

Key ruling on the definition of “carriage” under the Athens Convention

On 22nd January 2018, in the case of JENNINGS - v - TUI UK LIMITED, the Admiralty Court handed down judgment in favour of the Defendant in a decision regarding the point at which “carriage” concludes for the purpose of the Athens Convention in the context of passengers disembarking from a cruise ship.

This is the first legal authority on this point, and therefore of considerable significance. It should also be extremely helpful to passenger ship operators in defending certain claims for accidents that occur once passengers have left the ship.

The decision also considers the liability of a tour operator under the Package Travel, Package Holidays and Package Tours Regulations 1992 (“the Package Travel Regulations”) for those passengers who have completed disembarkation and are in a port or terminal. Liability arising from the Package Travel Regulations would not fall within the ambit of Club cover, but the findings are nonetheless also potentially helpful for Members.

injuries to his right hip, right knee and lower back.

The claim was bought pursuant to Article 3(1) of the Athens Convention and/or Regulation 15 of the Package Travel Regulations.

Article 3(1) states that:

“The carrier shall be liable for the damage suffered as a result of death or personal injury to a passenger... if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.”

The Claimant contended that the accident occurred within the course of carriage. He further claimed that the

water was present due to the Defendant’s crew members walking it into the area as they transferred cabin luggage from the ship to the terminal building. He also argued that the Defendant’s crew members had a duty to warn him of the danger of slipping.

The Court heard witness evidence from the Claimant, his wife and the Defendant’s hotel manager.

Factual findings

The Court accepted that the Claimant fell on the walkway and that there was water present where he fell. However, it did not accept the Claimant’s contention that the water was present due to the

Background

The Claimant and his wife had booked a cruise with the Defendant on the THOMSON DREAM, which started and finished at the port of Malaga, Spain.

At the end of the cruise, the Claimant was leaving the ship via a covered walkway. It was raining heavily. He made his way along the walkway, which was supported at each end by steel legs and running on rails set in the quay (these rails allowed the walkway to be moved along the quay in order to be positioned as needed so that it could be connected to the accommodation ports or doors of different ships). He then crossed over a fixed concrete walkway to access a further section of walkway, also fixed, which sloped down into the terminal building. As the Claimant was walking along this last walkway he slipped on water and fell, suffering



Defendant's crew members, instead accepting the evidence of the Defendant's hotel manager. She testified that only a few crew members used the passenger walkway into the terminal, and that this was to assist with identifying luggage and they would have had no reason to go outside into the rain.

Findings in law

Athens Convention

The Defendant argued that the Athens Convention did not apply as the fall did not occur during the course of carriage. Article 1(8) of the Athens Convention, which defines "carriage", and states that it covers:

"the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation... 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 Defendant contended that the fixed walkways (which were attached to the port and were not on or part of the cruise ship) were port installations using the ordinary meaning of that phrase and that the period of carriage had therefore, in accordance with Article 1(8), already ended when the fall occurred.

The Claimant had argued that disembarkation was not complete until he was safely ashore and sought to rely upon the decision in the 2017 case of COLLINS – v - LAWRENCE, where a passenger fell from a platform at the top of freestanding steps from a grounded fishing vessel, which had been provided by the vessel's owners and which led onto the beach. The judge in that case held that disembarkation was not completed until the passenger was safely on the beach, and that the accident therefore occurred during the course of carriage.

The Court accepted the Defendant's argument and found that whilst the scope of the Athens Convention is

generally intended to include disembarkation, this does not apply once a passenger has left the ship and has reached areas which are clearly not under the control of the ship. The walkway leading to the terminal constituted a "quay" or "port installation" for the purpose of Article 1(8). Therefore, once the Claimant had stepped onto the walkway, the period of carriage was over and the Athens Convention no longer applied.

The case of COLLINS – v - LAWRENCE could be distinguished on the basis that the platform from which the Claimant fell in that case had been provided by the shipowner.

Although the claim under the Athens Convention had failed, the Court also noted that in light of the factual findings, the Claimant had not in any event proved that the water was present due to any fault or neglect of the Defendant. It also rejected the Claimant's submission that the Defendant was under a duty to warn the Claimant of the presence of water. As the period of carriage was over, any responsibility for the passenger under the Athens Convention had ended.

Package travel regulations

The Claimant argued that, if the Athens Convention was found not to apply, the claim should instead succeed under the Package Travel Regulations.

The Court accepted that the cruise constituted a package, consisting of the cruise itself, along with transfers and flights, and that the accident occurred during the period of the package.

The Claimant contended that the Defendant was under a duty to warn the Claimant of the risk of slipping, as well as being responsible for any failures by the Port Authority as a supplier for whom the Defendant should be responsible, and that no evidence of local standards was required to establish breaches of these duties.

In respect of a duty to warn, the Court

doubted that the walkway fell within the scope of facilities provided within the package. Further, it was an area that the Defendant could not be expected to control and it was absurd in any event to consider that the Defendant, as a tour operator, should need to warn its customers to take care in weather conditions which were obvious to everyone.

In respect of the claim for any failure by the Port Authority as a supplier for whom the Defendant should be responsible, the Court found that the lack of evidence as to local standards was fatal to that claim. Previous case law dictates that an allegation of a failure by a foreign supplier for which a tour operator is responsible must be supported by evidence of local standards, and the way in which the supplier in question fell short of those standards. No such evidence was submitted and that aspect of the claim therefore failed.

This is a helpful decision as it clarifies the parameters of the period of carriage under the Athens Convention, and once again reinforces the need for clear evidence of a breach of local standards in Package Travel Regulations claims insofar as they relate to failures on the part of suppliers.

The clarification of the definition of the phrase "port installation" is extremely helpful in the context of the increasing use of modern port terminal facilities with walkways, such as those seen at the Port at Malaga, as opposed to the more traditional use of a gangway from the ship to the quayside. Liability for any claims received from passengers in respect of accidents that occur once they have reached the port area, or when they are in the process of disembarking but are in or on port owned or operated areas or equipment, should be considered in light of this decision. ■

The Defendant was represented in the Admiralty Court by Counsel Alex Carrington of 12 King's Bench Walk, who was instructed by Mark Fanning of Miles Fanning Legal. A link to the full Judgment can be found here: [Jennings-Judgement](#)