



## WASHINGTON AVIATION SUMMARY

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The Kirstein & Young law firm specializes in representing U.S. and foreign airlines, airports, leasing companies, financial institutions and aviation-related companies before U.S. Government agencies, Congress, the courts and in commercial and financing matters.

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## **I. REGULATORY NEWS**

### **1. President on Security Reviews: “A Failure to Connect the Dots.”**

President Obama said security reviews he ordered from intelligence, homeland security and law enforcement agencies after the failed Christmas Day attack reveal “human and systemic failures . . . This was not a failure to collect intelligence; it was a failure to integrate and understand the intelligence that we already had.” A failure of our intelligence community to connect the dots fed into shortcomings in the watch-listing system, said the President, which resulted in the suspect not being placed on the ‘No Fly’ list, thereby allowing him to board the plane. President Obama directed the intelligence community to immediately begin assigning specific responsibility for investigating all leads on high-priority threats. Intelligence reports, especially those involving potential threats to the United States, must be distributed more rapidly and more widely, and the analytical process must be strengthened. He ordered an immediate effort to strengthen criteria used to add names to terrorist watch lists, especially the ‘No Fly’ list. He directed agency heads to establish internal accountability reviews and national security staff to monitor their efforts. (See also Section III.)

### **2. DOT, U.S. Airlines Mobilize for Haitian Relief Effort.**

After a devastating earthquake struck Haiti on January 12, the U.S. Department of Transportation (DOT), the Federal Aviation Administration (FAA) and U.S. airlines were among responders worldwide that contributed relief supplies, funds and workers. FAA dispatched a portable, temporary air traffic control tower to Port-au-Prince International Airport. DOT granted exemptions to expand the pool of available aircraft by making them easier to charter, and granted authority to carriers that operate large aircraft in private carriage, allowing them to evacuate persons from and bring personnel and supplies to the disaster area, augmenting fleets operated by commercial airlines. American Airlines flew the last commercial flight from Port-au-Prince, to Miami, just after the earthquake struck, and then scheduled relief flights. United Parcel Service and FedEx worked with international relief agencies to help transport supplies into the disaster zone. JetBlue offered free flights to neighboring Dominican Republic for certain relief workers. United gathered 50 tons of supplies at Chicago O’Hare and planned to operate up to 30 relief flights and fly orphans back to the U.S., subject to authorizations. Many airlines offered frequent flier miles to members who donate to relief organizations, and corporate matching gifts.

3. **2009 International Traffic Dismal; Demand Improved in December.**

International scheduled air traffic in 2009 had the largest ever post-war decline, reports the International Air Transport Association (IATA). Passenger demand was down 3.5%, with average load factor of 75.6%; freight showed a full-year decline of 10.1% with average load factor of 49.1%. However, in December passenger demand improved 4.5% compared to December 2008, with load factor at 77.6%. This was an 8.4% demand improvement from the February 2009 low point, but 3.4% below the early 2008 peak. International passenger capacity fell 0.7% above December 2008 levels, while freight capacity grew 0.6%. Freight demand was up 24.4%, with a load factor of 54.1%, on December 2008, the low point. Freight demand is still 9% lower than the peak in early 2008. Optimism is returning as purchasing managers survey indicators reached a 44-month high in December pointing toward increased freight volumes in coming months. Asia-Pacific carriers accounted for over 60% of the increase in international air freight markets over the past 12 months, but their freight volumes remain 8% below peak levels. IATA forecasts that airlines will lose \$5.6 billion in 2010.

4. **United Fined for Advertising Rules Violations.**

DOT assessed a \$30,000 civil penalty against United for failing to include the 7.5% federal excise tax in fares in the initial search results page of its Web site for about 60 hours. Under DOT rules, all fares published by airlines must include the full price to be paid by consumers, with the only exceptions being government taxes and fees that are assessed on a per-passenger basis. In August, United was fined \$75,000 for failing to provide appropriate notice of taxes and fees at the first point a fare was advertised on its Web site, and for publishing each-way fares without making it clear that they were available only for a roundtrip flight. At that time, United was required to pay \$37,500 of the penalty immediately, with the rest payable if the carrier violated the price advertising rules again within one year. As a result of this most recent violation, United was required to pay the additional \$37,500.

5. **Additional Rule Proposed for Transport of Lithium Batteries.**

A new DOT proposal would strengthen safeguards for air shipments of lithium batteries and cells, including when they are packed with or contained in equipment. The changes would ensure the batteries are designed to withstand normal transportation conditions and packaged to reduce the possibility of damage that could lead to an unsafe incident. Transportation of defective or damaged cells or batteries would be limited to highway and rail. Since 1991, more than 40 air transport-related incidents involving lithium batteries and devices powered by lithium batteries have been identified.

6. **FAA Heightens American Airlines Oversight After Incidents.**

FAA strengthened oversight of American Airlines following three landing incidents over an 11-day period in December, reports the *Wall Street Journal*. Wingtips touched the ground during two landings, one in Charlotte, N.C., the other in Austin, Texas, and a plane overshot the runway during heavy rain in Jamaica. FAA is conducting a review of the incidents to determine if there is a larger issue, as is the airline.

