

THE CRUISE PASSENGER'S RIGHTS & REMEDIES: 2004

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Floating Deluxe Hotels

Modern cruise ships are best viewed as floating hotelsⁱⁱ that transport their guests from exotic port to exotic port where they stay a few hours for shopping, snorkeling, scuba diving, parasailing and touring. The cruise industry is growing rapidly. Cruise lines carried 11 percent more passengers from U.S. ports in the first quarter of 2003 than they did in the first quarter of 2002ⁱⁱⁱ. The advertising for cruise vacations is seductive, indeed, with cruise ships now being built that exceed 140,000 tons and accommodate nearly 4,000 passengers. A recent study compared the Titanic at 882 feet long with a registered gross tonnage of 46,328 tons with the 3,838 passenger Voyager of the Seas at 1,020 feet long with a registered gross tonnage of 142,000 tons^{iv}. The commitment of the cruise industry to the

future is extraordinary with an estimated \$10.5 billion invested in new ships delivered in 2002^v and Carnival Corporation intending to spend \$6.35 billion on 13 new cruise ships^{vi} and other cruise lines making similar plans^{vii}.

As of December of 2003 the largest ocean liner ever built is the Queen Mary 2 at 150,000 tons, a length of 1,132 feet, a cost of \$780 million, a height from the waterline of 23 stories, amenities that include " deluxe penthouses, a planetarium, the first Chanel and Dunhill shops at seas, a Veuve Liquot champagne bar and a ' pillow concierge ' offering nine types of pillows "^{viii} The Queen Mary 2 is scheduled to enter service in 2004 and during construction 13 visitors and many other were injured when a gangway collapsed^{ix}.

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A] **History Of Modern Cruising**

" For much of the twentieth century, of course, sea passage

was more about crossing than cruising. Only on the competitive transatlantic route could travelers readily book a stateroom on the kind of seagoing Art Deco museum that still fires the imagination. But in fact, many of these great vessels were short-lived: The Titanic sunk in 1912, the sleek Lusitania torpedoed in 1915, the France and her Louis XIV interiors sold for scrap in 1934, and the peerless Normandie stripped of her Lalique fixtures (and every other extravagance) when she was transformed into a U.S. troopship in 1941.

Ultraluxury liners were phased out, losing travelers to jet airlines. But true cruising was only really beginning, and the industry had its own postwar baby boom, giving birth to a new generation of vessels that were built for pleasure cruising, not plain old crossing. Among the first and finest was the Carolina, a standard setter for Cunard. Launched in 1949, she mirrored both the past and the present: Her elegant interiors typified the great postwar liners, but she was also modern, with an outdoor swimming pool, a bathroom in every cabin (not just first class), and a crew-to-passenger ratio that approached one-to-one...Opulence had its day. Gone is the Queen Mary (now a \$150 a night floating hotel in Long Beach, California), along with the Louis Vuitton gown trunks and port of call baggage stickers that traveled with her. But if pomp has been lost, consider the gain in circumstances. Ships now not only frequent waters from the

Inside Passage to the Aegean, they also sail to ports that most of us need five-pound atlases to locate, from Deception Island to Nosy Be to Muroran. More than six hundred cruise ships now ply the waves, with capacities ranging from fewer than thirty passengers to more than three thousand. With these kinds of numbers, the competition is relentless...more than fifty new ships are on order...The unsinkable dream is swell travel on the high seas, and cruise lines aim to design ships that deliver. Dining rooms are becoming true restaurants, an onboard spa is all but guaranteed, and balconied cabins are increasingly commonplace.^x "

B] The Downside Of Rapid Expansion

" As the industry grows and more and more ships ply the seas, however, there are bound to be further incidents like those that have peppered the evening news in recent months : Last September, a fire on Carnival's Tropicale caused the ship to drift in the Gulf of Mexico for an entire day--during a tropical storm, no less--before the crew were able to restart the engines and return to port. Passengers complained of malfunctioning toilets and sewage in the hallways. That same month, the brand-new Norwegian Sky ran aground in the St. Lawrence Seaway, even though it had two local pilots on board. The vessel was stranded

for three hours before the tide allowed it to float free. On a clear night last August the Norwegian Dream collided with a container ship in the English Channel. Its hull was dented and 21 passengers sustained minor injuries. Investigators... suspect that one of the vessels had faulty navigation equipment or that the crew were not monitoring it properly. In July, Carnival disclosed that between 1993 and 1998, passengers and crew members made 108 allegations of rape or other sexual misconduct on board its ships. In December 1998, Royal Caribbean's Monarch of the Seas struck a reef off the coast of St. Martin; all 2,557 passengers had to be evacuated and flown home ^{xvi}.

C] Cruise Passenger Safety: Post September 11, 2001

On September 11, 2001 four regularly scheduled domestic commercial aircraft were hijacked by terrorists. Two of the aircraft were flown into both towers of the World Trade Center in New York City resulting in their collapse. A third hijacked aircraft was flown into the Pentagon in Washington, D.C.. And a fourth aircraft crashed into a field near Pittsburgh^{xvii}. The total number of dead may have exceeded 3,000^{xviii}. The ease with which the hijackers boarded the aircraft and seized control with knives and boxcutters^{xix} highlighted just how vulnerable our airports and commercial aircraft are to terrorist acts. This horrific disaster

has and will continue to generate significant changes in passenger security at airports and on aircraft^{xv} and on other forms of mass transportation such as cruise ships^{xvi}.

Indeed, the Courts may have to change their thinking on various airline matters in light of the events of September 11, 2001^{xvii}. In In re September 11 Litigation^{xviii} the Court found, inter alia, that the owners of the World Trade Center owed the occupants a duty to implement adequate fire safety measures and that the airlines failure to design an impenetrable cockpit door was the proximate cause of the disaster.

D] **Increased Security On Cruise Ships**

Cruise ships would appear to be likely targets of terrorist attacks. Even before the September 11, 2001 disaster security on cruise ships was high.

" Passenger ships operating from the United States already had security procedures in place well before Sept. 11, according to Michael Crye, the president of the International Council of Cruise Lines...Those procedures have since been intensified. ' We implemented the highest level of security immediately after the attacks '... Security on cruise ships usually includes a trained staff and an officer who is a military veteran. On Royal Caribbean, and other major cruise lines, carry-ons, provisions

and luggage are screened by one or more detectors—X-ray machines, metal detectors, hand searches and canine teams. And before passengers or crew members board or debark, each must swipe an identification card that contains a digital photograph and personal data on a magnetic strip; security personnel then compare the resulting photograph and data on the computer screen to the person standing before them ^{xxix}.

Congress passed the Maritime Transportation Safety Act of 2002, effective January 1, 2003. The Act ^x requires various security plans for U.S. Ports and mandates improved identification and screening of seaport personnel. When all is said and done, the U.S. will have security measures that are much more restrictive than other countries...It has been obvious that protection was needed, considering that some 7,500 foreign flagged ships make 51,000 ports of call each year in 361 U.S. Ports ^{xxx}.

E] Unruly Airline Passengers: A Warning For Cruiselines

The ongoing problem of unruly airline passengers^{xxxi}, a problem that affects both domestic and international passengers and which predates the September 11, 2001 disaster, foretold of the vulnerability of commercial aircraft to terrorist attacks^{xxii} and should serve as a warning of what may happen on cruise ships.

In the U.S. the pilot of a commercial aircraft has the right to deny boarding to and/or remove disruptive passengers since they may pose a threat to other passengers^{xxiii}. Occasionally airline employees and flight attendants may be responsible for assaults and mistreatment of passengers^{xxiv}.

F] **How Should Aggrieved Passengers Respond?**

Passengers who are dissatisfied with their cruise experience may file complaints and/or commence a lawsuit seeking appropriate compensation.

(1) **The Art Of Complaining**

Kevin Doyle of Conde Nast Traveler Magazine in his article Cruise Smart, How To Ensure Smooth Sailing, From Booking To Disembarking^{xxv} recommends the following:

" This magazine has heard stories of cabin toilets being clogged for days, showers spraying putrid water, and air conditioning that either didn't work or turned the cabin into a deep-freeze. One reader even complained about a waiter aggressively soliciting tips, telling sad tales of his many hungry children on a far-off continent. These situations deserve

immediate attention: Notify the chief purser or the hospitality director (or the maitre d' for dining room problems) and politely suggest a satisfactory resolution...Solutions...How to convince the crew to fix your problems...Be reasonable.

Requesting a full refund because you've found a fly in your soup or because a burned-out lightbulb hasn't been replaced won't get you much more than a bad reputation among the staff. Man the faxes. If the situation is not resolved to your satisfaction, use the ship's fax machine to send a letter of complaint to the president of the cruise line, explaining the situation and requesting intervention. Carefully consider any offers. On very rare occasions—such as the time a reader and his wife were literally flushed out of their cabin by a broken water pipe—the line will offer compensation on the spot. If you accept, you'll have a hard time convincing anyone you're entitled to more should you change your mind later “.

(2) **Suing The Cruiseline & Others**

If the aggrieved passengers are unable to resolve the more minor of these problems through complaining then litigation may be necessary after the cruise is completed. In filing a claim and preparing a lawsuit the passenger should carefully read the

cruise ticket since it contains numerous clauses limiting liability including very short time periods in which to file claims and commence lawsuits. Most importantly, the aggrieved passengers and his or her attorney should be aware that the passenger's rights and remedies are governed by maritime law which in many important respects is very different from the common law. Lastly, the aggrieved passenger may wish to consider suing his or her local travel agent^{xxvi}, tour operator^{xxvii} or sponsoring organization^{xxviii} that arranged the cruise vacation.

G] **21st Century Cruise Ships; 19th Century Passenger Rights**

While a cruise vacation may very well be the best travel value available, consumers should be aware that the cruise ship's duties and liabilities are governed not by modern, consumer oriented common and statutory law, but by 19th century legal principals [See e.g., *Barbetta v. S/S Bermuda Star*^{xxix}(cruise ship insulated from vicarious liability for medical malpractice of ship's doctor based upon a rule (" If the doctor is negligent in treating a passenger, however, that negligence will not be imputed to the carrier ") followed by " An impressive number of courts from many jurisdictions...for almost one hundred years ")], the purpose being to insulate cruiselines from the legitimate claims of passengers. The policy enunciated by the Second Circuit

Court of Appeals nearly 40 years ago in Schwartz v. S.S. Nassau^{xxx}, a case involving a passenger's physical injuries, applies equally today, " The purpose of [46 U.S.C. 183c]...' was to encourage shipbuilding and (its provisions) ...should be liberally construed in the shipowner's favor ` " .

Although recent years have seen the expansion of travel consumers' rights and remedies in actions against airlines^{xxxii}, domestic hotels^{xxxiii}, international hotels^{xxxiii}, tour operators^{xxxiv}, travel agents^{xxxv}, informal travel promoters^{xxxvi} and depository banks^{xxxvii}, there has been little, if any , change in the passengers' rights and remedies in actions against cruise lines.^{xxxviii} Cruise passengers are at a distinct disadvantage in prosecuting their claims.

H] Accidents Onboard The Cruise Ship

Common travel problems experienced by cruise passengers include death and physical injuries caused by

(1) **Slips, trips, falls & minor injuries** [Ward v. Cross Sound Ferry^{xxxix} (slip and fall on gangway boarding ferry); Morrow v. Norwegian Cruise Line Limited^{xl}(minor passenger injured " when the ladder she was climbing detached and fell backwards "); Carnival Corp. v. Stowers^{xli} (slip and fall on granite step after

slipping on liquid on carpet); Gibbs v. Carnival Cruise Lines^{xiii} (minor passenger burns foot stepping onto hot surface of deck); Watanabe v. Royal Caribbean Cruise Ltd.^{xliii} (passengers forced to abandon ship after it struck a reef); Angel v. Royal Caribbean Cruises Ltd.^{xliv} (passenger falls overboard and survives); Carnival Corp. v. Amato^{xlv} (passenger falls down stairs and recovers \$577,000 in damages); Norwegian Cruise Line Ltd. v. Clark^{xlvi} (slip and fall on wet deck); Corona v. Costa Crociere SPA^{xlvii} (passengers who walked with cane falls when bathroom door handle came off its housing); Kalendareva v. Discovery Cruise Line^{xlviii} (passenger seated in lounge chair struck by weighted end of thrown mooring line); ; Bergonzine v. Maui Classic Cruises^{xlix} (350 lb. passenger on honeymoon cruise falls on gangplank); Rainey v. Paquet Cruises¹ (fall on disco dance floor); Lee v. Regal Cruises¹¹ (fall on melting ice cubes on stairway); Kunken v. Celebrity Cruises¹¹¹ (ankle broken entering cabin)];

(2) **Drownings and pool accidents** [Wallis v. Princess Cruises, Inc.^{liii} (passenger drowns after falling off cruise ship); Smith v. Mitlof^{liv} (water taxi capsizes drowning one passenger and injuring others); Calhoun v. Yamaha Motor Corp.^{lv} (rider of Yamaha WaveJammer jet ski dies after collision with anchored vessel off Mexico coast); United Shipping Co. v. Witmer^{lvi} (passenger drowns during boat tour of Bahamas); Smith v. West Rochelle Travel Agency^{lvii} (passenger on booze cruise leapt

overboard and was killed when he came into contact with the vessel's propellers); Kruempelstaedter v. Sonesta International Hotels Corp.^{lviii} (after exiting pool passenger burns feet on hot sun exposed surface); Benezra v. Holland America Line-Westours, Inc.^{lix} (passenger slips and falls on pool steps); Carron v. Holland America Line^{lx} (passenger in pool " propelled into a sharp statute...causing injury "); Brown v. New Commodore Cruise Line^{lxi} (passenger fractures ankle recklessly jumping into pool from one deck above)];

(3) **Flying coconuts** [McDonough v. Celebrity Cruises^{lxii} (passenger struck in head with rum filled coconut [a drink called the " **Coco Loco** "] dropped from a deck above);

(4) **Stray golf balls** [Catalan v. Carnival Cruise Lines^{lxiii} (passenger driving golf balls into sea strikes another passenger)];

(5) **Discharging shot gun shells** [Fay v. Oceanic Sun Line^{lxiv} (skeet shooting passenger discharges shot gun shell into another passenger)];

(6) **Defective exercise equipment** [Berman v. Royal Cruise Lines^{lxv} (passenger injured exercising on treadmill)];

(7) **Diseases** [Petitt v. Celebrity Cruises, Inc.^{lxvi} (passengers develop upper respiratory tract infection); Anderson v. Carnival Cruise Lines, Inc.^{lxvii} (passenger contracts appendicitis, initially treated in ship's infirmary and removed to Puerto Rican hospital); Hague v. Celebrity Cruises, Inc.^{lxviii} (passenger who suffered from Legionnaires' Disease awarded compensatory damages); Licensed Practical Nurses v. Ulysses Cruises, Inc.^{lxix} (passengers suffer from bacterial infection); In re Horizon Cruises Litigation^{lxx} (Legionnaires' Disease); Freeman v. Celebrity Cruises, Inc.^{lxxi} (Legionnaires' Disease; class of passengers suffering from emotional distress and fear certified); Hirschhorn v. Celebrity Cruises, Inc.^{lxxii} (passengers became ill and needed medical treatment); Mullen v. Treasure Chest Casino^{lxxiii} (respiratory disorder caused by improperly maintained air-conditioning and ventilating system)]. See also: Peterson, Leading Passengers to Water, N.Y. Times Travel Section, September 28, 2003, p. 8 (" The norovirus, as the Norwalk virus has been renamed, has been making unwelcome headlines in the cruise industry for a decade or more, most recently when the Regal Princess...tied up in New York early this month with 301 of 1,529 passengers and 45 of a crew of 679 stricken with the illness. The virus is so closely associated with cruise ships that it has come to be called the cruising sickness...cruise ships are an ideal vessel for spreading the

virus, said Dave Forney chief of CDC's Vessel Sanitation Program...' You have 3,400 passengers in a relatively confined space for 10 days at a time, so if you have someone who throws up in an elevator or has an accident in a restroom,, the risk becomes actually quite high for many people ").

(8) **Rapes & sexual assaults** [Stires v. Carnival Corp.^{lxxiv} (head waiter sexually assaults passenger repeatedly calling her a " puta "); Doe v. Celebrity Cruises^{lxxv} (" female passenger...alleges to have been sexually assaulted, raped and battered by a male crewmember...while ashore in Bermuda during a roundtrip cruise from New York to Bermuda... (the Court held that) " a common carrier may be held strictly liable for its' employee's intentional torts that are committed outside the scope of employment " ; case tried to a jury which awarded \$1 million in damages; judgment dismissed as to all defendants [operator, owner, caterer and service] because none of them are both a common carrier and the employer of the employee]; State v. Stepansky^{lxxvi} (crew member charged with crimes of attempted sexual assault and burglary onboard cruise ship); Royal Caribbean Cruises, Ltd. v. Doe^{lxxvii} (passenger claims that bartender put drugs into her drink and sexually assaulted her); Nadeau v. Costly^{lxxviii} (rape of passenger); Morton v. De Oliveira^{lxxix} (rape); Johnson v. Commodore Cruise Lines^{lxxx} (rape of passenger and cover up on cruise); York v. Commodore Cruise Line^{lxxxii} (sexual assault); Travel Weekly, August 16, 1999 ("

Cruising Holds Steady Despite Assault Reports...As reported, 108 allegations of sexual misconduct were included in a lawsuit filed in July by a former Carnival employee, who said she was raped by a Carnival officer..."); See also Navin, Stalking Sexual Predators at Sea: The response of the cruise industry to sexual assaults onboard^{lxxxii}];

(9) **Assaults by crew members** [O'Hara v. Celebrity Cruises, Inc. ^{lxxxiii}(two passengers assaulted by crew member); Corna v. American Hawaii Cruises^{lxxxiv} (crewman assaults passenger)];

(10) **Assaults by passengers** [Marmer v. Queen of New Orleans^{lxxxv} (patron of riverboat casino assaulted in restroom); Colavito v. Carnival Cruise Lines, Inc.^{lxxxvi} (assault by intoxicated passenger)];

(11) **Malpractice by ship's doctor** [Carlisle v. Carnival Corp^{lxxxvii} (14 year old passenger with appendicitis misdiagnosed by ship's doctor as suffering from flu removed from ship suffers ruptured appendix and rendered sterile after surgery; Florida Appellate Court rejects majority rule that cruise ships are not liable for torts of ship's doctors [see discussion below] and holds that " where a ship's physician is

in the regular employment of a ship, as a salaried member of the crew " the ship will be held liable for his " negligent treatment of a passenger "); Pota v. Holtz,^{lxxxviii} (pregnant passenger complaining of stomach cramps misdiagnosed as having bladder infection goes into contractions and bleeding and cruiseline denies request for airlift to hospital in Grand Cayman Island; passenger taken to hospital only after ship docks, gives birth and baby dies a few hours later); Jackson v. Carnival Cruise Lines, Inc.^{lxxxix} (passenger becomes ill during cruise, treated in onboard infirmary and dies after disembarkation; no proof that contaminated food caused death); Stires v. Carnival Corp.^{xc} (head waiter sexually assaults passenger repeatedly calling her a " puta "; medical malpractice claim against cruise ship dismissed); Doe v. Celebrity Cruises^{xcii} (passenger sexually assaulted by crewmember; claim that ship's physician failed to examine her correctly, preserve evidence of the sexual assaults, protect her from a sexually transmitted disease or pregnancy or administer a rape kit; medical malpractice claim against cruise ship dismissed); Benson v. Norwegian Cruise Line Limited^{xciii} (passenger ate " shellfish and had an allergic reaction. Due to swelling in the windpipe he could not breath...(passenger) died before intubation could be successfully completed "; medical malpractice occurred 11.7 nautical miles from Florida and, hence, Florida has jurisdiction over medical doctor); Cimini v. Italia Crociere International^{xciiii} (cruise ship disclaimer of liability for malpractice of ship's doctor enforced); Cross v. Kloster Cruise Lines, Limited^{xcv} (passenger bitten by brown recluse spider; medical malpractice); Afflerbach v. Cunard Line Ltd.^{xcvi}

(passenger falls while disembarking injuring buttocks, elbow and right shoulder; medical malpractice and failure to assist); Fairley v. Royal Cruise Line Ltd.^{xcvi}(ship may be liable for ship's doctor's malpractice); Meitus v. Carnival Cruise Lines, Inc.^{xcvii} (crew member contracts viral encephalitis; misdiagnosis and medical malpractice); Rand v. Hatch^{xcviii}(failure to diagnose passenger's blood sugar level and render proper medical treatment); Johnson v. Commodore Cruise Lines^{xcix} (passenger raped by crew member and misdiagnosed as having had heart attack; removed from ship and abandoned on shore); see also: Herschaft, Cruise Ship Medical Malpractice Cases: Must Admiralty Courts Steer By The Star Of Stare Decisis?^c].

(12) **Fires** [Tobin, NCL stands by Norway, says it will repair ship, Travel Weekly, June 2, 2003, p. 1 (a blast in the boiler occurred “ May 25 after the Norway had returned to Miami following a seven-day Caribbean cruise. Four crew members were killed; two more later died from injuries. About 20 other crew were injured...No passengers were injured in the incident...”); Neenan v. Carnival Corp.^{ci} (fire onboard M.S. Tropicale in September 16, 1999; passengers “ were held inside a smoke-filled, unventilated `muster station ` within the ship, after it caught fire...As significant portions of the M.S. Tropicale were ablaze, its sanitary system and engines allegedly became inoperable (which) produced backup, overflow and the constant smell of

human waste...the events on this day caused damage to (the passenger's) personal property and resulted in ` severe discomfort and nausea throughout most of the voyage ` `".

