

THE CRUISE PASSENGERS' RIGHTS & REMEDIES: 2013

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Costa Concordia Disaster: One Year Later; Many More

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**Disasters Both Onboard The Mega-Ships And During Risky
Shore Excursions; And What About Those Pesky Pirates?**

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A Very Bad Year For Mega-Ships

Starting in January of 2012 up through May of 2013 there have been a series of disasters involving, *inter alia*, a mega-ship thought to be unsinkable but which sank faster than the Titanic, mega-ships thought to be fireproof but which weren't and mega-ships thought to be safe with appropriate backup systems both mechanical and electrical that didn't exist. The mega-ships which disappointed thousands of angry passengers included:

(1) "**Costa Concordia** catastrophe on **Jan. 13 (of 2012)**"¹ leaving "a haunting image: that of the 13-story luxury liner *Costa Concordia* half-submerged in the Tyrrhenian Sea last January after its captain piloted the ship and its 4,252 passengers and crew into a rock off the Tuscan coast, killing 32 on board"²],

(2) "The **Costa Allegra** becoming inoperative in **February of 2012** in Indian Ocean waters, making it's a sitting

duck for pirates who regularly ply these waters"³,

(3) **Carnival's Triumph** in **February of 2013** when "a fire in the engine room shut down the Triumph's power, propulsion, sewage and air-conditioning systems, leaving 4,200 passengers adrift in the Gulf of Mexico with little to eat and raw sewage seeping through the ship's walls and carpets"⁴ highlighting the absence of backup systems; "In the Triumph's case, the Coast Guard has said that the ship's safety equipment failed to contain the blaze...what most travelers do not realize when they book cruises (is that) nearly all ships lack backup systems to help them return to port should power fail because to install them would have cost operators more money"⁵; similar to **November of 2010** fire on **Carnival's Splendor** stranding 3,300 passengers "at sea for more than 72 hours without electricity, the result of a fire...In the ship's engine room"⁶ and the fire onboard the **Star Princess** in **April of 2006**⁷ ,

(4) **Carinval's Dream** was passengers' nightmare in **March of 2013** when it "lost power and some toilets stopped working temporarily last week and for a while no one was allowed to get off the vessel docked at Philipburg, St. Maarten...Carnival said the ship's emergency diesel generator

failed"⁸ and **Carnival's Legend** also in **March of 2013** sailed "back to Tampa with reduced power due to a problem with the ship's propulsion system (skipping) a call in Grand Cayman"⁹.

(5) **Royal Caribbean's Grandeur of the Seas'** fire in May of 2013 which "was extinguished about two hours later with no injuries reported"¹⁰.

Floating Hotels And Dangerous Shore Excursions

Modern cruise ships are best viewed as floating deluxe hotels that transport their guests from exotic port to exotic port where they stay a few hours for shopping, snorkeling, scuba diving, jet skiing, parasailing and touring. Although there are problems onboard the cruise ship, generally, it is safer to be onboard than on a shore excursion which are highly promoted¹¹ by the cruiselines, generate substantial revenues¹² and cause an increasing number of reported deaths and serious injuries to cruise passengers involving, for example, quadreplegia after an unforgettable swim at Lover's Beach¹³ in Cabo San Lucas, Mexico, tetraplegia after taking a dive at ½ Senor Frogs Restaurant¹⁴ in Cozumel, Mexico, being shot to death near Coki Beach¹⁵ in St.

Thomas, injured while riding an ATV¹⁶ in Acapulco, Mexico, struck by lightning during a catamaran ride¹⁷ in Montego Bay, Jamaica, injured during a zip-line excursion in Jamaica¹⁸, assaulted and robbed during an excursion to Earth Village in Nassau¹⁹, slip and fall during a Laughton Glacier Hike Tour²⁰, asphyxiated in a diving bell in Bermuda²¹, dying while parasailing in Cozumel, Mexico²², dying after being run over by a tour bus after returning from the Rain Forest Aerial Tram in Dominica²³ and dying after a tour bus runs off a mountain road in Chile²⁴.

Shore Excursion Questions To Ask

Before purchasing a cruiseline shore excursion consumers are well advised to ask the following questions.

(1) Is the local ground operator insured²⁵, licensed and trained?

The Answer May Be No On All Three Issues.

(2) Has the cruise line evaluated the reliability of the local ground operator?

The Answer: Maybe Yes²⁶, Maybe No.

(3) Has the cruise line assumed responsibility for any injuries suffered by its passengers or has it disclaimed all liability for any injuries which passengers might sustain during the shore excursion?

The Answer: Read Your Cruise Ticket. The Cruiseline Typically Disclaims Liability For Shore Excursion Accidents²⁷. This is reason enough to have appropriate travel insurance²⁸ including evacuation coverage.

And How About Those Pesky Somali Pirates

The scary news in cruising in Middle Eastern and Indian Ocean waters are those pesky and not so romantic Somali pirates [See Klein, After Attack, Cruise Ships Rethink Security²⁹ (" Now the armed attack on the Seaborne Spirit off Somalia has the cruise industry checking its bearings on security. The Spirit was carrying 151 passengers and 161 crew members when it was fired upon at dawn from two small vessels off the Somalia coast ")].

Kidnaping Tourists In Kenya

Recently, Somali gunmen have expanded the scope of their nefarious activities by kidnaping and murdering tourists in Kenya [See Sayare, Frenchwoman Abducted in Kenya Dies³⁰, "A disabled Frenchwoman kidnaped by Somali gunmen in Kenya this month has died in captivity...The woman, Marie Dedieu, 66, was dragged from a beachfront bungalow on Manda, an island that is a tourist destination, in the early morning of Oct. 1. Witnesses said a small group of heavily armed Somalis beached their speedboat in front of her home...A recovering cancer patient and quadriplegic...Ms. Dedieu was taken without her wheelchair or medication...Gunmen from war-torn Somalia have carried out a spate of kidnapings in Kenya since September...targeting Westerners"; See also: Steinmetz, UK warns Brits to stay away from coastal areas in Kenya³¹<http://www.eturbonews.com>.

Some Improvements In Pirate Control

In 2012 there was a well publicized effort by U.S. Navy Seals to rescue "two hostages-an American air worker and her Danish colleague-held by Somali pirates since October. The Commandos had dropped down in parachutes under the cloak of darkness...hiked two miles...grabbed the hostage and flew them

to safety”³². In addition, “Data released by the Navy...showed 46 pirate attacks in the area this year, compared with 222 in all of last year and 239 in 2010. Nine of the piracy attempts this year (2012) have been successful...compared with 34 successful attacks in all of 2011 and 68 in 2010”³³.

However, “Pirates operate with total impunity in many parts of lawless Somalia...As naval efforts have intensified on the high seas, stymieing hijackings, Somali pirates seem to be increasingly snatching foreigners on land. Just last week, pirates grabbed another American hostage not far from where the Seal raid took place”³⁴. Further, the recent disbanding of the Puntland Maritime Police Force may result in well trained “pirate hunters” “to join up with the pirates...or to sell themselves to the highest bidder in Somalia’s clan wars-yet another dangerous element in the Somali mix”³⁵.

21st Century Cruise Ships; 19th Century Passenger Rights

While a cruise vacation may very well be the best travel value available³⁶, 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 Dickerson, The Cruise Passenger’s

Dilemma: Twenty-First Century Ships, Nineteenth Century Rights, 28 Tulane Maritime L.J. 447-517 (No. 2, Summer 2004); see also Doonan v. Carnival Corp., 404 F. Supp. 2d 1367 (S.D. Fla. 2005); Carlisle v. Carnival Corp., 2003 Fla. App. LEXIS 12794 (Fla. App. 2003), *rev'd* 953 So. 2d 461 (2007)], the purpose being to insulate cruiselines from the legitimate claims of passengers. The policy enunciated by the Second Circuit Court of Appeals nearly 60 years ago in Schwartz v. S.S. Nassau, 345 F. 2d 465 (2d Cir. 1965) 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 ` ". Recently, in Farris v. Celebrity Cruises, Inc., 2012 WL 3590727 (11th Cir. 2012) the Court enforced passenger ticket language which provided that "The ticket provides that Celebrity Cruises, not (passenger) is entitled to rights under the Athens Convention. And, although that treat establishes a two-year limitations period for personal injuries...the ticket does not incorporate that limitations period (but imposes a one year limitations period)". And in Brozyna v. Niagara Gorge Jet Boating, Inc., 2011 WL 4553100 (W.D.N.Y. 2011), wherein a passenger was injured in a jet boat plying the rapids of the Niagara River "when the boat 'came down hard' in the rapids at Devil's Hole", the Court

enforced a pre-accident waiver of all liability noting that “there is a clearly stated rule in maritime jurisprudence in favor of allowing parties to enter into enforceable agreements to allocate the risks inherent in maritime recreational activities (in recognition of) the long-recognized national interest in the development of a uniform body of maritime law”). However, in Johnson v. Royal Caribbean Cruises, Ltd., 2011 WL 6354064 (11th Cir. 2011), a cruise passenger was injured on a ship board “Flowrider” (simulated surfing and body boarding activity) and the Court refused to enforce a waiver of all liability citing 46 U.S.C. § 30509.

Recent Developments

The Costa Concordia Disaster: Under Investigation

On January 13, 2012 the Costa Concordia struck a large rock and nearly sank³⁷ leaving “a haunting image: that of the 13-story luxury liner Costa Concordia half-submerged in the Tyrrhenian Sea last January after its captain piloted the ship and its

4,252 passengers and crew into a rock off the Tuscan coast, killing 32 on board”³⁸. Perhaps, the most helpful in terms of identifying safety issues which need correction is an article by Adam Piore of Conde Nast Traveler entitled Staying Afloat³⁹ which states “Statistically, cruising is one of the safest ways to travel: Of the 153 million passengers carried between 2002 and 2011, only 6 died in operational incidents (as opposed to suicides or accidents on shore excursions)...The Concordia disaster seized the public’s imagination in part because it involved a state-of-the-art vessel owned by Carnival Corporation, the world’s largest cruise operator. The idea that one of the industry’s most sophisticated ships could be so spectacularly vulnerable proved unsettling and has raised troubling questions. The Concordia sinking was prevent only because it came to rest on a large rock. Had the ship gone down, most agree, the window for abandoning ship would have closed quickly and thousands could have died. ‘I thought that after the Titanic, something like that would never happen again’...

“ The first major safety change following the Concordia accident...when CLIA announced a voluntary industry wide policy mandating muster drills prior to leaving port. By most accounts the scene aboard the Concordia after it hit a rock was one of chaos- a situation ascribed in part to the fact that some 600

passengers had just boarded and had not yet received a safety briefing, which is required within 24 hours of embarkation...

“ The Concordia accident also raises a troubling question about vessel design. Under SOLAS (International Convention on the Safety of Life at Sea) ships must be designed to survive the flooding of two of the watertight compartments that are supposed to allow the ship to maintain its stability if the hull is breached...A key question that Concordia investigators are considering is why this system failed...It's likely (say experts) that enough of the ship's compartments were torn open by the rocks to cause catastrophic flooding sufficient to sink the vessel. Another much discussed possibility is that the doors used to seal off the compartments were left open due to human error...

It will likely be months before Italian authorities determine the cause of the wreck...and regulators react to that determination”.

As a result of a Cruise Industry Operational Safety Review conducted by the Cruise Lines International Association (CLIA) a new Life Boat Loading for Training Purposes policy has been enacted effective on or about September 24, 2012⁴⁰. See also: Stieghorst, Concordia One Year Later, www.travelweekly.com (1/14/2013) (“What's clear is there will be fairly fundamental

amendments to SOLAS [the International Convention for the Safety of Life at Sea] as a result of Costa Concordia...Under existing rules, the emergency muster drill on the ship was allowed to be deferred for 24 hours after passengers boarded. Some passengers who departed Rome's port...the evening of the accident had not been briefed about crisis response").

Lawsuits And Settlements

In Giglio Sub S.N.C. v. Carnival Corp.⁴¹ a purported class of 1,000 "fishermen, property owners, business owners and wage earners on Giglio Island, as well as those working in and around the island" claimed damages to their businesses stemming from the wreck of the Costa Concordia". This class action was dismissed on the grounds of *forum non conveniens*. For more details see Bryan Bourrough, Another Night to Remember, Vanity Fair, May 2012, <http://www.vanityfair.com/culture/2012/05/costa-concordia-sinking-scandalitaly>. See also: Mercante, Italy Cruise Ship Lawsuits Unlikely To Survive, New York Law Journal, January 18, 2013, p. 4 (noting that an Italy forum selection clause in the Costa Concordia's cruise contract has already been and will most likely be enforced in all actions pending in the United States).

In Carnival Corp. Annual Report filed securities regulators "Carnival said that as of Jan. 22, 2013 it had agreements with 62% of passengers and 93% of the crew who were on the Concordia. It said substantially all of the costs of raising the sunken ship and the cost of legal claims will be covered by insurance"⁴²

Cruise Passenger Bill Of Rights 2013-Not Much There

After the worst year in Mega-Ship history and a blizzard of negative publicity members of the Cruise Lines International Association (CLIA) agreed to issue the International Cruise Line Passenger Bill Of Rights (Passenger Bill of Rights). While superficially encouraging the Passenger Bill of Rights promises little more than what cruiselines are legally obligated to do already and does nothing to level the litigation playing field as discussed in the **Litigation Road Blocks Section at pp 91-142 below. For example, if CLIA really wants to help cruise passengers then each cruiseline should stop relying on Miami, Florida forum selection clauses and allow injured passengers to sue in their own hometown. In addition, cruiselines should disavow their disclaimers of liability and accept full legal responsibility for all accidents that occur during the shore excursions they recommend and earn commissions on**⁴³.

International Cruise Line Passenger Bill Of Rights

"The Members of (CLIA) are dedicated to the comfort and care of all passengers on oceangoing cruises throughout the world. To fulfill this commitment, our Members have agreed to adopt the following set of passenger rights:

(1) The right to disembark a docked ship if essential provisions such as food, water, restroom facilities and access to medical care cannot adequately be provided onboard, subject only to the Master's concern for passenger safety and security and customs and immigration requirements of the port.

(2) The right to a full refund for a trip that is canceled due to mechanical failures, or a partial refund for voyages that are terminated early due to those failures.

Analysis: This may be helpful since cruiselines have in the past offered unhappy passengers a discounted cruise as opposed to cash refunds.

(3) The right to have available on board ships operating beyond

rivers or coastal waters full-time, professional emergency medical attention, as needed until shore side medical care becomes available.

Analysis: Meaningless and fails to address the fact that cruiseslines routinely and successfully disclaim liability for the malpractice of the ship's medical staff⁴⁴. In addition 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

practice⁴⁵)] .

(4) The right to timely information updates as to any adjustments in the itinerary of the ship in the event of a mechanical failure or emergency, as well as timely updates of the status of efforts to address mechanical failures.

(5) The right to a ship crew that is properly trained in emergency and evacuation procedures.

(6) The right to an emergency power source in the case of a main generator failure.

Analysis: This may be helpful since a number of recent Mega-Ship disasters have involved the failure of or absence of mechanical and electrical back-up systems. See e.g.,

(A) *"The Costa Allegra becoming inoperative in February of 2012 in Indian Ocean waters"*^{A6},

(B) *Carnival's Triumph in February of 2013 when "a fire in the engine room shut down the Triumph's power, propulsion, sewage and air-conditioning systems"*^{A7} highlighting the absence

*of backup systems; "In the Triumph's case, the Coast Guard has said that the ship's safety equipment failed to contain the blaze...what most travelers do not realize when they book cruises (is that) nearly all ships lack backup systems to help them return to port should power fail because to install them would have cost operators more money"*⁴⁸;

*© Similar to November of 2010 fire on Carnival's Splendor stranding 3,300 passengers "at sea for more than 72 hours without electricity, the result of a fire...In the ship's engine room"*⁴⁹ *and the fire onboard the Star Princess in April of 2006*⁵⁰,

*(D) Carinval's Dream was passengers' nightmare in March of 2013 when it "lost power and some toilets stopped working temporarily last week and for a while no one was allowed to get off the vessel docked at Philipburg, St. Maarten...Carnival said the ship's emergency diesel generator failed"*⁵¹ *and*

*(E) Carnival's Legend also in March of 2013 sailed "back to Tampa with reduced power due to a problem with the ship's propulsion system (skipping) a call in Grand Cayman"*⁵².

(7) The right to transportation to the ship's scheduled port of

disembarkation or the passenger's home city in the event a cruise is terminated early due to mechanical failure.

(8) The right to lodging if disembarkation and an overnight stay in an unscheduled port are required a cruise is terminated early due to mechanical failures.

(9) The right to have included on each cruise line's website a toll-free phone line that can be used for questions or information concerning any aspect of shipboard operations.

(10) The right to have the Cruise Line Passenger Bill of Rights published on each line's website"⁵³

Cruise Vessel Security and Safety Act of 2010

In response to growing number of reported rapes, assaults and robberies aboard cruise ships touching U.S. ports [e.g., a passenger was punched in the face and "Witnesses say the (aggressor's) girlfriend 'stomped' on Berner's face with her stiletto heel six or seven times "⁵⁴, another passenger was sexually assaulted⁵⁵ and yet another passenger was sexually assaulted verbally by the head waiter repeatedly calling her a

"puta"⁵⁶] President Obama in July of 2010 signed into law the Cruise Vessel Security and Safety Act of 2010⁵⁷ [the Act]. Section 2(13) provides in part:" To enhance the safety of cruise passengers, the owners of cruise vessels could upgrade, modernize and retrofit the safety and security infrastructure of such vessels in installing peep holes in passenger room doors, installing security video cameras in targeted areas, limiting access to passenger rooms to select staff during specific times and installing acoustic hailing and warning devices capable of communicating over distances". In addition the Act requires cruise vessel owners to maintain a log... which records "(I) all complaints of crimes... (ii) all complaints of theft of property in excess of \$1,000 and (iii) all complaints of other crimes...; and (B) make such log book available upon request to any agent of the (FBI)...". Further, the Act requires owners...to report to the (FBI) any incident involving "homicide, suspicious death, a missing United States national, kidnaping, assault with serious bodily injury...or theft of moneys or property in excess of \$10,000". The owner shall also "furnish a written report of the incident to an Internet based portal maintained by" the U.S. Coast Guard and "Each cruise taking or discharging passengers in the United States shall include a link on its Internet website⁵⁸ to the (USCG) website".

Safety Act Needs Some Adjustments

While such information is helpful it is neither cruise ship specific nor does it require the reporting of thefts which are between \$1,000 and \$9,999 in value. These problems may be resolved as follows. First, requiring owners to report thefts less than \$10,000 would allow local law enforcement to investigate and deter future crimes. Second, mandating owners to include the recorded thefts of property valued between \$1,000 and \$9,999 on the USCG website would allow prospective cruise passengers to better appreciate the risks associated with cruises⁵⁹. An even more effective method would be to breakdown the USCG online reporting by individual cruise ships, rather than by cruise lines, as is currently required. In fact, the CDC's Monthly Cruise Vessel Sanitation Inspections are available online and ranked by cruise ship⁶⁰. Such information would allow consumers to select specific cruise ships based not only on sanitation but the reported incidents of criminal activity.

Victims Group Questions Crime Data

The International Cruise Victims Association, Inc. (ICV) asserted that "alleged crimes" should be reported as well as actual crime "so that potential passengers could judge for themselves the safety of a cruise vacation...Through a Freedom of Information Act request (on behalf of ICV) submitted before the CVSSA (Cruise Vessel Security and Safety Act) was passed, material was obtained showing over 400 alleged crimes being reported to the FBI over a one-year period of time. However, last year, after passage of the legislation to protect U.S. cruise ship passengers, a total of only 16 crimes were reported on the Coast Guard website for the entire year of 2011. In the past nine months, only six crimes have been reported on the website"⁶¹.

Americans With Disabilities Act

All cruise ships touching U.S. ports are now subject to the requirements of the Americans with Disabilities Act⁶² which has been enforced by passengers and advocates [Association For Disabled Americans, Inc. v. Concorde Gaming Corp.⁶³ (crap tables too high for wheelchair-bound players did not violate ADA but handicapped toilet violated Title III); Access Now, Inc. v.

Cunard Line Limited, Co.⁶⁴ (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") and the Justice Department [consent decree wherein cruise line "agreed to pay \$100,000 to nine passengers...five deaf or hard-of-hearing passengers and four passengers who used wheelchairs during cruises of the Hawaiian Islands (and another \$40,000 in civil fines)"⁶⁵].

But More Needs To Be Done

These are positive developments, indeed. However, they have little impact upon the host of **Litigation Road Blocks** (discussed below) which still make it difficult for injured or aggrieved cruise passengers to pursue their rights [Ericksen, Love boats on troubled waters, Trial Magazine, March 2006, p. 48 (" Cruise lines promise fun and romance and encourage partying aboard ship. When negligence or crime results in injury to passengers, what remedies does the law provide? ")]. For example, litigation on behalf of cruise passengers is made, especially, difficult because of the enforcement of forum selection clauses, federal forum selection clauses [See Eriksen, U.S. Maritime

Public Policy Versus Ad-hoc Federal Forum Provisions in Cruise Tickets, The Florida Bar Journal, p. 22 (Dec. 2006); Lischininskaya v. Carnival Corp., 56 A.D. 3d 116, 865 N.Y.S. 2d 334 (2008)], choice of law and mandatory arbitration clauses [See e.g., Hadlock v. Norwegian Cruise Line, Ltd., 2010 WL 1641275 (C.D. Cal. 2010)] and time limitation clauses requiring that notice of physical injury claims be filed within six months and lawsuits filed within one year [and much shorter time limitation clauses for non-physical injury claims], liability limiting clauses applying to medical malpractice and accidents occurring during shore excursions, application of the Athens Convention, limitations on the application of long arm jurisdiction to cruiselines and purveyors of travel services and so forth [See Dickerson, The Cruise Passenger's Dilemma: Twenty-First-Century Ships, Nineteenth-Century Rights].

