

**TITLE 47 – MARITIME
CHAPTER 4 - CARRIAGE BY SEA**



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

CARRIAGE BY SEA ACT

Arrangement of Sections

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CARRIAGE BY SEA ACT

AN ACT to provide for a comprehensive modernization of the maritime laws of the Republic of the Marshall Islands. [The legislation in this Chapter 4 was originally codified as Part IV of 34 MIRC 3.]

<i>Commencement:</i>	<i>September 13, 1990</i>
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<i>Amended By:</i>	<i>P.L. 1990-94</i>

PART I - CARRIAGE OF GOODS

§401. Short title.

This Chapter may be cited as the Carriage by Sea Act. [Short title supplied by Reviser during recodification of the original Act.]

§402. Definitions.

When used in this Part:

- (a) “**carrier**” includes the owner or the charterer who enters into a contract of carriage with a shipper;
- (b) “**contract of carriage**” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of

title regulates the relations between a carrier and a holder of the same;

- (c) **“goods”** includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals, and cargo which by the contract of carriage is stated as being carried on deck and is so carried;
- (d) **“ship”** means any vessel used for the carriage of goods by sea;
- (e) **“carriage of goods”** covers the period from the time when the goods are loaded on, to the time when they are discharged from the ship; and
- (f) **“foreign trade”** means the transportation of goods between the ports of the Republic and, or between, ports of foreign countries. [P.L. 1990-92, §85. The Phrase **“the term”**, used in each Paragraph, was deleted as being redundant.]

§403. Risks.

Subject to the provisions of Section 408 of this Chapter, under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth. [P.L. 1990-92, §86.]

§404. Responsibilities and liabilities.

- (1) The carrier shall be bound, before and at the beginning of the voyage to exercise due diligence to:
 - (a) make the ship seaworthy;
 - (b) properly man, equip, and supply the ship; and
 - (c) make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation.
- (2) The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
- (3) After receiving the goods into his charge the carrier, or the Master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

- (a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided, such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
 - (b) either the number of packages or pieces, or the quantity or weight as the case may be, as furnished in writing by the shipper; and
 - (c) the apparent order and condition of the goods; provided that no carrier, Master, or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight, which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.
- (4) Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with Subsections (3)(a), (b), and (c) of this Section. However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith. Nothing in this Part shall be construed as limiting the application of any part of the law governing bills of lading.
- (5) The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of the shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.
- (6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

If the loss or damage is not apparent, the notice must be given within three (3) days of the delivery. Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

Subject to Subsection (7) of this Section, the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen. In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

- (7) An action for indemnity against a third person may be brought even after the expiration of the year provided for in Subsection (6) of this Section, if brought within the time allowed for suit on causes of action sounding in contract. However, the time allowed shall be not less than three (3) months, commencing from the day when the person bringing such action of indemnity has settled the claim or has been served with process in the action against himself.
- (8) After the goods are loaded the bill of lading to be issued by the carrier, Master, or agent of the carrier to the shipper shall, if the shipper so demands, be a "shipped" bill of lading; provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, Master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this section be deemed to constitute a "shipped" bill of lading.
- (9) Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this Section, or lessening such liability otherwise than as provided in this Chapter, shall be null and void and of no effect.

A benefit of insurance in favor of the carrier, or similar clause, shall be deemed to be a clause relieving the carrier from liability. [P.L. 1990-92, §87. Former Subsection (6)(a) and (b) have been renumbered to Subsections (6) and (7), and all subsequent Subsections have been renumbered accordingly, for consistency with the format and style of the Code.]

§405. Rights and immunities.

- (1) Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make holds, refrigerating and cooling chambers, and all other parts of the ship in which the goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of Subsection 404 (1) of this Part. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under this section.
- (2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:
 - (a) act, neglect, or default of the Master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;
 - (b) fire, unless caused by the actual fault or privity of the carrier;
 - (c) perils, dangers, and accidents of the sea or other navigable waters;
 - (d) act of God;
 - (e) act of war;
 - (f) act of public enemies;
 - (g) arrest or restraint of princes, rulers, or people, or seizure under legal process;
 - (h) quarantine restrictions;
 - (i) act or omission of the shipper or owner of the goods, his agent or representative;
 - (j) strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general; provided that

- nothing herein contained shall be construed to relieve a carrier from responsibility for the carrier's own acts;
- (k) riots and civil commotions;
 - (l) saving or attempting to save life or property at sea;
 - (m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
 - (n) insufficiency of packing;
 - (o) insufficiency or inadequacy of marks;
 - (p) latent defects not discoverable by due diligence; and
 - (q) any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.
- (3) The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.
- (4) Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this Chapter or the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom; provided, however, that if the deviation is for the purpose of loading or unloading cargo or passengers it shall, prima facie, be regarded as unreasonable.
- (5) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.
- (a) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the

contract, or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

- (b) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this Subsection as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.
- (c) The unit of account mentioned in this Section is the Special Drawing Right as defined by the International Monetary Fund. The dollar value in terms of the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions.
- (d) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this Subsection if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
- (e) The declaration mentioned in Subsection (5) of this Section, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.
- (f) By agreement between the carrier, Master or agent of the carrier, and the shipper, other maximum amounts than those mentioned in Subsection (5) of this Section may be fixed, provided, that no maximum amount so fixed shall be less than the appropriate maximum mentioned in Subsection (5) of this Section.
- (g) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

- (6) Goods of an inflammable, explosive, or dangerous nature, to the shipment whereof the carrier, Master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any. [P.L. 1990-92, §88. The provisions of Subsection (5) have been renumbered to make them consistent with the format and style of the Code.]

