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Keeping the “Live” in Live Animal Air Cargo Transport

Noreen Lanza

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EDITOR'S NOTE

THIS ARTICLE WAS previously published in the *Journal of Air Law and Commerce* in our Spring 2011 book.¹ This article is reprinted in its original form, maintaining the article's original pagination and citation formatting. Recent incidents exemplify the dangers associated with airline animal transport, which continue to pose timely legal questions.² The United States legislature recently addressed some of these incidents by outlawing the transport of animals in an air carrier's overhead compartment; however, issues remain regarding the safety of animals transported in an aircraft's cargo hold.³ As Dr. Lanza's article suggests, additional precautions may be implemented to mitigate the risks associated with transporting live animals.

¹ See Noreen Lanza, *Keeping the Live in Live Animal Air Cargo Transport*, 76 J. Air L. & Com. 229 (2011).

² See, e.g., Dean Balsamini, *Air Force Member's Dog Dies on Their Flight Home to US After Six Years*, N.Y. POST (Mar. 30, 2019), <https://nypost.com/2019/03/30/air-force-members-dog-dies-on-their-flight-home-to-us-after-six-years/> [<https://perma.cc/BS22-2WGX>]; Jon Haworth, *French Bulldog Puppy Dies on Trans-Atlantic KLM Flight*, ABC NEWS (Sept. 3, 2019), <https://abcnews.go.com/US/french-bull-dog-puppy-dies-trans-atlantic-klm-flight/story?id=65355067> [<https://perma.cc/RNL3-Y8T2>]; Bart Jansen, *Official Reports About Animal Deaths on Airline Flights Focus Only on Cargo*, USA TODAY, <https://www.usatoday.com/story/travel/flights/2018/03/16/official-reports-animal-deaths-airline-flights-focus-only-cargo/432343002/> [<https://perma.cc/37NY-FG9M>] (last updated Mar. 16, 2018, 2:19 PM); see also Sarah Gray, *Why More Animals Died on United Airlines than Any Other Airline in 2017*, TIME (Apr. 5, 2018), <https://time.com/5228475/united-airlines-animal-deaths/> [<https://perma.cc/Q9V5-B3XC>].

³ See FAA Reauthorization Act of 2018, Pub. L. No. 115-254, § 417(a), 132 Stat. 3186, 3334 (to be codified at 49 U.S.C. § 44739(a)).

KEEPING THE “LIVE” IN LIVE ANIMAL AIR CARGO TRANSPORT

NOREEN LANZA*

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I. INTRODUCTION

THE AIRLINE INDUSTRY has been transporting live animals since its infancy in the 1930s.¹ Most airlines transport live

* Noreen D. Lanza is a 2010 graduate of Rutgers-Camden School of Law and has a B.S. in Animal Science from Purdue and a Doctorate of Veterinary Medicine from New York State College of Veterinary Medicine at Cornell.

¹ *Live Animals: Live Animals Transportation by Air*, IATA, http://www.iata.org/whatwedo/cargo/live_animals/Pages/index.aspx (last visited Feb. 27, 2011).

animals in airplane holds as cargo by procedures that have not changed much over the years.²

Today, people in general, hold pets and animals in higher regard than throughout the twentieth century. Most pet owners keep pets indoors and consider them a part of the owner's family.³ Owners of small pets are fortunate that airlines allow their pets to be carried into the cabin and transported in the cabin when accompanied by their owners on trips.⁴ But, most airlines handle larger pets and unaccompanied live animals as cargo and still travel in cargo holds with all of the attendant risks.⁵

An alternative to air transportation of pets in cargo holds arrived in the form of a pets-only airline in the summer of 2009.⁶ Pet Airways is a pets-only airline which transports unaccompanied pets in the cabin area of the plane.⁷ The option to have a pet transported in the same controlled environment as a human passenger is an option pet enthusiasts have long desired.⁸ Although still officially cargo, the airline does not handle the pets, or "pawsengers," as cargo; the airlines' staff, who love and know pets, treat them with special care.⁹

The availability of this new transportation alternative for pets refocuses attention on the potential dangers of live animal air transportation during both ground handling and in flight.¹⁰ The airlines may suffer from adverse publicity and lose a substantial amount of their live animal air transportation revenue if

² See generally *Ing v. Am. Airlines, Inc.*, No. C 06-02873 WHA, 2007 WL 420249 (N.D. Cal. Feb. 5, 2007).

³ Press Release, VPI Pet Insurance, More Pets Sleeping in Bed with Their Owners, Veterinary Pet Insurance Shows (Feb. 8, 2007), available at <http://press.petinsurance.com/pressroom/196.aspx>.

⁴ *Air Travel for Your Pet*, AIR TRANSPORT ASS'N, <http://www.airlines.org/PassengersCargo/PassengerInfo/Pages/AirTravelforYourPet.aspx> (last visited May 26, 2011).

⁵ *Id.*

⁶ Samantha Bomkamp, *All-Pet Airline Hits Skies*, THE POST AND COURIER (July 19, 2009), http://www.postandcourier.com/news/2009/jul/19/allpet_airline_hits_skies/.

⁷ *Id.*

⁸ See *Summer Pet Embargoes Cause Skepticism Among Pet Protectors*, WORLD AIRLINE NEWS, June 16, 2000, available at http://findarticles.com/p/articles/mi_m0ZCK/is_24_10/ai_62835360/.

⁹ See Bomkamp, *supra* note 7; LEONARD BOGNER, *Len Bogner Reports: Pet Airways (AAQS) on Oct. 11, 2010*, CP REPORTS (Sept. 12, 2010), <http://www.cpreports.com/?p=574> (stating that Pet Airways operates as a cargo carrier).

¹⁰ See *Dogs and Cats Don't Travel Well in Cargo*, PET AIRWAYS (Jan. 13, 2009, 9:00 PM), <http://www.petairways.com/content/dogs-and-cats-dont-travel-well-cargo>.

they do not update their procedures for transportation of live cargo.¹¹

II. BACKGROUND

A. METHODS OF TRANSPORT

There are four categories of air transportation of animals: in-cabin transport of pets, in-cabin transportation of working animals, pets checked as “excess” or “accompanied baggage,” and animals transported as cargo.¹²

The Federal Aviation Administration (FAA) allows each airline to decide if they will transport pets in the passenger cabin.¹³ The airlines consider any pets in the cabin carry-on baggage and, therefore, must follow the FAA carry-on baggage rules.¹⁴ The Department of Transportation does not consider service animals or working animals assisting passengers with physical disabilities as pets and allows them in the cabin without any limits or restrictions on all flights.¹⁵ Although there are no reported injuries of pets traveling in the cabin, the Animal Welfare Act (AWA) does not cover carry-on pets and, therefore, carry-on pet injuries would not be included in airline monthly incident reports.¹⁶

The third method of air transportation for owners traveling with their pets is accompanied or excess baggage.¹⁷ In this case, the pet travels in a carrier in the cargo hold as the checked baggage of a passenger traveling on the same flight.¹⁸ The last and most common method of live animal air transportation is for animals unaccompanied by their owners, which travel as live

¹¹ See, e.g., *Emergency Travel Alert: Don't Transport Pets by Air!*, MICH. ST. U., <http://www.msu.edu/~silvar/airplane.htm> (last visited May 26, 2011).

