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Air Carrier Liability for Loss & Damage of Air Freight

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Outline

- Convention Applicability
- Scope of Application
- Availability of Actions
- Liability Limits
- Documentation
- Avoidance of Limits
- Carrier Defenses
- Extinguishment of Claims

Convention Applicability

- Cargo air carriage is most commonly unidirectional → both States of departure and arrival must have ratified Convention

...otherwise, complications liable to arise on selection of applicable law

Scope of Application

Article 18 MC

- While cargo in the charge of the carrier
- During carriage by land, sea or inland waterway taking place in the performance of a contract of carriage by air for the purpose of loading, delivery or transshipment

Overall simplification compared to more elaborate wording of Art 18 WC, which created confusion on whether Art 18 applied in cases where the cargo was in carrier's charge but outside airport premises

Availability of Actions

- Successive carriage provision of Art 36
 - Consignor (cargo): v. First carrier
 - Consignee (cargo): v. Last carrier
 - Passenger (baggage): v. First carrier
 - Passenger entitled to delivery (baggage): v. Last carrier
 - OR: v. the carrier that performed the carriage when damage/ delay/loss occurred
- Joint & several liability of carriers involved

Liability Limits

- Art 24 MC: review of liability limits

Cargo:

- Raised to from 17 to 19 SDR / kg of cargo (since total compensation depends on weight of cargo, importance of accurate recording of weight)
- IATA Standard AWB set limit to 17 SDR but new S/AWB also adjusted to 19 SDR – recall invalidity of inconsistent contractual provisions in cases where old AWB used following revision of limits

Baggage:

- Raised from 1000 SDRs to 1131 SDRs

Documentation

- Simplified documentation requirements under MC – Air Way Bill must specify departure, destination, stopping places and weight of cargo (Art 5&7 MC)
- Accommodation of electronic documentation (Art 4 MC)
- Evidence of contract of carriage (Art 11 MC)
- Unlike WC, non-compliance with documentation requirements does not deprive carrier of liability limits (avoidance of endless litigation re: specification of documents)
- Increased documentation flexibility

Avoidance of Limits

- Willful misconduct (Art 25 WC) and equivalent culpability (intent or recklessness) under Art 22(5) MC - baggage.
- Consignor may declare a higher value under Art 22(3) MC
- Carrier may voluntarily waive the limits – Art 25 MC
- Carrier may stipulate a higher limit – Art 25
 - NB: Repeated use of contract stipulating higher limits or waiving limits may result in finding that limits have been waived
- NB: If WC applicable, possible avoidance of limits in the event of inadequate/incomplete documentation
- Damage did not occur while goods in charge of carrier (diminishing after MC)

Defenses of Carrier

- Negligent pilotage / navigation (obsolete – under Warsaw Convention)
- Inherent defects of baggage or cargo (Art 17(2) & 18(2)(a) MC resp.)
- Defective packing of cargo, if not conducted by carrier (Art18(2)(b))
- Act of war (cargo – Art 18(2)(c) MC)
- Act of public authority relating to entry, exit or transit of cargo (Art 18(2) (d) MC)
- Contributory negligence – Art 20 MC
- All reasonable measures taken by carrier – re: delays of baggage / cargo

Extinguishment of claims

- General applicability of 2 year rule for bringing an action
 - NB: This time bar applies to claims against the carrier brought by the consignor – it does not cover all claims arising from the destruction of cargo: e.g. it does not cover indemnification and contribution claims
- Promptness of notice – Art 31 MC
 - Damage to baggage: 7 days from receipt
 - Damage to cargo: 14 days from receipt
 - Delay: 21 days
- Sufficiency of notice
 - Must be in writing
 - No need to expressly state that claim is being/will be brought against carrier therewith

Thank You

Questions ?