See also Wade, Fire Safety For Ships at Sea, New York Times, Practical Traveler, August 2, 1998, p. 4.

" Unlike the Titanic or the Andrea Doria, the Carnival cruise ship Ecstasy lost not a single passenger or crew member. But in its smaller way, the Ecstasy fire, which produced thick smoke that was on hundreds of television newscasts, will probably contribute to the evolution of marine safety.

The time line of progress on marine safety reads as a perfect counterpoint to tragedies afloat. After more than 1,000 people, mostly children, died on an excursion aboard the General Slocum, which caught fire in New York in 1904, requirements for lifesaving gear and fire equipment were tightened. When more than 1,500 died on the Titanic in 1912, lifeboat personnel were required to be certified, and an international conference was called to approve a Convention on the Safety of Life at Sea. The Andrea Doria-Stockholm crash in 1956, in which 52 died, brought requirements that hulls be divided by steel bulkheads.

With the Ecstasy, which was built with sprinklers, smoke inhalation in corridors caused the only injuries, and they were

mild. (The investigators, at this writing, do not know if the sprinklers were going to be effective in the fire, or if the fireboats were essential. There were also complaints of confusion and delay in informing passengers of the fire and the procedures to follow).

There were no sprinklers aboard Commodore Cruise Line's Universe Explorer, where five crew members died of smoke inhalation in a 1996 fire....There are many other ships without sprinklers, or even smoke alarms that go off on the spot. Sometimes they are installed then taken out—in a laundry, for example—because they go off too often “];

(13) **Collisions & striking reefs** [Travel Weekly, Aug. 30, 1999 (“ Norwegian cancels sailings in wake of ship collision ”); Watanabe v. Royal Caribbean Cruises, Ltd.^{cii} (passengers injured when Monarch of the Seas struck reef forcing them to abandon ship];

(14) **Gastrointestinal disorders, seasickness and fear** [Hutton v. Norwegian Cruise Line^{ciii} (cruise ship collides with cargo ship in English Channel; emotional injuries including “ severe fright, trouble sleeping, nerves, headaches, depression and shaking. Many passengers also complained about aches, bumps and bruises of their neck, back and knees associated with the collision “); Jackson v. Carnival Cruise Lines, Inc.^{civ}

(passenger becomes ill during cruise and dies after disembarking; no proof that contaminated food caused illness); Tateosian v. Celebrity Cruise Services, Ltd.^{cv} (food poisoning; claim dismissed for failure to commence lawsuit within 1 year of accident); Adler v. Royal Cruise Line, Ltd.^{cvi} (passengers become ill because of unsanitary conditions); Bounds v. Sun Line Cruises, Inc.^{cvi} (food contamination); Hernandez v. The Motor Vessel Skyward^{cvi} (contaminated food and water); Barbachym v. Costa Line^{cix} (food poisoning); Williams v. Carnival Cruise Lines^{cx} (seasickness; fear of seasickness)];

(15) **Heart attacks** [Bailey v. Carnival Cruise Lines, Inc.^{cx}; Warren v. Ajax Navigation Corp^{cx}. (passenger claimed malpractice by ship's doctor in treatment after heart attack)];

(16) **Malfunctioning toilets** [Kornberg v. Carnival Cruise Lines^{cx}];

(17) **Pool jumping** [Brown v. New Commodore Cruise Line Limited^{cx} (passenger jumps from deck above into pool below and suffers broken ankle after landing on " wooden bench " about a foot short " of the pool ")];

(18) **Sliding down banisters** [Meyer v. Carnival Cruise

Lines, Inc.^{cxv}(intoxicated passenger injured while sliding down banister)];

(19) **Poorly designed bathrooms, sofas, bunkbeds, passageways & railings** [Carnival Corp. v. Amato^{cxvi}(passenger falls down flight of stairs and recovers \$577,000; claims negligence “ for allowing grease to accumulate on the top of the stairs...maintaining a defective handrail...failure to put non-skid strips on the stairs and...building the stairs too steeply and too overlapped “); Corona v. Costa Crociere SPA^{cxvii} (passenger fell after loose screws released bathroom door handle); Hood v. Regency Maritime Corp.^{cxviii} (while using bathroom passenger struck by piece of tub); Palmieri v. Celebrity Cruise Lines, Inc.^{cxix} (jury verdict for passenger injured falling over sofa bed); Kunken v. Celebrity Cruises, Inc.^{cxx}(passenger breaks ankle entering passageway to cabin); Marchewka v. Bermuda Star Lines, Inc.^{cxxi}(passenger falls when rungs of bunk bed ladder gave way)];

(20) **Open hatches** [In re Vessel Club Med^{cxiii} (passenger steps into open engine hatch and hurts ankle); Hendricks v. Transportation Services of St. John, Inc.^{cxiii} (passenger falls into open hatchway on ferry)];

(21) **Storms & hurricanes** [Domblakly v. Celebrity Cruises, Inc.^{cxxiv} (passengers injured when cruise ship battered by hurricane); In re Catalina Cruises, Inc.^{cxxv} (passengers injured during rough weather caused by storm); Stobaugh v. Norwegian Cruise Line Limited^{cxxvi} (passengers injured when cruise ship sails into Hurricane Eduardo)];

(22) **spider bites** [llan v. Princess Cruises, Inc.^{cxxvii} (passenger failed to prove that he was bitten by a hobo spider); Cross v. Kloster Cruise Lines, Limited^{cxxviii} (passenger bitten by brown recluse spider)];

(23) **Snapping mooring lines** [Kalendaeva v. Discovery Cruise Line,^{cxxix} (passenger sitting in lounge chair struck by heaving line thrown from dock to second deck); Douville v. Casco Bay Island Transit^{cxxx} (ferry passengers injured because of a failure to detach mooring line before departing)];

(24) **Medical emergency disembarkation.** A cruise ship's medical doctor may " medically disembark " a sick passenger without the passenger's consent. In Larsen v. Carnival Corporation^{cxxxi} a disabled cruise passenger, " diagnosed with severe obstructive sleep apnea, severe morbid obesity at approximately 450 lbs. and chronic obstructive pulmonary disease and has utilized a prescribed Bi-Pap ventilator

and oxygen concentrator at night to help him breath during sleep “, was medically disembarked by the ship’s doctor because a functioning Bi-Pap ventilator could not be supplied. In Larsen the Court found that the ship’s medical doctor’s “ decision to disembark

(passenger) was based upon a reasonable concern for safety

(and to do otherwise) would have represented a serious threat to (passenger’s) health and even his life “.

(25) **Torture and hostage taking** [Simpson v. Socialist People’s Libyan Arab Jamahiriya^{cxxxii} (passenger forcibly removed from cruise ship by Libyan authorities claims she was held hostage and tortured)];

(26) **Forced to abandon ship** [Watanabe v. Royal Caribbean Cruises, Ltd.^{cxxxiii} (passengers injured when forced to abandon ship after it struck a reef)];

(27) **Intentional infliction of emotional distress**

[Wallis v. Princess Cruises, Inc.^{cxxxiv} (passenger drowns after falling off cruise ship);

Stires v. Carnival Corp.^{cxxxv} (head waiter sexually assaults passenger repeatedly calling her a “ puta “)].

[I] **The Standard of Care**

(1) Accidents Onboard the Cruise Ship: Maritime Law

Cruise ships are common carriers once held to a high standard of care but more recently governed by a reasonable standard of care under the circumstances of each case [Kermarec v. Compagnie Generale Transatlantique^{cxxxvi}; Ginop v. A 1984 Bayliner 27' Cabin Cruiser^{cxxxvii} (“ The general principals of admiralty law require that an owner exercise such care as is reasonable under the circumstances “); Ilan v. Princess Cruises, Inc.^{cxxxviii} (“ A shipowner owes passengers a duty to take ordinary reasonable care under the circumstances...A prerequisite to liability is that the shipowner have had actual or constructive notice of the risk-creating condition “); Watanabe v. Royal Caribbean Cruises^{cxxxix} (“ The duty of care of the owner of an excursion ship is a matter of federal maritime law...That duty is to exercise reasonable care under the circumstances “); Kalendareva v. Discovery Cruise Line^{cxl} (“ A ship owner, however, may have a higher duty of care than a land owner, depending on the danger...The extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more danger to the passenger, will determine how high a degree of care is reasonable is each case “)].

The doctrines of **comparative negligence** [Ginop v. A 1984 Bayliner 27' Cabin Cruises^{cxli}(passenger’s failure to use reasonable care for his own safety was proximate cause of his injuries not the negligence of the cruise ship)] and **assumption of the risk**

[Hirschhorn v. Celebrity Cruises, Inc.^{cxlii}

(assumption of risk under the doctrine of comparative negligence is valid defense)]

apply. The doctrine of *res ipsa loquitur* may apply thereby raising an inference of

negligence [O’Conner v. Chandris Lines, Inc.^{cxliii} (falling bunk; *res ipsa loquitur*

applied); Hood v. Regency Maritime Corp.^{cxliv} (passenger using bathroom struck by

piece of tile that came loose)] and cruise ships may be **vicariously liable** for the

sexual misconduct of their employees [Stires v. Carnival Corp.^{cxlv} (head waiter sexually

assaults passenger repeatedly referring to her as a

“ puta “); Doe v. Celebrity Cruises^{cxlvi} (“ female passenger... alleges to have been

sexually assaulted, raped and battered by a male crewmember...while ashore in

Bermuda during a roundtrip cruise from New York to Bermuda... (the Court held that) “

a common carrier may be held strictly liable for its’ employee’s intentional torts that are

committed outside the scope of employment “; case tried to a jury which awarded \$1

million in damages; judgment dismissed as to all defendants [operator, owner, caterer

and service] because none of them are both a common carrier and the employer of the

employee)] and the malpractice of the ship’s doctor [Carlisle v. Carnival

Corp^{cxlvii}

(14 year old passenger with ruptured appendix misdiagnosed by

ship’s doctor as suffering from flu; Florida Appellate Court

rejects majority rule [see discussion below] that cruise ships

are not liable for torts of ship’s doctors and holds that “ where

a ship’s physician is in the regular employment of a ship, as a

salaried member of the crew “ the ship will be held liable for

his " negligent treatment of a passenger ")]. The **sea-worthiness doctrine** has not yet been applied to actions involving passengers [Kornberg v. Carnival Cruise Lines^{cxlviii}], there is no **breach of a contract for safe passage** unless expressly promised [Jackson v. Carnival Cruise Lines^{cxlix} (" The general rule of admiralty law is that a ship's passengers are not covered by the warranty of seaworthiness, a term that imposes absolute liability on a sea vessel for the carriage of cargo and seaman's injuries...there is an exception to this rule if the ship owner executes a contractual provision that expressly guarantees safe passage "); Stires v. Carnival Corp.^{cli} (head waiter sexually assaults passenger repeatedly referring to her as a " puta " ; no breach of contract of carriage permitted); Doe v. Celebrity Cruises^{clii} (crew member sexually assaults passenger; no breach of implied contractual duty of safe carriage)] and **causation** must be proven [Petitt v. Celebrity Cruises, Inc.^{cliii} (passengers suffer upper respiratory infections (URTI) during cruise; failure to prove that cruise ship's negligence, if any, caused the URTI; only 3.3% of 1,935 passengers visited ship's infirmary with colds or URTI); Jackson v. Carnival Cruise Lines^{cliiii} (passenger became ill during cruise, initially treated in infirmary and dies after disembarking; no proof of food poisoning)].

[2] **Accidents on Shore: How Far Does Maritime Law Extend?**

Prior to arriving at a port of call the cruise ship's staff will give lectures about the shopping to be expected and the availability of tours to include snorkeling and scuba diving areas, archaeological sites, catamaran rides, para-sailing, helicopter rides and so forth. Cruise ships may generate substantial income from these tours^{cliv}, which are typically delivered by independent contractors not subject to the jurisdiction of U.S. courts and which may be uninsured, unlicensed and irresponsible [Winter v. I.C. Holidays, Inc.^{clv} (tourists injured in bus accident; foreign bus company insolvent, uninsured and irresponsible; tour operator has duty to select responsible independent contractors)].

The law to be applied in the event of an accident on shore will depend upon the extent to which a given court wishes to extend the principals of maritime law beyond the confines of the cruise ship. Some courts have taken a conservative position holding that maritime law ends at the gangplank [Matter of Konoa, Inc.^{clvi} (scuba accident; maritime law does not apply); Musumeci v. Penn's Landing Corp.^{clvii} (maritime law applies to accident on gangplank)]. More progressive courts have extended maritime law to the pier [Gilmore v. Caribbean Cruise Line^{clviii} (passengers robbed and stabbed on pier; failure to warn of high level of criminal activity on pier)] and beyond to cover accidents that occur far away from the ship [Chan v. Society

Expeditions, Inc.^{clix} (inflatable raft transporting passengers to shore capsizes; maritime law applies to accident away from cruise ship); Carlisle v. Ulyssess Line Ltd.^{clx} (passengers ambushed on remote beach; cruise line has continuing duty to warn of dangerous conditions on shore)].

[a] **Three Zones Of Danger**

There are three zones in which accidents occur beyond the safety of the ship.

First, accidents may occur while passengers are being **transported from ship to shore** [Chan v. Society Expeditions^{clxi} (inflatable raft ferrying passengers to shore capsizes); Favorito v. Pannell^{clxii} (engineer drives inflatable tender with 15 passengers into other vessel)].

Second, accidents may occur on **the pier** or areas immediately adjacent thereto [Smith v. Commodore Cruise Line Limited^{clxiii} (passenger falls on bathroom floor of boarding facility used by cruise ship fracturing hip and knee); Sharpe v. West Indian Company, Ltd.^{clxiv} (a railing from cruise ship falls on passenger walking on dock to board tour bus); Gillmore v. Caribbean Cruise Line^{clxv} (passengers stabbed and robbed on pier); Sullivan v.

Ajax Navigation Corp.^{clxvi} (passenger injured on Mexican pier)].

Third, accidents may occur

(1) **In the town** [Petro v. Jada Yacht Charters^{clxvii} (two passengers have fight in bar in town)];

(2) **On local transportation** [Esfeld v. Costa Crociere^{clxviii} (passenger injured in tour van accident during shore excursion of Da Nang area in Vietnam); Konikoff v. Princess Cruises, Inc.^{clxix} (passenger sustained injury exiting taxi during shore excursion); Dubret v. Holland America Line^{clxx} (bus accident during shore excursion); Paredes v. Princess Cruises^{clxxi} (tour bus accident during ground tour in Egypt); DeRoche v. Commodore Cruise Line^{clxxii} (motor scooter accident during shore excursion); Lubick v. Travel Services, Inc.^{clxxiii}];

(3) **On a private beach** [Berg v. Royal Caribbean Cruise^{clxxiv} (accident at private beach); Carlisle v. Ulysses Line^{clxxv} (passengers ambushed, raped and robbed at private beach)];

(4) **At a hotel** [Rams v. Intrav, Inc.^{clxxvi} (passenger fell at hotel owned by cruise line during shore excursion)];

(5) **While being transported to local sites** [Varey v.

Canadian Helicopters Limited^{clxxvii} (cruise passengers drown when helicopter crashes on return to Cozumel, Mexico from tour of ruins in Chichen Itza); See also: Nineteen die on HAL tour excursion, Travel Weekly^{clxxviii} (“ Sixteen passengers from Holland America Line’s Maasdam, along with two pilots and one tour escort, were killed Sept. 12 when their sightseeing plane crashed in a jungle near Mexico’s Yucatan Peninsula “) Passenger killed in shore excursion accident, Travel Weekly^{clxxix}; Six passengers, pilot killed in Maui tour helicopter crash, Travel Weekly^{clxxx}];

(6) **Touring a local site** [Long v. Holland America Line Westours, Inc.^{clxxxix}, (slip and fall during tour of museum); Metzger v. Italian Line^{clxxxii} (accident during shore excursion)].

[J] **Types Of Shore Accidents**

(1) **Assaults, rapes, robberies and shootings**
[Gillmore v. Caribbean Cruise Line^{clxxxiii}; Carlisle v. Ulysses Line^{clxxxiv}; See also: Travel Weekly^{clxxxv} (“ A dozen passengers sailing on Holland America Line’s Noordam were robbed at gunpoint at the Prospect Plantation In Ocho Rios, Jamaica “)];

(2) **Horseback riding** [Colby v. Norwegian Cruise Lines^{clxxxvi} (horse riding accident during shore excursion)];

(3) **Jet skis** [Calhoun v. Yamaha Motor Co., Ltd.^{clxxxvii}
(rider of Yamaha WaveJammer jet ski dies after collision with
anchored vessel off the Mexican coast); Mashburn v. Royal
Caribbean Cruises, Ltd.^{clxxxviii} (passenger injured riding a Sea-
Doo provided by cruise ship); In re Complaint of Royal Caribbean
Cruises^{clxxxix} (passengers on jet skis collide)];

(4) **Scuba diving** [Carnival Cruise Lines, Inc. v.
LeValley^{cxcc}(judgment for passenger injured during cruiseship
sponsored scuba dive reversed for concealing asthmatic condition
from dive instructor); Neely v. Club Med Management Services,
Inc. ^{cxci}(American employed as scuba instructor at St. Lucia Club
Med resort sucked into dive boat propellers); Sinclair v.
Soniform, Inc.^{cxcii} (scuba diver suffers decompression sickness
due to defect in buoyancy compensator vest and failure of crew to
detect his symptoms); Matter of Pacific Adventures, Inc.^{cxciiii}
(scuba diver's leg entangles in dive boat propeller);
McClenahan v. Paradise Cruises, Ltd.^{cxciiv} (snuba diver injured
(" Snuba diving differs from more traditional Scuba diving;
Snuba diving is apparently similar to snorkeling and uses a
common air supply on the surface with air hose for a group of
divers); Tancredi v. Dive Makai Charters^{cxcv} (scuba accident
during shore excursion); Courtney v. Pacific Adventures^{cxcvi}

(scuba diver's leg becomes entangled in boat propeller);
Shultz v. Florida Keys Dive Venter, Inc.^{cxcvii} (scuba diver
drowns); Cutchin v. Habitat Curacao^{cxcviii} (scuba accident at
dive resort); Borden v. Phillips^{cxci} (scuba diver drowns)].

(5) **Snorkeling** [Mayer v. Cornell University^{cc}
(bird watcher on tour of Costa Rica drowns during snorkeling
expedition to Isle de Cano)];

(6) **Boat tours** [United Shipping Co. v. Witmer^{cci}
(cruise passengers drown during boat tour in the Bahamas)];

(7) **Traffic accidents** [Young v. Players Lake
Charles^{ccii} (intoxicated gamblers leave casino boat and have
traffic accident)];

(8) **Fist fights** [Petro v. Jada Yacht Charters^{cciii} (two
passengers fight each other on shore)];

(9) **Catamaran rides** [Henderson v. Carnival Corp.^{cciv}
(passenger injured during catamaran trip)];

(10) **Medical malpractice at local clinics** [Morris v.
Princess Cruises, Inc.^{ccv} (sick passenger removed from cruise to

inadequate and filthy intensive care facility in Bombay);
Martinides v. Holland America Line-Westours, Inc.^{ccvi} (cruise
passenger has angina attack and was stabilized in ship's
infirmary, then transferred to Naples hospital recommended as the
best for cardiac care; in reality the facility was a maternity
hospital with neither the equipment nor the trained staff to care
for cardiac patients. Three days later passenger dies and family
sued cruiseline alleging negligence in " failure to provide
adequate medical care, failure to properly provide information
regarding medical care options, and failure to recommend a
facility with proper medical services and/or equipment and
directing the deceased...to a medical facility which was
inadequate "); DeRoche v. Commodore Cruise Line^{ccvii} (passenger
suffered injuries from motor scooter accident in Cozumel, Mexico
and subsequent malpractice of Mexican doctors);

(11) **Abandoned on shore** [Daniel v. Costa Armatori^{ccviii}
(passenger abandoned on shore)];

(12) **Parasailing** [Matter of the Complaint of UFO Chuting of
Hawaii, Inc.^{ccix}(" (plaintiffs) went parasailing. Unfortunately for them, the rope that
attached them to the boat snapped, causing (plaintiffs) to fall into the water");
Matter of See N Ski Tours^{ccx} (parasailing accident); Matter of
Beiswenger Enterprises Corp.^{ccxi} (parasailing accident)];

(13) **Waterskiing** [O'Hara v. Bayliner^{ccxii} (water skiing accident)];

(14) **Snowmobiling** [See Passenger killed in shore excursion accident, Travel Weekly^{ccxiii} (" A female passenger aboard Orient Lines' Marco Polo was killed in a snowmobiling accident...during a shore excursion on Langjokull Glacier near Reykjavik, Iceland ")];

(15) **Helicopter & airplane rides** [Varey v. Canadian Helicopters Limited^{ccxiv} (cruise passengers drown when helicopter crashes on return to Cozumel, Mexico from tour of ruins in Chichen Itza); See also: Nineteen die on HAL tour excursion, Travel Weekly^{ccxv} (" Sixteen passenger from Holland America Line's Maasdam, along with two pilots and one tour escort, were killed Sept. 12 when their sightseeing plane crashed in a jungle near Mexico's Yucatan Peninsula ") Passenger killed in shore excursion accident, Travel Weekly^{ccxvi}, Six passengers, pilot killed in Maui tour helicopter crash, Travel Weekly^{ccxvii}];

(16) **Personal watercraft rides** [Matter of Bay Runner Rentals, Inc.^{ccxviii} (passengers sustain injuries when personal watercraft collides with a bulkhead)];

(17) **Wake boarding** [Wheeler v. Ho Sports Inc.^{ccxix}

(wake boarder injured when he “ attempted to do a difficult aerial trick, crashed face-first into the water “)].