¹² *Air Travel for Your Pet*, *supra* note 4; FEDERAL AVIATION ADMINISTRATION, PETS IN THE PASSENGER CABIN (2009) [hereinafter PETS IN THE PASSENGER CABIN], available at http://www.faa.gov/passengers/fly_pets/cabin_pets/.

¹³ PETS IN THE PASSENGER CABIN, *supra* note 12.

¹⁴ *Id.*; see 14 CFR § 121.589 (2010).

¹⁵ PETS IN THE PASSENGER CABIN, *supra* note 12.

¹⁶ *Traveling by Air with Your Pet*, APHIS (Jan. 2002), http://www.aphis.usda.gov/publications/animal_welfare/content/printable_version/fs_awpe_travel.pdf.

¹⁷ *Air Travel for Your Pet*, *supra* note 4; see also *Gluckman v. Am. Airlines, Inc.*, 844 F. Supp. 151, 154 (S.D.N.Y. 1994) (noting that a passenger checked his dog as excess baggage).

¹⁸ *Air Travel for Your Pet*, *supra* note 4.

animal cargo shipments.¹⁹ These shipments can be as regular cargo or by special airline cargo services.²⁰

The AWA, which regulates the pet's care within the carrier and the size and structure of the carrier itself, protects pets traveling as cargo.²¹ But, these protections do not prevent baggage handlers from treating pet carriers as cargo, and handlers may treat them as roughly as regular cargo or not strap them down during the flight.²² Airlines may place pet carriers in dark areas or areas with persistently loud noises, and pets may suffer trauma and anxiety from these cargo hold conditions.²³ Tranquilization is not recommended as it may cause pets to be unable to maintain their balance, regulate their body temperature, and increases the risk of respiratory and cardiac problems.²⁴

Pets traveling as cargo or accompanied baggage travel in pressurized cargo holds.²⁵ Large jets may have climatized holds with controlled temperature and ventilation, but smaller jets or turboprop aircraft may lack cargo holds with controlled environments.²⁶ In Class D holds that are often used to transport animals, the heat that the animal creates coupled with the limited amount of oxygen in the cargo space can cause ventilation problems and suffocation.²⁷ Cats, snub-nosed dogs, and long-

¹⁹ See, e.g., *Pet First*, DELTA CARGO, http://www.delta.com/business_programs_services/delta_cargo/products_rates_shipping/products/specialty_shipments/live_animals/pet_first/index.jsp (last visited Mar. 3, 2011).

²⁰ See, e.g., *id.*; *Products and Services*, CONTINENTAL AIRLINES CARGO, <http://cargo.cocargo.com/cargo/products> (last visited Mar. 2, 2011); *Shipping Instructions and Information: Animal Shipping*, AM. AIRLINES CARGO, <http://www.aacargo.com/shipping/animals.jhtml> (last visited Mar. 3, 2011).

²¹ *Traveling by Air with Your Pet*, *supra* note 16. The United States Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) enforces the Animal Welfare Act and promulgates shipping regulations for animal air transportation. See *id.*

²² See, e.g., Chris Walsh, *Cats Out of the Bag on Pet Risks on Planes*, ROCKY MT. NEWS, July 8, 2005, at 1B; *How to Minimize Risk to a Pet in the Cargo Area of an Airplane*, WIKIHOW, <http://www.wikihow.com/minimize-risk-to-a-pet-in-the-cargo-area-of-an-airplane> (last edited June 28, 2010).

²³ Jessica Fargen, *Cargo-Hold Flying Can Traumatize Animals*, BOSTON HERALD, Aug. 16, 2009 (Business); *Dogs and Cats Don't Travel Well in Cargo*, *supra* note 12.

²⁴ *Traveling with Your Pet FAQ*, AVMA: AM. VETERINARY MED. ASS'N, http://www.avma.org/animal_health/travelingwithpet-faq.asp (last visited Mar. 3, 2011); see also *Airline Travel*, PETCO, <http://www.petco.com/Content/ArticleList/Article/36/1/419/Airline-Travel.aspx> (last visited Mar. 3, 2011).

²⁵ See *Air Travel for Your Pet*, *supra* note 4.

²⁶ *How to Minimize Risk to a Pet in the Cargo Area of an Airplane*, *supra* note 22.

²⁷ Steve Ann Chambers, *Flying Pets?*, ANIMAL FAIR (on file with the Journal of Air Law and Commerce).

nosed dogs are more prone to experience respiratory problems from poor ventilation.²⁸ Even in climatized holds, sometimes pilots will shut off the heating or cooling systems in an attempt to save fuel or power when a delay occurs.²⁹ The extreme temperatures that result can cause brain damage or death to the pets in the hold.³⁰ Some airlines, however, may declare pet embargos, which prohibit pet travel during periods of extreme environmental temperatures.³¹

B. ANIMAL HANDLING RECOMMENDATIONS AND REGULATIONS

The AWA defines the minimal standard of care to be followed in the air transport of animals.³² The Animal and Plant Health Inspection Service (APHIS), a service of the USDA, makes and enforces domestic regulations for air transport of animals under the AWA.³³ Animal owners and airlines must follow APHIS animal handling regulations on domestic flights for animals traveling as accompanied baggage or cargo.³⁴ The AWA does not allow for a private right of action,³⁵ but the USDA may fine air carriers for violations of the AWA.³⁶ There were approximately forty-one DOA orders issued from 1987 to 2009.³⁷ The violations of the AWA included extreme temperatures, escape, lost pets, acceptance of animals in inadequate enclosures, and inadequate ventilation.³⁸ The resulting fines ranged from \$250 for a single complaint to \$187,000 for seven consolidated complaints against one carrier.³⁹

²⁸ *Traveling with Pets*, VETERINARY PET INSURANCE (VPI), <http://www.petinsurance.com/healthzone/pet-articles/pet-owner-topics/traveling-with-pets.aspx> (last visited Feb. 28, 2011).

²⁹ *How to Minimize Risk to a Pet in the Cargo Area of an Airplane*, *supra* note 22.

³⁰ *Emergency Travel Alert: Don't Transport Pets by Air!*, *supra* note 11.

³¹ *Air Travel for Your Pet*, *supra* note 4.

³² See Animal Welfare Act, 7 U.S.C. § 2143 (2006).

³³ See *Traveling by Air with Your Pet*, *supra* note 16.

³⁴ See *id.*

³⁵ *Ing v. Am. Airlines, Inc.*, No. C 06-02873 WHA, 2007 WL 420249, at *4 (N.D. Cal. Feb. 5, 2007).

³⁶ Jol A. Silversmith, *Airline Animal Incident Reports*, THIRDAAMENDMENT.COM, <http://www.thirdamendment.com/animals.html> (last updated Mar. 2011).

