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“Groundhandling: EU reform proposals and case law and amendment proposals concerning Art. 8 of the IATA Standard Ground Handling Agreement”

Laura Pierallini
Studio Legale Pierallini e Associati, Rome
www.studiopierallini.it

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The interpretation of articles 8.1 and 8.5 of the Standard Ground Handling Agreement (SGHA) has generated lengthy discussions between airlines and airport handlers. This has also occurred in Italy, where in some cases such disputes have been brought to the attention of the Italian Courts;

Italian Courts have jurisdiction on claims against handlers in virtue of the express provision of Annex B of most of the SGHAs stipulated in Italy which states:

“1. Notwithstanding Sub-Article 9 of the Main Agreement, the Handling Company and the Carrier agree that in the events of disagreement or dispute concerning the scope, meaning, construction or effect of this agreement, the parties will work to resolve the disagreement or dispute between them. Should the parties fail to resolve the disagreement or dispute, then either party is free to seek resolution through the Court of____

2. The main Agreement shall be construed in accordance with and governed by the laws of the land in which the Handling Company has its principal office, and in the event of any dispute the courts of that land shall have exclusive jurisdiction”
Handler’s arguments

In the cases recently brought to attention of the Italian Courts, airport handlers alleged their full exemption from any liability, invoking art. 8 of the SGHA.

The main arguments held by airport handlers to support their alleged full exemption of responsibility for physical loss or damage to the Carrier’s Aircraft caused by the Handling Company’s ground operations, subject to the Standard Ground Handling Agreement (SGHA), are the following:

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**Handler’s arguments**

1. In virtue of the article 8.1 and 8.4 the SGHA each part pays most of the damages or losses of property owned by itself regardless of who was responsible (except in case of damages or losses arising from an act done with intent to cause damage or loss, or recklessly and with the knowledge that damage or loss would probably result) that said, damages caused by air carriers and handlers in the course of handling operations are statistically the same both qualitatively and quantitatively. Provided as examples of damages caused by air carriers are the following:

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i) so called “heavy” landings or with retracted landing gear which cause damage to the runway;

ii) collisions by the aircraft with airport fingers during docking;

iii) management of complaints relating to the execution of transport of cargo and baggage (loss, damage, delay in delivering).

Within the energy sector and that of international tenders for employment and services, this kind of liability regime is also known as “Knock for Knock” (liability for people and property).

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2. article 8.1 provides for a prior waiver to any action irrespective of it being in contract or tort, and for any claim for damages.

3. in the aviation field there is no applicability of article 1229 of the Italian Civil Code which provides that any contractual provision, which excludes or limits the liability in case of acts done by gross negligence or with intent to cause damage or loss, is void. This is allegedly because of the fact that in the aviation field there is no applicability for the replacement of gross negligence with recklessness and knowledge of the negative outcome. This would result from interpreting the SGHA and norms of aeronautical law (Warsaw Convention 1929, articles 25 and 25a, Montreal Convention 1999 articles 22 and 30, Guatemala City Protocol 1971 articles X and XI)

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Air Carrier’s arguments

The main arguments put forth by the air carriers in support of the airport handler’s responsibility for damages on the aircraft caused by the handling operations pursuant to the Standard Ground Handling Agreement (SGHA) are the following:

1. Article 8.1 SGHA exemptions do not apply to subsections provided by article 8.5 (“except as stated in Sub-Article 8.5”) which state the types of damages to the aircraft;

2. Article 8.1 SGHA exemptions do not apply where the acts or omissions by the handler have been made with the intention of causing damages, death, delays and injuries, or by negligence or recklessness;

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3. Exemptions and limitations pursuant to articles 8.1 and 8.5 SGHA cannot derogate from article 1229 c.c., which provides that contractual provisions of limitation of responsibility by gross negligence and intentional wrongdoing are void;

4. Usually airport handling operations are routine and taken care of by qualified personnel, thus damages caused to aircraft are mainly associated to gross negligence.
Italian Courts recently served two judgments concerning airport handlers' responsibility for damages to the aircraft caused by handling operations, in particular The Civil Court of Verona (judgment no. 2656/2011) and the Civil Court of Bari (Judgment no. 1492/2011), both judgements actually have been challenged before the competent Courts of Appeal, respectively Court of Appeal of Venezia and Court of Appeal of Bari, and are still pending.

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The judgement regarded an action for damages caused by the airport handler to an aircraft operated by an Italian air carrier. Specifically, whilst towing the right wing of the aircraft bumped into the sliding hatch of a hangar, thus rendering the aircraft unsuitable for flight for a period of more than 20 days.

The Civil Court of Verona held the airport handler responsible not only for the damages to the aircraft but also for the damages consequential to the aircraft’s grounding and the reprogramming of flight schedules, along with the non proprietary damage to the commercial image and professional reputation of the air carrier amounting to about 3 million euros.

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Specifically, the court held that:

a) the coexistence of contractual and non contractual actions was admissible;

b) article 8.1 SGHA does not provide for a full exemption of responsibility, holding specifically that responsibility arises when acting through negligence and recklessness with knowledge of the result;

c) regarding contractual responsibility, the legal consequences of the conduct through gross negligence are comparable to such for intentional wrongdoing;

d) SGHA clauses must be interpreted by domestic law applying to where the handler is based

Regarding point d), the Federal Court of Appeal of Frankfurt reached analogous conclusions in the action between Frankfurt Airport and THAI Airways International Public Company LTD (judgement dated 26 May 1998)
Civil Court of Bari, judgement n. 1492/2011

The judgement regarded a request for damages caused by airport handler to an aircraft used by an Italian air carrier. Specifically, whilst loading and unloading luggages, the baggage carousel kept bumping into the aircraft causing the fuselage’s lower antenna to break and thus the aircraft’s inability to fly.

The Civil court of Bari rejected the claim, holding that:

a) the coexistence of contractual and non contractual actions was inadmissible;
b) the article 8.1 SGHA exemption was applicable, following the handler’s fault in handling operations.

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Conclusion

Also the Italian experience, considering in particular the contradictory decisions recently reached by the Italian Courts, gives evidence that a clarification, implementing the necessary changes to art. 8 of the SGHA, is most envisageable to avoid that the uncertainty on the applicable regime give raise to time and cost consuming litigations among airlines and handlers.