K] **Cancellations, Delays, Port Skipping & Itinerary Changes**

Besides physical injuries cruise passengers may have claims arising from

(1) **Cancellations** [Unger v. Travel Arrangements, Inc.^{ccxx}

(cruise line becomes insolvent); Dimon v. Cruises By De^{ccxxi} (travel agent absconds with consumer’s payment); Sanderman v. Costa Cruises, Inc.^{ccxxii} (passengers send cruise tour operator \$21,775 which fails to remit payment to cruise line or make refund); Slade v. Cheung & Risser Enterprises^{ccxxiii} (Great Lakes cruise line absconded with passenger payment; travel agent liable for failing to investigate financial responsibility)];

(2) **Flight delays** [Insognia v. Princess Cruises, Inc.^{ccxxiv}

(passengers purchased “ a seven-day Caribbean cruise on...the Grand Princess...and airline tickets on an American Airlines flight to Miami...the flight was unexpectedly canceled due (to) an American Airlines strike. As a result (passengers) were unable to

arrive at their destination in time to depart on the cruise...”); Bernstein v. Cunard Line, Ltd.^{ccxxxv} (snowstorm delays air transportation to port of cruise departure); Harden v. American Airlines^{ccxxxvi} (passengers miss two days of cruise because of delayed air transportation)] or

(3) **Port skipping and unannounced itinerary changes**

[Elliott v. Carnival Cruise Lines^{ccxxxvii} (passengers purchased cruise scheduled to make “ two stops-one in Cozumel and the other either in Playa del Carmen or in Cancun “; second stop canceled due to engine trouble); Yollin v. Holland American Cruises^{ccxxxviii} (Bermuda skipped); Desmond v. Holland American Cruises^{ccxxxix} (port skipping); Casper v. Cunard Line^{ccxxx} (mechanical breakdown and scheduled itinerary changed); Bloom v. Cunard Line^{ccxxxxi} (two ports of call, Puerto Rico and Nassau, canceled)].

[L] **Misrepresentations & Discomfort Aboard The Cruise Ship**

(1) **Deceptive port charges** [Cruiselines have generated substantial profits by forcing passengers to pay “ port charges “ in addition to the cost of the cruise. Sometimes these “ port charges “ have exceeded \$150 per passenger and were explained to passengers as required by port authorities and governmental agencies. In reality, very little of the “ port charge “ was ever

paid to port authorities or governmental agencies, most, if not all of the collected revenues, being pocketed by the cruise line as profit. This practice is deceptive, has been the subject of an enforcement proceeding brought by the Florida Attorney General [See " Cruise Lines Fined for ' Misleading ' Cruise Costs "^{ccxxxii} (" Six cruise ship lines operating from Florida ports will pay a total of \$295,000 and revise their advertising policies to settle allegations that they misled consumers about cruise costs, according to Florida attorney general Bob Butterworth...accused the lines of charging consumers more for so-called ' port charge ' than necessary to cover actual dockage costs and keeping the difference ")] and has been the subject of several consumer class actions alleging fraud and violation of state consumer protection statutes [In Re: Carnival Cruise Lines Port Charges Litigation, Notice Of Settlement Of Class Action^{ccxxxiii} (" This action was commenced on April 19, 1996 against Carnival for allegedly misrepresenting the nature and purpose of the ' port charges ' it advertised and collected from its cruise passengers. The action alleges that Carnival's advertising and other promotional materials implied ' port charges ' represented monies paid by Carnival to governmental authorities, that Carnival paid less to those governmental authorities than it collected from passengers and that Carnival's passengers are due the difference between the amount collected from them and the amount paid to

governmental authorities "); Latman v. Costa Cruise Lines ^{ccxxxiv}
(" We therefore conclude that where the cruise line bills the
passenger for port charges but keeps part of the money for
itself, that is a deceptive practice...Reliance and damages are
sufficiently shown by the fact that the passenger parted with
money for what should have been a ' pass-through ' port charge,
but the cruise line kept the money "); N.G.L. Travel Associates
v. Celebrity Cruises, Inc. ^{ccxxxv} (travel agents sue for damages
arising from deceptive port charges; complaint dismissed because
travel agents are not consumers and cruise line was not unjustly
enriched at the expense of travel agents); Renaissance Cruises,
Inc. v. Glassman ^{ccxxxvi} (deceptive port charges; certification of
nationwide class granted); Premier Cruise Lines, Ltd., v.
Picaut ^{ccxxxvii} (deceptive port charges; summary judgment or
cruiseline
reversed); Cronin v. Cunard Line Limited ^{ccxxxviii} (deceptive port
charges; complaint dismissed; six months time limitation in which
to file lawsuit enforced); Pickett v. Holland America Line-
Westours, Inc. ^{ccxxxix} (deceptive port charges; nationwide class
certified; proposed settlement adequate); Ames v. Celebrity
Cruises, Inc. ^{ccxli} (deceptive port charges; time limitations
enforced; complaint dismissed; not a class action);

(2) **Passenger's cabin** [Vallery v. Bermuda Star Line ^{ccxli}

(" The drapes were partly dirty and dingy...the headboards of the beds were broken and the mattresses of the beds were concave...The stateroom...did not meet the quality as described in the brochure as being special, luxurious and beautiful nor was it exquisite..."); Ames v. Celebrity Cruises, Inc.^{ccxlii}

(passengers purchase a Deluxe Suite and cruiseship substituted its Standard Cabin which was lower in quality); Mirra v. Holland America Lines^{ccxliii} (cabin smaller than promised, wrong sized bed and no sitting area); Donnelly v. Klosters Rederi^{ccxliv} (room unclean); Blair v. Norwegian Caribbean Lines^{ccxlv} (smaller room and bed than promised with stained bedspread); Kornberg v. Carnival Cruise Lines, Inc.^{ccxlvi} (malfunctioning toilets); Cismaru v. Radisson Seven Seas Cruises, Inc.^{ccxlvii} (accommodations during shore excursion less than satisfactory)];

(3) **Cruise ship's facilities & services** [Gelfand v. Action Travel Center^{ccxlviii} (cruise vessel misrepresented as being new when only refurbished); Boyles v. Cunard Line^{ccxlix} (cruise line misrepresented availability of " Spa at Sea " program); Ricci v. Hurley^{cc1} (unclean recreational deck facilities); Donnelly v. Klosters Rederi^{cccli} (failure to provide clean decks and children's playroom); Grivesman v. Carnival Cruise Lines^{ccclii} (poor quality of service aboard cruiseship); Hollingsworth v. Cunard Line Ltd.^{cccliii} (Poker game not available on Queen E II)];

(4) **Disabled accessible rooms & facilities** [Disabled travelers^{ccliv} present special problems which airlines, both domestic^{cclv} and foreign^{cclvi}, hotels^{cclvii} and cruise ships need to address. Until recently, some cruiselines did not feel bound by the directives of the Americans with Disabilities Act^{cclviii}. This changed in 2001 when a disabled passenger purchased a cruise represented to have rooms and public facilities which were wheelchair accessible. The passenger paid " a fee in excess of the advertised price to obtain a purportedly wheelchair-accessible cabin ", discovered after boarding that her cabin and the public areas were not wheelchair accessible and was "" denied the benefits of services, programs and activities of the vessel and its facilities "" The passenger's subsequent lawsuit, Stevens v. Premier Cruises, Inc.^{cclix}, established that the Americans with Disabilities Act applies to foreign flagged cruise ships touching U.S. ports ["...this case is about whether Title III requires a foreign-flag cruise ship reasonably to accommodate a disabled, fare-paying, American passenger while the ship is sailing in American waters "]. Other Courts have ruled upon the application of the Americans with Disabilities Act to cruise ships [Larsen v. Carnival Corp.^{cclx} (a disabled passenger a disabled cruise passenger " diagnosed with severe obstructive sleep apnea, severe morbid obesity at

approximately 450 lbs. and chronic obstructive pulmonary disease and has utilized a prescribed Bi-Pap ventilator and oxygen concentrator at night to help him breath during sleep “, was medically disembarked by the ship’s doctor because a functioning Bi-Pap ventilator could not be supplied); decision to disembark “ based upon a reasonable concern for safety “); Association For Disabled Americans, Inc. v. Concorde Gaming Corp.^{cclxi} (crap tables too high for wheelchair-bound players did not violate ADA but handicapped toilet violated Title III); Resnick v. Magical Cruise Co.^{cclxii} (no standing to sue under ADA); Access Now, Inc. v. Cunard Line Limited, Co.^{cclxiii} (settlement provided that cruiseline would spend \$7 million on “ installing fully and partially accessible cabins, accessible public restrooms, new signage, coamings, thresholds, stairs, corridors, doorways, restaurant facilities, lounges, spas “); Walker v. Carnival Cruise Lines^{cclxiv} (cruiseline misrepresented that its cruise ship, Holiday, had rooms and facilities which were “ disabled accessible “; travel agents liable under Americans with Disabilities Act for “ failing to adequately research, and for misrepresenting the disabled accessible condition of the Holiday “); Briefer v. Carnival Corp.^{cclxv} (travel agents governed by Americans with Disabilities Act); Deck v. American Hawaii Cruises, Inc.^{cclxvi} (passengers claim cruise ship violated Americans with Disabilities Act)];

(5) **Contaminated food & water** [Jackson v. Carnival Cruise Lines,

Inc.^{cclxvii} (passenger becomes ill during cruise and dies after disembarkation; no proof that food poisoning caused illness); Benson v. Norwegian Cruise Line Limited^{cclxviii} (passenger eats shellfish, suffers allergic reaction which causes windpipe to swell leading to death “ before intubation would be successfully completed “); Tateosian v. Celebrity Cruise Services^{cclxix} (salmonella poisoning); Barbachym v. Costa Lines, Inc.^{cclxx} (food poisoning); Bounds v. Sun Line Cruises, Inc.^{cclxxi} (salmonella food poisoning from contaminated food and water obtained in Turkey)];

(6) Breakdowns of Engines, Air Conditioning, Ventilation, Water Desalinization, Filtration and Sanitary Systems

[Neenan v. Carnival Corp.^{cclxxii} (fire causes breakdown in sanitation and air conditioning systems); Mullen v. Treasure Chest Casino^{cclxxiii} (defective ventilation system causes respiratory illness); Silvanch v. Celebrity Cruises, Inc.^{cclxxiv} (defective filter in whirlpool spa causes Legionnaires Disease); Charleston-Coad v. Cunard Line^{cclxxv} (QEII sailed before major refitting work on cabins and other facilities was complete; asbestos removal); Casper v. Cunard Line Ltd.^{cclxxvi} (cruise “ suffered a breakdown “); Simon v. Cunard Line^{cclxxvii} (lack of fresh water and malfunctioning air conditioning system)];

(7) The Absence of Medical Care Standards

Unfortunately, there are no uniform standards for the qualifications of ship's doctors or nurses or for the nature and quality of medical equipment on board the cruise ship [(" Many passengers would be surprised to discover that there are no international standards for medical care on passenger cruise ships-not even one requiring that a physician be on board. Although most cruise ships generally do carry doctors, many of them are not US-trained or licensed to practice medicine in the States...No international agency regulates the infirmary facilities or equipment, or requires a standard of training for cruise ship doctors...Bradley Feuer, DO, surveyed the medical facilities and staff qualifications of 11 cruise lines in 1996... Among the findings: 27% of nurses and doctors were not certified in advanced cardiac life support; 54% of doctors and 72% of nurses were not certified in advanced trauma life support. Nearly half the doctors-45%-weren't board certified in their areas of practice ^{ccclxxviii}); " The Shocking Inadequacy Of Maritime Healthcare. James Curtis, a fifty-nine year old business man from Maryland, collapsed in a restroom of the Carnival Cruise line ship Sensation. Taken to the infirmary and hooked up to an IV and a breathing tube, Curtis complained about stomach pains without effect on medical personnel. Curtis died six hours later of blood loss due to an abdominal rupture...Similarly, Margaret DiBari was diagnosed by a ship's doctor with bronchitis, despite her complaints of chest pains. Later, doctors ashore discovered she had a heart

attack; she suffered another attack in intensive care, and died...The mistreatment of people aboard ship, whether passengers or crew, is not rare, and persists as a modern embarrassment to all nations that are involved in international maritime commerce...there are no international standards for medical care on passenger cruise ships...nor is there even a requirement that a physician be on board...In fact no international agency regulates maritime infirmary facilities, equipment or requires a standard of training for cruise ship doctors...Because of the lack of medical regulation and certification of cruise ships and their medical staff, U.S. citizens often receive medical care substantially less than the expected normal community standard...It appears that the responsibility for passenger and crew care aboard ship has, in fact, nearly been ignored ^{ccclxxxix}).

[M] **Lost, Damaged or Stolen Baggage** [Mainzer v. Royal Olympic Cruises^{cclxxx} (cruise vessel losses one piece of passenger's baggage for four days); Cada v. Costa Lines, Inc.^{cclxxxix} (baggage damaged by fire); Ames v. Celebrity Cruises, Inc.^{cclxxxix} (baggage loss)].

[N] **Passenger Protection Rules**

Cruise ship passengers are the beneficiaries of various consumer protection regulations. State consumer protection statutes provide passengers with remedies for damages arising

from deceptive and unfair business practices^{cclxxxiii} [Vallery v. Bermuda Star Line, Inc.^{cclxxxiv} (quality of cruise ship misrepresented in brochures; " the drapes were partly dirty and dingy; the tables were painted with white enamel paint with nicotine stains; the headboards of the beds were concave; the lamp shade had a hole; the light flickered; and the knobs on the dressers were broken "; cruiseline liable under New York State General Business Law § 349 (deceptive business practices) and § 350 (false advertising)].

Federal regulations take the form of financial security rules and vessel sanitation inspections.

(1) **Financial protection for cruise passengers** [Federal Maritime Regulations^{cclxxxv} provide that entities which " arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility ". These regulations provide that cruiselines must establish sufficient funds, through combinations of surety bonds, insurance or escrow arrangements, to pay the full cruise contract price under circumstances where the cruise is not performed^{cclxxxvi}. Unfortunately, most problems with cruiselines involve a failure to deliver part of what is promised while the

aforesaid financial security devices would appear to only provide recourse in the event of insolvency or bankruptcy. In addition, the F.M.C. bonds are limited to a maximum of \$15 million which may be inadequate to cover all passenger claims^{cclxxxvii}].

(2) **Sanitary inspection of vessels** [The Federal Department of Health and Human Services conducts monthly inspections of cruise ships touching U.S. ports. The results of these inspections are published and made available upon request from the Center for Disease Control and should be examined^{cclxxxviii} before selecting a cruise ship].

(3) **Protecting the oceans** [Cruise passengers have a vital interest in monitoring the way in which cruise ships deliver their services. The oceans must be protected from illegal dumping by cruise ships of garbage, wastes and spent fuel. “ On April 19 the Carnival Corporation pleaded guilty in United States District Court in Miami to criminal charges related to falsifying records of the oil-contaminated bilge water that six of its ships dumped into the sea from 1996 through 2001...Carnival engineers circumvented the 1980 Federal Act to Prevent Pollution From Ships by intentionally flushing clean water instead of bilge water past the sensors of oil content meters, which are required on all ships and are designed to register the oil content in the bilge waste. That tricked the meters into measuring the oil in the clean water instead of in the bilge waster, which

was dumped, unfiltered into the sea. The Carnival Corporation was ordered to pay \$18 million in fines and perform community service...^{ccclxxxix}.

The States are now enacting legislation prohibiting dumping which may be tougher than federal regulations. “ In September, California became the second state- after Alaska- to decide that federal regulations governing what cruise ships can and cannot dump are too weak, and to respond by implementing its own laws. After a state task force report found that pollutants ‘ are routinely discharged from vessels into California’s coastal waters ‘ the state passed legislation that prohibits dumping of sewage sludge, hazardous materials and bilge water containing oil, and instructs California’s Environmental Protection Agency to ask the federal government to prohibit all such discharges within the state’s national marine sanctuaries. Although the laws do not include limits on the expulsion of backwater (from toilets) or graywater (from sinks, showers and laundry), many see ths as an important first step ^{ccxc}.

Cruise ship passengers must be observant and report any instance of illegal dumping to the U.S. Attorney as soon as possible.

[Q] **Litigation Roadblocks In Prosecuting Passenger Claims**

Notwithstanding the problems experienced by cruise passengers, the rights of the cruiseline under maritime law are paramount to those of the injured or victimized passenger. Here’s how maritime law works to protect the cruise lines against the legitimate claims of passengers.

(1) **Limitation Of Vessel Owner's Liability Act**

Ship owners are permitted under The Limitation Of Vessel Owner's Liability Act^{ccxcii} to limit their liability for passenger claims to the value of vessel. The Limitation Act provides in relevant part that " [t]he liability of the owner of any vessel...for any...loss...without the privity or knowledge of such owner...shall not...exceed the amount or value of the interest of such owner in such vessel, and the freight then pending " ^{ccxciii}. A limitation action is instituted by the posting of security in an amount equal to the value of the vessel with notice given to all prospective claimants. After claims are filed the Court conducts a two step analysis. First, the Court must establish what acts of negligence or conditions of unseaworthiness, if any, caused the accident. Second, the Court must establish whether (the cruise line) had ' knowledge or privity ' of negligence or the unseaworthiness of the vessel. In a Limitation proceeding the claimant must present some evidence of negligence or unseaworthiness before the burden shifts to the cruise line to establish lack of knowledge or privity. " If there is no evidence of (the cruise line's) negligence or contributory fault, then (the cruise line) is entitled to exoneration from all liability " ^{ccxciii}. A Limitation action can,

if successful, dramatically limit a passenger's recoverable damages

[Matter of the Complaint of UFO Chuting of Hawaii, Inc.^{ccxciv}

(“ (plaintiffs) went parasailing. Unfortunately for them, the rope that attached them to the boat snapped, causing

(plaintiffs) to fall into the water “; letters from plaintiffs' attorneys insufficient to start six-month limitation period for filing of petition); Lewis v. Lewis & Clark

Marine, Inc.^{ccxcv}

(Limitation of Liability Act grants owners the right to seek to limit their liability for ship board injuries); Matter of

Illusions Holdings, Inc.^{ccxcvi} (scuba accident; claimed acts of

negligence included (1) failing to give proper diving

instructions, (2) abandoning injured diver; no negligence;

exoneration under Limitation Act granted); In Re Vessel Club Med

^{ccxcvii}(passenger steps into open hatchway and injures ankle;

owner seeks to limit liability under Limitation Act to \$80,000

value of vessel); Matter of Bay Runner Rentals, Inc.^{ccxcviii}(

personal watercraft accident; negligent acts included (1) failure

to warn that watercraft did not have off-throttle steering, (2)

failure to give proper instructions in lack of off-throttle

steering; exoneration under Limitation Act denied); Matter Of

See N Ski Tours, Inc.^{ccxcix}(para-sailing accident; claimed acts

of negligence included (1) failure to train para-sailing crew,

(2) operating in adverse weather conditions, (3) towing to close

to shore, (4) failing to maintain tow rope and para-sailing equipment; settlement of \$22,000 approved); Ginop v. A 1984 Bayliner 27' Cabin Cruiser^{ccc} (injured diver sues boat owner who seeks limitation of liability under Limitation of Liability Act; owner used reasonable care under circumstances and diver's lack of reasonable care was proximate cause of injuries); In Re Seadog Ventures, Inc. ^{ccci} (for-hire pleasure boat strikes swimmer in Lake Michigan; owner seeks to limit liability under the Limitation Act to \$543,200 interest in vessel); Matter of Beiswenger Enterprises Corp. ^{ccci} (para-sailing accident); Mashburn v. Royal Caribbean Cruises, Ltd. ^{ccci} (passengers on day trip excursion to Coco Cay Island rent Sea-Doo jet ski from cruise line and are injured in a collision; claimed acts of negligence included (1) allowing inexperienced riders to operate in a restricted area, (2) failing to properly train and supervise riders, (3) failing to enforce safety rules, (4) selling alcohol to riders and (5) failing to provide jet skis with sound warning devices; no negligence found; release enforced; had negligence been established then liability of cruise line would have been limited to \$7,200 value of Sea-Doo); See also: Perrotta, City Seeks to Limit Liability For Ferry Crash in U.S. Court ^{ccci} (" Facing a stack of legal claims from victims of the Oct. 15 Staten Island Ferry crash (the Mayor) moved to limit New York City's liability to \$14 million (value of ship minus cost of repairs plus tonnage value) and

consolidate all lawsuits before a single federal judge ")].