³⁷ Public access to the Department of Agriculture Orders is provided, but is difficult to find. A compilation of orders can be found at *Airline Animal Incident Reports*, THIRDAAMENDMENT.COM, <http://www.thirdamendment.com/animals-agriculture.pdf> (last visited Mar. 3, 2011).

³⁸ See generally *id.*

³⁹ *Id.* at 1, 3.

APHIS requirements specify pet ages, size and strength of kennels, sanitation procedures, type of kennel grips and the number of animals allowed per kennel.⁴⁰ APHIS specifies ventilation requirements for specific kennels and provides directions for food, water, and medication.⁴¹ Airline websites provide information about APHIS regulations, often along with additional suggestions that people consider the length of the flight, age, health status, breed, arrival time, and sedation status of the pet before shipping.⁴²

The International Air Transport Association (IATA) developed similar minimal standards for the international transportation of live animals or the Live Animal Regulations (LAR).⁴³ IATA is an association of 230 airlines that make up 93% of the scheduled international airline traffic.⁴⁴ To be accepted as a member of the IATA, an airline must only accept live animals for transport according to the IATA's LAR.⁴⁵ The objective of the LAR is to be the worldwide standard for the safe, humane, and cost-effective treatment of animals transported by air.⁴⁶ Owners of unaccompanied pets are also advised to follow the additional recommendations for travel on the IATA website.⁴⁷

C. CONTRACTS OF CARRIAGE

The basic non-negotiable contract between the shipper and the air carrier for pets transported as accompanied baggage is the passenger ticket.⁴⁸ The passenger ticket booklet may consist of many flight coupons with parts of the contract printed on the coupon and other terms referred to by incorporation.⁴⁹ Alternately, the passenger ticket may be a standard seven and one-

⁴⁰ 9 C.F.R. §§ 2.130, 3.14(a), (b), (d) (2004); *Traveling by Air with Your Pet*, *supra* note 16.

⁴¹ 9 C.F.R. § 3.14(c); *Traveling by Air with Your Pet*, *supra* note 16.

⁴² See *Air Travel for Your Pet*, *supra* note 5; see, e.g., *Pet First*, *supra* note 19 (listing additional pet shipping restrictions).

⁴³ *Live Animals: Live Animals Transportation by Air*, *supra* note 1.

⁴⁴ *Membership*, IATA, <http://www.iata.org/membership/pages/airlines.aspx> (last visited Mar. 3, 2011).

⁴⁵ NAT'L RESEARCH COUNCIL, GUIDELINES FOR THE HUMANE TRANSPORTATION OF RESEARCH ANIMALS 27 (2006).

⁴⁶ See *Live Animals: Live Animals Transportation by Air*, *supra* note 1.

⁴⁷ *Live Animals: Traveler's Pet Corner*, IATA, http://www.iata.org/whatwedo/cargo/live_animals/pages/pets.aspx (last visited Mar. 3, 2011) (including a downloadable PDF of "Recommendations for shipping a dog or cat").

⁴⁸ See, e.g., *Gluckman v. Am. Airlines, Inc.*, 844 F. Supp. 151, 154-55 (S.D.N.Y. 1994) (providing one ticket as an example of a contract of carriage).

⁴⁹ See, e.g., *id.*

half by three inch ticket with the conditions of contract on an attached sheet.⁵⁰ And, the ticket may refer the passenger to the office of the carrier for further information.⁵¹ Also, an airline may issue a separate “excess baggage ticket” for the accompanying pet, which refers the passenger to the passenger ticket or baggage ticket for the terms of the contract.⁵² For pets traveling as cargo or freight, the air waybill is the basic contract of carriage.⁵³ The non-negotiable terms and conditions of the contract may be printed on the reverse side.⁵⁴

The terms and conditions of the contract of carriage in the ticket or airway bill may include standard provisions to exclude or limit liability for loss, damage, or delay to cargo⁵⁵ or baggage.⁵⁶ Terms may also include tariffs⁵⁷ or airline policies, including temperature embargos—prohibitions of pet travel at certain temperature extremes.⁵⁸

The contractual limits of liability for pets traveling as accompanied baggage are higher than the limits of liability for pets traveling as cargo. Pets traveling as accompanied baggage have the same limits of liability as a piece of luggage, which cases and airlines state as approximately \$500.00 in 1974,⁵⁹ \$750.00 in 1977,⁶⁰ \$1,250.00 in 1994,⁶¹ and \$3,300.00 in 2009.⁶² Pets travel-

⁵⁰ See, e.g., *Deiro v. Am. Airlines, Inc.*, 816 F.2d 1360, 1362 & n.2 (9th Cir. 1987).

⁵¹ See *Gluckman*, 844 F. Supp. at 155; *Deiro*, 816 F.2d at 1362.

⁵² See *Gluckman*, 844 F. Supp. at 155.

⁵³ See *Ing v. Am. Airlines, Inc.*, No. C 06-02873 WHA, 2007 WL 420249, at *4 (N.D. Cal. Feb. 5, 2007).

⁵⁴ See, e.g., *id.* at *1.

⁵⁵ See, e.g., *id.* at *5.

⁵⁶ See *Gluckman*, 844 F. Supp. at 155; *Deiro*, 816 F.2d at 1362.

⁵⁷ See, e.g., PAUL B. LARSEN, ET AL., AVIATION LAW: CASES, LAWS AND RELATED SOURCES 538–39 (2006) (setting forth certain tariff regulations in the Montreal Convention). Tariffs are rates or regulations of the airlines. MERRIAM-WEBSTER'S DICTIONARY OF LAW 489 (1996). The Civil Aeronautics Board (CAB) previously required carriers to file tariffs with them, but after airline deregulation in 1977, tariffs no longer had to be filed with any government agency. *Williams Dental Co. v. Air Express Int'l*, 824 F. Supp. 435, 440 (S.D.N.Y. 1993); see also LARSEN, *supra*, at 26 (discussing the deregulation of the aviation industry). Today, tariffs remain important and may still be incorporated by reference into air waybills. *Williams Dental Co.*, 824 F. Supp. at 438.

⁵⁸ See, e.g., *Shipping Instructions and Information: Animal Shipping*, *supra* note 20.

⁵⁹ See *Klicker v. Nw. Airlines, Inc.*, 563 F.2d 1310, 1315 (9th Cir. 1977).

⁶⁰ *Deiro*, 816 F.2d at 1362.

⁶¹ *Gluckman*, 844 F. Supp. at 162.