Accidents Onboard The Cruise Ship

Common travel problems experienced by cruise passengers ran the gamut and include in order of seriousness;

§ **Death** [See Higgins, So, Just How Safe Is Your Ship?, ("Costa Concordia catastrophe on Jan. 13 (2012)")⁶⁶; Piore, The

Informer, Staying Afloat⁶⁷ ("a haunting image: that of the 13-story luxury liner Costa Concordia half-submerged in the Tyrrhenian Sea last January after its captain piloted the ship and its 4,252 passengers and crew into a rock off the Tuscan coast, killing 32 on board"); Lasky v. Royal Caribbean Cruises, Ltd., 2012 WL 381207 (S.D. Fla. 2012) (cruise passenger slipped and fell fracturing his neck; dies after cruise ends; alleged failure to diagnose fracture timely; DOHSA applies); Isensee, Man's death sends cruise ship back to port, www.OrlandoSentinel.com, August 15, 2010 ("A 21-year old man hours into a seven-day cruise to the Caribbean with his family suffered an apparent severe allergic reaction to food and died onboard the Norwegian Cruise Line's Epic"); Pisa, Cruise passenger dies after ship gangway crashes 30ft into the Italian Rivera, DailyMailOnline July 28, 2010 ("A cruise passenger has died and another man was critically injured after the gangway taking them to their ship gave way at an Italian port"); see also: City of New York v. Agni, 522 F. 3d 279 (2d Cir. 2008) ("This case arises out of the Staten Island's Ferry's crash into a maintenance pier on October 15, 2003...we affirm, holding that the City did not act with reasonable care when it allowed a single pilot to operate the Staten Island Ferry without at least one other person in or near the pilothouse, aware of the

navigational circumstances and ready to render or summon assistance in the event of an emergency...The impact tore a 210 foot long gash in the starboard side of the hull on the main-deck level and destroyed about 1500 square feet of the pier. Ten passengers were killed. Nineteen passengers were seriously injured, one of whom died two months later. Fifty-seven passengers suffered minor injuries”)];

§ **Heart Attacks and Strokes** [See Amaran v. Marath, M.D., 2010 WL 1329801 (Fla. App. 2010) (“ Ms. Amaran (sued cruiseline and doctor on ship Enchantment of the Seas) for brain injuries suffered by her daughter as a result of a cardiac arrest, which occurred when her daughter was exercising on a treadmill at the ship’s spa and fitness center. Her daughter later became totally disabled”); Gliniecki v. Carnival Corporation, 632 F. Supp. 2d 1205 (S.D. Fla. 2009) (“ Approximately ten minutes after Conrad entered the ship’s infirmary, he was taken ashore and transported to an area medical facility aboard a van not equipped to treat stroke patients. Conrad arrived at the Colon, Panama hospital around 9:50 a.m., but the hospital did not have the facilities to treat stroke victims. He was transferred to Clinica Einstein in Panama City, Panama aboard the same ill-equipped van that transported

him to the Colon hospital. The van's emergency lights repeatedly fell during the ride, causing the driver to stop and retrieve the lights...At Clinica Einstein, Conrad received treatment for his stroke, but by then, four hours elapsed since he was found. According to Plaintiff, stroke treatment must be administered within one hour of symptom onset to be effective. Sometime thereafter, Conrad returned to his Michigan home, despondent and disabled. On November 9, 2008, Conrad committed suicide ").

§ **Suicides And Disappearances** [Steinmetz, Authorities call off search for two missing cruise ship passengers, www.eturbonews.com (5/13/2013) (The 30-year-old man and 27-year-old woman were reported missing when the Carnival Cruise Spirit docked in Sydney...surveillance video from the ship (revealed that the two passengers) went overboard Wednesday night"); Steinmetz, US tourist dies aboard Carnival cruise ship Bahamas, www.eturbonews.com (1/30/2012) (passenger jumped from one floor to another and "was declared dead at the scene"); Steinmetz, Cruise passenger missing as ship docks at Palm Beach, www.eturbonews.com (3/2/2012) ("A Canadian woman was nowhere to be found when her cruise ship docked in Florida"); Steinmetz, Royal Caribbean cruise passenger missing at sea, www.eturbonews.com (9/18/2012) ("Another passenger saw the 21-

year-old woman from Bartlett, Tennessee, go overboard"); Steinmetz, FBI probes mysterious death aboard Royal Caribbean cruise ship, www.eturbonews.com (3/29/2013) Gallop and Cervenka, Officials: Man rescued at sea intentionally jumped from cruise ship, FloridaToday.com, September 3, 2009; Duency, Officials question cruise line's suicide announcement, komonews.com August 19, 2009; Details emerge about Winter Haven woman who went overboard on cruise ship, OrlandoSentinel.com, December 29, 2008; Kelly, Bruising For Cruising (" More painful than losing a loved one is never finding out what happened to him. Twenty-four Americans have disappeared from cruise ships since 2003...The most recent to vanish was 26-year old George Smith 4th...who disappeared in August 2005 off a Royal Caribbean vessel during his honeymoon ");

§ **Drownings & Wave Actions** [See Higgins, So, Just How Safe Is Your Ship?, ("Costa Concordia catastrophe on Jan. 13 (2012)")⁶⁸; Piore, The Informer, Staying Afloat ⁶⁹ ("a haunting image: that of the 13-story luxury liner Costa Concordia half-submerged in the Tyrrhenian Sea last January after its captain piloted the ship and its 4,252 passengers and crew into a rock off the Tuscan coast, killing 32 on board"); Samuels v. Holland America Kline-USA Inc., 656 F. 3d 948 (9th Cir. 2011) (cruise

passenger leaves ship and is injured by turbulent wave action at Lover's Beach near Cabo San Lucus in Baja, Mexico); Clinton River Cruise Co. v. DeLaCruz, 2007 WL 98153 (6th Cir. 2007) ("The ship left the dock on the Clinton River at around 7:30PM with approximately 40 passengers...As (the ship) passed Markley's Marina at a distance of some 50 feet, DeLaCruz and another passenger, Aaron Mough...undressed, handed their shoes, wallets, cell phones and other items to a friend...and dove off the vessel in an apparent to land...Mough arrived at the marina but DeLaCruz drowned. It is undisputed that DeLaCruz was not intoxicated by Michigan's legal standards and that he jumped into the water voluntarily") Wallis v. Princess Cruises, Inc., 306 F. 3d 827 (9th Cir. 2002) (passenger drowns after falling off cruise ship)];

§ **Disease And Fear** [See Carroll, Sick ships: Cruises see rise in norovirus cases, msnbc.msn.com, March 10, 2010; 310 cruise passengers get food poisoning, chicagotribune.com March 4, 2010; Smith, Norovirus hit cruise ship that left SC for islands, washingtonpost.com February 25, 2010; Hague v. Celebrity Cruises, Inc.⁷⁰ (passenger who suffered from Legionnaires' Disease awarded compensatory damages);[" The

norvirus, 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 "71); Bird v. Celebrity Cruise Line, Inc.⁷² (passenger " rushed to the emergency room several days after (cruise ended)...claims that she was diagnosed with bacterial enteritis, a disease she allegedly contracted as a result of poisoning from food "); Hutton v. Norwegian Cruise Line⁷³ (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 ")];

§ **Rapes And Sexual Assaults** [See Doe v. Royal Caribbean Cruises Ltd. 2012 WL 1813282 (S.D. Fla. 2012) (17 year old female passenger induced by crew member "to participate in sexual activities including the taking of sexually explicit photographs"; cause of action stated for violation of The Child Abuse Victims' Rights Act of 1986 which "provides a federal civil cause of action to minors who are victims of enumerated crimes involving sexual abuse"); Steinmetz, NCL assistant cruise director arrested for sex with underage passenger, www.eturbonews.com (3/9/2012) (" The (FNI) arrested the assistant cruise director of the Norwegian Star cruise ship for engaging in sex with a 16 year old passenger and possessing child pornography"); Burdeaux v. Royal Caribbean Cruises, Ltd., 2012 WL 3202948 (S.D. Fla. 2012) (Cruise passenger went shopping on shore in Cozumel and was repeatedly raped by five local men; "prior to Burdeaux's assault, Royal Caribbean has taken millions of passengers to the port of Cozumel...In the five years prior to Burdeaux's assault, there were no reported instances of sexual assault or violent crime involving Royal Caribbean passengers or crewmembers both in the shopping area depicted on the map and in Cozumel as a whole"; Cruiselines have a "duty to warn passengers of 'dangers the cruise line knows or reasonably should have known"; summary judgment for cruiseline); Doe v.

Royal Caribbean Cruises, Ltd., 2011 WL 6727959 (S.D. Fla. 2011) (female passenger raped by non-crew passenger; alleged failure of security personnel to monitor surveillance video cameras); 2012 WL 920675 (S.D. Fla. 2012) (defendants motion to dismiss request for punitive damages denied); Stires v. Carnival Corp.⁷⁴ (head waiter sexually assaults passenger repeatedly calling her a " puta "); Doe v. Celebrity Cruises⁷⁵ (" 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. Stepansky⁷⁶ (crew member charged with crimes of attempted sexual assault and burglary onboard cruise ship); Royal Caribbean Cruises, Ltd. v. Doe⁷⁷ (passenger claims that bartender put drugs into her drink and sexually assaulted her); Nadeau v. Costly⁷⁸ (rape of passenger); Morton v. De Oliveira⁷⁹ (rape); Johnson v. Commodore Cruise Lines⁸⁰ (rape of passenger

and cover up on cruise); York v. Commodore Cruise Line⁸¹ (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 onboard⁸²];

§ **Assaults And Stomping** [See Berner v. Carnival Corporation, 632 F. Supp. 2d 1208 (S.D. Fla. 2009) (" Craig Berner was a passenger on the cruise ship Carnival Glory when he was attacked and beaten by two fellow passengers. According to Berner, a passenger approached him in the hallway and punched the right side of his face so hard that he fell to the floor... Witnesses say the passenger's girlfriend ' stomped ' on Berner's face with her stiletto heel six or seven times ")]; O'Hara v. Celebrity Cruises, Inc.⁸³ (two passengers assaulted by crew member); Corna v. American Hawaii Cruises⁸⁴ (crewman assaults passenger); Marmer v. Queen of New Orleans⁸⁵ (patron of riverboat casino assaulted in restroom); Colavito v. Carnival Cruise Lines, Inc.⁸⁶ (assault by intoxicated passenger)];

§ **Quadreplegia** [See Samuels v. Holland American Line-USA, Inc., 656 F. 3d 948 (9th Cir. 2011) (passenger injured by turbulent wave action at Lover's Beach rendered quadriplegic); Morag v. Quark Expeditions, Inc., 2008 WL 3166066 (D. Conn. 2008) (Plaintiffs " Azriel Morag (and his wife Daniella, both citizens of Israel) were passengers aboard a cruise ship traveling from Antarctica to Argentina run by Supernova Expeditions Ltd (Supernova)...Plaintiffs had booked their trip through a travel agent in Israel, who in turn booked the trip with Quark, a Delaware corporation with a principal place of business in Connecticut...During the ship's two-day crossing of the Drake Passage, Mr. Morag fell and suffered extensive spinal and other injuries which have rendered him quadriplegic ")].

§ **Slips, trips, falls & minor injuries** [Groves v. Royal Caribbean Cruises, Ltd., 2012 WL 933236 (11th Cir. 2012) (slip and fall on dining room floor); Johnson v. Royal Caribbean Cruises, Ltd., 2011 WL 6354064 (11th Cir. 2011) (cruise passenger injured learning to ride "Flowrider"); Cook v. Royal Caribbean Cruises, Ltd., 2012 WL 1792628 (S.D. Fla. 2012) (slip and fall on walkway to Park Café); Mendel v. Royal Caribbean Cruises, Ltd., 2012 WL 2367853 (S.D. Fla. 2012) (slip and fall on pool step); Lobegeiger v. Celebrity Cruises, Inc., 2011 WL 3703329 (S.D. Fla. 2011) (tip

of cruise passenger's finger sliced off by lounge chair); Lasky v. Royal Caribbean Cruises, Ltd., 2012 WL 381207 (S.D. Fla. 2012) (slip and fall causing a fractured neck); Rosenfeld v. Oceania Cruises, Inc., 654 F. 3d 1190 (11th Cir. 2011), en banc rehearing denied 682 F. 3d 1320 (11th Cir. 2012) (slip and fall on dining room floor); Balu v. Costa Crociere S.P.A., 2011 WL 3359681 (S.D. Fla. 2011) (slip and fall on marble staircase); Walter v. Carnival Corp., 2010 WL 2927962 (S.D. Fla. 2010) (passenger suffers injuries from **collapsing deck chair**); Adams v. Carnival Corporation, 2009 WL 4907547 (S.D. Fla. 2009) (" Adams, a 340 pound man at 44 years of age, sat in a chair on the Sensation's Lido Deck. The chair collapsed beneath his weight and Adams sustained injuries as a result "); Noboa v. MSC Crociere S.P.A., 2009 WL 1227451 (S.D.N.Y. 2009) (" while the vessel was still at sea, Anna Noboa allegedly ` slipped and fell on used and/or **wet towels left on the cabin's floor** ` "); Palmer v. Norwegian Cruise Line & Norwegian Spirit, 2010 WL 3853212 (E.D.N.Y. 2010) ("while Palmer was sleeping, the **wooden slats that supported the bed's mattress** gave way. Palmer and the mattress fell to the floor and Palmer allegedly sustained injuries to her back, neck and foot"; claim dismissed for failure to sue within one year of accident); Pratt v. Silversea Cruises, Ltd. (passenger " suffered a broken hip, a torn ACL

in her right knee and severe ankle injuries when she fell on a cruise ship); Evans v. Nantucket Community Sailing, Inc., 582 F. Supp. 2d 121 (D. Mass. 2008) (passenger on sail boat during race with another sailboat **hit by boom during jibe**; McDonough v. Celebrity Cruises (passenger **struck in head with rum filled coconut** [a drink called the " **Coco Loco** "] dropped from a deck above); Catalan v. Carnival Cruise Lines (passenger **driving golf balls** into sea strikes another passenger); Lawrence v. The IMAGINE...! YACHT, LLC (passenger suffers hearing loss when crew member fires cannon; " He was later diagnosed with permanent hearing loss and tinnitus as a result of **exposure to the cannon blast** "); LaVoie v. Suncruz Casino Cruises, LLC, 2009 WL 425815 (D.S.C. 2009) (" Plaintiff alleges that he was **operating a slot machine** on a Suncruz Casino boat when the slot machine next to him began to malfunction (an employee came to inspect) opened the door to the slot machine causing it to fall and strike the Plaintiff's knee"); Krupski v. Costa Crociere SPA, __U.S.__, 130 S. Ct. 2485, 177 L. Ed. 2d 48 (2010) ("Wanda Krupski, **tripped over a cable** and fractured her femur while she was on board the cruise ship Costa Magica"; Eisenberg v. Carnival Corporation, 2008 WL 2946029 (S.D. Fla. 2008) (" Plaintiff allegedly **slipped and fell on salad dressing** in a dining room "); Kamens v. Holland America

Line, Inc., 2010 WL 1945776 (W.D. Wash. 2010) (passenger fell and **"injured her knee on the Hydro Pool deck** of the ship"); Oran v. Fair Wind Sailing, Inc., 2009 WL 4349321 (D.V.I. 2009) (" Plaintiff Taner Oran's claim for relief arises from injury he suffered when he slipped and **fell on bench cushions** aboard a forty-five foot catamaran. Ward v. Royal Caribbean Cruise Lines, Ltd., 2009 WL 151490 (C.D. Cal. 2009) (" Plaintiff sustained a deep laceration to his left hand. Plaintiff was injured after he **grabbed a sharp metal sign** onboard the cruise ship ");

§ **Runaway Wheelchairs** [See Moura v. American West Steamboat Company LLC, 2009 WL 2390228 (N.D. Cal. 2009) (" During the disembarkment of passengers, Mrs. Moura requested wheelchair assistance from cruise staff. An employee arrived and began to wheel Mrs. Moura backwards down a ramp. In their descent the employee suddenly let go of the wheelchair which, along with Mrs. Moura, accelerated down the ramp towards a small cement landing below)];

§ **Rogue Waves** [See Samuels v. Holland American Line-USA, Inc., 656 F. 3d 948 (9th Cir. 2011) (passenger injured by turbulent wave action at Lover's Beach rendered quadriplegic); Dobnik, Freak wave leaves vivid trip images ⁸⁷ (" a freak seven-

story-high wave that smashed windows, sent furniture flying and ripped out whirlpools...The Norwegian Dawn carrying more than 2,000 passengers...About 300 other passengers-many from the affected cabins-decided to disembark early ")];

§ **Listing** [Jainchill, Princess: Human error caused list ⁸⁸(" Princess Cruises said that human error was responsible for the list that injured 240 people aboard the Crown Princess on July 18...Human error also was determined to have caused the listing of another Grand-class ship, the Grand Princess...In that incident, 27 people were injured when the ship tried to turn around and return to port after a passenger experienced cardiac arrest ")];

§ **Malfunctioning sliding doors** [Galentine v. Holland America Line-Westours, Inc. ⁸⁹(passenger injured by automatic sliding doors on observation deck)];

§ **Defective exercise equipment** [Berman v. Royal Cruise Lines ⁹⁰(passenger injured exercising on treadmill)];

§ **Malpractice by ship's doctor** [See Lobegeiger v. Celebrity Cruises, Inc., 2011 WL 3703329 (S.D. Fla. 2011) (a portion of

passenger's finger severed and ship's doctor allegedly committed medical malpractice in treatment of passenger; "Plaintiff alleges Celebrity 'held out' Dr. Laubscher as an officer of the ship's crew 'through his title, his uniform, his living quarters on board the ship and his offices on board the ship'...Taking these allegations as true, Plaintiff has sufficiently alleged that Celebrity made manifestations which could cause Plaintiff to believe Dr. Laubscher was an agent of Celebrity"; cause of action for fraudulent misrepresentation stated); 2012 WL 2402785 (S.D. Fla. 2012) (summary judgment for defendant on apparent agency theory of liability for medical malpractice); 2012 WL 2402781 (S.D. Fla. 2012) (no piercing of corporate veil); Hill v. Celebrity Cruises, Inc., 2011 WL 5360247 (S.D. Fla. 2011) (no actual agency; no apparent agency; but misrepresentation that ship would have two doctors but only provided one stated claim for negligent misrepresentation); Carlisle v. Carnival Corp⁹¹ (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"); Wajnstat v. Oceania Cruises, Inc., 2011 WL 465340 (S.D. Fla. 2011) (cruise passenger suffering from bleeding hemorrhoids misdiagnosed by ship's doctor and disembarked at Ukrainian hospital where "he underwent three abdominal surgeries, having the majority of his

colon removed"); Hill v. Celebrity Cruises, Inc., 2011 WL 5360247 (S.D. Fla. 2011) (medical malpractice); Doonan v. Carnival Corp., 404 F. Supp. 2d 1367 (S.D. Fla. 2005) (passenger chokes; ship's doctor fails to do emergency tracheotomy); Mack v. Royal Caribbean Cruises⁹²; Pota v. Holtz,⁹³ (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.⁹⁴ (passenger becomes ill during cruise, treated in onboard infirmary and dies after disembarkation; no proof that contaminated food caused death); Stires v. Carnival Corp.⁹⁵ (head waiter sexually assaults passenger repeatedly calling her a " puta "; medical malpractice claim against cruise ship dismissed); Doe v. Celebrity Cruises⁹⁶ (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 Limited⁹⁷ (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 International⁹⁸ (cruise ship disclaimer of liability for malpractice of ship's doctor enforced); Cross v. Kloster Cruise Lines, Limited⁹⁹ (passenger bitten by brown recluse spider; medical malpractice); Afflerbach v. Cunard Line Ltd.¹⁰⁰ (passenger falls while disembarking injuring buttocks, elbow and right shoulder; medical malpractice and failure to assist); Fairley v. Royal Cruise Line Ltd.¹⁰¹ (ship may be liable for ship's doctor's malpractice); Meitus v. Carnival Cruise Lines, Inc.¹⁰² (crew member contracts viral encephalitis; misdiagnosis and medical malpractice); Rand v. Hatch¹⁰³ (failure to diagnose passenger's blood sugar level and render proper medical treatment); Johnson v. Commodore Cruise Lines¹⁰⁴ (passenger raped by crew member and misdiagnosed as having had heart attack; removed from ship and abandoned on shore); see also: Konick, Malpractice on the High Seas: The Liability of Owners and Physicians for Medical Errors¹⁰⁵; Herschaft, Cruise Ship Medical Malpractice Cases: Must Admiralty Courts Steer By The Star Of Stare Decisis?¹⁰⁶].

