

Liability Implications of IATA Resolution 600b

By Glenn P. Patton

On March 17, 2008, an important resolution went into effect that impacts both scheduled air carriers and Indirect Air Carriers (“IAC”). The resolution was established by the International Air Transportation Association (“IATA”) and is known as IATA Resolution 600b (“600b”). 600b was designed to address antitrust concerns and also update the air waybill conditions of contract used by both scheduled air carriers and IACs in an attempt to create uniformity and incorporate two important treaties that regulate air freight: the Warsaw Convention (“Warsaw”) and the Montreal Convention (“Montreal”).

Previous IATA air waybills only referenced Warsaw, which expressly limited the carrier’s liability for lost or damaged cargo to \$9.07 per pound or \$20 per kilo. However, the Warsaw limitation of liability could be voided under certain circumstances. This led to inconsistencies in the interpretation of the statute and created problems for cargo liability underwriters who provided Indirect Air Carrier Legal Liability (“IACLL”) coverage to IACs. An underwriter would assume that an IAC’s liability was limited to \$9.07 per pound or \$20 per kilo and issue a policy referencing that amount. If the shipper declared a higher value for carriage, the IACLL would provide coverage for that amount, so long as premium was paid for the same. If a court ruled that the limitation of liability did not apply, however, an IAC could find its coverage to be insufficient to cover its liability.

In the United States, the Warsaw limit was fixed and did not take into consideration the fluctuations in exchange rates and the increase in value of goods. Warsaw was later amended by Montreal Protocol 4 (“MP4”), which changed the carrier’s limitation of liability to 17 Special Drawing Rights (“SDR”) per kilo.

An SDR is a “currency” that fluctuates according to a basket of major currencies. At present the current value of 17 SDRs is approximately USD \$27 (refer to www.IMF.org for more information on SDRs). Furthermore, MP4 eliminated several articles that made breaking the limitation of liability very difficult.

Not all countries have adopted MP4. In fact, many countries were parties to Warsaw or MP4, but not both. To encourage uniformity, the United States and its key trading partners adopted Montreal. Montreal was created to modernize what Warsaw had started as well as to update various amendments that had been made by Warsaw. Montreal preserved the 17 SDR limitation of liability as well as the previous changes made by MP4, which made breaking the limitation of liability very difficult. As with MP4, not all countries have adopted Montreal, so now situations exist in which an air carrier’s or IAC’s limitation of liability is still subject to Warsaw or other statutes — which may open them up to full liability for loss or damage to cargo.

Prior to 600b, the IATA air waybill addressed the carrier’s limitation of liability for situations in which Warsaw did not apply:

Except as otherwise provided in carrier’s tariffs or conditions of carriage, in carriage to which the Warsaw Convention does not apply, carriers’ liability shall not exceed USD \$20 or the equivalent per kilogram of goods lost, damaged or delayed, unless a higher value is declared by the shipper and a supplementary charge paid.

Due to antitrust concerns, 600b does not establish a limitation of liability. 600b states:

For carriage to which neither the Warsaw Convention nor the Montreal Convention applies, Carriers’ liability limitation shall not be less than the per

kilogram monetary limit *set out in the Carrier’s tariffs or general conditions of carriage for cargo* lost, damaged or delayed, provided that any such limitation of liability in an amount less than 17 SDR per kilogram will not apply for carriage to or from the United States.

The wording “set out in the Carrier’s tariffs or general conditions of carriage for cargo” has created a potential problem for IACs with respect to their limitation of liability, as ultimately 600b was designed for use by air carriers, not an IAC. Air carriers generally maintain tariffs that outline their limitation of liability in circumstances in which neither Warsaw nor Montreal apply, but it is far less common for an IAC to maintain such a tariff. In the absence of a tariff, if an IAC issues an air waybill that incorporates the 600b wording verbatim and provides door-to-door service, the IAC may be unable to assert a limitation of liability for pre- or post-air carriage transport or handling of the shipment. Under such circumstances an IAC could be held liable for the full invoice value of the lost or damaged cargo. Furthermore, there could be situations in which an IAC’s IACLL coverage will not respond to such losses if the policy wording specifically states that it will only cover the legal liability of the IAC in accordance with the terms of its house air waybill on file with underwriters.

Freight traveling interstate by rail or truck in the United States is governed by 49 U.S.C. Section 14706 (“Carmack”). Some carriage is exempt from Carmack. Section 13506 states in pertinent part:

Neither the Secretary nor the Board has jurisdiction under this part [49 U.S.C. Section 13101] over—transportation of property . . . by motor vehicle as part of a continuous movement which, prior

or subsequent to such part of the continuous movement, has been or will be transported by an air carrier. . . .

If the shipment is “continuous” and “will be transported by air,” an IAC can still assert the limitation of liability under federal law, if the air waybill and tariff give the shipper a notice of the limitation of liability and a fair opportunity to declare a value for carriage. However, some moves are governed by state law or surface freight regulations established by other countries that could make an IAC liable for full invoice value or other limitation of liability under circumstances in which neither Warsaw nor Montreal apply.

It would seem logical that 600b should have used wording similar to Warsaw rather than include a reference to a tariff when identifying an air carrier or IAC’s limitation of liability for shipments in which neither Warsaw nor Montreal applies. Since most air carriers maintain a

tariff, it is probable that they felt it was not an issue of concern. Yet IACs that do not have a tariff can be seriously impacted by the new wording.

Given the potential liability implications of 600b, it would be prudent for an IAC to modify or amend a 600b air waybill’s wording to reflect a limitation of liability in situations in which neither Warsaw nor Montreal applies. In addition, IACs should strongly consider establishing a rules tariff that clearly limits their liability. In this context, they should consult with a reputable transportation attorney to come up with acceptable wording. It is equally important for them to consult their insurance brokers/underwriters to make certain that they have proper IACLL coverage and to make certain that they are covered for their liability as stated in their air waybills and tariffs.

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