

Capping debate rages on as cruise industry counts its liability costs

Greater compensation for cruise passengers under the Athens Convention has led to terror and war exemption arguments, writes Sandra Speares

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Is more liability always better? That is the political view, according to Professor Erik RØsaeg of the Oslo-based Scandinavian Institute of Maritime Law.

Compensation may mean very different things in different jurisdictions, he told delegates at a recent maritime legal liabilities conference organised by Swansea University.

Prof RØsaeg was commenting on the Athens Convention 2002 relating to carriage of passengers and their luggage by sea.

Greatly increased liability limits under the new convention could mean liabilities of several billion dollars in the case of the total loss of a cruiseship, he told delegates.

A joint paper by the United Kingdom, Norway, the International Council of Cruise Lines and the International Chamber of Shipping has just been submitted to the International Maritime Organization's Legal Committee to "find a way forward on terrorism and war" in relation to carriers' liabilities under the Athens Convention 2002, Prof RØsaeg said.

Exemptions for terrorism pose questions as to whether carriers could be liable if they took a cruise ship into a war zone and exemptions only applied to acts wholly, not partially caused by terrorism.

Carriers have wanted an exemption from liability relating to acts of terrorism on the grounds that they are not liable for damage caused by an act of war under the terms of the convention.

The debate over the terrorism exclusion has delayed consideration of P&I clubs' non-war liability position.

The joint proposals put to the IMO Legal Committee represent a compromise by which carriers' liability for terrorist incidents would be capped, Prof RØsaeg said. The cap would be placed at whatever is the lower of SDR250,000 (\$371,000) per passenger or \$500m per ship for passenger claims. Insurance would be necessary to cover this amount as would certification — a Blue Card — that such cover was in place.

In an additional document presented by the Norwegian delegation, insurer Marsh had negotiated with underwriters to underwrite insurance cover for war and terrorism risk which would provide a guarantee of cover if existing insurance did not meet the requirements of the Athens Convention, Prof RØsaeg explained. The price to the carrier for this cover was estimated to be less than 10 cents per passenger per day.

While the idea of capping carriers' liability is to relieve pressure on the general insurance market, questions remain as to how to distinguish between war risk and non-war risks, he said.

"P&I rules need further study" and do not generally offer much guidance, he suggested.

Another issue is how claims would be paid, he said, as while the general rule is an "equitable distribution among claimants" there needs to be a procedure in order to distribute it.

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