[Public Notice 2173]

Shipping Coordinating Committee Subcommittee on Standards of Training and Watchkeeping; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 am on Monday, April 10, 1995, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington DC 20593–0001. The purpose of the meeting is to review the outcome of the twenty-seventh session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW), particularly as it relates to the revision of the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) and preparations for 1995 STCW Conference to be held at IMO from June 26 to July 7, 1995.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: February 21, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 49152 and Order 95–2–44]

Order on Discussion Authority Regarding Limits and Conditions of Passenger Liability Established by the Warsaw Convention

SUMMARY: We are publishing the entire order as an appendix to this document.

DATES: Issued in Washington, D.C., February 22, 1995.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Peter Bloch, U.S. Department of Transportation, Office of the Assistant General Counsel for International Law, Room 10105, 400 Seventh Street, S.W., Washington, D.C. 20590. (202) 366–9183.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

Order

On September 24, 1993, the International Air Transport Association (IATA) filed an application requesting approval of, and antitrust immunity for, intercarrier discussions concerning the limits and conditions of passenger liability established by the Warsaw Convention (Convention).

IATA states that pending ratification and entry into force of Montreal Protocols Numbers 3 and 4 to the Convention, there is a need for interim passenger liability rules that are adequate to current day standards of compensation. The current regime, as embodied in the Montreal intercarrier agreement of 1966 (Agreement) and which covers all carriers serving the United States, establishes a liability limit of $75,000 for personal injury and death.[1] Adjusted for inflation, IATA notes that this amount would be over $300,000 in today's dollars. Despite this, adherence to the Agreement's $75,000 limit continues to be a condition for all carriers to operate to the Untied States. Against this background, IATA states that air carrier parties to the Agreement need the authority to discuss bringing the Agreement up to date. It states that such discussions may include possible amendments to, or replacements for, this Agreement. IATA states that its request for discussion authority and antitrust immunity is consistent with Department precedent.

No answers were filed in response to the IATA application.

Decision

The Department has decided to grant the requested discussion immunity subject to the conditions described below. The United States has a firmly-established policy that liability limits should be adequate to contemporary standards of compensation and that the current regime needs to be updated to provide sufficient protection to the traveling public. We are granting the application because the discussions proposed by IATA may bring about an interim solution that will serve either until Montreal Protocols 3 and 4 are ratified and enter into force, or until negotiation and entry into force of a new Convention meeting all U.S. requirements.

We may authorize intercarrier discussions and grant them antitrust immunity where we find that the discussions are necessary to meet a serious transportation need or to achieve important public benefits and that such benefits or need cannot be secured by reasonably available alternatives that are materially less anticompetitive.[2] 49 U.S.C. 41308, 41309.

The purpose of the discussions in this case is to secure the important public benefit of a liability regime that reflects contemporary standards of compensation. The discussions are consistent with a strong and long-standing Department policy of seeking a uniform set of passenger liability rules that meet today's needs.

We find that there are no reasonably available alternatives to the requested discussions having a materially less anticompetitive effect. The best alternative, of course, is an international agreement such as the Montreal Protocols and Supplemental Compensation Plan, but it is because that approach has proven to be such a complex and lengthy one, and given the pressing need to have an updated liability regime, that we are entertaining this discussion authority request. Another alternative would be to allow individual carriers to apply to the Department for modifications to their tariffs and conditions of carriage to implement individual new special contracts under Article 22 of the Convention. We do not believe that approach is workable. Some carriers would probably attempt this, while others would not. Those that did would likely offer contracts with different terms from one another. One clear and unacceptable result of such an approach would be that portions of the traveling public would not be adequately protected. A final alternative would be for the United States to unilaterally establish a regime that all carriers operating to the United States would have to abide by. This approach, however, could engender such significant opposition from our trading partners that our ability to implement the plan unilaterally could very well be jeopardized.

We also find that the requested approval and grant of antitrust immunity to discuss an interim liability regime is appropriately limited in nature and well-calculated to achieve a result consistent with our objective of having in place a liability regime that reflects contemporary standards of compensation. IATA seeks discussions geared toward producing a temporary arrangement, recognizing the immediate need to increase the liability limits through a uniform system of rules. This is fully consistent with our objectives. IATA would announce a place and date for such discussions and has said that it would invite all its member carriers.

IATA requests that we not impose conditions on such discussions that would restrict the ability of the participant carriers to consider all options in structuring a liability regime. We will not impose conditions other than those that we consider standard and which we have set out below. However, we believe that in constructing any intercarrier agreement, the participants should seek to reflect the basic objectives which we have pursued in our efforts to secure ratification of the Montreal Protocols and creation of a supplemental compensation

[1] The Warsaw Convention, to which the United States became a party in 1934, established a number of uniform rules regarding international air transportation, including in Article 22 an air carrier liability limit of approximately $10,000 for each passenger injury or death, absent a finding of willful misconduct. The Hague Protocol of 1955, which doubled the liability limit, was not ratified by the United States. Rather, in 1966, the carriers serving the United States agreed to adopt a special contract under Article 22, establishing what remains the current regime (Agreement CAB 18900, approved by Order E–23680, May 13, 1966) (Docket 17325). Under the Agreement's terms, these carriers also agreed not to avail themselves of the defense of non-negligence under Article 20(1) of the Convention for claims under that amount.

[2] We assume for the purposes of our decision here that the proposed discussions could reduce competition among carriers.