

1937

A Proposal for Compulsory Maritime Liability Insurance

Norman Hill

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Norman Hill, *A Proposal for Compulsory Maritime Liability Insurance*, 8 J. AIR L. & COM. 451 (1937)
<https://scholar.smu.edu/jalc/vol8/iss3/9>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

A PROPOSAL FOR COMPULSORY MARITIME LIABILITY INSURANCE*

SIR NORMAN HILL‡

Mr. Chairman, before submitting the Report of my Committee, it is, I think, desirable that I should very briefly recall to the recollection of the Conference the steps taken up to the present time.

The question was first before the Conference at our meeting in 1924, and at that time there were two movements on foot. One had been started by an International Emigration Commission, held in Geneva in 1921, attended by the representatives of the Governments of fourteen countries, and held in pursuance of decisions arrived at by the General Labor Conference held in Washington in 1919. This Commission adopted unanimously a Resolution in favor of a system guaranteeing, for the benefit of dependents, emigrants against risk of death or disablement, and urged upon all Governments the desirability of instituting, if they had not already done so, such a system.

Concurrently with this movement there was another movement on foot for placing the laws governing the liability of the shipowner to the passenger in respect of claims resulting from death or personal injury on a sound and uniform basis. In this movement the International Maritime Committee took the lead.

It cannot be pretended that the law, as it stands, is on a satisfactory footing, either nationally or internationally. It is full of doubt and uncertainty. All that can be said is that the number of claims are, in total, small, and that they are diminishing in number, and that therefore the confusion created by the existing law is not a serious matter to the shipowner from the business point of view.

But the individual claims are serious, and it cannot be pretended that the law as it stands gives to the individual passenger the protection he needs; and so long as the passengers remain dissatisfied, demands will be made for the revision of the laws, or for the adoption of such insurance schemes as those advocated in Geneva in 1921.

The extent of the existing protection afforded to passengers,

* Speech at the International Shipping Conference, September, 1928, reporting on Compulsory Passenger Insurance; from Bulletin No. 86 of the International Maritime Committee, p. 21.

‡ Sir Norman Hill was then President of the I.M.C., and was referred to in debate as "not the old man of shipping, but the grand man of shipping."

and therefore of the shipowners' liability, may, I think, be fairly summarized as follows:

(A) *In overwhelming disasters in which the vessel is lost, the amount recoverable by the dependents of a passenger whose life is lost at sea is nothing more than a gamble.* It depends on: (1) The possibility of proving negligence, and in the case of a "missing ship" that is nearly always impossible. (2) On the nationality of the ship on which there is negligence. (3) On the size of the ship on which there is negligence. (4) On the value after the casualty of the ship on which there is negligence. (5) On the total number of lives lost in the casualty.

(B) *In other accidents involving death or injury to few, the amount recoverable under the existing system is almost as great a gamble.* There are on the one hand the difficulties of proving negligence and contending with the wide divergence between the laws of the different nations as to the right of the shipowner to free himself by his contract from the responsibility for such negligence, and, on the other hand, the chance of a big award.

(C) *In both classes of disaster about one-half of the total amount paid by the shipowners under the existing system goes into the pockets of the lawyers.*

It is manifest that whatever protection is afforded to the passengers, and in whatever form it is given, the liability imposed on the shipowners must be taken into account as one of the working expenses of the Line, and, as such, must be provided for out of the earnings of the Line. The protection given must therefore be within the means of the passengers, as its cost must be covered by the fares charged.

This being the position, some of us suggested to the International Maritime Committee that the needs of the passengers could never be met under laws based on responsibility for negligence. We pointed out that what the passengers need is insurance against risk of accidents of all kinds, occurring during the voyage, which result in death or personal injury. And we stated our belief that a well-considered scheme on those lines could be formulated without increasing the cost of transport, provided it was accepted in full and complete satisfaction of the shipowners' liabilities in every shape and form.

It was in these circumstances that the Maritime Committee adopted, in August, 1923, at its Gothenburg meeting, the following Resolutions:—

- (1) That in view of steps which are being taken by individual States to provide economic protection for their nationals against the consequences of casualties occurring during oversea transport, whether occasioned by negligence or by chance, it may be desirable to formulate a universal system for international adoption.
- (2) Having regard to the difficulties attaching to the matter, this Conference is of opinion that the question of compulsory insurance of passengers carried by sea ought to be further studied, and asks the Permanent Bureau in consultation with a Committee nominated by this Conference to investigate the advisability of framing a scheme for report to the next Conference."

In putting the position before the International Shipping Conference in 1924, I said:

"You recollect that what the Commission representing the Governments insisted on in August, 1921, was a real and comprehensive protection for emigrants, not only against the negligence of shipowners and their servants, but also against all risks and chances incident to travel. Can the shipowners help in securing such protection, and, if so, is it in their interests that they should help?