(2) Passenger Ticket Print Size & Language

A cruise passenger's rights are, to a large extent, defined by the terms and conditions set forth in the passenger ticket. Modern consumers expect the size of the print in consumer contracts to be large enough to be visible and readable. New York State, for example, requires consumer transaction contracts to be " printed...clear and legible [in print] eight points in depth or five and one-half points in depth for upper case type [to be admissible] in evidence in any trial "^{cccv}.

The microscopic terms and conditions in passenger tickets are, clearly, meant to be unreadable and invisible. In fact, maritime law, which governs the rights and remedies of cruise passengers, preempts all State laws requiring consumer contracts to be in a given type size [Lerner v. Karageorgis Lines, Inc.^{cccv}

(enforcement of time limitation provision in four-point type; maritime law preempts New York's statute requiring consumer contracts to be in ten-point type)]. In addition, the terms and conditions in passenger tickets are enforceable even though the passenger can neither read nor understand the language in which the tickets are printed [Paredes v. Princess Cruises^{cccvii} (time

limitations in passenger ticket in English language enforced even though passenger was unable to read English)].

(3) Time Limitations: Physical Injury Claims

Most States allow injured consumers, at least, 2½ years in which to commence physical injury lawsuits and up to 6 years for breach of contract and fraud claims. Maritime law, however, allows cruise lines to impose very short time limitations for the filing of claims and the commencement of lawsuits. For physical injuries occurring on cruise vessels that touch U.S. ports [Lerner v. Karageorgis Lines^{cccviii} (46 U.S.C. 183b time limitations apply only to cruise vessels touching U.S. shores)] passengers may be required to file a claim within six months and commence a lawsuit within one year [Hughes v. Carnival Cruise Lines, Inc.^{cccix} (one year time limitation period enforced); Stone v. Norwegian Cruise Line^{cccx} (slip and fall in bathroom; time limitations period enforced); Angel v. Royal Caribbean Cruises, Ltd.^{cccxi} (passenger falls overboard; one year time limitation enforced); Wall v. Mikeralph Travel, Inc.^{cccxi} (time limitations period enforced; “ The fact that the ticket-contract, while never reaching the (passenger), resided with the travel agency...employed to purchase the ticket, inclines one to conclude that the opportunity to discover these restrictions existed for a significant period of time “); Tateosian v. Celebrity Cruise

Services, Ltd.^{cccxi} (food poisoning; one year time limitation period enforced);
Konikoff v. Princess Cruises, Inc.^{cccxi} (passenger sustained
injury exiting taxi during shore excursion; claim dismissed as
untimely); Buriss v. Regency Maritime Corp^{cccxi} (passenger's
bunk crashed to floor; one year time limitation enforced)].

On occasion the Courts may decide not to enforce the one
year time limitation [Ward v. Cross Sound Ferry^{cccxi}, (slip and
fall on gangway; one year time limitations clause not enforced;
passenger receiving ticket two minutes before boarding did not
have proper notice of time limitations clause); Gibbs v. Carnival
Cruise Lines^{cccxi} (minor burns feet on hot deck surface; one year time limitations
period tolled for minor until after parent began to serve as guardian ad litem after filing
of lawsuit); Long v. Holland America Line Westours^{cccxi} (slip and fall at museum
during land tour; one year time limitation period not enforced; “ there are indications of
contractual overreaching...Holland America...made no effort to inform
(passenger) of the contractual limitation until the company sent (the) tour vouchers.
She received the vouchers just days before she was scheduled to embark on her
journey and after she had already paid for the tour...Thus if Long found the newly
announced contractual language unacceptable, she could reasonably have believed
that she had no recourse—that the contract left her no realistic choice but to travel on
Holland America's unilaterally dictated, last-minute terms “); Dillon v. Admiral
Cruises^{cccxi} (trip and fall in ship's lounge; cruise line may be
estopped from relying on one year time limitation); Rams v.

Royal Caribbean Cruise Lines^{cccxxx} (one year time limitation does not apply to accidents during shore excursions); Berg v. Royal Caribbean Cruises^{cccxxxi} (passenger misled into not filing lawsuit within one year)].

(4) Time Limitations: Non-Physical Injury Claims

For non-physical injury claims cruise lines may impose even shorter time limitation periods [Insogna v. Princess Cruises, Inc.^{cccxxii} (passengers purchase “ seven-day Caribbean cruise on...the Grand Princess...and tickets on an American Airlines flight to Miami...(Which) was unexpectedly canceled due (to) an American Airlines strike “; six months time limitation clause in ticket for filing lawsuit enforced; claim time barred); Boyles v. Cunard Line^{cccxxiii} (cruise vessel misrepresented availability of exercise facilities in “ Spa at Sea “; six months time limitation to file lawsuit enforced); Cronin v. Cunard Line^{cccxxiv} (deceptive port charges; six months’ time limitation in which to commence lawsuit enforced)].

On occasion the Courts may decide not to enforce these particularly short time limitations[Barton v. Princess Cruises, Inc.^{cccxxv} (deceptive port charges; clause in passenger ticket requiring the filing of written notice of claims within 15 days and the filing of a lawsuit within 90 days may be unenforceable if they “ were unreasonable under the circumstances, in that plaintiffs could not with

reasonable diligence have discovered their injuries within the limitation periods “); Johnson v. Commodore Cruise Line^{cccxxvi} (passenger raped by crew member; claim for negligent infliction of emotional distress governed by Mississippi’s 3 year statute of limitations; passenger ticket time limitations of 15 days to file claim and 6 months to sue for non-physical claims void)].

(5) **Jurisdictional Issues**

Most consumers purchase cruise vacations from their local retail travel agent. The cruise will depart from one of several domestic ports of call, typically, where the cruise line is headquartered, e.g., New York or Port of Miami. Modern consumers expect to be able to file a complaint or commence a lawsuit over a defective good or service in their local courts. Such is not the rule, however, when it comes to complaints against cruise lines.

To be able to sue a cruise company locally the consumer’s court must have jurisdiction. Even though cruise companies may distribute brochures through and take orders from retail travel agents, such marketing activities are insufficient to serve as a basis for jurisdiction [Falcone v. Mediterranean Shipping Co.^{cccxxvii} (passenger suffers physical injury aboard cruise ship; no jurisdiction based upon sales by local travel agent “ with no authority to confirm reservations “); Duffy v. Grand Circle

Travel, Inc.^{cccxxviii} (passenger sustains injury in France; no jurisdiction over Massachusetts cruise company); Sanderman v. Costa Cruises, Inc.^{cccxxix} (consumer pays Florida travel agent \$21,775 for cruise on Costa Romantica which fails to remit any money to cruise line; no jurisdiction over cruise line not doing business in Pennsylvania); Kaufman v. Ocean Spirit Shipping^{cccxxx} (dissemination of cruise brochures through travel agents and advertising in scuba magazine insufficient to support long arm jurisdiction)].

The " solicitation-plus doctrine " doctrine governs jurisdiction in travel cases with the " plus " equivalent to contract formation in the local forum [Afflerbach v. Cunard Line, Ltd^{cccxxxix} (national advertising of cruise vacations and sales through travel agents insufficient for jurisdiction)]. With the possible exception of Internet sales through interactive web sites [Dickerson, Selling Travel Over The Internet & Personal Jurisdiction^{cccxxxii}, Appendix A] the Courts have, generally, held that contract formation does not take place at the consumer's location. Some courts, however, have been willing to assume jurisdiction on little more than local advertising [Nowak v. Tak How Inv.^{cccxxxiii} (guest drowns in Hong Kong hotel pool; being available for litigation in local forum is reasonable cost of doing business in the forum)].

Jurisdictional issues may arise when an accident occurs in territorial waters [Benson v. Norwegian Cruise Line Limited^{cccxxxiv}

(passenger “ ate shellfish and suffered an allergic reaction...
(ship’s medical personnel unable to) insert a breathing tube several times “;
passenger dies; claim of medical malpractice aboard cruise ship; jurisdiction under
Florida long arm statute because tortious act of ship’s medical doctor occurred in
Florida territorial waters, 11.7 miles east of Florida shore); Rana v. Flynn^{cccxxxv} (
passenger suffers heart attack and treated by ship’s doctor as cruise ship sails into
Florida waters and docks in Port of Miami; jurisdiction over ship’s doctor); Pota v.
Holtz,^{cccxxxvi}
(pregnant passenger complaining of stomach cramps misdiagnosed as having bladder
infection goes into contractions and bleeding and cruiseline denies request for airlift to
hospital in Grand Cayman Island; passenger taken to hospital only after ship docks,
gives birth and baby dies a few hours later; jurisdiction over ship’s doctor on aboard
ship docked in Florida port)] and may involve *in rem* claims against the ship [Frefet
Marine Supply v. M/V Enchanted Capri^{cccxxxvii} (passengers sue bankrupt cruise line for
return of contract payments; sureties on performance bond intervene in this *in rem*
proceeding)].

(6) **Forum Selection Clauses**

The passenger ticket may contain a forum selection clause
and a choice of law clause, both of which can have a negative
impact upon the passenger’s ability to prosecute his or her
claim. A forum selection clause may require that all passenger

lawsuits be brought in the local court where the cruise line is headquartered [Carnival Cruise Lines, Inc. v. Shute^{cccxxxviii} (a clause in the ticket provided that " It is agreed...that all disputes...shall be litigated...before a Court located in the State of Florida, U.S.A., to the exclusion of the Courts of any other state or country ")].

Forum selection clauses are, generally, enforceable [Chapman v. Norwegian Cruise Line Ltd.^{cccxxxix} (" A forum selection clause in enforceable unless (1) ` the incorporation of the clause was the result of fraud, undue influence or overreaching bargaining power, (2) the selected forum is so gravely difficult and inconvenient that [the complaining party] will for all practical purposes be deprived of its day in court or (3) enforcement...would contravene a strong public policy of the forum in which the suit is brought..."); Hughes v. Carnival Cruise Lines, Inc.^{cccxi} (passenger breaks hip aboard ship; Florida forum selection clause enforced); Morrow v. Norwegian Cruise Line Limited^{cccxli} (minor passenger injured when ladder detaches; Florida forum selection clause enforced); Falcone v. Mediterranean Shipping Co.^{cccxlii} (passenger suffers personal injuries on Mediterranean cruise ship; Italy forum selection clause and Italian choice of law clause enforced); Ferketich v. Carnival Cruise Lines^{cccxlili} (passengers trips and falls on stairs; Florida forum selection clause enforced); Enderson v. Carnival Cruise Lines, Inc.^{cccxliv} (passenger contracts appendicitis and removed from ship to shore hospital; Florida forum selection clause

enforced); Elliott v. Carnival Cruise Lines^{cccxliv} (port skipping because of engine malfunction; Florida forum selection clause enforced); Tateosian v. Celebrity Cruise Services, Ltd.^{cccxlv} (food poisoning; New York forum selection clause appropriate); Watanabe v. Royal Caribbean Cruises, Ltd.^{cccxlvi} (passengers injured when Monarch of the Seas struck reef; forum selection clause enforced)].

Notice of the forum selection clause should be adequate [Ward v. Cross Sound Ferry^{cccxlvi} (passenger obtained ticket “ just two or three minutes before boarding the ferry...possession of the ticket for such a short period of time was insufficient to give (passenger) reasonable notice that the ticket contained important contractual provisions “); Osborn v. Princess Tours^{cccxlvi} (passenger must have “ ample opportunity to examine... contents “ of passenger ticket); Schaff v. Sun Line Cruises^{cccxlvi} (forum selection clause (Athens, Greece) not enforced; ticket delivered too late to allow consumer to seek refund of \$1,770 ticket price)] and they should be reasonable and fair [Carnival Cruise Lines, Inc. v. Shute^{cccxlvi} (forum selection clauses subject to judicial scrutiny for fundamental reasonableness)].

(7) Why Are Forum Selection Clauses Important?

Stated, simply, it is less expensive and more convenient for injured passengers to be able hire an attorney and sue in a local

court than being forced to travel to and prosecute their claim in Greece [Effron v. Sun Line Cruises^{ccclii}], Peru [Affram Carriers, Inc. V. Moeykens^{cccliii}], Naples, Italy [Hodes v. SNC Achille Lauro^{cccliv}], the State of Washington [Carron v. Holland America Line-Westours, Inc.^{ccclv}] or Miami, Florida [Hicks v. Carnival Cruise Lines^{ccclvi}]. When faced with prosecuting a claim in a distant forum some passengers may be discouraged from doing so. This is the practical result of enforcing forum selection clauses and explains why cruise lines favor their use in passenger tickets.

(8) **Cancellation Fees And Adequacy Of Notice**

To be enforceable forum selection clauses in cruise tickets or brochures must be fundamentally fair [Carnival Cruise Lines, Inc. v. Shute^{ccclvii}]. Fundamental fairness means (1) that the forum was not selected to discourage pursuit of legitimate claims, (2) there was no fraud or overreaching, (3) notice of the forum selected was adequate and (4) the consumer had a reasonable opportunity to reject the cruise contract without penalty^{ccclviii}. This latter requirement has been interpreted to mean that passengers should receive the cruise contract early enough to be able to cancel without being subjected to a cancellation fee. In

Cismaru v. Radisson Seven Seas Cruises,^{ccclix} a Florida forum selection clause was not enforced because the passenger received the cruise contract 21 days before departure. Were the passenger to cancel the cruise contract on the day of receipt he would have been subjected to a 50% cancellation fee. " This falls short of the ability to reject the contract ' with impunity ' contemplated in Shute. In other words...Radisson sent (a cruise ticket) at a time when (the passenger) could not conceivably have canceled without avoiding a penalty " .

Some Courts have agreed that imposition of a cancellation penalty means that notice was inadequate rendering the forum selection clause unenforceable [Long v. Holland America Line Westours, Inc.^{ccclx} (" there are indications of contractual overreaching...Holland America...made no effort to inform (passenger) of the contractual limitation until the company sent (the) tour vouchers. She received the vouchers just days before she was scheduled to embark on her journey and after she had already paid for the tour...Thus if Long found the newly announced contractual language unacceptable, she could reasonably have believed that she had no recourse—that the contract left her no realistic choice but to travel on Holland America's unilaterally dictated, last-minute terms "); Ward v. Cross Sound Ferry^{ccclxi} (passenger obtained ticket " just two or three minutes before boarding the ferry...possession of the ticket for such a short period of time was insufficient to give (passenger) reasonable notice that the ticket contained important contractual

provisions “); McTigue v. Regal Cruises, Inc.^{ccclxii} (passenger sustains physical injury during cruise; clause which provided that “ Passage money shall be considered earned at the earlier of the time of payment or embarkation. Carrier is entitled to receive and retain earned passage money under all circumstances and is not liable to make any refund “ rendered the ability of passenger to cancel without penalty illusory; “ Absent prior notice, the Court will not enforce a (Florida forum selection clause)...that substantially limits a passenger’s legal rights “); White v. Sun Line Cruises, Inc.^{ccclxiii} (passenger falls down gangplank; ticket received 4 days before departure and cancellation would have resulted in 100% penalty; Greece forum selection clause not enforced); Grivesman v. Carnival Cruise Lines^{ccclxiv} (Florida forum selection clause enforced; passengers received ticket early enough to have “ forfeited only their deposit if they had canceled their trip at that time “); Corna v. American Hawaii Cruises, Inc.^{ccclxv} (passengers assaulted by crew members; California forum selection clause not enforced because tickets received 2 days before cruise and cancellation would have resulted in a 100% cancellation fee); Stobaugh v. Norwegian Cruise Line Limited^{ccclxvi} (passengers injured when cruise ship sailed into Hurricane Eduardo; passengers received ticket 23 days before departure and immediate cancellation would have resulted in \$400 penalty; Florida forum selection clause not

enforced)]

Other Courts, however, have rejected this concept

[Ferketich v. Carnival Cruise Lines^{ccclxvii} (“ Although (passenger) would be subject to a \$350 cancellation fee...we believe

(passenger) has adequate and reasonable notice to support enforcing the forum selection clause despite the cancellation

fee “); Elliot v. Carnival Cruise Lines^{ccclxviii} (“ although

(passenger) characterizes the tickets as ‘ nonrefundable ‘ he admits that he received them almost a month before departing, at which time, according to the ticket, fifty

percent of the purchase price was refundable “); Natale v. Regency Maritime Corp.^{ccclxix} (time limitations clause enforced notwithstanding

cancellation penalty of 90%); Boyles v. Cunard Line Ltd.^{ccclxx}

(passenger ticket contract enforceable notwithstanding

significant cancellation fee); Hicks v. Carnival Cruise Lines,

Inc.^{ccclxxi} (contract terms not necessarily unreasonable because of the imposition of penalties if passenger canceled); Lauri v.

Cunard Line Limited^{ccclxxii} (passenger became ill onboard Queen

Elizabeth II; Florida forum selection clause enforced; receipt of ticket 19 days before departure meant that immediate cancellation

would have resulted in 100% penalty; refundability of tickets not dispositive on issue of notice); Bounds v. Sun Line Cruises,

Inc.^{ccclxxiii} (contaminated food and water onboard Stella Solaris;

Greek forum selection clause enforced notwithstanding minimum

cancellation penalty of 25% " no matter when they purchased the ticket "); Cross v. Kloster Cruise Lines, Limited^{ccclxxiv} (passenger bitten by a brown recluse spider suffers from medical malpractice; Florida forum selection clause enforced notwithstanding \$400 cancellation penalty); Schulz v. Holland America-Line Westours, Inc.^{ccclxxv} (passenger sustains physical injury; time limitation clause enforced; " The Schulzes' argument is premised on the false assertion that they could not cancel their tickets without incurring financial penalty. Had they checked with their travel agent, they would have found that the entire purchase price, including the travel agent's fee, would have been refunded ")].

(9) **Vindicating Important Civil Rights**

At least, one Court has taken the extraordinary position of refusing to enforce a forum selection clause on the grounds of public policy. In Walker v. Carnival Cruise Line^{ccclxxvi} a travel agent had been informed that the passenger was disabled, used a wheelchair, and would require a disabled accessible guest room and disabled accessible facilities. Although the cruiseline and the travel agent assured the passenger that the ship and his room would be disabled accessible he discovered that neither his room nor the ship were disabled accessible. While the passenger

claimed misrepresentations and a violation of the Americans with Disabilities Act the cruise line sought to enforce a forum selection clause and transfer the case from California to Florida. Initially, the Court granted the cruise line's request finding the forum selection clause reasonable and fair and dismissed the case as to it. Upon reconsideration, the Court refused to enforce the Florida forum selection clause for two reasons. First, " the fact that plaintiffs' physical disabilities and economic constraints are so severe that, in combination, they would preclude plaintiffs from having their day in court ". Second, " the fact that plaintiffs are seeking to vindicate important civil rights " .

(10) **Choice Of Law Clauses**

In addition to forum selection clauses, passenger tickets may also designate the law to be applied in resolving any dispute which may arise. The law selected may be that of the **Bahamas** [Kirman v. Compagnie Francaise^{ccclxxvii} (choice of Bahamian law clause enforced; cruise between Singapore and Australia)], **China** [Jewel Seafoods Ltd. v. M/V Peace River^{ccclxxviii} (choice of Chinese law clause enforced)] or **Italy** [Falcone v. Mediterranean Shipping Co.^{ccclxxix} (" In light of the fact that its passengers hail from around the world (cruise line) acted reasonably in selecting an ...Italian venue...cruise departed on an Italian vessel

from Genoa, Italy, and (cruise line) is headquartered in Italy...The choice of law provision in the ticket contract selects Italian law...which Italian courts are in the best position to interpret“). In determining whether choice of law clauses should be enforced, the courts may consider several factors including (1) the place of the wrongful act, (2) the law of the flag, (3) the allegiance of domicile of the injured passenger, (4) the allegiance of the ship owner, (5) the place of the contract, (6) the inaccessibility of the foreign forum and (7) the law of the forum [Klinghoffer v. S.N.C. Achille Lauro^{ccclxxx}].

Choice of law clauses are, generally, enforceable unless the passenger can demonstrate that enforcement would be unreasonable, to prevent fraud or overreaching [Long v. Holland America Line Westours, Inc.^{ccclxxxi} (passenger falls during land tour of museum; maritime law does not govern land tour; choice of law clause in tour contract stating that “ except when maritime law applied, the contract would be construed according to Washington state law “ rejected; Alaska law applied) or that “ enforcement would contravene a strong public policy of the forum in which the suit is brought “ [Milanovich v. Costa Crociere, SPA^{ccclxxxii}].

(11) **Why Are Choice Of Law Clauses Important?**

The law to be applied to an injured passenger’s claim can

have a dramatic impact on the likelihood of recovering proper damages.

For example, in a wrongful death case involving a crash in China in which two Americans were killed, the court, relying on New York choice of law rules, decided to apply Chinese law which limited the maximum recoverable damages to \$20,000 [Barkanic v. General Administration of Civil Aviation^{ccclxxxiii}]. In another case, the traveler was seriously injured when she was thrown from a horse during a vacation in the Bahamas. She sued several Bahamian entities most responsible for her injuries. However, the application of the Foreign Sovereign Immunities Act meant that the foreign entities would be insulated from any liability [Tucker v. Whitaker Travel, Ltd^{ccclxxxiv}]. In yet another instance, the traveler slipped and fell on an unlighted path while vacationing in Mexico. At issue was whether the court should apply Arizona or Mexican law to the issue of recoverable damages. The difference was dramatic. Mexico allowed no more than twenty-five pesos per day in lost wage claims, while Arizona had no such limits. The court applied the more generous law of Arizona [Wendelken v. Superior Court^{ccclxxxv}]. Just the opposite happened in a case involving an accident on a water slide at a Mexican hotel in which the court applied Mexican damages law resulting in a severe limit on the plaintiff's pain and suffering damages

[Feldman v. Acapulco Princess Hotel^{ccclxxxvi}].

