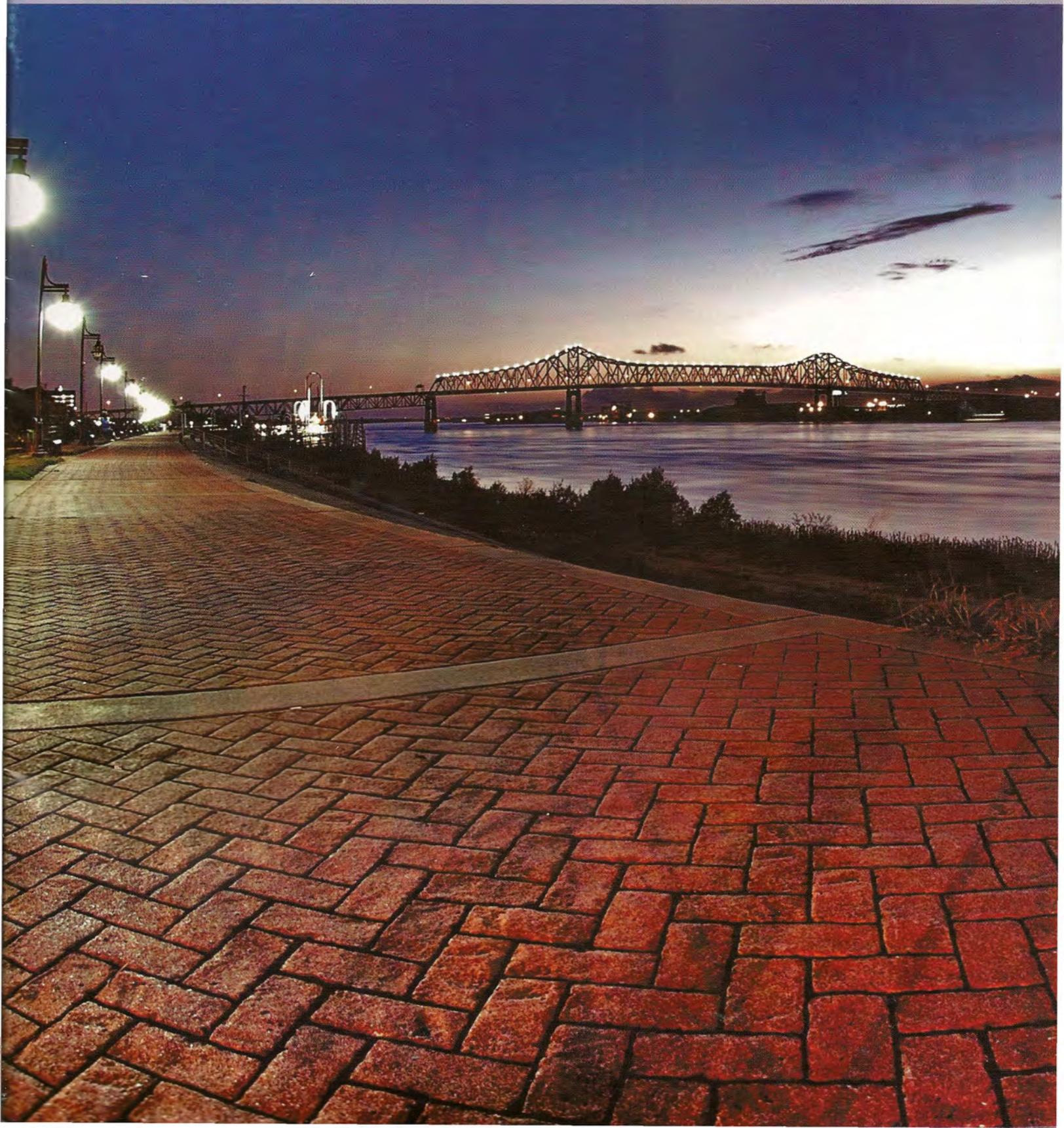


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# Athens Convention, Part 2: 2002 Protocol becomes effective in April 2014

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On April 23, 2013 — more than a decade after the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (2002 Protocol) was drafted — Belgium became the tenth nation to ratify it. With this ratification, the 2002 Protocol will supersede the provisions of the 1974 Athens Convention and its 1976 Protocol, which govern passenger-ship-carrier limitations on personal injury and death.<sup>1</sup> As the United States is not a signatory to the Athens Convention, the 2002 Protocol is only potentially applicable to U. S. passengers as a contractual provision where the voyage does not start, end, or include a U.S. port.

