

Travel Law Insider: Top Tips from a Travel Lawyer-Dealing with the Airlines

By  [Jeff Miller](#), Dec 30, 2021

This fifth and final column in Jeff's series of travel tips from a travel lawyer will focus on the airline industry. Travel advisers can provide a valuable service to their clients if they explain certain unique features of U.S. airlines. It is worth remembering that the industry is heavily concentrated with pre-COVID statistics showing that United Airlines, American Airlines, Delta Air Lines and Southwest carrying more than 80 percent of all passengers in the U.S.

The rest of the airline industry, including carriers with excellent customer service such as Alaska Airlines and JetBlue, and low-cost carriers like Allegiant, Spirit and Frontier, along with several smaller ones have the remaining 15-20 percent of passengers in the U.S.

All travel clients understand the difference between **non-stop**, **one-stop** and **connecting flights**. A **non-stop starts at points A and arrives at point B**. A one-stop starts at point A, stops at point B and the passenger remains on the plane and arrives at point C. A connecting flight starts at point A, arrives at point B and the passenger disembarks and gets on another flight and proceeds to point C.

If at all possible, fly your clients nonstop because it is less likely, but still possible, to have delays. The least desirable flights are connections because delays for mechanical, bad weather, crew scheduling and other issues can cause a missed connection and easily mess up travel plans with substantial delays in reaching the final destination.

Most industry observers recommend taking a morning flight as opposed to later in the day because delays are more likely throughout the day. Airline schedules typically do not have sufficient built-in time to make up for delays, particularly if the morning flights go out late.

In Southwest's case, for example, the airline prides itself on flight utilization, which is the best in the industry, by keeping its planes flying instead of wasting time on the ground. The downside is obvious. The more take-offs and landings, the more delays become inevitable. For a number of reasons, the Dallas-based carrier has had one of the worse on-time performance records in the industry. In Southwest's case, the lack of seat assignments can cause issues for your clients because if the first flight is late the client will probably be in a middle seat on the connecting flight regardless of their letter and number boarding position.

The frequent-flyer programs developed by the airline industry are considered by marketing experts to be some of the best marketing efforts ever done. American started its AAdvantage program in the very early 1980s and United followed with Mileage Plus shortly thereafter. The airlines needed these programs because most of the passenger information was retained by travel advisers (called travel agents in those days) and thus when the passenger signed up for a frequent-flyer program the carrier got name, address, phone number, and credit card information for their records.

It is hard to realize that when these frequent-flyer programs began you could only earn a mile by flying a mile. These days less than 30 percent of all mileage accumulated is earned by flying. Also the redemption of miles is allegedly less than 40 percent of mileage earned.

Some frequent-flyer programs still have a shelf life during which there has to be some activity over some period to keep the account active. When the programs started, the mileage was good for three years from the date earned. Some carriers have now eliminated the shelf life and allow the miles never to expire.

In my opinion, unless your clients fly a lot, look for low fares on convenient nonstop flights and do not worry about earning miles. The convenience and savings will far outweigh any possible miles your clients might earn from the flight(s). If they have an airline affinity card and got some type of bonus for signing up, tell

them to keep the card for two years , close the account, wait a few months and apply for the card again and get the newest promotional benefits. This works if you have good credit, but won't work if you do not. Most affinity cards require a two-year wait until you can obtain additional benefits and some require longer periods of time. I am not aware of any that are less than 24 months.

While many of your clients will book domestic air on their own, make certain that they know to use your services for all international airline tickets. There are all types of rules that impact international fares and a travel adviser is the best person to provide that service.

Many, many years ago airlines flying in the United States provided a small discount for a round-trip ticket. That discount disappeared decades ago and there is no reason to book a round-trip flight anymore. In fact, there are many reasons to book one-way flights. If you need to change a round-trip flight it involves two flights. If you were one of thousands of unfortunate passengers who got stranded by Southwest or American this past summer and had a round-trip ticket, it was much harder to deal with rebooking.