(12) **Disclaimers Of Liability For Onboard Accidents**

As a general rule, cruise ships are common carriers and held to a reasonable standard of care [Kermarec v. Compagnie Generale Transatlantique^{ccclxxxvii}]. The passenger ticket will contain a host of nearly invisible clauses many of which seek to disclaim liability for a variety of problems that may arise during the cruise. As with consumer contracts on dry land instances of gross negligence and intentional misconduct may not be disclaimed by common carriers [Royal Ins. Co. v. Southwest Marine^{ccclxxxviii}].

In addition, some Courts have held that disclaimers of simple negligence, particularly, regarding the health and safety of the passengers can not be disclaimed [Kornberg v. Carnival Cruise Lines^{ccclxxxix} (malfunctioning toilets ruin cruise vacation; clause in cruise contract seeks to disclaim all liability for the discomfort of passengers; " Of the three disclaimers, the disclaimer of liability for negligence appears to be the most applicable to this suit. Yet, for good reason Carnival does not rely on this disclaimer. 46 U.S.C.A. §§ 183c expressly invalidates any contract provision purporting to limit a ship's liability for negligence to its passengers. It shall be unlawful for the manager, agent, master, or owner of any vessel

transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability. Even prior to 1936, the year §§ 183c was enacted, such provisions were held to be void under common law as against public policy

(Liverpool and Great Western Steam Co. v. Phoenix Insurance, 129 U.S. 397, 441, 9 S.Ct. 469, 471, 32 L.Ed. 788 (1889) ")].

(13) **Disclaimer Of Medical Malpractice By Ship's Doctor**

" A cruise passenger at sea and in medical distress does not have any meaningful choice but to seek treatment from the ship's doctor " [Carlisle v. Carnival Corp^{cccxc}].

Traditionally, cruise ships have not been held vicariously liable for the medical malpractice of the ship's doctor or medical staff [see e.g., Barbetta v. S/S Bermuda Star^{cccxcii} (cruise ship not liable for medical malpractice of ship's doctor in failing to discover during treatment that passenger had diabetes); Stires v. Carnival Corp.^{cccxcii} (medical malpractice claim against cruise ship for " negligent acts of the ship's doctor and nurse " dismissed); Cimini v. Italia Crociere International^{cccxciii} (cruise ship disclaimer of liability for malpractice of ship's

doctor enforced)].

This policy is unfair and has been criticized by some Courts [see e.g., Nietes v. American President Lines, Ltd.^{cccxciv} (cruise ship vicariously liable for medical malpractice of ship's doctor who was a member of the crew); Fairley v. Royal Cruise Line Ltd.^{cccxcv} (cruise ship may be liable for medical practice of ship's doctor)] and commentators [See e.g., Herschaft, Cruise Ship Medical Malpractice Cases: Must Admiralty Courts Steer By The Star Of Stare Decisis^{cccxcvi} (“ It would be in the best interests of the traveling public for admiralty courts to revoke this harsh policy of holding carriers harmless for the torts of physicians engaged by them. However, if admiralty courts continue to exonerate carriers in passenger medical malpractice cases, there are three possible ways to provide better care to travelers: First, the legislature can amend current statutory descriptions of a ship's staff so that a doctor is specified as an employee of the carrier; second, passengers can invoke the doctrine of agency by estoppel; and third, a shipping company may indemnify itself against potential medical malpractice claims “) and most recently rejected by a Florida Appellate Court in Carlisle v. Carnival Corp^{cccxcvii} .

In Carlisle a 14 year old female passenger became “ ill with abdominal pain, lower back pain and diarrhea and was seen several times in the ship's hospital by the ship's physician “ who misdiagnosed her condition as flu when, in fact, she was suffering from an appendicitis. After several days of mistreatment the she was removed from the cruise ship, underwent surgery after the appendix ruptured and was rendered sterile. In rejecting a long line cases in the 5th Circuit^{cccxcviii} absolving cruise ships for the

medical malpractice of a ship's doctor, the Carlisle Court stated " The rule of the older cases rested largely upon the view that a non-professional employer could not be expected to exercise control or supervision over a professionally skilled physician. We appreciate the difficulty inherent in such an employment situation, but we think that the distinction no longer provides a realistic basis for the determination of liability in our modern, highly organized industrial society. Surely, the board of directors of a modern steamship company has as little professional ability to supervise effectively the highly skilled operations involved in the navigation of a modern ocean carrier by its master as it has to supervise a physician's treatment of shipboard illness. Yet, the company is held liable for the negligent operation of the ship by the master. So, too, should it be liable for the negligent treatment of a passenger by a physician or nurse in the normal scope of their employment, as members of the ship's company, subject to the orders and commands of the master. "

(14) **Shore Excursion Disclaimers**

The Courts have been willing to enforce disclaimers of liability regarding accidents that occur during shore excursions [Dubret v. Holland America Line Westours^{cccxcix} (bus accident during shore excursion; disclaimer of liability enforced); Henderson v. Carnival Corp.^{cd} (passenger injured on catamaran trip while on excursion from cruise; notwithstanding Carnival logo on catamaran and crew member shirts cruise ship disclaimer

of ownership or control of catamaran company enforced); Mashburn v. Royal Caribbean Cruises, Ltd.^{cdi} (day trip to Coco Cay Island owned by cruiseline; passengers rent Sea-Doo, sign waiver and are injured in accident; no negligence found)].

Such a disclaimer may not be enforceable if the injured passenger relied upon representations, or warranties regarding safety [Bergonzine v. Maui Classic Charters^{cdii} (350 lb. handicapped passenger broke ankle because of inattention and lack of assistance by crew; misrepresentations in brochure that cruises were " suitable for handicapped individuals "; \$42,500 in special damages awarded)], competence and reliability of on-shore suppliers of travel services. While disclaimers may be enforceable as against cruise ships they do not insulate ground service providers such as bus companies and dock operators from liability [Sharpe v. West Indian Company^{cdiii} (passenger leaves cruise ship to board waiting tour bus and is struck by falling railing; time limitation in cruise contract enforced as against cruise ship; clause that stated " The Exclusions Or Limitations Of Liability Of Carrier Set Forth In The Provisions Of This Contract Shall Also Apply To And Be For The Benefit Of Agents, Independent Contractors, Concessionaires And Suppliers Of Carrier, As Well As Owners And Operators Of All Shoreside Properties At Which The Vessel May Call " not enforced as against dock operators and local truck company responsible for

accident)].

(15) **Force Majeure/Act Of God Defense**

The cruiseline may claim that a delay in sailing or a cancellation of the cruise vacation or an itinerary change was caused by a storm or hurricane [DeNicola v. Cunard Line Limited^{cdv} (storm); Domblakly v. Celebrity Cruises, Inc.^{cdv} (passengers injured when cruise ship battered by hurricane); In re Catalina Cruises, Inc.^{cdvi} (passengers injured when cruise ship sails into storm); Williams v. Carnival Cruise Lines, Inc.^{cdvii} (207 passengers seasick after cruise ship sails into storm)] is an Act of God. As stated by the U.S. Supreme Court in 1887 in the Majestic^{cdviii} " the act of God is limited... to causes in which no man has any agency whatever; because it was never intended to arise ". Acts of God may include storms at sea^{cdix}, snowstorms [Alstrom Machinery, Inc. v. Associated Airfreight, Inc.^{cdx}(air carrier breached contract in failing to deliver cargo notwithstanding force majeure clause in contract of carriage and unanticipated snowstorm); Klakis v. Nationwide Leisure Corp.^{cdxi} (charter tour passengers confined in airport for 2 ½ days during snowstorm), a typhoon or volcanic eruption [DeVera v. Japan Airlines^{cdxii} (Manila Airport closed because of

volcano and typhoon) or a revolution or civil disorder [Jamil v. Kuwait Corp.^{cdxiii} (flight delayed 4 days due to coup in Pakistan) or a pilot's strike [Leake v. American Airlines, Inc.^{cdxiv} (passengers missed cruise because of airline strike)]. To prevail, however, the carrier must establish a causal connection between the Act of God or force majeure and its failure to deliver timely transportation. In addition, the air carrier must prove that it acted reasonably to reinstitute the transportation service once the snowstorm or unexpected event ceased [Bernstein v. Cunard Line^{cdxv}].

(16) **Limitations On Recoverable Damages**

Cruise vessels that touch U.S. shores may not disclaim liability for loss, death, damage or delay caused or contributed to by the vessel's negligence [46 U.S.C. 183c; Kornberg v. Carnival Cruise Lines^{cdxvi} (malfunctioning toilets; disclaimers not enforced)].

In addition, the passenger ticket may contain a disclaimer seeking to limit recoverable damages to those authorized by the Athens Convention [Wallis v. Princess Cruises, Inc.^{cdxvii} (passenger drowned after falling off of cruise ship; clause in passenger ticket limiting recoverable damages to the " amount prescribed by the Athens Convention (" Carrier shall be entitled to any and all liability limitations, immunities and rights applicable to it

under the ‘ Convention Relating to the Carriage of Passengers and Their Luggage by Sea of 1976 (‘ Athens Convention ‘) which limits the Carrier’s liability for death of or personal injury to a Passenger to no more than the applicable amount of Special Drawing Rights as defined therein, and all other limits for damage or loss of personal property “]” not enforced; “ We think it is unrealistic to assume the average passenger with no legal background would even attempt to analyze the conditions under which the Athens Convention would or would not apply “). Such a clause may not be enforceable if the passenger was not given sufficient notice to be able to understand the significance of the Athens Convention [see discussion below].

In 1996 the cruise industry was able to convince Congress to enact a provision permitting “ provisions or limitations in contracts, agreements or ticket conditions of carriage with passengers which relieve...operator of a vessel from liability for infliction of emotional distress, mental suffering or psychological injury “ [46 U.S.C. 183c(b)(1)]. Such a disclaimer does not apply to physical injuries, or those arising from being “ at actual risk of physical injury “ caused by the negligence or intentional misconduct of the cruise vessel or crew. Nor does such a disclaimer limit liability arising from “ sexual harassment, sexual assault or rape “.

In addition, a cruise vessel may invoke the Limitation of Vessel Owner’s Liability Act which allows it to limit liability to the value of the vessel [see discussion above].

(17) The Athens Convention: Cruises Not Touching U.S. Ports

While the United States is not a signatory to the Athens Convention passengers on cruises that do not touch a U.S. port should be aware of its liability limiting provisions. Some cruise contracts contain language limiting the passenger's recoverable damages under the Athens Convention to Special Drawing Rights (SDRs). SDRs, as " determined by the International Monetary Fund, are based on exchange rates for the American Dollar, German Mark, British Pound, French Franc and Japanese Yen " [Mills v. Renaissance Cruise, Inc.^{cdxviii}]. The 1976 Protocol to the Athens Convention provides a damage limit of 46,666 SDRs, while the 1990 Protocol provides for 175,000 SDRs.

The Athens Convention is important since it may apply to as much as 20% of U.S. cruise passengers who annually " sail from, and back to, foreign ports, like a Mediterranean or Caribbean cruise "^{cdxix}. In order to encourage the United States to sign the Athens Convention it was recently modified in the 2002 Convention Protocol " to raise liability limits to 250,000 SDRs (about \$359,000). If ratified by at least 10 states, the convention would come into force and there would be a compulsory insurance requirement per passenger in this amount for passenger ship operators...By its terms, the convention applies to ships flying the flag of the signatory country or where the place of departure or destination is a signatory

country. Suit may be brought in the principal place of defendant's place of business; the place of departure or destination; claimant's domicile, if defendant does business there or is subject to jurisdiction there; and the place where the contract of carriage was made, if defendant does business there or is subject to jurisdiction there^{cdxx}

Such a contractual limitation has been held to be enforceable when the passenger's injuries occur on cruises that do not touch U.S. ports [Berman v. Royal Cruise Line, Ltd.^{cdxxi} (cruise from Italy to Portugal governed by monetary limits of Athens Convention) ; Kirman v. Compagnie Francaise^{cdxxii} (accident on cruise between Singapore and Australia ; Athens Convention applies)] as long as there has been sufficient notice [Wallis v. Princess Cruises, Inc.^{cdxxiii} (passenger drowned after falling off of cruise ship ; clause in passenger ticket limiting recoverable damages to the amount prescribed by the Athens Convention not enforced)].

Conclusion

Cruise vacations can be wonderful experiences. However, potential cruise passengers are well advised to think carefully about their legal rights should they be injured and otherwise be dissatisfied with a cruise vacation.

ENDNOTES

i. Thomas A. Dickerson is a Justice of the New York State Supreme Court, Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, N.Y. 10601. Judge Dickerson's Web Page is at members.aol.com/judgetad/index.html. Judge Dickerson is the author of **Travel Law**, Law Journal Press, New York, 1981-2003, Web Page at members.aol.com/travellaw/index.html; **Class Actions: The Law of 50 States**, Law Journal Press, 1988-2003, Web Page at members.aol.com/class50/index.html; and over 200 consumer law articles. For some of Judge Dickerson's articles see www.classactionlitigation.com/articles_of_interest.htm.

2. See e.g.,

Ninth Circuit: Deck v. American Hawaii Cruises, Inc., 51 F. Supp. 2d 1057 (D. Hawaii 1999)(applying the Americans with Disabilities Act to some operations of a cruise ship).

" Cruise ships are a unique mode of transportation. Cruise ships are self-contained floating communities. In addition to transporting passengers, cruise ships house, feed and entertain passengers and thus take on aspects of public accommodations. Therefore cruise ships appear to be a hybrid of a transportation service and a public accommodation "

Eleventh Circuit: Stevens v. Premier Cruises, Inc., 2000 U.S. App. LEXIS 14421 (11th Cir. 2000)(applying Americans with Disabilities Act to cruise ships).

" Cruise ships, in fact, often contain places of lodging, restaurants, bars, theaters, auditoriums, retail stores, gift shops, gymnasiums, and health spas. And, a public accommodation aboard a cruise ship seems no less a public accommodation just because it is located on a ship instead of upon dry land. In other words, a restaurant aboard a ship is still a restaurant. Very important, Congress made no distinctions--in defining ' public accommodation ' based on the physical location of the public accommodation. We conclude, therefore, that those parts of a cruise ship which fall within the statutory enumeration of public accommodations are themselves public accommodations for the purposes of Title III "

State Courts:

Florida: Carlisle v. Carnival Corporation, 2003 Fla. App. LEXIS 12794 (Fla. App. 2003)(" A cruise ship is a city afloat with hundreds of temporary citizens, some of whom are passengers and some of whom are the employees and agents of the cruise line who comprise the ship's crew, each of whom, within their

particular sphere, owe a duty of reasonable care to the passengers ").

New York: Udell v. Hamburg-American Line, 141 Misc. 754, 253 N.Y.S. 209, aff'd 255 N.Y.S. 1011 (1931)(liability of steamship company for loss of passenger's fur coat is that of an innkeeper).

Contra:

Second Circuit: York v. Commodore Cruise Line, 1994 WL

51158
1 (S.D.N .Y. 1994) (passenger sexually assaulted by crew members; cruiseships are not floating hotels; no negligence for doors having locks with easy access from outside;

policy of rescuing passengers outweighs increased security).

iii. D.O.T. Press Release dated July 7, 2003 [“ For calendar year 2002, the data identifies 3,575 cruises and 7.6 million passengers carried by 10 cruise lines “].

iv. Conde Nast Traveler, March 2000, p. 163.

v. See N. 3, supra.

vi. See Peterson, Leading Passengers to Water, N.Y. Times Travel Section, September 28, 2003, p. 8 (“ Carnival Corporation, which includes 13 cruise lines, among them Carnival Cruise Lines, Princess Cruises, Costa Cruises and Cunard, is spending \$6.35 billion on 13 vessels set to go into service between now and mid-2006. The ships represent about 34,000 additional passengers “).

vii. See Tobin, Lines to grow capacity in a big way, Travel Weekly, September 28, p. 60 (“ Cruise capacity will grow even further in 2005 and 2006 with the addition of a 3,600 passenger ‘ Ultra Voyage ‘ vessel for Royal Caribbean International and two 2,400 passenger ships for Norwegian Cruise Line. The Ultra Voyage ship will settle in at 160,000-plus GRT when it is delivered in 2006. And once it is completed it will be the biggest ship on the seas, surpassing the upcoming Queen Mary 2 by about 10,000 tons “).

viii. Perez, Cunard’s Grand Gamble, Marketplace, Wall Street Journal, _____, 2003, p. B1.

ix. Tagliabue, 13 Visiting Queen Mary 2 Die in Accident, N.Y. Times, p. 4.

x. The Golden Age Of Cruising, Conde Nast Traveler, March 2001.

xi. Carothers, A Steady Course?, Stop Press, Conde Nast Traveler,

October 2000, p. 25. See also Blum, Ecstasy fire prompts closer look at safety on the seas, Travel Weekly, March 1, 1999, p. 6.

xii. See Schmemmann, U.S. Attacked, N.Y. Times, Sept. 12, 2001, at p.1.

" Hijackers rammed jetliners into each of New York's World Trade Center Towers yesterday, toppling both in a hellish storm of ash, glass, smoke and leaping victims while a third jetliner crashed into the Pentagon in Virginia...The attacks seemed carefully coordinated. The hijacked planes were all en route to California, and therefore gorged with fuel, and their departures were spaced within an hour and 40 minutes. The first, American Airlines Flight 11, a Boeing 767 out of Boston for Los Angeles, crashed into the north tower at 8:48 a.m. Eighteen minutes later, United Airlines Flight 175, also headed from Boston to Los Angeles, plowed into the south tower. Then an American Airlines Boeing 757, Flight 77, left Washington's Dulles International Airport bound for Los Angeles, but instead hit the western part of the Pentagon...at 9:40a.m. Finally, United Airlines Flight 93, a Boeing 757 flying from Newark to San Francisco, crashed near Pittsburgh, raising the possibility that its hijackers had failed in whatever their mission was. "

xiii. See Lipton, A New Count of the Dead, But Little Sense of Relief, N.Y. Times, Dec. 2, 2001, p. A41.

xiv. Id.

" There were indications that the hijackers on at least two of the planes were armed with knives. Attorney General John Ashcroft told reporters...that the suspects on Flight 11 were armed that way. And Barbara Olson, a television commentator who was traveling on American Flight 77, managed to reach her husband, Solicitor General Theodore Olson, by cell phone and to tell him that the hijackers were armed with knives and a box cutter. "

xv. See Fewer flights=better airline service, Consumer Reports Travel Letter, March 2002, p. 1.

" Anyone who has flown commercially since Sept. 11 knows that new security procedures have necessitated earlier departures for the airport and longer check-in lines. But an analysis of performance data yields a positive surprise: Airline service improved dramatically in the two full calendar months following the terrorist attacks...There are fewer flights, airfares have dropped, and service has improved...the dramatic drop-off in airline traffic shows that the systemic problems that plagued the industry in recent years were caused to a great extent by

congestion, which in turn was brought about in large measure by the airlines themselves " .

xvi. See McDowell, *Security Is Tightened On Ships and at Ports*, N.Y. Times Travel Section, Dec. 9, 2001, p. 3 (" But since Sept. 11, security has been ramped up at ports and on cruise ships and other vessels to its highest level since World War II...The Coast Guard, which oversees maritime security, added uniformed armed ' sea marshals ' to cruise ships in October and Coast Guard cutters equipped with machine guns often escort cruise and cargo ships to and from port. " ; *Increased Security*, Consumer Reports Travel Letter, May 2002, p. 6 (" In fact, in port you may encounter multiple security checkpoints before being allowed to board. Expect intensified scrutiny of your personal identification and other documents...The new Transportation Security Administration will oversee security assessments and enhancements at U.S. seaports. Congress recently authorized \$93 million for the Port Security Grants Program to assist in this effort...Because of the higher security level, the U.S. Coast Guard has activated directives for all cruise lines sailing into and out of U.S. territorial waters. These rules mean all baggage, cargo and stores should be screened and each terminal should undergo a ' definitive security review ' prior to the arrival of a cruise ship. At some ports, cruise ships may be escorted into and out of port, and a 300 foot security zone may be maintained for all cruise ship ").

xvii. See e.g., *Continental Airlines, Inc. v. United Airlines, Inc.*, 277 F. 3d 499 (4th Cir. 2002)(judgment for plaintiff in antitrust action challenging agreement providing for installation of airport screening machine templates limiting the size of carry-on baggage reversed and remanded); *Dazo v. Globe Airport Security Services*, 295 F. 3d 934 (9th Cir. 2002)(passenger loses \$100,000 in baggage stolen at security check point the operator (Globe) of which is not covered by the Warsaw Convention).

xviii. *In Re September 11 Litigation*, 2003 WL 22077747 (S.D.N.Y. 2003).

xix. McDowell, *Cruise Lines' Topic A: Intensified Security*, N.Y. Times Travel Section, February 2, 2003, p. 3.

xx. Edelman & LaPenta, *The Maritime Industry Since 9/11*, New York Law Journal, January 31, 2003, p. 3.

xxi. See e.g.,

First Circuit: Langadinos v. American Airlines, Inc., 199 F. 3d 68 (1st Cir. 2000)(passenger grabs other passenger's testicles causing excruciating pain); Montanez v. Solstar Corp., 46 F. Supp. 2d 101 (D.P.R. 1999)(passenger removed from aircraft after altercation with flight attendant); Uwagbai v. Alitalia Airlines, 24 Aviation Cases 17,811 (D. Mass. 1994) (passenger detained in airport lounge for three days because of forged travel documents).

