

What Steps, if any, Should a Charter Operator Take to Ensure that Both Parents Consent to the Travel of a Minor Child?

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Background

In April of 2005, a civil jury in Connecticut ordered a nationally-known certificated charter operator (the charter company or the defendant) to pay a total of \$27 million in damages to a mother whose ex-husband hired the charter company to carry him and his two young children to Egypt. Although the mother had been granted legal custody of the children, the father—an Egyptian national—took the children without his ex-wife's consent. At the time of the flight, the charter company had a policy that it would comply with any customs regulations of a proposed destination country (including with respect to children flying with one or no parents), but it had no general policy in place that required a traveling parent to show proof of the other parent's consent for the children flying with that one parent in all instances.

The mother's basic claim in the lawsuit was that the defendant failed to take sufficient measures to prevent the foreseeable harm that was likely to result from its arranging for and conducting the charter flight to Egypt. The mother claimed that the defendant should have determined whether the father had the right to remove the children from the United States before allowing the travel. The jury agreed with the plaintiff, and awarded the mother \$10 million as damages for negligence and custodial interference, plus an additional \$17 million to compensate the mother for her 22-month separation from her children. Although the defendant originally appealed the jury's decision, the parties eventually settled the matter for an undisclosed amount, so there was never a final resolution by the appellate courts as to whether or not the jury's decision was appropriate.

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The jury's verdict in this case raises a significant question for all charter operators: What steps, if any, should a charter operator take to ensure that both parents consent to the travel of a minor child?

Applicable Law

Although the jury in the April 2005 case felt that the charter operator had some duty to prevent foreseeable harm, there is no U.S. statute or regulation that specifically requires a charter operator to obtain the consent of the absent parent. Furthermore, although a number of foreign countries do have such requirements as part of their customs regulations—most notably Canada and Mexico for a U.S. air carrier's purposes—Egypt has no such requirement.

As such, although there were certain “red flags” concerning the father's request, the charter company's actions with respect to the flight in question appeared to comply with all applicable statutes and regulations. Moreover, looking further to commonly accepted industry standards, documents from the April 2005 case indicate that of 30 air carriers questioned, fewer than 70% required consent forms from absent parents.

That the charter company was in compliance with the applicable statutes and regulations and that its system was in line with industry practice did not carry much weight with the jury, however, who clearly believed that the charter company failed the mother. This jury verdict leads to the question of whether or not charter operators should create their own policies on the subject, even though such a policy is not currently required under applicable U.S. law.

Having a Policy: Benefit or Burden?

In determining what steps, if any, a charter operator should take to ensure that both parents consent to the travel of a minor child, the charter operator must first recognize that creating and implementing a policy is a double-edged sword. On the one hand, a policy that curbs opportunity for customers to use a charter operator for international abduction of minor children seems reasonable. On the other hand, by adopting such a policy, a charter operator may be considered as having adopted a higher level of responsibility than what U.S. law requires and may be subsequently held liable for failing to ensure that (a) the policy it crafted is appropriate, reasonable and sufficient for achieving the goal of curbing international abductions, and (b) the policy is reasonably and responsibly enforced.²

Potential Policy Contents:

² It also appears that the plaintiff in the April 2005 case argued that even though there are no U.S. statutes or regulations directly applicable to the transportation of children with no or only one parent, because other countries such as Canada and Mexico do have such policies, there already is a de facto standard of conduct in place for U.S. operators. If this argument were to ever definitively win the day, it could be another good reason for a charter operator to preemptively craft its own policy that arguably meets or exceeds the standards found in these other countries' policies.

If a charter operator elects to adopt a policy, based on the given circumstances noted above the operator may want to consider including various components in its policy such as the following:

- If a minor child is **traveling with only one parent**, the absent parent is expected to provide notarized consent to the travel. If **only one parent has legal custody**, that parent should be prepared to provide a court order of child custody.
- If a minor child is **traveling alone** or in someone else's company, both parents (or the sole, documented custodial parent) must provide notarized consent to the travel.
- If a child traveling has a **different last name** from the mother and/or father, the parents should be prepared to provide evidence that they are the parents (for example a birth certificate or adoption decree).
- If **one parent is deceased**, a death certificate is required.
- If the birth certificate shows that **the minor only has one parent**, it should be sufficient to hold only a notarized copy of the birth certificate.

Furthermore, given the concern over international abductions, it may be reasonable to require that additional information be gathered in situations involving travel other than “routine” domestic flight travel. For example, the charter operator should consider discouraging international flights when children are on board unless and until the traveling adult’s basic identifying information (e.g. identity, home address, and bank account) has been confirmed, and it should be sure it has complied with any customs regulations of the destination country regarding the in-bound transport of children.

With or Without a Policy: Watch out for “Red Flags”!

Even if a charter operator elects not to adopt a policy, it should consider educating all staff as to what circumstances might be viewed as suspicious and unusual, and further educating the staff as to what they should do when suspicious and unusual circumstances exist. These so-called “red flags” might include:

- A minor child accompanied by only one traveling adult who is in a particular hurry to make arrangements to leave the country.
- The travel destination is to a country that is not a signatory to the Hague Convention.³

³The countries that are party to the Hague Convention have agreed that a child who is habitually resident in one party country, and who has been removed to or retained in another party country in violation of the left-behind parent’s custodial rights, shall be promptly returned to the country of habitual residence. There is a treaty obligation to return an abducted child below the age of 16 if application is made within one year from the date of the wrongful removal or retention (unless one of the exceptions to return apply). A list of

- The travel destination is to a country that the U.S. Department of State has issued warnings about in light of child abductions.⁴
- The traveling adult indicates that “cost is no object,” or is having issues in making the required payments.
- An unwillingness on the part of the traveling adult to have anyone from the charter operator visit with the child.

Conclusion

In summary, adopting a policy could impose a heavier burden than a charter operator wishes to bear. Once a policy is in place, it is possible that a scorned parent may be more likely to recover damages from the charter company based on the argument that the policy itself was not sufficient to serve its purpose, or that the policy was not followed appropriately. Moreover, a charter operator’s refusal of legitimate travel based on an inaccurate belief that a child is being abducted may expose the charter operator to a lawsuit based on that refusal.

On the other hand, the April 2005 case made clear that, at least in certain circumstances, not having a policy in place and instead relying on normal industry practice may simply not be enough—to the tune of \$27 million not enough in that particular case. On balance, the April 2005 case arguably provides a pretty good incentive for charter operators to seriously consider putting some type of policy into place.

signatories to the Hague Convention may be found at the U.S. Department of State website:
http://travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html

⁴ The U.S. Department of State periodically issues “travel warnings,” which can be reviewed by visiting the website: www.travel.state.gov