§406. Defenses.

- (1) The defenses and limits of liability provided for in this Part shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
- (2) If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defenses and limits of liability which the carrier is entitled to invoke under this Part.
- (3) The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Part.
- (4) Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Section, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result. [P.L. 1990-92, §89.]

§407. Surrender of rights and immunities, and increase of responsibilities and liabilities.

- (1) A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities

and liabilities under this Part, provided that such surrender or increase shall be embodied in the bill of lading issued to the shipper.

- (2) The provisions of this Part shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of this Part. Nothing in this Part shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average. [P.L. 1990-92, §90.]

§408. Special conditions.

- (1) Notwithstanding the provisions of the preceding Sections, a carrier, Master or agent of the carrier, and a shipper shall, in regard to any particular goods, be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness (so far as the stipulation regarding seaworthiness is not contrary to public policy), or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea; provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a nonnegotiable document and shall be marked as such.
- (2) Any agreement so entered into shall have full legal effect; provided that this Section shall not apply to ordinary commercial shipments made in the ordinary course of trade but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably justify a special agreement. [P.L. 1990-92, §91.]

§409. Contract permitted as to damage to goods while not on ship.

Nothing contained in this Part shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea. [P.L. 1990-92, §92.]

§410. Effect of Part.

- (1) The provisions of this Part shall not affect the rights and obligations of the carrier under the provisions of Chapter 5 of this title, or under the provisions of any statute for the time being in force, relating to the limitation of the liability of the owners of sea-going vessels.
- (2) This Part shall not affect the provisions of any International Convention or national law governing liability for nuclear damage. [P.L. 1990-92, §93.]

§411. Discrimination forbidden as to competing shippers.

Nothing contained in this Part shall be construed as permitting a common carrier by water to discriminate between competing shippers similarly placed in time and circumstances, either:

- (1) with respect to their right to demand and receive bills of lading subject to the provisions of this Part; or
- (2) when issuing bills of lading, either in the surrender of any of the carrier's rights and immunities or in the increase of any of the carrier's responsibilities. [P.L. 1990-92, §94. Format of the Section has been modified to be consistent with the format and style of the Code.]

§412. Bulk cargo-weights ascertained by third parties.

Where under the customs of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in this Chapter, the bill of lading shall not be deemed to be prima facie evidence against the carrier on the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper. [P.L. 1990-92, §95.]

§413. Scope of Part.

This Part shall apply to all contracts for carriage of goods by sea:

- (1) on board vessels of the Republic in foreign trade; or
- (2) to or from ports of the Republic in foreign trade, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any

other interested person. [P.L. 1990-92, §96. Format of the Section has been modified to be consistent with the format and style of the Code.]

§414. Fire damage.

Any other provision of this Part to the contrary notwithstanding, no owner of any vessel shall be liable to answer for, or make good to any person, any loss or damage which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the actual fault or privity of such owner. [P.L. 1990-92, §97.]

§§415-419. Reserved.

PART II - CARRIAGE OF PASSENGERS AND LUGGAGE

§420. Definitions.

In this Part the following expressions have the meanings hereby assigned to them:

- (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;
- (b) “performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;
- (c) “contract of carriage” means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;
- (d) “ship” means only a seagoing vessel, excluding an air-cushion vehicle;
- (e) “passenger” means any person carried in a ship:
 - (i) under a contract of carriage; or
 - (ii) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Part;

- (f) “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding:
 - (i) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and
 - (ii) live animals;
- (g) “cabin luggage” means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of Paragraph (i) of this Section and Section 427 of this Chapter, cabin luggage includes luggage which the passenger has in or on his vehicle;
- (h) “loss of or damage to luggage” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labor disputes;
- (i) “carriage” covers the following periods:
 - (i) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. 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;
 - (ii) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been redelivered to the passenger;

- (iii) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent;
- (j) “international carriage” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State. [P.L. 1990-92, §98.]

§421. Application.

- (1) This Part shall apply to any international carriage if:
 - (a) the ship is flying the flag of or is registered in the Republic;
 - (b) the contract of carriage has been made in a State Party to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended; or
 - (c) the place of departure or destination, according to the contract of carriage, is in a State Party to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended.
- (2) Notwithstanding Subsection (1) of this Section, this Part shall not apply when the carriage is subject, under any international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.
- (3) This Part shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of Section 420 of this Chapter. [P.L. 1990-92, §99.]

§422. Liability of the carrier.

- (1) The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage 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.

- (2) The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.
- (3) Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant. [P.L. 1990-92, §100.]