For example, on a round-trip flight from Washington Dulles (IAD) to Chicago O'Hare (ORD), if the outbound flight is canceled by the carrier for any number of reasons and you decide to drive to Chicago, the return flight is going to be cancelled by the carrier's computer system if the carrier rebooks you on a flight a day or two later and you have already reached Chicago. With one-way tickets this is not an issue. I have not booked a round-trip domestic flight in at least 30 years—it's one less hassle, of many when flying, to deal with.

The airline industry is the biggest proponent of fee for service, which means charging for everything that was free and included in the cost of your flight many years ago. Airlines now charge for speaking with a reservation agent, booking specific seats, checking baggage, bringing on overhead baggage, refunding tickets without fees, not checking in online.

Spirit, Allegiant and Frontier pride themselves on their "low fares" and then charge numerous fees that most passengers wind up paying unless they only have a carry-on bag that fits under the seat in front of them. Allegiant operates many routes on a two- or three-time a week basis and if it cancels a flight, passengers often have to wait several days for the next one.

Unfortunately, airlines passengers in the U.S. have limited rights because the airline lobbyists convinced Congress when drafting the Airline Deregulation Act of 1978 to make the U.S. Department of Transportation the sole remedy for consumer rights involving the airline industry. If any of our readers have ever had an airline problem in Europe, you know that the EU has stringent consumer protection rights for passengers that unfortunately do not exist in this country.

The only consumer protection rights available in the U.S. involve denied boarding and lost or damaged luggage. If you have a confirmed reservation and are involuntarily removed from a flight, you do have certain rights. Generally, experienced gate agents avoid this issue by offering vouchers of varying amounts to get confirmed passengers to switch to another flight so that no one has to be involuntarily removed from the plane because more tickets were sold than seats.

When luggage is damaged or lost, each passenger is entitled to slightly more than \$3,000 subject to documentation. Airlines will have you fill out a claim form and then depreciate the items based on actual cash value (not what you paid) but what they say the item is worth today.

Most of our readers have homeowner's insurance that pays replacement costs, not actual cash value. For example, if a shirt was in the suitcase that was lost and the passenger lists the cost as \$60 purchased one year ago, the airline will say it is probably worth \$30 or less today.

When a passenger purchases an airline ticket, it is a contract between the passenger and the airline. The contract of carriage is available online and also at the ticket counter. That contract absolves the airline for many things, including delays or cancellations for mechanical, weather, staffing and a host of other reasons. The carrier is not required to pay for hotels, meals, other transportation or anything else that the passenger pays for in order to their destination.

While most people do not like lawyers, these types of issues can be resolved without involving a lawyer by filing a claim in your state's small claims court and seeking reimbursement for any documented out-of-pocket expenses. The forms are typically easy to fill out, the filing fees are generally small and uniformly the airline will pay the claim rather than pay an attorney to come into court to defend the lawsuit.

Many years ago I gave a speech in New Orleans and was flying back through Orlando to Fort Lauderdale. When we got to Orlando the airline did not hold the connecting flight, the last flight of the day, even though we were only 15 minutes late. I was told I could sleep at the airport or pay for a hotel and the carrier would fly me on the first flight in the morning.

I rented a car, drove down the Florida Turnpike to my destination and sued the carrier in small claims court for the car rental, gas, tolls and entire cost of the New Orleans-Orlando-Fort Lauderdale ticket. The ticket is a contract and clearly the carrier breached it by not holding the last flight of the day to my destination.

Once the carrier was served with the complaint (my lawsuit), the airline's in-house lawyer called and said they would send me a check and then I could dismiss the case. I have had lots of non-lawyer friends follow this procedure and every one of them has gotten what they requested in the lawsuit. It is an economic decision for the carrier. Does it cost less to pay the claim than it would to send a lawyer to defend it and still possibly lose the case?

A large percentage of travel these days involves the airline industry and it will only get worse not better for the foreseeable future. There is no incentive for the airlines to try to address some of their consumer issues because of the heavy concentration of the industry. There are now fewer carriers, more fortress hubs and no meaningful government oversight. Obviously, the airline lobbyists are still some of the best around, given that they obtained around \$50 billion in government aid for the industry because of COVID. I hope this column has been of some benefit to you and your clients.

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