⁶² See *United Airlines Contract of Carriage Baggage Summary*, UNITED, <http://www.united.com/page/middlepage/0,5046,2671,00.html> (last visited Feb. 24, 2011).

ing as cargo may have liability limits as low as \$50.00 even in 2007⁶³ and 2008.⁶⁴

The doctrine of released valuation holds the shipper bound to the limits of liability in the contract if the shipper “has reasonable notice of the rate structure and is given a fair opportunity to pay the higher rate” but does not do so.⁶⁵ A test of “reasonable communicativeness” may be used to determine whether a “carrier did all it reasonably could to inform the passenger that the terms and conditions incorporated in the ticket were important matters of contract affecting his or her rights.”⁶⁶

For international flights, the contract of carriage is also the airway bill.⁶⁷ The Warsaw Convention (1929) describes the airway bill in Article 8.⁶⁸ The Montreal Convention (1999) describes the contract of carriage as the airway bill and the requirements of the airway bill are delineated in Articles 4 through 11.⁶⁹ Article 22 of the Montreal Convention regulates the limits of liability of the carrier for baggage and cargo.⁷⁰ The limits of liability are 1,000 Special Drawing Rights for baggage unless the passenger has made a special declaration of value and paid an additional sum for the transportation.⁷¹ The limits of liability on cargo are 17 Special Drawing Rights.⁷² The value of a Special Drawing Right as of May 27, 2011 was \$1.97 U.S. per one Special Drawing Right⁷³

D. THE LAW OF AIRLINE TRANSPORTATION FOR ANIMALS

1. *Federal Common Law*

Animals are property under the law,⁷⁴ and in domestic animal transportation cases, live animals are also defined as cargo in the

⁶³ *Ing v. Am. Airlines, Inc.*, No. C 06-02873 WHA, 2007 WL 420249, at *1 (N.D. Cal. Feb. 5, 2007).

⁶⁴ CONT'L AIRLINES CARGO, DOMESTIC FREIGHT RULES 16 (2008), available at http://cargo.cocargo.com/cargo/files/pdfs/rules/freight_domestic.pdf.

⁶⁵ *Deiro*, 816 F.2d at 1365.

⁶⁶ *Gluckman*, 844 F. Supp. at 161.

⁶⁷ *LARSEN*, *supra* note 57, at 536.

⁶⁸ *Id.* at 534.

⁶⁹ *See id.* at 536–37.

⁷⁰ *Id.* at 538.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *SDR Valuation*, INT'L MONETARY FUND, http://www.imf.org/external/np/fin/data/rms_sdrv.aspx (last visited May 27, 2011).

⁷⁴ *See, e.g., Sherman v. Kissinger*, 195 P.3d 539, 547 (Wash. Ct. App. 2008); *Kennedy v. Byas*, 867 So. 2d 1195, 1197 (Fla. Dist. Ct. App. 2004).

contract. In *Ing v. American Airlines, Inc.*, the U.S. District Court of the Northern District of California stated shipping a “dog using an air carrier” was the “interstate shipment of cargo.”⁷⁵ In earlier dated animal air transportation cases, all companion animals were treated as cargo.⁷⁶

Historically and currently, federal common law applies to the interstate shipment of cargo.⁷⁷ After the Airline Deregulation Act, there were questions as to whether federal law preempted routine contract claims. The Ninth Circuit reaffirmed the holding that federal law preempted claims for damaged or lost cargo in *Read-Rite Corp. v. Burlington Air Express*.⁷⁸ Accordingly, in *Ing*, federal common law preempted all state law claims.⁷⁹

Under federal common law, limited liability provisions are valid if the contract contains the liability limitations and the means to avoid it.⁸⁰ If the carrier follows this released valuation doctrine for cargo, then the limits of liability are upheld.⁸¹ In *Ing*, because the released valuation doctrine was followed by the airline, the court held that the \$50.00 limitation on liability in the contract for carriage for Willie Ing, a bulldog who died in transport, was valid.⁸² If the cargo was checked baggage, then the carrier would also have to follow the reasonable communication doctrine.⁸³

Under federal common law, the carrier’s liability can even be limited for gross negligence.⁸⁴ Only intentional destruction or conduct in the theft of the property may change the validity of the limited liability.⁸⁵ If the carrier breached the terms of the airway bill, then the limits of liability would not apply.⁸⁶

⁷⁵ *Ing v. Am. Airlines, Inc.*, No. C 06-02873 WHA, 2007 WL 420249, at *4 (N.D. Cal. Feb. 5, 2007).

⁷⁶ *See, e.g.*, *Deiro v. Am. Airlines, Inc.*, 816 F.2d 1360, 1361 (9th Cir. 1987); *Klicker v. Nw. Airlines*, 563 F.2d 1310, 1311 (9th Cir. 1977); *Gluckman v. Am. Airlines, Inc.*, 844 F. Supp. 151, 153 (S.D.N.Y. 1994); *Davis v. Ne. Airlines, Inc.*, 362 A.2d 208, 209 (N.H. 1976).

⁷⁷ *Ing*, 2007 WL 420249, at *3.

⁷⁸ *Id.* (citing *Read-Rite Corp. v. Burlington Air Express*, 186 F.3d 1190, 1196 (9th Cir. 1999)).

⁷⁹ *Id.* at *8.

⁸⁰ *Id.* at *4 (citing *Read-Rite Corp.*, 186 F.3d at 1198).

⁸¹ *Id.*

⁸² *Id.* at *1, *8.

⁸³ *Id.* at *4.

⁸⁴ *Deiro v. Am. Airlines, Inc.*, 816 F.2d 1360, 1366 (9th Cir. 1987).

⁸⁵ *Ing*, 2007 WL 420249, at *6 (citing *Am. Cyanamid Co. v. New Penn Motor Express, Inc.*, 979 F.2d 310, 315–16 (3d Cir. 1992)).

⁸⁶ *Id.* at *7.

2. *International Treaties*

The international transportation of pets as cargo or baggage is governed by the applicable international treaty. In *Dalton v. Delta Airlines, Inc.*, a 1974 Fifth Circuit Court of Appeals case, airlines treated dogs as cargo under the Warsaw Convention, and the court explicitly stated in dicta that they “recognize[e], as we must, that live dogs are goods.”⁸⁷ The court held that destruction of animals is not the same as damage or delay, and, therefore, the damage or delay notice provision of Article 15 of the Warsaw Convention did not need to be observed.⁸⁸ The 1999 Montreal Convention, Article 22, limits the liability of the air carrier in cases of destruction, loss, damage and delay of cargo.⁸⁹

3. *The Safe Air Travel for Animals Act*

Congress passed the Safe Air Travel for Animals Act as part of a larger FAA bill; President Clinton signed it into law on April 5, 2000 as Public Law 106-181.⁹⁰ This law requires the “airlines to provide the Department of Transportation (DOT) with monthly reports describing any ‘loss, injury or death’ of animals” during air transport.⁹¹ Objectives of the law were to make it easier for consumers to evaluate an airline’s safety record for animal transport, and to make air travel for all animals safer by providing public access to animal air travel incident reports.⁹²

The DOT published the final rule implementing this law in 2003, and it made a technical change to the rule in March 2005.⁹³ The final rule was very narrowly interpreted by the DOT to only include “any warm or cold blooded animal which, at the time of transportation, is being kept as a pet in a family house-

⁸⁷ *Dalton v. Delta Airlines, Inc.*, 570 F.2d 1244, 1245, 1247 (5th Cir. 1978).

