses of hand or registered baggage of air passengers. The initiative presented by the Deputy Carlos Humberto Castaños Valenzuela from the political party Action National Party (PAN its acronym in Spanish), highlight that it has found a legal gap that causes damage to the rights of the passengers. *El Occidental. November 24, 2013.*

FAA warns airlines of GE engine icing problems.

The Federal Aviation Administration on Wednesday required US airlines to inspect General Electric engines on Boeing 787 Dreamliner and 747-8 aircraft that experience icing problems which could lead to loss of thrust, The FAA also required airlines to prohibit pilots from flying into high-altitude, icy weather conditions. The decision to issue an airworthiness directive had been expected *Aviation Wise November 27, 2013.*

Airbus aims to overtake Boeing in Latin America.

Airbus aims by next year to have more airliners operating in Latin America than its rival Boeing for the first time, said the European company's senior executive in the region. The reversal of fortune for Airbus underscores its fierce battle with Boeing for one of the world's fastest-growing travel markets. Airbus expects its fleet will make up 52 percent of the two companies' total aircraft in the region in 2014 after outselling Boeing in five of the last six years. The Airbus share is up from 23 percent a decade ago and just 12 percent in 2000. *Aviation Wise November 27, 2013.*

Some EU countries want a weakened aviation emission plan.

The Federal Aviation Administration on Wednesday required US airlines to inspect General Electric engines on Nearly 190 nations at ICAO agreed to design a global scheme by 2016 that would not take effect until 2020 but rejected letting Europe apply its own plan to foreign carriers in the meantime. Just weeks after the ICAO meeting, the European Commission revived its proposal, insisting Europe was within its rights to regulate aircraft emissions within its own airspace. To be made law the proposal needs the support of both EU member states and the European Parliament, which appears to back it. *Aviation Wise November 28, 2013.*

Air links Europe-Mexico announced.

A 17% increase in the availability of seats on the Spanish airline, Iberia, heads a period of growth in tourists to Mexico, following markets such as English and Russian, and still others, but with little presence of those from Middle Eastern and Northern Europe, Mexico would keep the same levels of visitors. Javier Aranda Pedrero, regional director for Europe of the Mexican Tourism Board (CPTM), has already announced negotiations with Irish tour operators to make a connection from Dublin to Mexico, but as yet he has not yet received details as to the airport in Mexico. *Aerolatin News. November 29, 2013.*

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