

The Cruise Passenger’s Rights and Remedies 2014: The COSTA CONCORDIA Disaster: One Year Later, Many More Incidents Both on Board Megaships and During Risky Shore Excursions

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I. A VERY BAD YEAR FOR MEGASHIPS

Between January 2012 and May 2013, there were a series of disasters involving, inter alia, a megaship thought to be unsinkable that sank faster than the TITANIC, megaships thought to be fireproof that were not, and megaships thought to be secured by appropriate backup systems, both mechanical and electrical, that did not exist. These disasters, which disappointed thousands of angry passengers, included:

- (1) The COSTA CONCORDIA catastrophe of January 13, 2012.¹ After striking a rock off the Tuscan Coast, the wrecked vessel left “a haunting image: that of the 13-story luxury liner *Costa Concordia* half-submerged in the Tyrrhenian Sea.” Thirty-two of the COSTA CONCORDIA’s 4,252 passengers perished in the accident.²
- (2) In February 2012, the COSTA ALLEGRA became inoperative while sailing on the Indian Ocean. The incident effectively rendered the COSTA ALLEGRA a “sitting duck” for pirates that routinely attack ships throughout the Indian Ocean.³
- (3) In February 2013, a fire aboard the CARNIVAL TRIUMPH shut down the vessel’s power, propulsion, sewage, and air-conditioning systems. The fire, which occurred in the ship’s engine room, left “4,200 passengers adrift for days in the Gulf of Mexico with little to eat and raw sewage seeping through the ship’s walls and carpets.”⁴ Although nearly all cruise vessels lack backup systems that would help the vessel return to port in the event of a power failure, the CARNIVAL TRIUMPH incident highlighted the absence of these systems. After a review of the incident, the United States Coast Guard (USCG) noted that “the ship’s safety equipment contained the blaze.”⁵

1. Michelle Higgins, *So, Just How Safe Is Your Ship?*, N.Y. TIMES (Feb. 1, 2012), http://www.nytimes.com/2012/02/05/travel/reassessing-cruise-safety.html?_r=0.

2. Adam Piore, *The Informer: Staying Afloat*, CONDÉ NAST TRAVELER, June 2012, at 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. Peter Tarlow, *Security on the High Seas: Assuring the Cruise Industry and Its Ports of Call*, ETURBONNEWS (Mar. 5, 2012), <http://www.eturbonews.com/28173/assuring-cruise-industry-and-its-ports-call>.

4. Stephanie Rosenbloom, *How Normal Are Cruise Mishaps?*, N.Y. TIMES (May 8, 2013), <http://www.nytimes.com/2013/05/12/travel/cruise-mishaps-how-normal-are-they.html>.

5. Barry Meier & John Schwartz, *Lack of Backup Power Puts Cruise Passengers at the Ocean’s Mercy*, N.Y. TIMES (Feb. 24, 2013), <http://www.nytimes.com/2013/02/25/business/many-cruise-ship-lack-backup-power-systems-vexing-regulators.html>; see also Mark Pestronk, *For Carnival Triumph Passengers, Three Obstacles to Recovery*, TRAVEL WKLY. (Mar. 6, 2013), <http://www.travelweekly.com/Mark-Pestronk/For-Carnival-Triumph-passengers-three-obstacles-to>

While the fire aboard the CARNIVAL TRIUMPH generated considerable publicity, similar incidents have occurred aboard other vessels in recent years. For example, a November 2010 fire on board the CARNIVAL SPLENDOR stranded 3,300 passengers at sea for more than seventy-two hours,⁶ and an April 2006 fire on board the STAR PRINCESS left one passenger dead and eleven injured.⁷

- (4) A March 2013 voyage of the CARNIVAL DREAM became the passengers' nightmare when the vessel's central power and emergency generator failed, resulting in some of the vessel's toilets not working.⁸ Similarly, a March 2013 voyage of the CARNIVAL LEGEND was interrupted when reduced power in the ship's propulsion system forced the vessel to skip a scheduled port of call in Grand Cayman.⁹
- (5) A May 2013 fire on board Royal Caribbean's GRANDEUR OF THE SEAS "was extinguished about two hours later with no injuries reported."¹⁰

A. *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 on board cruise ships, generally it is safer to be on board than on a shore excursion. However, shore excursions are highly promoted¹¹ by the cruise lines, generate

-recovery/ (discussing passenger tickets featuring a Miami-Dade County, Florida, forum selection clause).

6. Jennifer Medina, *Crippled Cruise Ship Reaches Shore*, N.Y. TIMES (Nov. 11, 2010), <http://www.nytimes.com/2010/11/12/us/12cruise.html>; see also Meier & Schwartz, *supra* note 5 (discussing the discovery of deficiencies in the ship's firefighting operations after a preliminary United States Coast Guard inquiry).

7. David Cogswell, *Star Princess Fire Lowers Carnival's Earnings*, TRAVEL WKLY. (Apr. 3, 2006), <http://www.travelweekly.com/Cruise-Travel/Star-Princess-fire-lowers-Carnivals-earnings/>.

8. Jack Carpenter, Holly Yan & Lateef Mungin, *Carnival Legend Back in Florida After Week of Troubled Cruise Voyages*, CNN (Mar. 17, 2013, 7:20 AM), <http://www.cnn.com/2013/03/17/travel/carnival-problems/>.

9. Jerry Limone, *Carnival Legend Skips Call Due to Propulsion Problems*, TRAVEL WKLY. (Mar. 15, 2013), <http://www.travelweekly.com/Cruise-Travel/Carnival-Legend-skips-call-due-to-propulsion-problems/>.

10. *US Memorial Day Turned into a Nightmare for 2000+ Passengers Onboard a Royal Caribbean Cruise*, ETURBONEWS (May 27, 2013), <http://www.eturbonews.com/35129/us-memorial-day-turned-nightmare-2000-passengers-onboard-royal-c>.

11. For a discussion of how cruise ships market shore excursions, see *Perry v. HAL Antillen NV*, No. C12-0850JLR, 2013 WL 2099499, at *1-4 (W.D. Wash. May 14, 2013) (discussing the relationship between the cruise line, ground tour operator, and subcontractor

substantial revenues,¹² and cause an increasing number of reported deaths and serious injuries to cruise passengers. Examples of such injuries include quadriplegia after an unforgettable swim at Lover's Beach in Cabo San Lucas, Mexico;¹³ quadriplegia after taking a dive at Señor Frog's Restaurant in Cozumel, Mexico;¹⁴ being shot to death near Coki Beach in St. Thomas;¹⁵ injury while riding an ATV in Acapulco, Mexico;¹⁶ being struck by lightning during a catamaran ride in Montego Bay, Jamaica;¹⁷ injury during a zip-line excursion in Jamaica;¹⁸ assault and robbery during an excursion to Earth Village in Nassau;¹⁹ slip and fall during a Laughton Glacier Hike Tour;²⁰ asphyxiation in a diving bell in Bermuda;²¹ death while parasailing in Cozumel, Mexico;²² death after being run over by a tour bus after returning from the Rain Forest Aerial Tram in Dominica;²³ and death after a tour bus ran off a mountain road in Chile.²⁴

transportation provider in relation to a passenger's injury during a shore excursion); *Koens v. Royal Caribbean Cruises, Ltd.*, 774 F. Supp. 2d 1215, 2012 AMC 721 (S.D. Fla. 2011); and *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308, 2011 AMC 2941 (S.D. Fla. 2011).

12. See Wendy Perrin, *What I Learned Moonlighting as a Cruise Ship Trainee*, CONDE NAST TRAVELER (Apr. 23, 2013, 4:30 PM), http://www.cntraveler.com/perrin-post/2013/04/cruise-ship-shore-excursions-what-i-learned-moonlighting-as-a-cruise-ship-trainee-042313_slideshow_item0_1 (explaining that Royal Caribbean expects the NAVIGATOR OF THE SEAS "to earn between \$600,000 and \$1,100,000 per week in onboard revenue").

13. *Samuels v. Holland Am. Line-USA Inc.*, 656 F.3d 948, 949-50, 2011 AMC 2441, 2441-43 (9th Cir. 2011).

14. *Belik v. Carlson Travel Grp., Inc.*, 864 F. Supp. 2d 1302 (S.D. Fla. 2011).

15. *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012).

16. *Carnival Corp. v. Operadora Aviomar S.A. de C.V.*, 883 F. Supp. 2d 1316, 1318 (S.D. Fla. 2012).

17. *Bridgewater v. Carnival Corp.*, 286 F.R.D. 636, 638 (S.D. Fla. 2011).

18. *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308, 1310, 2011 AMC 2941, 2942-43 (S.D. Fla. 2011).

19. *Koens v. Royal Caribbean Cruises, Ltd.*, 774 F. Supp. 2d 1215, 1218, 2012 AMC 721, 722-23 (S.D. Fla. 2011).

20. *Young v. Carnival Corp.*, No. 09-21949-CIV, 2011 WL 465366, at *1 (S.D. Fla. Feb. 4, 2011).

21. *Zapata v. Royal Caribbean Cruises, Ltd.*, No. 12-21897-Civ, 2013 WL 1296298, at *7 n.1 (S.D. Fla. Mar. 27, 2013); *Zapata v. Royal Caribbean Cruises, Ltd.*, No. 12-21897-Civ, 2013 WL 1100028, at *5-6 (S.D. Fla. Mar. 15, 2013) (dismissing claims against a Bermuda shore excursion operator for lack of personal jurisdiction).

22. *Joseph v. Carnival Corp.*, No. 11-20221-CIV, 2011 WL 3022555, at *1 (S.D. Fla. July 22, 2011).

23. *Perry v. HAL Antillen NV*, No. C12-0850JLR, 2013 WL 2099499, at *1-2 (W.D. Wash. May 14, 2013).

24. The danger passengers participating in shore excursions face was recently demonstrated when twelve cruise passengers were killed during a stopover in Chile. See Wayne Parry, *Dead, Injured in Chilean Bus Crash Return Home*, J. NEWS, Mar. 25, 2006, at 7B ("The victims . . . were part of a 64-member B'nai B'rith group that was traveling aboard the cruise ship

B. Shore Excursion Questions To Ask

Before purchasing a cruise line shore excursion, consumers are well advised to ask the following questions:

- (1) Is the local ground operator insured,²⁵ licensed, and trained? The answer: it may be no on all three issues.
- (2) Has the cruise line evaluated the reliability of the local ground operator? The answer: maybe yes,²⁶ maybe no.
- (3) Has the cruise line assumed responsibility for any injuries its passengers suffered, or has it disclaimed all liability for any injuries that passengers might sustain during a shore excursion? The answer: read your cruise ticket. Cruise lines typically disclaim liability for shore-excursion accidents.²⁷ This is reason enough to have appropriate travel insurance,²⁸ including evacuation coverage.

C. What About Those Pesky Somali Pirates?

The scary news for those cruising on Middle Eastern and Indian Ocean waters is those pesky and not so romantic Somali pirates who have been known to fire at vessels passing along the Somali coast.²⁹

Millennium, and 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*, 2013 WL 2099499, at *6-7. 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). The TOPPS manual 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.’” *Id.* at *6. In the event “the Operator subcontract[ed] for services (such as aircraft, rail, tour buses or watercraft), the Tour Operator” was required to “provide a list of its subcontractors and evidence of the subcontractor’s insurance.” *Id.* 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.’” *Id.* Here, it was discovered after the accident that the tour van operator only had approximately \$80,000 in insurance coverage. 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 the tour van operator was a subcontractor and was only insured up to approximately \$80,000. *Id.* at *7, *13-20.

26. See, e.g., *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308, 1312-14, 2011 AMC 2941, 2947-50 (S.D. Fla. 2011).

27. See, e.g., *Young v. Carnival Corp.*, No. 09-21949-CIV, 2011 WL 465366, at *2 (S.D. Fla. Feb. 4, 2011); *Smolnikar*, 787 F. Supp. 2d at 1310, 2011 AMC at 2443-44.

28. See Johanna Jainchill, *Travel Insurance Sales Are Booming for Cruise Vacations*, TRAVEL WKLY. (June 5, 2006), <http://www.travelweekly.com/Travel-News/Travel-Agent-Issues/Travel-insurance-sales-are-booming-for-cruise-vacations/>.

29. See Debra A. Klein, *After Attack, Cruise Ships Rethink Security*, N.Y. TIMES (Dec. 4, 2005), <http://www.nytimes.com/2005/12/04/travel/04prac.html> (“Now the armed attack on the Seabourn Spirit off Somalia on Nov. 5 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

Recently, Somali gunmen have expanded the scope of their nefarious activities beyond piracy by kidnapping and murdering tourists in Kenya.³⁰

D. Some Improvements in Pirate Control

In 2012, there was a well-publicized effort by United States Navy Seals to rescue “two hostages—an American aid worker and her Danish colleague—held by Somali pirates.” In order to rescue the hostages, the Seals were forced to parachute into central Somalia at night, hike two miles, retrieve the hostages, and fly them to safety.³¹ Aggressive operations like this one may contribute to a decline in piracy. In fact, data released by the United States Navy showed a decrease in the number of pirate attacks off the coast of Africa in 2012. Whereas there were 239 attacks in 2010 and 222 attacks in 2011, there were only 46 reported pirate attacks in 2012 as of August 2012. Of those 46 attacks, only 9 were successful.³²

However, while the total impunity with which pirates were able to operate in many parts of Somalia spurred an increase in naval efforts to stymie hijackings, pirates have simply reacted by shifting their activities landward, increasing land-based kidnapping of foreigners.³³ Further, the recent disbanding of the Puntland Maritime Police Force may result in well-trained “pirate hunters” joining forces with the very pirates they were trained to combat.³⁴

from two small vessels off the Somalia coast.”); *see also* Adam Nagourney & Jeffrey Gettleman, *Pirates Brutally End Yachting Dream*, N.Y. TIMES (Feb. 22, 2011), <http://www.nytimes.com/2011/02/23/world/africa/23pirates.html?pagewanted=all>.

30. *See* Scott Sayare, *Frenchwoman Abducted in Kenya Dies*, N.Y. TIMES (Oct. 19, 2011), http://www.nytimes.com/2011/10/20/world/africa/french-woman-abducted-in-kenya-dies.html?_r=0; *see also* *UK Warns Brits To Stay Away from Coastal Areas in Kenya*, ETURBONNEWS (Oct. 3, 2011), <http://www.eturbonews.com/25554/uk-warns-brits-stay-away-coastal-areas-kenya>.

31. Jeffrey Gettleman, Eric Schmitt & Thom Shanker, *U.S. Swoops In To Free 2 from Pirates in Somali Raid*, N.Y. TIMES (Jan. 25, 2012), <http://www.nytimes.com/2012/01/26/world/africa/us-raid-frees-2-hostages-from-somali-pirates.html>.

32. Thom Shanker, *U.S. Reports That Piracy off Africa Has Plunged*, N.Y. TIMES (Aug. 28, 2012), <http://www.nytimes.com/2012/08/29/world/africa/piracy-around-horn-of-africa-has-plunged-us-says.html>.

33. *Id.*

34. Mark Mazzetti & Eric Schmitt, *Private Army Formed To Fight Somali Pirates Leaves Troubled Legacy*, N.Y. TIMES (Oct. 4, 2012), <http://www.nytimes.com/2012/10/05/world/africa/private-army-leaves-troubled-legacy-in-somalia.html>.

II. TWENTY-FIRST-CENTURY CRUISE SHIPS, NINETEENTH-CENTURY PASSENGER RIGHTS

While a cruise vacation may very well be the best travel value available, consumers should be aware that a cruise line's duties and liabilities are governed not by modern, consumer-oriented common and statutory law, but by nineteenth-century legal principles,³⁵ the purpose being to insulate these companies from legitimate passenger claims.

The policy enunciated by the United States Court of Appeals for the Second Circuit nearly sixty years ago in *Schwartz v. S.S. Nassau*, a case involving a passenger's wrongful death action, applies equally today.³⁶ In *Schwartz*, the Second Circuit construed 46 U.S.C. § 183(b) as a statute designed to "encourage shipbuilding." Accordingly, the court determined that the statute's provisions "should be liberally construed in the ship-owner's favor"³⁷ and denied the plaintiffs' statutory claim that a shipowner impermissibly limited the time to bring suit in a ticket contract.

Recently, in *Farris v. Celebrity Cruises, Inc.*, the United States Court of Appeals for the Eleventh Circuit enforced passenger ticket language that provided, "Celebrity Cruises, not [the passenger], is entitled to rights under the Athens Convention. And, although that treaty establishes a two-year limitations period for personal injuries, the ticket does not incorporate that limitations period."³⁸ Similarly, in *Brozyna v. Niagara Gorge Jetboating, Ltd.*, a passenger was injured on a jet boat plying the rapids of the Niagara River "when the boat 'came down hard' in the rapids at Devil's Hole."³⁹ The court enforced a preaccident 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 marine recreational activities," in recognition of "the long-recognized national interest in the development of a uniform body of maritime law."⁴⁰

35. See Thomas A. Dickerson, *The Cruise Passenger's Dilemma: Twenty-First-Century Ships, Nineteenth-Century Rights*, 28 TUL. MAR. L.J. 447, 447-61 (2004); see also Doonan v. Carnival Corp., 404 F. Supp. 2d 1367, 2005 AMC 2971 (S.D. Fla. 2005); Carlisle v. Carnival Corp., 864 So. 2d 1, 2003 AMC 2433 (Fla. Dist. Ct. App. 2003), *rev'd*, 953 So. 2d 461, 2007 AMC 305 (Fla. 2007).

36. 345 F.2d 465, 1965 AMC 1375 (2d Cir. 1965).

