



## CLAIMS ARISING FROM ACCIDENTS AT SEA

1. The recent capsizing of the Italian cruise ship, *Costa Concordia*, has focussed attention on the claims available to passengers involved in such disasters.
2. The international carriage of passengers by sea is governed under English law by the Athens Convention 1974, which has been in force in the UK since 1996 by virtue of section 183 of the Merchant Shipping Act 1995.
3. The Athens Convention covers not only accidents at sea but also more common complaints like food poisoning and other forms of bacterial and viral illness contracted by passengers while travelling on international cruises.
4. An important restriction in the scope of the Athens Convention is that it does not apply to domestic cruises – for example, cruises around the British Isles or the coast of Scotland – but it do include cruises which start and finish in the UK but involve stopovers in other countries. Therefore, a cruise that starts and ends in Southampton but involves visits to Mediterranean ports will be covered by the Athens Convention.
5. Personal injury and lost baggage claims under the Athens Convention have a shorter limitation period of 2 years under Article 16 than the normal limitation period of 3 years for personal injury claims under English law. There is also no possibility of extending that limitation period as there is under section 33 of the English Limitation Act 1980. Time for limitation purposes starts to run from the date of disembarkation.
6. Article 14(1) of the Athens Convention states that no action for damages is to be brought against a carrier otherwise than in accordance with the Convention. It follows that the Athens Convention provides an exclusive remedy in respect of personal injury claims against the carrier. There is no alternative claim that can be brought under the Package Travel Regulations 1992. There are in fact conflicting county court decisions on this point -*Norfolk v. My Travel*

[2004] 1 LIR 106 (HHJ Overend, Plymouth County Court) decided that this was the case whereas the circuit judge in *Lee & Lee v. Airtours* [2002] ITLJ 198 decided that held that the PTR 1992 provide a parallel remedy to that contained in the Athens Convention. However, both *Grant & Mason on Holiday Law* and *Alan Saggerson on Travel Law and Litigation* argue that the second case is wrongly decided.

7. Despite its exclusivity over personal injury claims, the Athens Convention does not cover liability for quality complaints that arise out of a spoilt holiday cruise so those claims must still be brought under regulation 15 of the Package Travel Regulations 1992. In English law, there is no reason why both types of claim cannot be included in the same action.
8. Under Article 3(1) of the Athens Convention the carrier under an international contract of carriage is liable for damages suffered as a result of the death or personal injury of a passenger, if the incident which caused the damage occurred in the course of the carriage and was due to the fault of neglect of the carrier or his servants or agents. Article 1 of the Convention defines the term 'carrier' to mean either the party on whose behalf the contract of carriage has been made or a 'performing carrier', which is the party who actually performs the carriage contract and both carriers (if they are different entities) are jointly and severally liable. For practical purposes, a personal injury claimant will normally wish to sue the tour operator for whom he bought his package holiday and not the performing carrier, if that person is a different legal entity.
9. As stated in Article 3(1) of the Convention, the claimant usually has to prove fault on the part of the carrier, but Article 3(3) provides that fault is presumed, unless the contrary is proved, in six situations, namely: shipwreck, collision, stranding, explosion or fire or defect in the ship. Thus, in the case of the *Costa Concordia*, any claimant injured by the capsizing of the vessel would not have to prove fault: the burden of proof would be on the carrier to prove that the ship capsized without any fault on the part of the captain or any other staff member, which is unlikely to be possible, given the circumstances reported in the press.
10. Article 7 of the Athens Convention prescribes low limits for the maximum sum payable by a carrier in respect of death or personal injury to a passenger. This sum is expressed in terms of special drawings rights as defined by the IMF and the figure is currently 46,666 units of account (equivalent to around £45,500).

11. Individual signatory countries to the Athens Convention are allowed to increase this limit in respect of carriers whose principal place of business is within the jurisdiction of that country. By virtue of The Carriage of Passengers and their Luggage by Sea (UK Carriers) Order 1998, the limit was increased for British carriers to 300,000 units of account (equivalent to about £292,500).
12. In addition, under Article 13(1) of the Convention, the carrier loses the right to rely on the lower limit of liability if it is proved that the damage resulted from an act or omission of the carrier 'done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result'. It is likely that in any claims arising from the *Costa Concordia* disaster, it will be argued that the carrier was reckless and should therefore lose the right to limit its damages, but recklessness has been construed in English cases involving air travel under the Montreal Convention as requiring proof of subjective awareness of the possible damage on the part of the carrier, which may very difficult to establish. However, one case recorded in *Saggerson on Holiday Law and Litigation* in which recklessness was found was where the pilot of a light aircraft flew at low speed and altitude waving to on-lookers. It might be accepted by a court that the captain of the *Costa Concordia* was engaged in a similarly reckless manoeuvre in the moment leading up to the vessel's capsizing.
13. Reform of the Athens Convention was agreed at an international conference held in London in 2002, but these reforms will only come into force when 10 of the signatory countries have formally indicated their acceptance of the reforms. The measures include: a general increase in the limit of liability; replacing the fault-based system of liability with a 'reverse burden of proof' that requires the carrier to prove that the incident occurred without any fault on its part; a system of compulsory insurance and the introduction of a direct right of action against the shipping insurers.

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