



DECEMBER 17, 2012

CIRCULAR NO. 36/12

TO MEMBERS OF THE ASSOCIATION

Dear Member:

**ENTRY INTO FORCE OF THE REGULATION (EC) NO 392/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 23 APRIL 2009 ON THE LIABILITY OF CARRIERS OF PASSENGERS BY SEA IN THE EVENT OF ACCIDENTS (PLR)**

Members are referred to Circular No. 34/12 of December 6, 2012 on the PLR, which will apply in all European Union (EU) and European Economic Area (EEA) member states from December 31, 2012. The regulation essentially gives effect to the key provisions of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 as amended by the 2002 Protocol (the Convention), together with the 2006 IMO Reservation and Guidelines for Implementation of the Convention covering war risks (the Guidelines).

Circular No. 34/12 informed Members that article 7 of the PLR introduces an obligation on carriers and performing carriers to provide information to passengers, explaining their rights under the regulation. The Circular also reported that the European Commission was due to publish a publicly accessible summary of the PLR, including a summary of the information to be promulgated by carriers and performing carriers. This has now been published by the European Commission. A copy is attached to this Circular and can also be found on the following webpage:

[http://ec.europa.eu/transport/themes/passengers/maritime/index\\_en.htm](http://ec.europa.eu/transport/themes/passengers/maritime/index_en.htm)

Members have previously been informed that vessels covered by the regulation are required to maintain insurance which meets the requirements of the PLR and will need to obtain a certificate issued by an EU/EEA Member State attesting that such insurance is in force.

Operators of vessels registered in an EU/EEA member state should obtain their certificate from that state, which will then be accepted as evidence of insurance when calling at any port or terminal in an EU/EEA member state. In the case of vessels registered in a non-EU/EEA state, the International Group has liaised closely with states, and understands that Germany has agreed to issue certificates to vessels registered in non EU/EEA States if they are calling at any EU port, and not just German ports. The International Group also understands that a number of EU/EEA states will issue certificates to such vessels if calling at a port in their state after December 31, 2012, including the United Kingdom<sup>1</sup>, France, Spain, Netherlands, Poland, Cyprus, Belgium<sup>2</sup> and Sweden<sup>3</sup>.

The necessary contact information for the above mentioned EU/EEA member states is attached.

Yours faithfully,

  
Joseph E.M. Hughes, Chairman & CEO  
Shipowners Claims Bureau, Inc., Managers for  
**THE AMERICAN CLUB**

*All clubs in the International Group have issued similar circulars.*

<sup>1</sup> The UK will give priority to applications submitted by UK registered vessels; then non EU/EEA registered vessels calling at UK ports, and if the UK Maritime & Coastguard Agency has capacity to process any applications from non EU/EEA registered vessels calling at any EU port then they will be handled, although it remains unclear if this will be the case for 31 December 2012.

<sup>2</sup> Provided that the owner or operator has residence or a company office in Belgium and a request has also been submitted for the vessel's registry.

<sup>3</sup> Applications by such vessels to Sweden should be made 30 days in advance of arrival.

## Summary of provisions concerning the rights of passengers travelling by sea in the event of accidents<sup>1</sup>

*[The carrier shall provide at least this information to the passengers prior to or on departure to the extent this Regulation applies to their carriage. This summary has no legal value]*

Regulation (EC) No 392/2009 on the liability of carriers of passengers in the event of accidents becomes applicable in the EU and EEA States<sup>2</sup> on 31 December 2012. It incorporates certain provisions of the 1974 Athens Convention (as amended by the 2002 Protocol) relating to the carriage of passengers and their luggage by sea.

The Regulation applies to all carriers in international carriage, including carriage between EU Member States, and certain types of domestic carriage, provided that:

- the ship is flying the flag of a Member State or is registered in a Member State, or
- the contract of carriage has been made in a Member State, or
- the place of departure or destination or both, according to the contract of carriage, are in a Member State.

It covers liability of the carrier in respect of passengers, their luggage and their vehicles, as well as mobility equipment, in the event of accidents.

This Regulation does not affect the right of carriers to limit their liability for accidents in accordance with the International Convention on Limitation of Liability for Maritime Claims of 1976, as amended by the 1996 Protocol in its up to date form.

Accidents under the Regulation include both 'shipping'<sup>3</sup> and 'non-shipping' incidents in the course of the carriage.