37. *Id.* at 467, 1965 AMC at 1378 (quoting Scheibel v. Agwilnes, Inc., 156 F.2d 636, 638, 1946 AMC 1148, 1150 (2d Cir. 1946)).

38. 487 F. App'x 542, 544 (11th Cir. 2012) (per curiam) (citation omitted).

39. No. 10-CV-602-JTC, 2011 WL 4553100, at *2 (W.D.N.Y. Sept. 29, 2011).

40. *Id.* at *5.

Not all courts, however, are willing to enforce such passenger ticket provisions. In *Johnson v. Royal Caribbean Cruises, Ltd.*,⁴¹ a cruise passenger was injured on a ship's simulated surfing and body boarding activity, and the Eleventh Circuit refused to enforce a waiver of all liability, citing 46 U.S.C. § 30509.

III. RECENT DEVELOPMENTS

A. *The COSTA CONCORDIA Disaster: Under Investigation*

On January 13, 2012, the COSTA CONCORDIA struck a large rock and nearly sank.⁴² Perhaps the most helpful explanation of the various safety issues in need of correction in the wake of the COSTA CONCORDIA incident is an article written by Adam Piore of *Condé Nast Traveler* entitled *Staying Afloat*, 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 ship 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 prevented 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,' said . . . one of the passengers

. . . .
The first major safety change following the *Concordia* accident [was] when [the Cruise Lines International Association (CLIA)] announced a voluntary industrywide 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 [the International Convention on the Safety of Life at Sea (SOLAS)], 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

41. 449 F. App'x 846, 2011 AMC 1171 (11th Cir. 2011).

42. Piore, *supra* note 2.

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.⁴³

Additionally, as a result of a Cruise Industry Operational Safety Review conducted by CLIA, a new Life Boat Loading for Training Purposes policy has been enacted effective on or about September 24, 2012.⁴⁴

B. Lawsuits and Settlements

In *Giglio Sub S.N.C. v. Carnival Corp.*, a purported class “of more than 1,000 ‘fishermen, property owners, business owners, and wage earners on Giglio Island, as well as those working in and around the island’ . . . claim[ed] damages to their businesses stemming from the wreck of the *Costa Concordia*.”⁴⁵ This class action was dismissed on forum non conveniens grounds.⁴⁶

As of January 22, 2013, Carnival claimed that it had reached settlement agreements with 62% of the passengers and 93% of the crew who were on board the COSTA CONCORDIA. Furthermore, Carnival asserted that nearly all of the cost of raising the sunken ship and the cost of defending legal claims would be covered by insurance.⁴⁷ On July 22, 2013, five employees of Costa Crociere S.p.A., owner of the COSTA CONCORDIA, accepted plea bargains in criminal cases brought by Italian authorities.⁴⁸

43. *Id.* at 50, 54-55 (citation omitted).

44. See Theresa Norton Masek, *CLIA, ECC Unveil New Lifeboat Loading Training Policy for Cruise Ships*, TRAVEL PULSE (Sept. 20, 2012), <http://www.travelpulse.com/news/features/clia-ecc-unveil-new-lifeboat-loading-training-policy-for-cruise-ships.html>; *New Safety Policies Announced by Global Cruise Industry*, ETURBONews (June 27, 2012), <http://www.eturbonews.com/29919/new-safety-policies-announced-global-cruise-industry>; see also Tom Stieghorst, *Concordia: One Year Later*, TRAVEL WKLY. (Jan. 12, 2013), <http://www.travelweekly.com/Cruise-Travel/Concordia--One-year-later/> (discussing the potential changes to SOLAS rules arising out of the COSTA CONCORDIA incident).

45. No. 12-21680-CIV, 2012 WL 4477504, at *1, 2012 AMC 2705, 2707-08 (S.D. Fla. Sept. 26, 2012).

46. *Id.*, 2012 AMC at 2707; see also James E. Mercante, *Italy Cruise Ship Lawsuits Unlikely To Survive*, N.Y.L.J., Jan. 18, 2013, at 3 (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).

47. Tom Stieghorst, *Report Details Concordia Settlements*, TRAVEL WKLY. (Feb. 4, 2013), <http://www.travelweekly.com/Cruise-Travel/Report-details-Concordia-settlements/>.

48. *Italian Court Jails 5 over Costa Concordia Ship Disaster*, GLOBALSHIP NEWS (July 22, 2013), <http://www.nafrade.com/3/post/2013/07/italian-court-jails-5-over-costa-concordia-ship-disaster.html> (“A court [in] Italy has convicted five employees The longest sentence went to the crisis coordinator for Costa Crociere S.p.A., the cruise company, who was sentenced to two years

C. *International Cruise Line Passenger Bill of Rights 2013—Not Much There*

After the worst year in megaship history and a blizzard of negative publicity, CLIA members 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 cruise lines are already legally obligated to do and does nothing to level the litigation playing field, which is obstructed by roadblocks as discussed in Part VII. For example, if CLIA really wants to help cruise passengers, then cruise lines should stop inserting Miami, Florida, forum selection clauses into ticket contracts and allow injured passengers to sue in a forum convenient to them. In addition, cruise lines should disavow their liability disclaimers and accept full legal responsibility for accidents that occur during shore excursions they recommend and on which they earn commissions.⁴⁹

D. *The Passenger Bill of Rights: An Interposed Analysis*

What follows is an analysis of the Passenger Bill of Rights. The text has been reproduced with the author's analysis interposed between the Bill's provisions:

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.⁵⁰

and 10 months. Concordia's hotel director was sentenced to two years and six months while two bridge officers and a helmsman got sentences ranging from one year and eight months to one year and 11 months. The plea bargains were handled separately from the trial of Costa Concordia Captain Francesco Schettino, who is charged with manslaughter for causing the . . . shipwreck . . . and abandoning the vessel with thousands aboard. That trial opened this week.").

49. See *Perry v. HAL Antillen NV*, No. C12-0850JLR, 2013 WL 2099499 (W.D. Wash. May 14, 2013); *Young v. Carnival Corp.*, No. 09-21949-CIV, 2011 WL 465366 (S.D. Fla. Feb. 4, 2011).

50. *The Cruise Industry Passenger Bill of Rights*, CRUISE LINES INT'L ASS'N, <http://www.cruising.org/regulatory/issues-facts/safety-and-security/cruise-industry-passenger-bill-rights> (last

Analysis: This provision may be helpful because cruise lines have in the past merely 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.⁵¹

Analysis: This provision is meaningless and fails to address the fact that cruise lines routinely and successfully disclaim liability for malpractice committed by the ship's medical staff.⁵² In addition, there are no uniform standards for the qualifications of doctors and nurses or the nature and quality of medical equipment on board the cruise ship.⁵³

- [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.⁵⁴

Analysis: This provision may be helpful because a number of recent megaship disasters have involved the failure of, or complete absence of, mechanical and electrical backup systems. Such incidents include the February 2012 voyage of the COSTA ALLEGRA, during which the vessel became inoperative while sailing on the Indian Ocean;⁵⁵ the engine room fire on board the CARNIVAL TRIUMPH in February 2013 that shut down the vessel's power, propulsion, sewage, and air-conditioning

visited Apr. 12, 2014). Senator Charles Schumer proposed similar legislation on March 18, 2013. See Letter from Senator Charles Schumer to Christine Duffy, CEO & President, Cruise Line Int'l Ass'n (Mar. 18, 2013) (available at <http://www.schumer.senate.gov/record.cfm?id=341068&>); see also *Cruise Industry Oversight: Recent Incidents Show Need for Stronger Focus on Consumer Protection: Hearing Before the S. Comm. on Commerce, Sci. & Transp.*, 113th Cong. (2013) (testimony of Ross A. Klein, Ph.D.); *id.* (statement of Christine Duffy, President & CEO, Cruise Lines Int'l Ass'n, available at <http://cruising.org/sites/default/files/regulatory/pdf/CLIA-Statement-for-the-Record07-24-2013.pdf>).

51. *The Cruise Industry Passenger Bill of Rights*, *supra* note 50.

52. See, e.g., *Carlisle v. Carnival Corp.*, 864 So. 2d 1, 2003 AMC 2433 (Fla. Dist. Ct. App. 2003), *rev'd*, 953 So. 2d 461, 2007 AMC 305 (Fla. 2007).

53. See *Cruise-Ship Health Care: Prescription for Trouble*, CONSUMER REP. TRAVEL LETTER, Apr. 1999, at 1, 6 (discussing the lack of uniform standards regarding the requisite qualifications of cruise ship doctors).

54. *The Cruise Industry Passenger Bill of Rights*, *supra* note 50.

55. Tarlow, *supra* note 3.

systems;⁵⁶ the fire aboard the CARNIVAL SPLENDOR in November 2010;⁵⁷ the April 2006 fire on board the STAR PRINCESS;⁵⁸ the March 2013 engine failure on board the CARNIVAL DREAM;⁵⁹ and the March 2013 partial power loss on board the CARNIVAL LEGEND.⁶⁰

- [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 failures.
- [8] The right to lodging if disembarkation and an overnight stay in an unscheduled port are required when 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 this *Cruise Line Passenger Bill of Rights* published on each line's website.⁶¹

E. The Cruise Vessel Security and Safety Act of 2010

In response to the growing number of reported rapes, assaults, and robberies aboard cruise ships touching U.S. ports (for example, a passenger was punched and stomped several times in the face,⁶² another passenger was sexually assaulted,⁶³ and another passenger was sexually assaulted and subjected to sexual battery and verbal abuse by the head waiter),⁶⁴ President Obama in July 2010 signed into law the Cruise Vessel Security and Safety Act of 2010 (Safety Act).⁶⁵ 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 on such vessels by 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

56. Rosenbloom, *supra* note 4; Meier & Schwartz, *supra* note 5; *see also* Pestronk, *supra* note 5.

57. Medina, *supra* note 6; *see also* Meier & Schwartz, *supra* note 5.

58. Cogswell, *supra* note 7.

59. Carpenter, Yan & Mungin, *supra* note 8.

60. Limone, *supra* note 9.

61. *Cruise Industry Adopts Passenger Bill of Rights*, ETURBONNEWS (May 22, 2013), <http://www.eturbonews.com/35058/cruise-industry-adopts-passenger-bill-rights>.

62. *Berner v. Carnival Corp.*, 632 F. Supp. 2d 1208, 1209, 2009 AMC 2506, 2506 (S.D. Fla. 2009).

63. *Doe v. Celebrity Cruises, Inc.*, 287 F. Supp. 2d 1321, 1324, 2004 AMC 832, 832-33 (S.D. Fla. 2003), *aff'd in part and rev'd in part*, 394 F.3d 891, 2005 AMC 214 (11th Cir. 2004).

64. *Stires v. Carnival Corp.*, 243 F. Supp. 2d 1313, 1316-17 (M.D. Fla. 2002).

65. Pub. L. No. 111-207, 124 Stat. 2243 (2010).

acoustic hailing and warning devices capable of communicating over distances.

In addition, the Safety Act requires cruise vessel owners to maintain a log that records “(i) all complaints of crimes . . . (ii) all complaints of theft of property valued in excess of \$1,000, and (iii) all complaints of other crimes.” Additionally, they must “make such log book available upon request to any agent of the [FBI].”⁶⁶ Further, the Act requires owners to report to the FBI any “incident involving homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury . . . or theft of money or property in excess of \$10,000.”⁶⁷ The owner shall also “furnish a written report of the incident to an Internet based portal maintained by” the USCG, and “[e]ach cruise line taking on or discharging passengers in the United States shall include a link on its Internet website to the [USCG Web site].”⁶⁸

1. The Safety Act Needs Some Adjustments

While such information is helpful, it is neither cruise ship-specific nor does it require cruise lines to report thefts of money or property that are between \$1,000 and \$9,999 in value. These problems may be resolved in two ways. First, requiring owners to report thefts less than \$10,000 would allow local law enforcement to investigate and deter future crimes. Second, mandating that owners include the recorded thefts of property valued between \$1,000 and \$9,999 on the USCG Web site would allow prospective cruise passengers to better appreciate the risks associated with cruises.⁶⁹ An even more effective method would be to break down the USCG online reporting by individual cruise ships, rather than by cruise lines, as is currently required. In fact, the Centers for Disease Control and Prevention’s (CDC) Monthly Cruise Vessel Sanitation Inspections are available online and are ranked by cruise ship.⁷⁰ Such information would allow consumers to select specific cruise ships based not only on sanitation, but on reported incidents of criminal activity.

66. *Id.* § 3507(g)(1)(A)-(B), 124 Stat. at 2247.

67. *Id.* § 3507(g)(3)(A)(i), 124 Stat. at 2248.

68. *Id.* § 3507(g)(3)(A)(ii), (4)(B), 124 Stat. at 2249; see *Coast Guard Investigative Service: Cruise Line Incident Reporting Statistics*, U.S. COAST GUARD, <http://www.uscg.mil/hq/cgz/cgis/CruiseLine.asp> (last visited Feb. 16, 2014).

69. See Asia N. Wright, *High Seas Ship Crimes*, 7B LOY. MAR. L.J. 1, 9 (2009).

70. *Vessel Sanitation Program*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nceh/vsp/> (last visited Apr. 12, 2014).

2. Victims Group Questions Crime Data

In addition to the foregoing, the International Cruise Victims Association, Inc. (ICV) asserted that “alleged crimes” should be reported along with actual crimes “so that potential passengers could judge for themselves the safety of a cruise vacation.” Prior to the Safety Act’s passage, the ICV submitted a Freedom of Information Act request seeking information regarding alleged crimes on board cruise ships that had been reported to the FBI. The ICV obtained material detailing over 400 alleged crimes reported to the FBI over a one-year period. However, after the Safety Act’s passage, only sixteen crimes were reported on the USCG Web site for the entirety of 2011.⁷¹

F. *Americans with Disabilities Act*

All cruise ships touching U.S. ports, including foreign cruise ships, must comply with the requirements of the Americans with Disabilities Act (ADA).⁷²

71. See *Victims Group Questions Cruise Crime Data Provided by FBI*, ETURBONNEWS (June 14, 2012), <http://www.eturbonews.com/29706/victims-group-questions-cruise-crime-data-provided-fbi>.

72. *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 142, 2005 AMC 1521, 1534 (2005) (noting that the ADA regulates a vessel’s internal affairs while in U.S. waters); *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237, 1241, 2000 AMC 1976, 1980 (11th Cir. 2000) (concluding that public accommodations aboard vessels are treated as public accommodations under the ADA); *Ass’n for Disabled Ams., Inc. v. Concorde Gaming Corp.*, 158 F. Supp. 2d 1353, 1367 (S.D. Fla. 2001) (holding that craps tables that were too high for wheelchair-bound players did not violate the ADA); *Access Now, Inc. v. Cunard Line Ltd.*, No. 00-7233-CIV, 2001 U.S. Dist. LEXIS 21481, at *3-4 (S.D. Fla. Oct. 31, 2001) (noting that settlement required the cruise line to spend \$7 million to make vessels more handicap accessible); *Walker v. Carnival Cruise Lines*, 63 F. Supp. 2d 1083, 1091, 1094-95 (N.D. Cal. 1999) (explaining that travel agents are liable under the ADA for “failing to adequately research, and for misrepresenting, the disabled accessible condition of the [vessel]”), *on reconsideration*, 107 F. Supp. 2d 1135, 2001 AMC 741 (N.D. Cal. 2000); *Briefer v. Carnival Corp.*, No. 98-1493-PCT-SMM, 1999 U.S. Dist. LEXIS 21256, at *5-6 (D. Ariz. Aug. 3, 1999) (holding that travel agents are governed by the ADA); *Deck v. Am. Haw. Cruises, Inc.*, 51 F. Supp. 2d 1057, 1059, 1999 AMC 2829, 2829 (D. Haw. 1999); Austin Considine, *Lowering the Barriers for Disabled Visitors*, N.Y. TIMES, Sept. 11, 2005 (Travel), at 6 (“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.”). For a discussion of services for the disabled provided by Carnival, Celebrity, Holland America, Norwegian Cruise Line, Princess, and Royal Caribbean, see Linda Greenhouse, *Does the Disability Act Stop at the Shoreline?*, N.Y. TIMES, Mar. 20, 2005 (Travel), at 6.

G. More Needs To Be Done

These are positive developments, indeed. However, they have little impact on the host of litigation roadblocks (discussed *infra* Part VII) that still make it difficult for injured or aggrieved cruise passengers to exercise their rights.⁷³ For example, litigation on behalf of cruise passengers is made especially difficult because of the routine enforcement of forum selection clauses, federal forum selection clauses,⁷⁴ choice-of-law and mandatory arbitration clauses,⁷⁵ 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 nonphysical injury claims). Liability-limiting clauses applying to medical malpractice and accidents occurring during shore excursions, application of the Athens Convention, and limitations on the application of long-arm jurisdiction to cruise lines and purveyors of travel services may similarly obstruct cruise passengers' rights.⁷⁶

IV. ACCIDENTS ON BOARD CRUISE SHIPS: THE STANDARD OF CARE, LIABILITIES, AND WARRANTIES

Cruise passengers experience common travel problems. These problems run the gamut from death to emotional distress. What follows is a list of some examples of these problems with citations to illustrative authorities. The problems are:

1. Death⁷⁷

73. Michael Eriksen, *Love Boats on Troubled Waters*, TRIAL, Mar. 2006, at 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?").

74. See Michael D. Eriksen, *U.S. Maritime Public Policy Versus Ad-Hoc Federal Forum Provisions in Cruise Tickets*, FLA. B.J., Dec. 2006, at 21, 22; Lischinskaya v. Carnival Corp., 865 N.Y.S.2d 334, 336-37, 2010 AMC 427, 430 (App. Div. 2008).