7. **Babbitt: New Pilot Rest Rules Coming This Spring.**

In remarks to the Aero Club of Washington, FAA Administrator Randy Babbitt said a proposal for a Flight Time and Duty Time rule will probably be published this spring. "We know we need to reexamine pilot qualifications," he also said. "We must have qualification and training requirements that elevate the importance of mission appropriate experience." The former Air Line Pilots Association president said Colgan Air 3407 (the crash in Buffalo last February, that killed 50 people) "was very emotional for me. It raised issues like one level of safety and pilot fatigue, issues that I have spent my career working on."

8. **Compliance Date Extended for Black Box Upgrades.**

FAA proposed to extend certain compliance dates for upgrades to cockpit voice and digital flight data recorders. The action follows petitions from aircraft manufacturers and industry organizations indicating an inability to comply with an April 2010 requirement. FAA said it "has been put in an untenable position with these petitions. The option of granting exemptions to every new aircraft produced and delivered to U.S. operators between April 7, 2010, and as late as 2013 would present a huge burden on the agency and the affected operators." Comments are due February 8, 2010. The National Transportation Safety Board (NTSB) has long urged FAA to require the upgrades.

9. **ATA Urges Mediation Board Recusals**

The Air Transport Association (ATA) asked two of the three members of the National Mediation Board (NMB) to recuse themselves from the debate over how to count unionization votes in the industry. ATA in its motion said the two members had prejudged the issue through an internal process that excluded the public and the committee's lone dissenter. NMB proposed in November to let workers form unions with majority approval of voters in an election; the current system requires support of most employees in a class, rather than only those who vote. Delta and JetBlue would be the airlines most affected by the NMB proposal.

**10. November Passenger Airline Employment Data.**

U.S. scheduled passenger airlines employed 3.3% fewer workers in November 2009 than in November 2008. The total of 379,400 employees was 12,800 below November 2008 and the lowest total for any month since 1993. The seven network airlines employed 258,100, 68% of the passenger airline total. Low-cost carriers employed 16.5% and regional carriers employed 14%.

**11. DOT Air Travel Consumer Report for November 2009.**

Based on data filed by 19 of the largest U.S. airlines.

	Nov. '09 / '08	Oct. '09	Full Year					
			2008	2007	2006	2005	2004	2003
On-time arrivals %	88.6/83.3	77.3	76	73.4	75.4	77.4	78.1	82
Mishandled baggage*	2.78/3.75	3.48	5.26	7.05	6.73	6.64	4.91	4.19
<i>Consumer complaints:</i>								
Airline service	552 / 533	896	10,643	13,180	8,325	8,741	7,452	5,983
Disability-related	36 / 29	52	474	488	430	511	521	375
Discrimination**	11 / 7	10	115	99	114	129	118	85

Notes: No scheduled flights with tarmac delays of four hours or more in November.

\* Reports per 1,000 passengers.

\*\*I.e., race, religion, national origin or sex.

**12. DOT Awards \$8 Billion for High-Speed Rail Projects.**

DOT is awarding \$8 billion to states to develop the first nationwide program of high-speed intercity passenger rail service. Funded by the American Recovery and Reinvestment Act (ARRA), projects include: Los Angeles-San Francisco; Chicago-St. Louis-Kansas City; Madison-Milwaukee-Chicago; Tampa-Orlando; Detroit-Chicago; Charlotte-Raleigh-Richmond-Washington, DC; and Eugene-Portland-Seattle.

## II. AIRPORTS

### 1. Route Applications for Tokyo Haneda Fast-Tracked.

U.S. carriers have until February 10 to file route applications for Tokyo Haneda Airport, said DOT. Under a new U.S.-Japan air agreement, U.S. carriers can schedule up to four daily round trips when a new runway opens in October. The routes are also open to carriers that currently do not serve Japan.

### 2. Atlanta's DeCosta Resigns.

Hartsfield-Jackson General Manager Ben DeCosta announced he will leave when his contract expires on June 30. He has held the position since 1998. The city of Atlanta will conduct a national search for a replacement.

### 3. Chicago to Renew Midway Privatization Effort.

Chicago is expected to meet a February 1 deadline to resubmit its Midway Airport privatization time line to FAA, with completion this year. A \$2.5-billion effort led by Citibank, John Hancock Life Insurance and Vancouver Airport Services collapsed last year due to the credit crisis.

### 4. Dulles AeroTrain in Service.

A \$1.5 billion AeroTrain system began serving Washington Dulles passengers, replacing some airside mobile lounges. The 29 electric rail cars travel underground on almost four miles of track, at up to 42 miles per hour, from the passenger terminal to gate areas.