⁸⁸ *Id.* at 1247-48.

⁸⁹ LARSEN, *supra* note 57, at 538.

⁹⁰ *Legislative Update*, DORIS DAY ANIMAL LEAGUE, <http://www.ddal.org/legislation/federal/victories/> (last visited Feb. 24, 2011).

⁹¹ *Id.*

⁹² *New Rule Will Allow Pet Owners to Gauge an Airline’s Animal Safety Record*, HUMANE SOCIETY OF THE U.S. (Sept. 5, 2003) [hereinafter *New Rule Will Allow*] (on file with the Journal of Air Law and Commerce).

⁹³ Reports by Carriers on Incidents Involving Animals During Air Transport, 70 Fed. Reg. 29, 7392-93 (Feb. 19, 2005) (changing the regulations so the reporting was to the DOT’s Aviation Consumer Protection Division (ACPD) instead of APHIS, which did not have the capabilities to share the reports with DOT). Currently, reports are filed with DOT to share with APHIS.

hold in the United States.”⁹⁴ Animals transported as commercial cargo, dealer shipments, or any animals other than pets are not included under this definition.⁹⁵

The monthly reporting for the Safe Air Travel for Animals Act started in May 2005.⁹⁶ The data is to be reported “in a manner comparable to other consumer complaint and incident data.”⁹⁷ However, there is not a standard form for the data, and the current data requirements do not include a total number of animals transported, precluding a percentage type comparison of incidents between airlines.⁹⁸ Up to, and including, December 2010, the incidents reported resulted in 170 deaths, 39 losses and 70 injuries of transported pets.⁹⁹ Animal incidents, which result from violations of the Animal Welfare Act, may result in fines against the carrier by USDA orders.¹⁰⁰ There has only been one USDA order issued after the Safe Air Travel for Animal Transport Act reporting requirements went into effect.¹⁰¹

E. PET AIRWAYS

Pet Airways is a pets-only airline that transports pets in the passenger cabin of the aircraft.¹⁰² Pet Airways’ first flights were in July 2009.¹⁰³ They currently fly to eight U.S. cities: Atlanta, Baltimore, Washington D.C., Chicago, Denver, Fort Lauderdale, Los Angeles, New York, Omaha, and Phoenix.¹⁰⁴ Pet Airways offers a website showing a comparison of its fares with all major airline fares.¹⁰⁵

Pet Airways transports all the pets in the retooled main cabin of a Suburban Air Freight plane, lined with pet carriers instead

⁹⁴ *New Rule Will Allow*, *supra* note 92.

⁹⁵ *Id.*

⁹⁶ *See Silversmith*, *supra* note 36.

⁹⁷ 49 U.S.C. § 41721(d) (2006).

⁹⁸ Silversmith, *supra* note 36; *see also* Jol A. Silversmith, “*The Dog That Did Nothing*”: *The Curious Incident of DOT’s Animal Incident Reporting Requirements*, *TRANS-LAW*, Summer 2006, at 4, *available at* http://www.zsrlaw.com/images/stories/Aviation_-_Silversmith_-_The_Dog_That_Did_Nothing_2006.pdf.

⁹⁹ *See Silversmith*, *supra* note 36.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Bomkamp, *supra* note 6.

¹⁰³ *Id.*

¹⁰⁴ *Airport Directions*, PET AIRWAYS, <http://www.petairways.com/content/airport-directions> (last visited May 27, 2011).

¹⁰⁵ *Pet Airways Air Fares*, PET AIRWAYS, <http://petairways.com/content/pet-airways-air-fares> (last visited Feb. 24, 2011).

of seats.¹⁰⁶ The pets are taken to the plane by attendants and then placed in the carriers.¹⁰⁷ A proprietary restraint system secures the carriers, which is designed to hold the carriers securely.¹⁰⁸ A pet attendant checks on the pets every fifteen minutes,¹⁰⁹ and their mentality is, “pets aren’t packages, they’re Pawsengers.”¹¹⁰ The pets are not tranquilized and are kept individually in regulation-sized carriers¹¹¹ in a fully climate-controlled cabin.¹¹² If a pet becomes seriously ill during flight, pilots will divert the flight to the nearest airport, and the airline will contact a veterinarian.¹¹³

The full eight-page contract of carriage is available for owners to view on the Pet Airways website.¹¹⁴ The contract defines the term “shipment” as a single consignment of one or more animals from one Shipper at one time at one address, receipted in . . . one airbill.¹¹⁵ The value of a shipment will not be more than \$500, unless the shipper declares excess value and purchases the available insurance for that increased value.¹¹⁶ The carrier has a limitation of liability to \$500 or the declared value of the shipment.¹¹⁷

Section 17(A), Limitation of Liability, states that the carrier will “not be liable for any loss, damage or delay” nor “any death of or injury to any Pet.”¹¹⁸ In addition, in other parts of Section 17, the contract mentions the phrases “loss, damage, death, injury, or delay,” “any death of or injury to any Pet,” “the poor or otherwise ill health of the Pet,” and “aware of health issues with

¹⁰⁶ Bomkamp, *supra* note 6.

¹⁰⁷ *How Pet Airways Flies Your Pet*, PET AIRWAYS, <http://petairways.com/content/how-pet-airways-flies-your-pet> (last visited Feb. 24, 2011).

¹⁰⁸ *The Planes*, PET AIRWAYS, <http://petairways.com/content/our-planes> (last visited Feb. 24, 2011).

¹⁰⁹ *How Pet Airways Flies Your Pet*, *supra* note 107.

¹¹⁰ Dan Wiesel & Alys Wiesel, *Our Story*, PET AIRWAYS, <http://petairways.com/content/our-story> (last visited Feb. 24, 2011).

¹¹¹ *FAQ – Pet Travel: Should I Give My Pet a Sedative Before Travel?*, PET AIRWAYS, <http://petairways.com/faq/5> (last visited Mar. 7, 2011).

¹¹² *FAQ – Pet Travel: Are There Lights in the Cabin and Is It Climate Controlled?*, PET AIRWAYS, <http://petairways.com/faq/16> (last visited Mar. 7, 2011).

¹¹³ *FAQ – Pet Travel: What Happens If My Pet Gets Sick During the Flight?*, PET AIRWAYS, <http://petairways.com/faq/16> (last visited Mar. 7, 2011).

¹¹⁴ *Contract of Carriage Containing Rules, Regulations, and Charges Applicable to the Carriage of Pets by Pet Airways*, PET AIRWAYS, <http://petairways.com/files/Pet-Airways-Contract-of-Carriage-02-19-09.pdf> (last visited Mar. 7, 2011).

¹¹⁵ *Id.* § 1.

¹¹⁶ *Id.* § 11.

¹¹⁷ *Id.* § 16.