Second Circuit: Wallace v. Korean Air, 214 F. 3d 293 (2d Cir. 2000)(" Ms. Wallace had neither spoken to Mr. Park, nor given him the slightest indication that familiarity would be welcome. Nevertheless, about three hours into the flight, Ms. Wallace awoke in the darkened plane to find that Mr. Park had unbuckled her belt, unzipped and unbuttoned her jean shorts, and placed his hands into her underpants to fondle her. Ms. Wallace awoke with a start...When Mr. Park resumed his unwelcome amours, however, Ms. Wallace...hit him hard "); Curley v. AMR Corp., 153 F. 3d 5 (2d Cir. 1997)(passengers detained after smoking marijuana in aircraft lavatory); Christel v. AMR Corp., 222 F. Supp. 2d 335 (E.D.N.Y. 2002)(passenger, removed from aircraft, " was very angry and (flight attendant) started to think that his anger and hostile conduct...could become a safety issue during flight...Since the record is devoid of any indication that Captain Nelson's decision to refuse (passenger) transportation was ` retaliatory or malevolent `...such decision was not arbitrary and capricious "); Sirico v. British Airways, 2002 WL 113877 (E.D.N.Y. 2002)(passenger forcibly removed from aircraft); Lahey v. Singapore Airlines, Ltd., 115 F. Supp. 2d 464 (S.D.N.Y. 2000)(passenger assaults passenger); Singh v. Tarom Romanian Air Transport, 88 F. Supp. 2d 62 (E.D.N.Y. 2000)(passenger removed from aircraft and detained six days); Norman v. TWA, 2000 U.S. Dist. LEXIS 14618 (S.D.N.Y. 2000)(passenger removed from aircraft after dispute with flight attendant); Schaefer v. Cavallero, 54 F. Supp. 2d 350 (S.D.N.Y. 1999)(passenger escorted from aircraft by police after " vociferously pursu[ing] his demand for a [baggage] receipt "); Donkor v. British Airways, Corp., 62 F. Supp. 2d 963 (E.D.N.Y. 1999)(passenger detained and deported from England); Sedigh v. Delta Airlines, Inc., 850 F. Supp. 197 (E.D.N.Y. 1994)(passenger posed security risk after talking about Germans having killed Jews and going to lavatory several times); Levy v. American Airlines, 24 Aviation Cases 17,581 (S.D.N.Y. 1993)(officers forced to restrain prisoner during flight); Price v. British Airways, 23 Aviation Cases 18,465 (S.D.N.Y. 1992)(drunken fist fight between passengers); Padila v. Olympic Airways, 23 Aviation Cases 17,656 (S.D.N.Y. 1991)(passenger

falls in lavatory after consuming nine cans of beer); Zervigon v. Piedmont Aviation, Inc., 17 Aviation Cases 18,200 (S.D.N.Y. 1983)(passenger removed for safety reasons).

Third Circuit: Dasrath v. Continental Airlines, Inc., 2002 WL 31319716 (D.N.J. 2002)(Arab Americans removed from aircraft without investigation claim unlawful discrimination); O'Grady v. British Airways, 134 F. Supp. 2d 407 (E.D. Pa. 2001)(passenger assaults passenger during flight).

Fourth Circuit: Ruiz v. People Express Airlines, 802 F. 2d 1508 (4th Cir. 1986)(passenger detained after firearms discovered in baggage); Asher v. United Airlines, 1999 WL 1000125 (D. Md. 1999)(airline demanded passenger pay for sitting in business class seat when he only purchased an economy seat); Oliver v. Scandinavian Airlines Systems, 17 Aviation Cases 18,283 (D. Md. 1983)(intoxicated passenger).

Fifth Circuit: Smith v. America West Airlines, Inc., 1995 WL 35362 (5th Cir. 1995)(deranged passenger); U.S. v. Kilptarick, 757 F. 2d 1250 (5th Cir. 1985)(passenger who refused to fasten seatbelt liable for interfering with crew); Lewis v. Continental Airlines, Inc., 40 F. Supp. 2d 406 (S.D. Tex. 1999)(passenger who missed flight and delayed in airport arrested after stating " that there could have been a bomb in (his) luggage "); Bayne v. Adventure Tours USA, 23 Aviation Cases 18,004 (N.D. Tex. 1994)(passenger detained and baggage searched); Alyasin v. Lufthansa German Airlines, 23 Aviation Cases 17,237 (S.D. Tex. 1990)(passenger carried loaded gun in briefcase).

Sixth Circuit: Al-Qudahi'een v. America West Airlines, Inc., 2003 WL 21383607 (S.D. Ohio 2003)(removal of Saudi Arabian passengers who disobeyed instructions and entered first class without permission was justified and not discriminatory).

Seventh Circuit: Fournier v. Lufthansa German Airlines, 2002 WL 215457 (N.D. Ill. 2002)(passenger arrested in Greece for smuggling guns in checked baggage); Huggar v. Northwest Airlines, Inc., 1999 U.S. Dist. LEXIS 1026 (E.D. Ill. 1999) (passenger removed from aircraft after throwing bag at and threatening another passenger); Smith v. Gerber, 1999 WL 622963 (N.D. Ill. 1999)(passenger interfered with flight attendant).

Ninth Circuit: Bloom v. Alaska Airlines, 2002 WL 1136727 (9th Cir. 2002)(confrontation between passenger and flight attendant); Gee v. Southwest Airlines, 110 F. 3d 1400 (9th Cir. 1997)(intoxicated passenger harasses another passenger); Simmons v. American Airlines, 2002 U.S. Dist. LEXIS 1173 (N.D. Cal. 2002)(passenger removed from aircraft may have made comment about hijacking); Hermano v. United Airlines, 1999 U.S. Dist. LEXIS 19808 (N.D. Cal. 1999)(passenger suspected of having gun removed from aircraft); Goodwin v. Air France, 1998

U.S. Dist. LEXIS 8227 (N.D. Cal. 1998)(passenger assaults passenger); Stone v. Continental Airlines, Inc., 1995 WL 703722 (D. Hawaii 1995)(passenger assaults another passenger).

Eleventh Circuit: U.S. v. Grossman, 131 F. 3d 1449 (11th Cir. 1997)(passenger convicted of having assaulted and intimidated flight attendant); U.S. v. Grzeganeck, 841 F. Supp. 1169 (S.D. Fla. 1993)(drunk passenger charged with endangering the safety of other passengers by suggesting that a bomb was aboard).

District of Columbia Circuit: Kalantar v. Lufthansa German Airlines, 2002 U.S. Dist. LEXIS 2858 (D.C.D.C. 2002) (Iranian passenger arrested after refusing to allow his carry-on baggage to be searched); Gibbs v. American Airlines, Inc., 191 F. Supp. 2d 144 (D.C.D.C. 2002)(unruly passenger removed from aircraft).

State Courts:

California: Rubin v. United Air Lines, Inc., 96 Cal. App. 4th 364, 117 Cal. Rptr. 2d 109 (2002)(disruptive passenger removed from aircraft); Romano v. American Trans. Air., 48 Cal. App. 4th 1637, 56 Cal. Rptr. 2d 428 (1996)(failure to restrain unruly passenger).

Delaware: Haavistola v. Delta Airlines, Inc., 1997 Del. Super. LEXIS 63 (1997)(unruly passenger).

Illinois: Matlock v. The Industrial Commission, 321 Ill. App. 3d 167, 746 N.E. 2d 751 (2001)(flight attendant traumatized by unruly passenger and exposed to poison gas).

Maryland: Okwa v. Harper, 360 Md. 161, 757 A. 2d 118 (2000)(passenger arrested for creating disturbance in airport).

Massachusetts: MacIntosh v. Interface Group, 1999 Mass. Super. LEXIS 3 (1999)(passenger removed from aircraft, arrested, jailed and charged with breach of the peace).

Texas: Patin v. Carver, 2000 Tex. App. LEXIS 5707 (2000)(enraged passenger throws briefcase against wall injuring flight attendant).

See also: Weigand, Accident, Exclusivity and Passenger Disturbances Under The Warsaw Convention, 16 Am. U. Int'l L. Rev. 891, 894-895 (2001).

" In-flight disturbances range in degree and character. The panoply of altercations encompass physical fights or confrontation, sexual assaults, injurious contact or verbal harassment by and between passengers, or passengers and flight crew members. Others include refusals to obey simple commands or instructions of the flight crew. Some of the reported incidents include: a sleeping passenger wakes up to another passenger unbuttoning her pants and fondling her private parts, a passenger assaults flight attendant and tries to enter cockpit after

becoming enraged when told he was whistling too loudly, a passenger momentarily grabs another passenger's private parts based on mistaken identity, a fist fight between two passengers, a drunken passenger falls on another passenger, a passenger injures another passenger by suddenly moving his seat or dropping an item from [the] overhead compartment, a verbal and/or physical confrontation between crew member and passenger over seat assignment, a routine but offensive search of a passenger prior to boarding, a flight attendant pushes a passenger into a seat to clear the aisle, a flight crew member forcefully removes a passenger from the lavatory due to a smoke alarm sounding, a passenger assaults and intimidates flight attendant after being denied a request for pillow or blanket, a passenger refused to turn off boom box and a passenger refused to extinguish cigarette " .

xxii. See Peterson, Flight Attendants Train To Be On The Frontline, Stop Press, Conde Nast Traveler, March 2002, p. 54 (" Today, many in the airline business acknowledge an unsettling truth: The vulnerabilities in the system exposed by the September 11 suicide hijackings were already well known to anyone who looked closely at the details of the most recent rash of air-rage episodes. And only a few carriers had made any real effort to prepare their crews to handle violent passengers ").

xxiii. See e.g.,

Second Circuit: Norman v. Trans World Airlines, Inc., 2000 U.S. Dist. LEXIS 14618 (S.D.N.Y. 2000)(passenger removed from aircraft after dispute with flight attendant; " 49 U.S.C. 44902(b) provides that an airline has discretion to refuse to transport a passenger who in its estimation poses or may pose a threat to the safety of the flight "); Schaeffer v. Cavallero, 54 F. Supp. 2d 350, 351 (S.D.N.Y. 1999)(unruly passenger removed from aircraft; " The Federal Aviation Act provides that an airline ` may refuse to transport a passenger or property the carrier decides is or might be inimical to safety ` 49 U.S.C. 44902. Such a refusal cannot give rise to a claim for damages under either federal or New York State law unless the carrier's decision was arbitrary and capricious ").

Fifth Circuit: O'Carroll v. American Airlines, Inc., 868 F. 2d 11, 11-12 (5th Cir), cert. denied 490 U.S. 1106, 109 S. Ct. 3158, 104 L. Ed. 2d 1021 (1989)(intoxicated passenger removed from aircraft).

Seventh Circuit: Huggar v. Northwest Airlines, Inc., 1999 U.S. Dist. LEXIS 1026 (N.D. Ill. 1999)(passenger removed from aircraft; " Furthermore, a pilot is specifically authorized under Federal law to refuse to provide transportation to any passenger

on the basis of a threat to safety. 49 U.S.C. 44902(b) ").

State Courts:

California: Rubin v. United Air Lines, Inc., 96 Cal. App. 4th 364, 117 Cal. Rptr. 2d 109 (2002)(" We hold a passenger whom the airline believes is, or might become, inimical to the safety of the aircraft or its passengers may be ejected from a flight without subjecting the airline to tort liability if at the time airline personnel had a reasonable basis for believing the passenger presented a safety risk ").

Massachusetts: MacIntosh v. Interface Group, 1999 Mass. Super. LEXIS 3 (1999)(passenger removed from aircraft; " A refusal to transport a passenger under [49 U.S.C. 44902(b)] is proper when made in the face of evidence which would cause a reasonably careful and prudent air carrier to form the opinion that the passenger's presence aboard a plane ' would or might be inimical to safety of flight ' ").

xxiv. See e.g.,

Second Circuit: Turturro v. Continental Airlines, 128 F. Supp. 2d 170 (S.D.N.Y. 2001)(desperate passenger in need of anxiety medication refused permission by flight attendant to exit aircraft on tarmac calls 911 and is hissed and jeered by other passengers and leaves aircraft); Cush v. BWIA International Airways Ltd., 175 F. Supp. 2d 483 (E.D.N.Y. 2001)(when passenger refused to leave aircraft immigration officials " repeatedly punched him in the face and groin, placed him in a choke hold, handcuffed him and then pushed him down the stairs leading to the tarmac "); Glavey v. Aer Lingus, 1999 U.S. Dist. LEXIS 10498 (S.D.N.Y. 1999)(passenger not allowed to board aircraft unless she wrote an apology to airline for filing a lost baggage claim 10 days earlier); Rombom v. United Air Lines, 867 F. Supp. 214 (S.D.N.Y. 1994)(rude and unprofessional conduct by stewards who spitefully had passenger falsely arrested); Drakos v. TWA, 19 Aviation Cases 17,866 (S.D.N.Y. 1985) (elderly and infirm passenger removed from aircraft for safety reasons).

Third Circuit: Dasrath v. Continental Airlines, Inc., 2002 WL 31319716 (D.N.J. 2002)(Arab Americans removed from aircraft without investigation claim unlawful discrimination; " the flight supervisor approached and asked the three (Arab Americans) to gather their belongings and follow him off the plane, and they complied...At no time did the pilot or any security personnel question (Arab Americans) or conduct any investigation prior to ejecting him from the flight ").

Seventh Circuit: Chukwu v. Air France, 218 F. Supp. 2d 979 (N.D. Ill. 2002)(airline personnel mistreated passenger by refusing to provide wheelchair " forcing her to walk ' to and/or

from ` the boarding gates in Lagos, Paris and San Francisco ").

Ninth Circuit: Carey v. United Airlines, 2001 U.S. App. LEXIS 14834 (9th Cir. 2001)(passenger humiliated by flight attendant in front of 1st Class passengers).

Eleventh Circuit: Marcotte v. American Airlines, Inc., 296 F. 3d 1255 (8th Cir. 2002)(airline employee punched and pushed passenger who " was knocked against the door and fell to the ground ").

State Courts:

Florida: Zuiliana de Aviacion v. Herrera, 763 So. 2d 499 (Fla. App. 2000)(passenger removed from aircraft, placed in airport bathroom, strip searched including body cavity search; compensatory and punitive damages awarded).

xxv. Doyle, Cruise Smart, How To Ensure Smooth Sailing, From Booking To Disembarking, Stop Press, Conde Nast Traveler, December 2000, p. 63.

xxvi. Dickerson, Travel Agents 2001 : The Consumer's Rights & Remedies For Performance Failure, at www.classactionlitigation.com/TRAVELAGENTWEBARTICLE7-2001UPDATE.htm

xxvii. Dickerson, What Tort Lawyers Should Know About Travel Law : The Internet Book Updated, Revision Number 1. September 15, 2000, at www.courts.state.ny.us/tandv/travellaw.htm

xxviii. Dickerson, Sponsoring Group Travel: A Discussion Of Liability Issues at www.classactionlitigation.com/articles_of_interest.htm

xxix. Barbetta v. S/S Bermuda Star, 848 F. 2d 1364 (5th Cir 1988). Contra: Nietes v. American President Lines, Ltd., 188 F. Supp. 219 (N.D. Cal. 1959); Carlisle v. Carnival Corp., 2002 Fla. App. LEXIS 12794 (Fla. App. 2003).

xxx. Schwartz v. S.S. Nassau, 345 F. 2d 465, 467 (2d Cr. 1965).

xxxi. Dickerson, Travel Law, at Chapter 2.

xxxii. Id at Chapter 4.

xxxiii. Id.

xxxiv. Id. at Chapter 5.

xxxv. Id.

xxxvi. Id.

xxxvii. Id. at Chapters 2 & 5.

xxxviii. See Dickerson, *Laws Leave Passengers Shipwrecked*, National Law Journal, May 29, 1995, p. B9.

xxxix. *Ward v. Cross Sound Ferry*, 273 F. 3d 520 (2d Cir. 2001).

xl. *Morrow v. Norwegian Cruise Line Limited*, 2002 WL 32091779 (M.D. Pa. 2002).

xli. *Carnival Corp. v. Stowers*, 2003 WL 118268 (Fla. App. 2003).

xlii. *Gibbs v. Carnival Cruise Lines*, 314 F. 3d 125 (3d Cir. 2002).

xliii. *Watanabe v. Royal Caribbean Cruise Ltd.*, 2001 WL 1511268 (Cal. App. 2001).

xliv. *Angel v. Royal Caribbean Cruises Ltd.*, 2002 WL 31553524 (S.D. Fla. 2002).

xlv. *Carnival Corp. v. Amato*, 2003 WL 244821 (Fla. App. 2003).

xlvi. *Norwegian Cruise Line Ltd. V. Clark*, 2002 WL 826396 (Fla. App. 2003).

xlvii. *Corona v. Costa Crociere SPA*, 844 So. 2d 652 (Fla. App. 2003).

xlviii. *Kalendareva v. Discovery Cruise Line*, 798 So. 2d 804 (Fla. App. 2001).

xlix. *Bergonzine v. Maui Classic Charters*, 1995 American Maritime Cases 2628 (D. Hawaii 1995).

l. *Rainey v. Paquet Cruises, Inc.*, 709 F. 2d 169 (2d Cir. 1983).

li. *Lee v. Regal Cruises, Ltd.*, 1999 WL 87466 (S.D.N.Y. 1996).

lii. *Kunken v. Celebrity Cruises, Inc.*, 1999 WL 1140868 (S.D.N.Y. 1999).

liii. *Wallis v. Princess Cruises, Inc.*, 306 F. 3d 827 (9th Cir.

2002).

liv. Smith v. Mitlof, 2001 WL 173499 (S.D.N.Y. 2001).

lv. Calhoun v. Yamaha Motor Corp., 216 F. 3d 338 (3rd Cir. 2000).

lvi. United Shipping Co. v. Witmer, 724 So. 2d 722 (Fla. App. 1999).

lvii. Smith v. West Rochelle Travel Agency, 238 A.D. 2d 398, 656 N.Y.S. 2d 340 (1997).

lviii. Kruempelstaedter v. Sonesta International Hotels Corp., 2000 U.S. Dist. LEXIS 11453 (N.D. Ill. 2000).

lix. Benezra v. Holland America Line-Westours, Inc., 2000 U.S. Dist. LEXIS 6818 (9th Cir. 2000).

lx. Carron v. Holland America Line-Westours, Inc., 51 F. Supp. 2d 322 (E.D.N.Y. 1999).

lxi. Brown v. New Commodore Cruise Line Limited, 2000 WL 45443 (S.D.N.Y. 2000).

lxii. McDonough v. Celebrity Cruises, Inc., 1999 WL 680453 (S.D.N.Y. 1999).

lxiii. Catalan v. Carnival Cruise Lines, Inc., 1985 American Maritime Cases 1929 (D. Md. 1984).

lxiv. Fay v. Oceanic Sun Line, 1985 American Maritime Cases 1132 (N.Y. Sup. 1984).

lxv. Berman v. Royal Cruise Line, Ltd., 1995 American Maritime Cases 1926 (Cal. Sup. 1995).

lxvi. Pettitt v. Celebrity Cruises, Inc., 153 F. Supp. 2d 240 (S.D.N.Y. 2001).

lxvii. Enderson v. Carnival Cruise Lines, Inc., 2001 U.S. Dist. LEXIS 1608 (W.D.N.C. 2001).

lxviii. Hague v. Celebrity Cruises, Inc., 2001 U.S. Dist. LEXIS 10824 (S.D.N.Y. 2001).

lxix. Licensed Practical Nurses v. Ulysses Cruises, Inc., 2000 U.S. Dist. LEXIS 16619 (S.D.N.Y. 2000).

lxx. In re Horizon Cruises Litigation, 2002 U.S. Dist. LEXIS 1033 (S.D.N.Y. 2002).

lxxi. Freeman v. Celebrity Cruises, Inc., 1994 WL 689809 (S.D.N.Y. 1994).

lxxii. Hirschhorn v. Celebrity Cruises, Inc., 1999 U.S. Dist. LEXIS 9403 (S.D.N.Y. 1999).

lxxiii. Mullen v. Treasure Chest Casino. LLC, 186 F. 3d 620 (5th Cir. 1999).

lxxiv. Stires v. Carnival Corp., 2002 WL 31971728 (N.D. Fla. 2002).

lxxv. Doe v. Celebrity Cruises, Inc., 2003 WL 22351426 (S.D. Fla. 2003).

lxxvi. State v. Stepansky, 761 So. 2d 1027 (Fla. Sup. 2000).

lxxvii. Royal Caribbean Cruises, Ltd. v. Doe, 767 So. 2d 626 (Fla. App. 2000).

lxxviii. Nadeau v. Costly, 1994 A.M.C. 2810 (Fla. App. 1994).

lxxix. Morton v. De Oliviera, 984 F. 2d 289 (9th Cir. 1993).

lxxx. John v. Commodore Cruise Lines Ltd., 1995 WL 441982 (S.D.N.Y. 1995).

lxxxi. York v. Commodore Cruise Lines, 1995 American Maritime Cases 399 (S.D.N.Y. 1994).

lxxxii. Navin, Stalking Sexual Predators at Sea: The response of the cruise industry to sexual assaults onboard, 1999 International Travel Law Journal 192.

lxxxiii. O'Hara v. Celebrity Cruises, Inc., 979 F. Supp. 254 (S.D.N.Y. 1997).

lxxxiv. Corna v. American Hawaii Cruises, Inc., 1992 America Maritime Cases 1797 (D. Hawaii 1992).