75. See, e.g., *Hadlock v. Norwegian Cruise Line, Ltd.*, No. SACV 10-0187 AG (ANx), 2010 WL 1641275, at *6, 2010 AMC 1167, 1176 (C.D. Cal. Apr. 19, 2010).

76. See Dickerson, *supra* note 35.

77. See Higgins, *supra* note 1 (COSTA CONCORDIA grounding); Piore, *supra* note 2, at 50 (thirty-two passengers killed on COSTA CONCORDIA); Lasky v. Royal Caribbean Cruises, Ltd., 850 F. Supp. 2d 1309, 1311, 2012 AMC 2630, 2631-32 (S.D. Fla. 2012) (fractured neck after slip and fall); Choe Sang-Hun, Su-Hyun Lee & Jina Ham, *Human Error Suspected as Hope Fades in Korean Ferry Sinking*, N.Y. TIMES (Apr. 17, 2014), <http://www.nytimes.com/2014/04/18/world/asia/south-korean-ferry-accident.html> ("The Captain was among the first to flee. Only a couple of the 44 life rafts were deployed. The hundreds of passengers were instructed over the intercom to 'stay inside and wait' as the ship leaned to one side and began to sink, dragging scores of students down with it. . . . It took two and a half hours for the ferry, the Sewol, to capsized and become submerged in the blue-gray waters off the southwestern tip of South Korea. Yet in that time, only 179 of the 475 people believed to have been on board were rescued. By Thursday evening, the confirmed death toll was 25."); 2 *Dead, 290 Still Missing from Jeju Tourist Ferry*

2. Heart Attacks and Strokes⁷⁸
3. Suicides and Disappearances⁷⁹
4. Drownings and Wave Actions⁸⁰
5. Disease, Legionnaires' Disease, and Norovirus⁸¹
6. Rapes and Sexual Assaults⁸²

Disaster, ETURBONEWS (Apr. 16, 2014), <http://www.eturbonews.com/44749/2-dead-290-still-missing-jeju-tourist-ferry-disaster>; Laura Isensee, *Man's Death Sends Cruise Ship Back to Port*, SUN SENTINEL (Aug. 15, 2010), http://articles.sun-sentinel.com/2010-08-15/news/fl-cruise-ship-death-20100815_1_cruise-ship-caribbean-cruise-norwegian-cruise-line-s-epic (apparent allergic reaction); Nick Pisa, *Cruise Passenger Dies After Ship Gangway Crashes 30ft into the Italian Riviera*, DAILY MAIL (July 28, 2010), <http://www.dailymail.co.uk/news/article-1297548/Cruise-passenger-dies-ship-gangway-crashed.html>; see also *City of New York v. Agni*, 522 F.3d 279, 281, 2008 AMC 1389, 1391 (2d Cir. 2008) (involving ten passengers killed and seventy-six passengers injured after Staten Island ferry allided with maintenance pier).

78. See *Amaran v. Marath*, 34 So. 3d 88, 89 (Fla. Dist. Ct. App. 2010) (cardiac arrest while exercising in vessel's fitness center); *Gliniecki v. Carnival Corp.*, 632 F. Supp. 2d 1205, 1206, 2009 AMC 2740, 2741 (S.D. Fla. 2009) (stroke while on board a vessel).

79. *Authorities Call Off Search for Two Missing Cruise Ship Passengers*, ETURBONEWS (May 11, 2013), <http://www.eturbonews.com/34878/authorities-call-search-two-missing-cruise-ship-passengers> (man and woman fell overboard); *US Tourist Dies Aboard Carnival Cruise Ship in Bahamas*, ETURBONEWS (Jan. 29, 2012), <http://www.eturbonews.com/27635/us-tourist-aboard-carnival-cruise-ship-bahamas> (passenger died after jumping from one floor to another); *Cruise Passenger Missing as Ship Docks at Palm Beach*, ETURBONEWS (Mar. 2, 2012), <http://www.eturbonews.com/28132/cruise-passenger-missing-ship-docks-palm-beach> (passenger declared missing); *Royal Caribbean Cruise Passenger Missing at Sea*, ETURBONEWS (Sept. 18, 2012), <http://www.eturbonews.com/31212/royal-caribbean-cruise-passenger-missing-sea> (passenger claimed to see a woman fall overboard); J.D. Gallop & Suzanne Cervenka, *Officials: Man Rescued at Sea Intentionally Jumped from Cruise Ship*, FLORIDATODAY.COM (Sept. 3, 2009, 11:52 AM), <http://www.floridatoday.com/article/20090903/BREAKINGNEWS/90903001/Officials-Man-rescued-sea-intentionally-jumped-from-cruise-ship>; Luke Duecy, *Officials Question Cruise Line's Suicide Announcement*, KOMO NEWS (Aug. 17, 2009, 7:53 AM), <http://www.komonews.com/news/local/53413827.html>; Caitlin Kelly, *Bruising for Cruising*, N.Y. DAILY NEWS (Mar. 8, 2006, 12:00 AM), <http://www.nydailynews.com/archives/news/bruising-cruising-rash-vanishings-better-safety-demanded-24-americans-disappeared-families-answers-article-1.569574>.

80. See *Higgins*, *supra* note 1 (COSTA CONCORDIA grounding); *Piore*, *supra* note 2 (detailing COSTA CONCORDIA accident); *Samuels v. Holland Am. Line-USA Inc.*, 656 F.3d 948, 949-50, 2011 AMC 2441, 2442-43 (9th Cir. 2011) (passenger injured by turbulent wave action on beach); *Clinton River Cruise Co. v. DeLaCruz*, 213 F. App'x 428, 429 (6th Cir. 2007) (passenger drowned trying to swim from vessel to shore); *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 831, 2002 AMC 2270, 2273 (9th Cir. 2002) (passenger drowned after falling off the ship).

81. See Linda Carroll, *Sick Ships: Cruises See Rise in Norovirus Cases*, NBC NEWS (Mar. 10, 2010, 8:38 AM), http://www.nbcnews.com/id/35786891/ns/health-infectious_diseases/t/sick-ships-cruises-see-rise-norovirus-cases/; Bruce Smith, *Norovirus Hit Cruise Ship that Left SC for Islands*, SEATTLE TIMES (Feb. 25, 2010, 10:57 AM), http://seattletimes.com/html/nationworld/2011184297_apuscruisesickpassengers.html; Thomas A. Dickerson, *Travel Law: Stop Blaming the Passengers—Eradicate Norovirus Now*, ETURBONEWS (Mar. 5, 2014), <http://www.eturbonews.com/43374/travel-law-stop-blaming-passengers-eradicate-norovirus-now>.

82. See *Doe v. Royal Caribbean Cruises, Ltd.*, 860 F. Supp. 2d 1337, 1338-39, 2013 AMC 842, 842-44 (S.D. Fla. 2012) (involving a seventeen-year-old female passenger who stated a cause of action under the Child Abuse Victims' Rights Act of 1986 after she was allegedly induced by a crew member to participate in sexual activities); *NCL Assistant Cruise Director*

7. Assaults and Stomping⁸³
8. Quadriplegia⁸⁴
9. Slips, Trips, Falls, and Minor Injuries⁸⁵

Arrested for Sex with Underage Passenger, ETURBONews (Mar. 9, 2012), <http://www.eturbonews.com/28246/ncl-assistant-cruise-director-arrested-sex-underage-passenger>; *Burdeaux v. Royal Caribbean Cruises, Ltd.*, No. 11-22798-CIV, 2012 WL 3202948, at *1 (S.D. Fla. Aug. 3, 2012) (involving a cruise passenger who was reportedly raped by five local men while shopping on shore); *Doe v. Royal Caribbean Cruises, Ltd.*, No. 11-23323-CIV, 2011 WL 6727959, at *1, 2012 AMC 761, 762 (S.D. Fla. Dec. 21, 2011) (alleging failure of security personnel to monitor surveillance cameras after passenger was raped by another passenger); *Doe v. Royal Caribbean Cruises, Ltd.*, No. 11-23323-CIV, 2012 WL 920675, at *1 (S.D. Fla. Mar. 19, 2012) (denying the defendant's motion to dismiss the plaintiff's request for punitive damages); *Stires v. Carnival Corp.*, 243 F. Supp. 2d 1313, 1316 (M.D. Fla. 2002) (passenger sexually assaulted and verbally abused by a head waiter); *Doe v. Celebrity Cruises, Inc.*, 287 F. Supp. 2d 1321, 1324, 2004 AMC 832, 832-33 (S.D. Fla. 2003) (involving a female passenger allegedly raped and battered by a male crew member while on shore in Bermuda), *aff'd in part and rev'd in part*, 394 F.3d 891, 2005 AMC 214 (11th Cir. 2004); *State v. Stepansky*, 761 So. 2d 1027, 1029, 2000 AMC 1893, 1895 (Fla. 2000) (attempted sexual assault and burglary by crew member); *Royal Caribbean Cruises, Ltd. v. Doe*, 767 So. 2d 626, 626 (Fla. Dist. Ct. App. 2000) (involving a passenger who claimed that a bartender put drugs into her drink and sexually assaulted her); *Nadeau v. Costley*, 634 So. 2d 649, 650, 1994 AMC 2810, 2811 (Fla. Dist. Ct. App. 1994) (sexual assault); *Morton v. De Oliveira*, 984 F.2d 289, 290, 1993 AMC 843, 843 (9th Cir. 1993) (rape); *Johnson v. Commodore Cruise Lines, Ltd.*, 897 F. Supp. 740, 743, 1996 AMC 666, 668-69 (S.D.N.Y. 1995) (involving the cover up of the rape of a passenger on a cruise); *York v. Commodore Cruise Lines, Ltd.*, 863 F. Supp. 159, 161, 1995 AMC 339, 340 (S.D.N.Y. 1994) (sexual assault); *Brian Major Scutt, Cruising Holds Steady Despite Assault Reports*, TRAVEL WKLY. (Aug. 13, 1999), <http://www.travelweekly.com/Cruise-Travel/Cruising-holds-steady-despite-assault-reports/> ("108 allegations of sexual misconduct were included in a lawsuit filed . . . by a former Carnival employee, who said she was raped by a Carnival officer . . ."); *see also* Bonita Navin, *Stalking Sexual Predators at Sea: The Response of the Cruise Industry to Sexual Assaults Onboard*, 1999 INT'L TRAVEL L.J. 192.

83. *See Berner v. Carnival Corp.*, 632 F. Supp. 2d 1208, 1209, 2009 AMC 2506, 2506 (S.D. Fla. 2009) (passenger attacked, beaten, and stomped with a stiletto heel by two fellow passengers); *O'Hara v. Celebrity Cruises, Inc.*, 979 F. Supp. 254, 255, 1998 AMC 522, 522 (S.D.N.Y. 1997) (passengers assaulted by a crew member); *Corna v. Am. Haw. Cruises, Inc.*, 794, F. Supp. 1005, 1007, 1992 AMC 1787, 1788 (D. Haw. 1992) (passenger assaulted by a crew member); *Marmor v. Queen of New Orleans*, 2000-1598, p. 2 (La. App. 4 Cir. 5/16/01); 787 So. 2d 1115, 1116 (riverboat casino patron assaulted); *Colavito v. Carnival Cruise Lines, Inc.*, 1983 AMC 1378, 1379 (S.D. Tex. 1981) (passenger assaulted by an intoxicated passenger).

84. *See Samuels*, 656 F.3d at 950, 2011 AMC at 2442-43 (involving a passenger who was rendered quadriplegic by turbulent wave action at Lover's Beach); *Morag v. Quark Expeditions, Inc.*, No. 3:07-cv-1062(PCD), 2008 WL 3166066, at *1, 2009 AMC 2309, 2310 (D. Conn. Aug. 5, 2008) (involving a plaintiff who was rendered quadriplegic after suffering severe spinal injuries during a crossing of Drake's Passage).

85. *Bencomo v. Costa Crociere, S.P.A.*, 476 F. App'x 232, 232 (11th Cir. 2012) (per curiam) (finding that the plaintiff, who slipped and fell in a puddle, could not "establish that Costa had a duty to correct or warn passengers about the allegedly dangerous condition because Costa did not have actual or constructive knowledge of the puddle"); *Groves v. Royal Caribbean Cruises, Ltd.*, 463 F. App'x 846, 847-48 (11th Cir. 2012) (slip and fall on dining room floor); *Johnson v. Royal Caribbean Cruises, Ltd.*, 449 F. App'x 846, 847 (11th Cir. 2011) (injury on FlowRider); *Weiner v. Carnival Cruise Lines*, No. 11-CV-22516, 2012 WL 5199604, at *1, *6 (S.D. Fla. Oct. 22, 2012) (involving a passenger who slipped and injured his Achilles tendon

10. Runaway Wheelchairs⁸⁶
11. Rogue Waves⁸⁷
12. Listing⁸⁸

where there was no actual or constructive notice of wet area on ship); *Cook v. Royal Caribbean Cruises, Ltd.*, No. 11-20723-CIV, 2012 WL 1792628, at *1 (S.D. Fla. May 15, 2012) (slip and fall on walkway); *Mendel v. Royal Caribbean Cruises, Ltd.*, No. 10-23398-CIV, 2012 WL 2367853, at *1 (S.D. Fla. June 21, 2012) (slip and fall on pool step); *Lobegeiger v. Celebrity Cruises, Inc.*, No. 11-21620-CIV, 2011 WL 3703329, at *1, 2012 AMC 202, 205 (S.D. Fla. Aug. 23, 2011) (involving an injury to a passenger when the tip of her finger was sliced off by a lounge chair); *Lasky v. Royal Caribbean Cruises, Ltd.*, 850 F. Supp. 2d 1309, 1311, 2012 AMC 2630, 2632 (S.D. Fla. 2012) (fractured neck after slip and fall); *Rosenfeld v. Oceania Cruises, Inc.*, 654 F.3d 1190, 1191-92, 2011 AMC 2838, 2839 (11th Cir. 2011) (slip and fall on dining room floor), *reh'g denied*, 682 F.3d 1320, 2012 AMC 2149 (11th Cir. 2012); *Balu v. Costa Crociere S.P.A.*, No. 11-60031-CIV, 2011 WL 3359681, at *2 (S.D. Fla. Aug. 3, 2011) (flip and fall on marble staircase); *Walter v. Carnival Corp.*, No. 09-20962-CIV, 2010 WL 2927962, at *1 (S.D. Fla. July 23, 2010) (injuries from collapsing deck chair); *Adams v. Carnival Corp.*, No. 08-22465-CIV, 2009 WL 4907547, at *1, 2009 AMC 2588, 2589 (S.D. Fla. Sept. 29, 2009) (involving a 340-pound passenger who was injured when a deck chair collapsed beneath his weight); *Noboa v. MSC Crociere S.P.A.*, No. 08 Civ. 2896(PKL), 2009 WL 1227451, at *1, 2009 AMC 1312, 1312-13 (S.D.N.Y. May 5, 2009) (slip and fall on wet towels left on cabin floor); *Palmer v. Norwegian Cruise Line & Norwegian Spirit*, 741 F. Supp. 2d 405, 407, 2011 AMC 887, 888-89 (E.D.N.Y. 2010) (involving a passenger who suffered injuries to her back, neck, and foot when wooden slats supporting cabin's mattress gave way); *Pratt v. Silversea Cruises, Ltd.*, No. C 05-0693 SI, 2005 WL 1656891, at *1, 2006 AMC 99, 99 (N.D. Cal. July 13, 2005) (involving a passenger who suffered a broken hip, a torn ACL, and a severe ankle injury after a fall); *Evans v. Nantucket Cmty. Sailing, Inc.*, 582 F. Supp. 2d 121, 130-31, 2009 AMC 360, 368 (D. Mass. 2008) (involving a sailboat passenger who was injured after being hit by a boom during a jibe); *McDonough v. Celebrity Cruises, Inc.*, 64 F. Supp. 2d 259, 261, 2000 AMC 257, 258 (S.D.N.Y. 1999) (involving a passenger who was struck in the head by a rum-filled coconut dropped from the deck above); *Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18, 19, 1985 AMC 1941, 1942 (D. Md. 1984) (passenger struck by golf ball); *Lawrence v. The "IMAGINE . . ." Yacht, LLC*, 333 F. Supp. 2d 379, 382 (D. Md. 2004) (involving a passenger who suffered hearing loss after crew member fired cannon); *Lavoie v. Suncruz Casino Cruises, LLC*, No. 4:08-cv-2183-RBH, 2009 WL 425815, at *6, 2009 AMC 781, 788-89 (D.S.C. Feb. 18, 2009) (involving a plaintiff who was allegedly injured when a slot machine fell and struck his knee); *Krupski v. Costa Crociere S.p.A.*, 130 S. Ct. 2485, 2490, 2010 AMC 1564, 1565 (2010) (involving a passenger who tripped on a cable and fractured her femur); *Eisenberg v. Carnival Corp.*, No. 07-22058-CIV, 2008 WL 2946029, at *1 (S.D. Fla. July 7, 2008) (slip and fall on salad dressing in dining room); *Kamens v. Holland Am. Line, Inc.*, No. C09-1074JLR, 2010 WL 1945776, at *1 (W.D. Wash. May 12, 2010) ("[A passenger] fell and injured her knee on the Hydro Pool deck of the ship."); *Oran v. Fair Wind Sailing, Inc.*, No. 08-0034, 2009 WL 4349321, at *1 (D.VI. Nov. 23, 2009) (slip and fall on bench cushions); *Ward v. Royal Caribbean Cruise Lines, Ltd.*, No. SACV 08-1077 DOC (MLGx), 2009 WL 151490, at *1 (C.D. Cal. Jan. 22, 2009) (hand laceration after gripping a metal sign).

