
HOT TOPICS Archives

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Warsaw Convention Changes...Good News for Air Carriers?

The first amendments to the Warsaw Convention since 1955 will begin applying to international cargo shipments. The changes, known as Montreal Protocol No. 4, which have been accepted by the United States and adopted into law will commence effective March 4, 1999.

Some of the provisions may prove troublesome to shippers (and their insurers). For example, Article 24 states that airline limitations of liability constitute maximum limits "which may not be exceeded *whatever the circumstances* which gave rise to the liability". Previously shippers, under some circumstances, were able to overturn these limitations, even in the absence of value declarations and payment valuation charges. For example, gross negligence, willful misconduct, failure to correctly issue an airway bill, or failure to enclosed certain details of the transits on the airway bill all provided opportunities for shippers to circumvent liability limitations. The new wording attempts to close those opportunities.

Article 21 of the amended "Convention" could spark some interesting debate in the courts in years to come. In summary, Article 21 says... "*If the carrier proves that damage was caused by or contributed to, by the negligence of the party claiming, the carrier shall be wholly, or partly, exonerated from liability to the claimant... to the extent that such negligence caused, or contributed to the damage*". This kind of provision could have the effect of the carrier attempting to 'part pay' damages (damages already subject to the Warsaw limitations). For example if in the carrier's view the shipper claiming against it was 50% responsible for its own damages, then under Article 21, the airline might only offer this claimant a 50% settlement. However, since Article 18 says that the air carrier will have 'no liability whatsoever' for losses caused by packing defects, if the packing is performed by anyone other than the carrier, it will be interesting to see what other circumstances of loss might be construed as being 'contributed to' by the claimant. It will also be interesting to learn the criteria airlines will use in order to measure/determine this percentage of blame.

While liability of the air carriers is currently based upon \$9.07 per pound or \$20 per kilo, the Montreal Protocol 4 creates a new monetary unit which will be called a "Special Drawing Right" ("SDR") and the air carrier's liability will henceforth be pegged at 17 of these SDR units per kilo. Making things more interesting is the fact that these SDR's will *not* have a fixed value. Instead, the value of the SDR will fluctuate. Its values will be defined by the International Monetary Fund and will 'float' just as the value of currencies do. Based on recent SDR rates, an air carrier's liability would be in the area of about \$23 per kilo under the new system, about 15% higher than currently granted under the \$20 per kilo limitation.

However, the 'present' value of the SDR is not the most important factor. Article 22 of the

amended 'Convention' declares that that value of the SDR which will apply is that value which it holds "at the date of the judgement". So, particularly in cases which are decided after long judicial proceedings, the difference in value between 17 'SDRs' at date of loss, versus 17 'SDRs' at date of judgement could be significant.

While the items mentioned above are highlights of some of the more visible changes that will occur when the revised Warsaw Convention takes effect on March 4th, clearly these are not the only changes. We urge shippers to do what is necessary to become fully informed.

Whatever the eventual ramifications, one thing appears certain as we approach the March 4, 1999 implementation date. These changes, while possibly not revolutionary, are significant. It will be months, or even years, before the scope and extent of these changes become fully evident and clarified as various cases and issues work their way through both the transportation and court systems.