### 5. Sea-Tac Deploys Advanced Avian Radar System.

Seattle-Tacoma is the first U.S. airport to deploy a new advanced bird tracking system with real-time displays of bird activity on and around the airport. The technology will allow wildlife management staff to access live data as they patrol the airfield to minimize bird hazards. Sea-Tac has been the demonstration site for avian radar research since 2007; two avian radars are installed on an airport office building and one on the airfield. Through the FAA-designated Center of Excellence for Airport Technology at the University of Illinois, the latest program milestone builds on equipment from Accipiter Radar, which provides geographic displays of bird activity on Google Earth maps. According to an Associated Press analysis of government data, reports of airplanes hitting wildlife exceeded 10,000 last year, for the first time since FAA began keeping records of the strikes. In the first seven months, at least eight people died and six were hurt. At least 57 cases caused serious damage and three in which planes and a corporate helicopter were destroyed,

including the US Airways Airbus A320 that landed in the Hudson last January after hitting a flock of Canada geese (all passengers and crew survived).

**6. Auckland to Purchase Stakes in Cairns, Mackay Airports.**

Auckland Airport agreed to purchase from Westpac Bank a 24.55% stake in North Queensland Airports, operator of Cairns and Mackay airports in Queensland, Australia. Cairns, Australia's seventh busiest airport with 3.7 million passengers last year, is the closest international airport to Asia on Australia's eastern seaboard and the gateway to World Heritage attractions Great Barrier Reef and Wet Tropics Rainforests. Mackay, with one million annual passengers, services the Bowen Basin, which contains one of the largest deposits of coal in the world, and Whitsunday resort islands. Auckland, with 13 million annual passengers, seeks international passenger growth. "We believe that Asian tourism markets offer the greatest opportunity for volume growth and that one of the keys to growing Asian traffic is improved air services connections," said CEO Simon Moutter. "Driving more travel demand out of Asia will be crucial to the future growth of both Auckland Airport and the New Zealand tourism sector."

**7. World's Highest Airport Planned for Tibet's Nagqu Prefecture.**

The world's highest airport (altitude 4,436 meters) will be built in Nagqu Prefecture, about 300 km from Lhasa, said officials of the Tibetan Branch of the China Civil Aviation Administration. The three-year construction project will begin in 2011 and cost \$263 million. Nagqu Prefecture has a population of 400,000, reports Xinhua, and is expected to become the center of an economic hub in the region. Nagqu Daging will be Tibet's sixth airport. The civil aviation network in Tibet has taken shape, said officials; the next objective is to open direct air routes from Tibet to south Asian countries.

**8. Iraq Airport Activity.**

A U.S.-South Korean firm reportedly has contracted to build Salah al-Din International Airport near Tikrit City, 175 km north of Baghdad, reported Aswat al-Iraq news, with project completion in two years. In other news, Lufthansa plans to launch services from Frankfurt and Munich to Baghdad and Erbil this summer, subject to obtaining traffic rights; infrastructure requirements are also being examined. Lufthansa operated flights to Baghdad from 1956 until the start of the Gulf War in 1990. Erbil is already served from Vienna by Lufthansa unit Austrian Airlines.

### **III. SECURITY AND DATA PRIVACY**

#### **1. President Orders Security Actions.**

In the wake of the attempted terrorist attack on December 25, the President issued a directive for multiple federal departments and agencies, ordering corrective actions with respect to intelligence, screening, and watch list systems and programs. He ordered the Department of Homeland Security (DHS) to: Aggressively pursue enhanced screening technology, protocols, and procedures, especially in regard to aviation and other transportation sectors, consistent with privacy rights and civil liberties. Strengthen international partnerships and coordination on aviation security issues. Develop recommendations on long-term law enforcement requirements in coordination with the Department of Justice.

DHS outlined long-term steps it is taking to correct shortcomings that led to the attempted attack: Re-evaluate and modify the process for creation and modification of terror watch lists, including adjusting process by which names are added to “No-Fly” and “Selectee” lists. Establish partnership with Department of Energy and its National Laboratories to develop technologies to deter and disrupt known threats and proactively anticipate and protect against new ways by which terrorists could seek to board an aircraft. Accelerate deployment of advanced imaging technology to provide greater explosives detection capabilities and encourage foreign aviation security authorities to do the same. The Transportation Security Administration (TSA) has 40 body scanning machines deployed throughout the United States, and plans to deploy at least 300 more in 2010. Strengthen the presence and capacity of aviation law enforcement, by deploying officers from across DHS to serve as Federal Air Marshals to increase security aboard U.S.-bound flights. Work with the Department of State to strengthen international cooperation on aviation security measures, ensuring a consistent system to screen passengers flying to the United States from countries around the world. Work with international partners to strengthen international security measures and standards for aviation security.

DHS took immediate actions that include enhanced random screening, additional Federal Air Marshals on certain routes and adding “individuals of concern” to the terrorist watch list system. DHS strengthened screening requirements for passengers entering the United States and deployed additional law enforcement officers, behavior detection officers, and explosive detection K-9 units to airports across the country.