§ **Fires** [Hepburn, Caribbean cruise turns deadly as fire scorches 100 ship cabins¹⁰⁷ (" A fire apparently started by a cigarette broke out on (The Star Princess)...leaving one passenger dead, 11 people injured and at least 100 rooms damaged "); Carothers, Cruise Control¹⁰⁸ (" Experts are still investigating the March blaze aboard the Star Princess...The cause of the fire has not yet been determined, but it appears to have spread along the outside of the vessel, burning up balcony furniture and polycarbonate dividers. As a relatively new addition to cruise ships, polycarbonate dividers are not covered by current fire codes "); 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..."); Wade, Fire Safety For Ships at Sea¹⁰⁹ (" 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 "); Neenan v. Carnival Corp.¹¹⁰ (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 ` ")];

§ **Collisions & striking reefs** [Travel Weekly, Aug. 30, 1999 (" Norwegian cancels sailings in wake of ship collision "); Watanabe v. Royal Caribbean Cruises, Ltd.¹¹¹ (passengers injured when Monarch of the Seas struck reef forcing them to abandon ship)];

§ **Falling Bunk Beds** [Angulo v. Carnival Corp¹¹² (" Angulo, 48, was a passenger on a Carnival cruise ship. While in her cabin, she was struck in the head when the top bunk, weighing 115 pounds, became unhinged and fell open...jury awarded (her) about \$333,600 ")];

§ **Malfunctioning toilets** [Kornberg v. Carnival Cruise Lines¹¹³];

§ **Sanitation & Germs** [See Linda, When Bugs Swim, www.eturbonews.com (1/23/2012) ("Cruise ships provide ideal conditions for the rapid spread of respiratory viral illnesses. According to the Centers for Disease Control and Prevention (2010) the cruise ship is the perfect environment for the spread of disease...In addition to being a host environment for germs, cruise lines employees only appear to be proactive in sanitizing surfaces. Jim Walker, Esq. a legal expert in cruise law found that 'Cruise line cabin crews substitute sanitizing sprays for water (because they don't like the smell) and spread germs throughout the cabins, without a thought to the fact that they are dispersing germs and not killing them...**A recent site inspection (November 2011) by the CDC of the Royal Caribbean Monarch of the Sea**, found numerous violations and public health risks including: (1) Dish washing equipment in poor condition, (2) Improper cooling temperatures for stored provisions, (3) Improper cooking temperatures for cooked food, (4) Accumulation of food debris in wash and rinse areas, (5) Clean plates soiled with food residue, (6) Soiled plates stacked with clean plates, (7) Waiter stations, food prep counters, slicers and strainers soiled with dirt and food particles. The CDC recommended that: (1) Food preparation should not take place in rooms used for living or sleeping quarters and (2) employees should prevent

cross-contamination or ready-to-eat food by not using their bare hands. They are encouraged to use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment. A **CDC inspection of the Queen Mary 2 in June 2011** found many violations including: (1) Pool floor tiling and the pool water extremely dirty, coated with dark soil and hairs, (2) Potentially hazardous foods stored out of temperature and not properly discarded, (3) Toxic items stored with food and clean items, (4) Improper storage of food (e.g., food stored on deck), (5) Improper storage of food equipment, (6) Blocked hand washing sink, (7) Human hair found inside ice machine, (8) Food debris found on cleaned plates, (9) Internal beer lines soiled, (10) Big plastic container of limes, a container with celery, a container with clean bar utensils and a tray of clean drink glasses stored in a locker in front of the splash pool and (11) Food items and utensils stored along with clean and soiled pool towels, dirty drink glasses, a blue tarp, and a variety of maintenance tools, such as screws and tape".

§ **Pool jumping** [Brown v. New Commodore Cruise Line Limited

¹¹⁴(passenger jumps from deck above into pool below and suffers broken ankle after landing on " wooden bench " about a foot short " of the pool ");

§ **Sliding down banisters** [Meyer v. Carnival Cruise Lines, Inc. ¹¹⁵ (intoxicated passenger injured while sliding down banister)];

§ **Poorly designed bathrooms, sofas, bunkbeds, passageways, flooring and railings** [Rosenfeld v. Oceana Cruises, Inc., 654 F. 3d 1190 (11th Cir. 2011) (cruise passenger sustains injuries from slip and fall on wet ceramic tile floor near buffet area; jury verdict for cruiseline reversed and remanded, en banc review denied 682 F. 3d 1320 (11th Cir. 2012)); Glod v. Clinton River Cruise Company, Inc., 2009 WL 186188 (Mich. App. 2009) (slip and fall " while plaintiff crossed a five or six-inch tall doorway coaming, designed to prevent water entry from the bow to the dining room. She suspects that he foot became caught on one of two features on the coaming, either the tubing protruding two inches inward from the top of the coaming or the metal plate that secured a sliding bolt to lock the door "); Groves v. Royal Caribbean Cruises, Ltd., 2012 WL 933236 (11th Cir. 2012) (negligent design theory); Mendel v. Royal Caribbean Cruises, Ltd., 2012 WL 2367853 (S.D. Fla. 2012) (cruise passenger injured climbing pool step; claim of negligent design of pool dismissed); Prokopenko v. Royal Caribbean Cruises, Ltd., 2010 WL

1524546 (S.D. Fla. 2010) (slip and fall near swimming pool; “ Royal Caribbean argues that it had no duty to warn because the presence of water near a pool is an open and obvious condition... (Passenger’s allegation are sufficient to draw a reasonable inference of negligence by Royal Caribbean under a failure to maintain theory ”) Caputo v. Holland America Lines, Inc., 2010 WL 2102820 (W.D. Wash. 2010) (“Plaintiff caught her heel on a metal threshold separating the atrium and elevator lobby. Plaintiff, who is eighty-one years old, suffered a serious trip and fall, fracturing her right hip...(Defendant’s Director of Compliance Programs explained) that the Safety of Life at Sea Convention requires that vessels be divided into main fire zones, capable of being sealed by fire screen doors...’For such a door to be fire resistant and prevent the spread of smoke, a metal threshold is required to be installed on the floor where the bottom of the fire screen door would seal the door in its closed position”); Carnival Corp. v. Amato¹¹⁶ (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 SPA¹¹⁷ (passenger fell after loose screws released bathroom door handle

); Hood v. Regency Maritime Corp.¹¹⁸ (while using bathroom passenger struck by piece of tub); Palmieri v. Celebrity Cruise Lines, Inc.¹¹⁹ (jury verdict for passenger injured falling over sofa bed); Kunken v. Celebrity Cruises, Inc.¹²⁰ (passenger breaks ankle entering passageway to cabin); Marchewka v. Bermuda Star Lines, Inc.¹²¹ (passenger falls when rungs of bunk bed ladder gave way)];

§ **Open hatches** [In re Vessel Club Med¹²² (passenger steps into open engine hatch and hurts ankle); Hendricks v. Transportation Services of St. John, Inc.¹²³ (passenger falls into open hatchway on ferry)];

§ **Flow Riders** [See Johnson v. Royal Caribbean Cruises, Ltd., 2011 WL 6354064 (11th Cir. 2011) (a cruise passenger was injured on a ship board "Flowrider" (simulated surfing and body boarding activity) and the Court refused to enforce a waiver of all liability citing 46 U.S.C. § 30509]; Morris v. Royal Caribbean Cruises, Ltd., Case No. 11-23206-CIV-GRAHAM/GOODMAN U.S.D.C. SD Fla. Order dated Feb. 7, 2012 ("Plaintiff is able to recover under negligence theory or strict liability theory...Plaintiff alleges that Defendant modified the Flowrider's original design, therefore Defendant is more than

merely the operator of the cruise ship and surfing attraction”).

§ **Wave Runners** [See The Complaint of Royal Caribbean Cruises, Ltd., 459 F. Supp. 2d 1284 (S.D. Fla. 2006) (passenger injured riding wave runner supplied by cruiseship alleges negligence in failing to properly train in use of Waverunner; “this Court cannot find that RCC failed to exercise reasonable care under the circumstances. It is undisputed that the tour participants were not required to read the Yamaha Owners/Operator’s Manual...it would be unduly burdensome for this Court to require tour participants to read these documents prior to participating in the Wave Runner tour...under Claimants theory RCC would be required to force its tour participants to read approximately 120 pages and then perform several training exercises prior to being permitted to participate in the Wave Runner tour”)];

§ **Storms & hurricanes** [Domblakly v. Celebrity Cruises, Inc.¹²⁴ (passengers injured when cruise ship battered by hurricane); In re Catalina Cruises, Inc.¹²⁵ (passengers injured during rough weather caused by storm); Stobaugh v. Norwegian Cruise Line Limited¹²⁶ (passengers injured when cruise ship sails into Hurricane Eduardo)];

§ **Spider bites** [Ilan v. Princess Cruises, Inc.¹²⁷

(passenger failed to prove that he was bitten by a hobo spider); Cross v. Kloster Cruise Lines, Limited¹²⁸ (passenger bitten by brown recluse spider)];

§ **Snapping mooring lines** [Kalendaeva v. Discovery Cruise Line,¹²⁹ (passenger sitting in lounge chair struck by heaving line thrown from dock to second deck); Douville v. Casco Bay Island Transit¹³⁰ (ferry passengers injured because of a failure to detach mooring line before departing)];

§ **Medical emergency disembarkation.** A cruise ship's medical doctor may " medically disembark " a sick passenger without the passenger's consent. In Larsen v. Carnival Corporation¹³¹ 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 ". See also Wajnstat v. Oceania Cruises, Inc., 2011 WL 465340 (S.D. Fla. 2011) (cruise passenger suffering from bleeding hemorrhoids misdiagnosed by ship's doctor and disembarked at Ukrainian hospital where "he underwent three abdominal surgeries, having the majority of his colon removed").

§ **Torture and hostage taking** [Simpson v. Socialist People's Libyan Arab Jamahiriya¹³² (passenger forcibly removed from cruise ship by Libyan authorities claims she was held hostage and tortured)];

§ **Forced to abandon ship** [Watanabe v. Royal Caribbean Cruises, Ltd.¹³³ (passengers injured when forced to abandon ship after it struck a reef)];

§ **Intentional infliction of emotional distress**
[Wallis v. Princess Cruises, Inc.¹³⁴ (passenger drowns after falling off cruise ship); Stires v. Carnival Corp.¹³⁵ (head waiter sexually assaults passenger repeatedly calling her a " puta ")].

[I] **The Standard of Care**

(1) **Accidents Onboard the Cruise Ship: Maritime Law**

(a) **The Doctrine Of Reasonable Care**

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 Transatlantique¹³⁶; See also: Cook v. Royal Caribbean Cruises, Ltd., 2012 WL 1792628 (S.D. Fla. 2012) (cruise passenger sustains fracture of left hip when she fell "on the abrupt change in elevation in the walkway near the entrance of the Park Café"; in establishing a duty of care regarding flooring the court allowed plaintiffs to introduce into evidence (1) American Society of Testing and Materials "Standard Practice for Safe Walking Surfaces", (2) IMO Circular 75, (3) Draft Passenger PVAG Dated June 26, 2008 and (4) NFPA-101 Life Safety Code); Rosenfeld v. Oceania Cruises, Inc., 654 F. 3d 1190 (11th Cir. 2011) (trial court should have allowed expert on flooring safety to testify for plaintiff); City of New York v. Agni, 522 F. 3d 279 (2d Cir. 2008) ("This case arises out of the Staten Island's Ferry's crash into a maintenance pier on October 15,

2003...we affirm, holding that the City did not act with reasonable care when it allowed a single pilot to operate the Staten Island Ferry without at least one other person in or near the pilothouse, aware of the navigational circumstances and ready to render or summon assistance in the event of an emergency... Governmental safety regulations can also shed light on the appropriate standard of care. In fact when a defendant has violated a safety regulation causing an injury, courts will find the defendant *per se* negligent, the theory being that the legislature or agency has already determined what precautions need to be taken...Keeping these principals in mind we look to the agency charged with establishing maritime safety regulations-the U.S. Coast Guard (which) has promulgated a pilothouse watch regulation that 'in addition to the licensed deck officer or pilot, there shall be at least one member of the crew on watch in or near the pilothouse at all times when the vessel is being navigated...This is not a case of negligence *per se* because the pilothouse watch regulation does not technically apply to the Staten Island Ferry...But the content of the regulation can still be indicative of the degree of care that would be reasonable under the circumstances"); Doe v. Royal Caribbean Cruises Ltd., 2011 WL 6727959 (S.D. Fla. 2011) (reasonable care standard (and not strict liability or

vicarious liability) applied in case involving rape of female passenger by non-crew member passenger); Glod v. Clinton River Cruise Company, Inc., 2009 WL 186188 (Mich. App. 2009) (slip and fall " while plaintiff crossed a five or six-inch tall doorway coaming, designed to prevent water entry from the bow to the dining room...maritime law applies to plaintiff's claims. Nevertheless, where forum law supplements but does not conflict with maritime law, a court may apply the local law...the trial court applied Michigan law...Comparing Michigan and maritime law, we conclude that the open and obvious danger doctrine similarly precludes liability where an invitee or passenger should have discovered and realized a dangerous condition "; summary judgment for defendant); Fritsch v. Princess Cruise Lines, Ltd., 2010 WL 2090315 (Cal. App. 2010) (passenger falls and breaks wrist when stepped out onto stateroom balcony; California common carrier statute requiring utmost care preempted by federal maritime standard of care; "The Supreme Court has held that a cruise ship owes its passengers a duty to exercise reasonable care under the circumstances...To allow (Plaintiff) to proceed under the (California) common carrier statute, which requires a higher standard of care, would 'Interfere with the proper harmony and uniformity of (federal maritime law)'"); Ginop v. A 1984 Bayliner 27' Cabin Cruiser¹³⁷

(" The general principals of admiralty law require that an owner exercise such care as is reasonable under the circumstances "); Ilan v. Princess Cruises, Inc.¹³⁸(" 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 Cruises¹³⁹(" 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 Line¹⁴⁰ (" 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 in each case "); Galentine v. Holland America Line-Westours, Inc.¹⁴¹(passenger injured by automatic sliding doors on observation deck; reasonable standard of care); Lawrence v. The IMAGINE...! YACHT, LLC¹⁴²(passenger suffers hearing loss when crew member fires cannon; standard of reasonable care of vessel owner to passenger does not create a duty on part of charter broker)];

© **Res Ipsa Loquitur**

The doctrine of *res ipsa loquitur* may apply thereby raising an inference of negligence [Walter v. Carnival Corp., 2010 WL 2927962 (S.D. Fla. 2010) (passenger suffers injuries from collapsing deck chair; "Even with the benefit of the *res ipsa* doctrine, the plaintiff must still prove the remaining elements of his claim, including that his alleged injuries were proximately caused by the defendant's wrongs, and damages... Although the plaintiff submits that his injuries were caused by his fall from the deck chair, Carnival has presented evidence that all or part of the alleged injuries may have been pre-existing"); O'Conner v. Chandris Lines, Inc.¹⁴³ (falling bunk; *res ipsa loquitur* applied); Hood v. Regency Maritime Corp.¹⁴⁴ (passenger using bathroom struck by piece of tile that came loose)].

(d) **Strict Liability For Sexual Misconduct By Crew**

Cruise ships may be vicariously liable for the sexual misconduct of their employees [Doe v. Royal Caribbean Cruises Ltd., 2012 WL 1813282 (S.D. Fla. 2012) (17 year old passenger induced by crew member "to participate in sexual activities

including the taking of sexually explicit photographs; strict liability under The Child Abuse Victims' Rights Act of 1986); Stires v. Carnival Corp.¹⁴⁵ (head waiter sexually assaults passenger repeatedly referring to her as a " puta "); Doe v. Celebrity Cruises¹⁴⁶ (" 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 ")].

(e) **Liability For Malpractice Of Ship's Doctor**

Generally, cruise lines are not vicariously liable for the malpractice of the ship's doctor [See Wajnstat v. Oceania Cruises, Inc., 2011 WL 465340 (S.D. Fla. 2011) (cruise passenger suffering from bleeding hemorrhoids misdiagnosed by ship's doctor and disembarked at Ukrainian hospital where "he underwent three abdominal surgeries, having the majority of his colon removed"); Hill v. Celebrity Cruises, Inc., 2011 WL 5360247 (S.D. Fla. 2011) (medical malpractice); Doonan v. Carnival Corp., 404 F. Supp. 2d 1367 (S.D. Fla. 2005) (passenger chokes; ship's doctor fails to do emergency tracheotomy); Carlisle v. Carnival

Corp¹⁴⁷

(14 year old passenger with ruptured appendix misdiagnosed by ship's doctor as suffering from flu); Mack v. Royal Caribbean Cruises¹⁴⁸].

Recently, however, a few courts have allowed the victims of medical malpractice to assert a claim against the cruise line based on apparent agency and negligent or fraudulent misrepresentations [See Lobegeiger v. Celebrity Cruises, Inc., 2011 WL 3703329 (S.D. Fla. 2011) ("Plaintiff alleges Celebrity 'held out' Dr. Laubscher as an officer of the ship's crew 'through his title, his uniform, his living quarters on board the ship and his offices on board the ship'...Taking these allegations as true, Plaintiff has sufficiently alleged that Celebrity made manifestations which could cause Plaintiff to believe Dr. Laubscher was an agent of Celebrity"; cause of action for fraudulent misrepresentation stated); Lobegeiger v. Celebrity Cruises Inc., 2012 WL 2402785 (S.D. Fla. 2012) (summary judgment for defendant on apparent agency theory of liability for medical malpractice); Hill v. Celebrity Cruises, Inc., 2011 WL 5360247 (S.D. Fla. 2011) (no actual agency; no apparent agency; but misrepresentation that ship would have two doctors but only provided one stated claim for negligent misrepresentation)

(f) **Sea-Worthiness Doctrine**

The sea-worthiness doctrine has not yet been applied to actions involving passengers [Kornberg v. Carnival Cruise Lines¹⁴⁹; Oran v. Fair Wind Sailing, Inc., 2009 WL 4349321 (D.V.I. 2009) (" Plaintiff Taner Oran's claim for relief arises from injury he suffered when he slipped and fell on bench cushions aboard a forty-five foot catamaran... operated by Fair Wind Sailing, Inc....which runs Fair Wind Sailing School (offers) an ` Instant Bareboater and Catamaran ` course based in the territorial waters of United States and British Virgin Islands(and) features ` week-long, live-aboard sailing lessons designed to prepare students to learn to sail... bareboat charter cruising catamarans...Plaintiff asserts that as a sailing school student he served as a seaman aboard the Hound Dog, and therefore (he was owed ` a duty to ` ensure that the vessel is reasonably fit to be at sea `...Having previously found that Plaintiff signed the Release and that the Release waived Plaintiff's negligence claim, the Court similarly finds that the Release precludes the Plaintiff's unseaworthiness action `); Doonan v. Carnival Corp., 404 F. Supp. 2d 1367 (S.D. Fla. 2005) (seaworthiness doctrine does not apply to passengers);

Smith v. Carnival Corporation, 584 F. Supp. 2d 1343 (S.D. Fla. 2008) (" Plaintiffs bring wrongful death and related claims against a cruise line and snorkel tour company for the drowning of Lois Gales during a snorkel trip excursion in the Cayman Islands...Plaintiffs also allege that (the) vessel was unseaworthy and this caused or contributed to Gales' death...The warranty or seaworthiness, however, is inapplicable in this case because it only protects cargo and seamen...The doctrine...of seaworthiness does not apply to passengers ")].

(g) **No Implied Warranty Of Safe Passage**

" Admiralty law will not imply a warranty of safe passage... where the warranties are not expressly made a part of passenger's contract "¹⁵⁰ [Jackson v. Carnival Cruise Lines¹⁵¹ (" 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 "); Bird v. Celebrity Cruise Lines, 203 F. Supp. 2d 1275 (S.D. Fla. 2005); Stires v. Carnival Corp.¹⁵²

(head waiter sexually assaults passenger repeatedly referring to her as a " puta "; no breach of contract of carriage permitted); Hass v. Carnival Cruise Lines, Inc¹⁵³. (" (a) review of the contract of carriage reveals no provision guaranteeing safe passage and the law of admiralty will not imply one "); Rockey v. Royal Caribbean Cruises, Ltd.¹⁵⁴(no implied warranties of sea-worthiness or contract of carriage guaranteeing safe passage)].

(h) **No Implied Warranty Of Merchantability**

In Bird v. Celebrity Cruise Line, Inc.¹⁵⁵, a case involving a passenger who claimed to have been " diagnosed with bacterial enteritis, a disease she allegedly contracted as a result of food poisoning ", the Court refused to imply a warranty of merchantability [" courts have manifested a strong reluctance to imply warranties in contracts governed by admiralty law "], especially, where such a warranty is expressly disclaimed [" the only mention of food or beverage in the parties' contract disclaims any warranty as to the food or drink furnished: ' No undertaking or warranty shall be given or shall be implied as to the seaworthiness, fitness or condition of the Vessel or any food or drink supplied on board ' "]].