86. See *Moura v. Am. W. Steamboat Co.*, No. C 08-04025 WHA, 2009 WL 2390228, at *1 (N.D. Cal. Aug. 3, 2009) (involving a passenger in a wheelchair who was injured when a crew member suddenly let go of the wheelchair causing it to accelerate down a ramp into a cement landing).

87. See *Samuels*, 656 F.3d at 950, 2011 AMC at 2442-43 (involving a passenger who was rendered quadriplegic by turbulent wave action at Lover's Beach); Verena Dobnik, *Freak Wave Leaves Vivid Trip Images*, J. NEWS, Apr. 19, 2005, at 3A (discussing a vessel that was struck by a seven-story-high wave, resulting in 300 passengers disembarking early).

13. Malfunctioning Automatic Sliding Doors⁸⁹
14. Defective Exercise Equipment⁹⁰
15. Ship Doctor Malpractice⁹¹

88. Johanna Jainchill, *Princess: Human Error Caused List*, TRAVEL WKLY. (July 31, 2006), <http://www.travelweekly.com/Cruise-Travel/Princess--Human-error-caused-list/>. After reviewing a list that injured 240 passengers aboard the CROWN PRINCESS on July 18, 2006, Princess Cruises admitted that human error was ultimately responsible for the list. On another ship, the GRAND PRINCESS, twenty-seven passengers were injured in February 2006 in a listing incident, which occurred when the vessel attempted to reverse course and go back to port after a passenger suffered cardiac arrest.

89. *Galentine v. Holland Am. Line-Westours, Inc.*, 333 F. Supp. 2d 991, 993, 2004 AMC 711, 712 (W.D. Wash. 2004).

90. *Berman v. Royal Cruise Line, Ltd.*, 1995 AMC 1926, 1927 (Cal. Super. Ct. 1995) (treadmill injury).

91. See *Lobegeiger v. Celebrity Cruises, Inc.*, No. 11-21620-CIV, 2011 WL 3703329, at *2-4, 2012 AMC 202, 205-09 (S.D. Fla. Aug. 23, 2011) (involving alleged medical malpractice by the ship's doctor after plaintiff severed her finger on board the ship); *Lobegeiger v. Celebrity Cruises, Inc.*, 869 F. Supp. 2d 1356, 1361-64, 2013 AMC 1254, 1259-64 (S.D. Fla. 2012) (granting summary judgment for defendant on apparent agency theory of liability for medical malpractice); *Hill v. Celebrity Cruises, Inc.*, No. 09-23815-CIV, 2011 WL 5360247, at *3, 2012 AMC 234, 238 (S.D. Fla. Nov. 7, 2011) (involving plaintiff's claim for negligent misrepresentation after the ship represented that it would have two doctors and it actually only had one); *Carlisle v. Carnival Corp.*, 864 So. 2d 1, 2, 2003 AMC 2433, 2437 (Fla. Dist. Ct. App. 2003) (involving a fourteen-year-old passenger with appendicitis who was misdiagnosed by the ship's doctor as suffering from the flu), *rev'd*, 953 So. 2d 461, 2007 AMC 305 (Fla. 2007); *Wajnsat v. Oceania Cruises, Inc.*, No. 09-21850-Civ, 2011 WL 465340, at *1 (S.D. Fla. Feb. 4, 2011) (involving a passenger who was forced to have three major abdominal surgeries and the majority of his colon removed after being misdiagnosed by the ship's doctor); *Doonan v. Carnival Corp.*, 404 F. Supp. 2d 1367, 1369, 2005 AMC 2971, 2971-72 (S.D. Fla. 2005) (medical malpractice claim); *Mack v. Royal Caribbean Cruises, Ltd.*, 838 N.E.2d 80, 82 (Ill. App. Ct. 2005) (negligent medical treatment); *Pota v. Holtz, M.D.*, 852 So. 2d 379, 380, 2003 AMC 2443, 2443-44 (Fla. Dist. Ct. App. 2003) (pregnant passenger misdiagnosed by ship's doctor); *Jackson v. Carnival Cruise Lines, Inc.*, 203 F. Supp. 2d 1367, 1371 (S.D. Fla. 2002) (illness); *Stires v. Carnival Corp.*, 243 F. Supp. 2d 1313, 1316-17 (M.D. Fla. 2002) (involving a sexually assaulted passenger alleging negligence by the ship's doctor); *Doe v. Celebrity Cruises, Inc.*, 287 F. Supp. 2d 1321, 1325, 2004 AMC 832, 833 (S.D. Fla. 2003) (involving a passenger's claim that the ship's physician failed to examine her correctly after she was sexually assaulted by a crew member), *aff'd in part and rev'd in part*, 394 F.3d 891, 2005 AMC 214 (11th Cir. 2004); *Benson v. Norwegian Cruise Line Ltd.*, 859 So. 2d 1213, 1214, 2003 AMC 2973, 2973-74 (Fla. Dist. Ct. App. 2003) (medical malpractice claim following allergic reaction to shellfish); *Cimini v. Italia Crociere Int'l S.P.A.*, 1981 AMC 2674, 2677 (S.D.N.Y. 1981) (enforcing a cruise ship disclaimer of liability for malpractice of ship's doctor); *Cross v. Kloster Cruise Lines, Ltd.*, 897 F. Supp. 1304, 1306, 1996 AMC 1215 (AMC reporter summarizing case) (D. Or. 1995) (medical malpractice claim following brown recluse spider bite); *Afflerbach v. Cunard Line, Ltd.*, 14 F. Supp. 2d 1260, 1263, 1999 AMC 283, 285 (D. Wyo. 1998) (involving a passenger's claim for medical malpractice after injuring buttocks while disembarking from vessel); *Fairley v. Royal Cruise Line Ltd.*, 1993 AMC 1633, 1633 (S.D. Fla. 1993) (medical malpractice claim); *Meitus v. Carnival Cruise Lines, Inc.*, 775 So. 2d 965, 966-67, 2001 AMC 105, 106 (Fla. Dist. Ct. App. 2000) (involving a crew member's medical malpractice claim after contracting viral encephalitis); *Rand v. Hatch*, 762 So. 2d 1001, 1002, 2000 AMC 2610, 2610-11 (Fla. Dist. Ct. App. 2000) (involving a passenger's claim that the ship's doctor failed to diagnose her blood sugar level); *Johnson v. Commodore Cruise Lines, Ltd.*, 897 F. Supp. 740, 743, 1996 AMC 666, 668-69

16. Fires⁹²
17. Collisions and Striking Reefs⁹³
18. Hot Tubs and Flesh-Eating Bacteria⁹⁴
19. Falling Bunk Beds⁹⁵
20. Malfunctioning Toilets⁹⁶

(S.D.N.Y. 1995) (involving a passenger who was raped by a crew member and misdiagnosed as having had a heart attack); *see also* Melissa Konick, *Malpractice on the High Seas: The Liability of Owners and Physicians for Medical Errors*, 2006 INT'L TRAVEL L.J. 53.

92. Monique Hepburn, *Caribbean Cruise Turns Deadly as Fire Scorches 100 Ship Cabins*, J. NEWS, Mar. 24, 2006, at 3B (discussing a fire on the STAR PRINCESS that injured eleven people and damaged 100 rooms); Krista Carothers, *Cruise Control*, CONDÉ NAST TRAVELER, July 2006, at 53, 54 (discussing fires on cruise ships); Rebecca Tobin, *NCL Stands by Norway, Says It Will Repair Ship*, TRAVEL WKLY., June 2, 2003, at 1 (discussing the six crew members killed and the twenty injured after a fire in the boiler room of a cruise ship); Betsy Wade, *Fire Safety for Ships at Sea*, N.Y. TIMES (Aug. 2, 1998), <http://www.nytimes.com/1998/08/02/travel/practical-traveler-fire-safety-for-ships-at-sea.html> (“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.*, 199 F.R.D. 372, 373 (S.D. Fla. 2001) (involving passengers who suffered “severe discomfort and nausea” after fire on board).

93. Ernest Blum, *Norwegian Cancels Sailings in Wake of Collision*, TRAVEL WKLY. (Aug. 26, 1999), <http://www.travelweekly.com/Cruise-Travel/Norwegian-Cancels-Sailings-in-wake-of-collision/> (discussing a collision between a cruise ship and a cargo ship in the English Channel); *Watanabe v. Royal Caribbean Cruises, Ltd.*, No. B146759, 2001 WL 1511268, at *2 (Cal. Ct. App. Nov. 28, 2001) (involving passengers who were injured when the MONARCH OF THE SEAS struck a reef, forcing them to abandon ship).

94. Cheryl Rosen, *Class Action Claims Carnival Hot Tubs Infected with Flesh-Eating Bacteria*, TRAVEL MOLE (July 23, 2013), http://www.travelmole.com/news_feature.php?news_id=2007367 (“[A] class action lawsuit is claiming that hot tubs on Carnival ships are infested with flesh-eating bacteria. The suit alleges that hundreds of passengers contracted the MRSA virus on Carnival ships and calls for anyone infected to join in. [A passenger] claims he caught it on the Carnival Paradise in December 2011 and almost lost his leg.”).

95. *Recent Cases*, 49 L. REP. 112 (2006) (discussing *Angulo v. Carnival Corp.*, where a jury awarded about \$333,600 after a passenger was struck in the head by a bunk bed on board a Carnival cruise ship).

96. *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1334, 1985 AMC 826, 827 (11th Cir. 1984).

21. Sanitation and Germs⁹⁷
22. Pool Jumping⁹⁸
23. Sliding Down Banisters⁹⁹
24. Poorly Designed Bathrooms, Sofas, Bunk Beds, Passages, Flooring, and Railings¹⁰⁰

97. See Elinor Garely, *When Bugs Swim*, ETURBONNEWS (Jan. 23, 2012), <http://www.eturbonews.com/27225/when-bugs-swim> (“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. [2] Employees should prevent cross-contamination of 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.”).

98. *Brown v. New Commodore Cruise Line Ltd.*, No. 98 Civ. 4402 (BSJ), 2000 U.S. Dist. LEXIS 536, at *2 (S.D.N.Y. Jan. 17, 2000) (involving a passenger who suffered a broken ankle after jumping from a deck into the pool below).

99. *Meyer v. Carnival Cruise Lines, Inc.*, 1995 AMC 1652, 1653 (N.D. Cal. 1994) (intoxicated passenger injured while sliding down banister).

100. *Rosenfeld v. Oceania Cruises, Inc.*, 654 F.3d 1190, 1191, 2011 AMC 2838, 2838-39 (11th Cir. 2011) (slip and fall on wet ceramic tile floor), *reh'g denied*, 682 F.3d 1320, 2012 AMC 2149 (11th Cir. 2012); *Glod v. Clinton River Cruise Co.*, No. 279422, 2009 WL 186188, at *1, 2009 AMC 843, 844 (Mich. Ct. App. Jan. 27, 2009) (passenger tripped on raised door frame); *Groves v. Royal Caribbean Cruises, Ltd.*, 463 F. App'x 837, 837 (11th Cir. 2012) (per curiam) (slip and fall on granite floor); *Mendel v. Royal Caribbean Cruises, Ltd.*, No. 10-23398-CIV, 2012 WL 2367853, at *1 (S.D. Fla. June 21, 2012) (passenger injured climbing pool steps); *Prokopenko v. Royal Caribbean Cruises Ltd.*, No. 10-20068-CIV, 2010 WL 1524546, at *1 (S.D. Fla. Apr. 15, 2010) (slip and fall near swimming pool); *Caputo v. Holland Am. Line, Inc.*, No. 08-CV-4584(CPS)(SMG), 2009 WL 2258326, at *1 (E.D.N.Y. July 29, 2009) (involving an eighty-one-year-old passenger who fractured her hip after catching her heel on a metal threshold separating the ship's atrium and elevator lobby); *Carnival Corp. v. Amato*, 840 So. 2d 1088, 1089 (Fla. Dist. Ct. App. 2003) (involving a passenger who recovered \$577,000 after vessel was found negligent for allowing grease to accumulate on stairs, maintaining a defective handrail, failing to put nonskid strips on stairs, and building the stairs too steeply); *Corona v. Costa Crociere S.P.A.*, 844 So. 2d 652, 653 (Fla. Dist. Ct. App. 2003) (involving a passenger who fell after leaning on an improperly attached bathroom door handle); *Hood v. Regency Mar. Corp.*, No. 99 Civ. 10250 (CSH), 2000 U.S. Dist. LEXIS 17298, at *2, 2001 AMC 645, 645-46 (S.D.N.Y. Nov. 29, 2000) (passenger struck by piece of tub); *Palmieri v. Celebrity Cruise Lines, Inc.*, No. 98 Civ. 2037 (LAP)(HBP), 2000 U.S. Dist. LEXIS 3724, at *2 (S.D.N.Y. Mar. 24, 2000) (passenger injured falling over sofa bed); *Kunken v. Celebrity Cruises Inc.*, No. 98 Civ. 7304 (JSM), 1999 WL 1140868, at *1 (S.D.N.Y. Dec. 10, 1999) (ankle broken while entering passageway to cabin); *Marchewka v. Berm. Star Lines, Inc.*, 937 F. Supp. 328, 330, 1998 AMC 599 (S.D.N.Y. 1996) (AMC reporter summarizing case) (involving a passenger who fell when rungs of bunk bed ladder gave way).

25. Open Hatches¹⁰¹
26. FlowRiders¹⁰²
27. Wave Runners¹⁰³
28. Storms and Hurricanes¹⁰⁴
29. Spider Bites¹⁰⁵
30. Snapping Mooring Lines¹⁰⁶
31. Medical Emergency Disembarkation¹⁰⁷
32. Torture and Hostage Taking¹⁰⁸
33. Forced To Abandon Ship¹⁰⁹
34. Intentional Infliction of Emotional Distress¹¹⁰

101. *In re* Vessel Club Med, 90 F. Supp. 2d 550, 551, 2000 AMC 1824, 1824 (D.N.J. 2000) (passenger stepped into open engine hatch); *Hendricks v. Transp. Servs. of St. John, Inc.*, No. 626/1995, 1999 V.I. LEXIS 16, at *22 (Terr. Ct. V.I. Apr. 26, 1999) (passenger fell into open hatchway on ferry).

102. *See Johnson v. Royal Caribbean Cruises, Ltd.*, 449 F. App'x 846, 847-48, 2011 AMC 1171, 1172 (11th Cir. 2011).

103. *See In re* Royal Caribbean Cruises Ltd., 459 F. Supp. 2d 1284, 1286-87 (S.D. Fla. 2006) (passenger injured while riding jet ski supplied by cruise ship).

104. *Domblakly v. Celebrity Cruises, Inc.*, No. 96 Civ. 8333 (AJP)(LBS), 1998 U.S. Dist. LEXIS 16549, at *1 (S.D.N.Y. Oct. 20, 1998) (injury caused by hurricane); *In re* Catalina Cruises, Inc., 137 F.3d 1422, 1424-25, 1998 AMC 1282, 1284 (9th Cir. 1998) (injury during rough weather); *Stobaugh v. Norwegian Cruise Line Ltd.*, 5 S.W.3d 232, 234, 2001 AMC 215, 216 (Tex. App. 2000) (injury caused by Hurricane Eduardo).

105. *Ilan v. Princess Cruises, Inc.*, No. B151303, 2002 WL 31317342, at *1 (Cal. Ct. App. Oct. 16, 2002); *Cross v. Kloster Cruise Lines, Ltd.*, 897 F. Supp. 1304, 1306, 1996 AMC 1215 (D. Or. 1995).

106. *Kalendareva v. Discovery Cruise Line P'ship*, 798 So. 2d 804, 805 (Fla. Dist. Ct. App. 2001) (involving a passenger who was struck by a heaving line thrown from the dock to the second deck); *Douville v. Casco Bay Island Transit*, 1998 AMC 2775, 2776 (D.N.H. 1998) (injury caused by failure to detach mooring line before departing).

107. A cruise ship's medical doctor may medically disembark a sick passenger without the passenger's consent. In *Larsen v. Carnival Corp.*, 242 F. Supp. 2d 1333, 2003 AMC 1337 (S.D. Fla. 2003), a disabled cruise passenger, diagnosed with severe obstructive sleep apnea, severe morbid obesity at approximately 450 pounds, and chronic obstructive pulmonary disease, and who had utilized a prescribed Bi-Pap ventilator and oxygen concentrator at night to help him breathe during sleep, was medically disembarked by the ship's doctor because a functioning Bi-Pap ventilator could not be supplied. *Id.* at 1336, 1340, 2003 AMC at 1337-38, 1341. The court found that the ship's medical doctor's "decision to disembark [the passenger] was based upon a reasonable concern for safety" and to do otherwise "would have represented a serious threat to [the passenger's] health and even his life." *Id.* at 1346, 2003 AMC at 1349. In *Wajinstat v. Oceania Cruises, Inc.*, a cruise passenger who suffered from bleeding hemorrhoids was disembarked at a Ukrainian hospital. No. 09-21850-CIV, 2011 WL 465340, at *1 (S.D. Fla. Feb. 4, 2011).

108. *Simpson v. Socialist People's Libyan Arab Jamahiriya*, 362 F. Supp. 2d 168, 171 (D.D.C. 2003) (involving a passenger who claimed she was held hostage and tortured after she was forcibly removed from a cruise ship by Libyan authorities).

109. *Watanabe v. Royal Caribbean Cruises, Ltd.*, No. B146759, 2001 WL 1511268, at *2 (Cal. Ct. App. Nov. 28, 2001).