**2. IATA, U.S. Agree On Aviation Security Cooperation.**

IATA hosted a summit to spearhead “a new era of industry/government cooperation to improve aviation security around the world.” Attending were Raymond Benjamin, Secretary General of the International Civil Aviation Organization (ICAO), DHS Secretary Janet Napolitano and others from U.S. government, and executives from 25 airlines. Airlines recommended: Security policies should be written with benefit of airline operational expertise; IATA encouraged ICAO to create a template for government/industry cooperation to be implemented globally. Prescriptive, one-size-fits-all regulations with numerical targets will not secure a complex global industry and governments must work with industry to define practical implementation measures for security targets. Passenger data collection and sharing should be more efficient; IATA urged DHS to break down internal silos to create a single data collection and sharing program that could serve as a model for implementation by other governments. Harmonization across borders; governments must talk to each other to ensure that one country’s requirements do not conflict with another country’s laws. Begin to look at future checkpoints that combine technology and intelligence. After the meeting, IATA Director Giovanni Bisignani told reporters that governments rather than airlines should pay for stepped-up security measures.

**3. Napolitano Meets With EU Counterparts.**

DHS Secretary Napolitano met with her European counterparts in Toledo, Spain, and said they “reached consensus on a way forward to strengthen the international civil aviation system through enhanced information collection and sharing, cooperation on technological development, and modernized aviation security standards.” We do not want a cookie cutter approach where the same measures are in place everywhere, because then terrorists can plan and work around them, she said, and recommended using a wide range of security measures, including information sharing on suspected terrorists and detection technology like full body scanners. The European Commission is studying the effectiveness of the scanners, as well as their impact on health and privacy.

**4. White House Renews Search for TSA Head.**

Erroll Southers withdrew his name from consideration as the Obama Administration choice to head TSA, saying his nomination had become a focal point for the Republican political agenda. The former FBI agent had provided misleading information to Congress and the White House about incidents in 1987 and 1988, in which he inappropriately accessed a federal database to obtain information for personal use, which led to censure by the FBI. Earlier, the nomination was put on hold by Senator Jim DeMint (R-S.C.), who was concerned that Southers would support unionization of TSA workers.

**5. Security Breaches at New York Airports.**

After a man walked through a terminal exit into a secure area of Newark Liberty, New Jersey Senators Robert Menendez and Frank Lautenberg urged TSA to make immediate security upgrades at the airport. Video cameras, owned by the Port Authority of New York/New Jersey and operated by TSA, did not operate, said the senators in a letter to TSA Acting Administrator Gale Rossides. Also, TSA did not inform Authority Police until over an hour after the initial breach. Desired upgrades include reinforcement of terminal exit points with adequate personnel to ensure continuous monitoring; continuously functioning video surveillance system that is frequently monitored and provides complete surveillance of all secure areas; improvements to communication and information sharing between TSA, airlines, Port Authority police and other law enforcement. The incident caused massive systemwide delays and garnered worldwide news coverage. Cameras operated by Continental showed the man stepping under a rope barrier and into the terminal without passing through security; a security officer standing nearby was placed on administrative leave. Lautenberg called for a Senate Commerce Committee hearing to review the incident. Separately, New York-area lawmakers are demanding a refund from Raytheon for an intrusion sensor system purchased for area airports, which cannot be used because of too many false alarms.

Two weeks later, thousands of passengers were evacuated from a New York Kennedy terminal after an arriving passenger exited through an employees' entrance, triggering an alarm. Passengers waited for hours, as police searched the building, and had to be re-screened. Senator Charles Schumer (D-NY) said he would ask the Port Authority and TSA to investigate both breaches, which, he told the *New York Times*, were "failures of personnel." Complacency has set in since 9/11, said Schumer. "It takes a little bit of vigilance; you don't need a great technological innovation."

## IV. E-COMMERCE AND TECHNOLOGY

### 1. Searches for International Flights Rise.

Interest in international travel is on the rise, according to U.S. travel search engine Cheapflights.com. Data for the first three weeks of January show a 25% increase versus the same three weeks last year. Top search destinations include Cancun, London, Manila, Costa Rica and Frankfurt. The volume of Cheapflights users searching for international flights from January 1-20, 2010 is up 28%, compared to searches from December 1-20, 2009, preceding heightened security concerns and policies.

### 2. Survey Shows Travelers Favor Security Measures.

96% of the 1,100 U.S. respondents to a January TripAdvisor survey said they planned to fly this year, despite strengthened airport security measures; 8% have changed 2010 flight plans. 72% said they are familiar with the latest TSA guidelines; 42% said they are appropriate; 34% said TSA was overreacting and 24% said the new guidelines are not strict enough. 82% support passenger profiling. 77% want enhanced screenings, despite longer waits; 35% favor a ban on carry-on luggage to make flights more secure. 99% would take action if they observed suspicious activity on their flight, 91% would alert a flight attendant, 9% would take matters into their own hands. 96% think security levels vary across U.S. airports; 37% think U.S. airports are more secure than foreign airports. 37% have made it through security with a prohibited item; and of 72% selected for additional screening, 8% were selected after December 25, 2009. TripAdvisor says its travel Web sites attract more than 36 million monthly visitors.

### 3. DOT Improves Aviation Consumer and Enforcement Web Site.

A redesigned DOT Web site (<http://airconsumer.dot.gov>) allows consumers to file complaints about airline service, compare historical on-time and baggage mishandling records of airlines, and find tips about air travel and useful links. The site, also available in Spanish, offers guidance regarding aviation rules and statutes and airlines that have stopped operating or filed for bankruptcy protection.

