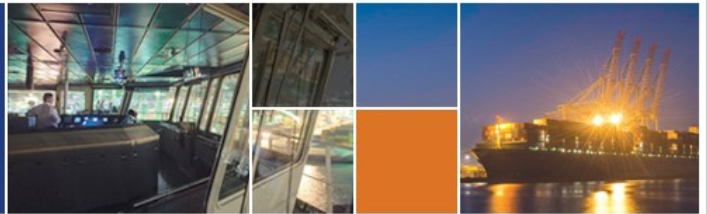




STEAMSHIP MUTUAL

Comprehensive Cover. Exceptional Service.



Athens Convention - 2002 Protocol

January 2003

The Diplomatic Conference which was held in London from 21st October to 1st November 2002 agreed a Protocol to the Athens Convention 1974*. Following entry into force (12 months after being accepted by 10 States), the Protocol will establish a new liability regime for passenger death and personal injury claims, require carriers to maintain insurance in respect of such liability, and allow passenger claimants to proceed directly against insurers.

Passengers

The Protocol will amend the liability regime of the 1974 Convention by introducing strict liability for death and personal injury claims caused by shipping incidents. Liability in relation to such claims will be limited to SDR 250,000 per passenger. "Shipping incidents" are defined as follows: "shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship". "Defect in the ship" is further defined, restricting it to incidents which are operational in nature rather than hotel-type incidents.

If the loss exceeds SDR 250,000 per passenger, the carrier will be further liable up to a limit of SDR 400,000 per passenger unless the carrier proves that the incident occurred without his fault or neglect.

For death and personal injury claims not caused by shipping incidents, carriers will be liable in negligence up to a limit of SDR 400,000 per passenger, with the claimant bearing the burden of proof.

States Parties may set higher limits of liability, or unlimited liability, for death and personal injury claims in their national law.

Insurance

Carriers will be required to maintain not less than SDR 250,000 per passenger insurance or other financial security to cover liability in respect of death and personal injury to passengers. The insurance requirements apply to ships licensed to carry 12 or more passengers. Certificates issued by States which attest that insurance is in place will be required to be carried on board.

Claimants will be permitted to proceed directly against the insurer in respect of the first SDR 250,000 of any claim. The insurer's liability will be limited to SDR 250,000 per passenger regardless of whether the carrier is entitled to limit his liability. The insurer may invoke defences which the carrier would have been entitled to invoke (other than bankruptcy or winding up) but will not be entitled to invoke policy defences save for the defence of wilful misconduct of the assured.

Luggage And Vehicles

The limits of liability for loss of or damage to luggage and vehicles were increased by some 25 - 27% and will be as follows:

- » for loss or damage to cabin luggage - SDR 2,250 per passenger;
- » for loss or damage to vehicles including luggage in the vehicle - SDR 12,700 per vehicle; and
- » for loss or damage to any other luggage - not more than SDR 3,375 per passenger.

Maximum deductibles of SDR 330 for vehicles and SDR 149 for other luggage may be agreed.

Future Increases

The Protocol includes a tacit amendment procedure for raising the limits of liability.

Loss of Right to Limit

The Convention will continue to provide that the carrier's right to limit liability will be lost if it is proved that damage resulted from an act or omission done with intent to cause the damage or recklessly and with knowledge that the damage would probably result.

Ratification By European Union On Behalf On Member States

The Protocol contains a novel provision which will permit its ratification by the European Union. The relevant Article provides that a Regional Economic Integration Organisation, which is constituted by sovereign States that have transferred competence over certain matters governed by the Protocol, may ratify the Protocol. EU member states have transferred competence in relation to jurisdiction and recognition and enforcement of judgements to the European Community and it was maintained that without such a provision, EU member states would not be able to become parties to the Protocol.

Non-Binding Resolutions

The following non-binding conference resolutions were also adopted:

- » Regional Economic Integration Organisations

The resolution notes that the Protocol allows Regional Economic Integration Organisations and their member states to become parties to the Protocol and recognises that new forms of such organisations may be developed in the future. The resolution requests IMO to carry out a study of the issue and, if found necessary, to develop appropriate provisions for inclusion in future IMO treaties when needed to enable present and future regional economic integration organisations to become parties to such treaties.

- » Certificates of Insurance or other Financial Security and Ships Flying the Flag of a State under the terms of a Bareboat Charter Registration

The resolution addresses the fact that a number of States allow ships to fly their flag under the terms of a bareboat charter, through which the bareboat charterer assumes all the duties and responsibilities of the owner for operation of the ship while the ownership and encumbrances remain registered in another State which suspends the right of the ship to fly its flag. The resolution requests IMO to carry out a study of the issuing of certificates of insurance or financial security in such cases and, if found necessary, to develop appropriate guidelines.

The resolution notes that the carrier's overall limit of liability for death and personal injury claims under the Protocol is set at SDR 400,000 per passenger and further notes that the Protocol requires carriers to maintain insurance of SDR 250,000 per passenger. The resolution requests IMO to consider and, if found necessary, develop guidelines to ensure that carriers maintain insurance to meet the full extent of their liability under the Protocol.

International Group Input

The International Group submitted papers clearly stating that it would be most unlikely that Clubs would be willing to provide cover in respect of a direct action exposure of more than SDR100,000 per passenger and this position was further emphasised at the Conference. There was also clear indication from the commercial market (represented by IUMI) that it would be most unlikely to be able to offer more than SDR100,000 per passenger by way of direct action if P&I insurance was not available. This advice was ignored by the Conference and the hope expressed that when the Protocol came to be implemented cover would be found.

Entry Into Force

Ten States are required to ratify the before the Convention as revised by the Protocol can enter into force and delay of three to five years would normally be expected. However, many States are aware that their current legislation is out-of-date, particularly as regards limits. Since the carriage of passengers is regarded as a consumer issue it is therefore likely that there will be political pressure to accelerate the usual timetable. This political pressure is felt particularly strongly in the EU Commission which has the power to ratify the Protocol on behalf of member States.

*Diplomatic Conference 21 October - 1st November 2002: Protocol Of 2002 To The Athens Convention Relating To The Carriage Of Passengers And Their Luggage By Sea, 1974

This article is based on a report prepared by the Secretariat to the International Group of P&I Clubs.