

CADWALLADER LECTURE: Social responsibility in shipping and aviation

Marine accident claimants should pursue insurers

When a shipowner or his assets are difficult to reach, a claimant's only realistic chance of obtaining a settlement is through the shipowner's insurer. However, the claimant is the underdog in negotiations as he does not have a legal claim directly on the insurer. This is not good corporate social responsibility practice, according to **Professor Erik Røsæg** of the Scandinavian Institute of Maritime Law.

“Either the shipowner and his assets should be reasonably available or his insurer should be subject to direct action.”

However, he did not think it outrageous to invoke time or amount limitation rules enacted by governments although “my impression is that compensation is often fairly prompt.”

Professor Røsæg contended that while the airline industry tends to accept reforms in the liability law readily, the shipping industry tends to resist as long as possible.

“Aviation is based on market insurance while shipping liability is dominated by mutual clubs, which also lobby for the industry *en bloc* in liability matters. In shipping, therefore, new legislation must have wide support to be accepted. This is difficult to gather when shipowners to a large extent insure themselves. In all fairness, the shipping industry has demonstrated exemplary social responsibility in negotiations on implementing the Athens Convention on passenger liability.”

Professor Røsæg was addressing the theme ‘The ship and the plane: are they the same?’ at the ninth Cadwallader Memorial Lecture in London on November 16th. He was comparing the practice and prospects of corporate social responsibility in the shipping and aviation industries. The lecture was organized by the London Shipping Law Centre to encourage dialogue between the industries and chaired by the Centre’s Founding Director Dr. Aleka Mandaraka Sheppard.

“There are more than enough CSR issues concerning human life and the environment in aviation and shipping,” continued Professor Røsæg.

He maintained that a good and trustworthy CSR policy would be advantageous for a company in many respects. Directors, owners and employees might find their jobs more meaningful and be better motivated if their values were reflected in CSR policy. After an accident or crisis, a good reputation would be a flying start in its management. CSR policy should contribute to resolving long term sustainability of the company.

Some airlines and sea carriers, perhaps because of an exclusive focus on profits or because they lacked the sophistication or resources for developing CSR policy, had no policy or a limited one.

Professor Røsæg noted that the plane manufacturer has his name associated with an aeroplane throughout its lifetime, while a shipbuilder did not have a brand name to defend in the same way. This might have some bearing on safety aspects. “In shipping, there are obviously some substandard vessels around while there is far from the same problem in aviation. I think that the aviation industry is safer.”

Determining the effectiveness of the enforcers of regulations in each industry was quite a challenge, given the great variety of enforcement agencies and variations within each industry.

“Planes and vessels may be subject to safety checks based on local jurisdiction - port state control and ramp checks - as well as safety checks based on the jurisdiction of the state of registry.

“A very topical issue is the use of classification societies and other consultants for safety inspections. If more surveys are delegated to private entities in shipping than in aviation, this is perhaps because passengers dominate in aviation.”

Professor Røsæg did not think delegation or non-delegation was very crucial. Surveying organisations' resources and recruitment were much more important.

There was a crucial difference between aviation and shipping in respect of enforcement of safety standards. “To a large extent, international shipping is free while aviation is subject to licensing. Airlines had to establish their identity and prove that all government requirements were met. In shipping, governments had to establish ship owner identity and justify black listing of ships.

In aviation, a change of registry will be monitored by the licensing authorities. The shipowner is free to change a vessel's flag, perhaps to escape new regulations issued by the previous flag state.

This structural difference in the control of the two industries - deeply rooted in the freedom to navigate - is no incentive to responsible social corporate behavior and hampers international enforcement of safety standards.”

Professor Røsæg did not suggest restricting freedom of the seas or introducing a licensing system for shipping to help enforce safety norms. “However, flag states certainly must coordinate their efforts, as in Port State Control MOUs and the European Maritime Safety Agency. While such systems are being developed, shipping must be seen not to take advantage of the situation.”

“The public needs transparency and accountability. They need to know who's really responsible for the tanker that may be a potential environmental risk. They need a feeling that the governments and courts can tighten their grip. It is for the industries to ensure that this is not needed.”

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