### 4. Travelocity Business Offers Meetings Management.

Services of Meetings & Incentives, Inc. are now available to Travelocity Business clients, including strategic meetings management; domestic and international sourcing, with services in Latin America and Europe; planning and registration; on-site services and production; and event marketing and detailed reporting. Travelocity is owned by Sabre Holdings.

## V. **ENERGY AND ENVIRONMENT**

### 1. **Fuel Bill for Global Airline Industry.**

The price of aviation jet fuel, as of January 22, was \$83/barrel, down 1.2% for the month and up 46.6% year-on-year, reports the International Air Transport Association. Fuel price average year-to-date was \$87.5/barrel..

### 2. **Southwest CEO Opines on Energy Issues.**

Southwest CEO Gary Kelly told a *Dallas Morning News* economic summit that energy is the critical issue for the U.S., “because gas prices can double in a couple of months and that’s far worse than a broken health care system.” He criticized a bill that would create a cap-and-trade system, calling it a “cap and tax system . . . simply a mechanism to reduce the federal deficit.” Regarding proposed rules that would limit excessive speculation in the oil market, Kelly said, “There’s a difference between speculation and manipulation. It’s a free country and we want investors to be able to invest” in energy markets. In related news, the Air Transport Association said a proposed Commodity Futures Trading Commission rule will establish the same oil-speculation position limits that currently apply to agricultural commodities, while ensuring that bona fide hedge exemptions are not exploited by big banks.

### 3. **Commercial Flights at Paine Field Opposed.**

A plan to add 8,000 commercial flights annually by 2016 at Paine Field, near Seattle, is being protested by nearby residents who say FAA’s draft environmental assessment does not adequately address noise and environmental concerns. Horizon and Allegiant have requested permission to operate scheduled passenger service at Paine Field, which has three paved runways and currently operates at less than 40% of capacity as a general aviation airport.

### 4. **Canada Orders Study of Health Effects of Biofuel Production.**

Canadian Prime Minister Stephen Harper ordered a study on effects of biofuel production, amid reports in other countries that such facilities are responsible for new air- and water-related and human health problems. Saying the action does not presuppose harmful effects or change the government’s commitment to renewable fuels, Environment Canada noted that not enough is known about potential harm from biofuel production.

### 5. **Boeing, Etihad in Sustainable Bioenergy Research Project.**

A research and demonstration project using seawater and desert for bioenergy, to be located in Abu Dhabi, was announced by the Masdar Institute

of Science and Technology, Boeing, Etihad Airways and Honeywell's UOP. The Sustainable Bioenergy Research Project (SBRP) will use integrated saltwater agricultural systems to support development and commercialization of biofuel sources for aviation and co-products. The Masdar Institute, an independent research university working in renewable energy development, will host the SBRP and provide laboratory and demonstration facilities both within and outside Masdar City. An integrated seawater agriculture systems (ISAS) approach is a highly efficient system for producing liquid and solid biofuels, capturing and holding carbon from the atmosphere, enlarging habitats for increasing biodiversity, and simultaneously releasing fresh water for drinking water and other higher value uses. ISAS also has the potential to reduce impacts of sea level rise on coastal communities.

**6. Qatar, Airbus Establish Advanced Biofuel Platform.**

Qatar Airways, Qatar Science & Technology Park (QSTP) and Qatar Petroleum (QP) will jointly carry out engineering, economic analysis and potential development of sustainable bio jet fuel and will look into production and supply, with the support of Airbus. Last year, Qatar Airways, QSTP and U.S.-based Verno Systems undertook a feasibility study on sustainable Biomass-to-Liquid (BTL) jet fuel and possible by-products such as bio diesel. The study looked at all available bio feed stocks that would not affect the food or fresh water supply chain, and at existing and future production technologies with a viability analysis. Based on results of the study, the partners agreed to establish the "Qatar Advanced Biofuel Platform." In October, Qatar Airways successfully conducted the world's first commercial flight powered by a Gas-to-Liquid (GTL) fuel blend.

## **VI. U.S. CONGRESS**

### **1. Congress Holds Hearings on Terror Plot.**

Several hearings were held related to security and the failed Christmas Day terror plot, in which a Nigerian man tried to destroy a Northwest plane en route from Amsterdam to Detroit, using explosives concealed in his underwear.

In Senate hearings, Homeland Security Secretary Janet Napolitano said, "We must move as aggressively as possible both to find and fix security flaws and anticipate future vulnerabilities." National Counterterrorism Center Director Michael Leiter said the counterterrorism system failed; complaints about terrorist watch lists had influenced changes in how names were added, and analysts cannot do a simple Google-like search of computer databases to automatically search for links. Asked if anyone has been held accountable, Director of National Intelligence Dennis Blair said no action had been taken, but he accepted blame and is fixing problems; Blair also agreed with some senators that a team of special interrogators created by the Administration should have been the first to question the suspect, who is being prosecuted in a civilian rather than a military court, a contentious area for critics. "We collect a tremendous amount of intelligence and we need the very best people not only sorting through it for tactical details, but in a strategic sense asking where the next attack will come from," said Lee Hamilton, who served as Vice Chairman of the 9/11 Commission. Tom Kean urged the Administration to reconstitute the Privacy and Civil Liberties Oversight Board, created by the 9/11 Commission, saying, "The balance between security and liberty will always be a part of the struggle against terrorism. America must not sacrifice one for the other and must be in the business of protecting freedom and liberty as well as fighting terrorism." Kean was 9/11 Commission Chairman.

