

Have Dog, Will Travel

By Emily Gardner, Esq.



With spring break upon us and summer virtually just around the corner, many of us are making plans to “get away from it all” and go on vacation. A lot of us might also be interested in bringing our favorite canine companions along for the ride. Travel with pets has become increasingly popular in recent years. That being said, there are some issues that people traveling with pets should be aware of to better help ensure the safety of their pet, as well to protect their legal rights should the unfortunate occur.

Flying the Canine-Friendly Skies

According to the United States Department of Transportation (DOT) more than two million pets and live animals are transported by air every year in the United States. The DOT also has estimated that as many as 5,000 animals may be lost, injured or die each year due to extreme heat or cold temperatures, lack of oxygen or rough handling while being transported by commercial airlines.

These kind of statistics—as well as horror stories of people who lost their pet in the course of a seemingly routine flight—prompted Congress to pass the Safe Air Transport for Animals Act. The Act, which went into effect in June of 2005, requires all domestic airlines to provide a report when animals flown on their planes died, were hurt or were lost. Under the Act, reports are mandated for family pets only and not animals flown by commercial shippers.

The DOT provides a summary of all reported incidents in its monthly Air Travel Consumer Report at: airconsumer.ost.dot.gov/reports/index.htm.

Each commercial airline has its own rules and policies regarding pet-transport, so it

is advisable to check with the carrier you intend to fly and ask what their specific policies are. It is also a good idea to ask the carrier to provide you with a written copy of all of their pet transport policies before you travel to help avoid any misunderstandings. Other measures you can take to protect your pet include:

- If traveling with a small pet, use a pet-friendly/airline approved carrier that allows the pet to travel in the cabin with you. Typically, the carrier must be able to fit under the seat in front of you and allow the pet to completely turn around.

- Check a pet as baggage only if necessary, and do not send any pet as cargo.

- Book early (most airlines limit the number of pets that can travel per flight) and choose a non-stop flight.

- Avoid flying midday in the summer or at night in the winter, when temperatures in the hold or the tarmac can be the most extreme.

- Ask your veterinarian if it is safe for your pet to fly and how much food and water to provide. Pet sedatives are often not a good idea as they can disturb equilibrium and cause other problems.

- Be aware that service animals should almost always be permitted in the cabin, including “emotional support” animals, which are often permitted with a doctor’s note certifying the patient’s need.

In addition to these tips, it is also important to ask whether and how the airline limits its liability with respect to pets. Many people traveling with pets are surprised to learn that their furry family members are generally considered mere baggage by commercial airlines—even when they are traveling in the cabin. A pet’s status as baggage often subjects the pet owner to liability limitations imposed by the airline.

Federal aviation legislation expressly preserves the federal common law governing damaged or lost baggage. Under federal common law, an airline passenger is contractually bound to a boilerplate limitation of liability, if it is reasonably communicated to the passenger. Most airline limitations of liability are provided in small print on the ticket or ticket jacket and sometimes on signage near the airline ticket counter. In most cases, courts have considered these forms of communication to have been reasonable.

An airline’s limitation of liability is

generally only a nominal amount, e.g., a few hundred, or in some cases a few thousand dollars. This amount usually fails to fully compensate a pet owner for losses relating to the death, loss or injury of a pet due to an airline’s negligence. What’s even more disturbing is that federal common law provides that an airline’s limitation of liability is upheld even in cases of extreme negligence.

For example, in *Deiro v. American Airlines, Inc.*, 816 F.2d 1360, the United States Court of Appeals for the Ninth Circuit determined that a pet owner was bound to the limitation of liability included on his ticket, even though the airline was grossly negligent. The airline had placed the pet owner’s nine dogs in a baggage cart on the tarmac for several hours in 97-99 degree heat, resulting in the death of seven of the dogs. The court upheld the \$750.00 limitation of liability that was printed on the ticket—as total damages for *all* seven dogs.

In reaching its holding, the court noted that the pet owner had an opportunity to request a higher liability amount by paying an additional charge, but failed to make this request.

Thus, it is always advisable to inquire specifically what an airline’s limitation of liability would be for transporting each of your pets (there are usually different levels of liability for carry-on baggage/pet in cabin, than there are for pets that travel below in the hold.); AND to request an opportunity to purchase additional liability, if you want it. Do not expect that the airline will offer it to you. The airlines assume that by purchasing the ticket, you agree to be bound by its terms unless you specifically express otherwise. Purchasing or even requesting to purchase additional liability coverage will help to ensure that you are able to recover more fully for your losses should tragedy strike. It will also put the airline on notice that you expect your pet to be handled with due care and may help reduce the potential for mishaps associated with your flight. A little added protection can be well worth it, especially when it comes to enjoying that much deserved vacation with those we hold most dear.

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