

Double trouble

■ Len Kirsch in defence of IATA's SGHA.

The 2008 IATA Standard Ground Handling Agreement (SGHA) and several of its predecessors (which are still in use), are not perfect documents. Sure, the SGHA can be better written (ie Americanized); for sure, it could be clearer; and sure, it could be updated to reflect changes in the handling industry. However, Article 8 should basically be left alone.

Article 8 represents years of negotiations between the airline and ground handling communities. It is not perfect but it reflects economic realities. Recent demands by the Association of European Airlines for changes to Article 8 fail to recognise just how smart Article 8 is.

Liability for aircraft damage, damage of cargo and for personal injury will occur no matter how many safety programmes handlers institute. It is a fact of doing business at a congested airport. Neither workers nor ground support equipment works perfectly. Weather and other conditions, along with Acts of God, occur when least expected. While responsibility for an accident should not be ignored, we have to face it that handling of accident cases should be based mostly on sound economic principle.

Basically, the question arises as to who should bear the economic risk or loss. When deciding this issue, the one thing we must all keep in mind is that both airlines and ground handlers purchase insurance. However, ground handlers pass on their cost of insurance to airlines, so in effect airlines pay double insurance. They pay for their own policies and they reimburse ground handlers for a portion of their insurance cost. Most ground handlers add at least 5% to a contract price to reflect insurance cost. However, if rates are suddenly increased, like after 9/11, handlers will increase their handling fees - and in the past have even imposed surcharges.

Economic theory supports the concept that double insurance should be avoided and, if it cannot be avoided, at least minimised. Hey, airlines! That is what Article 8 does. It lowers your insurance cost!

In a perfect world, ground handlers would not purchase liability insurance but instead, airlines would fully indemnify the ground handler. This would offer the airline lower handling costs because it would not pay any double insurance. This was actually performed for a short period of time when Eastern Airlines went bankrupt. During the Administration period, it proposed to handlers full indemnification if they offered the lowest handling prices with no costing for insurance.

However, it is not a perfect world. If a ground handler was not obligated to indemnify an airline for aircraft damage or for personal injury, it would not spend sufficient money training its

employees, instituting safety programmes and doing everything that a responsible corporate citizen should do to protect its customer, the flying public and itself.

Thus, the smart thing to do is to require the ground handler to accept enough liability so that it would have no choice but to institute the safety and training programmes necessary, but at the same time, assist the ground handler in keeping its insurance costs low so that the airline customer would not have recourse to excessive double insurance.

Well, that is exactly what Article 8 does. As it exists, Article 8 is close to the perfect combination of the imposition of liability and protection from excessive double insurance.

For property damage, Section 8.5 provides in part:

"the Handling Company shall indemnify the Carrier against any physical loss of or damage to the Carrier's Aircraft caused by the Handling Company's negligent act or omission PROVIDED ALWAYS THAT the Handling Company's liability shall be limited to any such loss of or damage to the Carrier's Aircraft in an amount not exceeding the level of deductible under the Carrier's Hull All Risk Policy which shall not, in any event, exceed US\$1,500,000 except that loss or damage in respect of any incident below US\$3,000... the Carrier shall not make any claim against the Handling Company and shall indemnify it against any liability in respect of any and all consequential loss or damage howsoever arising."

For cargo damages, Section 8.6 provides in part:

"the Handling Company shall indemnify the Carrier against direct loss of or damage to the Carrier's cargo (excluding Mail) caused by the negligent act or omission by or on behalf of the Handling Company... PROVIDED ALWAYS THAT the Handling Company's liability shall be limited to 17 SDR per kilo or to the actual compensation paid out by the Carrier, whichever is less. In any event, the total amount of the claim shall not exceed USD 1,000,000, except that loss or damage in respect of any claim below US\$500 shall not be indemnified."

Perfect. Ground handlers are liable for up to US\$1.5m of aircraft damage: they are not liable for consequential damages and any liability for cargo damage is limited. This liability is high enough that a ground handler will do whatever it can to train its employees, repair its ground support equipment and maintain safe operating procedures; but is also reasonable, so that its insurance costs are somewhat controlled and excessive double insurance is prevented.

My advice?

Let's leave well enough alone!



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