The House Committee on Homeland Security held a full committee hearing, entitled "Flight 253: Learning Lessons from an Averted Tragedy," to provide insight on security failures that led to what the President labeled a systemic failure. "Our Homeland Security resources must come together to ensure that an incident like this does not occur again," said Chairman Bennie Thompson (D-MS). Preceding the hearing, Committee staff went to London and Amsterdam to investigate circumstances surrounding the attempted attack and were briefed by Embassy and airport officials on information sharing infrastructure, the watch list process and passenger screening technologies. As an example of overlooked clues to the planned attack, the alleged bomber boarded his flight in Amsterdam to wintry Detroit with no coat, said a Committee member; he paid in cash for his ticket and had no luggage.

Committee member Nita Lowey (D-N.Y.) wants passenger lists provided to U.S. Customs 24 hours in advance, and more behavior detection officers and body scanners at airports.

2. **Schumer Proposes Steps to Prevent Forged Boarding Passes.**

Anyone with basic computer skills can print a fake boarding pass and avoid scrutiny by airport security, said Senator Charles Schumer (D-NY), who has proposed a plan to combat this byproduct of online check-in. He is calling for: a second identification check against a boarding pass scan at the gate to ensure that the name on the scanned boarding pass, the passengers identification, and the person boarding the plane are the same; a fast track TSA program to encrypt boarding pass barcodes; and making the act of forging a boarding pass a felony.

3. **Oberstar Cites Links Between Lockerbie, 2009 Bomb Attempt.**

House Transportation Committee Chairman James Oberstar sees parallels between the attempted bombing of Northwest Flight 253 in 2009, and the 1988 terrorist bombing of Pan Am Flight 103 over Lockerbie, Scotland, which killed all 259 people aboard and 11 residents of the town. In each case, a security failure stemmed from inadequate information sharing between elements of the intelligence community or inadequate analysis of available information. Effective use of intelligence to take preventive security measures was a key consideration of the post-Lockerbie President's Commission on Aviation Security and Terrorism, on which he served, and the 9/11 Commission. Aviation is a high value and high profile target for our enemies, said Oberstar. Intelligence is our first line of defense. Unless our intelligence community improves its ability to identify and share critical information, we will see more attacks like the attempt to bring down Northwest Flight 253.

## VII. BILATERAL AND STATE DEPARTMENT NEWS

### 1. U.S., EU Continue Open Skies Talks.

The United States and the European Union (EU) met in Washington for the sixth round of negotiations on a second stage air transport agreement. DOT Secretary Ray LaHood and Spanish Transport Minister Jose Blanco for the EU Presidency encouraged the negotiators to reach agreement in 2010. Further talks are scheduled for February 15-17 in Madrid. Separately, U.S. State Department Deputy Assistant Secretary for Transportation Affairs John Byerly told *Business Travel News* that foreign ownership limits remain in dispute, with national defense, the Civil Reserve Air Fleet program and concerns of airline labor as key issues. Also, the United States is seeking changes to rules that govern night flights in Europe, and, said Byerly, is concerned “about how Europe has implemented the balanced approach to noise management, and in particular the problem of a creeping increase in the number of European airports with either total night flight bans or very restrictive night flight conditions. Those are a matter of enormous importance to our cargo industry.” Byerly also said there is no prospect of amending our laws to allow cabotage.

### 2. Philippines to Sign ASEAN Open Skies Pact in April.

The Philippines expects to sign in April an Association of Southeast Asian Nations (ASEAN) open skies agreement, which would allow regional carriers to make unlimited flights among the group’s 10 capital cities. Separately, ASEAN Tourism Ministers reported that, despite the global economic slowdown, ASEAN tourism performed well, and continued to grow. Intra-ASEAN travel was the major contributor, with a 49% share of 65 million total international visitor arrivals in 2009.

### 3. UAE to Sign Open Skies Pacts With 10 Countries in 2010.

The United Arab Emirates (UAE) General Civil Aviation Authority (GCCA) plans to sign open skies agreements with at least 10 countries in 2010, according to news reports, beginning with Australia and Nepal in the first quarter. Talks are in progress with India, Pakistan and the EU.

## **VIII. EUROPE AND AFRICA**

### **1. Canada Judge Approves \$12 Million Air France Settlement.**

Passengers who were on Air France Flight 358 when it overshot a Toronto Pearson airport runway and crashed into a ravine in 2005 have won a \$12 million settlement to cover post-traumatic stress and injuries. All 297 passengers and 12 crew escaped before the plane burst into flames. The class action suit was filed in 2006 against Air France, the Greater Toronto Airport Authority (GTAA) and others. GTAA reached a \$2 million settlement in principle. Nav Canada was not part of the settlement and that case will return to court. Air France is suing GTAA and Nav Canada for loss of an aircraft, and GTAA is suing Air France for environmental cleanup costs.

