CLIENT ALERTS & INSIGHTS

Inflation Strikes Again: Limitations of Liability for International Air Transportation are Rising

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The limitation of liability for cargo that is lost or damaged during international air transportation was increased on December 28, 2024, from 22 Special Drawing Rights ("SDRs") per kilogram to 26 SDRs per kilogram.

The change in international law is due to an increase under the Montreal Convention 1999 ("Montreal Convention"), formerly known as the Convention for the Unification of Certain Rules for International Carriage by Air, which applies to traffic with signatory nations. The change was recently announced by the International Civil Aviation Organization ("ICAO"), a United Nations agency that leads international alignment of technical standards and strategies for international air shipments.

How is the Limitation Calculated: An SDR is a unit of monetary measure defined by the International Monetary Fund ("IMF"). Its value is determined by the IMF based upon a basket of five currencies: the US dollar, the euro, the Chinese renminbi, the Japanese yen, and the British pound sterling. The SDR metric is used to normalize international limitations across a number of transportation modalities including for certain ocean shipments (under the Hague-Visby Rules), for EU road shipments (under the Convention on the Contract for the International Carriage of Goods by Road). For illustration, as of November 25, 2024, one SDR was approximately equivalent to US $1.31. Here, the increased limitation of liability for air cargo loss and damage will result in a new limitation of liability of approximately US $34.00 per kilogram which is an increase from approximately US $28.80 per kilogram.

How Inflation Impacts the Limitation: The Montreal Convention requires review of the established limitation of liability every five years. This review takes into account the effective rate of inflation. This 2024 increase is the fourth review since the treaty came into force in 2003. It amounts to an 18% increase over the prior limitation. The most recent prior increase in the limitation of liability occurred in December of 2019, resulting in an approximately 15.5% increase from 19 SDRs to 22 SDRs.

Practical Implications of the Increase: The Montreal Convention governs all international carriage of persons, baggage, or cargo performed by aircraft for reward between or within member countries. While the Montreal Convention does not technically govern United States domestic air shipments, many parties to domestic air transportation contracts also rely on the Montreal Convention in negotiating terms and conditions of carriage. In practice the limitation means that the recovery a commercial user of international air cargo services may recover is limited to the lesser of actual loss or the 26 SDR per kilogram measure of damages. Parties are free to contract for higher limitations at commensurate rates but may not contract for lower limitations.

What Does this Increase Mean for Shippers and Providers

: The limitation in the Montreal Convention effectively creates a floor for a carrier's cargo liability exposure during international air shipments. Simply put, this increase in SDRs will potentially expose air transport providers, indirect air carriers, forwarders, and their insurers to approximately 18% greater cargo claims payments year over year. This also means that there will be a correspondingly greater recovery for shippers of those goods. It stands to reason that the cost of international air transportation services may see commensurate increases as service providers seek to internalize exposure.

Best Practices During Change: Now is the time for all parties involved in commercial air transportation to review and update their current template air waybills, contracts, or other service terms and conditions to conform with this change. In the absence of carefully updated terms, the parties to air transport risk falling appreciably outside market, which may impact volumes of tender or "leaving money on the table" for resolution of cargo claims, which may impact the total cost of transportation.

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