### RIGHTS OF PASSENGERS

#### **Right to compensation for death or personal injury**

Shipping incident: the passenger has a right to compensation from the carrier or the carrier's insurance provider of up to 250.000 SDR<sup>4</sup> in any event, with the exception of circumstances beyond the carrier's control (i.e. act of war, natural disaster, act of a third party). Compensation can go up to 400.000 SDR unless the carrier proves that the incident occurred without his fault or neglect.

Non-shipping incident: the passenger has a right to compensation from the carrier or the carrier's insurance provider of up to 400.000 SDR, if he/she proves that the incident was the result of the carrier's fault or neglect.

#### **Right to compensation for loss of or damage to cabin luggage**

Shipping incident: the passenger has a right to compensation from the carrier of up to 2.250 SDR, unless the carrier proves that the incident occurred without his fault or neglect.

Non-shipping incident: the passenger has a right to compensation from the carrier of up to 2.250 SDR, if he/she proves that the incident was the result of the carrier's fault or neglect.

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<sup>1</sup> Summary drafted in accordance with article 7 of Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 (OJ L 131, 28.5.2009, p. 24) on the liability of carriers of passengers by sea in the event of accidents.

<sup>2</sup> The Regulation will become applicable to EEA States in accordance with the Decision of the EEA Joint Committee No 17/2011 (OJ L 171, 30.6.2011, p. 15) following the relevant notifications by EEA States concerned.

<sup>3</sup> 'Shipping incident' for the purposes of this Regulation include: shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship or defect in the ship. All other incidents in the course of the carriage for the purposes of this summary are 'non-shipping' incidents.

<sup>4</sup> Loss or damage suffered as a result of an accident are calculated on the basis of "units of account", which are "Special Drawing Rights" (SDR) for Member States parties to the International Monetary Fund (all EU Member States). Information and conversion rates for SDR can be found on: <http://www.imf.org/external/np/exr/facts/sdr.htm>. On 26 November 2012 1 SDR = 1.18 EUR.

**Right to compensation for loss of or damage to luggage other than cabin luggage**

The passenger has a right to compensation from the carrier of up to 12.700 SDR (vehicles, including luggage carried in or on the vehicle) or 3.375 SDR (other luggage), unless the carrier proves that the incident occurred without his fault or neglect.

**Right to compensation for loss of or damage to valuables**

The passenger has a right to compensation from the carrier of up to 3.375 SDR for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments and works of art, only when these have been deposited with the carrier for the agreed purpose of safe-keeping.

**Right of a passenger with reduced mobility to compensation for loss of or damage to mobility equipment or other specific equipment**

Shipping incident: the passenger has a right to compensation from the carrier corresponding to the replacement value or the repair costs of the equipment concerned, unless the carrier proves that the incident occurred without his fault or neglect.

Non-shipping incident: the passenger has a right to compensation from the carrier corresponding to the replacement value or the repair costs of the equipment concerned, if he/she proves that the incident was the result of the carrier's fault or neglect.

**Right to an advance payment in the event of a shipping incident**

In case of death or personal injury, the passenger or other person entitled to damages has a right to an advance payment to cover immediate economic needs. The payment shall be calculated on the basis of the damage suffered, shall be made within 15 days and shall not be less than 21.000 EUR in the event of death.

**ELEMENTS OF PROCEDURE & OTHER MATTERS****Written notice**

In case of damage to cabin or other luggage, the passenger must give timely<sup>5</sup> written notice to the carrier. Failure to do so will result in the passenger losing his/her right to compensation.

**Time limits for exercise of the passenger's rights**

In general, any action for damages before a competent court must be introduced within a period of 2 years. The starting point of this limitation period may differ depending on the nature of the loss.

**Exemptions concerning liability**

Liability of the carrier can be reduced if he proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger.

The limits on the different amounts for compensation will not apply if it is proved that the damage resulted from an act of the carrier, or a servant or agent of the carrier or of the performing carrier, done with the intent to cause such damage or with knowledge that such damage would probably result.

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<sup>5</sup> In cases of apparent damage, written notice must be given before or at disembarkation for cabin luggage, and before or at re-delivery for other luggage. In cases of non-apparent damage to or loss of luggage, written notice must be given within 15 days from disembarkation or re-delivery (or scheduled re-delivery in the event of loss).

## State contacts – PLR

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