§423. Performing carrier.

- (1) If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Part. In addition, the performing carrier shall be subject and entitled to the provisions of this Part for the part of the carriage performed by him.
- (2) The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.
- (3) Any special agreement under which the carrier assumes obligations not imposed by this Part or any waiver of rights conferred by this Part shall affect the performing carrier only if agreed by him expressly and in writing.
- (4) Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.
- (5) Nothing in this Section shall prejudice any right of recourse as between the carrier and the performing carrier. [P.L. 1990-92, §101.]

§424. Valuables.

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewelry, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in Section 427 (3) of this Chapter, unless a higher limit is agreed upon in accordance with Section 429 (1) of this Chapter. [P.L. 1990-92, §102.]

§425. Contributory fault.

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court. [P.L. 1990-92, §103.]

§426. Limit of liability for personal injury.

The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 46,666 units of account per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodic income payments, the equivalent capital value of those payments shall not exceed the said limit. [P.L. 1990-92, §104.]

§427. Limit of liability for loss of or damage to luggage.

- (1) The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 833 units of account per passenger, per carriage.
- (2) The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 3,333 units of account per vehicle, per carriage.
- (3) The liability of the carrier for the loss of or damage to luggage other than that mentioned in Subsections (1) and (2) of this Section shall in no case exceed 1,200 units of account per passenger, per carriage.
- (4) The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 117 units of account in the case of damage to a vehicle and not exceeding 13 units

of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.
[P.L. 1990-92, §105.]

§428. Unit of Account.

The Unit of Account mentioned in this Part is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Sections 426 and 427 of this Chapter shall be converted into the U.S. Dollar on the basis of the value of the U.S. Dollar on the date of the judgment or the date agreed upon by the Parties. The value of the U.S. Dollar, in terms of the Special Drawing Right, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. [P.L. 1990-92, §106. Reference to "Dollar" has been clarified as relating to the United States Dollar.]

§429. Supplementary provisions on limits of liability.

- (1) The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Sections 426 and 427 of this Chapter.
- (2) Interest on damages and legal costs shall not be included in the limits of liability prescribed in Sections 426 and 427 of this Chapter.
[P.L. 1990-92, §107.]

§430. Defenses and limits for carriers' servants.

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Part, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defenses and limits of liability which the carrier or the performing carrier is entitled to invoke under this Part.
[P.L. 1990-92, §108.]

§431. Aggregation of claims.

- (1) Where the limits of liability prescribed in Sections 426 and 427 of this Chapter take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

- (2) In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Part, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.
- (3) In any case where a servant or agent of the carrier or of the performing carrier is entitled under Section 430 of this Part to avail himself of the limits of liability prescribed in Sections 426 and 427 of this Chapter, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits. [P.L. 1990-92, §109.]

§432. Loss of right to limit liability.

- (1) The carrier shall not be entitled to the benefit of the limits of liability prescribed in Sections 426 and 427 and Subsection (1) of Section 429 of this Chapter, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
- (2) The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. [P.L. 1990-92, §110.]

§433. Basis for claims.

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Part. [P.L. 1990-92, §111.]

§434. Notice of loss or damages to luggage.

- (1) The passenger shall give written notice to the carrier or his agent:
 - (a) in the case of apparent damage to luggage:

- (i) for cabin luggage, before or at the time of disembarkation of the passenger;
 - (ii) for all other luggage, before or at the time of its re-delivery;
 - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen (15) days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
- (2) If the passenger fails to comply with this Section, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.
- (3) The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection. [P.L. 1990-92, §112.]

§435. Time-bar for action.

- (1) Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two (2) years.
- (2) The limitation period shall be calculated as follows:
- (a) in the case of personal injury, from the date of disembarkation of the passenger;
 - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three (3) years from the date of disembarkation;
 - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.
- (3) The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Part be brought after the expiration of a period of three (3) years from the date of disembarkation of the passenger or

from the date when disembarkation should have taken place, whichever is later.

- (4) Notwithstanding Subsections (1), (2) and (3) of this Section, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing. [P.L. 1990-92, §113.]

§436. Competent jurisdiction.

- (1) An action arising under this Part shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended:
- (a) the court of the place of permanent residence or principal place of business of the defendant; or
 - (b) the court of the place of departure or that of the destination according to the contract of carriage, or
 - (c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State; or
 - (d) a court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.
- (2) After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration. [P.L. 1990-92, §114.]

§437. Invalidity of contractual provisions.

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Part except as provided in Section 427(4) of this Chapter, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in Section 436(1), of this Chapter, shall be null and void, but the nullity of that

provision shall not render void the contract of carriage which shall remain subject to the provisions of this Part. [P.L. 1990-92, §115.]

§438. Other provisions on limitation of liability.

This Part shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in Part III of this Chapter, or in international conventions relating to the limitation of liability of owners of seagoing ships. [P.L. 1990-92, §116.]

§439. Nuclear damage.

No liability shall arise under this Part for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage; or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favorable to persons who may suffer damage as either the Paris or the Vienna Conventions. [P.L. 1990-92, §117.]