The Subparts that follow address some of the legal issues facing passengers who have suffered some of the problems noted in the above list.

A. *Reasonable Care*

Cruise lines, as common carriers, were once held to a high standard of care, but more recently are governed by a reasonable standard of care under the circumstances of each case.¹¹¹ This change may prove burdensome to passengers bringing suits against cruise lines.

B. *Res Ipsa Loquitur*

Changes to the standard of care courts apply to cruise lines notwithstanding, the doctrine of *res ipsa loquitur* may apply, thereby

110. *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 831, 2002 AMC 2270, 2273 (9th Cir. 2002) (passenger drowned after falling off cruise ship); *Stires v. Carnival Corp.*, 243 F. Supp. 2d 1313, 1316 (M.D. Fla. 2002) (head waiter sexually assaulted and verbally abused a passenger).

111. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632, 1959 AMC 597, 602 (1959); *see also* *Cook v. Royal Caribbean Cruises, Ltd.*, No. 11-20723-CIV, 2012 WL 1792628, at *4 (S.D. Fla. May 15, 2012) (allowing plaintiffs to introduce into evidence (1) the American Society of Testing and Materials Standard Practice for Safe Walking Surfaces, (2) IMO Circular 75, (3) Draft Passenger Vessel Accessibility Guidelines dated June 26, 2008, and (4) National Fire Protection Association NFPA-101 Life Safety Code); *Rosenfeld v. Oceania Cruises, Inc.*, 654 F.3d 1190, 1193, 2011 AMC 2838, 2841-42 (11th Cir. 2011) (concluding that an expert on flooring safety should have been allowed to testify for plaintiff); *City of New York v. Agni*, 522 F.3d 279, 286, 2008 AMC 1389, 1398 (2d Cir. 2008) (considering USCG regulations in determining the standard of reasonable care following an allision involving the Staten Island Ferry); *Doe v. Royal Caribbean Cruises, Ltd.*, No. 11-23323-CIV, 2011 WL 6727959, at *2 (S.D. Fla. Dec. 21, 2011) (applying a reasonable-care standard in a case involving the rape of a female passenger by another passenger); *Glod v. Clinton River Cruise Co.*, No. 279422, 2009 WL 186188, at *3, 2009 AMC 843, 846 (Mich. Ct. App. Jan. 27, 2009) (“In a maritime premises liability action, a ship owner is under a duty to its passengers to exercise reasonable care.”); *Fritsch v. Princess Cruise Lines, Ltd.*, No. B214767, 2010 WL 2090315, at *4-5, 2010 AMC 1655, 1660-62 (Cal. Ct. App. May 26, 2010) (finding a California statute that required carriers to exercise “utmost care” preempted by the general maritime law reasonable care standard); *Ginop v. A 1984 Bayliner 27’ Cabin Cruiser*, 242 F. Supp. 2d 482, 485, 2003 AMC 1200, 1203 (E.D. Mich. 2003) (applying reasonable standard of care); *Ilan v. Princess Cruises, Inc.*, No. B151303, 2002 WL 31317342, at *3 (Cal. Ct. App. Oct. 16, 2002) (applying reasonable standard of care); *Watanabe v. Royal Caribbean Cruises, Ltd.*, No. B146759, 2001 WL 1511268, at *3 (Cal. Ct. App. Nov. 28, 2001) (“The duty of care of the owner . . . is to exercise reasonable care . . .”); *Kalendareva v. Discovery Cruise Line P’ship*, 798 So. 2d 804, 805 (Fla. Dist. Ct. App. 2001) (“A ship owner . . . may have a higher duty of care than a land owner, depending on the danger.”); *Galentine v. Holland Am. Line-Westours, Inc.*, 333 F. Supp. 2d 991, 996, 2004 AMC 711, 716 (W.D. Wash. 2004) (“Defendant . . . owed Plaintiff . . . a reasonable duty of care, but not a heightened duty of care.”); *Lawrence v. The “IMAGINE . . . !” Yacht, LLC*, 333 F. Supp. 2d 379, 384 (D. Md. 2004) (finding that the vessel owner’s duty of reasonable care to the passengers did not create a duty on the part of the charter broker).

raising an inference of negligence.¹¹² Application of the doctrine may offset the increased burden courts place on passengers via the lower standard of care to which courts now hold cruise lines.

C. Strict Liability for Cruise Employees' Sexual Misconduct

Cruise lines may be held vicariously liable for the sexual misconduct of their employees.¹¹³

D. Vicarious Liability for Ship Doctor Malpractice

Despite that cruise lines may be held vicariously liable for employee sexual misconduct, they are generally not held vicariously liable for ship doctor malpractice.¹¹⁴ Recently, however, a few courts have allowed medical malpractice victims to assert a claim against the cruise line based on apparent agency and negligent or fraudulent misrepresentations.¹¹⁵

112. *Walter v. Carnival Corp.*, No. 09-20962-CIV, 2010 WL 2927962, at *1 (S.D. Fla. July 23, 2010) (applying doctrine of *res ipsa loquitur* when passenger suffered injuries from collapsing deck chair); *O'Connor v. Chandris Lines, Inc.*, 566 F. Supp. 1275, 1279 (D. Mass. 1983) (applying doctrine of *res ipsa loquitur* when passenger was injured by a falling bunk bed); *Hood v. Regency Mar. Corp.*, No. 99 Civ. 10250, 2000 U.S. Dist. LEXIS 17298, at *12-13, 2001 AMC 645, 650 (S.D.N.Y. Nov. 29, 2000) (applying doctrine of *res ipsa loquitur* when a passenger was struck by a piece of tile).

113. *Doe v. Royal Caribbean Cruises, Ltd.*, 860 F. Supp. 2d 1337, 1339-40, 2013 AMC 842, 845-46 (S.D. Fla. 2012) (applying strict liability to a violation of the Child Abuse Victims' Rights Act of 1986 after seventeen-year-old passenger was induced by a crew member "to participate in sexual activities, including the taking of sexually explicit photographs"); *Stires*, 243 F. Supp. 2d at 1318 (finding vicarious liability possible after head waiter sexually assaulted and verbally abused a passenger); *Doe v. Celebrity Cruises, Inc.*, 287 F. Supp. 2d 1321, 1327-28, 2004 AMC 832, 836-38 (S.D. Fla. 2003) (declining to impose strict liability for crew member's alleged sexual assault, rape, and battery of a passenger), *aff'd in part and rev'd in part*, 394 F.3d 891, 2005 AMC 214 (11th Cir. 2004).

114. *See Wajnstat v. Oceania Cruises, Inc.*, No. 09-21850-Civ, 2011 WL 465340, at *4-5 (S.D. Fla. Feb. 4, 2011); *Hill v. Celebrity Cruises, Inc.*, No. 09-23815-CIV, 2011 WL 5360247, at *1-2, 2012 AMC 234, 236 (S.D. Fla. Nov. 7, 2011); *Doonan v. Carnival Corp.*, 404 F. Supp. 2d 1367, 1370, 2005 AMC 2971, 2973-74 (S.D. Fla. 2005); *Carlisle v. Carnival Corp.*, 864 So. 2d 1, 3, 2003 AMC 2433, 2435 (Fla. Dist. Ct. App. 2003), *rev'd*, 953 So. 2d 461, 2007 AMC 305 (Fla. 2007); *Mack v. Royal Caribbean Cruises, Ltd.*, 838 N.E.2d 80, 87 (Ill. App. 2005).

115. *See Lobegeiger v. Celebrity Cruises, Inc.*, No. 11-21620-CIV, 2011 WL 3703329, at *13-15, 2012 AMC 202, 224-28 (S.D. Fla. Aug. 23, 2011) (involving a medical malpractice claim where a passenger sufficiently pled fraudulent misrepresentation against a cruise line); *Lobegeiger v. Celebrity Cruises Inc.*, 869 F. Supp. 2d 1356, 2013 AMC 1254 (S.D. Fla. 2012) (granting summary judgment for the defendant on an apparent agency theory of liability for medical malpractice); *Hill v. Celebrity Cruises, Inc.*, No. 09-23815-CIV, 2011 WL 5360247, at *3, 2012 AMC 234, 238 (S.D. Fla. Nov. 7, 2011) (denying summary judgment for the defendant on the plaintiff's claim of negligent misrepresentation when the ship represented that it would have two doctors but only carried one).

E. No Strict Liability

Excepting the application of the doctrine of vicarious or strict liability for the sexual misconduct of crew members, cruise ships have not been held strictly liable for on board accidents including slip-and-falls and food poisoning.¹¹⁶

F. Dram Shop Liability

State dram shop acts creating liability for the purveyors of alcoholic beverages to patrons who subsequently injure third parties have been inconsistently applied to cruise ships and riverboat casinos.¹¹⁷

116. *Id.* at 1282, 1284, 2005 AMC at 2802-03 (“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. . . . [T]here is no principled basis to establish a new exception to the general duty owed by [cruise ships] to their ship passengers. . . .”); *see also* Fisher v. Olde Towne Tours, LLC, No. B224772, 2011 WL 3310362, at *6-7 (Cal. Ct. App. Aug. 3, 2011) (vessel owner not strictly liable for products liability). However, courts have imposed strict liability upon cruise lines for injuries suffered aboard FlowRiders. *See* Order Denying Defendant’s Motion To Dismiss at 1, 3-4, Morris v. Royal Caribbean Cruises, Ltd., No. 11-23206-CIV-GRAHAM/GOODMAN (S.D. Fla. dismissed Aug. 3, 2012). Additionally, one court has imposed strict liability for a defective filter in an onboard whirlpool spa that caused Legionnaires’ Disease. *See* Silivanch v. Celebrity Cruises, Inc., 333 F.3d 355, 358-59, 2003 AMC 2208, 2209-10 (2d Cir. 2003); Celebrity Cruises Inc. v. Essef Corp., 434 F. Supp. 2d 169, 2006 AMC 528 (S.D.N.Y. 2006).

117. *See* Paul S. Edelman & James E. Mercante, *The Floating Dram Shop*, N.Y.L.J., May 8, 2006, at 3 (“The popularity of gambling ‘cruises to nowhere’ and ‘booze cruises’ have increased the incidents of lawsuits against vessel owners. . . . [A] tort involving a cruise, to wit, an alcohol-related injury to a third party by an intoxicated passenger or crew member, will typically sustain admiralty jurisdiction. However, despite the ardent strive for uniformity in admiralty law . . . ‘dram shop’ acts ha[ve] come up short of that goal [because such] liability is not . . . uniformly recognized by the states”); *see also* Voillat v. Red & White Fleet, No. C 03-3016 MHP, 2004 WL 547146, at *1, *3-4, 2006 AMC 66, 66, 70-72 (N.D. Cal. Mar. 18, 2004) (dismissing a liquor liability cause of action against a vessel owner after a passenger was allegedly thrown overboard during a fight on board the vessel); Young v. Players Lake Charles, L.L.C., 47 F. Supp. 2d 832, 833, 837 (S.D. Tex. 1999) (holding that general maritime law applied to a claim against a riverboat casino owner for the actions of an intoxicated driver); Hall v. Royal Caribbean Cruises, Ltd., 888 So. 2d 654, 654-55, 2004 AMC 1913, 1913-14 (Fla. Dist. Ct. App. 2004); Taylor v. Costa Cruises, Inc., No. 90 Civ. 2630 (AGS), 1996 U.S. Dist. LEXIS 22510, at *8 (S.D.N.Y. Mar. 13, 1996) (declining to establish a minimum drinking age under general maritime law); Guinn v. Commodore Cruise Line, Ltd., No. 94 Civ. 5890(TPG), 1997 WL 164290, at *1 (S.D.N.Y. Apr. 7, 1997) (noting that a ship operator may be liable under general maritime law for not assisting an intoxicated person posing a danger to himself); Peterson v. Scotia Prince Cruises Ltd., 328 F. Supp. 2d 119 (D. Me. 2004) (holding that cruise ships may be liable for its crew members’ intentional torts).

G. *Seaworthiness Doctrine*

The seaworthiness doctrine has not been applied to actions involving passengers.¹¹⁸

H. *No Implied Warranty of Safe Passage*

Generally speaking, courts “will not imply a warranty of safe passage” unless such a warranty is explicitly provided in a passenger ticket contract.¹¹⁹

I. *No Implied Warranty of Merchantability*

In *Bird v. Celebrity Cruise Line, Inc.*,¹²⁰ 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 into her ticket contract.¹²¹ In refusing to apply this warranty, the court noted that other “courts have manifested a strong reluctance to imply warranties in contracts governed by admiralty law,” especially where such warranty is expressly disclaimed.¹²² With regard to the plaintiff’s specific claim involving the implied warranty of merchantability for the food and drinks served on board the vessel, the court held that no such implied warranty existed because “the only mention of food or beverage in the parties’ contract disclaim[ed] any warranty as to the food or drink furnished.”¹²³

118. *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1335, 1985 AMC 826, 829-30 (11th Cir. 1984); *Oran v. Fair Wind Sailing, Inc.*, No. 08-0034, 2009 WL 4349321, at *12 (D.V.I. Nov. 23, 2009); *Doonan*, 404 F. Supp. 2d at 1372, 2005 AMC at 2976; *Smith v. Carnival Corp.*, 584 F. Supp. 2d 1343, 1352, 2009 AMC 563, 575-76 (S.D. Fla. 2008); *Hass v. Carnival Cruise Lines, Inc.*, No. 86-33-CIV-KING, 1986 WL 10154, at *1, 1986 AMC 1846, 1846 (S.D. Fla. June 20, 1986) (“The warranty of seaworthiness does not apply to fare paying passengers.”).

119. *Bird v. Celebrity Cruise Line, Inc.*, 428 F. Supp. 2d 1275, 1279, 2005 AMC 2794, 2797 (S.D. Fla. 2005) (citing *Stires*, 243 F. Supp. 2d at 1320); *see also* *Jackson v. Carnival Cruise Lines, Inc.*, 203 F. Supp. 2d 1367, 1377 (S.D. Fla. 2002) (“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 seamen’s injuries. . . . [T]here is an exception to this rule if the ship owner executes a contractual provision that expressly guarantees safe passage.”); *Rockey v. Royal Caribbean Cruises, Ltd.*, No. 99-708-CIV-GOLD, 2001 WL 420993, at *6 (S.D. Fla. Feb. 20, 2001) (“[T]he law of admiralty will not imply a warranty of seaworthiness . . . unless there is an express provision in the contract of carriage guaranteeing safe passage.”).

120. 428 F. Supp. 2d 1275, 2005 AMC 2794.

121. *Id.* at 1277, 1280-81, 2005 AMC at 2795, 2799.

122. *Id.* at 1279, 2005 AMC at 2798.

123. *Id.* at 1280, 2005 AMC at 2799.

J. Causation and Notice

Causation and notice must be proven in all personal injury claims against cruise lines.¹²⁴ Generally, cruise lines must have actual or constructive notice of defects that may cause passenger injuries.¹²⁵ This overarching requirement may serve as a stumbling block for plaintiffs bringing personal injury suits.

V. ACCIDENTS ON SHORE: HOW FAR DOES MARITIME LAW EXTEND?

A. Risky Business: Shore Excursions

Prior to arriving at a port of call, a cruise ship's staff may give lectures about the shopping to be expected and the availability of tours, including snorkeling, scuba diving, archaeological sites, catamaran rides, parasailing, and helicopter rides, among others. Cruise ships generate substantial income from these tours,¹²⁶ which are typically delivered by independent contractors not subject to the jurisdiction of U.S. courts. These independent contractors may be uninsured, underinsured,¹²⁷ unlicensed, or irresponsible.¹²⁸

124. *Petitt v. Celebrity Cruises, Inc.*, 153 F. Supp. 2d 240, 248, 261 (S.D.N.Y. 2001) (holding that passengers did not prove causation for upper respiratory tract infections (URTI) when only 3.3% of 1934 passengers visited the ship's infirmary with cold or URTI symptoms); *Fritsch v. Princess Cruise Lines, Ltd.*, No. B214767, 2010 WL 2090315, at *6-7, 2010 AMC 1655, 1665-66 (Cal. Ct. App. May 26, 2010) (holding that a passenger did not prove notice when there were no similar slips and falls aboard any of the cruise line's vessels in the prior two years); *Jackson v. Carnival Cruise Lines, Inc.*, 203 F. Supp. 2d 1367, 1371, 1375 (S.D. Fla. 2002) (holding that a passenger's estate failed to prove causation for wrongful death allegedly caused by food poisoning).

125. *See Mendel v. Royal Caribbean Cruises, Ltd.*, No. 10-23398-CIV, 2012 WL 2367853, at *3 (S.D. Fla. June 21, 2012) (no cause of action for negligent design unless cruise line had actual or constructive notice of alleged defect); *Samuels v. Holland Am. Line-USA Inc.*, 656 F.3d 948, 953-54, 2011 AMC 2441, 2448-49 (9th Cir. 2011) (cruise ship had no actual or constructive notice of turbulent wave action at Lover's Beach).

126. *See, e.g., Princess Cruise Lines, Ltd. v. Superior Court*, 101 Cal. Rptr. 3d 323, 330 (Ct. App. 2009); *Hernandez v. Quality Inns, Inc.*, N.Y. L.J., Mar. 23, 1993, at 21-22.

127. *See, e.g., Perry v. HAL Antillen NV*, No. C12-0850JLR, 2013 WL 2099499, at *6-7 (W.D. Wash. May 14, 2013) (shore excursion operator only carried approximately \$80,000 in insurance when \$2 million was required).

