



## IFTTA NORTH AMERICA CONFERENCE

**MARCH 5 – 6, 2020**

For the ninth consecutive March, the North American section of the International Forum of Travel & Tourism Advocates (<http://iftta.org/>) met in Fort Lauderdale, Florida.

Host Laurence Gore welcomed the attendees (from Mexico, the USA and Canada) and led off the day's presentations with one entitled "**The Need for Advanced Health Care Directives and Health Care Surrogate Forms in the Travel Industry**". These forms can have other names (e.g. Power of Attorney for Personal Care) but they serve the same purpose ..... evidencing the grant

- to a specified person
- by a tour passenger
- of the authority to make health care decisions for the person who signs the document, if s/he cannot.

While originally more relevant to Adventure Tourism and Medical Tourism, the recent COVID-19 outbreak suggests that these documents can be relevant to every type of group travel.

The General Data Protection Regulations ("GDPR") are European in origin, but worldwide in relevance. Designed to protect personal data by imposing various obligations on those who collect, receive or store such data, the GDPR can impact

the North American travel agent who relays information about its passengers to a German Tour Operator, as well as a California Tour Operator who receives personal details regarding a group of French tourists it receives. In **“The Unsolvable GDPR problem: what to do when clients require agencies to be responsible for data breaches by GDSs and suppliers”**, Mark Pestronk also looked at the role of the GDS, and noted that while Amadeus characterizes itself as a Controller of data, SABRE sees itself as being a Processor of it. Different legal results flow from that difference. He also discussed the implications to North American travel companies if anyone in the data distribution chain refuses or fails to honour its obligations, or to indemnify the North American victim of another’s breach.

Prof. Enrique Mota of the *Universidad del Caribe* covered the **“Legal Implications of The Convention On Air Services Between Mexico and the United Arab Emirates”**. That battle between Emirates and Aeromexico is but one example of similar commercial battles elsewhere in the world. Conflict between

- \* the domestic interests of a country and its companies, and
- \* the commercial interests of international trade and competitors from other countries,

are sometimes fought in the marketplace, and sometimes (as here) in the Courts. Mota updated the meeting on the current status of the dispute, which has seen Emirates prevail.

Connecticut litigator Jeff Ment dealt with three unrelated travel industry cases. In **“Aftermath of a Bus Accident from a Tour Operator’s Perspective”**, he summarized how a Tour Operator successfully dealt with the legal fallout of an accident involving a chartered bus, a busload of Secondary School students, and an insurance company. He also spoke of injuries suffered by an elderly passenger on a European tour organized by another of his clients, and the consequences of the ambiguous legal status of an Arctic cruise ship.

Doug Crozier finished off the morning with **“New Rules for Unruly Passengers”**. This presentation dealt with the legal context for dealing with in-cabin misbehaviour by airline passengers under the Tokyo Convention (1963) and the

Montreal 2014 updates to it. Those updates reached the necessary threshold for acceptance in the Autumn of 2019 and, for those 22 countries, took effect on the first day this year. The changes involve an elaboration of the scope of the Captain's authority to act in the face of an incident, an expansion of the jurisdictions with authority to prosecute the in-air miscreant, and a clear articulation of the carrier's ability to recover damages suffered by any re-routing etc. necessitated by such behaviour.

As usual, part of the lunch break was devoted to an informal business meeting of this section of the international organization. Among other things, it was decided to hold the Tenth such conference in Fort Lauderdale next March.

Prof. John Thomas of Florida International University led off the afternoon session with an interesting discussion of "**Law, Ethics and Compliance for the Internet of Things in Hospitality and Tourism**". In it, he focussed on the ethical issues raised by an increased reliance on non-human activity, both in the Travel Industry and in the world in general. As a sidebar, he shared with the group in real time the decisions being taken by his University in regard to a planned April trip, by his Tourism students with him as leader, to the north of Italy, where COVID-19 has been concentrated.

The legal obligations of Travel Companies in the face of COVID-19 was the subject of an open discussion chaired by Pestronk. Within the structure of seven prepared questions, the lawyers for various travel agency operations, cruise specialists, tour operators, etc. devoted an hour to this topical subject.

The U.S. Department of Transportation has recently issued proposals for new parameters for service and emotional support animals on aircraft. Experienced aviation lawyer Lisa Harig dealt with proposed rule-making (which is open for input until April 6, and so is subject to change) in "**Say Goodbye to Your Emotional Support Peacock**". The current proposals would dictate that dogs are the only type of permitted service animal, limit to two the number per passenger as well as their size (i.e. the foot space under the seat in front). She also spoke of another current DOT initiative (open for comment to April 28) that would define "unfair" and "deceptive" consumer practices, and make intent irrelevant to the analysis of a business's practice, *vis a vis* the consumer.

In “**Online Contract Formation: the latest cases and practical advice**”, Mark Pestronk re-visited a legal issue with which he has long been troubled. Cases from 2018 and 2020 formed the backbone of his update, in which he cited examples of online suppliers who seem to subvert the basic premise of contract law ..... the need for offer, followed by acceptance .... by unilaterally imposing terms and conditions AFTER consumer acceptance has been communicated. His presentation concluded with a list of suggested “best practices”.

Meghan Betz is a realtor, para-legal and soon-to-be lawyer. She drew on her experience in the non-travel sphere to discuss “**Travel Blogging Liability and Imploring Unique Marketing Tactics to Capture Niche Audiences**”. Every business, large or small, must resolve the eternal conflict between the marketing desire to promote more aggressively and the legal imperative to market more cautiously.

The Conference ended with Doug Crozier’s presentation entitled “**Crossing the Border and Crossing the Line**”. In it, he dealt with the extensive cross-border traffic between the US and Canada, and the risks posed

- to those who carry with them, when crossing the border, electronic devices such as cell phones, iPads and laptops,
- by Customs/Border Security officials in each country, who may cross the line when it comes to searching the contents of those devices.

He also touched briefly on the issues confronted by Canadians (who are now legally entitled to consume cannabis) when they are questioned by American border officials about their consumption of this product, which is still illegal in the States.

All in attendance were advised that the next Worldwide conference of IFTTA is slated for Valetta, Malta, from September 21 to 24, 2020.

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