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Journal of Banking and Insurance Law
Volume 1, Issue 2
www.stmjournals.com

Aviation Insurance and Bermuda Triangle Crisis

Shubham Gangal*
Student,
School of Law, CHRIST (Deemed to be University), Bengaluru, Karnataka, India.

Abstract
It has been a debatable issue when it comes to claiming of Insurance against the liability caused by an airline company. It has been a mystery to find out what happens to an aircraft when it crosses the Bermuda Triangle. But the question which comes before us is whether the passengers flying with the same aircraft are insured by the flying agency/company. Further, the question that arises before us is if the insurance is claimed, who is entitled to the amount so claimed? Some people claim that the mystery of the Bermuda Triangle is solved and so there's no need to have a discussion whatsoever. The recent past also gives us the blurred idea about the handicapped situation of the concerned authorities in such a scenario. This paper will be putting a light on the historical view of the cases pertaining to aviation laws in matters of an airline company's fault in order to have duty towards its customers leading to the infringement of fundamental rights of the particular customers travelling by the same airline. This paper focuses on the applicability of aviation insurance laws in India and the jurisdictional scope of the claim of such insurance and who is entitled to such claim. So far there has not been a proper answer to the question of insurance against the act of God pertaining to the civil aviation industry. The paper also discusses on the issue of the accident due to the mistake of a crew member if the aircraft gets into the trouble of act of God.

Keywords: *Insurance, Bermuda Triangle, Aviation laws, infringement, fundamental rights, customers.*

****Author for Correspondence*** *E-mail: gangalshubham@gmail.com*

BERMUDA TRIANGLE

Bermuda Triangle is a geographical area depicted as a triangle which connects the places of Bermuda, Miami, and Puerto Rico. It has been an adverse issue of concern that there is no way out to the mis-happenings caused by the presence of Bermuda Triangle. After more than 70 years of fevered speculation, Karl Kruszelnicki, a skeptical scientist has insisted the reason why so many ships and planes vanish without trace in the area between the three cities and has stated that it has nothing to do with aliens or fire-crystals from the lost city of Atlantis. He states that the problems of vanishing arise from the old human error plus the adverse weather conditions at the area of Atlantic Ocean.

VANISHING OF PLANES

The history of aviation is marked by aircraft that have disappeared without a traceable mark. Such aircraft leave a lot of legal issues thereupon and also have amounted to matters that have generated couple of reported cases.
When a plane disappears, the first question possible is always why?

The possible answers to this question include government malfeasance, military operations, criminal activity, weather, and pilot error. The doctrine of *res ipsa loquitur* can also be considered as an option.

Let us discuss the whole Bermuda Triangle speculation: the loss of "Flight 19". The said flight was of five US Navy TBM Avenger torpedo bombers that set off from Fort Lauderdale, Florida, on December 5, 1945 for a routine two-hour training mission over the Atlantic. After losing radio contact with their base, all five planes vanished. No trace of them or their 14 crew members was found. Even more spookily, it was later claimed, a PBM-Mariner seaplane dispatched that night on a search-and-rescue mission to find Flight 19 also disappeared, along with its 13 crew [1].

Most recent issue that has come up is of vanishing of MH 370 Malaysia Airlines, which dealt with the Malaysian Airlines flight MH 370 that flew from Kuala Lumpur International Airport, Malaysia, to its destination, Beijing Capital International Airport in China. The crew of Boeing 777-200ER aircraft last made contact with air traffic control (ATC) around 38 minutes after takeoff when the flight was over the South China Sea. The Aircraft was lost from the ATC radar screens minutes later, but was tracked by military radar for another hour, deviating westwards from its planned flight path, crossing the Malay Peninsula and Andaman Sea. The flight left the radar range 200 nautical miles northwest of Penang Island in North Western Malaysia.

The search for this missing plane amounts to the costliest search in the aviation history which focused initially towards the South China and Andaman Seas, before analysis of the aircraft's automated communications with an Inmarsat satellite identified a possible crash site somewhere in the southern Indian Ocean. However, even after months of its vanishing, when the plane was not finally found, the insurance companies were asked to pay due compensation to the aggrieved passengers [2].

AVIATION INSURANCE

In aviation Insurance, there are three different types of insurance:

i. Hull insurance: for aircraft
ii. Passenger legal liability: if the passengers suffer harm
iii. Third party liability: covers damage caused by the operation of an aircraft, for example, if it crashes or if there is a problem while functioning of the aircraft

Apart from the above stated, there is also the aircraft hull war market, where special cover can be bought for losses arising from acts of war or terror against an aircraft. This insurance protection also covers civil war, sabotage, strike, civil unrest, internal commotion, hijacking, etc. Losses caused by nuclear weapons are always excluded. Cover can usually be restored in full with respect to passenger's legal liability against payment of a corresponding premium, but sub-limits are set for third-party liability. Policies concerning liability usually exclude war, terrorism and similar situations. Airline insurance policies usually cover the whole fleet and are typically concluded for a period of one year. The sum insured for an aircraft varies depending upon the type, age, and technical equipment. Coverage is also offered on the basis of an "agreed value", which means the airline decides on the amount of the sum insured.