128. *See, e.g., Winter v. I.C. Holidays, Inc.*, N.Y. L.J., Jan. 9, 1992, at 23, col. 4 (foreign bus company hired for a shore excursion was uninsured, irresponsible, and insolvent); *see also* Parry, *supra* note 24; Carothers, *supra* note 92.

1. Due Diligence Investigations

Some cruise lines, however, make a concerted effort to perform due diligence in the selection of shore excursion operators.¹²⁹ In those cases, adequate due diligence may help relieve a cruise line of liability. For example, in *Smolnikar v. Royal Caribbean Cruises Ltd.*, the court recited several reasons for holding that the cruise line had performed a concerted due diligence effort to ensure the safety of its shore excursions. Such reasons included:

(1) that Royal Caribbean had an incident-free relationship with [the excursion operator] 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 [the operator's] other tours; (3) the positive feedback received from Royal Caribbean passengers who participated in [the operator's] other tours; (4) [the operator'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 a year; (8) that it had sent representatives to participate on the tour and there was no negative feedback; . . . and (12) that it never received any accident reports from [the operator] pertaining to the Montego Bay tour.¹³⁰

2. Big Business for the Cruise Lines

Shore excursions generate large revenues for cruise lines,¹³¹ so it is not surprising that cruise lines actively promote them.¹³²

3. The Applicable Law

The law to be applied in the event of an accident on shore, which can be outcome-determinative, will depend on the extent to which a given court wishes to expand maritime law principles beyond the confines of the cruise ship. Some courts have taken a conservative

129. See *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308, 1312-14, 2011 AMC 2941, 2947-50 (S.D. Fla. 2011).

130. *Id.* at 1319, 2011 AMC at 2957-58.

131. Perrin, *supra* note 12 (“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, *supra* note 92 (“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.”); Christopher Solomon, *Voyage to the Great Outdoors*, N.Y. TIMES, Oct. 2, 2005 (Travel), at 12.

132. See *Perry*, 2013 WL 2099499, at *2; *Gayou v. Celebrity Cruises, Inc.*, No. 11-23359-Civ, 2012 WL 2049431, at *1 (S.D. Fla. June 5, 2012); *McLaren v. Celebrity Cruises, Inc.*, No. 11-23924-CIV, 2012 WL 1792632, at *1 (S.D. Fla. May 16, 2012); *Smolnikar*, 787 F. Supp. 2d at 1311, 2011 AMC at 2944; *Koens v. Royal Caribbean Cruises, Ltd.*, 774 F. Supp. 2d 1215, 1218, 2012 AMC 721, 722 (S.D. Fla. 2011).

position, holding that maritime law ends at the gangplank.¹³³ More progressive courts have extended maritime law to the pier¹³⁴ and beyond to cover accidents that occur away from the ship.¹³⁵

4. Three Zones of Danger

Generally, 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.¹³⁶ Second, accidents may occur on piers or areas immediately adjacent thereto.¹³⁷ Third, accidents may occur:

1. In a town¹³⁸
2. At a hotel¹³⁹
3. On local transportation¹⁴⁰ or while being transported to local sites¹⁴¹

133. *In re Kanoa, Inc.*, 872 F. Supp. 740, 746, 1995 AMC 691, 699 (D. Haw. 1994) (maritime law did not apply to suit arising out of scuba accident); *Musumeci v. Penn's Landing Corp.*, 640 A.2d 416, 418, 421 (Pa. Super. Ct. 1994) (maritime law applied to accident on gangplank).

134. *Gillmor v. Caribbean Cruise Line, Ltd.*, 789 F. Supp. 488, 489-90, 1994 AMC 1329, 1329, 1331 (D.P.R. 1992) (robbing and stabbing of passengers on pier).

135. *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1401, 1403, 1994 AMC 2642, 2643, 2646 (9th Cir. 1994) (inflatable raft capsized while transporting passengers to shore); *Carlisle v. Ulysses Line Ltd.*, 475 So. 2d 248, 249-50, 1986 AMC 694, 695-96 (Fla. Dist. Ct. App. 1985) (passengers ambushed on remote beach).

136. *Chan v. Soc'y Expeditions, Inc.*, 123 F.3d 1287, 1289, 1997 AMC 2713, 2715 (9th Cir. 1997) (inflatable raft ferrying passengers to shore capsized), *cert. dismissed*, 522 U.S. 1100 (1998); *Favorito v. Pannell*, 27 F.3d 716, 718 (1st Cir. 1994) (engineer drove passengers in an inflatable tender into other vessels).

137. *Burdeaux v. Royal Caribbean Cruises, Ltd.*, No. 11-22798-CIV, 2012 WL 3202948, at *1 (S.D. Fla. Aug. 3, 2012) (passenger reportedly raped while shopping on shore); *Smith v. Commodore Cruise Line Ltd.*, 124 F. Supp. 2d 150, 152 (S.D.N.Y. 2000) (passenger fell in a cruise ship boarding facility); *Sharpe v. W. Indian Co.*, 118 F. Supp. 2d 646, 648, 2001 AMC 995, 996 (D.V.I. 2000) (passenger was struck by a cruise ship railing while walking on a dock); *Gillmor*, 789 F. Supp. at 489, 1994 AMC at 1329 (passengers stabbed and robbed on pier); *Sullivan v. Ajax Navigation Corp.*, 881 F. Supp. 906, 908, 1995 AMC 2407 (S.D.N.Y. 1995) (AMC reporter summarizing case) (passenger injured on pier).

138. *Petro v. Jada Yacht Charters, Ltd.*, 854 F. Supp. 698, 699, 1994 AMC 1146, 1146 (D. Haw. 1994) (passengers injured in fight at a town bar).

139. *Rams v. Royal Caribbean Cruise Lines, Inc.*, 17 F.3d 11, 11, 1994 AMC 1573, 1574 (1st Cir. 1994) (passenger fell at hotel owned by cruise line).

140. *Balashchak v. Royal Caribbean Cruises, Ltd.*, No. 09-21196-CIV, 2010 WL 457137, at *1 (S.D. Fla. Feb. 4, 2010) (passenger injured in pickup truck); *Esfeld v. Costa Crociere, S.P.A.*, 289 F.3d 1300, 1302, 2002 AMC 1750, 1751 (11th Cir. 2002) (passengers injured in a tour van accident during a shore excursion); *Konikoff v. Princess Cruises, Inc.*, No. 1999-224, 2001 U.S. Dist. LEXIS 14034, at *1 (D.V.I. Aug. 13, 2001) (passenger injured exiting a taxi during a shore excursion); *Dubret v. Holland Am. Line Westours, Inc.*, 25 F. Supp. 2d 1151, 1152, 1999 AMC 859, 859 (W.D. Wash. 1998) (passenger injured in a bus accident during a shore excursion); *Paredes v. Princess Cruises, Inc.*, 1 F. Supp. 2d 87, 89 (D. Mass. 1998) (passenger injured in a tour

4. On a private beach or tour of a local site¹⁴²

B. *Types of Shore Excursion Accidents*

Like the list of problems cruise passengers commonly experience aboard ships, passengers experience a wide range of problems on shore excursions. What follows is a list of some examples of these problems with citations to illustrative authorities:

1. Assaults, rapes, robberies, and shootings¹⁴³
2. Horseback riding¹⁴⁴
3. Jet skis¹⁴⁵

bus accident); *DeRoche v. Commodore Cruise Line, Ltd.*, 46 Cal. Rptr. 2d 468, 470, 1994 AMC 2347, 2348 (Cal. Ct. App. 1994) (passenger injured in a motor scooter accident during a shore excursion); *Lubick v. Travel Servs., Inc.*, 573 F. Supp. 904, 905, 1986 AMC 132, 133 (D.V.I. 1983) (passengers injured in a bus accident during a shore excursion).

141. *McLaren v. Celebrity Cruises, Inc.*, No. 11-23924-CIV, 2012 WL 1792632, at *2 (S.D. Fla. May 16, 2012) (involving an incident where a cruise passenger was injured while disembarking a snorkeling tour boat); *Varey v. Canadian Helicopters Ltd.*, Case No. 95-13755-18 (Fla. Cir. Ct., Broward County) (on file with author) (acknowledging incident where cruise passengers drowned when their helicopter crashed on their return to Cozumel, Mexico); *see also Sixteen HAL Passengers Die in Mexico Air Crash*, TRAVEL WKLY. (Sept. 13, 2001), <http://www.travelweekly.com/Cruise-Travel/Sixteen-HAL-passengers-die-in-Mexico-air-crash/>; *Passenger Killed in Shore Excursion Accident*, TRAVEL WKLY. (July 27, 2000), <http://www.travelweekly.com/Destinations2001-2007/Passenger-killed-in-shore-excursion-accident/>.

142. *Berg v. Royal Caribbean Cruises, Ltd.*, No. 91-4957, 1992 WL 609803, at *1, 1994 AMC 806, 807 (D.N.J. Feb. 20, 1992) (passenger injured at a private beach); *Carlisle v. Ulysses Line Ltd.*, 475 So. 2d 248, 249, 1986 AMC 694, 695 (Fla. Dist. Ct. App. 1985) (passengers were ambushed, raped, and robbed at a private beach); *Koens v. Royal Caribbean Cruises, Ltd.*, 774 F. Supp. 2d 1215, 1218, 2012 AMC 721, 722 (S.D. Fla. 2011) (passengers were robbed and assaulted during tour); *Samuels v. Holland Am. Line-USA Inc.*, 656 F.3d 948, 950, 2011 AMC 2441, 2442-43 (9th Cir. 2011) (passenger rendered quadriplegic after turbulent wave action at beach); *Parry*, *supra* note 24 (twelve passengers killed after their tour bus fell down a mountainside); *Long v. Holland Am. Line Westours, Inc.*, 26 P.3d 430, 431 (Alaska 2001) (slip and fall during a museum tour); *Metzger v. Italian Line*, 1976 AMC 453, 453-54 (S.D.N.Y. 1975) (passengers injured in automobile accident).

143. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012) (passenger shot and killed on a bus); *Koens*, 774 F. Supp. 2d at 1218, 2012 AMC at 722 (passengers robbed at gunpoint during a shore excursion); *Gillmor v. Caribbean Cruise Line, Ltd.*, 789 F. Supp. 488, 489, 1994 AMC 1329, 1329 (D.P.R. 1992) (passenger stabbed and robbed on pier); *Carlisle*, 475 So. 2d at 249, 1986 AMC at 695 (passengers ambushed by gunmen while on shore); *see also* Cathy Carroll, *HAL Passengers Robbed During Shore Excursion*, TRAVEL WKLY., Jan. 9, 1997, at 4 (“A dozen passengers sailing on Holland America Line’s Noordam were robbed at gunpoint during a shore excursion at the Prospect Plantation in Ocho Rios, Jamaica . . .”).

144. *Colby v. Norwegian Cruise Lines, Inc.*, 921 F. Supp. 86, 1996 AMC 1752 (D. Conn. 1996).

145. *Calhoun v. Yamaha Motor Corp., U.S.A.*, 216 F.3d 338, 2000 AMC 1865 (3d Cir. 2000); *Mashburn v. Royal Caribbean Cruises, Ltd.*, 55 F. Supp. 2d 1367, 1999 AMC 2475 (S.D. Fla. 1999), *aff’d sub nom. Royal Caribbean Cruises v. Hommen*, 214 F.3d 1356 (11th Cir. 2000) (unpublished table decision); *Mashburn v. Royal Caribbean Cruises, Ltd.*, No. 00-3575-CIV-SEITZ, 2002 U.S. Dist. LEXIS 3999 (S.D. Fla. Mar. 1, 2002).

4. Scuba diving¹⁴⁶
5. Walking underwater¹⁴⁷
6. Falling from a zip-line¹⁴⁸
7. Jumping from a cavern wall¹⁴⁹
8. Fishing¹⁵⁰
9. Bobsled rides¹⁵¹
10. Diving bells¹⁵²
11. Snorkeling¹⁵³
12. Boat tours¹⁵⁴
13. Vehicular accidents¹⁵⁵
14. Fist fights¹⁵⁶
15. Catamaran rides¹⁵⁷

146. *Carnival Cruise Lines, Inc. v. Levalley*, 786 So. 2d 18 (Fla. Dist. Ct. App. 2001); *Gershon v. Regency Diving Ctr., Inc.*, 845 A.2d 720 (N.J. Super. Ct. App. Div. 2004); *Neely v. Club Med Mgmt. Servs., Inc.*, 63 F.3d 166, 1996 AMC 776 (3d Cir. 1995); *Sinclair v. Soniform, Inc.*, 935 F.2d 599, 1991 AMC 2341 (3d Cir. 1991); *Courtney v. Pac. Adventures, Inc.*, 5 F. Supp. 2d 874, 1998 AMC 2857 (D. Haw. 1998); *Tancredi v. Dive Makai Charters*, 823 F. Supp. 778, 1994 AMC 911 (D. Haw. 1993) (AMC reporter summarizing case); *Shultz v. Fla. Keys Dive Ctr., Inc.*, 224 F.3d 1269, 2001 AMC 483 (11th Cir. 2000); *Cutchin v. Habitat Curacao-Maduro Dive Fantas-Seas, Inc.*, No. 98-1679-CIV-GOLD, 1999 WL 33232277, 1999 AMC 1377 (S.D. Fla. Feb. 8, 1999); *Borden v. Phillips*, 752 So. 2d 69 (Fla. Dist. Ct. App. 2000).

147. *DelPonte v. Coral World V.I., Inc.*, 233 F. App'x 178 (3d Cir. 2007).

148. *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308, 2011 AMC 2941 (S.D. Fla. 2011); *Gayou v. Celebrity Cruises, Inc.*, No. 11-23359-Civ, 2012 WL 2049431 (S.D. Fla. June 5, 2012); *Fojtasek v. NCL (Bah.) Ltd.*, 613 F. Supp. 2d 1351 (S.D. Fla. 2009); *Fojtasek v. NCL (Bah.) Ltd.*, 262 F.R.D. 650 (S.D. Fla. 2009).

149. *Skeen v. Carnival Corp.*, No. 08-22618-CIV, 2009 WL 1117432 (S.D. Fla. Apr. 24, 2009).

150. *Doyle v. Graske*, 579 F.3d 898, 2009 AMC 2493 (8th Cir. 2009).

151. *See Gentry v. Carnival Corp.*, No. 11-21580-CIV, 2011 WL 4737062 (S.D. Fla. Oct. 5, 2011).

152. *See Zapata v. Royal Caribbean Cruises, Ltd.*, No. 12-21897-Civ, 2013 WL 1296298 (S.D. Fla. Mar. 27, 2013); *Zapata v. Royal Caribbean Cruises, Ltd.*, No. 12-21897-Civ, 2013 WL 1100028 (S.D. Fla. Mar. 15, 2013).

153. *McLaren v. Celebrity Cruises, Inc.*, No. 11-23924-CIV, 2012 WL 1792632 (S.D. Fla. May 16, 2012); *Piché v. Stockdale Holdings, LLC*, No. 2006-79, 2009 WL 799659 (D.VI. Mar. 24, 2009); *Mayer v. Cornell Univ., Inc.*, 909 F. Supp. 81 (N.D.N.Y. 1995), *aff'd*, 107 F.3d 3 (2d Cir. 1997) (unpublished table decision), *cert. denied*, 522 U.S. 818 (1997); *McClenahan v. Paradise Cruises, Ltd.*, 888 F. Supp. 120, 1995 AMC 1899 (D. Haw. 1995).

154. *United Shipping Co. (Nassau) v. Witmer*, 724 So. 2d 722 (Fla. Dist. Ct. App. 1999).

155. *Perry v. HAL Antillen NV*, No. C12-0850JLR, 2013 WL 2099499 (W.D. Wash. May 14, 2013); *Gibson v. NCL (Bah.) Ltd.*, No. 11-24343-CIV, 2012 WL 1952667 (S.D. Fla. May 30, 2012); *Young v. Players Lake Charles, L.L.C.*, 47 F. Supp. 2d 832 (S.D. Tex. 1999).

156. *Petro v. Jada Yacht Charters, Ltd.*, 854 F. Supp. 698, 1994 AMC 1146 (D. Haw. 1994).

157. In *Wolff v. Holland America Lines, Inc.*, a cruise passenger participated in a shore excursion during which she fell off a catamaran and injured 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 those events." No. 09-50RAJ, 2010 WL 234772, at *1, *3 (W.D.

16. Medical malpractice at local clinics¹⁵⁸
17. Abandonment onshore¹⁵⁹
18. Parasailing¹⁶⁰
19. Waterskiing¹⁶¹
20. Snowmobiling¹⁶²
21. Helicopter and airplane rides¹⁶³

Wash. Jan. 13, 2010). Holland America asserted that for ten years prior to the accident, it had no complaints about this shore excursion operator. The court granted summary judgment for the cruise line. *Id.* at *3; *see also* *Bridgewater v. Carnival Corp.*, 286 F.R.D. 636, 638 (S.D. Fla. 2011) (passenger injured by lightning strike at or near the catamaran); *Oran v. Fair Wind Sailing, Inc.*, No. 08-0034, 2009 WL 4349321, at *1 (D.V.I. Nov. 23, 2009) (slip and fall on a catamaran); *Kilma v. Carnival Corp.*, No. 08-20335-CIV, 2008 WL 4559231, at *1 (S.D. Fla. Oct. 10, 2008); *Henderson v. Carnival Corp.*, 125 F. Supp. 2d 1375, 1376, 2001 AMC 264, 264 (S.D. Fla. 2000) (passengers injured when catamaran struck a coral reef).

