

**NO. 17-0538**

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**In the Supreme Court of Texas**

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**Sabre Travel International Ltd.**  
*Petitioner,*

**v.**

**Deutsche Lufthansa AG, Austrian Airlines AG,  
Brussels Airlines NV/SA, and Swiss International Air Lines Ltd.**  
*Respondents.*

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On Review from the Second Court of Appeals at Fort Worth, Texas  
No. 02-17-00153-CV

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**PETITIONER'S ORAL ARGUMENT EXHIBITS**

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Wallace B. Jefferson  
State Bar No. 00000019  
Alexandra Wilson Albright  
State Bar No. 21723500  
ALEXANDER DUBOSE JEFFERSON  
& TOWNSEND LLP  
515 Congress Avenue, Suite 2350  
Austin, Texas 78701-3562  
Telephone: (512) 482-9300

Ralph H. Duggins  
State Bar No. 06183700  
Philip A. Vickers  
State Bar No. 24051699  
CANTEY HANGER LLP  
600 West 6<sup>th</sup> Street, Suite 300  
Fort Worth, Texas 76102  
Telephone: (817) 877-2800  
rduggins@canteyhanger.com

Chris Lind (*pro hac vice*)  
Andrew C. MacNally (*pro hac vice*)  
BARTLIT BECK HERMAN  
PALENCHAR & SCOTT LLP  
54 W. Hubbard Street, Suite 300  
Chicago, Illinois 60654  
Telephone: (312) 494-4400

Karma M. Giulianelli (*pro hac vice*)  
Jason C. Murray (*pro hac vice*)  
BARTLIT BECK HERMAN  
PALENCHAR & SCOTT LLP  
1801 Wewatta Street, Suite 1200  
Denver, Colorado 80202  
Telephone: (303) 592-3100

*Counsel for Petitioner Sabre Travel International Ltd.*

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**CERTIFICATE OF SERVICE**

I certify that on October 26, 2018, a true and correct copy of Petitioner's Oral Argument Exhibits has been served on the following counsel using the Court's electronic case filing system:

R. Paul Yetter  
Reagan W. Simpson  
Christopher D. Porter  
Wyatt J. Dowling  
Yetter Coleman LLP  
909 Fannin, Suite 3600  
Houston, Texas 77010  
pyetter@yettercoleman.com  
*Counsel for Respondents*

Roland K. Johnson  
Harris Finley & Bogle, P.C.  
777 Main Street, Suite 1800  
Fort Worth, Texas 76102  
rolandjohnson@hfblaw.com  
*Counsel for Respondents*

/s/ Ralph H. Duggins  
Ralph H. Duggins

# **Tab A**



MIKE WALLACH  
 DISTRICT JUDGE  
 348TH JUDICIAL DISTRICT OF TEXAS  
 TOM VANDERGRIF CIVIL COURTS BLDG.  
 100 N. CALHOUN  
 FORT WORTH, TEXAS 76196-0281  
 (817) 884-2715

MICHELE RAYBURN  
 COURT COORDINATOR  
 (817) 884-2715

ANNETTE BOS  
 COURT REPORTER  
 (817) 884-1790

April 11, 2017

R. Paul Yetter, via email [pyetter@yettercoleman.com](mailto:pyetter@yettercoleman.com)  
 Ralph H. Duggins, via email [rduggins@canteyhanger.com](mailto:rduggins@canteyhanger.com)  
 Philip A. Vickers, via email [pvickers@canteyhanger.com](mailto:pvickers@canteyhanger.com)  
 Steven J. Kaiser, via email [skaiser@cgsh.com](mailto:skaiser@cgsh.com)  
 Chris Lind, via email [chris.lind@bartlit-beck-com](mailto:chris.lind@bartlit-beck-com)  
 Karma M. Giulianelli, via email [karma.giulianelli@bartlit-beck.com](mailto:karma.giulianelli@bartlit-beck.com)

Re: Cause No. 348-284291-16  
 Deutsche Lufthansa AG, et al v. Sabre Travel International LTD

Dear Counsel:

I want to thank each of you for your excellent arguments at the hearing last week and for your insightful briefing for the Court. The purpose of this letter is to advise the parties of the Court's rulings on the motions which were heard.

First, since taking the bench, my practice regarding motions to reconsider my predecessor's rulings has been to not disturb them unless there has been a change in the law, the facts, or the pleadings since she made her rulings. Judge Womack is a very intelligent and conscientious Judge, and I believe it appropriate to leave her rulings intact absent such changes--hence, my question to each of you during argument about that matter. Since everyone agreed that no such changes have occurred and I have found none myself, the Court is denying the Motion to Reconsider. I am requesting that counsel for Plaintiffs prepare an order and submit it to the Court after obtaining opposing counsel's approval as to form.