Calculation of Aviation Risks

Many factors play a part in our assessment of airlines. For example, we consider the size of the fleet, the age of the aircraft, and how much they are still worth. Other matters to be considered are: How often are they serviced, and by whom? What claims have there been in the past? What routes are flown and—above all—where will the aircraft be starting and landing? Starts and landings are the most risky part of a flight. But soft factors are also important. We want to know which pilot training an airline prefers; whether it sends its pilots to the simulator as often as stipulated or more often; and whether the airline attempts to create an open culture in which it is possible that the pilot listens to the co-pilot when he tells him they are flying towards a mountain. There are varying cultures when it comes to dealing with risk. All of these things go into our calculation of the premium.

Response from the Insurance Companies

Three elements:

1. A primary insurer takes on cent percent of the policy, and then divides that part of the risk which it does not wish to hold between other insurers, who in turn technically act as reinsurers.
2. Several primary insurers are involved in the policy, one of them acts as a lead insurer. When there is a loss claim, it is handled by the lead insurer.
3. Some countries have a statutory requirement that insurance policies which are for an airline should be issued by a local insurer. When this local insurer has neither the financial strength nor the specific know-how to take on this transaction, the risk is passed on to the international aviation market in the form

of reinsurance. A lead reinsurer then often takes over the administration and claims settlement.

Most primary and reinsurance policies are placed by specialists in the field of brokers [3].

Disaster by Hurricanes Emergency from Bermuda Triangle

Hurricane Nicole which got plowed directly into Bermuda had caused a widespread damage and knocked out power to most homes and businesses thereby. It was stated that the storm had blown away rooftops from buildings, uprooted trees, flooded homes and downed power lines as it slammed into Bermuda, which was a major tourist destination and affluent insurance industry at that point of time.

The storm, with a distance about 30 miles across, weakened after moving back into the open sea and was eventually downgraded to a "category II hurricane" its maximum winds were diminished to 110 miles per hour.

Passage of the hurricane's eye provided a clearance for about an hour, during which the skies got cleared, the rain and winds ceased and some islanders from boarded-up homes were able to stroll outside briefly.

It was claimed by the Bermuda Electric Light Company (BELCO) that nearly 26,000 customers were without power, roughly 85% of its customers, and that many power lines and utility poles had also been knocked down.

Later that evening, winds had got diminished to below the strength of the tropical storm and repair crews were able to move safely towards the streets to begin assessment of the damage caused and till then the storm had moved farther from the shore.

Bermuda has been often in the paths of Atlantic storms and also has an extensive experience in handling them. The last hurricane to hit the spot with the same strength on the island territory was Gonzalo, which was later downgraded as a category-II storm, days after the island was hit by tropical storm Fay.

Also, hurricane Fabian, which had struck the island in 2003 and caused $300 million in damage, was a category-III storm.

Hurricane Nicole, which entered the Bermuda just a week after hurricane Matthew, had spread a path of destruction through impoverished Haiti en route to the United States, where it triggered severe flooding. Matthew, which had risen to the maximum category-V intensity, had killed more than a thousand people in Haiti, and left more than 30 dead in Florida, Georgia and the Carolinas.

Bermuda Triangle Theories and Counter Theories

Author Charles Berlitz, whose grandfather had founded the Berlitz stoked the legend even further in 1974 with an enlightening bestseller about the legend. The author states that however, there is no single theory that solves the mystery. As one may put it, "trying to find a common cause for every Bermuda Triangle disappearance is no more logical than trying to find a common cause for every automobile accident in Arizona". Although storms, reefs and the Gulf Stream can cause navigational challenges there, the maritime insurance leader Lloyd's of London refuses to recognize the Bermuda Triangle as an especially hazardous place. Neither does the U.S. Coast Guard, who said "in a review of many aircraft and vessel losses in the area over the years, there has been nothing discovered that would indicate that casualties were the result of anything other than physical causes. No extraordinary factors have ever been identified" [4].

CONCLUSION

Even though there has been no answer to the question that pertains to the everlasting crisis of claim of insurance compensation in case of vanishing of planes in Bermuda Triangle, insurance companies have still made an effort to satisfy their customers by compensating them in the case of crash of MH 370 Malaysia Airlines.

In cases of pilot's failure, there is no claim of third-party insurance as the Insurer claims it to be an act of God and nothing more. The Lloyd's London Insurance Broker agrees to the fact that Coast Guard has made the area of internal research no more dangerous than others with a similar amount of traffic. The broker has not charged any special premium on the ships passing in that region.

This seems to be extremely arbitrary on the part of the insurer as the people who have been through the mis-happenings, there is no way of them getting due compensation for the loss which they have suffered. Furthermore, the same practice depicts the hollowness in the insurance laws when it comes to claim of compensation at large. At last it is very much evident that there are innumerable deaths, be it in matters of ship sinking or vanishing of aircraft due to extreme pressure of gravity present in Bermuda Triangle but it is the victims and their family members who have been left helpless and the situation does not seem to resolve. There is still a hope of a rational being that there might be a solution to the problem and justice will be served to the needful ones.

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Cite this Article
Shubham Gangal. Aviation Insurance and Bermuda Triangle Crisis. *Journal of Banking and Insurance Law*. 2018; 1(2): 21–24p.