(I) **No Strict Liability**

With the exception of the application of the doctrine of vicarious or strict liability for the sexual misconduct of crew members against passengers cruise ships have not been held strictly liable for onboard accidents including slip and falls and food poisoning [Bird v. Celebrity Cruise Line, Inc.¹⁵⁶ (" While precedent establishes reasonable care under the circumstances as the operative standard of care in ' slip and fall ' and other cases involving the physical condition of the ship, (this) Court must also determine whether there is any reason to depart from this standard for injuries resulting from a ship operator's provision of food and/or drink to its passengers...there is no principled basis to establish a new exception to the general duty owed by (cruise ships) to their ship passengers "); Fisher v. Olde Towne Tours, LLC, 2011 WL 3310362 (Cal. App. 2011) ("During the trip to the snorkeling site, Fisher's dinghy was struck by a large wave...(plaintiff injured her back); no strict products liability "A shore excursion company such as Old Towne is not part of the 'chain of distribution' of the type of watercraft at issue merely because it uses such equipment to provide boating and snorkeling

adventures to its clients")] but have been for a defective Flowrider¹⁵⁷ (onboard surfing simulator), a defective filter in an on board whirlpool spa which caused Legionnaires' Disease [See Silvanich v. Celebrity Cruises, Inc., 333 F. 3d 344 (2d Cir. 2003); Celebrity Cruises, Inc. v. Essef Corp., 434 F. Supp. 2d 169 (S.D.N.Y. 2006)].

(j) **Americans With Disabilities Act**

All cruise ships touching U.S. ports including foreign cruise lines must comply with the requirements of the Americans with Disabilities Act [Spector v. Norwegian Cruise Lines ¹⁵⁸; Stevens v. Premier Cruises, Inc.¹⁵⁹ ("...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 "); Association For Disabled Americans, Inc. v. Concorde Gaming Corp.¹⁶⁰ (crap tables too high for wheelchair-bound players did not violate ADA but handicapped toilet violated Title III); Access Now, Inc. v. Cunard Line Limited, Co.¹⁶¹ (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 Lines¹⁶² (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.¹⁶³ (travel agents governed by Americans with Disabilities Act); Deck v. American Hawaii Cruises, Inc.¹⁶⁴ (passengers claim cruise ship violated Americans with Disabilities Act); Considine, Lowering the Barriers for Disabled Visitors¹⁶⁵ (" Cruising is a popular way for disabled travelers to reach the Caribbean, partly because some lines have been building increasingly accessible ships. According to the 2002 Open Doors study, 12 percent of disabled adults had taken a cruise in the previous five years, compared with 8 percent of all travelers "); Greenhouse, Does the Disability Act Stop at the Shoreline?¹⁶⁶ (contains a sampling of services for the disabled provided by Carnival, Celebrity, Holland America, Norwegian Cruise Line, Princess and Royal Caribbean)];

(k) Dram Shop Liability

State dram shop acts creating liability for the purveyors of alcoholic beverages to patrons that subsequently injure third parties have been inconsistently applied to cruise ships [See Edelman & Mercante, The Floating Dram Shop¹⁶⁷ (" The popularity of gambling ` cruises to nowhere ` and ` booze cruises ` have increased the incidents of lawsuits against vessel owners...a tort involving a cruise...an alcohol-related injury to a third party by an intoxicated passenger or crew member, will typically sustain admiralty jurisdiction (but may or may not sustain a claim based upon the violation of a state dram shop act)...In Voillat v. Red and White Fleet¹⁶⁸

alcohol was served by a catering company aboard a harbor cruise on San Francisco Bay. The alcohol turned some passengers courageous and flirtatious resulting in a fight over a girl. In the aftermath, Mr. Voillat, a young man (with the girl) was allegedly thrown overboard...by another passenger, Mr. Monaghan (who wanted the girl). Mr. Voillat did not surface and his decomposed body was found nearly one month later. The vessel owner, catering company, security firm and Mr. Monaghan were sued for wrongful death. One of the causes of action, for improper service of alcohol to obviously intoxicated passenger is commonly known as dram shop liability...California's dram shop statute does not recognize liability for the negligent

service of alcohol (which) actually immunizes providers of alcoholic beverages from liability for merely furnishing alcohol...Faced with...California's anti-dram statute (the Court dismissed the) liquor liability cause of action...other courts have found that liability...in admiralty law exists for providing alcohol without adequate supervision and for failing to monitor alcohol consumption onboard, fostering a party atmosphere and failing to prohibit drunk officers from driving " (Their v. Lykes Bros., Inc.¹⁶⁹); Young v. Players Lake Charles, LLC,¹⁷⁰; Hall v. Caribbean Cruises, Ltd.¹⁷¹). See also: Taylor v. Costa Cruises, Inc.¹⁷² (cruise ship has responsibility for conduct of crew in serving alcoholic beverages to passengers); Guinn v. Commodore Cruise Line, Ltd.¹⁷³; Petersen v. Scotia Prince Cruises¹⁷⁴];

(1) **Causation And Notice**

Causation and notice must be proven [Petitt v. Celebrity Cruises, Inc.¹⁷⁵ (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); Fritsch v. Princess Cruise Lines, Ltd., 2010 WL 2090315 (Cal.

App. 2010) (passenger falls and breaks wrist when stepped out onto stateroom balcony; "Princess has presented evidence that of the 367,000 passengers aboard the Golden Princess in the two years prior to Fritsch's fall, there was no record of another passenger slipping and falling. Princess then expanded its search to all of its ships and that from 2005 to 2007, there were only four reported accidents involving a stateroom balcony. Of those three were completely dissimilar"; plaintiff failed to demonstrate that "there were prior similar accidents on stateroom balconies sufficient to give notice to Princess of a danger or defect");

Jackson v. Carnival Cruise Lines¹⁷⁶ (passenger became ill during cruise, initially treated in infirmary and dies after disembarking; no proof of food poisoning.

Generally, cruise ships must have actual or constructive notice of defects which may cause passenger injuries [See Mendel v. Royal Caribbean Cruises Ltd., 2012 WL 2367853 (S.D. Fla. 2012) (cruise passenger slips on pool step; no cause of action for negligent design unless cruise ship actually designed the pool and had actual or constructive notice of alleged defect); Samuels v. Holland American Line-USA, Inc., 656 F. 3d 948 (11th Cir. 2011) (cruise ship had no actual or constructive notice of turbulent wave action at Lover's Beach near Cabo San Lucas,

Mexico).

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

(a) **Risky Business : Shore Excursions**

Prior to arriving at a port of call the cruise ship's staff may 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 tours¹⁷⁷, which are typically delivered by independent contractors not subject to the jurisdiction of U.S. courts, which may be uninsured, underinsured¹⁷⁸, unlicensed and irresponsible [See e.g., Winter v. I.C. Holidays, Inc.¹⁷⁹ (tourists injured in bus accident; foreign bus company insolvent, uninsured and irresponsible; tour operator has duty to select responsible independent contractors)] and whose negligence [for which the cruise line disclaims responsibility] can be dramatic, indeed [e.g., twelve cruise passengers, part of " 64-member B'nai B'rith group that was traveling aboard the cruise ship Millennium...(who) had made a

side excursion to see the mountains on a tour bus that tumbled more than 300 feet down a mountainside “¹⁸⁰ were killed in March of 2006 in Chile. “ Soon after the accident, reports surfaced that the company which provided the tour was unlicensed and not one of those recommended by the cruise ship “¹⁸¹.

Due Diligence Investigations

Some cruiselines, however, make a concerted effort to perform due diligence in the selection of shore excursion operators [See Smolnikar v. Royal Caribbean Cruises Ltd., 787 F. Supp. 2d 1308 (S.D. Fla. 2011) (cruise line passenger injured while participating in a “zip line” excursion tour in Montego Bay, Jamaica operated by independent contractor Chukka Caribbean Adventures Ltd. (Chukka) and Court addressed three theories of liability against the cruiseline one of which was the negligent selection of the zip line operators finding that based on Florida law the cruise line had such a duty which could not be disclaimed (46 U.S.C. 30509); “Under Florida law, a principal may be subject to liability ‘for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor...Where such a duty exists, a plaintiff bringing a claim for negligent hiring or retention of

an independent contractor must prove that '(1) the contractor was incompetent or unfit to perform the work; (2) the employer knew or reasonably should have known of the particular incompetence or unfitness and (3) the incompetence or unfitness was a proximate cause of the plaintiffs injury'...In determining whether Royal Caribbean knew or reasonably should have known of (Chukka's) alleged incompetence...the relevant inquiry is whether Royal Caribbean diligently inquired into (Chukka's) fitness...Royal Caribbean has provided...a multitude of reasons why it found (Chukka) to be a competent and suitable zip line tour operator before and while it was offering the Montego Bay zip line tour. Those reasons include (1) that Royal Caribbean had an incident-free relationship with Chukka dating back 4-5 years before offering the Montego Bay tour, (2) that it had never been made aware of any accidents occurring on any of Chukka's other tours, (3) the positive feedback received from Royal Caribbean passengers who participate in Chukka's other tours, (4) Chukka's reputation as a first class tour operator...(7) that at least two other major cruise lines had been offering the Montego Bay zip line tour for approximately one year, (8) that it had sent representatives to participate on the tour and there was no negative feedback...(12) that it never received any accident reports from Chukka pertaining to the

Montego Bay tour. These indicate that Royal Caribbean's inquiries were diligent and that its decisions (in selecting Chukka) were reasonable").

(b) **Big Business For The Cruise Lines**

Shore excursions are big business for the cruise lines [Perrin, What I Learned Moonlighting as a Cruise Ship Trainee www.cntraveler.com/perin-post/2013/04 ("Cardozo works year-round, planning, scheduling and executing shore excursion for demanding passengers...These day trips are big business for the cruise lines: Royal Caribbean expects Navigator of the Seas to earn between \$600,000 and \$1,100,000 per week in onboard revenue, including tour sales"); Carothers, Cruise Control¹⁸² ("Almost half of all cruise passengers-some five million a year-participate in shore excursions ranging from simple bus tours in port cities to more adventurous activities such as scuba diving trips and hot-air balloon rides. Excursions sold by a cruise line are generally the most convenient to book, and therefore are often more crowded-and more expensive-than those purchased independently...Perhaps, the safest bet is to purchase shore excursions through the cruise lines. Serious accidents on these trips are extremely rare although the lines disclaim any

liability for mishaps that occur on these excursions, they say that they make every effort to ensure that the businesses they work with are licensed and reputable..."); Solomon, Voyage to the Great Outdoors¹⁸³ (" 250 passengers from a Carnival cruise ship had signed up and paid \$93 for the experience of floating in inner tubes through a rain forest cave...Cruise lines now offer a buffet of shore excursions for their guests at every port of call...Passengers can attend a race-car academy in Spain, get their scuba diving certificate in the Virgin Islands and even take a spin in a MIG fighter jet in Russia ")].

Cruise lines actively promote shore excursions [See Perry v. Hal Antillen NV, 2013 WL 2099499 (W.D. Wash. 2013) (shore excursion accident; discussion of relationships between cruiseline, ground tour operator and subcontractor transportation providers; theories of liability); Gayou v. Celebrity Cruises, Inc., 2012 WL 2049431 (S.D. Fla. 2012) (cruise passengers sustained injuries riding zip-line); McLaren v. Celebrity Cruises, Inc., 2012 WL 1792632 (S.D. Fla. 2012) (cruise passenger injured disembarking snorkeling tour boat); Smolnikar v. Royal Caribbean Cruises Ltd., 787 F. Supp. 2d 1308 (S.D. Fla. 2011) (cruise line passenger injured while participating in a "zip line" excursion tour in Montego Bay, Jamaica operated by independent contractor Chukka Caribbean Adventures); Koens v.

Royal Caribbean Cruises Ltd., 774 F. Supp. 2d 1215 (S.D. Fla. 2011) (cruise passengers robbed and assaulted in tour of Earth Village)].

© The Law To Be Applied

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.¹⁸⁴ (scuba accident; maritime law does not apply); Musumeci v. Penn's Landing Corp.¹⁸⁵ (maritime law applies to accident on gangplank)]. More progressive courts have extended maritime law to the pier [Gilmore v. Caribbean Cruise Line¹⁸⁶ (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.¹⁸⁷ (inflatable raft transporting passengers to shore capsizes; maritime law applies to accident away from cruise ship); Carlisle v. Ulyssess Line Ltd.¹⁸⁸ (passengers ambushed on remote beach; cruise line has continuing duty to warn of dangerous conditions on shore)].

(d) **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 Expeditions¹⁸⁹ (inflatable raft ferrying passengers to shore capsizes); Favorito v. Pannell¹⁹⁰ (engineer drives inflatable tender with 15 passengers into other vessel)].

Second, accidents may occur on **the pier** or areas immediately adjacent thereto [Burdeaux v. Royal Caribbean Cruises, Ltd., 2012 WL 3202948 (S.D. Fla. 2012) (Cruise passenger went shopping on shore in Cozumel and was repeatedly raped by five local men; "prior to Burdeaux's assault, Royal Caribbean has taken millions of passengers to the port of Cozumel...In the five years prior to Burdeaux's assault, there were no reported instances of sexual assault or violent crime involving Royal Caribbean passengers or crewmembers both in the shopping area depicted on the map and in Cozumel as a whole"; Cruiselines have a "duty to warn passengers of 'dangers the cruise line knows or reasonably should have known"; summary judgment for cruiseline);

Smith v. Commodore Cruise Line Limited¹⁹¹ (passenger falls on bathroom floor of boarding facility used by cruise ship fracturing hip and knee); Sharpe v. West Indian Company, Ltd.¹⁹² (a railing from cruise ship falls on passenger walking on dock to board tour bus); Gillmore v. Caribbean Cruise Line¹⁹³ (passengers stabbed and robbed on pier); Sullivan v. Ajax Navigation Corp.¹⁹⁴ (passenger injured on Mexican pier)].

Third, accidents may occur

(1) **In the town** [Petro v. Jada Yacht Charters¹⁹⁵ (two passengers have fight in bar in town)];

(2) **On local transportation** [Balaschak v. Royal Caribbean Cruises, LTD, 2010 WL 457137 (S.D. Fla. 2010)
(" Elizabeth Balaschak was a passenger on the Celebrity Summit for a seven-night cruise through the Caribbean. While on board she bought an excursion to take place in Dominica called ` Caribbean Cooking Adventure `. The three and a half hour excursion began with a bus ride to a mountain-top location where the passengers learned to prepare local dishes. After the presentation, the passengers ` were picked up in a 1969 open-aired Bedford truck with plywood seats `...On the way back to

the port the truck crashed, and Balaschak was severely injured “
); Esfeld v. Costa Crociere¹⁹⁶ (passenger injured in tour van
accident during shore excursion of Da Nang area in Vietnam);
Konikoff v. Princess Cruises, Inc.¹⁹⁷ (passenger sustained injury
exiting taxi during shore excursion); Dubret v. Holland America
Line¹⁹⁸ (bus accident during shore excursion); Paredes v.
Princess Cruises¹⁹⁹ (tour bus accident during ground tour in
Egypt); DeRoche v. Commodore Cruise Line²⁰⁰ (motor scooter
accident during shore excursion); Lubick v. Travel Services,
Inc.²⁰¹];

(3) **On a private beach or tour of local site** [Berg v.
Royal Caribbean Cruise²⁰² (accident at private beach); Carlisle
v. Ulysses Line²⁰³ (passengers ambushed, raped and robbed at
private beach); Koens v. Royal Caribbean Cruises Ltd., 774 F.
Supp. 2d 1215 (S.D. Fla. 2011) (cruise passengers robbed and
assaulted in tour of Earth Village); Samuels v. Holland American
Line-USA Inc., 656 F. 3d 948 (9th Cir. 2011) (cruise passenger
rendered quadriplegic after turbulent wave action at Lover’s
Beach near Cabo San Lucas, Mexico)].

(4) **At a hotel** [Rams v. Intrav, Inc.²⁰⁴ (passenger

fell at hotel owned by cruise line during shore excursion]];

(5) **While being transported to local sites** [McLaren v. Celebrity Cruises, Inc., 2012 WL 1792632 (S.D. Fla. 2012) (cruise passenger injured disembarking snorkeling tour boat); Varey v. Canadian Helicopters Limited²⁰⁵ (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 Weekly²⁰⁶ (" 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 Weekly²⁰⁷; Six passengers, pilot killed in Maui tour helicopter crash, Travel Weekly²⁰⁸]];

(6) **Touring a local site** [Parry, Dead, injured in Chilean bus crash return home, The Journal News, March 25, 2006 at p. 7B (twelve passengers of a " 64-member B'nai B'rith group that was traveling aboard the cruise ship Millennium...(who) had made a side excursion to see the mountains on a tour bus that tumbled more than 300 feet down a mountainside "²⁰⁹ were killed in March of 2006 in Chile; Long v. Holland America Line

Westours, Inc.²¹⁰, (slip and fall during tour of museum); Metzger v. Italian Line²¹¹ (accident during shore excursion)];

(7) **Renting A Villa** [Garin, Stay Safe²¹² (" In 2005, a young British man was shot to death in a vacation villa on Barbados where he was staying with his family, and in separate incidents, two American couples were robbed at gunpoint outside their rental villas on St. John. The first half of this year has seen villa break-ins across the Caribbean. In January, on laid-back Anguilla, two American tourists in their 70's were shot and left for dead (both survived) inside the villa they'd been renting for nearly a month. This past spring, the robberies on St. John continued when an American couple were held at gunpoint, bound and robbed at their rental villa. Perhaps, most disturbing, a rash of violent rapes and robberies of tourists at vacation villas on Tobago (two in May alone) has led both the U.S. State Department and the British Foreign Office to issue warnings related to renting villas on the island ")].

[I] **Types Of Shore Excursion Accidents**

(1) **Assaults, rapes, robberies and shootings**

[See Chaparro v. Carnival Corporation, 693 F. 3d 1333 (11th Cir.

2012) (plaintiff passengers took a cruise aboard Carnival's M/V Victory during which a Carnival employee urged plaintiffs to visit Coki Beach and Coral World which plaintiffs did; "On their way back to the ship from Coki Beach (plaintiffs) rode an open-air bus past a funeral service of a gang member who recently died in a gang-related shooting near Coki Beach...While stuck in traffic, gang-related retaliatory violence erupted at the funeral, shots were fired and Liz Marie was killed by gunfire which she was a passenger on the bus"; motion by Carnival to dismiss denied, claim stated for failure to warn; complaint alleged, inter alia, "Carnival was familiar with Coki Beach because it sold excursion to passengers to Coki Beach; Carnival generally knew of gang violence and public shootings in St. Thomas; Carnival knew of Coki Beach's reputation for drug sales, theft and gang violence...Carnival failed to warn (passengers) of any of these dangers; Carnival knew or should have known of these dangers because Carnival monitors crime in its ports of call; Carnival's negligence in encouraging its passengers to visit Coki Beach and in failing to warn disembarking passengers of general or specific incidents of crime in St. Thomas and Coki Beach caused Liz Marie's death"); Koens v. Royal Caribbean Cruises Ltd., 774 F. Supp. 2d 1215 (S.D. Fla. 2011) (cruise passengers robbed and assaulted in tour of Earth Village);

Gillmore v. Caribbean Cruise Line²¹³; Carlisle v. Ulysses Line²¹⁴;

See also: Travel Weekly²¹⁵ (" 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 Lines²¹⁶ (horse riding accident during shore excursion)];

(3) **Jet skis** [Calhoun v. Yamaha Motor Co., Ltd.²¹⁷ (rider of Yamaha WaveJammer jet ski dies after collision with anchored vessel off the Mexican coast); Mashburn v. Royal Caribbean Cruises, Ltd.²¹⁸ (passenger injured riding a Sea-Doo provided by cruise ship); In re Complaint of Royal Caribbean Cruises²¹⁹ (passengers on jet skis collide)];

(4) **Scuba diving** [Carnival Cruise Lines, Inc. v. LeValley²²⁰ (judgment for passenger injured during cruiseship sponsored scuba dive reversed for concealing asthmatic condition from dive instructor); Gershon v. Regency Diving Center, Inc.²²¹ (exculpatory release does not prevent heirs of decedent from commencing wrongful death action); Neely v. Club Med Management Services, Inc.²²² (American employed as scuba instructor at St.

Lucia Club Med resort sucked into dive boat propellers);
Sinclair v. Soniform, Inc.²²³ (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.²²⁴ (scuba diver's leg entangles in dive boat propeller);
McClenahan v. Paradise Cruises, Ltd.²²⁵ (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 Charters²²⁶ (scuba accident
during shore excursion); Courtney v. Pacific Adventures²²⁷
(scuba diver's leg becomes entangled in boat propeller);
Shultz v. Florida Keys Dive Venter, Inc.²²⁸ (scuba diver
drowns); Cutchin v. Habitat Curacao²²⁹ (scuba accident at dive
resort); Borden v. Phillips²³⁰ (scuba diver drowns)].

(4.1) **Walking underwater** [DelPonte v. Coral World
Virgin Islands, Inc., 2007 WL 1433530 (3d Cir. 2007) (" While
vacationing on a cruise ship in the Virgin Islands, DelPonte
purchased a ticket to take part in Coral World's Sea Trek
experience. Sea Trek participants wear a helmet with an attached
breathing tube, descend a ladder to the ocean floor and walk
underwater to examine the sea habitat...While descending the

ladder, DelPonte slipped and broke his femur ").