**E-MAILED**

*mea*

*yetter  
 Duggins  
 vickers  
 KAISER  
 LIND  
 Giulianelli*

*gm*

The issue of allowing an interlocutory appeal is new territory. The Court's interpretation of Rule 168 and Section 151.014 of the Texas Civil Practice & Remedies Code is that the September 30, 2016, Order of the Court did not address the issue of interlocutory appeal. Since the law requires that the trial court affirmatively grant permission for an interlocutory appeal, the time limit to file the appeal never started to run and, therefore, an interlocutory appeal now is not untimely. The Court also is of the opinion that this question is one which involves a controlling question of law as to which there is a substantial ground for difference of opinion. While the opinion in *Frequent Flyer Depot, Inc. v. American Airlines, Inc.*, 281 S.W. 3d 215 (Tex. App.--Fort Worth 2009, pet. denied) is persuasive, it is factually different in ways which could be construed to make it distinguishable as controlling authority. Given the holdings from other jurisdictions in cases involving the application of federal pre-emption to tortious interference cases, this question is ripe for consideration, especially from the Second Court of Appeals which authored the *Frequent Flyer Depot* opinion and, ultimately, the Texas Supreme Court.

The Court is also of the opinion that an immediate appeal may materially advance the ultimate termination of the litigation. This case has two clearly distinguishable aspects, breach of contract and tortious interference. While the Court believes that there may be some discovery necessary to advance the contract claims to fruition, it likely pales in comparison to the discovery which will likely be necessary on the tortious interference claim, including depositions of multiple travel agents who allegedly acted in furtherance of the alleged unlawful conduct, discovery from international third parties regarding contractual obligations, and more. If the state tort claim is, in fact, pre-empted, then all of the expense and delay associated with that claim can be avoided.

As a result, the Court grants the request to amend the September 30, 2016, Order in question to allow an interlocutory appeal. I am requesting that counsel for Defendant prepare an order and submit it to the Court after obtaining opposing counsel's approval as to form. I am requesting that the order specifically address the topics required to be addressed in Rule 168.

Finally, the Court is going to abate the question of attorneys' fees, costs, and expenses under Rule 91a until the issue of the interlocutory appeal has been finally resolved. No order is necessary at this time.

Thank you for your attention.

Respectfully,



Mike Wallach

mer

# **Tab B**

DEUTSCHE LUFTHANSA AG,  
AUSTRIAN AIRLINES AG,  
BRUSSELS AIRLINES NV/SA, and  
SWISS INTERNATIONAL AIR  
LINES LTD,

Plaintiffs and  
Counter-Defendants;

v.

SABRE TRAVEL INTERNATIONAL  
LTD.,

Defendant and  
Counter-Claimant.

IN THE DISTRICT COURT

OF TARRANT COUNTY, TEXAS

348<sup>TH</sup> JUDICIAL DISTRICT

**AMENDED ORDER DENYING DEFENDANT'S MOTION TO DISMISS  
AND GRANTING DEFENDANT PERMISSION TO PURSUE AN  
INTERLOCUTORY APPEAL**

Having considered Sabre Travel International Ltd.'s ("Sabre") alternative motion filed March 23, 2017 to amend an Order dated September 30, 2016 signed by Judge Dana Womack regarding Sabre's motion to dismiss the tortious inference claims asserted by Deutsche Lufthansa AG, Austrian Airlines AG, Brussels Airlines NV/SA, and Swiss International Air Lines Ltd. (collectively "Lufthansa Group"), the subsequent response, arguments of counsel, and the papers filed in this case, the Court finds that Sabre's motion to dismiss should be denied but Sabre's alternative motion to amend will be granted.

Court's Minutes  
Transaction # 122

 **E-MAILED**  
5-1-17  
*new*

*Kaiser  
Guiliani  
Lind  
Yetter  
Vickers  
Duggins*

*gm*

Therefore, it is hereby ORDERED that Sabre's motion to dismiss filed August 29, 2016 is denied. It is further ORDERED that permission to appeal the denial of the motion to dismiss pursuant to Texas Rule of Civil Procedure 168 and §51.014(d) of the Texas Civil Practice & Remedies Code is hereby GRANTED solely on the controlling question of law of whether Lufthansa Group's tortious interference claims are pre-empted by the federal Airline Deregulation Act.

The Court concludes that the question whether Lufthansa Group's tortious interference claims are preempted by the federal Airline Deregulation Act is one that involves a controlling question of law as to which there is a substantial ground for difference of opinion. While the opinion in *Frequent Flyer Depot, Inc. v. American Airlines, Inc.*, 281 S.W.3d 215 (Tex. App.—Fort Worth 2009, pet. denied) is persuasive, it is factually different in ways which could be construed to make it distinguishable as controlling authority. Given the holdings from other jurisdictions in cases involving the application of federal preemption to tortious interference cases, this question is ripe for consideration, especially from the Second Court of Appeals which authored the *Frequent Flyer Depot* opinion and, ultimately, the Texas Supreme Court.