I discussed the 1974 Convention and its 1976 Protocol at length in last month's article, "Are you worth only 46,666 SDRs if you die or are injured when cruising abroad?" This article focuses on the provisions of the 2002 Protocol that go into effect on April 23, 2014.<sup>2</sup>

Other countries that ratified the 2002 Protocol are Albania, Belize, Denmark, Latvia, Netherlands, Palau, Saint Kitts and Nevis, Serbia, and Syrian Arab Republic.<sup>3</sup> The European Union also ratified it.<sup>4</sup> The 2002 Protocol makes significant changes to compensation in the event of personal injury or death. For the first time, the 2002 Protocol requires passenger lines to hold insurance.<sup>5</sup> It also outlines jurisdictional and statute of limitations issues.

Under the 2002 Protocol's new language for Article 3, carriers will now be liable for a passenger's personal injury or death caused by a shipping incident up to 250,000 special drawing rights (SDRs)<sup>6</sup> unless the



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carrier proves that the incident a) "... resulted from an act of war, hostilities, civil war, insurrection, or natural phenomenon of an exceptional, inevitable and irresistible character; or, b) was wholly caused by an act or omission done with the intent to cause the incident by a third party."<sup>7</sup>

If the loss is greater than 250,000 SDRs,<sup>8</sup> the carrier is further liable up to a maximum of 400,000 SDRs.<sup>9,10</sup>

These rates are a significant increase over the previous limits of liability.<sup>11</sup> A shipping incident is defined as "... shipwreck, capsizing, or stranding of the ship, explosion or fire in the ship, or defect in the ship."<sup>12</sup> Defect in the ship means:

... any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation or disembarkation of passengers; or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances."<sup>13</sup>

Fault or neglect of the carrier is defined as including "... the fault or neglect of the servants of the carrier, acting within the scope of their employment."<sup>14</sup> If a shipping incident is not the cause of the personal injury or death, the carrier is liable if the incident that caused the loss was due to the fault or neglect of the carrier.<sup>15</sup> The carrier's liability only relates to loss arising from incidents incurred in the course of

carriage, and the burden of proof lies with the claimant.<sup>16</sup>

The 2002 Protocol introduces a new section, Article 4bis. Under the new article, carriers are required to carry compulsory insurance to cover liability for personal injury or death, and this insurance cannot be less than 250,000 SDRs per passenger on each distinct occasion.<sup>17</sup> “Any claim for compensation covered by insurance . . . pursuant to this Article may be brought directly against the insurer . . .”<sup>18</sup> Any sums provided by this insurance shall be made available exclusively for claims brought under the 2002 Protocol.<sup>19</sup>

Article 16, paragraph 3 of 2002 Protocol provides statutes of limitation for claims brought under the Athens Convention. The law of the court where the case is filed governs suspension and interruption of statute of limitations periods.<sup>20</sup> However, the 2002 Protocol provides a peremption-style limit on those time periods.

An action under the 2002 Protocol to the Athens Convention cannot be filed more than five years from the date of disembarkation (or the date disembarkation should have taken place) or, if earlier, three years from the date the claimant knew or should have known of the injury, loss, or damage caused by the incident.<sup>21</sup>

This represents a significant change from Article 16, paragraph 3 of the 1974 Athens Convention and its 1976 Protocol. The earlier version time bars actions for personal injury after two years from the date of disembarkation. Actions for death are time barred after two years from the date the passenger should have disembarked. Actions for personal injury during the carriage that later result in death after disembarkation are time barred from the date of death provided that the death is not more than three years from the date of disembarkation.<sup>22</sup>

Additionally, the 1974 Athens Convention and its 1976 Protocol, Article 16 provided that while suspension and interruption of statute of limitations periods are governed by the law of court where the case is filed, a case is time barred if it is brought more than three years from the date of the disembarkation.<sup>23</sup>

Under the 2002 Protocol, jurisdictional limitations provided by Article 17 are similar those under the 1974 Athens Convention and its 1976 Protocol. The claimant has the option of filing a lawsuit under the Athens Convention in any one of the following jurisdictions provided that it is located in a state party to the Athens Convention and it is in line with the jurisdictional requirements of that state:

- a) the court of the state of permanent residence or principal place of business of the defendant;
- b) the court of the state of departure or destination according to the contract of carriage;
- c) the court of the state of the domicile or permanent residence of the claimant if the defendant has a place of business and is subject to jurisdiction in that state; or
- d) the court of the state where the contract of carriage

was made if the defendant has a place of business and is subject to jurisdiction in that state.<sup>24</sup>

Under the 2002 Protocol, these jurisdictional rules also apply to actions made directly against the carrier’s insurer under new Article 4bis.<sup>25</sup>