(4.2) **Falling From A Zip-Line** [Smolnikar v. Royal Caribbean Cruises Ltd., 787 F. Supp. 2d 1308 (S.D. Fla. 2011) (cruise line passenger injured while participating in a "zip line" excursion tour in Montego Bay, Jamaica operated by independent contractor Chukka Caribbean Adventures Ltd. (Chukka) and Court addressed three theories of liability against the cruiseline one of which was the negligent selection of the zip line operators finding that based on Florida law the cruise line had such a duty which could not be disclaimed (46 U.S.C. 30509); "Under Florida law, a principal may be subject to liability 'for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor... Where such a duty exists, a plaintiff bringing a claim for negligent hiring or retention of an independent contractor must prove that '(1) the contractor was incompetent or unfit to perform the work; (2) the employer knew or reasonably should have known of the particular incompetence or unfitness and (3) the incompetence or unfitness was a proximate cause of the plaintiffs injury'...In determining whether Royal Caribbean knew or reasonably should have known of (Chukka's) alleged incompetence ...the relevant inquiry is whether Royal Caribbean

diligently inquired into (Chukka's) fitness...Royal Caribbean has provided...a multitude of reasons why it found (Chukka) to be a competent and suitable zip line tour operator before and while it was offering the Montego Bay zip line tour. Those reasons include (1) that Royal Caribbean had an incident-free relationship with Chukka dating back 4-5 years before offering the Montego Bay tour, (2) that it had never been made aware of any accidents occurring on any of Chukka's other tours, (3) the positive feedback received from Royal Caribbean passengers who participate in Chukka's other tours, (4) Chukka's reputation as a first class tour operator...(7) that at least two other major cruise lines had been offering the Montego Bay zip line tour for approximately one year, (8) that it had sent representatives to participate on the tour and there was no negative feedback...(12) that it never received any accident reports from Chukka pertaining to the Montego Bay tour. These indicate that Royal Caribbean's inquiries were diligent and that its decisions (in selecting Chukka) were reasonable"); Gayou v. Celebrity Cruises, Inc., 2012 WL 2049431 (S.D. Fla. 2012) (cruise passenger crashes into tree using zip-line); Fojtasek v. NCL(Bahamas) Ltd., 613 F. Supp. 2d 1351 (S.D. Fla. 2009) (cruise passenger died from fall during " zip-line excursion...Here, the cause of action accrued on land at the time that the decedent fell from

the zip-line "); Fojtasek v. NCL (Bahamas), 262 F.R.D. 650 (S.D. Fla. 2009)(discovery)].

(4.3) **Jumping From A Cavern Wall** [Skeen v. Carnival Corporation, 2009 WL 1117432 (S.D. Fla. 2009)(passenger on cruise ship Holiday purchased " a ' Caves and Caverns ' excursion tour through Carnival...While participating in the ' Caves and Caverns ' tour (in Progresso, Mexico), plaintiff was injured as a result of falling or jumping from a cavern wall into a natural pool, a distance of approximately thirty feet ").

(4.4) **Fishing** [Doyle v. Graske, 579 F. 3d 898 (8th Cir. 2009)(" Graske and two friends (Doyle and Van Hook) decided to go fishing in the waters off the coast of Grand Cayman Island, where Graske owned a vacation home. The three set out on Graske's inflatable boat...Doyle...was thrown overboard ")].

(4.5) **Bobsled Ride** [See Gentry v. Carnival Corp., 2011 WL 4737062 (S.D. Fla. 2011)(cruise passenger injured during shore excursion to Magic Mountain "when the seat belt restraint on the excursion bobsled failed"; claims against cruise ship

stated for negligent failure to warn, negligence based upon apparent authority and joint venture between cruise ship and excursion operator; no claim stated based upon third party beneficiary theory)].

(4.6) **Diving Bell** [See Zapata v. Royal Caribbean Cruises, Ltd., 2013 WL 1296298 (S.D. Fla. 2013) (cruise passenger purchased excursion tickets onboard cruise ship featuring "bell diving" during which decedent is asphyxiated, brought to the surface for oxygen but unfortunately the oxygen tank was empty whereupon decedent became unconscious and died; claims against cruise line RCCL governed by Death on the High Seas Act (DOHSA) eliminating recovery of non-pecuniary damages; claims for negligent selection or retention of excursion operators and apparent agency or agency by estoppel legally sufficient if appropriate facts repleaded; claims of joint venture and third party beneficiary theory dismissed as expressly disclaimed in Tour Operator Agreement); Zapata v. Royal Caribbean Cruises, Ltd., 2013 WL 1100028 (S.D. Fla. 2013) (claims against Bermuda excursion operator dismissed on grounds of no personal jurisdiction)].

(5) **Snorkeling** [McLaren v. Celebrity Cruises, Inc.,

2012 WL 1792632 (S.D. Fla. 2012) (cruise passenger injured disembarking snorkeling tour boat); Piche v. Stockdale Holdings, LLC, 2009 WL 799659 (D.V.I. 2009) (cruise passenger “ was injured onboard the Ocean Rider (during snorkeling excursion) while traveling on navigable water off the coast of St. Thomas “); Mayer v. Cornell University ²³¹ (bird watcher on tour of Costa Rica drowns during snorkeling expedition to Isle de Cano)].

(6) **Boat tours** [United Shipping Co. v. Witmer²³² (cruise passengers drown during boat tour in the Bahamas)];

(7) **Vehicular accidents** [Perry v. Hal Antillen NV, 2013 WL 2099499 (W.D. Wash. 2013) (cruise passenger returning from cruiseline recommended and promoted shore excursion run over by shore excursion tour bus; extensive discussion of liability issues regarding cruiseline which recommended and promoted shore excursion, local ground operator and tour bus that transported cruise passengers to and from shore excursion; liability theories include agency by estoppel, third party beneficiary, failure to disclose, negligent selection, joint venture, warranty of safety, negligent supervision and damages limitation under Washington’s Consumer Protection Statute); Gibson v. NCL (Bahamas) Ltd., 2012 WL 1952667 (S.D. Fla.

2012) (cruise passenger injured attempting to board “‘Jungle Bus’ to transport her to a zipline tour in the Mexican jungle”; no causes of action for negligent selection to excursion operator or “Jungle Bus”, failure to warn and negligent supervision; but causes of action stated for apparent authority and joint venture); Young v. Players Lake Charles²³³ (intoxicated gamblers leave casino boat and have traffic accident)];

(8) **Fist fights** [Petro v. Jada Yacht Charters²³⁴ (two passengers fight each other on shore)];

(9) **Catamaran rides** [In Wolff v. Holland America Lines, Inc., 2010 WL 234772 (W.D. Wash. 2010) a cruise passenger participated in a shore excursion “Aqua Terra” and fell off a catamaran injuring herself; “The parties agree that Holland America owed Ms. Wolff a duty of care in selecting independent third parties to provide off-ship excursions (but) Ms. Wolff has submitted no evidence showing that Holland America had any reason to anticipate these events”; Holland America asserted that for 10 years prior to accident it had no complaints about this shore excursion operator; summary judgment for cruiseline granted); Bridgewater v. Carnival Corp., 2011 WL 4383312 (S.D. Fla. 2011)

(cruise passenger on a catamaran excursion struck by lightning; discovery issues); Oran v. Fair Wind Sailing, Inc., 2009 WL 4349321 (D.V.I. 2009) (" Plaintiff Taner Oran's claim for relief arises from injury he suffered when he slipped and fell on bench cushions aboard a forty-five foot catamaran); Kilma v. Carnival Corporation, 2008 WL 4559231 (S.D. Fla. 2008) (passenger suffers injuries on a catamaran known as the " Thriller Powerboat "); Henderson v. Carnival Corp.²³⁵ (passenger injured during catamaran trip)].

(10) **Medical malpractice at local clinics** [Wajnstat v. Oceania Cruises, Inc., 2011 WL 465340 (S.D. Fla. 2011) (cruise passenger suffering from bleeding hemorrhoids misdiagnosed by ship's doctor and disembarked at Ukrainian hospital where "he underwent three abdominal surgeries, having the majority of his colon removed"); Morris v. Princess Cruises, Inc.²³⁶ (sick passenger removed from cruise to inadequate and filthy intensive care facility in Bombay); DeRoche v. Commodore Cruise Line²³⁷ (passenger suffered injuries from motor scooter accident in Cozumel, Mexico and subsequent malpractice of Mexican doctors)];

(11) **Abandoned on shore** [Daniel v. Costa Armatori²³⁸

(passenger abandoned on shore)];

(12) **Parasailing** [Joseph v. Carnival Corp., 2011 WL 3022555 (S.D. Fla. 2011) (cruise passenger died while parasailing in Mexican waters while on a stopover in Cozumel; parasailing vendor not recommended or sponsored by cruiseline; although plaintiff alleges duty to warn of latent defects in vendor's failure to proper safety equipment the court found no duty and dismissed amended complaint without prejudice; cruiseline also asserted that dangers of para-sailing are open and obvious);

Matter of the Complaint of UFO Chuting of Hawaii, Inc.²³⁹ (" (plaintiffs) went parasailing. Unfortunately for them, the rope that attached them to the boat snapped, causing (plaintiffs) to fall into the water"); Ransier v. Quirk Marine, Inc.²⁴⁰ (parasailing accident; " we find that plaintiff raised questions of fact...whether her risk of injury was increased by having another patron who was not an employee of or trained by, defendant...act as a ' spotter ' for the operator of the boat while plaintiff was parasailing "); Matter of See N Ski Tours²⁴¹ (parasailing accident); Matter of Beiswenger Enterprises Corp.²⁴² (parasailing accident); See also 49 A.T.L.A. Law Reporter March 2006 at p. 57 (Comment: For a case involving a

hotel management company's liability where a guest drowned while parasailing, see Walker v. Wedge Hotel Management (Bahamas) Ltd., 47 ATLA L. Rep. 127 (May 2004). There, plaintiff claimed that the defendant management company was liable because the vendor who ran the parasailing business was an agent of defendant. A jury awarded plaintiff \$1.88 million in the case ")];

(13) **Waterskiing** [O'Hara v. Bayliner²⁴³ (water skiing accident)];

(14) **Snowmobiling** [See Passenger killed in shore excursion accident, Travel Weekly²⁴⁴ (" 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** [Altman v. Liberty Helicopters, 2010 WL 2998467 (E.D. Pa. 2010) ("This death benefits action arises from a collision on August 8, 2009 between a helicopter (providing a tour to Italian tourists) and a private plane over the Hudson River); Gund III v. Pilatus Aircraft, Ltd, 2010 WL 887376 (N.D Cal. 2010)(" For the last day of the Kellys family trip...booked an aerial sightseeing

tour of Playa Flamingo Bay...All six perished when the aircraft crashed off the shore of Costa Rica "); See also: Rogers, Risky Business?²⁴⁵ (" On June 14, 2004, a Bell flightseeing helicopter plunged into New York City's East River soon after takeoff from a Wall Street heliport, injuring the pilot and six tourists on board. This followed the crash of a four passenger Cessna on the beach at Brooklyn's Coney Island a month earlier, in which the pilot and three sightseers were killed. More recently, on September 23, three passengers died after a Heli USA Airways flightseeing helicopter plummeted into the sea off the island of Kauai. Flightseeing-known in the aviation industry as air-touring, be it aboard a hot-air balloon, a fixed wing plane, or a helicopter-attracts more than two million passengers a year and generates revenues in excess of \$625 million in the United States alone "); Klein, Spate of Copter Crashes Prompts Concern²⁴⁶ (" The N.T.S.B. has recorded more than 140 sightseeing-flight accidents nationally since January 2000, 19 of them fatal. The accidents are split almost evenly among helicopters, balloons and small planes, but helicopter flights made up more than half of the fatal crashes killing 43 people, 24 in Hawaii "); Rizzuti v. Basin Travel Service²⁴⁷ (tourist dies in airplane crash during a safari trip in Africa); Abercrombie & Kent v. Carlson²⁴⁸ (tourists killed in air crash during African safari);

Varey v. Canadian Helicopters Limited²⁴⁹ (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 excursion²⁵⁰ (" 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 accident²⁵¹, Six passengers, pilot killed in Maui tour helicopter crash²⁵²];

(16) **Personal watercraft rides** [The Complaint of Royal Caribbean Cruises, Ltd., 459 F. Supp. 2d 1284 (S.D. Fla. 2006) (passenger injured riding personal watercraft supplied by cruiseship alleges negligence in failing to properly train in use of Waverunner); Henson v. Klein, 2010 WL 3374243 (Ky. Sup. 2010) (two Sea-Doos collide); Matter of Bay Runner Rentals, Inc.²⁵³ (passengers sustain injuries when personal watercraft collides with a bulkhead)];

(17) **Wake boarding** [Wheeler v. Ho Sports Inc.²⁵⁴ (wake boarder injured when he " attempted to do a difficult aerial trick, crashed face-first into the water ")].

(17.1) **Drownings** [Smith v. Carnival Corporation, 584 F. Supp. 2d 1343 (S.D. Fla. 2008) (" Plaintiffs bring wrongful death and related claims against a cruise line and snorkel tour company for the drowning of Lois Gales during a snorkel trip excursion in the Cayman Islands "); Island Sea-Faris, Ltd. v. Haughey, 13 So. 3d 1076 (Fla. App. 2009) (" While in Puerto Rico (passenger Haughey), a resident of Missouri, purchased tickets from Royal Caribbean for a shore excursion in Antigua. After she was injured during the excursion, she sued Royal Caribbean and Island Sea-Faris); In re Lake George Tort Claims, 2010 WL 1930583 (N.D.N.Y. 2010) (Lake George tour boat capsizes causing the drowning death of many elderly passengers).

(18) **Mig Fighter Jet Flying** [Jainchill, Luxury cruising sector is booming as mass-market products struggle²⁵⁵ (" Five Crystal Cruises passengers sailing St. Petersburg itineraries this year will each spend 30 minutes in the cockpit of a Mig fighter jet, experiencing zero gravity and Mach 2 speeds while inverted in the sky over Moscow. The price? A cool \$22,000 each. Only two guests took this excursion last year, when it was first offered for \$15,000 ")].

[A] **Theories Of Liability For Shore Excursion Accidents**

Typically the cruiseline will seek to enforce a cruise ticket clause disclaiming all liability for shore excursion accidents²⁵⁶. Recently, the courts have recognized a variety of legal theories by which to hold the cruiseline and shore excursion operator liable for such accidents.

(A-1) Duty To Warn Of Dangerous Environments

[See e.g., *Chaparro v. Carnival Corporation*, 693 F. 3d 1333 (11th Cir. 2012) (plaintiff passengers took a cruise aboard Carnival's M/V Victory during which a Carnival employee urged plaintiffs to visit Coki Beach and Coral World which plaintiffs did; "On their way back to the ship from Coki Beach (plaintiffs) rode an open-air bus past a funeral service of a gang member who recently died in a gang-related shooting near Coki Beach...While stuck in traffic, gang-related retaliatory violence erupted at the funeral, shots were fired and Liz Marie was killed by gunfire which she was a passenger on the bus"; motion by Carnival to dismiss denied, claim stated for failure to warn; complaint alleged, inter alia, "Carnival was familiar with Coki Beach because it sold excursion to passengers to Coki Beach; Carnival generally knew of gang violence and public shootings in

St. Thomas; Carnival knew of Coki Beach's reputation for drug sales, theft and gang violence...Carnival failed to warn (passengers) of any of these dangers; Carnival knew or should have known of these dangers because Carnival monitors crime in its ports of call; Carnival's negligence in encouraging its passengers to visit Coki Beach and in failing to warn disembarking passengers of general or specific incidents of crime in St. Thomas and Coki Beach caused Liz Marie's death").

(A-2) Negligent Selection Of Shore Excursion Operator

[See e.g., *Zapata v. Royal Caribbean Cruises, Ltd.*, 2013 WL 1296298 (S.D. Fla. 2013) (cruise passenger purchased excursion tickets onboard cruise ship featuring "bell diving" during which decedent is asphyxiated, brought to the surface for oxygen but unfortunately the oxygen tank was empty whereupon decedent became unconscious and died; claims against cruise line RCCL governed by Death on the High Seas Act (DOHSA) eliminating recovery of non-pecuniary damages; claims for negligent selection or retention of excursion operators and apparent agency or agency by estoppel legally sufficient if appropriate facts pleaded; claims of joint venture and third party beneficiary theory dismissed as expressly disclaimed in Tour

Operator Agreement); *Perry v. Hal Antillen NV*, 2013 WL 2099499 (W.D. Wash. 2013) (cruise passenger returning from cruiseline recommended and promoted shore excursion run over by shore excursion tour bus; extensive discussion of liability issues regarding cruiseline which recommended and promoted shore excursion, local ground operator and tour bus that transported cruise passengers to and from shore excursion; liability theories include agency by estoppel, third party beneficiary, failure to disclose, negligent selection, joint venture, warranty of safety, negligent supervision and damages limitation under Washington's Consumer Protection Statute); *Gibson v. NCL (Bahamas) Ltd.*, 2012 WL 1952667 (S.D. Fla. 2012) (cruise passenger injured attempting to board "'Jungle Bus' to transport her to a zipline tour in the Mexican jungle"; no causes of action for negligent selection to excursion operator or "Jungle Bus", failure to warn and negligent supervision; but causes of action stated for apparent authority and joint venture).

(A-3) **Third Party Beneficiary Theory**

[See e.g., *Perry v. Hal Antillen NV*, 2013 WL 2099499 (W.D. Wash. 2013) (a cruise passenger was run over by a tour van hired as a subcontractor by the tour operator Rain Forest Aerial Tram,

Ltd. (RFAT) which had entered into a contract with the cruise line (HAL) and executed a copy of a manual entitled "Tour Operator Procedures and Policies" (TOPPS) which required "a tour operator in the Caribbean to obtain minimum limits of auto and general liability insurance of 'US\$2.0 million/accident or occurrence'... [s]hould the Operator subcontract for services (such as aircraft, rail, tour buses or watercraft), the Tour Operator must provide a list of its subcontractors and evidence of the subcontractor's insurance". The cruise line asserted that RFAT "was 'required to assure that any subcontractor it used to provide excursion related services had in place the equivalent USD 2,000,000 in auto and general liability coverage". Here, it was discovered after the accident that the tour van operator only had \$85,000 in insurance coverage and the Court held that the plaintiffs were third party beneficiaries of TOPPS and had a claim against RFAT for failing to disclose to HAL that tour van operator was a subcontractor and was only insured up to \$85,000].

J] Cancellations, Delays, Port Skipping & Itinerary Changes

Besides physical injuries cruise passengers may have claims

arising from

(1) **Cancellations** [Odyssey Travel Center, Inc. v. RO Cruises, Inc.²⁵⁷ (cruise line cancels group contracts); Unger v. Travel Arrangements, Inc.²⁵⁸ (cruise line becomes insolvent); Dimon v. Cruises By De²⁵⁹ (travel agent absconds with consumer's payment); Sanderman v. Costa Cruises, Inc.²⁶⁰ (passengers send cruise tour operator \$21,775 which fails to remit payment to cruise line or make refund); Slade v. Cheung & Risser Enterprises²⁶¹ (Great Lakes cruise line absconded with passenger payment; travel agent liable for failing to investigate financial responsibility)];

(2) **Flight delays** [Flamenbaum v. Orient Lines, Inc.²⁶² (passengers sail without baggage because it was placed on wrong flight; claims against cruise ship and airlines for " irresponsible scheduling of connecting flights " and " mishandling of their baggage "); Insognia v. Princess Cruises, Inc.²⁶³ (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.²⁶⁴ (snowstorm delays air transportation to port of cruise departure); Harden v. American Airlines²⁶⁵ (passengers miss two days of cruise because of delayed air transportation)];

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

[Elliott v. Carnival Cruise Lines²⁶⁶ (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 Cruises²⁶⁷ (Bermuda skipped); Desmond v. Holland American Cruises²⁶⁸ (port skipping); Casper v. Cunard Line²⁶⁹ (mechanical breakdown and scheduled itinerary changed); Bloom v. Cunard Line²⁷⁰ (two ports of call, Puerto Rico and Nassau, canceled); See also: Elliott, Maybe Barbados, Maybe Someplace Else²⁷¹ (" Cruise lines make a lot of claims about their itineraries and ports of call. But they may be under no contractual obligation to keep to their schedules, and they sometimes do not. When that happens, the compensation to passengers is entirely up to the lines. Their policies are uneven, ranging from a small credit for port taxes

issued to a passenger's onboard account to, in extreme cases, a free cruise. These responses do not always sit well with passengers or authorities. New Jersey's attorney general recently sued Royal Caribbean Cruises, a sister brand of Celebrity Cruises, for diverting a Bermuda cruise to New Brunswick and Nova Scotia, Canada, last summer when a hurricane was feared in Bermuda.

(The company offered a 25 percent discount on a future sailing and a \$42.50 port fee refund, but no refund for the cruise itself... (Celebrity's) cruise contract allows it to ' cancel, advance, postpone or deviate from any scheduled sailing or port of call ' for any reason, at anytime and without notice.

Regarding compensation, the contract is equally clear. Celebrity is not ' liable for any loss whatsoever ' for a cancellation...

' when it comes to the ports clause, the typical cruise contract may be open to legal challenge as against public policy because it basically allows a cruise line to enter a contract to offer a specific cruise, but then change the terms in its favor, even in the case of mechanical problems. He said there may be a time when a cruise line should be able to legally change its itinerary, such as an ' extreme emergency '-a hurricane, say-or war. ' But the provision of cruise vacations during peacetime is not one of them '"]].