The Court is also of the opinion that an immediate appeal may materially advance the ultimate termination of the litigation. This case has two clearly distinguishable aspects, breach of contract and tortious interference. While the

Court believes there may be some discovery necessary to advance the contract claims to fruition, it likely pales in comparison to the discovery which will likely be necessary on the tortious interference claim, including depositions of multiple travel agents who allegedly act in furtherance of the alleged unlawful conduct, discovery from international third parties regarding contractual obligations, and more. If the state court claim is, in fact, pre-empted, then all of the expense and delay associated with that claim can be avoided.

It is therefore the Court's opinion that an appeal at this time may materially advance ultimate resolution of this case.

SO ORDERED.

SIGNED this 1<sup>st</sup> day of MAY 2017.



MIKE WALLACH  
PRESIDING JUDGE

# Tab C



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-17-00153-CV**

SABRE TRAVEL INTERNATIONAL  
LTD.

APPELLANT

V.

DEUTSCHE LUFTHANSA AG,  
AUSTRIAN AIRLINES AG,  
BRUSSELS AIRLINES NV/SA, AND  
SWISS INTERNATIONAL AIR  
LINES LTD.

APPELLEES

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FROM THE 348TH DISTRICT COURT OF TARRANT COUNTY  
TRIAL COURT NO. 348-284291-16

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**MEMORANDUM OPINION<sup>1</sup>**  
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<sup>1</sup>See Tex. R. App. P. 47.4.

Having considered Sabre Travel International Ltd.'s petition for permissive interlocutory appeal<sup>2</sup> of the trial court's May 1, 2017 "Amended Order Denying Defendant's Motion to Dismiss," we deny the petition.<sup>3</sup>

/s/ Elizabeth Kerr  
ELIZABETH KERR  
JUSTICE

PANEL: LIVINGSTON, C.J.; GABRIEL and KERR, JJ.

DELIVERED: June 1, 2017

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<sup>2</sup>See Tex. Civ. Prac. & Rem. Code Ann. § 51.014(d) (West Supp. 2016); see also Tex. R. App. P. 28.3(a), (f), (j); Tex. R. Civ. P. 168.

<sup>3</sup>See Tex. Civ. Prac. & Rem. Code Ann. § 51.014(f); see also *Blakenergy, Ltd. v. Oncor Elec. Delivery Co.*, No. 02-14-00241-CV, 2014 WL 4771736, at \*1 & n.2 (Tex. App.—Fort Worth Sept. 25, 2014, no pet.) (mem. op.) (stating that courts strictly construe the interlocutory appeals statute).

# **Tab D**

DEUTSCHE LUFTHANSA AG,	§	IN THE JUDICIAL DISTRICT
AUSTRIAN AIRLINES AG, BRUSSELS	§	
AIRLINES NV/SA, and SWISS	§	
INTERNATIONAL AIR LINES LTD.,	§	
	§	
Plaintiffs,	§	OF TARRANT COUNTY
	§	
v.	§	
	§	
SABRE TRAVEL INTERNATIONAL LTD.,	§	
	§	
Defendant.	§	348th JUDICIAL DISTRICT

**PLAINTIFFS’ SECOND AMENDED PETITION**

Plaintiffs Deutsche Lufthansa AG, Austrian Airlines AG, Brussels Airlines NV/SA, and Swiss International Air Lines Ltd. (collectively, “Lufthansa Group”), through their counsel, file this Second Amended Petition against defendant Sabre Travel International Ltd. and, based upon personal knowledge as to themselves and their own actions and upon information and belief as to all other matters, respectfully allege as follows:

**Nature of the Action**

1. This is an action to determine and declare the parties’ rights under 2015 contracts for the display and distribution of Lufthansa Group’s airline inventory, remedy breaches of the contracts, and stop interference with Lufthansa Group’s contracts with travel agents.

2. Sabre long has served as a middleman in the travel industry to display inventory received from travel providers. Airlines allow Sabre to display their flights and fares to travel agents through Sabre’s global distribution system (“GDS”). In turn, these agents – including brick and mortar travel agencies, online travel agencies, and corporate booking departments – book airline tickets on behalf of travelers. This legacy model has existed for decades.

3. With the development of internet commerce in recent years, especially in the travel industry, more and more alternative booking technologies to GDSs have become available. Further, the legacy GDS distribution model is restrictive to airlines, as it hinders direct marketing and communication between airlines and their customers and does not support dynamically created and customizable product offerings. Additionally, GDS distribution is costly to airlines, as it requires paying Sabre and other GDSs significant booking fees to act as intermediaries.

4. To make the distribution of its products more up-to-date, customer-minded, and less expensive, Lufthansa Group has pursued and invested in modern and innovative distribution technologies. Further, to provide transparency and fairness regarding the high costs of GDS distribution, Lufthansa Group added a fee last September, called the Distribution Cost Charge, on tickets sold through Sabre and other GDSs. The parties' contract allows Lufthansa Group to recoup the extra GDS costs through this new charge, and it has been doing so for the past six months. At the same time, Lufthansa Group has been discussing with Sabre the longer term plans of Lufthansa Group to create a more direct relationship with its customers, allowing it to better tailor its services to the needs of passengers, increase customer satisfaction and loyalty, and improve its business around the world.