"I think it is manifest that a scheme giving such a form of protection could be worked by the shipowners carrying the emigrants at far less cost, and with far greater satisfaction to the emigrants, than by any organization set up by the country from which either the emigrants are sailing, or the country to which the emigrants are proceeding. For example: Insurance, if provided by the shipowner, could be combined with the passenger ticket and its cost could be collected as part of the fare, thereby obviating the need of any separate organization charged with the duty of issuing policies and collecting premiums from either the emigrants or the shipowners, or both. Then again, the claims under a passenger ticket could be made and enforced in whatever country the ship might be, thereby obviating the need of the claimants proving their claims in the country from which they had sailed. Again, all claims, if they were based on the passenger ticket, would be examined and satisfied by the shipowners, thereby obviating the necessity of setting up a separate organization charged with the duty of investigating and settling claims.

"It is clear that if any such scheme as the Governments have in view is to be made workable, it must be placed on a reasonable footing as to costs. A scheme which imposed such a cost on the emigrant as to preclude him from ever buying a passenger ticket would be absurd. The scheme must be kept, and it must be worked, within the means of the emigrant.

"I think there are two factors that will play an all-important part if the cost of the scheme is to be kept within reasonable limits. The first point is the *distribution of the risks* as widely as possible, and the second point is *fixing definite maximum liabilities* which are fair and reasonable in themselves.

"I take my first point: Taken as a whole, oversea travel is extraordinarily safe, and therefore the aggregate of deaths and injuries is but a trifling percentage of the aggregate numbers carried. I think that in practice it will be found impossible to draw a dividing line which will be acceptable to all nations, between emigrants and other passengers; I think probably that if you want to elaborate an effective, economic and satisfactory scheme of insurance it will have to cover all your passengers.

"As to the second point—that is, the fixing of a definite maximum liability in an amount which is fair and reasonable in itself—we must, if we are to give a comprehensive insurance, cover liabilities of all kinds, whether they arise from pure chance or misfortune, or through negligence of those on board the vessel which is carrying the passengers or of any other vessel. Experience has shown that any system based on responsibility for negligence does not give the protection required. Indeed, I think we can go further and say that experience has shown that such a system is hopelessly inadequate to give the protection that is needed. But, on the other hand, under such a system occasions do arise when the individual shipowner is overwhelmed with liabilities. If the scheme is not to increase the cost beyond the capacity of the emigrants, it seems to me that the independent right to claim, in the event of the claimant proving negligence, will have to be given up, in exchange for the right to claim up to the fixed and agreed amount, whether or not there be negligence."

After this statement [at the Conference of 1924] there was a general discussion, and ultimately the following Resolution was adopted by the International Shipping Conference in 1924:

- "(1) That this Conference, representative of the shipping industry in every part of the world, endorses the Resolution passed by the Comité Maritime International at their Conference in Gothenburg on the 16th August, 1923, and invites the Comité to continue their study of the subject.
- (2) That a Committee of this Conference be appointed to co-operate with the Comité Maritime in the examination of the subject."

I will not trouble you with a description of the work that has been put into preparation of a Convention on the lines I have indi-

cated. A great deal of work has been done by a Sub-Committee of the Comité Maritime, and the drafts prepared by that Sub-Committee have been reviewed at general meetings of the Comité Maritime in Genoa and Amsterdam. The last of these meetings was that held in Amsterdam in 1927 and at that meeting the following Resolution was adopted:

"This Conference therefore requests its Sub-Committee:—

- (1) To continue its work in order that the proposed system of insurance may be further developed in the light of the views expressed at this Conference and the information supplied by the International Labour Office.
- (2) To draft, for submission to the Comité Maritime, an International Convention, such as will receive the general support of the representatives of passengers and shipowners."

Since the Amsterdam meeting the unofficial organizations representing migrants, whose head office is in Geneva, have given a great deal of consideration to the draft Convention, but have not yet arrived at any final conclusions. They are meeting in conference in September, when they propose to review the whole position and determine on their line of action.

In the meantime, some further nations have introduced their own systems for the insurance of emigrants, and the International Labor Office is following closely the work of the Comité Maritime, and is awaiting the Report of its Committee.

From our point of view it may be said that the position is as it was when the question was last before the International Shipping Conference in 1926—and indeed as it was when the question was first before the International Shipping Conference in 1924. We are still waiting for a scheme which will meet and satisfy the needs of passengers, and in particular of the emigrant class, without increasing the cost of travel. It is clear that no such scheme is yet before us, as, apart from all other points, we have failed so far to obtain any authoritative statement as to the *amounts* to be covered by the proposed insurance.

But although from one point of view but little progress has been made, I think that we are today in a position to judge what are the methods by which such a scheme, if any scheme can be formed, can be brought into operation.

