

## Costa Concordia: passenger claims

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The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 ("PAL") entered into force on 28 April 1987. This Convention establishes the liability regime for damage suffered by passengers carried on a seagoing vessel e.g. a cruise vessel. For the death of, or personal injury to, a passenger the carrier may limit his liability to 46,666 Special Drawing Rights ("SDR"). The "SDR" is an international reserve asset created by the International Monetary Fund ("IMF") in 1969 to supplement its member countries' official reserves. The value of a SDR is based on a basket of 4 key international currencies and SDRs can be exchanged for freely usable currencies.

To give an example: on 30 January 2012 the SDR exchange rate to Euro was 0.847214 and to USD: 0.646235; this means that the maximum exposure of the carrier on this date amounted to EUR 55,081.-- or USD 72,212.-- per passenger. The limit of liability shall apply unless the carrier acted with intent to cause such damage, or recklessly and with knowledge that such damage would probably result. As regards loss of or damage to luggage the carrier's limit of liability will vary, depending on whether the lost or damaged luggage was to be considered cabin luggage, a vehicle and/or luggage carried in or on a vehicle, or in respect of other luggage.

On 1 November 2002 a Protocol to this Convention was adopted, i.a. introducing compulsory insurance to cover passengers carried on seagoing vessels, allowing a direct action against the insurers and also raising the limits of liability. The 2002 Protocol will enter into force 12 months after being accepted by 10 States, but this Protocol has not therefore entered into force yet. This is a pity for passengers, since one of the other features of the Protocol is to replace the fault-based liability system of PAL to a system with strict liability for the carrier for shipping related incidents. Furthermore, the Protocol requires carriers to maintain compulsory insurance (or other financial security) of not less than 250,000 SDR per passenger. At the present time (30 January 2012) the PAL Convention has been accepted by 34 States/countries, whereas the Protocol 2002 has only been accepted by 7 States/countries, which in the latter case is not yet sufficient for entry into force. The above already means a serious impediment to those passengers that have been fortunate enough to survive the capsizing and sinking of "Costa Concordia" with the loss of their luggage in most cases.

Quite another issue is the contractual arrangement between any single passenger and the carrier which we understand, is Costa Crocières S.p.A., a company organized and existing in Italy. By accepting a ticket from the carrier the passenger accepts and agrees to certain terms and conditions, e.g. the conditions that were prevailing on the ill-fated ship, that will become important. In principle the limitations and contractual provisions contained in the Cruise Ticket Contract shall apply to all actions a passenger may take, whether against the carrier Costa Crocières directly, or against the Master, officers, crew members, staff members, agents etc. The Costa Crocières Cruise Ticket does contain a number of provisions that will have a certain pre-emptive effect on lawyers

representing passenger desirous to make claims. First of all the contract contained in the ticket provides for the exclusive resolution of disputes through individual legal action on each passenger's own behalf instead of through any class or representative action. The ticket further contains a choice of forum provision distinguishing between voyages departing from, returning to or visiting a US port and voyages that do not depart from, return to, or visit a US port. In the latter case all claims arising out of or concerned with or incident to any voyage shall be instituted exclusively in the courts of Genoa, Italy and Italian law shall apply to any such proceedings. In addition to the PAL Convention the carrier may also seek to rely on other international conventions on limitation of liability, including the Convention on Limitation of Liability for Maritime Claims of 1976 ("LLMC") and the International Convention on Travel Contracts ("CCV"), signed at Brussels on 23 April 1970. If the above is not sufficient to protect the carrier from claims, there is also a provision cutting off a passenger's right to claim unless written notice of a claim with full particulars is delivered to the carrier or its duly authorized agent within 185 days after the date of injury, illness or death. This will probably mean that claims unless notified as provided for in the ticket will become barred on or about 16 July 2012.