### **2. Lufthansa to Resume Munich-Miami Service.**

This summer Lufthansa will offer Airbus A330 flights to Miami from Munich three times a week starting March 29.

### **3. UK Addresses Aircraft Laser Crime.**

The UK Civil Aviation Authority (CAA) initiated a law that makes shining a light or laser at an aircraft a specific criminal offence, in response to a growing number of such incidents near British airports. The previous charge was 'recklessly endangering an aircraft.' In 2009 there were 737 attacks with lasers on commercial airliners, air ambulances and police helicopters across the UK, compared to 29 incidents in 2007. Airports reporting high numbers of laser incidents in the UK in 2009 included Heathrow, Manchester, Glasgow, Birmingham and Leeds Bradford.

### **4. LOT Privatization Set for 2011.**

A major airline is among three potential bidders for LOT Polish Airlines, a reports Dow Jones. Privatization is not scheduled before 2011. LOT last year was near bankruptcy and will cut 400 employees by March.

### **5. Ethiopian Air Crash Kills 90.**

An Ethiopian Airlines Boeing B-737-800 crashed off the coast of Lebanon, killing all 90 people on board. The flight data recorders were recovered. Lebanese officials said the pilot flew in the opposite direction from the path recommended by the control tower, after taking off from Beirut in thunderstorms. NTSB is assisting in the investigation.

## **IX. ASIA/PACIFIC AND MIDDLE EAST**

### **1. Japan Airlines Files for Bankruptcy Restructuring.**

Japan Airlines (JAL) entered into court-led financial restructuring under the guidance of the Enterprise Turnaround Initiative Corporation of Japan (ETIC). JAL will continue to operate as usual during the restructuring, which will include a shift from large to small and regional jet aircraft; consolidation of underperforming routes; cutting 15,700 employees; leveraging alliances to expand networks; establishing a low-cost flight service model; and decreasing pension payments. JAL President Haruka Nishimatsu resigned and Kazuo Inamori, founder of Kyocera Corp., will become Chairman and CEO on February 1; Masaru Onishi was named Group President. Japan's Transport Minister said it will be necessary to carefully evaluate whether two mega-carriers (JAL and All Nippon Airways) should continue to operate. Delta (SkyTeam) and American (oneworld) have made offers to invest in JAL, currently a member of oneworld. Delta is offering a total package of \$1 billion, while American and private equity house TPG have offered \$1.4 billion.

### **2. Asia Pacific Airlines 2009 Passenger Traffic Down 5.7%.**

Members of the Association of Asia Pacific Airlines (AAPA) carried 132.9 million international passengers last year, 5.7% fewer than in 2008. Passenger traffic fell by 6.5%, with particular weakness in long-haul demand. Available seat capacity was reduced by 6.1%, resulting in a drop in average passenger load factor by 0.4 percentage points to 74.6%. International air cargo traffic for 2009 was down 11%, with average cargo load factor of 66.1% almost unchanged from 2008. In other news, Qantas and Air New Zealand have withdrawn from AAPA membership.

### **3. Jetstar, AirAsia Form Non-Equity Alliance.**

A non-equity alliance between Jetstar and AirAsia, low-cost units of Qantas and AirAsia respectively, was formed to "reduce costs, pool expertise and ultimately result in cheaper fares for both carriers." A joint specification for the next generation of narrow body aircraft is proposed in the agreement and both groups will investigate opportunities for joint procurement of aircraft. The two largest airlines in the Asia Pacific in revenue terms, Jetstar and AirAsia jointly earned nearly AUD3 billion in revenues in the 2009 financial year.

### **4. Vietnam Detains Qantas Executives.**

The Australian government urged Vietnamese authorities to complete the questioning of two senior executives of Qantas' Vietnamese operation Jetstar Pacific and send them home. They were detained in December in connection

with an investigation into a \$31 million loss on fuel hedging. Qantas CEO Alan Joyce defended the employees, saying fuel hedging was part of the normal course of business practice. Also detained was former Jetstar Pacific CEO Luong Hoai Nam, a Vietnamese national who resigned in November. In related news, a Civil Aviation Administration of Vietnam (CAAV) report on Jetstar Pacific identified administrative and quality issues. "We remain confident in our investment in Jetstar Pacific," said Qantas' Joyce. "This audit concluded there were no safety concerns with Jetstar Pacific's operations and that the airline met regulatory requirements." Jetstar Pacific is 70%-owned by the Vietnamese government's investment arm and 27%-owned by Qantas, and competes with state-owned Vietnam Airlines.

**5. China Plans \$5.9 Billion Aviation Industrial Zone.**

A \$5.9 billion industrial zone for aircraft parts is being planned in South China, according to Reuters. An official of the provincial Development and Reform Commission said Jiangxi province has begun seeking investors, including foreign firms, for the 25 square-kilometer zone, and could break ground in two years. The province will draw on talent from an aviation research institute and two universities. plus interest among three local aircraft manufacturers. Output could equal 25% of all parts made in China for large Chinese aircraft, he said.