5. On March 1, 2016, despite ongoing discussions between the parties, Sabre gave written notice that it believes Lufthansa Group is in breach of the parties' contracts regarding the Distribution Cost Charge. Lufthansa Group disagrees, as it has complied with the contracts by imposing the fee on tickets booked through all other GDSs, not just Sabre. Nevertheless, Sabre now claims that two distribution channels of Lufthansa Group – its Direct Connection and its agent.com Internet portal – should be considered “GDSs” and thus be subject to the fee, even though both channels are expressly excluded from being considered GDSs under the contracts.

Sabre also claims that Lufthansa Group is imposing an improper charge on Sabre subscribers, even though the charge is paid by passengers, not subscribers.

6. Sabre has also taken steps to undermine Lufthansa Group's efforts to modernize the distribution of its products and services. Last year, Sabre began encouraging travel agents to breach their contracts with Lufthansa Group by directing them to book and ticket travel through its direct channels, where it does not assess a Distribution Cost Charge, and then enter those itineraries into the Sabre GDS. This scheme enables Sabre to collect improperly-assessed fees. Sabre's actions are intended to preserve its legacy revenue stream by preventing Lufthansa Group from modernizing its distribution system.

7. Given Sabre's aggressive position and the uncertainty it has created, Lufthansa Group has no choice but to seek a ruling and declaration in this case that its Distribution Cost Charge as implemented complies with the contracts, and it may apply the fee to tickets sold through the GDS channels without also being required to apply the fee to tickets sold through its Direct Connect and Internet-site channels. Further, Lufthansa Group seeks recovery for Sabre's breach of the contracts by charging fees for travel booked and ticketed in Lufthansa Group's direct channels, and by interfering with travel agency contracts.

#### **Discovery Level**

8. Discovery should be done under a Level 2 plan, pursuant to Tex. R. Civ. P. 190.3.

#### **Parties**

9. Deutsche Lufthansa AG is a German corporation with its worldwide headquarters in Koln, Germany.

10. Austrian Airlines AG is an Austrian corporation with its headquarters in Vienna, Austria. It is a wholly-owned subsidiary of Deutsche Lufthansa AG.

11. Brussels Airlines NV/SA is a Belgian corporation with its registered office in Brussels, Belgium. Deutsche Lufthansa AG owns 45% of the parent company of Brussels Airlines, with a right to acquire the remaining portion.

12. Swiss International Air Lines Limited is a Swiss corporation with its headquarters in Zurich, Switzerland. It is a wholly-owned subsidiary of Deutsche Lufthansa AG.

13. Defendant Sabre Travel International Ltd. is a foreign corporation with its registered office in Dublin, Ireland and its principal place of business in this County, at 3150 Sabre Drive, Southlake, Texas. It has appeared and answered.

#### **Jurisdiction and Venue**

14. The Court has subject matter jurisdiction over the case. The amount in controversy is within the jurisdictional limits of the Court and exceeds \$1 million.

15. The Court has personal jurisdiction over defendant. The parties consented to the jurisdiction of Texas courts for disputes arising out of the contracts.

16. Venue is proper here, pursuant to Tex. Civ. Prac. & Rem. Code §15.002. A substantial part of the events or omissions giving rise to the claim occurred here.

#### **Facts Giving Rise to this Action**

17. Lufthansa Group is one of the world's leading aviation groups and operates one of the largest fleets in the world. With a fleet of more than 600 aircraft, it serves 235 destinations in 78 countries and safely transports over 100 million passengers a year. It owns and operates several airlines, including Lufthansa, Swiss International, Brussels Airlines, and Austrian Airlines.

18. As a worldwide leader in the airline industry, Lufthansa Group constantly seeks to offer its products to its customers in an efficient, convenient, and cost effective manner. Over the

years, it has taken a number of steps to accomplish this, including making its products available directly to the public through its airlines' websites, like lufthansa.com.

19. Businesses often use travel agencies because they offer services such as managing and tracking travel spending, negotiating discounted rates, and managing traveler itineraries. Traditionally, travel agencies have subscribed to GDSs such as Sabre in order to get access to airline inventory. GDSs receive the inventory from airlines and display it electronically to these subscribers. Once provided with the airline inventory, travel agents can select flight options that meet their clients' needs.

20. The legacy GDS systems, such as Sabre, provide Lufthansa Group with limited interactions with its customers and limited opportunities to provide innovative product offerings tailored to individualized passenger needs. The GDS model also gives Lufthansa Group limited control over which agencies and other distribution outlets have access to its content. In addition, distribution through GDSs is expensive. Travel agencies do not pay GDSs to use their systems. Instead, airlines pay GDSs a fee, and in turn travel agents receive incentive payments from GDSs once a booking is made. Thus, when a travel agent provides flight options to a client, and the client purchases an airline's ticket, the airline must pay a booking fee to the GDS, which then pays the agent incentives. This model of incentive payments to travel agents inhibits adoption of modern distribution technologies.

