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Total Limit Distribution awards

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The Total Limit Distribution proposition

Where there is an air accident, the total amount of the liability insurance held by the air carrier should always be paid out in full, with it being split between the passenger victims or, where deceased, their families.



- Liability insurance is always subject to a maximum limit.
 - Assuming insurance with a combined single limit of US\$1.5 billion (any one occurrence) and an accident with 200 passengers on board, all of whom tragically died, a Total Limit Distribution would mean a pay out to the family of each victim of US\$7.5 million.



- Rough estimate of potential compensatory damages for the death of a 45 year old wage earner (in an administrative position) leaving behind a partner and one teenage child:

County/Region	AMOUNT IN USD
USA	\$4,500,000
Brazil	\$2,500,000
France	\$2,200,000
UK	\$2,000,000
Canada	\$1,700,000
Australia	\$1,400,000
Spain	\$540,000
New EU	\$450,000
Asia	\$250,000 – \$650,000
Egypt	\$190,000

- The obligation of insurers is to meet the legal liability of the air carrier.
 - There would need to be a legal obligation for the carrier pay out on the basis of a Total Limit Distribution if it is to be enforceable.



- The liability of air carriers to passengers and their families is governed by the Montreal Convention 1999.
 - 3rd preamble: “RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for **equitable compensation based on the principle of restitution.**”
 - 5th preamble: “CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving **an equitable balance of interests.**”

- The liability of air carriers to passengers and their families is governed by the Montreal Convention 1999 (continued).
 - Article 29 (second sentence):

in any action for damages “punitive, exemplary or any other non-compensatory damages **shall not be recoverable.**”

- An obligation in the form of a Total Limit Distribution would impose non-compensatory damages.

It would therefore be inconsistent with the Montreal Convention 1999.

- A Total Limit Distribution obligation could only be brought into force by a revision to the Montreal Convention 1999.



- Passenger interests have no direct legal relationship with an air carrier's liability insurers.
 - Passenger interests could not have any greater right against insurers than they would have against the air carrier itself.
 - Inconsistency with the Montreal Convention 1999 could not be bypassed by placing a Total Limit Distribution obligation directly upon the air carrier's insurers.



- It is doubtful that any attempt to revise the Montreal Convention 1999 so as to add a Total Limit Distribution obligation would be successful.



- Arguments against a Total Limit Distribution obligation:
 - Only compensatory damages should be recoverable.
 - It would give the victim, or their family, a vast sum of money, out of all proportion to what would normally be recognised as their loss according to law.
 - It would lead to a disparity with what would otherwise be recoverable under any single State's law.

- Arguments against a Total Limit Distribution obligation (continued):
 - There is a wide divergence as between States as to the levels of damages that are awarded and hence what those States consider to be fair, just and reasonable levels of damages. It is difficult to see how international consensus could be reached on a single standard, especially one likely to be far above what a large number of States would apply as their norm.
 - A Total Limit Distribution payment obligation would be likely to have a profound effect upon insurers' ability, or willingness, to provide insurance to air carriers as they do currently.
 - With a detrimental knock-on effect upon air carriers.

- Arguments against a Total Limit Distribution obligation (continued):
 - Potential knock-on effect on passengers generally.
 - How would any new law/obligation be structured?

Conclusion

- The notion of a Total Limit Distribution obligation should be rejected.

Thank you.

Questions?

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