(4) **Forced Disembarkation**

The captain of a cruise ship [and a commercial aircraft²⁷²] may, under appropriate circumstances, order the disembarkation of passengers. Typically, a medical disembarkation will seek to protect the well being of an individual passenger [Larsen v. Carnival Cruise Corp. ²⁷³ (" Since 1989, (passenger) has been a paraplegic and utilizes a motorized wheelchair. Since 1997, (passenger) was diagnosed with severe obstructive sleep apnea...chronic obstructive pulmonary disease and has utilized a prescribed Bi-Pap ventilator " which was discovered not be functioning properly after boarding. As a result the passenger was " medically disembarked "; " The undisputed testimony of the ship's doctor, ship's nurse, (passenger's) own treating physician and defendant's medical expert all confirm that permitting (the passenger) to sail without a functioning Bi-Pap would have posed an unacceptable risk to his very life and that the medical disembarkation of (passenger) was a sound and reasonable medical decision "); Wajnstat v. Oceania Cruises, Inc., 2011 WL 465340 (S.D. Fla. 2011) (cruise passenger suffering from bleeding hemorrhoids misdiagnosed by ship's doctor and disembarked at Ukrainian hospital where "he underwent three

abdominal surgeries, having the majority of his colon removed")] while the disembarkation of a passenger may be necessary to protect the remaining passengers [Afkhami v. Carnival Corporation ²⁷⁴ (passengers of Iranian descent brought onboard a wooden container of 50 to 60 live bees [the venom of which was used as a non-prescribed treatment for multiple sclerosis] in direct violation of clause in cruise contract prohibiting passengers from bringing live animals onboard; " The ship's doctor...stated that the bees were a danger to other passengers because bee stings may have life-threatening consequences for those who are allergic to bee venom "; passengers were disembarked and in a subsequent lawsuit failed to establish discrimination based on Iranian descent).

[K] **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"²⁷⁵

(" 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

Action²⁷⁶ (" 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 ²⁷⁷

(" 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. ²⁷⁸ (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 ²⁷⁹ (deceptive port charges; certification of nationwide class granted); Premier Cruise Lines, Ltd., v. Picaut ²⁸⁰ (deceptive port charges; summary judgment or cruiseline reversed); Cronin v. Cunard Line Limited ²⁸¹ (deceptive port charges; complaint dismissed; six months time limitation in which to file lawsuit enforced); Pickett v. Holland America Line-Westours, Inc. ²⁸² (deceptive port charges; nationwide class certified; proposed settlement adequate)]; Ames v. Celebrity

Cruises, Inc.²⁸³ (deceptive port charges; time limitations enforced; complaint dismissed; not a class action)];

(a) **Compare: Hotel Taxes/Fees Surcharges**

Chiste v. Hotels.Com LP²⁸⁴ ("The crux of Plaintiffs' allegations stem from what is not disclosed on this invoice (for the online purchase of hotel accommodations)...Second Plaintiffs' allege that defendants are charging consumers a higher tax based the Retail Rate consumers pay Defendants rather than the Wholesale Rate Defendants pay the hotels. Instead of remitting the full amount of taxes collected to the hotels, Defendants keep the difference between the tax collected and the amount remitted to the tax authorities...as a profit or fee without disclosing it"; GBL 349 claim sustained)].

In Hotels.Com, LLP v. Canales²⁸⁵ the hotel guest " contacted Hotels.com to make a reservation at a hotel in San Antonio, Texas...Each customer is charged a room rate, entitled ' published rate ', which is higher than Hotel.com's negotiated rate with the hotel. A surcharge entitled ' taxes/fees ' or ' tax recovery charge/service fees ' is subsequently added to the published rate, but the exact percentages are not delineated for the customer...By its own admission, Hotels.com neither charges

nor collects taxes nor does it remit taxes directly to any taxing authority. Rather, after the customer completes his or stay, Hotels.com pays the hotel the negotiated rate and keeps the difference between the negotiated and the published rate. Hotels.com also pays an additional amount to cover any applicable sales and/or occupancy taxes, based on the negotiated rate, directly to the hotel...Hotels.com retains the difference between the amount paid by the customer for ' taxes/fees ' and the amount paid to the hotel for applicable taxes ").

(2) **Passenger's cabin** [Vallery v. Bermuda Star Line²⁸⁶ (" 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.²⁸⁷ (passengers purchase a Deluxe Suite and cruiseship substituted its Standard Cabin which was lower in quality); Mirra v. Holland America Lines²⁸⁸ (cabin smaller than promised, wrong sized bed and no sitting area); Donnelly v. Klosters Rederi²⁸⁹ (room unclean); Blair v. Norwegian Caribbean Lines²⁹⁰ (smaller room and bed than promised with stained bedspread); Kornberg v. Carnival Cruise Lines, Inc.²⁹¹ (malfunctioning toilets); Cismaru

v. Radisson Seven Seas Cruises, Inc.²⁹² (accommodations during shore excursion less than satisfactory)];

(3) **Cruise ship's facilities & services** [Godwin, Clients sue agency over Pride of Aloha sailing²⁹³ (" Passengers on a charter cruise of NCL's Pride of Aloha in Hawaii last summer brought a class action lawsuit...(alleging) that the ship was experiencing severe staffing problems and that the crew could not provide adequate food-and-beverage service, cleaning services or safety drills. The ship smelled badly and the food was inedible "); Poulos v. Caesars World, Inc., 379 F. 3d 654 (9th Cir. 2004) (allegations that casinos including those onboard cruise ships " have engaged in ` a course of fraudulent and misleading acts and omissions intended to induce people to play their video poker and electronic slot machines based on a false belief concerning how those machines actually operate as well as the extent to which there is actually an opportunity to win on any given play ` "); Gelfand v. Action Travel Center²⁹⁴ (cruise vessel misrepresented as being new when only refurbished); Boyles v. Cunard Line²⁹⁵ (cruise line misrepresented availability of " Spa at Sea " program); Ricci v. Hurley²⁹⁶ (unclean recreational deck facilities); Donnelly v. Klosters Rederi²⁹⁷ (

failure to provide clean decks and children's playroom);
Grivesman v. Carnival Cruise Lines²⁹⁸ (poor quality of service
aboard cruiseship); Hollingsworth v. Cunard Line Ltd.²⁹⁹ (Poker
game not available on Queen E II)];

(4) **Disabled accessible rooms & facilities** [Disabled
travelers³⁰⁰ present special problems which airlines, both
domestic³⁰¹ and foreign³⁰², hotels³⁰³ and cruise ships need to
address. Now, all cruise ships touching U.S. ports are subject
to the requirements of the Americans with Disability Act³⁰⁴.

However, until recently, some cruiselines did not feel
bound by the directives of the Americans with Disabilities Act³⁰⁵.
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.³⁰⁶, 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.³⁰⁷ (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.³⁰⁸ (crap tables too high for wheelchair-bound players did not violate ADA but handicapped toilet violated Title III); Resnick v. Magical Cruise Co.³⁰⁹ (no standing to sue under ADA); Access Now, Inc. v. Cunard Line Limited, Co.³¹⁰ (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 ³¹¹ (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. ³¹² (travel agents governed by Americans with Disabilities Act); Deck v. American Hawaii Cruises, Inc. ³¹³ (passengers claim cruise ship violated Americans with Disabilities Act)].

Compare Peluso v. Mark Travel Corp., 2011 WL 1468359 (Conn. Super. 2011) (tour operator/travel agent fails to deliver hotel accommodations handicapped accessible).

(5) **Contaminated food & water & Norovirus** [See Linda, Carnival Cruise may have located source of virus outbreak, www.eturbonews.com (3/25/2013) (closure of "the Carnival Cruise Port on Grand Turk in the Turks and Caicos Islands in the wake of an outbreak of a sickness that causes vomiting and diarrhea"); Brown, Cruise Ships Queen Mary 2 and Emerald Princess Hit By Suspected Norovirus, www.abcnews.go.com (12/28/2012); Jackson v. Carnival Cruise Lines, Inc. ³¹⁴ (

passenger becomes ill during cruise and dies after disembarkation; no proof that food poisoning caused illness); Benson v. Norwegian Cruise Line Limited³¹⁵ (passenger eats shellfish, suffers allergic reaction which causes windpipe to swell leading to death " before intubation would be successfully completed "); Tateosian v. Celebrity Cruise Services³¹⁶ (salmonella poisoning); Barbachym v. Costa Lines, Inc.³¹⁷ (food poisoning); Bounds v. Sun Line Cruises, Inc.³¹⁸ (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.³¹⁹ (fire causes breakdown in sanitation and air conditioning systems); Mullen v. Treasure Chest Casino³²⁰ (defective ventilation system causes respiratory illness); Silvanch v. Celebrity Cruises, Inc.³²¹ (defective filter in whirlpool spa causes Legionnaires Disease); Charleston-Coad v. Cunard Line³²² (QEII sailed before major refitting work on cabins and other facilities was complete; asbestos removal); Casper v. Cunard Line Ltd.³²³ (cruise " suffered a breakdown "); Simon v. Cunard Line³²⁴ (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 ³²⁵)].

[L] **Lost, Damaged or Stolen Baggage** [Mainzer v. Royal Olympic Cruises³²⁶ (cruise vessel losses one piece of passenger's baggage for four days); Cada v. Costa Lines, Inc.³²⁷ (baggage damaged by fire); Ames v. Celebrity Cruises, Inc.³²⁸ (baggage loss)].

[M] **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 practices³²⁹ [Vallery v. Bermuda Star Line, Inc.³³⁰ (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 Regulations³³¹ 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 performed³³². 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 claims³³³] .

(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 examined³³⁴ 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 [Wald, A Cruise Line Starts to Clean Up After Itself³³⁵ (" Royal Caribbean International, which pleaded guilty in 1999 to 21 felony (counts) of violating water pollution laws, and paid \$18 million in fines...In October, it turned on new systems on two ships...advanced wastewater treatment plants " ; Carothers, Full Steam Ahead³³⁶ (" When Royal Caribbean said in May that it plans to retrofit its entire fleet with advanced wastewater treatment systems, environmental groups welcomed the news, hoping it might signal a change for the better in the industry's dumping practices ") ; McDowell, For Cruise Ships, A History of Pollution³³⁷ (" 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...³³⁸.

(a) **California Environmental Enforcement Efforts**

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 ")³³⁹.

Insurance: Cancellation Waivers/ Third Party Policies

_____ Krista Carothers of Conde Nast Traveler Magazine prepared an excellent comparison of cruise line policies and third-party policies in 2005 in Playing It Safe³⁴⁰ (" When it comes to protecting your vacation investment...nothing is more important than determining whether you need insurance and, if so, choosing the policy that meets your needs...But that doesn't mean you should automatically accept whatever policy the cruise line or tour operator offers...Almost all travel insurance is sold in packages that bundle together various types of coverage and cost between 4 and 12 percent of the total trip price. The three most important benefits-trip cancellation, trip-interruption and medical coverage will protect you from the kinds of losses that could send you to the poorhouse...Perhaps the most important coverage of all, trip cancellation insurance will reimburse the cost of a cruise or tour if you're forced to call off your plans for any number of covered reasons. These include your falling ill, death or illness of a family member (

which companies define differently)...and a flood or fire in your home...Make sure that whatever policy you buy protects you until the moment your trip begins. Some plans won't cover cancellations within 24 or 48 hours of departure...As an enhancement to an insurance policy, some cruise lines and tour operators offer a cancellation waiver that allows you to back out of your vacation-for any reason-up to a day or two before departure and receive a refund or travel credit, usually for between 75 and 90 percent of the cost of the trip. But a waiver won't cover other things that insurance does. It won't, for instance, pay to help you reach your ship or tour if a blizzard delays your flight, or to get you home if you have to leave your trip early...It can be perilous though to rely on a waiver as your only protection against the unexpected ")].

Litigation Roadblocks In Prosecuting Passenger Claims

Generally, the rights of the cruiseline under maritime law are paramount to those of the injured or victimized passenger [See e.g., Schwartz v. S.S. Nassau³⁴¹, 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 ` ")]. Recently, in Brozyna v. Niagara Gorge Jet Boating, Inc., 2011 WL 4553100 (W.D.N.Y. 2011), wherein a passenger was injured in a jet boat plying the rapids of the Niagara River "when the boat 'came down hard' in the rapids at Devil's Hole", the Court enforced a pre-accident waiver of all liability noting that "there is a clearly stated rule in maritime jurisprudence in favor of allowing parties to enter into enforceable agreements to allocate the risks inherent in maritime recreational activities (in recognition of) the long-recognized national interest in the development of a uniform body of maritime law"). However, in Johnson v. Royal Caribbean Cruises, Ltd., 2011 WL 6354064 (11th Cir. 2011), a cruise passenger was injured on a ship board "Flowrider" (simulated surfing and body boarding activity) and the Court refused to enforce a waiver of all liability citing 46 U.S.C. § 30509)].

Here's how maritime law works to protect the cruise lines from legitimate passenger claims.

(1) Limitation Of Vessel Owner's Liability Act

Ship owners are permitted under The Limitation Of Vessel Owner's Liability Act³⁴² 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 " ³⁴³. The most recent use of the Limitation Act was by the City of New York in seeking to limit its liability for the 2003 death of eleven passengers in a crash of the Staten Island Ferry. " The dispute stems from the city's attempt to limit its liability to \$14 million-the value of the ferry after the crash-based on a maritime law from 1851 " ³⁴⁴.

(a) **Filing A Limitation Proceeding**

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 "³⁴⁵. A Limitation action can, if successful, dramatically limit a passenger's recoverable damages [Matter of the Complaint of UFO Chuting of Hawaii, Inc.³⁴⁶ (" (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.³⁴⁷ (Limitation of Liability Act grants owners the right to seek to limit their liability for ship board injuries); Matter of Illusions Holdings, Inc.³⁴⁸ (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 Med³⁴⁹ (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.³⁵⁰ (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. ³⁵¹ (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 ³⁵² (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. ³⁵³ (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. ³⁵⁴ (para-sailing accident); Mashburn v. Royal Caribbean Cruises, Ltd. ³⁵⁵ (passengers on day trip excursion to Coco Cay Island rent See-Doos 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. Court³⁵⁶ (" 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 "³⁵⁷.

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.³⁵⁸ (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 Cruises³⁵⁹ (time limitations in passenger ticket in English language enforced even though passenger was unable to read English)].

(3) **Time Limitations: Physical Injury Claims**

Many 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.

(a) **One Year In Which To File Lawsuit**

For physical injuries occurring on cruise vessels that touch U.S. ports [Lerner v. Karageorgis Lines³⁶⁰ (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.³⁶¹ (one year time limitation period enforced); Stone v. Norwegian Cruise Line³⁶² (slip and fall in bathroom; time limitations period enforced); Angel v. Royal Caribbean Cruises, Ltd.³⁶³ (passenger falls overboard; one year time limitation enforced); Wall v. Mikeralph Travel, Inc.³⁶⁴ (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.³⁶⁵ (food poisoning; one year time limitation period enforced); Konikoff v. Princess Cruises, Inc.³⁶⁶ (passenger sustained injury exiting taxi during shore excursion; claim dismissed as untimely); Buriss v. Regency Maritime Corp³⁶⁷ (passenger's bunk crashed to floor; one year time limitation enforced)].

(b) **Exceptions To The Rule**

On occasion the Courts may decide not to enforce the one year time limitation [Ward v. Cross Sound Ferry³⁶⁸, (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 Lines³⁶⁹ (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 Westours³⁷⁰ (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 Cruises³⁷¹ (trip and fall in ship's lounge; cruise

line may be estopped from relying on one year time limitation); Rams v. Royal Caribbean Cruise Lines³⁷² (one year time limitation does not apply to accidents during shore excursions); Berg v. Royal Caribbean Cruises³⁷³ (passenger misled into not filing lawsuit within one year)].

(4) Time Limitations: Non-Physical Injury Claims

(a) Six Months In Which To Commence A Lawsuit

For non-physical injury claims cruise lines may impose even shorter time limitation periods [Insogna v. Princess Cruises, Inc.³⁷⁴ (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 Line³⁷⁵ (cruise vessel misrepresented availability of exercise facilities in " Spa at Sea "; six months time limitation to file lawsuit enforced); Cronin v. Cunard Line³⁷⁶ (deceptive port charges; six months' time limitation in which to commence lawsuit enforced)].

(b) **Exceptions To The Rule**

On occasion the Courts may decide not to enforce these particularly short time limitations[Barton v. Princess Cruises, Inc.³⁷⁷ (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 Line³⁷⁸ (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.

(a) **Marketing Through Travel Agents**

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.³⁷⁹ (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.³⁸⁰ (passenger sustains injury in France; no jurisdiction over Massachusetts cruise company); Sanderman v. Costa Cruises, Inc.³⁸¹ (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 Shipping³⁸² (dissemination of cruise brochures through travel agents and

advertising in scuba magazine insufficient to support long arm jurisdiction)].

(b) **The Solicitation Plus Doctrine**

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, Ltd³⁸³ (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 Jurisdiction³⁸⁴, 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.³⁸⁵ (guest drowns in Hong Kong hotel pool; being available for litigation in local forum is reasonable cost of doing business in the forum)].

© **Jurisdiction Over Internet Travel Sellers**

More and more travel services including cruises are being

sold over the Internet either directly by suppliers or through Internet travel sellers such as Expedia and Travelocity.

Establishing jurisdiction over Internet Travel Sellers is discussed in Personal Jurisdiction And The Marketing Of Goods And Services On The Internet available at www.nycourts.gov/courts/9jd/taxcertatd.shtml

(d) **Jurisdiction And Territorial Waters**

Jurisdictional issues may arise when an accident occurs in territorial waters [Benson v. Norwegian Cruise Line Limited³⁸⁶ (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. Flynn³⁸⁷ (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,³⁸⁸ (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 Capri³⁸⁹ (passengers sue bankrupt cruise line for return of contract payments; sureties on performance bond intervene in this *in rem* proceeding)].

(6) **Forum Selection And Mandatory Arbitration 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. Shute³⁹⁰ (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 ")]. Recently, cruiselines have sought to require passengers to resolve their disputes in the context

of mandatory arbitration proceedings [See Gilroy v. Seabourne Cruise Line, Ltd., 2010 WL 1202343 (W.D. Wash. 2012) (arbitration compelled)].

(a) **Forum Selection Clauses Are Generally Enforceable**

Forum selection clauses are, generally, enforceable [Chapman v. Norwegian Cruise Line Ltd.³⁹¹ (" A forum selection clause is 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...' "); Heinz v. Grand Circle Travel³⁹² (passenger on Rhine River cruise sustains injuries " when the ship's automatic doors failed " ; Basel, Switzerland forum selection clause enforced); Schlessinger v. Holland America³⁹³ (Washington forum selection clause enforced); Hughes v. Carnival Cruise Lines, Inc.³⁹⁴ (passenger breaks hip aboard ship; Florida forum selection clause enforced); Pratt v. Silversea Cruises, Ltd.³⁹⁵ (Florida forum selection clause enforced); Morrow v. Norwegian Cruise Line Limited³⁹⁶ (minor

passenger injured when ladder detaches; Florida forum selection clause enforced); Falcone v. Mediterranean Shipping Co.³⁹⁷ (passenger suffers personal injuries on Mediterranean cruise ship; Italy forum selection clause and Italian choice of law clause enforced); Ferketich v. Carnival Cruise Lines³⁹⁸ (passengers trips and falls on stairs; Florida forum selection clause enforced); Enderson v. Carnival Cruise Lines, Inc.³⁹⁹ (passenger contracts appendicitis and removed from ship to shore hospital; Florida forum selection clause enforced); Elliott v. Carnival Cruise Lines⁴⁰⁰ (port skipping because of engine malfunction; Florida forum selection clause enforced); Tateosian v. Celebrity Cruise Services, Ltd.⁴⁰¹ (food poisoning; New York forum selection clause appropriate); Watanabe v. Royal Caribbean Cruises, Ltd.⁴⁰² (passengers injured when Monarch of the Seas struck reef; forum selection clause enforced)].

(b) **Notice Must Be Adequate**

Notice of the forum selection clause should be adequate [Casavant v. Norwegian Cruise Line, Ltd.⁴⁰³ (passengers cancel September 16, 2001; court refuses to enforce forum selection clause because ticket delivered thirteen days before cruise;

clause unenforceable " where the course of conduct of Norwegian was unreasonable and unjust. Here the ticket purchasers took no affirmative action to accept the contract but rather to the contrary, in fact expressly rejected the services offered in the contract due to the legitimate safety concerns stemming from the catastrophic events of September 11, 2001. In these circumstances, as there was neither under Federal maritime law, the allowance of an opportunity...to reject the ticketing contract ' with impunity ' nor, under State contract law, did (the passengers') actions give rise to an accepted contract, we conclude that the forum selection clause is unenforceable "); Ward v. Cross Sound Ferry⁴⁰⁴ (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 Tours⁴⁰⁵ (passenger must have " ample opportunity to examine... contents " of passenger ticket); Schaff v. Sun Line Cruises⁴⁰⁶ (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. Shute⁴⁰⁷ (forum selection

clauses subject to judicial scrutiny for fundamental reasonableness)].

