



Defence case made on Athens Convention

As the row continues to rage over a new protocol governing passenger liability, two industry heavyweights have given their approval to the changes, writes James Brewer

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Backers of the new convention protocol and some insurance experts say a sensible framework has been laid down — but there is a strong counter camp, including many senior P&I experts, that insists it is based on wishful thinking.

Passionate debate has been sparked because of the nature of the protocol, unprecedented in the IMO in recent years, as an aggregation of risk: a combination of direct liability and direct action, and large overall limits, plus an opt-out provision to allow countries to impose their own higher liability limits under the protocol.

Erik Rosaeg, chairman of the conference correspondence group, has issued a robust answer to the message to the conference from both P&I clubs and the commercial market casting doubt on availability of cover, which they felt rendered the convention inoperable in its new form.

In a letter to Lloyd's List, Professor Rosaeg said: "We are sure that insurance will be available for the new regime. After all, it is not unusual for an airplane today to be insured for \$2bn, which is about the capacity of the insurance market just now."

He added that the industry would be better served by a worldwide regime than one in which the European Union and other regions set out their own rules.

Graham Barnes, a senior consultant at London insurance broker BankServe and pioneer in developing insurances to meet political situations and new regulations, has welcomed IMO's compromise agreement.

He said the IMO had addressed the contentious and festering issue that arose from the Herald of Free Enterprise tragedy, which was followed by numerous worldwide ferry losses but progressively brought to a head by the Estonia disaster in the Baltic, the Norwegian Dream scare in the North Sea and a horrendous incident of crew negligence causing serious loss of life on Express Samina in Greece.

That issue was the unacceptable level of compensation to passengers following disasters that were invariably caused by negligence or vessel defects.

Mr Barnes said the IMO sensibly compromised their original liability limits to SDR250,000 (\$330,250) for strict liability per passenger, up to a maximum of SDR 400,000 for any one incident, instead of the SDR350,000 to SDR500,000 originally proposed.

For a 3,000 passenger cruiseship, this brought the aggregate passenger liability amount to just over \$1bn, well within the International Group of P&I Clubs' present reinsurance programme of \$2bn. "However, this will have to be guaranteed where the ship operates in jurisdictions that have ratified the protocol," he said.

Mr Barnes said the opt out was particularly important, to encourage the US to ratify the Athens Convention and protocol on limits it saw as appropriate.

He explained: "Cruise business is concentrated in the US, with a 90% domination of the market. Americans are also big users of ferries, buying 130m ferry tickets per annum, representing a third of all ferry tickets bought in the developed world.

"The US has traditionally shunned all limitation of liability conventions in favour of shipowners but the mould was broken with the Oil Pollution Act 1990 under which, for the first time, the US introduced strict limits of liability for oil pollution.

"Failure by the US to ratify this Athens Convention and protocol, exercising the opt-out option adjusting the liability limits as deemed acceptable, in favour of maintaining what is in practice unlimited liability, risks disappointing claimants. The net assets of even the biggest cruise lines are distinctly finite."

He said: "The IMO clearly and correctly favours the P&I club system to accommodate this protocol.

"When it becomes a fait accompli, club managers are certain to find ways of meeting the requirements to the strict liability limits, as compromised.

"This might be done by restructuring their reinsurance programme through the International Group of P&I Clubs at a cost that, when passed on to passengers, will appear relatively modest. At the same time, the clubs should be able to satisfy their non-passenger vessel members in minimising the risk of overspill claims."

A spokesman for the International Group said: "Having consulted club boards in some detail, we were in a position to inform the diplomatic conference what we thought the clubs would be able to provide by way of direct action cover. We were therefore disappointed that our advice was ignored, and higher direct action figures (SDR250,00) chosen in the

hope that cover would somehow be available when the convention would come to be implemented.

"We indicated that cover at that level would not be available today and that, while we would do our utmost to assist, we did not believe it would be available in the future.

"It was interesting that the International Union of Marine Insurance representative indicated that if the clubs were unable to provide the necessary cover it was also unlikely that the commercial market would be able to provide direct action cover from the ground up in excess of SDR100,000."

Other shipowner concerns include lack of a claims defence of act of terrorism, although individual states might choose to enact such a defence.

There is a standard defence relating to acts of third parties, but that might exclude terrorist acts.

One P&I specialist said of the outcome: "The practicalities took second place. The convention, as the market stands, is based on a wish and is simply undoable."

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