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- lxxxv. *Marmer v. Queen of New Orleans*, 787 So. 2d 1115 (La. App. 2001).
- lxxxvi. *Colavito v. Carnival Cruise Lines, Inc.*, 1983 American Maritime Cases 1378 (S.D. Tex. 1981).
- lxxxvii. *Carlisle v. Carnival Corp.*, 2003 Fla. App. LEXIS 12794 (Fla. App. 2003).
- lxxxviii. *Pota v. Holtz*, 852 So. 2d 379 (Fla. App. 2003).
- lxxxix. *Jackson v. Carnival Cruise Lines, Inc.*, 203 F. Supp. 2d 1367 (S.D. Fla. 2002).
- xc. *Stires v. Carnival Corp.*, 2002 WL 31971728 (N.D. Fla. 2002).
- xc. *Doe v. Celebrity Cruises*, 145 F. Supp. 2d 1337 (S.D. Fla. 2001).
- xcii. *Benson v. Norwegian Cruise Line Limited*, 834 So. 2d 915 (Fla. App. 2003).
- xciii. *Cimini v. Italia Crociere International*, 1981 A.M.C. 2674 (S.D.N.Y. 1981).
- xciv. *Cross v. Kloster Cruise Lines, Limited*, 897 F. Supp. 1304 (D. Ore. 1995).
- xcv. *Afflerbach v. Cunard Line Ltd.*, 14 F. Supp. 2d 1260 (D. Wyo. 1998).
- xcvi. *Fairley v. Royal Cruise Line Ltd.*, 1993 A.M.C. 1633 (S.D. Fla. 1993).
- xcvii. *Meitus v. Carnival Cruise Lines, Inc.*, 2000 Fla. App. LEXIS 10157 (Fla. App. 2000).
- xcviii. *Rand v. Hatch*, 762 So. 2d 1001 (Fla. App. 2000).
- xcix. *Johnson v. Commodore Cruise Lines*, 1996 American Maritime Cases 666 (S.D.N.Y. 1995).
- c. Herschaft, *Cruise Ship Medical Malpractice Cases: Must Admiralty Courts Steer By The Star Of Stare Decisis?* 17 Nova L. Rev. 575 (1992).
- ci. *Neenan v. Carnival Corp.*, 2001 WL 64747 (S.D. Fla. 2001).

cii. Watanabe v. Royal Caribbean Cruises, Ltd., 2001 WL 1511268
(Cal. App. 2001).

ciii. Hutton v. Norwegian Cruise Line, 2001 WL 273173 (S.D. Fla.
2001).

civ. Jackson v. Carnival Cruise Lines, Inc., 203 F. Supp. 2d 1367
(S.D. Fla. 2002).

cv. Tateosian v. Celebrity Cruise Services, Ltd., 768 A. 2d 1248
(R.I. Sup. 2001).

cvi. Adler v. Royal Cruise Line, Ltd., 1996 A.M.C. 1349 (N.D. Cal.
1996).

cvii. Bounds v. Sun Line Cruises, Inc., 1997 A.M.C. 25 (C.D. Cal.
1996).

cviii. Hernandez v. The Motor Vessel Skyward, 61 F.R.D. 558 (S.D.
Fla. 1973), aff'd 502 F. 2d 1278 (5th Cir. 1975).

cix. Barbachym v. Costa Line, 713 F. 2d 216 (6th Cir. 1983).

cx. Williams v. Carnival Cruise Line, 907 F. Supp. 403 (S.D. Fla.
1995).

cxii. Bailey v. Carnival Cruise Lines, Inc., 1985 American Maritime
Cases 836 (Fla. App. 1984).

cxiii. Warren v. Ajax Navigation Corp., 1995 American Maritime Cases
2609 (S.D. Fla. 1995).

cxiiii. Kornberg v. Carnival Cruise Lines, 741 F. 2d 1332 (11th Cir.
1984).

cxiv. Brown v. New Commodore Cruise Line Limited, 2000 U.S. Dist.
LEXIS 536 (S.D.N.Y. 2000).

cxv. Meyer v. Carnival Cruise Lines, Inc., 1995 A.M.C. 1652 (N.D.
Cal. 1994).

cxvi. Carnival Corp. v. Amato, 2002 WL 244821 (Fla. App. 2003).

cxvii. Corona v. Costa Crociere SPA, 844 So. 2d 652 (S.D. Fla.

2003).

cxviii. Hood v. Regency Maritime Corp., 2000 U.S. Dist. LEXIS 17298 (S.D.N.Y. 2000).

cxix. Palmieri v. Celebrity Cruise Lines, Inc., 2000 U.S. Dist. LEXIS 3724 (S.D.N.Y. 2000).

cxx. Kunken v. Celebrity Cruises, Inc., 1999 U.S. Dist. LEXIS 19321 (S.D.N.Y. 1999).

cxxi. Marchewka v. Bermuda Star Lines, Inc., 1998 A.M.C. 599 (S.D.N.Y. 1996).

cxxii. In re Vessel Club Med, 90 F. Supp. 2d 550 (D.N.J. 2000).

cxxiii. Hendricks v. Transportation Services of St. John, Inc., 1999 V.I. LEXIS 16 (T.C.V.I. 1999).

cxxiv. Domblakly v. Celebrity Cruises, Inc., 1998 U.S. Dist. LEXIS 16549 (S.D.N.Y. 1998).

cxxv. In re Catalina Cruises, Inc., 137 F. 3d 1422 (9th Cir. 1998).

cxxvi. Stobaugh v. Norwegian Cruise Line Limited, 5 S.W. 3d 232 (Tex. App. 2000).

cxxvii. Ilan v. Princess Cruises, Inc., 2002 WL 31317342 (Cal. App. 2002).

cxxviii. Cross v. Kloster Cruise Lines, Limited, 897 F. Supp. 1304 (D. Ore. 1995).

cxxix. Kalendareva v. Discover Cruise Line, 798 So. 2d 804 (Fla. App. 2001).

cxx. Douville v. Casco Bay Island Transit, 1998 A.M.C. 2775 (D.N.H. 1998).

cxxxi. Larsen v. Carnival Corp., Inc., 242 F. Supp. 2d 1333 (N.D. Fla. 2003).

xxxii. Simpson v. Socialist People's Libyan Arab Jamahiriya, 2003 WL 1906337 (D.C. Cir. 2003).

cxxxiii. *Watanabe v. Royal Caribbean Cruises, Ltd.*, 2001 WL 1511268 (Cal. App. 2001).

cxxxiv. *Wallis v. Princess Cruises, Inc.*, 306 F. 3d 827 (9th Cir. 2002).

cxxxv. *Stires v. Carnival Corp.*, 2002 WL 31971728 (S.D. Fla. 2002).

cxxxvi. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 79 S. Ct. 406, 3 L. Ed. 2d 550 (1958).

cxxxvii. *Ginop v. A 1984 Bayliner 27' Cabin Cruiser*, 242 F. Supp. 2d 482 (E.D. Mich. 2003).

cxxxviii. *Ilan v. Princess Cruises, Inc.*, 2002 WL 31317342 (Cal. App. 2002).

cxxxix. *Watanabe v. Royal Caribbean Cruises*, 2001 WL 1511268 (Cal. App. 2001).

cxl. *Kalendareva v. Discovery Cruise Line*, 798 So. 2d 804 (Fla. App. 2001).

cxli. *Ginop v. A 1984 Bayliner 27' Cabin Cruises*, 242 F. Supp. 2d 482 (E.D. Mich. 2003).

cxlii. *Hirschhorn v. Celebrity Cruises, Inc.*, 1999 U.S. Dist. LEXIS 9403 (S.D.N.Y. 1999).

cxliii. *O'Conner v. Chandris Lines, Inc.*, 566 F. Supp. 1275 (D. Mass. 1983).

cxliv. *Hood v. Regency Maritime Corp.*, 2000 U.S. Dist. LEXIS 17298 (S.D.N.Y. 2000).

cxlv. *Stires v. Carnival Corp.*, 2002 WL 31971728 (S.D. Fla. 2002).

cxlvi. *Doe v. Celebrity Cruises, Inc.*, 2003 WL 22351426 (S.D. Fla. 2003).

cxlvii. *Carlisle v. Carnival Corp.*, 2003 Fla. App. LEXIS 12794 (Fla. App. 2003).

cxlviii. *Kornberg v. Carnival Cruise Lines*, 741 F. 2d 1332 (11th Cir. 1984).

cxlix. *Jackson v. Carnival Cruise Lines*, 203 F. Supp. 2d 1367 (S.D. Fla. 2002).

cl. *Stires v. Carnival Corp.*, 2002 WL 31971728 (S.D. Fla.

2002).

cli. Doe v. Celebrity Cruises, 145 F. Supp. 2d 1337 (S.D. Fla. 2001).

clii. Petitt v. Celebrity Cruises, Inc., 153 F. Supp. 2d 240 (S.D.N.Y. 2001).

cliii. Jackson v. Carnival Cruise Lines, 203 F. Supp. 2d 1367 (S.D. Fla. 2002).

cliv. See e.g., Hernandez v. Holiday Inn, New York Law Journal, March 23, 1993, p. 21, col. 6 (N.Y. Sup.)(parasailing accident on hotel beach; relationship between hotel and parasailing operator described as follows: " Hotel Calinda contracted with the parasailing concessionaire ' Deportes Aquaticos ', received a monthly fee pursuant to the contract; and that employees of the hotel were responsible for regularly inspecting the activity and equipment of the parasailing concessionaire. The parasailing activity was conducted along the Hotel Calinda beach and signs were posted on the grounds of the hotel directing guests to the parasailing activity...plaintiff's husband was instructed by a clerk of the hotel's front desk to go to the beach area to sign-up for parasailing ").

clv. Winter v. I.C. Holidays, Inc., New York Law Journal, January 9, 1992, p. 23, col. 4 (N.Y. Sup.).

clvi. Matter of Konoa, Inc., 1994 WL 715611 (D. Haw. 1994).

clvii. Musumeci v. Penn's Landing Corp., 640 A. 2d 416 (Pa. Super. 1994).

clviii. Gilmore v. Caribbean Cruise Line, 789 F. Supp. 488 (D.P.R. 1992).

clix. Chan v. Society Expeditions, Inc., 1994 A.M.C. 2642 (9th Cir. 1994).

clx. Carlisle v. Ulysses Line Ltd., 475 So. 2d 248 (Fla. App. 1985).

clxi. Chan v. Society Expeditions, Inc., 123 F. 3d 1287 (9th Cir. 1998), cert. dismissed 522 U.S. 1100 (1998).

clxii. Favorito v. Pannell, 27 F. 3d 716 (1st Cir. 1994).

clxiii. *Smith v. Commodore Cruise Line Limited*, 2000 U.S. Dist. LEXIS 14267 (S.D.N.Y. 2000).

clxiv. *Sharpe v. West Indian Company, Ltd.*, 2000 U.S. Dist. LEXIS 13715 (D.V.I. 2000).

clxv. *Gillmore v. Caribbean Cruise Line*, 789 F. Supp. 488 (D.P.R. 1992).

clxvi. *Sullivan v. Ajax Navigation Corp.*, 1995 WL 140172 (S.D.N.Y. 1995).

clxvii. *Petro v. Jada Yacht Charters, Ltd.*, 854 F. Supp. 698 (D. Hawaii 1994).

clxviii. *Esfeld v. Costa Crociere*, 289 F. 3d 1300(11th Cir. 2002).

clxix. *Konikoff v. Princess Cruises, Inc.*, 2001 U.S. Dist. LEXIS 14034 (D.V.I. 2001).

clxx. *Dubret v. Holland America Line Westours, Inc.*, 25 F. Supp. 2d 1151 (W.D. Wash. 1998).

clxxi. *Paredes v. Princess Cruises, Inc.*, 1 F. Supp. 2d 87 (D. Mass. 1998).

clxxii. *DeRoche v. Commodore Cruise Line, Ltd.*, 46 Cal. Rptr. 2d 468 (Cal. App. 1994).

clxxiii. *Lubick v. Travel Services, Inc.*, 573 F. Supp. 904 (D.V.I. 1983).

clxxiv. *Berg v. Royal Caribbean Cruise, Ltd.*, 1994 American Maritime Cases 806 (D.N.J. 1992).

clxxv. *Carlisle v. Ulysses Line, Ltd.*, 475 So. 2d 248 (Fla. App. 1985).

clxxvi. *Rams v. Intrav, Inc.*, 1994 American Maritime Cases 1573 (1st Cir. 1994).

clxxvii. *Varey v. Canadian Helicopters Limited*, Case No: 95-13755-18 (Fla. Cir. Ct., Broward County).

clxxviii. Nineteen die on HAL tour excursion, Travel Weekly, September 17, 2001, p. 56.

clxxix. Passenger killed in shore excursion accident, Travel Weekly, July 31, 2000, p. 8.

clxxx. Six passengers, pilot killed in Maui tour helicopter crash, Travel Weekly, July 27, 2000, p. 4.

clxxxi. Long v. Holland America Line Westours, Inc., 26 P. 3d 430 (Alaska Sup. 2001).

clxxxii. Metzger v. Italian Line, 1976 American Maritime Cases 453 (S.D.N.Y. 1975).

clxxxiii. Gillmore v. Caribbean Cruise Line, 789 F. Supp. 488 (D.P.R. 1992).

clxxxiv. Carlisle v. Ulyssess Line, Ltd., 475 So. 2d 248 (Fla. App. 1985).

clxxxv. Travel Weekly, Jan. 9, 1997.

clxxxvi. Colby v. Norwegian Cruise Lines, Inc., 1996 WL 173016 (D. Conn. 1996).

clxxxvii. Calhoun v. Yamaha Motor Co., Ltd., 216 F. 3d 338 (3rd Cir. 2000).

clxxxviii. Mashburn v. Royal Caribbean Cruises, Ltd., 55 F. Supp. 2d 1367 (S.D. Fla. 1999), aff'd 214 F. 3d 1356 (11th Cir. 2000). See also Mashburn v. Royal Caribbean Cruises, Ltd., 2002 U.S. Dist. LEXIS 3999 (S.D. Fla. 2002)(similar state court negligence action removed to federal court and dismissed on the grounds of res judicata).

clxxxix. In re Complaint of Royal Caribbean Cruises, Ltd., 1999 WL 556892 (S.D. Fla. 1999).

cxc. Carnival Cruise Lines, Inc. v. LeValley, 786 So. 2d 18 (Fla. App. 2001).

cxci. Neely v. Club Med Management Services, Inc., 63 F. 3d 166 (3rd Cir. 1995).

cxcii. Sinclair v. Soniform, Inc., 935 F. 2d 599 (3rd Cir. 1991).

cxiii. Matter of Pacific Adventures, Inc., 5 F. Supp. 2d 874 (D. Hawaii 1998).

cxiv. McClenahan v. Paradise Cruises, Ltd., 888 F. Supp. 120 (D. Hawaii 1995).

cxv. Tancredi v. Dive Makai Charters, 823 F. Supp. 778 (D. Hawaii 1993).

cxvi. Courtney v. Pacific Adventures, Inc., 5 F. Supp. 2d 874 (D. Hawaii 1998).

cxvii. Shultz v. Florida Keys Dive Venter, Inc., 224 F. 3d 1269 (11th Cir. 2000).

cxviii. Cutchin v. Habitat Curacao, 1999 A.M.C. 1377 (S.D. Fla. 1999).

cxix. Borden v. Phillips, 752 So. 2d 69 (Fla. App. 2000).

cc. Mayer v. Cornell University, 909 F. Supp. 81 (N.D.N.Y. 1995), aff'd 107 F. 3d 3 (2d Cir. 1997) cert. denied 522 U.S. 818, 1185 S. Ct. 68, 139 L. Ed. 2d 30 (1997).

cci. United Shipping Co. (Nassau) Ltd. v. Witmer, 724 So. 2d 722 (Fla. App. 1999).

ccii. Young v. Players Lake Charles, L.L.C., 47 F. Supp. 2d 832 (S.D. Tex. 1999).

cciii. Petro v. Jada Yacht Charters, 1994 WL 255037 (D. Hawaii 1994).

cciv. Henderson v. Carnival Corp., 2000 U.S. Dist. LEXIS 18821 (S.D. Fla. 2000).

ccv. Morris v. Princess Cruises, Inc., 2001 U.S. App. LEXIS 318 (9th Cir. 2001).

ccvi. Martinides v. Holland America Line-Westours, Inc., C94-1386 (W.D. Wash.).

ccvii. DeRooche v. Commodore Cruise Line, Ltd., 46 Cal. Rptr. 2d 468 (Cal. App. 1994).

ccviii. Daniel v. Costa Armatori, 1980 A.M.C. 2874 (D.C.D.C. 1980).

ccix. Matter of the Complaint of UFO Chuting of Hawaii, Inc., 233 F. Supp. 2d 1254 (D. Hawaii 2001).

ccx. Matter of See N Ski Tours, Inc., 2000 U.S. Dist. LEXIS 2983 (D. Ala. 2000).

ccxi. Matter of Beiswenger Enterprises Corp., 48 F. Supp. 2d 1294 (M.D. Fla. 1999).

ccxii. O'Hara v. Bayliner, 89 N.Y. 2d 636 (N.Y. Ct. App. 1997).

ccxiii. Travel Weekly, July 31, 2000, p. 8.

ccxiv. Varey v. Canadian Helicopters Limited, Case No: 95-13755-18 (Fla. Cir. Ct., Broward County).

ccxv. Nineteen die on HAL tour excursion, Travel Weekly, September 17, 2001, p. 56.

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ccxvii. Six passengers, pilot killed in Maui tour helicopter crash, Travel Weekly, July 27, 2000, p. 4.

ccxviii. Matter of Bay Runner Rentals, Inc., 113 F. Supp. 2d 795 (D. Md. 2000).

ccxix. Wheeler v. Ho Sports Inc., 232 F. 3d 754 (10th Cir. 2000).

ccxx. Unger v. Travel Arrangements, Inc., 25 A.D. 2d 40, 266 N.Y.S. 2d 715 (1966).

ccxxi. Dimon v. Cruises By De, 1995 A.M.C. 675 (Iowa Dist. 1994).

ccxxii. Sanderman v. Costa Cruises, Inc., 2001 Pa. D. & C. LEXIS 198 (Pa. Com. Pls. 2001).

ccxxiii. Slade v. Cheung & Risser Enterprises, Inc., 10 Pa. D. & C. 3d 627 (Pa. C. P. 1979).

ccxxiv. Insognia v. Princess Cruises, Inc., New York Law Journal, June 10, 2002, p. 37 (N.Y. Sup.).

ccxxv. Bernstein v. Cunard Line. Ltd., 19 CCH Aviation Cases 17,485
(S.D.N.Y. 1985).

ccxxvi. Harden v. American Airlines, 1998 WL 260251 (M.D. Ala.
1998).

ccxxvii. Elliott v. Carnival Cruise Lines, 231 F. Supp. 2d 555 (D. Tex. 2002).

ccxxviii. Yollin v. Holland American Cruises, 97 A.D. 2d 720, 468
N.Y.S. 2d 873 (1983).

ccxxix. Desmond v. Holland American Cruises, 1981 A.M.C. 211
(S.D.N.Y. 1981).

ccxxx. Casper v. Cunard Line, Ltd., 560 F. Supp. 240 (E.D. Pa.
1983).

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1981 American Maritime Cases 211 (S.D.N.Y. 1981).

