



Estimating the real price of pleasure

Shipowners and their insurers will no longer be unfairly protected when changes to the London Convention on limitation of liability come in, writes Sandra Speares

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CLAIM levels for injury sustained aboard pleasure craft look set to increase as much as sixfold when amendments to the London Convention on limitation of liability come into force.

The changes will have serious implications for policy liability limits.

"The revisions reflect the belief that the rules now unfairly protect shipowners and their insurers when compared to other industries," Ira Harris of law firm Hill Dickinson told delegates at a seminar to discuss new rules.

"Why, for example, should someone injured by a speedboat be subject to a lower maximum award of damages than someone injured by a speeding car?"

According to Ms Harris, the revision of limitation fund values under the London Convention is "imminent". However, she did not expect further increases in claim limits contained in a 2002 protocol to the Athens Convention to come into force in the near future.

The 1976 London Convention covers shipowners' rights to limit liability for injury and damage claims arising from nearly all marine casualties including passenger claims.

The 1974 Athens Convention, meanwhile, deals with the claims of paying passengers.

Under current legislation, limitation fund values applicable to most yachts and small craft under the London Convention are, for vessels of not more than 500 tons, SDR333,000 for injury claims and SDR167,000 for damage claims giving a total combined fund of SDR500,000.

When the 1996 protocol to the London Convention is implemented the combined fund figure will increase to SDR3m.

In the UK there are at present lower limits for vessels under 300 tons: SDR166,667 for injury claims and SDR83,333 for damage claims offering a combined fund total of SDR250,000 which will increase to SDR1.5m when the revisions come into force.

As far as passenger claims are concerned, the Athens Convention sets a maximum per passenger limit which varies according to whether the carrier's principal place of business is in the UK or overseas.

In the UK the limit is SDR300,000 per passenger and SDR46,666 for overseas-based companies.

Under the 2002 protocol to the Athens Convention it is proposed to raise the injury limit to SDR400,000 for a passenger where fault is established and SDR250,000 in other cases.

The amended rules will simplify passenger claims with Athens alone applying to claims involving sea-going ships and contracts of carriage, Ms Harris explained.

London will apply to other passenger claims including those involving non-seagoing ships.

Current limits are 46,666 SDRs per passenger times the number of licensed passengers with a cap of SDR 25m which will change to 175,000 SDRs per passenger rather than a global limit calculated on the licensed number of passengers.

"The new London rules will mean that there will no longer be a specific bracket for ships between 300 and 500 tons in the UK, or for ships up to 500 tons in other countries.

"This next bracket will instead be increased to include all ships between 300 and 2,000 tons in the UK and any ship up to 2,000 tons elsewhere."

Ms Harris suggested that one of the consequences of the sixfold increase in the London limitation fund values is that, in all but the most catastrophic cases, potential damages are likely to be less than the available fund. "For this reason the limitation defence will cease to be such an important weapon, at least until inflation once again erodes the value of the funds and increases the value of injury claims."

She warned, however, that in cases where large numbers of passengers have claims or in cases where injuries are severe the defence will still be relevant.

"A third party indemnity limit of £2m is likely to be adequate for UK claims by non-paying guests on ships under 300 tons where the combined fund will amount to 1.5m SDRs (£1.2m)," she said.

However she warned that a £2m liability limit would be likely to be inadequate in cases of ships over 300 tons and in the case of some overseas claims as, in both cases, the combined injury and damage fund under the London Convention would amount to SDR 3m (approximately £2.6m).

The definition of a ship and a ship's crew for the purposes of marine limitation also presents certain problems according to Grahame Aldous of 9 Gough Square.

"Different insurance policies may have their own particular definitions of what amounts to a ship and who are to be regarded as members of the crew," he said.

Courts had not been consistent when considering the issue of what constituted a ship.

"The issue of what is a ship has come before the courts on many occasions but they have not provided a definitive definition, indeed they have refused to do so."

He added that courts were prejudiced against "fun items or novelty items" like jet-skis when coming up with a definition.

"The problem of definition is not so much with the definition of a vessel, which appears to mean simply something that can float, as with the concept of navigation."

The definition of a ship and a crew member is important because it can result in a shorter limitation period for marine accident claims and the right to cap claims under the conventions.

In UK law a two-year limitation period for marine accident claims, rather than the normal personal injury limit of three years, applies to "passengers" under the Athens Convention.

How to differentiate a passenger from a crew member is not always clear-cut.

In the case of the Biche, Mr Aldous said, a group of young people taken on board to crew it for sail training purposes were found to be passengers.

There were also problems in deciding whether, for example, the croupier on a cruiseship was a member of the crew or a passenger.

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