

Liabilities on the increase: Operating Under the U.S. Liability Regimes VS The International Conventions



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Athens Convention relating to the Carriage of Passengers and their Luggage by Sea – 2002 Protocol

- Establishes a regime of liability for damage suffered by passengers on a seagoing vessel
- Requires carriers to maintain compulsory insurance for up to 250,000 SDR per passenger
- Strict liability for shipping incidents unless Article 3.1 defense applies
- Limit of SDR 250,000 per passenger for strict liabilities
- Limit of SDR 400,000 per passenger if carrier is negligent
- States may opt out of limits provided national limit is not lower than Protocol limits



Position in the U.S.

- **Passenger ships are common carriers governed by reasonable standard of care**
- **Doctrines of comparative negligence and assumption of risk apply**
- **Seaworthiness doctrine has not been applied to passenger claims**
- **No breach of contract unless expressly promised and causation must be proven**
- **Shipowners are entitled to limitation under Limitation Act**

Position in the U.S.

- **Passengers' rights are largely defined by terms of passenger ticket**
- **Forum selection and choice of law clauses are generally enforceable**
- **Passenger ticket may contain disclaimer seeking to limit recoverable damages to those authorized by Athens Convention**
- **U.S. Courts may enforce Athens Convention with respect to non-U.S. flag vessels that do not call at U.S. ports**

International Convention on Civil Liability for Oil Pollution Damage

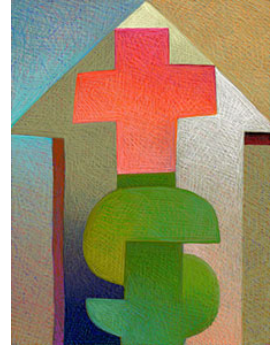
- Makes owner of ship from which persistent oil is discharged liable for damage
- Spills from tankers in ballast or bunker spills from non-tankers are not covered
- Strict liability, subject to limited exceptions
- Limit of SDR 14 million for strict liability
- No limit if incident caused by shipowner's personal fault
- Requires covered ships to maintain insurance equivalent to owner's total liability for one incident
- No recovery for response costs where no spill occurs



1992 Protocol

✈ **Raised compensation limits –
USD 133 million for vessels of 140,000 GRT or greater**

- **Covers pollution damage in EEZ of state**
- **Environmental damage compensation limited to reasonable measures to reinstate contaminated environment**
- **Preventive measures may be recovered provided there was grave and imminent threat of pollution damage.**
- **Applies to both laden and unladen tankers, including bunker spills**



International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage – 1992 and 2003 Protocols

- **1992 Protocol established a separate IOPC Fund**
- ↗ **2000 Amendments raised compensation limits to USD 301 million**
- **2003 Protocol established a supplementary IOPC Fund adding a third tier of compensation up to USD 1.1 billion (including compensation paid under CLC/Fund Convention)**

International Convention on Civil Liability for Bunker Pollution Damage 2001

- **Ensures that adequate and prompt compensation is available for pollution damage caused by bunkers**
- **Pollution damage includes:**
 - **Loss or damage caused outside the ship by discharge of bunkers**
 - **Cost of reasonable measures of reinstatement actually under taken**
- **Requires shipowner to maintain compulsory insurance cover equal to limits of liability under applicable national law or international convention**

The U.S. Position

Oil Pollution Act of 1990

- **Responsible party for vessel or facility from which oil is discharged**
 - **Owner, operator or demise charterer**
- **Includes oil of any kind or in any form**
- **Strict Liability, subject to limited exceptions**
- **Limits of liability**
 - **USD 1,200 per GRT for tank vessels**
 - **USD 600 per GRT for other vessels**
- **Limits may be easily broken**



The U.S. Position

Oil Pollution Act of 1990

- **Political pressure to increase limits**
- **Compulsory Financial Responsibility**
- **Removal costs and damages, including natural resources**
- **Covers “substantial threat” of a discharge**
- **Oil Spill Liability Trust Fund**
- **State law not pre-empted**

International Convention of Liability and Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) 1996

- **Compensation up to SDR 250 million to victims of accidents involving HNS**
- **Based on two-tiered system established under CLC and Fund**
- **Covers pollution damage, risk of fire and explosion, personal injury, property damage**
- **Strict Liability**
- **Compulsory Insurance**
- **Total compensation limit of SDR 100 million**



THE POSITION IN THE US

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT

- **Owner or operator of vessel or facility from which there is a release of threat of a release of a hazardous substance is liable for response costs and damages**
- **“Hazardous substance” excludes petroleum and natural gas**
- **Liability is strict, subject to limited defenses**
- **Shipowner liability is limited to greater of USD 300 per gross ton or USD 5 million**
- **Mandatory financial responsibility requirement**
- **State Law not pre-empted**
- **Government has numerous enforcement options**