158. *Wajnstat v. Oceania Cruises, Inc.*, No. 09-21850-Civ, 2011 WL 465340 (S.D. Fla. Feb. 4, 2011); *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 2001 AMC 804 (9th Cir. 2001); *DeRoche v. Commodore Cruise Line, Ltd.*, 46 Cal. Rptr. 2d 468, 1994 AMC 2347 (Cal. Ct. App. 1994).

159. *Daniel v. Costa Armatori, S.p.A.*, 1980 AMC 2874 (D.D.C. 1980).

160. In *Haese v. Celebrity Cruises, Inc.*, the plaintiff and her mother were parasailing in tandem during a shore excursion when “the guide rope supporting them broke and both women fell into the water. As a result of this fall, Plaintiff sustained ‘serious catastrophic injuries’ and her mother died.” The plaintiff brought causes of actions based upon third-party beneficiary and joint venture theories. No. 12-20655-CIV, 2012 WL 3808596, at *1, 2012 AMC 1739, 1740-41 (S.D. Fla. May 14, 2012); *Joseph v. Carnival Corp.*, No. 11-20221-CIV, 2011 WL 3022555 (S.D. Fla. July 22, 2011); *In re UFO Chuting of Haw., Inc.*, 233 F. Supp. 2d 1254, 2002 AMC 954 (D. Haw. 2001); *Ransier v. Quirk Marine, Inc.*, 812 N.Y.S.2d 214 (App. Term 2006); *In re See N Ski Tours, Inc.*, No. 98-1300-P-M, 2000 U.S. Dist. LEXIS 2983 (S.D. Ala. Feb. 25, 2000); *Beiswenger Enters. Corp. v. Carletta*, 46 F. Supp. 2d 1294, 1999 AMC 2078 (M.D. Fla. 1999). For a case involving a hotel management company’s liability where a guest drowned while parasailing, see *Walker v. Wedge Hotel Management (Bahamas) Ltd.*, No. 01-3564-CIV, 2003 WL 23218085 (S.D. Fla. Oct. 22, 2003). There, the plaintiff claimed that the defendant management company was liable because the vendor that ran the parasailing business was its agent. A jury awarded plaintiff \$1.88 million in the case. No. 01-3564-CIV, 2003 WL 23407582 (S.D. Fla. Sept. 3, 2003).

161. *O’Hara v. Bayliner*, 679 N.E.2d 1049, 1997 AMC 2037 (N.Y. 1997).

162. *See Passenger Killed in Shore Excursion Accident*, *supra* note 141.

163. *Altman v. Liberty Helicopters*, No. 10-545, 2010 WL 2998467 (E.D. Pa. July 29, 2010); *Gund III v. Pilatus Aircraft, Ltd.*, Nos. C07-4902 TEH, C08-3795 TEH, 2010 WL 887376 (N.D. Cal. Mar. 11, 2010); *see also* Douglas Rogers, *Risky Business*, CONDÉ NAST TRAVELER (Feb. 2006), <http://www.cntraveler.com/travel-tips/safety-and-security/2006/02/Risky-Business> (“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.”); Debra A. Klein, *Spate of Copter Crashes Prompts Concern*, N.Y. TIMES, Feb. 5, 2006 (Travel), at 6 (“The N.T.S.B. has recorded more than 140 sightseeing-flight accidents nationally since January 2000, 19 of them

22. Personal watercraft rides¹⁶⁴
23. Wake boarding¹⁶⁵
24. Drownings¹⁶⁶
25. Mig fighter jet flying¹⁶⁷

C. Theories of Liability for Shore Excursion Accidents

Typically the cruise line will seek to enforce a cruise ticket clause disclaiming all liability for shore excursion accidents.¹⁶⁸ Recently, courts have recognized a variety of legal theories by which to hold the cruise line and shore excursion operator liable for such accidents. Some of these theories include a breach of the duty to warn of dangerous

fatal. The accidents were 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 Serv. of Othello, Inc.*, 105 P.3d 1012, 1015 (Wash. Ct. App. 2005) (safari participants killed in airplane crash); *Abercrombie & Kent Int’l, Inc. v. Carlson Mktg. Grp.*, No. 88-7889, 1990 WL 20213, at *1 (E.D. Pa. Feb. 28, 1990) (travelers killed when in airplane crash); *Sixteen HAL Passengers Die in Mexico Air Crash*, *supra* note 141 (“Sixteen passengers from Holland America Line’s Maasdam, along with two pilots and one tour escort, were killed . . . when their sightseeing plane crashed in a jungle near Mexico’s Yucatan Peninsula.”); *Passenger Killed in Shore Excursion Accident*, *supra* note 141; *Seven Killed in Maui Tour Helicopter Crash*, TRAVEL WKLY. (July 26, 2000), <http://www.travelweekly.com/Destinations2001-2007/Seven-killed-in-Maui-tour-helicopter-crash/>.

164. *In re Royal Caribbean Cruises Ltd.*, 459 F. Supp. 2d 1284 (S.D. Fla. 2006); *Henson v. Klein*, 319 S.W.3d 413 (Ky. 2010); *In re Bay Runner Rentals, Inc.*, 113 F. Supp. 2d 795, 2001 AMC 894 (D. Md. 2000).

165. *Wheeler v. HO Sports Inc.*, 232 F.3d 754 (10th Cir. 2000).

166. *Smith v. Carnival Corp.*, 584 F. Supp. 2d 1343, 2009 AMC 563 (S.D. Fla. 2008); *Island Sea-Faris, Ltd. v. Haughey*, 13 So. 3d 1076 (Fla. Dist. Ct. App. 2008); *In re Lake George Tort Claims*, No. 1:05-cv-1408, 2010 WL 1930583 (N.D.N.Y. May 10, 2010), *aff’d*, 461 F. App’x 39 (2d Cir. 2012).

167. Johanna Jainchill, *Luxury Cruising Sector Is Booming as Mass-Market Products Struggle*, TRAVEL WKLY., May 29, 2006, at 1 (“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.”).

168. For example, in *Reming v. Holland America Line Inc.*, a cruise passenger fell into a sink hole during a shore excursion tour of Cliff Diver’s Plaza in Mazatlan, Mexico. No. C11-1609RSL, 2013 WL 594281, at *1-2 (W.D. Wash. Feb. 14, 2013). The cruise ship contract clause disclaimed liability for negligent selection of local tour bus companies, but the court held that the clause was unenforceable, thus expanding the scope of 26 U.S.C. § 30509 from accidents on board to shore excursion accidents. The court concluded that the cruise line “failed to provide any evidence or argument regarding [its] inquiry into [the local tour bus company’s] competence and fitness as an excursion provider. Therefore, Plaintiffs’ claim regarding [the cruise line’s] selection and retention of [the local tour bus company] remains for trial.” *Id.* at *4, *7; *see also* *Young v. Carnival Corp.*, No. 09-21949-CIV, 2011 WL 465366 (S.D. Fla. Feb. 4, 2011) (enforcing a cruise line’s disclaimer of liability for misconduct of shore excursion operators).

environments,¹⁶⁹ negligent selection of shore excursion operators,¹⁷⁰ and the third-party beneficiary theory.¹⁷¹

VI. OTHER LIABILITY ISSUES

A. *Cancellations, Delays, Port Skipping, and Itinerary Changes*

Aside from physical injuries, cruise passengers may have claims arising from cancellations,¹⁷² flight delays,¹⁷³ port skipping and unannounced itinerary changes,¹⁷⁴ and forced disembarkation. The captain of a cruise ship or a commercial aircraft may, under appropriate circumstances, order the disembarkation of passengers.¹⁷⁵ Typically, a

169. *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012) (duty to warn of dangerous gang-infested environment on shore).

170. *See, e.g., Zapata v. Royal Caribbean Cruises, Ltd.*, No. 12-21897-Civ, 2013 WL 1296298, at *1 (S.D. Fla. Mar. 27, 2013) (decedent asphyxiated during bell diving excursion); *Perry v. HAL Antillen NV*, No. C12-0850JLR, 2013 WL 2099499, at *3 (W.D. Wash. May 14, 2013) (shore excursion operator ran over passenger with tour bus); *Gibson v. NCL (Bah.) Ltd.*, No. 11-24343-CIV, 2012 WL 1952667, at *1 (S.D. Fla. May 30, 2012) (declining to entertain a cause of action against the cruise line for negligent selection of a shore excursion operator).

171. *See, e.g., Perry*, 2013 WL 2099499; *Haese v. Celebrity Cruises, Inc.*, No. 12-20655-CIV, 2012 WL 3808596, 2012 AMC 1739 (S.D. Fla. May 14, 2012).

172. *Odyssey Travel Ctr., Inc. v. RO Cruises, Inc.*, 262 F. Supp. 2d 618, 622 (D. Md. 2003) (cruise line cancelled group contracts); *Unger v. Travel Arrangements, Inc.*, 266 N.Y.S.2d 715, 717, 1966 AMC 1440, 1440 (App. Div. 1966) (insolvent cruise line cancelled contracts); *Dimon v. Cruises By De*, No. 115-62264, 1994 WL 792663, at *1, 1995 AMC 685, 686 (Iowa Dist. Ct. Nov. 28, 1994) (travel agent absconded with consumer's payment); *Sanderman v. Costa Cruises Inc.*, 55 Pa. D. & C.4th 328, 329-30 (Ct. Com. Pl. 2001) (cruise tour operator failed to remit passengers' payment to cruise line or issue refund); *Slade v. Cheung & Risser Enters., Inc.*, 10 Pa. D. & C.3d 627, 628-29 (Ct. Com. Pl. 1979) (cruise line absconded with passenger payments).

173. *Flamenbaum v. Orient Lines, Inc.*, No. 03-22549-CIV, 2004 WL 1773207, at *1 (S.D. Fla. July 20, 2004) (baggage placed on wrong flight); *Insogna v. Princess Cruises, Inc.*, N.Y. L.J., June 10, 2002, at 37; *Bernstein v. Cunard Line Ltd.*, No. 83 Civ. 2206 (SWK), 1985 WL 1980, at *1 (S.D.N.Y. June 27, 1985) (snowstorm delayed air transportation); *Harden v. Am. Airlines*, 178 F.R.D. 583, 584 (M.D. Ala. 1998) (passengers missed two days of cruise because of flight delays).

174. *Elliott v. Carnival Cruise Lines*, 231 F. Supp. 2d 555, 557, 2003 AMC 1055, 1056 (S.D. Tex. 2002) (engine trouble caused cancellation of stop in Playa del Carmen); *Yollin v. Holland Am. Cruises, Inc.*, 468 N.Y.S.2d 873, 874-75, 1984 AMC 542, 543 (App. Div. 1983) (planned stop in Bermuda skipped); *Desmond v. Holland Am. Cruises, N.V.*, 1981 AMC 211, 212 (S.D.N.Y. 1981) (same); *Casper v. Cunard Line, Ltd.*, 560 F. Supp. 240, 241, 1984 AMC 2465, 2466 (E.D. Pa. 1983) (cruise line failed to abide by its itinerary); *Whitman v. TravLtips, Inc.*, 1982 AMC 429, 430 (W.D. Va. 1981) (change in the travel itinerary); *Bloom v. Cunard Line, Ltd.*, 430 N.Y.S.2d 607, 608 (App. Div. 1980) (same); Christopher Elliott, *Maybe Barbados, Maybe Someplace Else*, N.Y. TIMES, July 2, 2006 (Travel), at 6 ("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. Those responses do not always sit well with passengers or authorities.")

175. *See, e.g., Ruta v. Delta Airlines, Inc.*, 322 F. Supp. 2d 391 (S.D.N.Y. 2004); *Rubin v. United Air Lines, Inc.*, 117 Cal. Rptr. 2d 109 (Ct. App. 2002).

medical disembarkation—a type of forced disembarkation—will seek to protect the well-being of an individual passenger.¹⁷⁶ Medical disembarkation of a passenger may also be necessary to protect the remaining passengers.¹⁷⁷

B. Misrepresentations and Discomfort Aboard the Cruise Ship

1. Port Charges

Cruise lines have generated substantial profits by forcing passengers to pay “port charges” in addition to the price they pay for a cruise. Sometimes these “port charges” have exceeded \$150 per passenger and were explained to passengers as charges required by port authorities and government agencies. In reality, very little of the “port charge” was ever paid to port authorities or governmental agencies, with most, if not all, of the collected revenues being pocketed by the cruise line as profit. This deceptive practice has been the subject of an enforcement proceeding brought by the Florida Attorney General¹⁷⁸ and several consumer class actions alleging fraud and violation of state consumer protection statutes.¹⁷⁹

2. Hotel Taxes and Fee Surcharges

Cruise passengers may also be forced to pay hidden hotel taxes and fee surcharges that they likely were not aware of at the time they booked their tickets. However, courts do not seem to find that these surcharges constitute deceptive practices like they have found with respect to port charges. For example, in *Chiste v. Hotels.com L.P.*, the court dismissed the plaintiff’s claim that the cruise line violated New York General

176. *Larsen v. Carnival Corp.*, 242 F. Supp. 2d 1333, 1340, 2003 AMC 1337, 1341-42 (S.D. Fla. 2003); *Wajnstat v. Oceania Cruises, Inc.*, No. 09-21850-Civ, 2011 WL 465340, at *1 (S.D. Fla. Feb. 4, 2011).

177. *Afkhami v. Carnival Corp.*, 305 F. Supp. 2d 1308, 1313-14, 2004 AMC 1459, 1463-64 (S.D. Fla. 2004) (passengers forced to disembark after they brought live bees on board).

178. Larry Fox & Barbara Radin Fox, *The ‘Port Charge’ Game*, WASH. POST, Mar. 2, 1997, at E4 (“[S]ix cruise lines . . . said that by June 1 they will adopt new pricing practices that limit advertised ‘port charges’ solely to governmental and quasi-governmental fees imposed by ports of call.”).

179. See *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 701 (Fla. Dist. Ct. App. 2000); *N.G.L. Travel Assocs. v. Celebrity Cruises, Inc.*, 764 So. 2d 672, 673, 2000 AMC 2391, 2391-92 (Fla. Dist. Ct. App. 2000); *Renaissance Cruises, Inc. v. Glassman*, 738 So. 2d 436, 437 (Fla. Dist. Ct. App. 1999); *Premier Cruise Lines, Ltd., v. Picaut*, 746 So. 2d 1132, 1134 (Fla. Dist. Ct. App. 1999); *Cronin v. Cunard Line Ltd.*, 672 N.Y.S.2d 864, 864, 1998 AMC 2367, 2367 (App. Div. 1998); *Pickett v. Holland Am. Line-Westours, Inc.*, 6 P.3d 63, 65 (Wash. Ct. App. 2000), *rev’d*, 35 P.3d 351 (Wash. 2001) (en banc); *Ames v. Celebrity Cruises, Inc.*, No. 97 Civ. 0065 (LAP), 1998 U.S. Dist. LEXIS 11559, at *4 (S.D.N.Y. July 29, 1998).

Business Law § 349 by taxing passengers for their hotel accommodations based on the higher retail rate passengers paid to the cruise line rather than the lower wholesale rate the cruise line paid to the hotel.¹⁸⁰

Similarly, in *Hotels.com, L.P. v. Canales*, a hotel guest “contacted Hotels.com to make a reservation at a hotel in San Antonio, Texas.”¹⁸¹ Hotels.com, the defendant, charged each customer a surcharge, entitled “taxes/fees.”¹⁸² The defendant admitted that it neither charged nor collected the alleged “taxes/fees,” and the court found that such a charge was permissible because “the fee [was] not a tax” under Texas law.¹⁸³

3. Passengers’ Cabins

Unlike hotel taxes and fee surcharges, courts have found cruise lines liable for engaging in deceptive practices with regard to passenger accommodations under a variety of circumstances.¹⁸⁴

180. 756 F. Supp. 2d 382, 403 (S.D.N.Y. 2010).

181. 195 S.W.3d 147, 149 (Tex. App. 2006).

182. *Id.*

183. *Id.* at 152.

184. *Vallery v. Berm. Star Line, Inc.*, 532 N.Y.S.2d 965 (Civ. Ct. 1988) (stateroom did not meet advertised quality); *Ames*, 1998 U.S. Dist. LEXIS 11559 (cruise ship substituted lower quality cabin); *Mirra v. Holland Am. Line*, 751 A.2d 138 (N.J. Super. Ct. App. Div. 2000) (cabin smaller than promised); *Donnelly v. Klosters Rederi A/S*, 515 F. Supp. 5 (E.D. Pa. 1981) (room unclean); *Blair v. Norwegian Caribbean Lines A/S*, 622 F. Supp. 21, 1985 AMC 2435 (D.D.C. 1985) (double bed instead of two twin beds); *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1985 AMC 826 (11th Cir. 1984) (malfunctioning toilets); *Cismaru v. Radisson Seven Seas Cruises, Inc.*, No. 07-00-00100-CV, 2001 WL 6546 (Tex. App. Jan. 2, 2001) (unsatisfactory accommodations during shore excursion).