(b-1) **Federal Court Forum Selection Clauses**

Recently, several major cruiselines have drafted and implemented a forum selection clause that not only requires that all lawsuits be brought in a specific forum such as Florida or Washington but that the lawsuit must also be brought in U.S. District Court. The enforcement of what amounts to a " sovereign selection clause " may have the effect of eliminating jury trials otherwise available in State court [See e.g., Garnand v. Carnival Corp., 2006 WL 1371045 (S.D. Tex. 2006) (Florida forum selection clause providing that lawsuits " shall be litigate, if at all, before the United States District for the Southern District of Florida in Miami " enforced); Taylor v. Carnival Corp., 2006 WL 508632 (E.D. Mich. 2006) (motion to enforce Florida Federal court forum selection clause denied because of factual dispute as to whether passenger received ticket prior to embarking); Farries v. Imperial Majesty Cruise Line, 2006 WL 2472189 (N.D. Cal. 2006) (Federal court forum selection providing that all lawsuits must be litigated " in a court

located in Broward County, State of Florida, U.S.A. or the United States District Court, Southern District of Florida, U.S.A. to the exclusion of the courts of any other state or elsewhere in the state of Florida " enforced); Oltman v. Holland America Line-USA, Inc., 2006 WL 2222293 (W.D. Wash. 2006)(Oltmans " fell sick when a gastrointestinal illness broke out among the passengers...the Oltmans filed a complaint against Holland America in King County Superior Court (which) dismiss(ed) Plaintiffs' claims...because a forum-selection clause in the cruise contract required Plaintiffs to bring their lawsuit in this (Federal) court "); Barry v. Carnival Corp., 424 F. Supp. 2d 1354 (S.D. Fla. 2006)(Federal court forum selection clause providing that all lawsuits " shall be litigate...before the United States District Court for the Southern District of Florida in Miami, or as to those lawsuits to which the Federal Courts...lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida...to the exclusion of the courts of any other county, state or country " challenged in declaratory judgment action; " [T]he Plaintiffs (claim) they are harmed by being required to file lawsuits in federal court, and therefore being stripped of their right to a jury trial...Plaintiffs argue: ' If defendant Carnival's latest clause is enforced in...state

court actions, Plaintiffs, who lack diversity of citizenship with Carnival, will thus be relegated to this Court's admiralty side. Plaintiffs are therefore now under a direct and imminent threat of losing their entire common law remedies and concomitant rights to jury trial unless Carnival's clause is declared to be unlawful "...This is simply not sufficient to allege an injury "; passengers have no standing to seek declaratory relief); Assiff v. Carnival Corp., 930 So. 2d 776 (Fla. App. 2006)(Federal Court forum selection clause enforced and claim dismissed; state court has no power to transfer case to federal court); Carnival Corp. v. Middleton, 2006 WL 2819558 (Fla. App. 2006)(State court enforced Federal Court forum selection clause and dismissed case which was refiled in Federal court and dismissed because time barred; State court may not re-instate case and provide allow passengers to challenge Federal court forum selection clause on the grounds that it " violated the passengers' right to a jury trial under the Florida Constitution "); Finkelschtein v. Carnival Cruise Lines, 2006 WL 1492469 (N.J. App. 2006)(Florida Federal court forum selection clause enforced); Oltman v. Holland America Line, 2006 WL 2590066 (Wash. App. 2006)(Washington Federal court forum selection clause enforced)].

As stated in Eriksen, U.S. Maritime Public Policy Versus Ad-hoc Federal Forum Provisions in Cruise Tickets, The Florida Bar Journal, December 2006, p. 22 " For all of the last century, and for most of the current one, nearly all major cruise carriers have complied with the Saving to Suitors Clause by employing ticket provisions offering all passengers their ` historic option ` to sue the carrier in state court (subject of course to a defendant's right to remove an appropriate diversity case from state to federal court pursuant to 28 U.S.C. § 1441).

In 2002 Carnival abruptly deviated from this norm and installed federal forum provisions in passenger tickets for its Carnival Cruise Lines brand. The relevant clause reads:

` It is agreed by and between the Guest and Carnival that all disputes and matters arising under, or in connection with or incident to this Contract or the Guest's cruise, including travel to and from the vessel, shall be litigate, if at all, before the United States District Court for the Southern District of Florida in Miami or as to those lawsuits to which the Federal Court of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida, U.S.A., to the exclusion of the Courts of any other county, state or country `

Norwegian Cruise Line (NCL) adopted an identical clause in 2005. These provisions operate, without expressly saying so, to require suit in nonjury federal admiralty court for all claims failing any requirement for federal diversity (law side) jurisdiction (e.g., citizenship, amount in controversy).

Federal forum provisions in cruise tickets are neither authorized nor required by any government regulation, statute or treaty. They are the carriers' creation, for proprietary use with their own particular passengers.

No carrier has publically announced its reasons for attempting to federalize all its passenger claims at this late date. One plausible explanation is forum-shopping. A carrier cannot deny a nondiversity passenger-suitor a jury trial in state court, but can in federal court where bench trial produce significantly lower median damage awards than juries in comparable cases. Furthermore, economies of scale simply make state court the only common-sense ' fit ' for many relatively minor, albeit meritorious, cruise-related disputes, which would be deterred altogether if they had to be pursued as a proverbial ' federal case '.

(b-2) **As Applied To Non-Signatories**

May a non-signatory to the passenger contract such as a tour operator benefit from a contractual forum selection clause? The Court in Morag v. Quark Expeditions, Inc., 2008 WL 3166066 (D. Conn. 2008) held that " A non-party to a contract may invoke a contractual forum selection clause if the non-party is ' closely related ' to one of the signatories to the contract such that ' the non-party enforcement of the ... clause is foreseeable by virtue of the relationship between the signatory and the party sought to be bound...There is no question that Quark is closely related to the dispute and that its relation to the ticket-contract was foreseeable ". See also: Oran v. Fair Wind Sailing, Inc., 2009 WL 4349321 (D.V.I. 2009)(" Plaintiff Taner Oran's claim for relief arises from injury he suffered when he slipped and fell on bench cushions aboard a forty-five foot catamaran... operated by Fair Wind Sailing "); release applied to non-signatory); Bernstein v. Wysocki, 907 N.Y.S. 2d 49 (N.Y. App. Div. 2010) (camper injured and treated at local hospital; in medical malpractice action forum selection clause in camp contract may not be relied upon by non-signatory medical personnel who treated camper at local hospital since they "do not

have a sufficiently close relationship with the Camp such that enforcement of the forum selection clause by them was foreseeable to the plaintiffs by virtue of that relationship”).

(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 Cruises⁴⁰⁸], Peru [Affram Carriers, Inc. V. Moeykens⁴⁰⁹], Naples, Italy [Hodes v. SNC Achille Lauro⁴¹⁰], the State of Washington [Carron v. Holland America Line-Westours, Inc.⁴¹¹] or Miami, Florida [Hicks v. Carnival Cruise Lines⁴¹²]. 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. Shute⁴¹³]. 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 penalty⁴¹⁴.

(a) **Ticket Should Be Received Early Enough**

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 [LaVoie v. Suncruz Casino Cruises, LLC, 2009 WL 425815 (D.S.C. 2009) (" the ticket issued to the plaintiff after payment stated: 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 to Passenger, notwithstanding any statute or regulation to the contrary, the benefit of which Passenger hereby expressly waives...The plain language of the ticket indicates that the ticket was non-refundable under all circumstances and that the ticket became nonrefundable as soon as

it was purchased. Plaintiff had no notice of the forum selection clause before the ticket became nonrefundable and, as a result, Plaintiff had no means of rejecting the forum selection clause without forfeiting his entire fare. Because the Plaintiff could not have rejected the forum selection clause and cancelled his ticket with impunity, the forum selection clause is unenforceable as it is unreasonable and fundamentally unfair "); Cismaru v. Radisson Seven Seas Cruises,⁴¹⁵ (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 "); Casavant v. Norwegian Cruise Line, 919 N.E. 2d 165 (Mass. App. 2009) (passengers cancelled cruise a few days after September 11, 2001; " When they booked the cruise, the Casavants received a ' Passenger Invoice and Confirmation ' which stated...' Cancellation Fees ' , that fifty percent forfeiture would be imposed for cancellation fifteen to twenty-nine days prior to departure, and a one hundred percent forfeiture

would be imposed for cancellation from zero to fourteen days prior to departure...(Later) Norwegian sent ` Passenger Ticket Contracts ` to the Casavants who received them in early September 2001...(passenger ticket contract paragraph 2 stated)

[Norwegian] shall not be liable to make any refund to passenger in respect of lost tickets or in respect of tickets wholly or partly not used by a passenger...At all relevant times, Norwegian had an additional refund and cancellation policy in force that was not included in any of the initial materials the Casavants received when purchasing their tickets. That policy appears to have been disclosed (after the claim arose and provided) ` passengers with a 100% refund if they have an objection to a provision in the Passenger Ticket Contract...The proper inquiry is whether Norwegian violated the Attorney General's regulations which required Norwegian to furnish its refund policy to the Casavants prior to accepting payment... Norwegian failed to do so, and thus its conduct...constituted an unfair or deceptive practice...In this case, Norwegian did not agree to refund the ticket price until at least four years after the departure date of the cruise. During this time, the Casavants endured litigation that required them to expend considerable time, money and effort. The case is remanded for a determination of the Casavants's...damages, reasonable

attorney's fees and costs...(also entitled) to their reasonable appellate attorney's fees and costs "); Long v. Holland America Line Westours, Inc.⁴¹⁶ (" 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 Ferry⁴¹⁷ (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.⁴¹⁸ (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.⁴¹⁹ (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 Lines⁴²⁰ (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.⁴²¹ (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 Limited⁴²² (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)].

(b) **Notice Adequate Despite Cancellation Penalties**

Other Courts, however, have rejected this concept

[Ferketich v. Carnival Cruise Lines⁴²³ (" 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 Lines⁴²⁴ (" 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.⁴²⁵ (time limitations clause enforced notwithstanding cancellation penalty of 90%); Boyles v. Cunard Line Ltd.⁴²⁶ (passenger ticket contract enforceable notwithstanding significant cancellation fee); Hicks v. Carnival Cruise Lines, Inc.⁴²⁷ (contract terms not necessarily unreasonable because of the imposition of penalties if passenger canceled); Lauri v. Cunard Line Limited⁴²⁸ (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.⁴²⁹ (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, Limited⁴³⁰ (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.⁴³¹ (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 ")].

© **Cancellation Penalties Must Be Reasonable**

Some courts may not enforce a cancellation or liquidated damages charge if it is a penalty or unreasonable [Sub-Zero Freezer Co., Inc. v. Cunard Line Limited⁴³² (freezer manufacturer cancels contract for cruise for its dealers because of September 11, 2001 terrorist attacks and seeks return of \$892,000 prepayment none of which cruise ship agrees to refund relying on " clause 9 "; " I cannot say that Clause 9 of the contract is a reasonable substitute for defendant's actual damages...no evidence about the

costs incurred by defendant as a result of the plaintiff's unilateral breach of the agreement ")].

(9) **Physical Disabilities Exception**

Some courts have refused to enforce a forum selection clause on the grounds of public policy [Walker v. Carnival Cruise Line ⁴³³ (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 cruiseline sought to enforce a forum selection clause and transfer the case from California to Florida. Initially, the Court granted the cruiseline'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 "). But see Caputo v. Holland America
Line, Inc., 2009 WL 2258326 (E.D.N.Y. 2009) (Washington (
federal) forum selection clause enforced; " Plaintiff and her
husband, a key witness, are elderly. Plaintiff states...that she '
cannot travel ' and it would be a ' severe hardship ' for her to
attend trial in Washington State due to her age and medical
restrictions. However, plaintiff's physician testified that
although plaintiff would suffer discomfort if she were to take a
long journey, it would not be medically unsound to do
so...defendant has stipulated that it will conduct video tape
depositions of plaintiff, her husband and her treating physicians
to minimize the difficulty to conducting the litigation "); Pratt
v. Silversea Cruises, Ltd.⁴³⁴ (Florida forum selection clause
enforced; " While the Court does not adopt a broad rule that a
physical disability alone is never enough, it cannot conclude from
the facts here that this plaintiff will be deprived of her day in
court ")].

(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 Francaise⁴³⁵ (choice of Bahamian law clause enforced; cruise between Singapore and Australia)],

or **China** [Jewel Seafoods Ltd. v. M/V Peace River⁴³⁶ (choice of Chinese law clause enforced)]

or **Italy** [Falcone v. Mediterranean Shipping Co.⁴³⁷ (" 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 ")]

or **England** [Morag v. Quark Expeditions, Inc., 2008 WL 3166066 (D. Conn. 2008) (" Plaintiffs are correct that the proposed London, England forum seems remote and inconvenient to all parties, none of which is incorporated, maintains its principal place of business or is a citizen or resident of England. The only apparent links to London in this case are the forum selection clause in the passage contract and choice of law clause in (the agreement) and the fact that more than twenty of

the other passengers on board the (ship) were from the United Kingdom. None of these facts suggests that London would be a convenient forum for two Israeli citizens to sue a Connecticut based corporation for injuries arising out of a trip aboard foreign cruise liner sailing the Drake Passage. However, unfortunately for the Morags, as the Second Circuit, has written in a similar case, ' we are concerned here with a forum of contract, not of convenience '...Plaintiffs have shown nothing fundamentally unfair, despite its inconvenience, about the mandatory forum selection clause, and the Court is convinced that the forum selection clause was reasonably communicated so as to permit the Morags to be meaningfully informed of the contractual terms at stake "; London, England forum selection clause enforced)

or **France** [Seung v. Regent Seven Seas Cruises, Inc., 2010 WL 3273535 (11th Cir. 2010) (passenger injured while onboard M/S Paul Gauguin; French forum selection clause enforced; "For all cruises which include a port of the United States of America...any disputes...shall be determined by the United States District Court for the Southern District of Florida in Fort Lauderdale...For all cruises which do not include a port of the United States...all disputes...shall be litigated and determined, if at all, before a

court of competent jurisdiction in Paris, France...Seung's cruise departed from Tahiti and was to travel only within French Polynesia"); Burns v. Radisson Seven Seas Cruises, Inc., 867 So. 2d 1191 (Fla. App. 2004) ("the Paul Gauguin both departed and returned from a foreign locale, never making contact with any ports or waters of the United States...it is reasonable that Radisson selected Paris, France as a neutral location in order to dispel confusion as to where passengers from a variety of countries could bring a lawsuit")

or pursuant to the **Strasbourg Convention** [Heinz v. Grand Circle Travel ⁴³⁸ (passenger sustains injuries on Rhine River cruise; Basel, Switzerland forum selection clause enforced; cruise contract also provides that liability issues will be resolved pursuant to the Strasbourg Convention)]. 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 ⁴³⁹] .

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.⁴⁴⁰ (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, SPA⁴⁴¹].

(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 Aviation⁴⁴²]. 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, Ltd⁴⁴³]. 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 Court⁴⁴⁴]. 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 Hotel⁴⁴⁵].

(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 Transatlantique⁴⁴⁶]. 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 Marine⁴⁴⁷]. However, cruise ships that touch U.S. cruise ships may not disclaim liability for ordinary negligence on board the ship [See Johnson v. Royal Caribbean Cruises, Ltd., 11th Cir. 2011) (a release waiving all claims against cruise line for injuries sustained on Flow Rider (simulated surfing machine) void as contrary to 46 U.S.C. § 30509)].

(a) **Implied Warranties Of Merchantability**

In Bird v. Celebrity Cruise Line, Inc., 428 F. Supp. 2d 1275 (S.D. Fla. 1279), a case involving a passenger who claimed to have been " diagnosed with bacterial enteritis, a disease she allegedly contracted as a result of food poisoning ", the Court refused to imply a warranty of merchantability [" courts have manifested a strong reluctance to imply warranties in contracts governed by admiralty law "], especially, where such a warranty is expressly disclaimed [" the only mention of food or beverage in the parties' contract disclaims any warranty as to the food or

drink furnished: ` No undertaking or warranty shall be given or shall be implied as to the seaworthiness, fitness or condition of the Vessel or any food or drink supplied on board ' `] .

(b) **Health & Safety**

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 Lines⁴⁴⁸ (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**

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 Star⁴⁴⁹ (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.⁴⁵⁰ (medical malpractice claim against cruise ship for " negligent acts of the ship's doctor and nurse " dismissed); Cimini v. Italia Crociere International⁴⁵¹ (cruise ship disclaimer of liability for malpractice of ship's doctor enforced)].

(a) **Policy Unfair**

This policy is unfair and has been criticized by some Courts [see e.g., Nietes v. American President Lines, Ltd.⁴⁵² (cruise ship vicariously liable for medical malpractice of ship's doctor who was a member of the crew); Fairley v. Royal Cruise Line Ltd.⁴⁵³ (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 Decisis⁴⁵⁴ (" 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 ")]

(b) **The Carlisle Case**

In Carlisle v. Carnival Corp⁴⁵⁵ 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 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 Circuit⁴⁵⁶ 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. ". Unfortunately, the Florida Supreme Court reversed this decision in Carlisle v. Carnival Corp., 953 So. 2d 461 (Fla. Sup. 2007).

© Recent Developments In Medical Malpractice Cases

Recently, however, a few courts have allowed the victims of medical malpractice to assert a claim against the cruise line based on apparent agency and negligent or fraudulent misrepresentations [See Lobegeiger v. Celebrity Cruises, Inc., 2911 WL 3703329 (S.D. Fla. 2011) ("Plaintiff alleges Celebrity 'held out' Dr. Laubscher as an officer of the ship's crew 'through his title, his uniform, his living quarters on board the ship and his offices on board the ship'...Taking these allegations as true, Plaintiff has sufficiently alleged that Celebrity made manifestations which could cause Plaintiff to believe Dr. Laubscher was an agent of Celebrity"; cause of action for fraudulent misrepresentation stated); Lobegeiger v. Celebrity Cruises Inc., 2012 WL 2402785 (S.D. Fla. 2012) (summary judgment for defendant on apparent agency theory of liability for medical malpractice); Hill v. Celebrity

Cruises, Inc., 2011 WL 5360247 (S.D. Fla. 2011) (no actual agency; no apparent agency; but misrepresentation that ship would have two doctors but only provided one stated claim for negligent misrepresentation).

(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 Westours⁴⁵⁷ (bus accident during shore excursion; disclaimer of liability enforced); Henderson v. Carnival Corp.⁴⁵⁸ (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.⁴⁵⁹ (day trip to Coco Cay Island owned by cruiseline; passengers rent Sea-Doo, sign waiver and are injured in accident; no negligence found)].

Recently, in Brozyna v. Niagara Gorge Jet Boating, Inc., 2011 WL 4553100 (W.D.N.Y. 2011), wherein a passenger was injured in a jet boat plying the rapids of the Niagara River "when the boat 'came down hard' in the rapids at Devil's Hole", the Court

enforced a pre-accident waiver of all liability noting that "there is a clearly stated rule in maritime jurisprudence in favor of allowing parties to enter into enforceable agreements to allocate the risks inherent in maritime recreational activities (in recognition of) the long-recognized national interest in the development of a uniform body of maritime law"). However, in Johnson v. Royal Caribbean Cruises, Ltd., 2011 WL 6354064 (11th Cir. 2011), a cruise passenger was injured on a ship board "Flowrider" (simulated surfing and body boarding activity) and the Court refused to enforce a waiver of all liability citing 46 U.S.C. § 30509.

(a) **Warranties Of Safety**

Such a disclaimer may not be enforceable if the injured passenger relied upon representations, or warranties regarding safety [Bergonzine v. Maui Classic Charters⁴⁶⁰ (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.

(b) **Limited In Scope**

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 Company⁴⁶¹ (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)]. In addition, recreational disclaimers may be limited to only the signatory not the heirs of his or her estate [Gershon v. Regency Diving Center, Inc.⁴⁶² (exculpatory release does not prevent heirs of decedent from commencing wrongful death action; " On its face the release only manifests decedent's intention to waive defendants' duty of care pertaining to his personal safety. In order for such a waiver to also apply to decedent's heirs, the agreement must manifest the unequivocal

intention of such heirs to be so bound ")].

(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 Limited⁴⁶³ (storm); Domblakly v. Celebrity Cruises, Inc.⁴⁶⁴ (passengers injured when cruise ship battered by hurricane); In re Catalina Cruises, Inc.⁴⁶⁵ (passengers injured when cruise ship sails into storm); Williams v. Carnival Cruise Lines, Inc.⁴⁶⁶ (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 Majestic⁴⁶⁷ " 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 sea⁴⁶⁸, snowstorms [Alstrom Machinery, Inc. v. Associated Airfreight, Inc.⁴⁶⁹ (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.⁴⁷⁰ (charter tour passengers confined in airport for 2 ½ days during snowstorm), a typhoon or volcanic eruption [DeVera v. Japan Airlines⁴⁷¹ (Manila Airport closed

because of volcano and typhoon) or a revolution or civil disorder [Jamil v. Kuwait Corp.⁴⁷² (flight delayed 4 days due to coup in Pakistan) or a pilot's strike [Leake v. American Airlines, Inc.⁴⁷³ (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 carrier must prove that it acted reasonably to reinstitute the transportation service once the snowstorm or unexpected event ceased [Bernstein v. Cunard Line⁴⁷⁴].

(a) **Hurricane Season**

[Edelman & Mercante, Of Hurricanes, Acts of God and Admiralty Jurisdiction⁴⁷⁵ (" Hurricane season is here. No one disputes that a hurricane is an act of Mother Nature, or at law, an ' act of god '. The disputes arise when it is asserted as a defense...A shipowner will invoke this defense, sometimes referred to as ' peril of the sea ' against cargo lost or damaged at sea, sinking, charter disputes, third-party property damage and personal injury claims...Similar phrases such as ' inevitable accident ' and ' force majeure ' are sometimes used as the

functional equivalent of ' act of god. This is not always accurate, however. For example, unlike an act of god a force majeure can constitute governmental intervention resulting from the necessities of war...A severe weather condition of hurricane force is considered in law to be an act of god. A hurricane also qualifies as ' heavy weather '"]].