In the first place, I doubt any Convention being drafted which substitutes *in law* the protection of insurance for the liability for negligence. The fact that the legal principle of liability for negligence has failed badly in providing the protection that the passen-

gers need and are asking for, and the further fact that no system based on that principle can be framed to meet the needs of passengers—even this fact will not persuade the lawyers to make the change. Even if we convince the lawyers on this point, I do not think there is any chance of getting them to accept the idea that the insurance must take the place of the liability of the whole shipping community towards the passengers, yet that idea is the foundation upon which any workable scheme must be based. From the passenger's point of view he needs protection if the collision is caused by the ship on which he is being carried, or on any other ship. And from the shipowner's point of view the insurance of passengers against risks resulting from pure chance can only be borne if the insurance liability in all cases is fixed in amount.

Further, if we can convince the lawyers on both of these points, the chances are that a Convention would overload the scheme with excessive precautions as to the methods of insurance, and thereby add substantially to the cost of travel without conferring any benefit on the passengers.

It has been suggested that the question has been confused by the introduction of the term "insurance." But if the shipowner is to bear the risks of pure chance I know no other apt description of the scheme. And I am certain that the passengers will look for "insurance," and that they will not be satisfied with anything else in exchange for their rights under the existing law.

But because the term "insurance" has been used, we are told that the shipowner is not an underwriter, and that he is entirely unequal to the task of undertaking all the responsibilities and intricacies of the business of insurance. That may be true in a general sense, but it is surely ludicrously inapplicable to the scheme under consideration. Existing passenger laws of all nations already impose liabilities on shipowners in varying degrees, and for matters some of which are within, but others of which are entirely beyond, their control. In the same way the existing laws of a good many nations have for many years imposed on shipowners responsibilities in regard to cargo, in matters some of which are entirely beyond their control. And under The Hague Rules these responsibilities are being extended. The international trade of the world exceeds in value £4,000,000,000 a year, the greater portion of which is carried by sea. Neither the law nor any other body has ever questioned the efficiency or the sufficiency of the shipowners to bear the burdens that have been placed upon them in respect of this enormous volume and value of traffic.

In matters such as these—and in particular in regard to responsibilities in respect of passengers and cargo resulting from matters which are entirely beyond the control of the shipowners—how does the shipowner's position differ from that of the underwriter? And has not the shipowner proved equal to the task of undertaking all the responsibilities and intricacies incident to the burdens that have been put upon him?

Apart from the adoption of the insurance scheme, I doubt of any Convention being drafted which either affirms the right of freedom of contract in regard to passengers, or, on the other hand, asserts the rights of all nations to impose such terms as may have been agreed to internationally. There are nations firmly wedded to freedom of contract, and there are other nations equally determined on control as a matter of public policy. Uniformity of law on this point is, I am afraid, impossible.

If I am right, and there is no chance of securing a Convention on lines which will give the passengers what they need, without unduly increasing the cost of travel, must we abandon the work upon which we have been engaged for so many years? If we do so, we shall leave the laws under which we carry on our business in a hopeless state of doubt and confusion. We shall leave the amount recoverable by the passenger, and therefore the amount payable by the shipowner, in great measure to chance. And we shall leave the Governments to go on elaborating schemes, which may or may not be consistent with one another, for the special protection of particular classes of passengers, and to superimpose those new schemes on the top of our existing responsibilities.

I am convinced that to leave the position to develop on those lines will be in the interests of neither the passengers nor the shipowners. If such a scheme as we have had under consideration can be framed on sound business lines it will, I believe, work for the benefit of both, and if only the law will not stand in its way it can be carried into effect.

The terms upon which the protection of insurance may be allowed to take the place of liability for negligence must be fair and equitable as between the passengers and the shipowners; and they can best be adjusted by the process of collective bargaining between the representatives of those interests, just as the York-Antwerp Rules of General Average were agreed upon years ago and have since been revised from time to time as occasion has required.

If and when terms have been so adjusted, they would be

standard terms, to be incorporated by way of voluntary contract, in the passenger tickets of some or of all classes of passengers, and on some or on all routes. Whether they are incorporated or not would be determined by each Line and its own passengers. If a passenger preferred the insurance protection, he would get it from a Line working under the Rules, but he would surrender all other rights in respect of the risks covered. If a Line is prepared to remain under its existing liabilities, it would not adopt the Rules. If a Government thought it necessary to impose the insurance system, it would have before it the standard form.

Can we, working on these lines, secure for our passengers that for which they are asking—namely, real protection on a certain and uniform basis?