21. Booking fees provide substantial revenues for the GDSs. Lufthansa Group pays hundreds of millions of dollars in booking fees each year to GDSs, including Sabre.

22. Given the limitations of GDS distribution and high fees that airlines pay, airlines like Lufthansa Group have sought more dynamic and less expensive methods to display and distribute their products to customers. These innovative methods are central to Lufthansa

Group's distribution strategy, because they facilitate more efficient product offerings that allow more frequent and customizable interactions with its customers, in ways not supported by GDSs. New methods, technologies, and approaches also foster increased competition, innovation, and lower costs, in the interests of the travelling public.

23. One such method – called “direct connection” or “direct-connect” – allows travel agencies and corporate travel departments to connect directly into an airline's reservation system to access fares, inventory, and other products and services. Under the direct-connect model, airlines can choose which travel agencies have access to their content, rather than the GDSs, to ensure effective and efficient distribution. Once travel agencies or corporate travel departments gain access to an airline's system, they can review the airline's inventory, check flight availability, price flight options, and book flights for passengers. These direct-connect methods allow Lufthansa Group to offer flexible, modular, customizable, and individualized products, pricing options, and ancillary services to customers. Customers are able to purchase and pay for what they want, better reflecting their preferences. Direct-connect systems are far less expensive, costing a fraction of what it costs to book flights through legacy GDS channels.

24. In the past, Sabre has been resistant to direct-connect systems because they allow travel agencies to use new and better technology to search for airline fare and flight information. Moreover, these systems are chipping away at the large revenue streams that Sabre has enjoyed for years. It thus is no surprise that Sabre has tried to minimize and limit direct-connect systems that its airline customers want and have tried to adopt.

25. Despite this historical resistance from Sabre, the Lufthansa Group airlines each successfully secured from Sabre the right to use direct-connect systems, in the parties' 2015 Base Participating Carrier Distribution & Services Agreements (“Agreements”). The Agreements

provide that Lufthansa Group can use technology provided by non-GDS third parties to implement its direct connect. Currently, Farelogix, Travelfusion, and i:Fao serve as Lufthansa Group's third-party direct-connect technology providers. The Agreements also authorize Lufthansa Group to offer access through its own internet sites. These direct-connect and internet channels are expressly permitted under the Agreements.

26. Finally, the Agreements entitle Sabre, if and when travel agents book travel on Lufthansa Group airlines, to payment of "booking fees," including "passive" bookings, but only where tickets are issued in Sabre for such bookings.

27. In 2015, Lufthansa Group calculated that it costs the airline an additional €16 for every ticket booked through a GDS. Hence, to fairly allocate the distribution cost, increase transparency, and offset the high fees of GDS channels, Lufthansa Group introduced the Distribution Cost Charge ("DCC"). The DCC went into effect on September 1, 2015. It is added to Lufthansa Group's passenger airline tickets sold through the GDSs. The DCC does not apply to tickets booked through non-GDS channels, such as direct connects and Lufthansa Group's own internet sites.

28. Lufthansa Group's intent to gain greater freedom over distribution of its products and to employ a direct-connect strategy was understood by Sabre when the parties entered into the Agreements. Nevertheless, on September 30, 2015, Sabre sent letters to Lufthansa Group objecting to implementation of the DCC. Sabre claimed that Lufthansa Group agent.com and direct-connect technology providers Farelogix and Travelfusion are "GDSs," as defined in the Agreements. As such, it claimed that the DCC must be applied to bookings made through those direct-connect and agent.com channels as well. Lufthansa Group responded on October 28, confirming that all of its activities are in full compliance with the Agreements.

29. For months, there was no response. Then, on March 1, 2016, Sabre sent letters to the Lufthansa Group airlines again claiming that agent.com, Farelogix, and Travelfusion are GDSs under the Agreements and that the DCC should apply to bookings made through those channels. Sabre claimed that the DCC amounted to a discriminatory surcharge on its subscribers, and it claimed that Lufthansa Group was in material breach of the Agreements.

30. Sabre bases its position on an incorrect reading of the Agreements. The DCC does not discriminate against Sabre at all. Lufthansa Group agent.com, Farelogix, Travelfusion, and i:Fao are not GDSs, but instead are direct-connect channels exempt from the DCC. Nor is Lufthansa Group imposing any surcharge on Sabre subscribers through the DCC, because the fee is added to tickets that are paid for by travelers, not travel agent subscribers.

31. Sabre also has taken harmful commercial actions to force Lufthansa Group to abandon the DCC. Sabre changed its booking policies with travel agents to circumvent the DCC. On August 31, 2015, one day before Lufthansa Group implemented the DCC, Sabre told travel agents to book tickets in Lufthansa Group's direct distribution channels – where the DCC does not apply – and then “enter the segment into Sabre as a YK passive segment.” YK segments do not entitle Sabre to payment of booking fees under the Agreements, but are non-billable segments used for administrative purposes. Nevertheless, Sabre told Lufthansa Group that it would charge it for such bookings, even though they are not billable. Sabre's actions were a breach of the Agreements.