¹¹⁸ *Id.* § 17(A).

the Pet.”¹¹⁹ In total, the phrase “death of or injury to any pet” is used three separate times in Section 17,¹²⁰ and the section itself, although regarding the carrier’s liability, would clearly imply to the owner that there are health risks associated with air travel for their pet. Because Pet Airways is not an air carrier that provides scheduled passenger air transportation, it is not subject to monthly animal incident reporting.¹²¹

III. ANALYSIS

A. THE DEATH, LOSS, OR INJURY OF ANIMALS DURING AIR TRANSPORT

The death, loss, or injury of animals during air transportation as baggage or cargo is always tragic and often widely publicized in the media.¹²² Pet enthusiasts advocate that pets only travel in the passenger cabin of aircraft and never travel in cargo holds.¹²³ Ground handling by owners and in cabin transportation of pets is safe.¹²⁴ Animal air transportation in cargo holds and ground handling as baggage or cargo is risky, but in some cases it is the only available method of travel for a pet to certain places.¹²⁵

Both internationally and domestically, valid contracts of carriage limit liability to low amounts.¹²⁶ These low contract damages allow airlines to continue to consider lost, injured, or dead

¹¹⁹ *Id.* § 17(D).

¹²⁰ *Id.* §§ 17(A), (D), (F).

¹²¹ 49 U.S.C. § 41721(a) (2006).

¹²² See, e.g., Dan Goodin, *Dog Owner Sues Airline Over Death of his Canine*, THE ASSOCIATED PRESS (Mar. 30, 2006), http://www.redorbit.com/news/business/450637/dog_owner_sues_airline_over_death_of_his_canine/index.html (reporting the incident in *Ing v. American Airlines, Inc.*); Mickey H. Gramig, *Animal Deaths Prompt Delta, American to Refuse Pets*, THE ATLANTA J., July 29, 1998, available at <http://archives.foodsafety.ksu.edu/animalnet/1998/7-1998/an-07-29-98-01.txt>.

¹²³ *Why Pets Shouldn't Travel by Air*, HUMANE SOC'Y OF THE U.S. (Jan. 4, 2010), http://www.humanesociety.org/animals/resources/tips/why_pets_shouldnt_travel_by_air.html.

¹²⁴ See *id.*

¹²⁵ Mr. Ed., *The Safe Air Travel for Animals Act*, AUTHORSDEN.COM (June 15, 2005), <http://authorsden.com/visit/viewArticle.asp?id=18499>.

¹²⁶ Domestically, in 2009, liability for pets without a declaration of excess value was \$50 for cargo and \$3300 for baggage. See text accompanying *supra* notes 59–64. Internationally, treaties may limit cargo liability at 17 Special Drawing Rights, which were valued at \$1.98 as of May 27, 2011, for a total of \$27.03, and baggage liability may be limited at 1000 Special Drawing Rights, with a current value of \$1590. See *supra* text accompanying notes 71–73.

pets as just a “cargo” loss and a cost of doing business.¹²⁷ The business of air transport of animals is a substantial source of revenue for many airlines.¹²⁸ Continental Airlines alone reported \$8 million in revenue from animal transport in 2002.¹²⁹

Lacking an effective private right of action, consumers worked for the passage of the Safe Air Travel for Animals Act.¹³⁰ The act was designed to allow public access to information on incidents of loss, injury and death of animals transported by airlines.¹³¹ In the final regulations, Congress limited the definition of “animals” to only family pets so that dealer-owned animals were not covered by the law.¹³² The Safe Animal Air Transport Act was also designed to help consumers compare the safety records of airlines.¹³³ This objective, however, has also only been partially accomplished, as the data is insufficient to allow consumers to make an accurate safety comparison across airlines.¹³⁴

The Safe Air Travel for Animals Act also allowed airlines to be fined for violations of the AWA in the transportation of animals.¹³⁵ But, due to the narrow final definition of “animals” in the act, many animals not classified as pets could die in air transportation and the Act would not require their death to be reported as an incident.¹³⁶ It is also unlikely that an airline

¹²⁷ See, e.g., CONTINENTAL AIRLINES CARGO, *supra* note 64, at 8.

¹²⁸ See Press Release, The Pets Forum, See Spot Fly. Fly, Spot, Fly. Earn Miles, Spot! (Jan. 14, 2005), *available at* <http://www.thepetsforums.com/forums/showthread.php?t=4185> (stating United Airlines transports approximately 150,000 animals per year); see also AVIATION CONSUMER PROT. & ENFORCEMENT, ANIMAL INCIDENT REPORT TO THE U.S. DEPARTMENT OF TRANSPORTATION PURSUANT TO 14 CFR § 234.13 (2009), *available at* <http://airconsumer.ost.dot.gov/reports/2009/August/CO%20DOT%20Final%20Report%20-%20JUN09%20redacted%20version.doc> (stating that Continental Airlines transported 10,794 animals in June 2009). Using an estimate of \$100 per flight segment, these volumes predict animal transport revenues per year at \$15 million for United and \$13 million for Continental.

¹²⁹ Bill Henson, Jr., *Houston Becomes Crossroads for Globetrotting Animals*, HOUS. CHRON. KNIGHT RIDDER/TRIB. BUS. NEWS, Aug. 27, 2003.

¹³⁰ See PAUL G. IRWIN, HUMAN SOC'Y OF THE U.S., COMPASSIONATE LIVING AND CIVIC PARTICIPATION: PRESIDENT'S MESSAGE 3 (2000), *available at* http://www.humanesociety.org/assets/pdfs/2000_Annual_Report_Pt1.pdf.

¹³¹ See 14 C.F.R. § 234.13 (2010).

¹³² *Id.*

¹³³ See Silversmith, *supra* note 36.

¹³⁴ *Id.*; Silversmith, *supra* note 98, at 4.

¹³⁵ Silversmith, *supra* note 36.

¹³⁶ See 14 C.F.R. § 234.13; Silversmith, *supra* note 36.

receiving a Department of Agriculture fine would consider it anything more than “a cost of doing business.”¹³⁷

APHIS regulations give standards of care for animal air transportation regarding the contents, construction, and size of the animal’s carrier.¹³⁸ It also controls the age of the pet and the food and water given along with any other internal factors.¹³⁹ But, APHIS regulations do not set standards for other factors such as lighting and noise, other external stress factors, or prior health conditions.¹⁴⁰

Animal owners wishing to transport their pets by air have had to accept the conditions listed above for many years, but now pet owners have a choice of how their pet may travel. Although Pet Airways has limited locations and schedules to date,¹⁴¹ even the availability of an alternative choice will draw the public’s attention to the potential complications of the air transport of live pets in cargo holds. If the airlines want to keep the goodwill of animal owning travelers, decrease negative publicity, and maintain the revenue generated from live animal transportation, they need to update and improve their procedures for transportation of live cargo.