Under the 2002 Protocol, the invalidity of certain contractual provisions under Article 18 are similar to those under the former 1974 Athens Convention and its 1976 Protocol.<sup>26</sup> The 2002 Protocol makes null and void any contractual provisions that attempt to:

- 1) contractually limit the liability of the carrier or anyone else liable under the Athens Convention for personal injury or death,
- 2) provide a lower limit of liability for personal injury or death than those limits fixed by the 2002 Protocol,
- 3) shift the carrier’s burden of proof, or
- 4) restrict the jurisdictional options provided by Article 17.<sup>27</sup>

Thus, the 2002 Protocol to the Athens Convention significantly increases the carrier’s limits of liability for personal injury and death. It also provides mandatory insurance to cover claims. The 2002 Protocol further changes the statute of limitations periods applicable to claims filed under the Athens Convention. Since the United States is not a party to the Athens Convention, the ultimate question for U.S. passengers is whether cruise lines will adopt the 2002 Protocol amendments into their cruise contracts after April 2014.

## Endnotes

1. The Athens Convention also limits liability for loss or damage to luggage and vehicles; however, this article focuses solely on the limitations for personal injury and death.
2. <http://www.imo.org/mediacentre/pressbriefings/pages/13-athens-2002.aspx>.
3. *Id.*
4. *Id.*
5. For a full compilation of the Athens Convention Protocol, [http://library.arcticportal.org/1700/1/Athens\\_convention\\_compilation.pdf](http://library.arcticportal.org/1700/1/Athens_convention_compilation.pdf). For the 2002 Protocol only, see, <http://www.transportrecht.org/dokumente/AthenProt2002e.pdf>.
6. An SDR is a “special drawing right” noted by Article 9 of the 1976 Protocol to the Athens Convention as being the unit of account used by the Athens Convention and defined by the International Monetary Fund. You can find the daily exchange rate for SDRs at <http://www.imf.org>.
7. See the 2002 Protocol at Article 4, which replaces language in Article 3, paragraph 1 of the Athens Convention.
8. 250,000 SDRs were valued at approximately \$372,135.67 (U.S.) as of July 9, 2013. See IMF website for daily exchange (<http://www.imf.org>).

9. 400,000 SDRs were valued at approximately \$595,417.07 (U.S.) as of July 9, 2013. See IMF for daily exchange (<http://www.imf.org>).
10. See the 2002 Protocol at Articles 4 and 6, which replace the language of Articles 3 and 7, respectively. Article 7, Section 2 now provides that a state party to the 2002 Protocol can regulate increased limits of liability although they cannot reduce the limits below those required by the 2002 Protocol.
11. Article 7 formerly limited a carrier's liability to a maximum of 46,666 SDRs for personal injury or death, or approximately \$69,464.33 (U.S.) as of July 9, 2013. These rates remain applicable until the 2002 Protocol comes into effect on April 23, 2014. See <http://www.admiraltylawguide.com/conven/protopassengers1976.html>.
12. See the 2002 Protocol at Article 4, which replaces language in Article 3, paragraph 5(a) of the Athens Convention.
13. See the 2002 Protocol at Article 4, which replaces language in Article 3, paragraph 5(c) of the Athens Convention.
14. See the 2002 Protocol at Article 4, which replaces language in Article 3, paragraph 5(b) of the Athens Convention.
15. See the 2002 Protocol at Article 4, which replaces language in Article 3, paragraph 2 of the Athens Convention.
16. See the 2002 Protocol at Article 4, which replaces language in Article 3, paragraph 6 of the Athens Convention.
17. See the 2002 Protocol at Article 5, which introduces new language as Article 4bis, paragraph 1 of the Athens Convention.
18. See the 2002 Protocol at Article 5, which introduces new language as Article 4bis, paragraph 10 of the Athens Convention.
19. See the 2002 Protocol at Article 5, which introduces new language as Article 4bis, paragraph 11 of the Athens Convention.
20. See the 2002 Protocol at Article 9, which replaces language in Article 16, paragraph 3 of the Athens Convention.
21. See the 2002 Protocol at Article 9, which replaces language in Sections 3(a) and 3(b) of the Athens Convention.
22. See <http://www.admiraltylawguide.com/conven/passengers1974.html>, at Article 16.
23. *Id.*
24. See, the 2002 Protocol at Article 10, which replaces language

in Article 17, paragraphs 1(a), 1(b), 1(c), and 1(d) of the Athens Convention.

25. See the 2002 Protocol at Article 10, which replaces language in Article 17, paragraph of the Athens Convention.
26. See <http://www.admiraltylawguide.com/conven/passengers1974.html> at Article 16.
27. See the 2002 Protocol at Article 12, which introduces replaces language in Article 18 of the Athens Convention.



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