32. Sabre's actions have interfered with Lufthansa Group's travel agency contracts. Lufthansa Group and travel agents are parties to the Agent Reporting Agreement (“ARA”) and International Air Transport Association Passenger Sales Agency Agreement (“PSAA”). The Airlines Reporting Corporation (“ARC”) and International Air Transport Association (“IATA”)

function as clearinghouses and collection agents for transactions between airlines like Lufthansa Group and travel agents. Lufthansa Group is a member of ARC and IATA, which are authorized to enter into contracts with travel agents on behalf of Lufthansa Group. ARC and IATA, in turn, enter into the ARA and PSAA with travel agents, who are required to comply with all Lufthansa Group instructions.

33. By convincing travel agents to breach Lufthansa Group's policies – which prohibit using passive bookings except in limited circumstances – Sabre is interfering with Lufthansa Group's travel agency contracts. The interference results in travel agents' breaches of the ARA and PSAA, and substantial improper booking fees billed to Lufthansa Group by Sabre. Lufthansa Group notified Sabre that its actions are not authorized by the Agreements and sought reimbursement for these improper billings. Sabre has made no reimbursement and continues to direct travel agents to breach their contracts with Lufthansa Group.

34. A real and substantial controversy exists between the parties over the Agreements, whether the DCC wrongfully discriminates against Sabre, whether agent.com, Farelogix, Travelfusion, and i:Fao are GDSs, and whether Lufthansa Group is imposing a surcharge on subscribers. Sabre also is in breach of the Agreements, by charging for non-billable administrative bookings. Finally, it is wrongfully interfering by encouraging travel agents to breach Lufthansa Group's agreements.

**First Cause of Action  
(Declaratory Judgment)**

35. The material facts alleged above are incorporated here by reference.

36. This action is brought pursuant to Tex. Civ. Prac. & Rem. Code §37.004, which states that a person “interested under a [written contract] or whose rights, status or other legal relations are affected by a [contract] may have determined any question of construction or

validity arising under the [contract] and obtain a declaration of rights, status or other legal relations thereunder.”

37. There is a real and substantial judicable controversy between the parties over their respective rights and obligations under the Agreements.

38. Lufthansa Group seeks a judicial declaration that its Distribution Cost Charge as implemented complies with the Agreements, and Lufthansa Group may apply the fee to tickets sold through the GDS channels without also being required to apply the fee to tickets sold through its Direct Connect and Internet-site channels.

39. Lufthansa Group is entitled to recover its costs and reasonable and necessary attorney fees, pursuant to Tex. Civ. Prac. & Rem. Code §37.009 and Tex. R. Civ. P. 131.

**Second Cause of Action  
(Breach of Contract)**

40. The material facts alleged above are incorporated here by reference.

41. The Agreements are valid, enforceable contracts, which Lufthansa Group has fully performed. Sabre has breached the Agreements by billing Lufthansa Group for non-billable administrative bookings. Its breaches have caused actual damages to Lufthansa Group.

**Third Cause of Action  
(Tortious Interference With Existing Contracts)**

42. The material facts alleged above are incorporated here by reference.

43. The ARA and PSAA are valid and enforceable contracts. Lufthansa Group and travel agents have entered into these written contracts through the ARC and IATA. These agreements provide that travel agents are Lufthansa Group’s agents for the purpose of issuing traffic documents in connection with sales of air transportation on Lufthansa Group airlines, and that travel documents must be issued in accordance with the applicable rules, regulations, and instructions furnished to the travel agent by ARC, IATA, and Lufthansa Group.

44. Sabre intentionally interfered with the contracts by encouraging travel agents to violate Lufthansa Group's policies, in breach of the ARA and PSAA. The interference caused injury to Lufthansa Group in the form of booking fees improperly charged by Sabre and other lost revenues. Lufthansa Group has incurred actual damages as a result.

#### **Conditions Precedent**

45. All conditions precedent to suit have been done or waived or have occurred.

#### **Prayer for Relief**

For these reasons, plaintiffs Deutsche Lufthansa AG, Austrian Airlines AG, Brussels Airlines NV/SA, and Swiss International Air Lines Ltd. respectfully request judgment against defendant, after trial or final hearing, as follows:

- a. a declaration that the Lufthansa Group Distribution Cost Charge, as implemented, complies with the parties' Agreements;
- b. actual damages according to the proof at trial;
- c. plaintiffs' reasonable and necessary attorney fees;
- d. plaintiffs' costs and expenses; and
- e. all other relief to which plaintiffs are justly entitled, whether at law or in equity.