B. KEEPING THE “LIVE” IN LIVE ANIMAL AIR CARGO TRANSPORTATION

Ideally, all pets would travel in the cabin as passengers on airlines and none would travel in cargo holds.¹⁴² This, however, may not be a viable economic or practical solution at the present time. It may not be economically feasible for the traditional airlines to retrofit all cargo holds to make them climate controlled.¹⁴³ And, the schedules and routes of Pet Airways will not be convenient or possible for all pet air travel until they are expanded significantly.¹⁴⁴ Animal owners must become aware of the inherent limitations of airline transportation for live animals and do all they can to be responsible for their own animal’s

¹³⁷ *Emergency Travel Alert: Don’t Transport Pets by Air*, *supra* note 11.

¹³⁸ Silversmith, *supra* note 36; *Traveling by Air with Your Pet*, *supra* note 16.

¹³⁹ Silversmith, *supra* note 36; *see, e.g.*, 9 C.F.R. §§ 2.130, 3.16.

¹⁴⁰ *See generally* 9 C.F.R. §§ 2.1, 3.13–3.19.

¹⁴¹ *FAQ – Reservations: What Cities Does Pet Airways Fly to?*, PET AIRWAYS, <http://www.petairways.com/faq/17> (last visited Mar. 7, 2011).

¹⁴² *Why Pets Shouldn’t Travel by Air*, *supra* note 123.

¹⁴³ Chambers, *supra* note 27.

¹⁴⁴ *FAQ – Reservations: What Cities Does Pet Airways Fly to?*, *supra* note 141.

safety in transport.¹⁴⁵ This includes declining to have their pets travel by plane when their safety is compromised and other methods of transport are available.

Until all of the broader measures above can be achieved, airlines that wish to continue to successfully transport live animals should implement at least the following changes in their policies. Airlines need to improve the accuracy of their contractual language to more clearly demonstrate to the pets' owners the risk to animals traveling in cargo holds. Airlines also need to inform the owners about how the risks can be minimized by the owners themselves and allow the owners to expressly accept the remaining risks by contractual agreement. The airlines must also improve their animal handling and safety measures both on the ground and in flight. Finally, the airlines need to re-assess their current policies on live animals as cargo and adapt their corporate policies to conform more closely to public opinion regarding the value of any life.

1. *Contractual Changes*

The current non-negotiable contracts for animal air transport do not accurately alert or advise animal owners about the dangers of air transport in cargo holds. Airline contracts of carriage use the terms "loss, damage or delay" in their provisions limiting liability.¹⁴⁶ Owners may not relate the baggage or cargo terms of "loss, damage, or delay" to their pets. They would be more accurately advised as to transportation risks if the liability provisions were stated in precise animal oriented terms such as loss and/or escape or physiological terms such as injury or death.

The Safe Air Travel for Animals Act requires reporting for "loss, injury, or death" of animals in air transport.¹⁴⁷ Interestingly, the terms "loss, death, or sickness" were used as early as 1975 in a cancelled Civil Aeronautics Board (CAB) tariff.¹⁴⁸ In contrast to the traditional airlines contracts of carriage, the Pet Airways contract uses the terms death or injury four separate

¹⁴⁵ See Press Release, PRNewswire, Leading Animal Transportation Association Responds to DOT Pet Travel Incident Report (July 12, 2005), *available at* <http://www.thefreelibrary.com/Leading+Animal+Transportation+Association+Responds+to+DOT+Pet+Travel.+.-a0133941587>.

¹⁴⁶ See, e.g., *Ing v. Am. Airlines, Inc.*, No. C 06-02873 WHA, 2007 WL 420249, at *1 (N.D. Cal. Feb. 5, 2007).

¹⁴⁷ 14 C.F.R. § 234.13(a) (2010).

¹⁴⁸ *Klicker v. Nw. Airlines, Inc.*, 563 F.2d 1310, 1312 (9th Cir. 1977); *Davis v. Ne. Airlines, Inc.*, 362 A.2d 208, 209 (N.H. 1976).

times in the Exclusion of Liability section.¹⁴⁹ It also contains discussions of the health of the pet.¹⁵⁰ Any owner reading this contract of carriage would be well aware that there are health risks and a possibility of death or injury for their pet during the performance of the contract for handling and travel. The Pet Airways contract of carriage serves to better inform owners of risks to their pets even though pets transported by Pet Airways are not subject to all the additional risks of cargo hold transportation.

The term “loss” is used both in the currently used cargo terms and in the proposed terms.¹⁵¹ But for live animals, there is higher risk of “loss,” as “loss” includes animal escape.¹⁵² As opposed to using the term “loss,” using the term “loss and/or escape” in the contract would advise the owners that loss can be due to the handling, and there also may be a tendency for an animal to escape on its own without any negligence on the part of the handler. This instance of loss is, of course, different and in addition to the normal risk of loss for non-live or inanimate cargo.

In addition to changing contractual terms to advise the owners more accurately of the losses and injuries that may result due to animal air transportation in general, the airlines also need to advise pet owners as to the specific additional risks that pets may experience due to placement in cargo holds. Many owners may not realize that pets fly under conditions that are not comparable to those experienced by their human counterparts during air travel, even though the Secretary of Transportation requires airlines to inform passengers of these differences.¹⁵³ Additional risks that owners need to be advised of include death or severe injury from hyper- and hypothermia due to extreme temperatures in non-climatized holds, suffocation from a lack of ventilation, and extremely loud noise levels due to engine noise causing hearing loss or anxiety.¹⁵⁴

¹⁴⁹ *Contract of Carriage Containing Rules, Regulations, and Charges Applicable to the Carriage of Pets by Pet Airways*, *supra* note 114.

¹⁵⁰ *Id.* § 17(D).

¹⁵¹ Julie Catalano, *Congress Votes to Protect Animals in Flight: Hopes to Put End to Pet Travel 'Horror Stories'*, ABPNEWS.COM (Mar. 15, 2000), <http://www.vetabusenetwork.com/CongressVotestoProtectAnimalsinFlight.htm>.

¹⁵² Silversmith, *supra* note 98, at 4.

¹⁵³ 9 U.S.C. § 41721(b) (2006) (stating air carriers must notify passengers of animal air-transport conditions).

¹⁵⁴ *Id.*

Airlines may declare embargos on the transportation of pets due to adverse weather conditions.¹⁵⁵ It may not be self evident to owners as to why there are weather embargos. The contract of carriage or airway bill should expressly note why weather embargos are needed in precise and physiological terms. The embargo may be needed to ensure that animals are not exposed to extreme heat or cold while in animal holding areas, terminal facilities, when moving between facilities, or when placed in non-climatized cargo holds.¹⁵⁶ The contract of carriage should specifically state that animals subject to such extreme heat or cold may suffer injuries or death.

Once owners are informed of the risks involved in live animal transport as cargo, they may make an informed choice on the method of transportation for their pet. Some owners may choose in-cabin transportation when available; others may choose to drive or forego the trip altogether. Others may choose to work within the airline recommendations to minimize the risks and expressly accept the remaining risks. In such a case, airlines should have owners sign a waiver of liability within the contract of carriage stating the airline informed them of and they understand the risks involved in cargo hold transportation.

