

## ATHENS CONVENTION: MAKE IT A DOUBLE

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*Cruising is one of the fastest growing areas of the travel industry and inevitably accidents will occur, not only onboard but also embarking and disembarking and while on shore. Different legal regimes apply to whether the accident occurred on land or sea and which one applies can make a significant difference to both liability and compensation. In this article the author examines two recent cases where the defendants pleaded that the Athens Convention applied in the hope that this would exempt them from liability.*

As with the proverbial bus, you wait ages for a reported Athens Convention case then two come along in the same month.

The first was a Court of Appeal Decision, [Collins v Lawrence \[2017\] EWCA Civ 2268](#). It related to the meaning of disembarkation. The claim involved a passenger who had been on a fishing trip off the coast of Kent when he injured himself disembarking which was by way of free-standing, semi-permanent steps onto the beach.

Article 1(8) of the Athens Convention defines “carriage” as follows:

“(a) ... the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation; ...”

The main argument related as to whether the Athens Convention two year time bar applied to the matter or not. If it did, then the matter was time barred before the action had been commenced. Whether the time bar applied turned on whether disembarkation had been completed, i.e. had carriage been completed or not, pursuant to Article 1(8). If it had not then

the passenger was still aboard the vessel and thus the claim would be time barred. If the incident occurred post-disembarkation then he was no longer aboard - therefore the Athens Convention would not apply and the "usual" three year personal injury limitation would apply.

At first instance, the judge found that the passenger had slipped on a wet wooden board placed on the bottom step. He had not reached the beach and as such was still within the confines of Article 1(8). Therefore the claim was time barred.

At the Court of Appeal the claimant's application was dismissed. The Court held that the process of disembarkation covered the whole period of moving from the vessel to a safe position on the shore and while a person was still using equipment which facilitated disembarkation, such as the steps and the board in this case, the person was still in the process of disembarking. In this case, disembarkation had not been completed until the claimant was ashore, meaning on the shingle beach.

The second reported Athens Convention case in November 2017 was another Court of Appeal decision. In *Lawrence v NCL (Bahamas) Ltd (The "Norwegian Jade")* [2017] EWCA Civ 2222, the claimant had injured himself whilst slipping on a tender taking him from a cruise ship to the island of Santorini.

At first instance the claimant had been awarded £5,197 in a claim against the cruise ship operator.

This case was the cruise ship operator's application for permission to appeal against the decision of the Admiralty Registrar.

The background to the matter was that the claimant had booked a holiday to include flights from the UK to Venice, hotel accommodation in Venice, a cruise in the Mediterranean on the *Norwegian Jade*, returning to Venice and then flights back to the UK.

On 2 July 2013, whilst on a tender boat in the Greek port of Santorini, the claimant tripped and injured himself. The tender was owned and operated by the Union Boatmen of Santorini

(“UBS”), rather than the defendant. The defendant owned and operated the cruise ship *Norwegian Jade*.

The claimant brought a claim against the defendant under the Athens Convention and at first instance before the Admiralty Registrar, was successful.

The relevant parts of the Athens Convention to this matter were as follows:

- Art 1.1(a) – provides that the “carrier” is the person “by or on behalf of whom the contract has been concluded, whether the carriage is actually performed by him or by a performing carrier”.
- Art 1.1(b) – provides that the “performing carrier” is the person “other than the carrier being the owner, charterer or operator of a ship, who actually performs the whole or part of the carriage”.
- Art 1.8(a) provides that “Carriage” covers “...the period during which the passenger and/or his cabin luggage are on board the ship in the course of embarkation and disembarkation, and the period which the passenger and his cabin luggage are transported by water from the land to the ship or vice versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier ...”
- Art 3.1 – “The carrier shall be liable for damage suffered as a result of ... personal injury to a passenger ... if the incident which caused the damage so suffered occurred in the course of the carriage was the fault or neglect of the carrier or his servants or agents acting within the scope of their employment.”
- Art 4.1 – “If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier will nevertheless remain liable for the entire carriage according to the provisions of this Convention ...”
- Art 4.2 – “The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts or omissions of the performing carrier and of his servants and agents acting in the scope of their employment.”

The Admiralty Registrar held that the defendant was the contractual carrier, the incident occurred during the carriage, that the UBS were a performing contractor and that the incident was caused by the neglect of the performing carrier, namely not adequately marking a hazardous step on the tender.

The defendant's application for appeal was based on the following grounds:

1. That they were not the contractual carrier but rather the travel agent with whom the claimant had booked the holiday;
2. That the incident did not occur during the course of carriage; and
3. That there was no neglect in terms of the lack of warning markings on the step.

The Court of Appeal refused permission to appeal on these three points for the following reasons:

1. The appeal had no real prospect of success. There was no evidence that the travel agent had been the contractual carrier: on the contrary, the documentation showed that the defendant was the contractual carrier.
2. The language of the Convention did not imply that for liability to arise when the passenger was being transported from the ship, the passenger had to be transported along with their luggage, as would be the case on embarkation or disembarkation, but not on intermediate trips.
3. The appellant's point regarding fault or neglect in essence amounted to a point that the judge had been wrong in his finding of fact that the step had been insufficiently marked. The cruise ship operator was liable for the fault and neglect of the performing carrier.

Although both claims were of low value they both discussed and decided significant elements of the Athens Convention and when it does and does not apply. These issues are important and

should be borne in mind in any case where an injury occurs in relation to passenger vessels as the Convention will have an effect on time bars, as in *Collins*, and also allows the defendant to limit their liability.

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[See also *Rosemary Cairns v Northern Lighthouse Board (First Defenders) and Calypso Marine Ltd (Second Defenders)* [2013] CSOH 22 a Scottish case which also discussed the application of the Athens Convention. Ed.]