Respectfully submitted,

YETTER COLEMAN LLP

By: 

R. Paul Yetter  
State Bar No. 22154200  
Christopher D. Porter  
State Bar No. 24070437  
Wyatt J. Dowling  
State Bar No. 24074152  
909 Fannin, Suite 3600  
Houston, Texas 77010  
(713) 632-8000  
(713) 632-8002 (Fax)

HARRIS, FINLEY & BOGLE, P.C.  
Roland K. Johnson  
State Bar No. 00000084  
777 Main Street, Suite 1800  
Fort Worth, Texas 76102  
(817) 870-8700  
(817) 332-6121 (Fax)

ATTORNEYS FOR PLAINTIFFS  
DEUTSCHE LUFTHANSA AG,  
AUSTRIAN AIRLINES AG,  
BRUSSELS AIRLINES NV/SA, AND  
SWISS INTERNATIONAL AIR LINES LTD.

**Certificate of Service**

I certify that on this 5th day of September, 2016, in compliance with Tex. R. Civ. P. 21 and 21A, this pleading was served by email, hand-delivery, and/or by electronic filing service on all counsel of record in this matter.

/s/Christopher D. Porter  
Christopher D. Porter

# **Tab E**

Vernon's Texas Statutes and Codes Annotated
Civil Practice and Remedies Code (Refs & Annos)
Title 2. Trial, Judgment, and Appeal
Subtitle D. Appeals
Chapter 51. Appeals
Subchapter B. Appeals from County or District Court (Refs & Annos)

V.T.C.A., Civil Practice & Remedies Code § 51.014

**§ 51.014. Appeal from Interlocutory Order**

Effective: September 1, 2015

Currentness

(a) A person may appeal from an interlocutory order of a district court, county court at law, statutory probate court, or county court that:

- (1) appoints a receiver or trustee;
- (2) overrules a motion to vacate an order that appoints a receiver or trustee;
- (3) certifies or refuses to certify a class in a suit brought under Rule 42 of the Texas Rules of Civil Procedure;
- (4) grants or refuses a temporary injunction or grants or overrules a motion to dissolve a temporary injunction as provided by Chapter 65;
- (5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state;
- (6) denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity, or a person whose communication appears in or is published by the electronic or print media, arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution, or Chapter 73;
- (7) grants or denies the special appearance of a defendant under Rule 120a, Texas Rules of Civil Procedure, except in a suit brought under the Family Code;
- (8) grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001;
- (9) denies all or part of the relief sought by a motion under Section 74.351(b), except that an appeal may not be taken from an order granting an extension under Section 74.351;
- (10) grants relief sought by a motion under Section 74.351(l);
- (11) denies a motion to dismiss filed under Section 90.007;
- (12) denies a motion to dismiss filed under Section 27.003; or

(13) denies a motion for summary judgment filed by an electric utility regarding liability in a suit subject to Section 75.0022.

(b) An interlocutory appeal under Subsection (a), other than an appeal under Subsection (a)(4) or in a suit brought under the Family Code, stays the commencement of a trial in the trial court pending resolution of the appeal. An interlocutory appeal under Subsection (a)(3), (5), (8), or (12) also stays all other proceedings in the trial court pending resolution of that appeal.

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

(d) On a party's motion or on its own initiative, a trial court in a civil action may, by written order, permit an appeal from an order that is not otherwise appealable if:

(1) the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion; and

(2) an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(d-1) Subsection (d) does not apply to an action brought under the Family Code.

(e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:

(1) the parties agree to a stay; or

(2) the trial or appellate court orders a stay of the proceedings pending appeal.

(f) An appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). If the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.

#### Credits

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, § 3.10, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 915, § 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 855, § 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1296, § 1, eff. June 20, 1997; Acts 2001, 77th Leg., ch. 1389, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 204, § 1.03, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 97, § 5, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 1051, §§ 1, 2, eff. June 18, 2005; Acts 2011, 82nd Leg., ch. 203 (H.B. 274), § 3.01, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 44 (H.B. 200), § 1, eff. May 16, 2013; Acts 2013, 83rd Leg., ch. 604 (S.B. 1083), § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 916 (H.B. 1366), § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 961 (H.B. 1874), § 1, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., ch. 1042 (H.B. 2935), § 4, eff. June 14, 2013; Acts 2015, 84th Leg., ch. 1236 (S.B. 1296), §§ 3.001, 3.002, eff. Sept. 1, 2015.

V. T. C. A., Civil Practice & Remedies Code § 51.014, TX CIV PRAC & REM § 51.014  
Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

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# **Tab F**

Vernon's Texas Rules Annotated
Texas Rules of Appellate Procedure
Section Two. Appeals from Trial Court Judgments and Orders (Refs & Annos)
Rule 28. Accelerated, Agreed, and Permissive Appeals in Civil Cases (Refs & Annos)

TX Rules App.Proc., Rule 28.3

28.3. Permissive Appeals in Civil Cases

Currentness

(a) *Petition Required.* When a trial court has permitted an appeal from an interlocutory order that would not otherwise be appealable, a party seeking to appeal must petition the court of appeals for permission to appeal.