2. *Improved Animal Handling Procedures*

An airline may lose, injure, or kill an animal traveling as air cargo during ground handling or in flight. Monthly incident reports filed since the passage of the Air Safety of Animals Act indicate that many incidents are due to ground handling.¹⁵⁷ Several airlines have already changed animal ground handling from that of routine baggage handling to special cargo handling.¹⁵⁸ Special cargo programs are designed to eliminate rough handling and decrease the possibility of animal escape.¹⁵⁹ These programs also seek to limit pets' exposure to temperature

¹⁵⁵ *Traveling with Pets: Temperature Restrictions*, AM. AIRLINES, <http://www.aa.com/i18n/travelInformation/specialAssistance/travelingWithPets.jsp#Temperature%20Restrictions> (last visited Mar. 7, 2011).

¹⁵⁶ *Id.*

¹⁵⁷ *See, e.g., In re Delta Air Lines, Inc.*, AWA Docket No. 05-0001 (Nov. 10, 2005).

¹⁵⁸ *See, e.g., Traveling with Animals*, CONTINENTAL AIRLINES, <http://www.continental.com/WEB/en-US/content/travel/animals/default.aspx> (last visited Mar. 7, 2011).

¹⁵⁹ *Id.*

variations by individually arranging ground transportation for live animal cargo.¹⁶⁰

Ideally, in-flight transportation would only be in climatized cargo holds. Airline personnel should be trained to only schedule animal transport on flights with climatized holds. Furthermore, if any unscheduled changes in aircraft occur, aircraft with climatized holds should be substituted if animals are aboard.¹⁶¹ If airline transport of animals continues in non-climatized holds, precautions that might improve safety would be to transport animals in pet carriers that are larger than the required size and to require more room for adequate ventilation safeguards when loading pet carriers. Loading of cargo holds so that pets are not exposed to the continuous loud noise of jet engines would also be advisable.¹⁶²

3. Airline Corporate Policy Changes

Treating animal injury or death as a cost of the live animal air cargo business is an outdated and poor corporate policy for any airline that desires to continue to successfully maintain their live animal transportation business. This is especially so in a pet transportation market that now has a niche pet airline with in-cabin transport and special pet care, which sharply contrasts the traditional airlines “take it or leave it” approach to live animal transport.

Continental Airlines no longer ships pets as baggage and instituted a special live cargo handling service called QuickPak.¹⁶³ Continental is also the only airline which reports a total number of animals transported per month in their monthly pet transport incident data.¹⁶⁴ Continental calculates the percentage of reportable incidents to the number of animals shipped in their report.¹⁶⁵ In June of 2009, Continental had two reportable

¹⁶⁰ See, e.g., *id.*

¹⁶¹ AWA Docket No. 03-0029 involved the death of five German Shephard dogs whose flight aircraft was changed. *In re* Delta Air Lines, Inc., AWA Docket No. 03-0029. The dogs were placed in a forward cargo compartment which had no system for air circulation. *Id.*

¹⁶² See Mr. Ed, *supra* note 125.

¹⁶³ *Traveling with Animals*, *supra* note 158.

¹⁶⁴ AVIATION CONSUMER PROT. & ENFORCEMENT, *supra* note 128; Silversmith, *supra* note 36.

¹⁶⁵ *Id.* For the purposes of animal incident reporting, “[a]nimal means any warm or cold blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States.” 14 C.F.R. § 234.13(c)(2) (2010).

animal incidents out of a total of 10,794 animals shipped for a percent of reportable incidents to animals handled of .01%.¹⁶⁶

Individual airlines with good safety records could use the monthly animal incident data to their advantage to promote their safety records. If the airlines were required to provide the total number of “family pets” transported monthly to the Department of Agriculture on their animal incident reports, then uniform airline safety data could be used as a valuable tool for consumers to assess the relative safety of airlines for pet transport.¹⁶⁷ Quality safety data could be voluntarily published yearly or monthly on airline web sites and in promotional materials for airlines offering live animal air transport.

Ultimately, animal friendly and responsible airlines would use some of the profits from live animal transport to purchase new aircraft with all climatized cargo holds or retrofit all current aircraft for climatization. A provision in the original version of the Safe Air Travel for Animals Act, which did not make it into the final bill, was to have airplanes being retrofitted for fire prevention to also be retrofitted for climatization at the same time.¹⁶⁸ Climatization of cargo holds may be suggested as an amendment to the act along with other possible amendments to the act, which include broadening the definition of “animal” to include all animals or at least species that are currently covered but owned by dealers instead of families.¹⁶⁹

To protect their own economic interests, airlines might be wise to enact corporate policies that respect the views of those who use their services. In today’s more enlightened society, many animals are treated as family members.¹⁷⁰ Although the airlines are on legally solid ground in treating animals as cargo, public opinion may not be in concert with this practice.¹⁷¹ Animals are legally property or cargo with a limited fair market value, but they are still live beings. Airline corporate policy should reflect respect for the lives of the animals that they trans-

¹⁶⁶ AVIATION CONSUMER PROT. & ENFORCEMENT, *supra* note 128.

¹⁶⁷ Silversmith, *supra* note 36.

¹⁶⁸ Mr. Ed, *supra* note 125.

¹⁶⁹ Catalano, *supra* note 151, at 3; *Senators Call for Change in Airline Pet Rules*, SFGATE TAILS OF THE CITY, http://sfgate.com/cgi-bin/blogs/pets/detail?entry_id=70252 (last visited July 4, 2011).

¹⁷⁰ See, e.g., Press Release, VPI Pet Insurance, *supra* note 4; Scott Mayerowitz, *Traveling with Pets: Airlines with the Most Dog Deaths*, ABC NEWS (July 21, 2010), <http://abcnews.go.com/Travel/traveling-pets-airlines-dog-deaths/story?id=11198807>.

¹⁷¹ See, e.g., Scott Mayerowitz, *supra* note 170.

port. Consumers of airline services may alter their purchasing decisions when a company's policies are not in harmony with the prevailing public opinion or the consumer's own view. A corporate policy which reflects concern and compassion for animal life would be a wise adaptation of policy for any airline that wishes to continue to be successful in the live animal air transportation industry.

IV. CONCLUSION

Ideally, all animals would be as safely transported around the world as are their human counterparts. If traditional airlines cannot provide this level of safety for animals, at the minimum, their contracts of carriage should clearly state the risks of animal cargo transport, and allow animal owners to accept the risks of transport or find alternate methods of transportation. Currently many animal owners naively assume that their pet's flight experience is similar to and just as safe as their own passenger flight experience.

The issue of airline transportation of animals is also influenced by public policy concerns. Controversies exist regarding the treatment of animals. Should animals be regarded as property with their owners allowed to choose the acceptable risk level for them in animal transportation? What is acceptable public policy on the loss of life for an animal? Should commercially owned animals and family pets be treated differently in this regard? Until these broader questions are resolved, responsible airlines wishing to preserve their public image and maintain their revenues from live animal air transportation should take the intermediate steps proposed to minimize animal injuries and death in animal air transportation.