



Athens Protocol shocks P&I clubs

Section: Special Report-Maritime Law

Release Date: Wednesday February 19 2003

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Radical changes regarding passenger liability claims were contained in the Athens Protocol which was adopted at the International Maritime Organisation at the end of October.

The new protocol has sent shivers down the spines of the P&I clubs who could in effect be left with an uninsurable risk as regards cover for cruise lines.

The protocol which will come into force 12 months after it has been ratified by 10 states, makes far-reaching reforms to the 1974 Athens Convention covering the carriage of passengers and their luggage by sea.

Of particular concern is the steep rises in liability limits which carriers could face when the protocol comes into force. The maximum liability per passenger for a single incident will be SDR400,000, more than eight times 1974 limits.

There is also an opt-out clause for states that want to increase the maximum liability or remove the limit altogether. According to Rory Gogarty and James Clanchy, of Holman Fenwick & Willan, the 2002 protocol does not expose a carrier to unlimited liability "but it does impose a far higher limit of 250,000 SDR per passenger for 'shipping incidents' for which the carrier will be strictly liable."

This is subject to certain exceptions, including acts of war.

They warn that the "principle of strict liability, the introduction of direct access to insurers and the higher compensation limits also have the potential to cause tension between passenger and non-passenger members in the traditional P&I Clubs".

According to Lars Rodin, of the Swedish Club, one unfortunate aspect of the new Athens Protocol is that states have the possibility to opt out and implement their own liability levels.

This means that one might end up with "a patchwork as far as limitation of liability is concerned". The P&I clubs, he says, "fought very hard for having one regime for liability".

The clubs took the position that they would accept liability up to SDR100,000 per passenger but under the protocol the limit is set at SDR250,000.

The question remains of whether commercial companies can provide cover. Equally, will mutual P&I be able to sustain the risk? According to Jonathan Lux, who heads Ince & Co's Hamburg office, the banks' attention is focused on the new Athens Protocol.

"As I understand it there is still no clear idea as to who is going to provide that compulsory insurance," he said.

Another aspect causing consternation is the suggestion of whether the cruise sector is really P&I or a hotel style risk.

"When you go beyond the no fault limit, the protocol says there should be additional liability where there has been fault and there is no compulsory insurance requirement appended to that.

"Passenger liability claims in many jurisdictions confer a maritime lien and they would outrank the mortgagees." Banks are in consequence concentrating on their exposures because there will be a whole new raft of claims that will outrank them.

Mr Lux says that there are good prospects of the protocol coming into force at a fairly early date, maybe even in 2005.

The European Commission is determined there should be higher liability limits, Mr Lux says. The commission is pushing member states to ratify. The EU is party to the protocol, so there is the political will to bring the convention into force.

The compromise over limits he said was felt to be the only way to bring the US to the table.

Commenting on the Athens Protocol, the loss record for passenger ferries has been very good over the last 10-20 years, Andrew Higgs, of Davies Arnold Cooper, said. However, the real problems arise in the Far East where overcrowding has resulted in accidents.

Mr Higgs maintains that liability limits for different forms of transport should be harmonised. There is also, he says, the enormous disparity in liability limits within different jurisdictions within Europe.

Trying to harmonise the compensation available would be a "proper thing" for Europe to legislate on.

With high per passenger limits and cruiseships that could be carrying 4,000-5,000 people in the future an assessment of probable maximum loss would arguably leave the ship uninsurable if higher per passenger limits were applied, he says.

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