(b) *Where Filed.* The petition must be filed with the clerk of the court of appeals having appellate jurisdiction over the action in which the order to be appealed is issued. The First and Fourteenth Courts of Appeals must determine in which of those two courts a petition will be filed.

(c) *When Filed.* The petition must be filed within 15 days after the order to be appealed is signed. If the order is amended by the trial court, either on its own or in response to a party's motion, to include the court's permission to appeal, the time to petition the court of appeals runs from the date the amended order is signed.

(d) *Extension of Time to File Petition.* The court of appeals may extend the time to file the petition if the party:

- (1) files the petition within 15 days after the deadline, and
- (2) files a motion complying with Rule 10.5(b).

(e) *Contents.* The petition must:

- (1) contain the information required by Rule 25.1(d) to be included in a notice of appeal;
- (2) attach a copy of the order from which appeal is sought;
- (3) contain a table of contents, index of authorities, issues presented, and a statement of facts; and

(4) argue clearly and concisely why the order to be appealed involves a controlling question of law as to which there is a substantial ground for difference of opinion and how an immediate appeal from the order may materially advance the ultimate termination of the litigation.

(f) *Response; Reply; Cross-Petition; Time for Filing.* If any party timely files a petition, any other party may file a response or a cross-petition within 10 days. A party may file a response to a cross-petition within 10 days of the date the cross-petition is filed. A petitioner or cross-petitioner may reply to any matter in a response within 7 days of the date the response is filed. The court of appeals may extend the time to file a response, reply, and cross-petition.

(g) *Length of Petition, Cross-Petition, Response, and Reply.* A petition, cross-petition, response, and reply must comply with the length limitations in Rule 9.4(i)(2)(D)-(E).

(h) *Service.* A petition, cross-petition, response, and reply must be served on all parties to the trial court proceeding.

(i) *Docketing Statement.* Upon filing the petition, the petitioner must file the docketing statement required by Rule 32.1.

(j) *Time for Determination.* Unless the court of appeals orders otherwise, a petition, and any cross-petition, response, and reply, will be determined without oral argument, no earlier than 10 days after the petition is filed.

(k) *When Petition Granted.* If the petition is granted, a notice of appeal is deemed to have been filed under Rule 26.1(b) on that date, and the appeal is governed by the rules for accelerated appeals. A separate notice of appeal need not be filed. A copy of the order granting the petition must be filed with the trial court clerk.

#### Credits

Adopted by Supreme Court Sept. 9, 2011, eff. Sept. 9, 2011. Amended by order of March 4, 2013, eff. immediately.

Rules App. Proc., Rule 28.3, TX R APP Rule 28.3  
Current with amendments received through July 1, 2018  
Current with amendments received through August 1, 2018

# **Tab G**

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 2. Judicial Branch (Refs & Annos)
Subtitle A. Courts
Chapter 22. Appellate Courts
Subchapter C. Courts of Appeals (Refs & Annos)

This section has been updated. [Click here for the updated version.](#)

V.T.C.A., Government Code § 22.225

**§ 22.225. Effect of Judgment in Civil Cases**

Effective: September 1, 2011 to August 31, 2017

- (a) A judgment of a court of appeals is conclusive on the facts of the case in all civil cases.
- (b) Except as provided by Subsection (c) or (d), a judgment of a court of appeals is conclusive on the law and facts, and a petition for review is not allowed to the supreme court, in the following civil cases:
- (1) a case appealed from a county court or from a district court when, under the constitution, a county court would have had original or appellate jurisdiction of the case, with the exception of a probate matter or a case involving state revenue laws or the validity or construction of a statute;
  - (2) a case of a contested election other than a contested election for a state officer, with the exception of a case where the validity of a statute is questioned by the decision;
  - (3) an appeal from an interlocutory order appointing a receiver or trustee or from other interlocutory appeals that are allowed by law;
  - (4) an appeal from an order or judgment in a suit in which a temporary injunction has been granted or refused or when a motion to dissolve has been granted or overruled; and
  - (5) all other cases except the cases where appellate jurisdiction is given to the supreme court and is not made final in the courts of appeals.
- (c) This section does not deprive the supreme court of jurisdiction of a civil case brought to the court of appeals from an appealable judgment of a trial court in which the justices of the courts of appeals

disagree on a question of law material to the decision or in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court, as provided by Subdivisions (1) and (2) of Section 22.001(a).

(d) A petition for review is allowed to the supreme court for an appeal from an interlocutory order described by Section 51.014(a)(3), (6), or (11), or (d), Civil Practice and Remedies Code.

(e) For purposes of Subsection (c), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

#### Credits

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 1106, § 2, eff. June 20, 1987; Acts 1993, 73rd Leg., ch. 855, § 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 204, § 1.02, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 97, § 6, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., ch. 203 (H.B. 274), § 3.02, eff. Sept. 1, 2011.

V. T. C. A., Government Code § 22.225, TX GOVT § 22.225

Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

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