

“Nuts and Bolts” – The Montreal Convention

GENERAL TERMS AND ISSUES

Date of Entry Into Force

4 November 2003 for all ratifying countries, including USA

International Carriage Defined:

- No significant change from Warsaw.
- Travel between two signatory nations is Montreal “International Carriage.”
- Critical Point. Travel from signatory nation to any nation and back again is also Montreal Travel. Thus, regardless of the carrier, a flight ticketed JFK/LHR/JFK would still constitute Montreal International carriage, as would a ticketed JFK/ZRH/JFK. (Neither the UK nor Switzerland have ratified the Montreal Convention).
- The critical document is the contract between the parties, i.e., the passenger ticket or, presumably “E-Ticket.”

(Source: Montreal Art. 1(2)).

Jurisdiction – In which Country can suit be brought?

- The Montreal Convention retains the jurisdictional provisions of the Warsaw Convention for **baggage and cargo**. (final destination, place where contract made, carrier’s principal place of business/domicile).
- In instances of death and personal injury, in addition to the above, suit may also be brought in the country where the passenger permanently resided at the time of event giving rise to the claim.

(Source: Montreal Art. 33).

Ticket, Baggage and Cargo Documentation formerly “Mandatory Particulars”

- No more “mandatory particulars.” Failure to deliver ticket or baggage check and failure to deliver ticket or baggage check with all of the required items and notifications no longer leads to a waiver of liability limits.

(Source: Ticket/Baggage Check – Montreal Art. 3(5); Air Waybill- Montreal Art. 9)

- However, carrier **is liable** to, and must **indemnify**, consignor of cargo for damages caused by carrier’s failure to properly prepare documentation. Montreal Art. 10(3).
- Question: Is this liability limited? It is not clear when read with Article 22, and case law will have to determine the meaning of the term, “indemnify.” For example, what if improper documentation results in a “total constructive loss” of time-critical goods. Is this a “delay” for which liability is limited under Article 22 or is the consignor entitled to full compensation/“indemnity” under Article 10?

LIABILITY AND COMPENSATION

Personal Injury/Death

- Article 17 preserves, in substance, the Warsaw terms of “Accident” and requirement that death/injury occur in the course of international carriage, including the course of embarking/disembarking. Montreal Art. 17(1).

Passenger Compensation – Injury/Death

- Strict Liability up to 100,000 SDRs (approx. US\$140,000). Beyond SDR 100,000, carrier may prove that death/injury was not its fault or, alternatively, that the injury/death was caused solely by the act of another. Montreal Art. 21.
- The Carrier is also required to make advance payments to injury and death claimants to the extent required by local law. These payments are not an admission of liability and may be offset against ultimate recovery. Montreal Art. 28.

Baggage Liability

- **Checked baggage** must be in the custody/control of the carrier when lost/damaged, and carrier is not liable for damage caused by inherent defect in the checked baggage. Montreal Art. 17(2).

- Carrier only liable in the event the loss/damage to **carry-on baggage** that is the fault of the carrier. (This provision, in particular, will need some case law to sort out).

Baggage Liability Limits

- **Gone are weight-based limits.** The liability of the carrier is limited to 1,000 SDRs per passenger (approx. US\$1,400.00) for both checked and unchecked baggage. Montreal Art. 22(2). For checked baggage, the carrier may defend based upon inherent defect. Montreal Art. 17(2). For carry-on, the carrier may defend against acts not attributable to the carrier. Montreal Art. 17(2). In the case of both carry-on and checked baggage, the limitations of liability may be lifted in instances of deliberate or reckless conduct by the carrier and its servants/agents. Montreal Art. 22 (5). **Note – as set forth below, there is no such express exception for cargo.**

Cargo Liability

- Carrier liable for loss or damage to cargo, but not if caused by inherent defect, improper documentation by consignor, or defective packaging. Montreal Art 18(2).
- In a mixed-mode cargo shipment (e.g., road and air), transport by air does not include off-airport transportation by non-air means. However, damage/loss will be presumed to have occurred in the course of carriage by air absent proof to the contrary. Montreal Art. 18(4).
- Liability for loss/damage to cargo is limited to 17 SDRs per kilo. Liability is limited further to the weight of the actual items lost/damaged/delayed (i.e., partial loss of larger shipment). However, some allowance is made for partial loss that affects the value of the whole shipment. There is no willful misconduct-like exception to break this limit. Montreal Art. 22(6).

Delay

- Carrier responsible for delay of baggage, cargo, and passengers, but not if carrier can prove that it took reasonable measures to avoid the delay. Montreal Art. 19.
- Liability Limits, Delay:
 - Delay of Person – limited to 4,150 SDRs. (Montreal Art. 22(1))

- Delay/loss/destruction of Baggage – limited to 1,000 SDRs. checked or unchecked (Montreal Art. 22(2))
- Delay/loss/destruction of Cargo – 17 SDRs per kilo.
- As you would expect, with respect to baggage and cargo, the passenger/shipper may declare a higher value and pay a supplementary fee. (Montreal Art. 22 (2) & (3))
- All of the above “limits,” even if a higher value is declared, are still subject to proof of actual value.

Defenses:

- In all types of claims (baggage/PAX/cargo) Carrier may still defend itself and be entirely exonerated based upon the contributory fault of the party seeking compensation or the party from whom the claimant derives his/her rights (e.g., deceased claimant or assigned/subrogated claims). Montreal Art. 20.
- With respect to passenger death/injury, the carrier may also defend damages above SDR 100,000 on the basis of the negligence of third-parties and on the ground that that the accident was not caused by the wrongful conduct of the carrier. Montreal Art. 21(2).
- In all instances, the carrier retains right of recourse for indemnity or contribution against other parties causing or contributing to the loss. Montreal Art. 37.

Lesser Limits Void

- Carrier may agree to higher limits of liability, but may not undercut the Montreal Convention. Additionally, the carrier may waive defenses under the Convention (Montreal Arts. 25-27).

OTHER ISSUES

Exclusivity

- The Montreal Convention is the exclusive recovery method for referenced recoveries. Punitive and similar type damages are not recoverable. Montreal Art. 29.

Notice:

- Baggage damage: Must provide written within notice seven days

- Cargo Damage: Must provide written notice within fourteen days
- Delay of baggage or cargo: Must provide written notice within 21 days of receipt of baggage or cargo.
- Lack of timely notice is absolute defense.

(Source: Montreal Art 31(2) (4))

Successive Carriage

- In instances of passenger claims for death, injury, or delay, the carrier responsible for the incident is the proper party. Montreal Art. 36(1)
- With respect to baggage and cargo, the first carrier (claim by PAX or consignor), the last carrier (claim by PAX or consignee) and the carrier having control of the baggage/cargo at the time of the damage/loss/delay (claim by any proper claimant) are jointly and severally liable. Montreal Art. 36(3).
- Fees and Costs. The Montreal Convention has a provision similar to a judicial “offer of judgment” that affords some protection to a carrier’s good-faith settlement efforts. While allowing for the recovery of costs and interest in accordance with local law, the carrier will not be liable for these costs if, within six months of the claim, or prior to the filing of legal proceedings, the carrier has offered to settle for an amount at least equal to the compensatory damages ultimately awarded. Montreal Art. 22(6).

Limitations

- Right to all claim types is **extinguished** if not brought within two years from arrival or date of scheduled arrival. Montreal Art. 35. We would expect that with this language, as in old Warsaw, this limitation period is an absolute “condition precedent” to suit and subject to no tolling etc.