



CAHA revision December 2009 Passenger Rights and Partial Agreements

Introduction

On 1 December 2009, the Railway Industry Dispute Resolution Committee (RIDRC) issued a revised version of the Claims Allocation and Handling Agreement (CAHA) applicable to the classic (i.e. not HS1) network.

This briefing note follows our comments on the proposed changes in June 2008 www.burgess-salmon.com/Sectors/transport_and_logistics/Publications/CAHA_Proposed_Changes.pdf and describes the key changes and the importance of clarifying the current drafting of the caps.

Certain key changes are set out in the box opposite.

In addition to some important tidying up of the 2004 CAHA, the new version:

- seeks to:
 - get to grips with the impact of new European law on passenger rights and
 - introduce a new structure for the treatment of nuclear related rail transport, however
- makes no attempt to resolve the long standing difficulties with CAHA's caps on property damage losses.

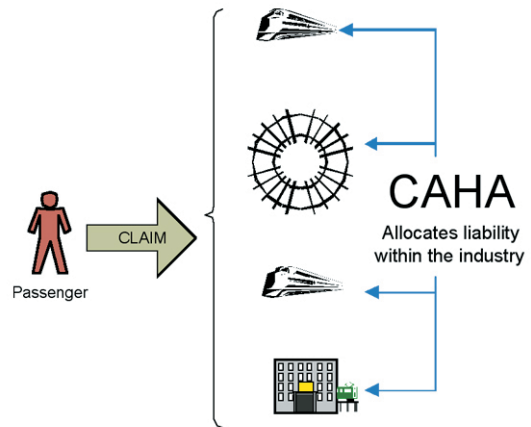
Passenger Rights and CAHA

When a passenger or third party is injured, he or she should not be obliged to analyse the industry's internal structure and contractual matrix before being able to identify the right member of the industry to claim against. A key objective of CAHA is to provide a unified face to passengers in these circumstances.

But once the claim has been brought and (if valid) paid, the industry parties involved need a mechanism to allocate the liability amongst them. CAHA is the means by which this is done.

A messy (and potentially clumsy) piece of European law, however, threatened this existing arrangement. The Passenger Rights Regulation (EUPRR) in force from 3 December 2009¹ introduced additional rights for passengers to claim (including a non-refundable interim no fault payment) and a default (Europe wide) allocation mechanism between industry parties.

Unfortunately, due partially to uncertainty in the drafting of EUPRR, the default allocation process is not ideal for Great Britain and the extent of the rights and liabilities under it are



unclear. In the revised CAHA, RIDRC has tried to adjust the operation of CAHA to accommodate the new rights to claim and disapply the default allocation.

Practically, these changes should make it possible for a train operator to recover any advance payments it is obliged to make to injured passengers from the liable party and in most cases exclude the operation of the EUPRR where it is inconsistent with the existing division of liability under CAHA.

¹ see our briefing at http://www.burgess-salmon.com/Sectors/transport_and_logistics/Publications/Tightening_Passenger_Rights.pdf

Nuclear claims

The revisions also clarify arrangements for incidents which may involve nuclear material being transported on the network. This is principally to be compatible with the relevant Nuclear legislation.

Where Nuclear Matter may be involved in any incident, the CAHA registrar will contact a loss adjuster appointed under the Nuclear Industry Claims Protocol to agree how liability will be allocated.

The remaining Property Damage Caps

Despite the detailed amendments made throughout CAHA by this revision, it has not been possible in this revision to resolve outstanding issues with the caps on liability for property damage included within CAHA.

Unlike the majority of CAHA, these caps are not related to claims by third parties against industry members. Instead, unless excluded (as for example in the model clause Track Access Agreement) they apply to all claims between CAHA parties which concern property damage. This makes them relevant in principle to most claims for property damage within the industry.

The caps have been the subject of arbitration in the past and have given rise to substantial, time consuming and expensive disputes due to their wording. In essence their interpretation was determined to be uncertain.

A new protocol for handling the relationship between the two industries has also been suggested and may shortly be developed.

Although it is hoped that the provisions connected with Nuclear Claims are never needed, these provisions are designed to make the response to any such incident more effective.

The caps therefore formed part of the consultation raised by RIDRC on changes to CAHA. Following the consultation however RIDRC noted that although the clause:

“needs amending to overcome its present lack of clarity, the consultation responses failed to give the Committee sufficient guidance on how best to proceed in the best interests of the railway industry.”

RIDRC has identified five different ways in which the clause could be amended and intends to consult further upon which of these should be adopted. Until then, the caps remain and would apply in their current unclear form to any claims arising.

Clearly the sooner this position is revised and clarified the better.

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