Fourth Circuit: Whitman v. Traveltips, Inc., 1982 American
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New York: Yollin v. Holland American Cruises, Inc., 97 A.D.
2d 729, 468 N.Y.S. 2d 873 (1983)(Bermuda skipped).

ccxxxi. Bloom v. Cunard Line, Ltd., 76 A.D. 2d 237, 430 N.Y.S. 2d
607 (1980).

ccxxxii. " Cruise Lines Fined for ' Misleading ' Cruise Costs ",
Travel Trade, Feb. 10, 1997, p. 27.

ccxxxiii. In Re: Carnival Cruise Lines Port Charges Litigation, Case.
No. 96-8078 CA 03, Fla. Cir. Ct., 11th Jud. Dist, Dade County,
Notice Of Settlement Of Class Action.

ccxxxiv. Latman v. Costa Cruise Lines, 758 So. 2d 699
(Fla. App. 2000).

ccxxxv. N.G.L. Travel Associates v. Celebrity Cruises, Inc., 2000
Fla. App. LEXIS 6544 (Fla. App. 2000).

ccxxxvi. Renaissance Cruises, Inc. v. Glassman, 738 So. 2d 436 (Fla.
App. 1999).

ccxxvii. Premier Cruise Lines, Ltd., v. Picaut, 746 So. 2d 1132 (Fla. App. 1999).

ccxxviii. Cronin v. Cunard Line Limited, 672 N.Y.S. 2d 864 (N.Y. App. Div. 1998).

ccxxxix. Pickett v. Holland America Line-Westours, Inc., 6 P. 3d 63 (Wash. Ct. App. 2000), rev'd 2001 WL 1511532 (Wash. Sup. 2001).

ccxl. Ames v. Celebrity Cruises, Inc., 1998 U.S. Dist. LEXIS 11559 (S.D.N.Y. 1998).

ccxli. Vallery v. Bermuda Star Line, 141 Misc. 2d 395, 532 N.Y.S. 2d 965 (N.Y. Sup. 1988).

See also:

Second Circuit: Ames v. Celebrity Cruises, Inc., 1998 WL 427694 (S.D.N.Y. 1998) (passengers induced to buy Deluxe Suite when only Standard Cabins were available).

ccxlii. Ames v. Celebrity Cruises, Inc., 1998 U.S. Dist. LEXIS 11559 (S.D.N.Y. 1998).

ccxliii. Mirra v. Holland America Lines, 331 N.J. Super. 86, 751 A. 2d 138 (2000).

ccxliv. Donnelly v. Klosters Rederi, 515 F. Supp. 5 (E.D. Pa. 1981).

ccxlv. Blair v. Norwegian Caribbean Lines, 622 F. Supp. 21 (D.C.D.C. 1985).

ccxlvi. Kornberg v. Carnival Cruise Lines, Inc., 741 F. 2d 1332 (11th Cir. 1984).

ccxlvii. Cismaru v. Radisson Seven Seas Cruises, Inc., 2001 Tex. App. LEXIS 16 (Tex. App. 2001).

ccxlviii. Gelfand v. Action Travel Center, Inc., 55 Ohio App. 3d 193, 563 N .E. 2d 317 (1988).

ccxlix. Boyles v. Cunard Line Ltd., 1994 American Maritime Cases 1631 (S.D.N.Y. 1994).

cccl. Ricci v. Hurley, 1984 A.M.C. 546 (Palm Beach City. Ct.).

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ccli. *Donnelly v. Klosters Rederi*, 515 F. Supp. 5 (E.D. Pa. 1981).

cclii. *Grivesman v. Carnival Cruise Lines*, 2001 U.S. Dist. LEXIS 661 (N.D. Ill. 2001).

ccliii. *Hollingsworth v. Cunard Line Ltd.*, 152 Ga. App. 509, 263 S.E. 2d 190 (1980).

ccliv. See Wade, Cruise Ships and The Disabled, Practical Traveler, New York Times, Sunday Travel Section, p. 4; Special Report, Shipping News Cruise Passengers Gain More Rights, Consumer Reports Travel Letter, December 2000, p. 12; Blum, AAA to publish guides for disabled travelers, Travel Weekly, February 5, 2001, p. 8.

cclv. See Air Carrier's Access Act of 1986, 49 U.S.C. Section 41705.

cclvi. *Alino v. Aerovias De Mexico, S.A.*, 2000 WL 33152065 (S.D. Fla. 2000)(Air Carriers Access Act of 1986, 49 U.S.C. Section 41705(a) (" In providing air transportation, an air carrier...including any foreign air carrier, may not discriminate..."). " does not apply to a foreign air carrier operating a foreign domestic flight that does not travel to a place within the United States "); Blum, DOT aims to extend disability rules to foreign lines, Travel Weekly, February 1, 2001, p. 5 (" The (DOT) is actively carrying out a new mandate from Congress to bring foreign airlines under the jurisdiction of U.S. law in order to guarantee disabled travelers equal access to air transportation ").

cclvii. *Sigros v. Walt Disney World Co.*, 2001 WL 28683 (D. Mass. 2001)(disabled hotel guest injured in wheelchair accident sues resort claiming violations of Americans with Disabilities Act).

cclviii. 42 U.S.C Section 12101.

cclix. *Stevens v. Premier Cruises, Inc.*, 215 F. 3d 1237 (11th Cir. 2000), rehearing denied 2002 U.S. App. LEXIS 3439 (11th Cir. 2002).

cclx. *Larsen v. Carnival Corp.*, 242 F. Supp. 2d 1333 (N.D. Fla. 2003).

cclxi. Association For Disabled Americans, Inc. v. Concorde Gaming Corp., 158 F. Supp. 2d 1353 (S./D. Fla. 2001).

cclxii. Resnick v. Magical Cruise Co., 148 F. Supp. 2d 1298 (M.D. Fla. 2001).

cclxiii. Access Now, Inc. v. Cunard Line Limited, Co., 2001 U.S. Dist. LEXIS 21481 (S.D. Fla. 2001).

cclxiv. Walker v. Carnival Cruise Lines, 63 F. Supp. 2d 1083 (N.D. Cal. 1999), on reconsideration, 107 F. Supp. 2d 1135 (N.D. Cal. 1999).

cclxv. Briefer v. Carnival Corp., 1999 U.S. Dist. LEXIS 21256 (D. Ariz. 1999).

cclxvi. Deck v. American Hawaii Cruises, Inc., 51 F. Supp. 2d 1057 (D. Hawaii 1999).

cclxvii. Jackson v. Carnival Cruise Lines, Inc., 203 F. Supp. 2d 1367 (S.D. Fla. 2002).

cclxviii. Benson v. Norwegian Cruise Line Limited, 834 So. 2d 915 (Fla. App. 2003).

cclxix. Tateosian v. Celebrity Cruise Services, Inc., 768 A. 2d 1248 (R.I. Sup. 2001).

cclxx. Barbachym v. Costa Lines, Inc., 713 F. 2d 216 (6th Cir. 1983).

cclxxi. Bounds v. Sun Line Cruises, Inc., 1997 A.M.C. 25 (C.D. Cal. 1996).

cclxxii. Neenan v. Carnival Corp., 2001 WL 64747 (S.D. Fla. 2001).

cclxxiii. Mullen v. Treasure Chest Casino, 186 F. 3d 620 (5th Cir. 2000).

cclxxiv. Silvanich v. Celebrity Cruises, Inc., 2000 U.S. Distr. LEXIS 12166 (S.D.N.Y. 2000).

cclxxv. Charleston-Coad v. Cunard Line Ltd., Index No. 95 Civ. 1325 (HB)(S.D.N.Y.).

cclxxvi. Casper v. Cunard Line Ltd., 560 F. Supp. 240 (E.D. Pa. 1983).

cclxxvii. *Simon v. Cunard Line, Ltd.*, 75 A.D. 2d 283, 428 N.Y.S. 2d 952 (1980).

cclxxviii. *Cruise-Ship Health Care: Prescription for Trouble*, Consumer Reports Travel Letter, April 199, p. 1, 6.

cclxxix. *Gionis, Paradox On The High Seas: Evasive Standards Of Medical Care—Duty Without Standards Of Care: A Call For The International Regulation Of Maritime Healthcare Aboard Ships*, 34 J. Marshall L. Rev. 751 (2001).

cclxxx. *Mainzer v. Royal Olympic Cruises, Ltd*, 177 Misc. 2d 553, 677 N.Y.S. 2d 668 (1998).

See also:

Second Circuit: *Ames v. Celebrity Cruises, Inc.*, 1998 WL 427694 (S.D.N.Y. 1998)(one piece of baggage missing for most of cruise).

Seventh Circuit: *Cada v. Costa Lines, Inc.*, 1984 American Maritime Cases 1491 (N.D. Ill. 1984)(baggage destroyed during fire on cruise vessel).

cclxxxii. *Cada v. Costa Lines, Inc.*, 1984 A.M.C. 1491 (N.D. Ill. 1984).

cclxxxiii. *Ames v. Celebrity Cruises, Inc.*, 1998 U.S. Dist. LEXIS 11559 (S.D.N.Y. 1998).

cclxxxiiii. For a discussion of New York State consumer protection statutes including General Business Law §§ 349, 350 see Dickerson, *Consumer Law 2003 Updated: The Judge's Guide To New York State Consumer Protection Statutes*, published at www.classactionlitigation.com/CONSUMERLAWJUDGSEMUPDATE2003.htm#_end133

cclxxxv. *Vallery v. Bermuda Star Line, Inc.*, 141 Misc. 2d 395, 532 N.Y.S. 2d 965 (1988).

cclxxxvi. 46 C.F.R. Part 540, “ Security for the Protection of the Public “.

cclxxxvii. For amendments eliminating the availability of self-insurance and other changes affective August 5, 2002 see 67 Fed. Reg. 44774.

For cases discussing the scope of coverage of these maritime surety bonds see e.g.,

Second Circuit: *Hayes v. M/V Big Red Boat*, 2002 U.S. Dist. LEXIS 9867 (S.D.N.Y. 2002)(trade creditor seeks to impose maritime lien on surety bond “ to refund passenger monies for unperformed cruises on (Big Red Boat) “).

Fifth Circuit: *Freret Marine Supply v. M/V Enchanted Capri, In Rem*, 2002 U.S.

Dist. LEXIS 5130 (E.D. La. 2002)(surety bond not a maritime contract and not subject to maritime lien by sureties) aff'd 2003 WL 21997744 (5th Cir. 2003)(“ When (New Commodore Cruise Lines) declared bankruptcy, the customers that had charged their deposits for upcoming cruises on the CAPRI and the ISLE sought to have their deposits returned. Most of these customers had their money refunded by seeking a ‘ charge back ‘ to their VISA or Mastercard accounts. (The creditor bank (“ bank “), in turn, was contractually obligated to remit the funds to the credit card companies. (Bank) was not insured for the ‘ charge back ‘ liability, nor was it named on Commodore’s Federal Maritime Commission Passenger Vessel Surety Bond. According to (Bank), it has incurred ‘ charge back ‘ liability of at least \$610,962 “).

See also: Tobin, Cruise Lines Debate Surety Plan, Travel Weekly, June 9, 2003, p. 4.

“ A Federal Maritime Commission(FMC) plan to boost bonding requirements for cruise lines...At issue is an FMC plan to eliminate the \$15 million ceiling on cruise line bond requirements and make other changes in the financial responsibility rules...Under the new proposal, cruise lines would be responsible for coverage equal to the total amount of passenger funds on hand for future cruises (unearned passenger revenue), except for revenue received from credit card charges made within 60 days of sailing. “

cclxxxvii. Id.

cclxxxviii. For cruise ship sanitation reports see www.cdc.gov/travel/cruiseships.htm.

cclxxxix. McDowell, For Cruise Ships, A History of Pollution, New York Times Travel Section, June 16, 2002, p. 3.

ccxc. Carothers, Stop Press, Environment Pollution Progress, October 2003, p. 76.

279. 46 U.S.C. Section 183(a).

ccxcii. Mashburn v. Royal Caribbean Cruises, Ltd., 55 F. Supp. 2d 1367, 1370 (S.D. Fla. 1999), aff'd 214 F. 3d 1356 (11th Cir. 2000).

ccxciii. Mashburn v. Royal Caribbean Cruises, Ltd., 55 F. Supp. 2d 1367, 1370 (S.D. Fla. 1999), aff'd 214 F. 3d 1356 (11th Cir. 2000).

ccxciv. Matter of the Complaint of UFO Chuting of Hawaii, Inc., 233 F. Supp. 2d 1254 (D. Hawaii 2001).

ccxcv. Lewis v. Lewis & Clark Marine, Inc., 2001 WL 167535 (Sup. Ct. 2001).

ccxcvi. Matter of Illusions Holdings, Inc., 78 F. Supp. 2d 238 (S.D.N.Y. 1999).

ccxcvii. In Re Vessel Club Med, 90 F. Supp. 2d 550 (D.N.J. 2000).

ccxcviii. Matter of Bay Runner Rentals, Inc., 113 F. Supp. 2d 795 (D. Maryland 2000).

ccxcix. Matter Of See N Ski Tours, Inc., 2000 U.S. Dist. LEXIS 2983 (S.D. Ala. 2000).

ccc. Ginop v. A 1984 Bayliner 27' Cabin Cruiser, 242 F. Supp. 2d 482 (E.D. Mich. 2003).

ccci. In Re Seadog Ventures, Inc., 2000 U.S. Dist. LEXIS 5805 (N.D. Ill. 2000).

cccii. Matter of Beiswenger Enterprises Corp., 46 F. Supp. 2d 1294 (M.D. Fla. 1999).

ccciii. Mashburn v. Royal Caribbean Cruises, Ltd., 55 F. Supp. 2d 1367 (S.D. Fla. 1999) *aff'd* 214 F. 3d 1356 (11th Cir. 2000).

ccciv. Perrotta, City Seeks to Limit Liability For Ferry Crash in U.S. Court, New York Law Journal, December 2, 2003, p. 1.

291. New York Civil Practice Law And Rules, Section 4544. See e.g., Walch v. New York Sports Club Corp., New York Law Journal, March 21, 2001, p. 19 (N.Y. Civ.)(applied to health club contracts); Hamilton v. Khalife, 289 A.D. 2d 444 (2d Dept. 2001)(applied to car rental contracts); Bauman v. Eagle Chase Association, 226 A.D. 2d 488 (2d Dept. 1996)(applied to home improvement contracts).

cccv. Lerner v. Karageorgis Lines, Inc., 66 N.Y. 2d 479, 497 N.Y.S. 2d 894, 488 N.E. 2d 824 (1985).

cccvii. Paredes v. Princess Cruises, Inc., 1 F. Supp. 2d 87 (D. Mass. 1998).

cccviii. Lerner v. Karageorgis Lines, Inc., 66 N.Y. 2d 479, 497

N.Y.S. 2d 894, 488 N.E. 2d 824 (1985).

cccix. Hughes v. Carnival Cruise Lines, Inc., 2003 WL 1740460
(S.D.N.Y. 2003).

cccx. Stone v. Norwegian Cruise Line, 2001 WL 877580 (E.D. Pa. 2001).

cccxi. Angel v. Royal Caribbean Cruises, Ltd., 2002 WL 31553524
(S.D. Fla. 2002).

cccxi. Wall v. Mikeralph Travel, Inc., 2002 WL 178770 (Conn. Super. 2003).

cccxi. Tateosian v. Celebrity Cruise Services, Ltd., 768 A. 2d 1248 (R.I. Sup. 2001).

cccxi. Konikoff v. Princess Cruises, Inc., 2001 U.S. Dist. LEXIS
14034 (D.V.I. 2001).

cccxi. Buriss v. Regency Maritime Corp., 1994 American Maritime
Cases 2355 (S.D.N.Y. 1993).

cccxi. Ward v. Cross Sound Ferry, 272 F. 3d 520 (2d Cir. 2001).

cccxi. Gibbs v. Carnival Cruise Lines, 314 F. 3d 125 (3d Cir.
2002).

cccxi. Long v. Holland America Line Westours, 26 P. 3d 430 (Alaska Sup. 2001).

cccxi. Dillon v. Admiral Cruises, Inc., 960 F. 2d 743 (8th Cir.
1992).

cccxi. Rams v. Royal Caribbean Cruises, Inc., 1994 American
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cccxi. Berg v. Royal Caribbean Cruises, 1994 American Maritime
Cases 806 (D.N.J. 1994).

cccxi. Insogna v. Princess Cruises, Inc., New York Law Journal, June 10, 2002, p. 37 (N.Y. Sup.).

cccxi. Boyles v. Cunard Line Ltd., 1994 American Maritime Cases
1631
(S.D.N.Y. 1994).

cccxi. Cronin v. Cunard Line Limited, Index No. 115899/96,

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cccxxv. Barton v. Princess Cruises, Inc., 2002 WL 31677178 (Cal. App. 2002).

cccxxvi. Johnson v. Commodore Cruise Line Ltd., 1995 American Maritime Cases 666 (S.D.N.Y. 1995).

cccxxvii. Falcone v. Mediterranean Shipping Co., 2002 U.S. Dist. LEXIS 11392 (E.D. Pa. 2002).

cccxxviii. Duffy v. Grand Circle Travel, Inc., 2003 WL 549883 (N.Y. App. Div. 2003).

cccxxix. Sanderman v. Costa Cruises, Inc., 2001 Pa. D. & C. LEXIS 198 (Pa. Com. Pleas 2001).

cccxxx. Kaufman v. Ocean Spirit Shipping, Ltd., 1993 American Maritime Cases 178 (W.D. Mich. 1990).

cccxxxi. Afflerbach v. Cunard Line, Ltd., 14 F. Supp. 2d 1260 (D. Wyo. 1998).

cccxxxii. Dickerson, False, Misleading & Deceptive Advertising In The Travel Industry: The Consumer's Rights & Remedies 2003, Section D, at www.classactionlitigation.com/articles_of_interest.htm.

cccxxxiii. Nowak v. Tak How Inv. Ltd., 1995 WL 521874 (D. Mass. 1995).

cccxxxiv. Benson v. Norwegian Cruise Line Limited, 834 So. 2d 915 (Fla. App. 2003).

cccxxxv. Rana v. Flynn, 823 So. 2d 302 (Fla. App. 2002).

cccxxxvi. Pota v. Holtz, 852 So. 2d 379 (Fla. App. 2003).

cccxxxvii. Frefet Marine Supply v. M/V Enchanted Capri, 2002 U.S. Dist. LEXIS 5130 (E.D. La. 2002).

cccxxxviii. Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 111 S. Ct. 39, 113 L. Ed. 2d 622 (1991).

cccxxxix. Chapman v. Norwegian Cruise Line Ltd., 2001 U.S. Dist. LEXIS 9360 (N.D. Ill. 2001).

cccxl. Hughes v. Carnival Cruise Lines, Inc., 2003 WL 1740460 (S.D.N.Y. 2003).

cccxli. Morrow v. Norwegian Cruise Line Limited, 2002 WL 32091779 (M.D. Pa. 2002).

cccxlii. Falcone v. Mediterranean Shipping Co., 2002 U.S. Dist. LEXIS 11392 (E.D. Pa. 2002).

cccxliii. Ferketich v. Carnival Cruise Lines, 2002 WL 31371977 (E.D. Pa. 2002).

cccxliv. Enderson v. Carnival Cruise Lines, Inc., 2001 U.S. Dist. LEXIS 1608 (W.D.N.C. 2001).

cccxlv. Elliott v. Carnival Cruise Lines, 231 F. Supp. 2d 555 (D. Tex. 2002).

cccxlvi. Tateosian v. Celebrity Cruise Services, Ltd., 768 A. 2d 1248 (R.I. Sup. 2001).

cccxlvii. Watanabe v. Royal Caribbean Cruises, Ltd., 2001 WL 1511268 (Cal. App. 2001).

cccxlviii. Ward v. Cross Sound Ferry, 273 F. 3d 520 (2d Cir. 2001).

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cccliv. Hodes v. SNC Achille Lauro, 858 F. 2d 905 (3d Cir. 1988).

ccclv. Carron v. Holland America Line-Westours Inc., 51 F. Supp. 2d 322 (E.D.N.Y. 1999).

ccclvi. Hicks v. Carnival Cruise Lines, Inc., 1995 American Maritime Cases 281 (E.D. Pa. 1994).

ccclvii. *Carnival Cruise, Inc. V. Shute*, 499 U.S. 585, 595, 111 S. Ct. 1522, 133 L. Ed. 2d 622 (1991).

ccclviii. See e.g.,

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ccclx. *Long v. Holland America Line Westours, Inc.*, 26 P. 3d 430 (Alaska Sup. 2001).

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ccclxiii. *White v. Sun Line Cruises, Inc.*, 999 F. Supp. 924 (S.D. Texas 1998).

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ccclxvi. *Stobaugh v. Norwegian Cruise Line Limited*, 5 S.W. 3d 232 (Tex. App. 1999).

ccclxvii. *Ferketich v. Carnival Cruise Lines*, 2002 WL 31371977 (E.D. Pa. 2002).

ccclxviii. *Elliot v. Carnival Cruise Lines*, 231 F. Supp. 2d 555 (D. Tex. 2002).

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ccclxxii. Lauri v. Cunard Line Limited, 2000 U.S. Dist. LEXIS 8627 (E.D. Mich. 2000).

ccclxxiii. Bounds v. Sun Line Cruises, Inc., 1997 A.M.C. 25 (C.D. Cal. 1996).

ccclxxiv. Cross v. Kloster Cruise Lines, Limited, 897 F. Supp. 1304 (D. Ore. 1995).

ccclxxv. Schulz v. Holland America-Line Westours, Inc., 230 Wis. 2d 749, 604 N.W. 2d 35 (1999).

ccclxxvi. Walker v. Carnival Cruise Lines, 63 F. Supp. 2d 1083 (N.D. Cal. 1999), on reconsideration 107 F. Supp. 2d 1135)(N.D. Cal. 2000).

ccclxxvii. Kirman v. Compagnie Francaise, 1994 American Maritime Cases 2848 (Cal. Sup. 1993).

ccclxxviii. Jewel Seafoods Ltd. M/V Peace River, 1999 WL 166559 (D.S.C. 1999).

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(N.D. Cal. 1992).

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