(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 Lines⁴⁷⁶ (malfunctioning toilets; disclaimers not enforced); Johnson v. Royal Caribbean Cruises, Ltd., 2011 WL 6354064 (11th Cir. 2011), a cruise passenger was injured on a ship board "Flowrider" (simulated surfing and body boarding activity) and the Court refused to enforce a waiver of all liability citing 46 U.S.C. § 30509)]. 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 ".

(a) **Athens Convention Disclaimer**

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.⁴⁷⁷

(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 also: Wajnstat v. Oceania Cruises, Inc., 2012 WL 2332841 (11th Cir. 2012) ("The district court applied the 'reasonable communicativeness' test...to determine whether the non-negotiated limitation of liability provision (Athens Conventions) was enforceable...it was confusing and...required the passengers to parse through the treaties and the statutes to determine the limits of Oceania's liability");

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

While the United States is not yet a signatory to the Athens Convention passengers on cruises that do not touch a U.S. port should be aware of it's 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.⁴⁷⁸]. The 1976 Protocol to the Athens Convention provides a damage limit of 46,666 SDRs, while the 1990 Protocol provides for 175,000 SDRs.

(a) **May Apply To 20% Of U.S. Cruise Passengers**

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 "⁴⁷⁹. 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 “⁴⁸⁰

(b) **Limitations Enforceable**

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.⁴⁸¹ (cruise from Italy to Portugal governed by monetary limits of Athens Convention); Kirman v. Compagnie Francaise⁴⁸² (accident on cruise between Singapore and Australia; Athens Convention applies)] as long as there has been sufficient notice [Wallis v. Princess Cruises, Inc.⁴⁸³ (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)].

The Athens Protocol 2002

Paul Edelman in his article The Athens Protocol 2002 published in The Maritime Law Association Cruise Lines and

Passenger Ships Committee Newsletter, Vol. 5, No. 3 (April 18, 2012), p. 4 clarified the significance of the proposed changes to the Athens Protocol which the U.S. has not yet ratified.

“Everyone who handles cruise line cases knows that the fine print in a cruise ticket now goes something like this: in the event of a voyage which does not touch a U.S. port and there is a personal injury or death, the Athens Convention shall apply which limits recoveries to about \$68,000 (or \$70,000 in some cases). There are conflicting decisions as to whether U.S. courts will enforce this provision since the U.S. is not a party to it. Several district and state court opinions have enforced the damage limitation as a matter of contract law in completely foreign voyages, while some have refused...The 2002 Protocol makes a radical change in the amount recoverable. On December 12th of 2011 the European Community (EC) promulgated an adherence to the 2002 Protocol. It is mandatory for each of the over 25 EC countries to follow it and make it enforceable by (December 31, 2012). Ten countries are required to adhere to it to put it into force...The new Protocol makes the cruise line absolutely liable up to 250,000 SDR's (Special Drawing Rights each valued at about \$1.53) and for damages based upon fault the limit is \$400,000 SDR's. But the cruise line must prove it was not at fault for amount beyond the

250,000 SDR's. Cabin luggage is up to 2250 SDR's and other baggage at 3375 SDR's. Thus there is absolute liability up to about \$384,000...Other important provisions include a direct action against an insurer and compulsory insurance or a bank guarantee, etc...Jurisdiction for suit includes (1) the residence or place of business of the defendant, (2) the place of departure or destination, (3) plaintiff's residence if the defendant is subject to jurisdiction and has a place of business and (4) where the ticket was issued if defendant had a place of business there and is subject the court's jurisdiction".

Death On High Seas Act (DOHSA): Pecuniary Damages Only

As noted in Leesfield, Cruise Ship Litigation at www.plaintiffmagazine.com (October 2009) DOHSA "provides a wrongful death remedy limited to pecuniary damages for fatalities on the high seas (and has been applied to the) death of a snorkeler from a heart attack in Mexican territorial waters during an expedition off the beaches of Cozumel (Moyer v. Kloseters Rederi, 645 F. Supp. 620 (S.D. Fla. 1986)), the death of a snorkeler in Jamaican waters when the decedent was struck by the propeller of a 22-foot motorboat (Kunreuther v. Outboard Marine

Corp., 757 F. Supp. 633 (E.D. Pa. 1991) and the death of a cruise ship passenger of complications from an injury sustained on a gangway of a vessel in Mexican territorial waters (Howard v. Crystal Cruises, 41 F 3d 527 (9th Cir. 1993))”.

See also: Lasky v. Royal Caribbean Cruises, Ltd., 2012 WL 381207 (S.D. Fla. 2012) (passenger slips and falls on Navigator of the Seas and sustains neck fracture; DOHSA limits recoverable losses to pecuniary damages only).

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

1. Higgins, So, Just How Safe Is Your Ship?, <http://travel.nytimes.com> (2/6/2012).

2. Piore, The Informer, Staying Afloat, Conde Nast Traveler, June 2012, pp. 49-55 (“The dramatic end of the Costa Concordia, ripped open by rocks off the Tuscan coast, has lawmakers asking if the regulations governing cruise ship safety have kept pace with the industry’s rapid growth”).

3. Linda, Assuring the cruise industry and its ports of call, www.eturbonews.com (3/6/2012).

4. Rosenblum, How Normal Are Cruise Mishaps?,

<http://travel.nytimes.com> (5/13/2013) ("Ross A. Klein...is an authority on the cruise industry...His Web site, CruiseJunkie.com, is a record of fires, sunken ships, collisions and other events at sea over the last few decades...I used the statistics Mr. Klein does have—to help determine just how rare (or not) the events aboard the Triumph were...Fires are not unusual. There have been about 79 fires aboard cruise ships between 1990 and 2011, according to Mr. Klein's data. Up until about 2006 there were usually three or four fires a year. From 2006 onward the number of fires doubled to about seven or eight a year").

5. Meier and Schwartz, Lack of Backup Power Puts Cruise Passengers at the Ocean's Mercy, <http://www.nytimes.com> (2/25/2013). See also: Pestronk, For Carnival Triumph passengers, three obstacles to recovery, www.travelweekly.com (March 4, 2013) (discussing clauses in passenger tickets featuring a Miami-Dade County, Florida forum selection clause, class action waiver and no emotional distress damages unless caused by the passenger's physical injury).

6. Medina, Crippled Cruise Ship Reaches Shore, www.nytimes.com (November 12, 2010). See also: Meier and Schwartz, Lack of Backup Power Puts Cruise Passengers at the Ocean's Mercy, <http://www.nytimes.com> (2/25/2013) ("'It was really hell'...A preliminary Coast Guard inquiry into the Splendor found glaring deficiencies in its firefighting operations, including manuals that called for crew members to 'pull' valves that were designed to turn").

7. Cogswell, Star Princess fire lowers Carnival's earnings, www.travelweekly.com (April 3, 2006) ("One person dies and 11 people were injured as a result of the fire, which started as the ship sailed between Grand Cayman and Jamaica and burned 100 cabins").

8. Carpenter, Yan and Mungin, Carnival Legend back in Florida after week of troubled voyages, www.cnn.com (March 17, 2013).

9. Limone, Carnival Legend skips call due to propulsion problems, www.travelweekly.com (March 15, 2013).

10. Steinmetz, US Memorial Day turned into a nightmare for 2000+ passengers onboard a Royal Caribbean Cruise, www.eturbonews.com (5/28/2013).

11. For a discussion of how cruiseships market shore excursions see

Perry v. Hal Antillen NV, 2013 WL 2099499 (W.D. Wash. 2013) (shore excursion accident; discussion of relationships between cruiseline, ground tour operator and subcontractor transportation providers; theories of liability); Koens v. Royal Caribbean Cruises, Ltd., 774 F. Supp. 2d 1215 (S.D. Fla. 2011) and Smolnikar v. Royal Caribbean Cruises, Ltd., 787 F. Supp. 2d 1308 (S.D. Fla. 2011).

12. See also Perrin, What I Learned Moonlighting as a Cruise Ship Trainee www.cntraveler.com/perin-post/2013/04 ("Cardozo works year-round, planning, scheduling and executing shore excursion for demanding passengers...These day trips are big business for the cruise lines: Royal Caribbean expects Navigator of the Seas to earn between \$600,000 and \$1,100,000 per week in onboard revenue, including tour sales").

13. Samuels v. Holland America Line-USA Inc., 656 F. 3d 948 (9th Cir. 2011) (cruise passenger goes swimming at Lover's Beach (no lifeguards, no warning signs, not the property of the cruiseline) during stopover in Cabo San Lucas on Mexico's Baja Peninsula and is rendered quadriplegic after being pummeled by a turbulent wave alleges failure to warn of dangers of swimming at Lover's Beach; court found no failure to warn because plaintiff's expert testimony excluded and "with the exception of (plaintiff) 96,000 Holland American passengers visited Cabo San Lucas in 2008 without a single report that any of those passengers who chose to visit Lover's Beach were injured while doing so. Nor was Holland America aware of any similar accident, or any accident at all, that had previously occurred while a Holland America passenger was swimming on the Pacific side of the Lover's Beach...Because Holland American had neither actual nor constructive notice of a dangerous condition on the Pacific Ocean side of Lover's Beach, it had no duty to warn...about swimming there").

14. Belik v. Carlson Travel Group, 2012 WL 4511236 (S.D. Fla. 2012) (passenger purchases cruise aboard Carnival's Valor from Carnival's agent U.S. based Travel Leaders Group LLC and Travel Leaders Leisure Group LLC (SinglesCruise) which also sold plaintiff "a port-of-call excursion in Cozumel, Mexico known as the 'Cozumel Beach Party'. The event was at the ½ Senor Frogs Restaurant in the port of Cozumel...(and plaintiff alleges that Carnival and SinglesCruise) knew the passengers attending...would be drinking and partying and would be encouraged to slide, jump and dive into the waters from seawall adjacent to the ½ Senor Frogs Restaurant (which plaintiff did) hit(ing) his head on the

ocean floor resulting in tetraplegia"; motion to dismiss on the grounds of no personal jurisdiction and/or forum non conveniens denied; admiralty jurisdiction extends "'beyond the gangplank'" to shore excursions and applies to Carnival and all other foreign defendants; forum non conveniens motion denied as inadequately addressed by the parties).

15. *Chaparro v. Carnival Corporation*, 693 F. 3d 1333 (11th Cir. 2012) (plaintiff passengers took a cruise aboard Carnival's M/V Victory during which a Carnival employee urged plaintiffs to visit Coki Beach and Coral World which plaintiffs did; "On their way back to the ship from Coki Beach (plaintiffs) rode an open-air bus past a funeral service of a gang member who recently died in a gang-related shooting near Coki Beach...While stuck in traffic, gang-related retaliatory violence erupted at the funeral, shots were fired and Liz Marie was killed by gunfire which she was a passenger on the bus"; motion by Carnival to dismiss denied, claim stated for failure to warn; complaint alleged, inter alia, "Carnival was familiar with Coki Beach because it sold excursion to passengers to Coki Beach; Carnival generally knew of gang violence and public shootings in St. Thomas; Carnival knew of Coki Beach's reputation for drug sales, theft and gang violence...Carnival failed to warn (passengers) of any of these dangers; Carnival knew or should have known of these dangers because Carnival monitors crime in its ports of call; Carnival's negligence in encouraging its passengers to visit Coki Beach and in failing to warn disembarking passengers of general or specific incidents of crime in St. Thomas and Coki Beach caused Liz Marie's death").

16. *Carnival Corporation v. Operadora Aviomar S.A.*, 2012 WL 3260310 (S.D. Fla. 2012) (employee of Carnival injured during an ATV shore excursion in Acapulco, Mexico owned and operated by Operadora Aviomar S.A.; motion to dismiss for lack of subject matter jurisdiction granted; contract between parties allowing Aviomar "a provider of land-based excursion at ports-of-call, to sell shore excursions to the passengers of plaintiff" is not a maritime contract which would invoke admiralty subject matter jurisdiction under 28 U.S.C. 1333).

17. *Bridgewater v. Carnival Corporation*, 2011 WL 4383312 (S.D. Fla. 2011) ("Plaintiff, a passenger on the Carnival Conquest, participated in a catamaran sailing excursion on Montego Bay, Jamaica which was operated by (Jamaican company Rhapsody Tours,

Charters & Cruise Limited). Lightning struck at or near the catamaran and Plaintiff was injured as a result"; discovery to establish relationship between domestic cruise line and foreign ground service provider).

18. *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308 (S.D. Fla. 2011) (cruise line passenger injured while participating in a "zip line" excursion tour in Montego Bay, Jamaica operated by independent contractor Chukka Caribbean Adventures Ltd. (Chukka) and Court addressed three theories of liability against the cruiseline one of which was a failure to warn of the dangers of using a zip line finding that based on Florida law the cruise line had such a duty which could not be disclaimed (46 U.S.C. 30509) but under the circumstances of this case the dangers were apparent and obvious; the duty of a shipowner to its passengers "includes a duty to warn passengers of dangers the cruise line knows or reasonably should have known...For cruise ships...this duty to warn extends 'beyond the port' to 'places where the passenger is invited to, or reasonably may be expected to visit'...But this duty encompasses only 'those dangers which are not apparent and obvious to the passenger... Here, it is simply unreasonable to posit that the danger of slamming into a tree at high speed without adequate protection (as alleged...) Is a risk inherent to participating in a zip line tour...Nonetheless...(plaintiff) has not submitted or referenced any evidence (that) Royal Caribbean knew or should have known that there was any alleged safety issue at traverse #6 of...zip line tour...Royal Caribbean had positive information about (zip line operator) and there is no evidence that Royal Caribbean received any form of notice regarding the existence of an alleged danger").

19. *Koens v. Royal Caribbean Cruises, Ltd.*, 774 F. Supp. 2d 1215 (S.D. Fla. 2011) (during shore excursion to Earth Village plaintiffs were assaulted and robbed and "feared for their safety"; no duty to warn of high crime rate in Nassau; "Permitting Plaintiffs to proceed on their claim of negligence against Defendant solely because of a rising crime rate in Nassau would improperly expand a cruise line's duty to its customers. Here, there are no allegations...that RCL knew or should have known of dangerous conditions on either the Caribbean Segway Tour or on the grounds of Earth Village Nature Preserve").

20. *Young v. Carnival Corp.*, 2011 WL 465366 (S.D. Fla. 2011) (during shore excursion cruise passenger slips and falls during Laughton Glacier Hike Tour; cruiseline disclaimer of liability for

misconduct of shore excursion operator enforced and no duty to warn of open and obvious dangers; "Surely, as an experienced hiker, plaintiff understood he would be traversing uneven, rugged terrain and that tripping is a risk posed by the activity").

21. Zapata v. Royal Caribbean Cruises, Ltd., 2013 WL 1296298 (S.D. Fla. 2013) (cruise passenger purchased excursion tickets onboard cruise ship featuring "bell diving" during which decedent is asphyxiated, brought to the surface for oxygen but unfortunately the oxygen tank was empty whereupon decedent became unconscious and died; claims against cruise line RCCL governed by Death on the High Seas Act (DOHSA) eliminating recovery of non-pecuniary damages; claims for negligent selection or retention of excursion operators and apparent agency or agency by estoppel legally sufficient if appropriate facts pleaded; claims of joint venture and third party beneficiary theory dismissed as expressly disclaimed in Tour Operator Agreement); Zapata v. Royal Caribbean Cruises, Ltd., 2013 WL 1100028 (S.D. Fla. 2013) (claims against Bermuda excursion operator dismissed on grounds of no personal jurisdiction).

22. Joseph v. Carnival Corp., 2011 WL 3022555 (S.D. Fla. 2011) ("Plaintiff does not allege that Carnival advised the decedent of the parasail vendor that the decedent ultimately selected. Plaintiff does not allege that the fatal parasailing excursion was sponsored or endorsed by Carnival or that any agency relationship existed between Carnival and the parasail vendor chosen by the decedent...Plaintiff has failed to allege facts sufficient to trigger a duty to warn about damages of parasailing).

23. Perry v. Hal Antillen NV, 2013 WL 2099499 (W.D. Wash. 2013) (cruise passenger returning from cruiseline recommended and promoted shore excursion run over by shore excursion tour bus; extensive discussion of liability issues regarding cruiseline which recommended and promoted shore excursion, local ground operator and tour bus that transported cruise passengers to and from shore excursion; liability theories include agency by estoppel, third party beneficiary, failure to disclose, negligent selection, joint venture, warranty of safety, negligent supervision and damages limitation under Washington's Consumer Protection Statute).

24. The danger to passengers of participating in shore excursions was recently demonstrated when twelve cruise passengers were killed during a stop over in Chile. See Parry, Dead, Injured in

Chilean Bus Crash Return Home, *The Journal News*, p. 7B (March 25, 2006) (The passengers were part of " 64-member B'nai B'rith group that was traveling aboard the cruise ship Millennium... (who) had made a side excursion to see the mountains on a tour bus that tumbled more than 300 feet down a mountainside ".

25. See e.g., *Perry v. Hal Antillen NV*, 2013 WL 2099499 (W.D. Wash. 2013) (a cruise passenger was run over by a tour van hired as a subcontractor by the tour operator Rain Forest Aerial Tram, Ltd. (RFAT) which had entered into a contract with the cruiseline (HAL) and executed a copy of a manual entitled 'Tour Operator Procedures and Policies' (TOPPS) which required "a tour operator in the Caribbean to obtain minimum limits of auto and general liability insurance of 'US\$2.0 million/accident or occurrence'... [s]hould the Operator subcontract for services (such as aircraft, rail, tour buses or watercraft), the Tour Operator must provide a list of its subcontractors and evidence of the subcontractor's insurance". The cruiseline asserted that RFAT "was 'required to assure that any subcontractor it used to provide excursion related services had in place the equivalent USD 2,000,000 in auto and general liability coverage". Here, it was discovered after the accident that the tour van operator only had \$85,000 in insurance coverage and the Court held that the plaintiffs were third party beneficiaries of TOPPS and had a claim against RFAT for failing to disclose to HAL that tour van operator was a subcontractor and was only insured up to \$85,000.

26. See e.g., *Smolnikar v. Royal Caribbean Cruises, Ltd.*, 787 F. Supp. 2d 1308 (S.D. Fla. 2011).

27. See e.g., *Young v. Carnival Corp.*, 2011 WL 465366 (S.D. Fla. 2011) (during shore excursion cruise passenger slips and falls during Laughton Glacier Hike Tour; cruiseline disclaimer of liability for misconduct of shore excursion operator enforced and no duty to warn of open and obvious dangers; "Surely, as an experienced hiker, plaintiff understood he would be traversing uneven, rugged terrain and that tripping is a risk posed by the activity"); *Smolnikar v. Royal Caribbean Cruises, Ltd.*, 787 F. Supp. 2d 1308 (S.D. Fla. 2011) (cruiseline disclaimer limiting ship's liability for accidents during shore excursions does not apply to claims of negligent failure to warn and negligent selection of tour operators and ground service providers).

28. See Jainchill, Post-9/11, travel insurance sales are booming, www.travelweekly.com (June 5, 2006).

29. Klein, *After Attack, Cruise Ships Rethink Security*, *Practical Traveler*, *New York Times Travel Section*, December 4, 2005, at p. 6. See also: Nagourney and Gettleman, *Pirates Brutally End Yachting Dream*, nytimes.com, February 22, 2011 ("Jean and Scott Adam shared a dream through 15 years of marriage: to retire, build a boat and sail the world. And that is precisely what they did, heading out in 2004 from Marina Del Rey, Calif., on a custom-built 58 yacht for a permanent vacation that brought them to exotic islands and remote coastlines...The dream came to a brutal end...when the Adams and their crew...were killed by pirates off the coast of Somalia in one of the most violent episodes since the modern-day piracy epidemic began several years ago...The killings underscore how lawless the seas have become in that part of the world. Just about every week another ship gets hijacked. More than 50 vessels, from fishing trawlers...to giant freighters and oil tankers are currently being held captive, with more than 800 hostages...The Somali seas are now known as the most perilous in the world, crawling with young gunmen in lightweight skiffs cruising around with machine guns, looking for quarry...Many pirate crews are paid by wealthy Somali business men who later get a cut of the ransom").

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31. Steinmetz, *UK warns Brits to stay away from coastal areas in Kenya*, www.eturbonews.com (10/6/2011)).

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177. See e.g., Princess Cruise Lines. Ltd. v. Superior Court, 179 Cal. App. 4th 36 (Cal. App. 2010) (" The Wangs bought tickets...in 2005 for a two-week cruises with stops in six northern European cities. They also purchased and paid for shore excursions that were offered as part of the cruise. The gravaman...is that Petitioner represented that the shore excursions were operated and controlled by third parties and not Petitioner, who were independent contractors and that, as far as the shore excursions were concerned, Petitioner only served as an agent for these independent operators. In truth, the complaint alleges, Petitioner effectively controlled the operators of the shore excursions and ' inflated charges for shore excursions which

exceeded the price the shore excursion providers were actually charging for those services "; claims brought on behalf of all California residents who were passengers on cruises operated by Petitioner who paid prices for shore excursions that were ' in excess of the shore excursion operator's actual price ' "; summary judgment for defendant should be granted); 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 ").

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