**6. Philippines to Sign ASEAN Open Skies Pact in April.**

See Section VII, item 2.

## **X. AMERICAS**

### **1. Virgin America Remains a U.S. Citizen, DOT Finds**

DOT found that Virgin America remains a U.S. citizen and is under actual control of U.S. citizens, and dismissed petitions by Alaska Airlines and the Aircraft Mechanics Fraternal Association for a public inquiry into the San Francisco-based carrier's citizenship. U.S. law requires that domestic airlines remain under the control of U.S. citizens, with no more than 25% of the voting stock being held by foreign citizens. Under a new structure, U.S.-based VAI Partners holds 75% in Virgin America and UK-based Virgin Group holds 25%. U.S. investors comprising VAI Partners include Cyrus Aviation Investor (55.5%), VAI MBO Investors (27.8%), VX Employee Holdings (16.7%) and VAI Management ( 1%). Cyrus Aviation Investor, related to long-time Virgin America investor Cyrus Capital, will substantially increase its investment to become the airline's principal U.S. investor. VAI MBO Investors is comprised of Board Members Don Carty, Sam Skinner, Cyrus Freidheim, Robert Nickell and CEO David Cush. VX Employee Holdings will hold the value of 16.7% of VAI for distribution to employees at the time of an initial public offering or other liquidity event. Seven of nine Board seats continue to be held by U.S. citizens. Virgin America will obtain an additional \$68.4 million in unsecured debt from shareholders to improve liquidity.

### **2. Smisek Chairman/CEO of Continental.**

Jeff Smisek assumed the role of Chairman, President and CEO of Continental in January, replacing Lawrence Kellner who resigned to join a private-equity firm. A Continental employee for 15 years, Smisek formerly was President and Chief Operating Officer. He said he will refuse his \$730,000 salary or annual bonus until the company makes a full-year profit and told employees continued losses will lead to furloughs and stagnant pay and benefits. Continental lost \$367 million in the first nine months of last year.

### **3. Mesa Files for Bankruptcy.**

Mesa filed for Chapter 11 bankruptcy protection and received approval to continue normal operations. Over the past two years the regional has eliminated \$160 million of debt obligations, returned aircraft and restructured vendor agreements. "We are nonetheless faced with an untenable financial situation resulting primarily from our continued lease obligations on aircraft excess to our current requirements," said Chairman and CEO Jonathan Ornstein. "In addition, this action will give us the opportunity to reach a more timely conclusion in the litigation with Delta Air Lines in which Mesa is currently seeking damages in excess of \$70 million." Mesa operates as Delta

Connection, US Airways Express and United Express. Mesa's go!-Mokulele inter-island joint venture in Hawaii is not included in the filing.

4. **Republic Announces Sean Menke's Resignation.**

Sean Menke resigned as Executive Vice President and Chief Marketing Officer for Republic's branded operations (Frontier and Midwest), effective end of first quarter. As CEO of Frontier, Menke led the Denver-based carrier through an 18-month bankruptcy process and the merger with Republic. The next phase of the integration of Frontier and Midwest will be consolidation of executive management functions in Indianapolis, announced Republic, with final integration to be completed by end of second quarter.

5. **Airlines Cancel Fare Increases.**

U.S. airlines, including Delta, American, United and Continental, raised fares, but met with resistance and rolled back prices to remain competitive. The carriers also raised fees for checked bags, charging \$25 for the first checked bag and \$35 for the second, with exceptions. U.S. carriers took in \$1.24 billion from bag-check fees in first half 2009. In related news, the IRS has ruled that airline baggage fees are not subject to federal taxes, in response to an inquiry by an unidentified airline.

6. **Baltia Signs Engine Leasing Agreement**

New York-based Baltia Air Lines has signed an engine lease agreement with Logistic Air. Baltia intends to offer direct passenger and cargo service to St. Petersburg, Russia, and capital cities of Eastern Europe, subject to receipt of government operating authority.

7. **Chile's New President, Pinera, to Sell LAN Stake.**

Sebastian Pinera was elected President of Chile and will sell his stake in LAN before taking office on March 11. LAN is jointly controlled by the Cueto group (Costa Verde Aeronautica and Inversiones Mineras del Cantábrico) and the Pinera group (Axxion and Inversiones Santa Cecilia).

8. **Neeleman's Azul Boards Two Million in First Year.**

David Neeleman's Azul Airlines boarded more than two million passengers in its first year and claims the highest load factor (about 80%) among Brazilian carriers. JetBlue founder and former Chairman Neeleman started Azul in December 2008 with \$200 million in capital. Today, the Campinas-based carrier serves 16 cities with 14 Embraer E-190s and has a 50% market share in its home market. Azul employs 1,500 now and expects to operate 80 aircraft with more than 5,000 employees by 2013.

9. **Canada Judge Approves \$12 Million Air France Settlement.**

See Section VIII, item 1.

10. **Lufthansa to Resume Munich-Miami Service.**

See Section VIII, item 2.