Some of us on the Committee believe that the subject can be so attained; others are doubtful; but we are all unanimous in recommending that no effort should be lacking on the part of the shipowners to meet and satisfy the needs of the passengers. A scheme that is so costly as to prevent travel will be worse than useless; and if the protection asked for is to be given and at a cost that is within the means of the passengers, and in particular of the emigrants, it can only be given with the help of the shipowners' organizations.

APPENDIX A

TEXT OF DRAFT AGREEMENT REFERRED TO IN SIR NORMAN HILL'S REPORT

Passenger Insurance Benefits

"In this agreement the word 'voyage' shall be taken to cover the whole period whilst the passenger is on board the vessel, and also the processes of embarkation and disembarkation whether directly from or to the shore or by means of gangways or ladders or by means of tenders, tugs, ferries or other craft or by means of any form of air transport.

"1. In consideration of the acceptance by the passenger of the benefits of insurance conferred by this agreement in lieu of his rights under the maritime and common law, the shipowner agrees to insure the passenger in the amounts set out in the Schedule hereto against all risks of accident causing death or personal injury which may occur during the course of the voyage.

"2. In the event of the passenger sustaining personal injury by accident as aforesaid, the shipowner agrees to pay the sum due under such insurance to the passenger, and in the case of the death of the passenger by accident the shipowner agrees to pay such sum to any person duly nominated by the passenger as provided for in Clause 3 hereof, or in default of such nomina-

tion by the passenger, to such person or authority as may be appointed by the National Law of the passenger to receive the same.

"3. At any time before the commencement of the voyage the passenger may nominate any person to receive the sum payable under the insurance in the event of death by accident of the passenger. Such nomination shall be made in writing by the passenger in duplicate on a form which will be provided for the purpose by the shipowner or his agent. One copy of such form shall be retained by him and the other copy shall be delivered to the passenger.

"4. The insurance aforesaid shall cover all accidents, even when the same are occasioned by the negligence or want of reasonable care of the passenger, but shall not cover cases in which the death or personal injury of the passenger is directly caused by his own wilful misconduct. In like manner nothing contained in this agreement shall relieve the shipowner from liability for the consequences of his own wilful misconduct.

"5. The passenger agrees to accept the insurance aforesaid in lieu of all his rights and of all the rights of any persons claiming through him against the shipowner under the maritime or common law in the Courts of any country in respect of an insured accident other than actions for the enforcement of claims based on the said insurance. Save, however, as provided in Clause 6 hereof, the said insurance shall not affect or prejudice any rights of the passenger against third parties.

"6. If the third party referred to in Clause 5 hereof be the owner of a ship the passenger agrees to transfer to the carrying shipowner all his rights against such other shipowner, and the carrying shipowner shall thereby become entitled to enforce such rights against such other shipowner up to the amount paid by the carrying shipowner to the passenger under Clause 1 hereof.

"7. All claims under such insurance shall be paid in full by the shipowner without regard to any limitation of liability which he may be entitled to claim in respect of any action for damages according to the law of the flag of the ship or the law of any other country.

"8. In case of personal injury, unless the accident is known to the surgeon or other authorities on board, or unless the passenger is prevented by *force majeure* from giving such notice, the passenger shall, within eight days after disembarkation, give notice of the accident to the captain or to the shipowner or his agent at the port of disembarkation or to the authorities competent in that behalf according to the national law of the port of disembarkation.

"All claims based on such insurance shall be barred unless the action in respect thereof be instituted within twelve months after the date of the accident.

"9. If the passenger desires to be insured against accident causing death or personal injury in any sum greater than that set out in the Schedule hereto, he shall before or at the time of payment of the fare in respect of the insured voyage formally request the shipowner so to insure him. Upon receipt of such request the shipowner or his agent will issue in his own name or as agent for an insurance company of recognized standing a policy for such larger sum as the passenger shall demand, upon payment by the passenger of a premium at the current rates charged by such an insurance company.

In no case, however, shall the shipowner be compelled to issue a policy to the passenger for an amount exceeding ten times the sums set out in the Schedule hereto.

"10. Except as provided in Clause 9 hereof no policy of insurance shall be issued to the passenger by the shipowner, but the insurance aforesaid shall take effect, and the liability of the shipowner to pay to the passenger the sum insured in accordance with Clause 1 shall arise, by reason of the incorporation of this agreement in the Contract Ticket."

APPENDIX B

SCHEDULE

| | <i>Adults over 18</i> | <i>Adults between 12 and 18</i> | <i>Children under 12</i> |
|--|---|---|---|
| A. Death | £..... | £..... | £..... |
| B. Permanent disablement de- stroying earning power to the extent of 50% | £..... | £..... | £..... |
| C. Permanent disablement de- stroying earning power to the extent of less than 50% | £..... | £..... | £..... |
| D. Disablement temporarily affecting earning power |per week with limit of 12 weeks |per week with limit of 12 weeks |per week with limit of 12 weeks |