*C. Cruise Ship Facilities and Services*¹⁸⁵

Disabled travelers¹⁸⁶ present special problems that airlines, both domestic¹⁸⁷ and foreign,¹⁸⁸ hotels,¹⁸⁹ and cruise ships need to address. Currently, all cruise ships touching U.S. ports are subject to the ADA's requirements.¹⁹⁰

However, until recently, some cruise lines did not feel bound by the ADA's directives.¹⁹¹ This changed in 2000 when a disabled passenger purchased a ticket for a cruise, which represented that it had rooms and public facilities that 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."¹⁹² The passenger's subsequent lawsuit, *Stevens v. Premier*

185. Nadine Godwin, *S.F. Agency, NCL Named in Pride of Aloha Lawsuits*, TRAVEL WKLY. (Mar. 29, 2005), <http://www.travelweekly.com/Cruise-Travel/S-F--agency,-NCL-named-in-Pride-of-Aloha-lawsuits/> ("Passengers on a charter cruise of NCLs [sic] Pride of Aloha in Hawaii last summer brought a class-action lawsuit . . . alleg[ing] 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."); *Poulos v. Caesars World, Inc.*, 379 F.3d 654 (9th Cir. 2004) (regarding fraudulent and misleading acts related to slot machines); *Gelfand v. Action Travel Ctr., Inc.*, 563 N.E.2d 317 (Ohio Ct. App. 1988) (refurbished cruise vessel misrepresented as being new); *Boyles v. Cunard Line, Ltd.*, No. 93 Civ. 5472 (JFK), 1994 U.S. Dist. LEXIS 21449, 1994 AMC 1631 (S.D.N.Y. Jan. 11, 1994) (cruise line misrepresented availability of Spa Sea program); *Ricci v. Hurley*, M 79 10186 C, 1984 AMC 546 (Fla. Palm Beach Cnty. Ct. 1981) (unclean recreational deck facilities); *Donnelly*, 515 F. Supp. 5 (failure to provide clean decks and children's playroom); *Grivesman v. Carnival Cruise Lines*, No. 00 C 2091, 2001 U.S. Dist. LEXIS 661 (N.D. Ill. Jan. 24, 2001) (poor quality of service aboard cruise ship); *Hollingsworth v. Cunard Line Ltd.*, 263 S.E.2d 190 (Ga. Ct. App. 1979) (poker game not available on QUEEN ELIZABETH II).

186. See Betsy Wade, *Cruise Ships and the Disabled*, N.Y. TIMES, Aug. 6, 2000 (Travel), at 4; Special Report, *Shipping News Cruise Passengers Gain More Rights*, Consumer Reports Travel Letter, Dec. 2000, at 12; Ernest Blum, *AAA To Publish Guides for Disabled Travelers*, TRAVEL WKLY. (Feb. 2, 2001), <http://www.travelweekly.com/travel-news/travel-agent-issues/AAA-to-publish-guides-for-disabled-travelers/>.

187. See Air Carrier Access Act of 1986, 49 U.S.C. § 41705 (2006).

188. *Alino v. Aerovias de Mexico, S.A.*, 129 F. Supp. 2d 1341, 1344 (S.D. Fla. 2000) (noting that foreign air carriers can be liable under the amended Air Carrier Access Act); Ernest Blum, *DOT Aims To Extend Disability Rules to Foreign Lines*, TRAVEL WKLY., Feb. 1, 2001, at 5 ("The Department of Transportation is actively carrying out a new mandate from Congress to bring foreign airlines under the jurisdiction of U.S. law in order to guarantee disabled travelers equal access to air transportation.").

189. *Sigros v. Walt Disney World Co.*, 129 F. Supp. 2d 56 (D. Mass. 2001) (claiming violations of the ADA after wheelchair accident at resort).

190. See *supra* note 72 and accompanying text.

191. 42 U.S.C. §§ 12101-12213 (2006).

192. *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237, 1238, 2000 AMC 1976, 1977 (11th Cir. 2000) (internal quotation marks omitted).

Cruises, Inc., established that the ADA applies to foreign-flagged cruise ships sailing in U.S. waters.¹⁹³

Other courts have also ruled on the ADA's application to cruise ships.¹⁹⁴ These cases have dealt with contaminated food and water and Norovirus,¹⁹⁵ breakdowns of engines, air conditioning, ventilation, water desalinization, filtration, and sanitary systems,¹⁹⁶ and the absence of medical care standards.

193. *Id.* at 1242, 2000 AMC at 1982 (“[T]his 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.”).

194. *Larsen v. Carnival Corp.*, 242 F. Supp. 2d 1333, 1348, 2003 AMC 1337, 1341 (N.D. Fla. 2003) (finding that a cruise passenger's medical disembarkation was appropriate because the proposed modifications to the ship's ventilator were not reasonable and not required by the ADA); *Ass'n for Disabled Ams., Inc. v. Concorde Gaming Corp.*, 158 F. Supp. 2d 1353, 1367-68 (S.D. Fla. 2001) (finding that craps tables that were too high for wheelchair-bound players did not violate the ADA but that inaccessible restroom facilities did); *Resnick v. Magical Cruise Co.*, 148 F. Supp. 2d 1298, 1303, 1305, 2001 AMC 2576, 2581, 2584 (M.D. Fla. 2001) (finding that a passenger did not have standing to sue under the ADA and that the ADA accessibility guidelines did not apply to cruise ships because they had not been developed yet); *Access Now, Inc. v. Cunard Line Ltd.*, No. 00-7233-CIV-MORENO, 2001 U.S. Dist. LEXIS 21481, at *1 (S.D. Fla. Oct. 31, 2001) (approving a settlement that required the cruise line to spend \$7 million to make its vessels comply with the ADA's public accommodation provisions); *Walker v. Carnival Cruise Lines*, 63 F. Supp. 2d 1083, 1091 (N.D. Cal. 1999) (explaining that even travel agents could be liable under the ADA for misrepresenting the disabled accommodations on a vessel or failing to research such accommodations); *Briefer v. Carnival Corp.*, No. 98-1493-PCT-SMM, 1999 U.S. Dist. LEXIS 21256, at *5-6 (D. Ariz. Aug. 3, 1999) (alleging sufficient facts to show that the ADA governed travel agents); *Deck v. Am. Haw. Cruises, Inc.*, 51 F. Supp. 2d 1057, 1061, 1999 AMC 2829, 2832 (D. Haw. 1999) (finding the ADA's new construction and alteration-of-facility provisions inapplicable to the cruise ship).

195. See *Carnival Cruise May Have Located Source of Virus Outbreak*, ETURBONEWS (Mar. 24, 2013), <http://eturbonews.com/print/33997> (“[C]losure of the Carnival Cruise Port on Grand Turk in the Turks and Caicos Islands . . . [comes] in the wake of an outbreak of a sickness that causes vomiting and diarrhea.”); see also Genevieve Shaw Brown, *Cruise Ships Queen Mary 2 and Emerald Princess Hit by Suspected Norovirus*, ABC NEWS (Dec. 28, 2012), <http://www.abcnews.com/Travel/cruise-ships-queen-mary-emerald-princess-hit-suspected/story?id=18082284>; *Jackson v. Carnival Cruise Lines, Inc.*, 203 F. Supp. 2d 1367 (S.D. Fla. 2002) (claiming negligence, breach of contract, and failure to warn where passenger became ill during cruise and died shortly after disembarking); *Tateosian v. Celebrity Cruise Servs., Ltd.*, 768 A.2d 1248, 1249 (R.I. 2001) (per curiam) (negligence action for salmonella poisoning); *Barbachym v. Costa Line, Inc.*, 713 F.2d 216, 218, 1984 AMC 1484, 1486 (6th Cir. 1983) (food poisoning); *Bounds v. Sun Line Cruises, Inc.*, 1997 AMC 25, 30 (C.D. Cal. 1996) (salmonella poisoning from contaminated food and water).

196. *Neenan v. Carnival Corp.*, 199 F.R.D. 372, 373 (S.D. Fla. 2001) (breakdown of sanitation and air conditioning systems causing nausea); *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 623, 2000 AMC 1519 (5th Cir. 1999) (AMC reporter summarizing case) (defective ventilation system allegedly caused respiratory illnesses); *Silivanch v. Celebrity Cruises, Inc.*, No. 95 Civ. 0374 (BSJ) (JCF), 2000 U.S. Dist. LEXIS 12155, at *2 (S.D.N.Y. Aug. 23, 2000) (defective filter in whirlpool spa caused Legionnaires' Disease); *Casper v. Cunard Line, Ltd.*, 560 F. Supp. 240, 241, 1984 AMC 2465, 2465-66 (E.D. Pa. 1983) (class action for failure to follow itinerary after cruise ship suffered a breakdown); *Simon v. Cunard Line Ltd.*, 428 N.Y.S.2d 952

Unfortunately, there are no uniform international standards for the qualifications of cruise ship doctors or nurses or for the nature and quality of medical equipment on board cruise ships.¹⁹⁷

D. Lost, Damaged, or Stolen Baggage

Cruise passengers have also had to deal with various issues arising when cruise lines lose, damage, or steal baggage.¹⁹⁸

E. Passenger Protection Rules

Cruise ship passengers are the beneficiaries of various consumer protection regulations. State consumer protection statutes provide passengers with remedies for damages arising from deceptive and unfair business practices.¹⁹⁹ Federal regulations take the form of financial security rules and vessel sanitation inspections.

1. Financial Protection for Cruise Passengers

Federal maritime regulations provide that entities that “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.”²⁰⁰ These regulations provide that cruise lines must establish sufficient funds, through combinations of surety bonds, insurance, or escrow arrangements, and pay the full cruise contract price under circumstances where the cruise is not performed.²⁰¹ Unfortunately, most problems with

(App. Div. 1980) (change in itinerary when air conditioning malfunctioned and fresh water was not available).

197. Cruise-Ship Health Care: Prescription for Trouble, CONSUMER REP. TRAVEL LETTER, Apr. 1999.

198. See *Mainzer v. Royal Olympic Cruises, Ltd.*, 677 N.Y.S.2d 668, 669 (Sup. Ct. App. Term 1998) (vessel lost passenger's baggage for four days); *Ames v. Celebrity Cruises, Inc.*, No. 97 Civ. 0065 (LAP), 1998 U.S. Dist. LEXIS 11559, at *3-5 (S.D.N.Y. July 29, 1998) (vessel lost baggage for most of cruise); *Cada v. Costa Line, Inc.*, 547 F. Supp. 85, 85-86, 1984 AMC 1491, 1491-92 (N.D. Ill. 1982) (fire on vessel destroyed baggage).

199. For a discussion of New York State consumer protection statutes, including General Business Law sections 349, 350, see Thomas A. Dickerson, *Consumer Law 2013 Update: The Judge's Guide to Federal and New York State Consumer Protection Statutes*, NYCOURTS.GOV (June 6, 2013), http://www.nycourts.gov/courts/9jd/TacCert_pdfs/Dickerson_Docs/CONSUMER LAW2013ONLINE.pdf; see also *Vallery v. Bermuda Star Line, Inc.*, 532 N.Y.S.2d 965, 967-68 (Civ. Ct. 1988) (finding the cruise line liable under New York State General Business Law section 349 for deceptive business practices and section 350 for false advertising after the quality of the cruise ship was misrepresented in brochures).

200. 46 C.F.R. § 540.1 (2013).

201. For amendments eliminating the availability of self-insurance and other changes that became effective August 5, 2002, see 67 Fed. Reg. 44,774 (2002). For cases discussing the scope

cruise lines involve a failure to deliver part of what is promised while the aforesaid financial security devices appear to provide recourse only in the event of insolvency or bankruptcy. In addition, the Federal Maritime Commission bonds are limited to a maximum of \$15 million, which may be inadequate to cover all passenger claims.²⁰²

2. Sanitary Inspection of Vessels

The United States 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 CDC and should be examined before selecting a cruise ship.²⁰³ For example, the CDC recently

released a report documenting the unsanitary conditions that led to one of the world's most luxurious cruise ships failing a health inspection

The report on the surprise inspection of Silversea Cruises' 382-passenger Silver Shadow says inspectors found raw, cooked and ready-to-eat foods improperly stored under the cabin beds of crew members who worked in the ship's galley.

Food also was stored on the floors of crew cabins, as was equipment used to prepare food for passengers such as a meat slicer and serving trays, the report says.²⁰⁴

of coverage of these maritime surety bonds, see, for example, *Patricia Hayes & Associates, Inc. v. M/V Big Red Boat, II*, No. 00 Civ. 6925(GBD), 2002 U.S. Dist. LEXIS 9867, 2002 AMC 1722 (S.D.N.Y. May 31, 2002), and *Freret Marine Supply v. M/V Enchanted Capri*, No. 00-3805, 2002 U.S. Dist. LEXIS 5130 (E.D. La. Mar. 8, 2002), *aff'd sub nom. Freret Marine Supply v. Harris Trust & Savings Bank*, 73 F. App'x 698 (5th Cir. 2003). See also Rebecca Tobin, *FMC Bond Ceiling To Get a Hearing*, TRAVEL WKLY. (June 10, 2003), <http://www.travelweekly.com/cruise-travel/FMC-bond-ceiling-to-get-a-hearing/> ("A Federal Maritime Commission plan to boost bonding requirements for cruise lines [would] eliminate the \$15 million ceiling on cruise line bond requirements and make other changes in the financial responsibility rules. . . . Under the new proposal, cruise lines would be responsible for coverage equal to the total amount of passenger funds on hand for future cruises (unearned passenger revenue), except for revenue received from credit card charges made within 60 days of sailing.").

202. Tobin, *supra* note 201.

203. For cruise ship sanitation reports, see *Vessel Sanitation Program*, CTNS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nceh/vsp/> (last visited Apr. 12, 2014).

204. *CDC Documents Unsanitary Conditions on Luxury Ship*, USA TODAY (July 23, 2013, 5:39 PM), <http://www.usatoday.com/story/travel/news/2013/07/23/silver-sea-cruise-ship-health-inspection/2579265/>; *Travel Agents: Cancel All Bookings on Silversea Cruises!*, ETURBONNEWS (July 25, 2013), <http://www.eturbonews.com/print/36453> ("According to crew members, some spoilable food items were kept out of the refrigerator in cabins and hallways but were served the following day to the cruise passengers.").

3. Protecting the Oceans

Cruise passengers have a vital interest in monitoring the way in which cruise ships deliver their services. This includes protecting the oceans from cruise ships that illegally dump garbage, wastes, and spent fuel.²⁰⁵ While federal laws exist to protect the oceans, some states have stepped in to provide additional protection. These state laws may in fact be tougher than federal regulations. California and Alaska, for example, have enacted legislation prohibiting ocean dumping.²⁰⁶

F. Insurance: Cancellation Waivers and Third-Party Policies

Krista Carothers of *Condé Nast Traveler* prepared an excellent comparison of cruise line policies and third-party policies in a 2005 article, *Playing It Safe*. In her article, Carothers noted that the three most important benefits of obtaining travel insurance for your cruise are trip cancellation coverage, trip interruption coverage, and medical coverage. Of these three benefits, Carothers claimed that trip cancellation coverage is the most important because it “will reimburse the cost of a cruise or tour if you’re forced to call off your plans for any of a number of covered reasons.”²⁰⁷ Carothers also discussed cancellation waivers, which typically allow passengers to cancel their cruise up to one or two days before departure and receive a refund of roughly 75%-90% of the trip’s total cost. While Carothers acknowledged that waivers are generally

205. Matthew L. Wald, *A Cruise Line Starts To Clean Up After Itself*, N.Y. TIMES, Nov. 28, 2004 (Travel), at 3 (“Royal Caribbean International, which pleaded guilty in 1999 to 21 felony counts of violating water pollution laws, and paid \$18 million in fines, . . . turned on new systems on two ships [providing] advanced wastewater treatment.”); Krista Carothers, *Cruise Ships Come Clean*, CONDÉ NAST TRAVELER, Aug. 2004, at 62 (“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.”); Krista Carothers, *Pollution Progress*, CONDÉ NAST TRAVELER, Dec. 2003, at 76; Edwin McDowell, *For Cruise Ships, A History of Pollution*, N.Y. TIMES, June 16, 2002 (Travel), at 3 (“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.”).

206. Carothers, *Pollution Progress*, *supra* note 205, at 76 (“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 blackwater (from toilets) or graywater (from sinks, showers, and laundry), many see this as an important first step.”).

207. Krista Carothers, *Playing It Safe*, CONDÉ NAST TRAVELER, Jan. 2005, at 55, 56.

helpful, she also noted, “It can be perilous . . . to rely on a waiver as your only protection against the unexpected” because such waivers “won’t cover other things that insurance does.”²⁰⁸

VII. LITIGATION ROADBLOCKS IN PROSECUTING PASSENGER CLAIMS

Generally, the rights of the cruise line under maritime law are paramount to those of the injured or victimized passenger.²⁰⁹ The following Subpart discusses how maritime law works to protect the cruise lines from legitimate passenger claims.

A. *The Limitation of Liability Act*

Under the Limitation of Liability Act (Limitation Act),²¹⁰ shipowners may limit their liability for passenger claims to the value of vessel. The Limitation Act provides, in relevant part, “The liability of the owner of a vessel for any claim, debt, or liability described in [this Act] shall not exceed the value of the vessel and pending freight.”²¹¹ The City of New York sought to limit its liability for the 2003 death of eleven passengers in a crash of the Staten Island Ferry. The city “attempt[ed] to limit its liability to \$14 million—the value of the ferry after the crash—based on [the Limitation Act].”²¹²

A limitation action is instituted by posting 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 of, or privity of knowledge 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

208. *Id.* at 57-58.

209. *See, e.g.*, *Schwartz v. S.S. Nassau*, 345 F.2d 465, 467, 1965 AMC 1375, 1378-79 (2d Cir. 1965); *Brozyna v. Niagara Gorge Jetboating, Ltd.*, No. 10-CV-602-JTC, 2011 WL 4553100, at *5 (W.D.N.Y. Sept. 29, 2011); *Johnson v. Royal Caribbean Cruises, Ltd.*, 449 F. App’x 846, 848-49 (11th Cir. 2011).

210. 46 U.S.C. §§ 30501-30512 (2006).

211. *Id.* § 30505(a).

212. Tom Perrotta, *Parties Spar over Findings in Ferry Action*, N.Y. L.J., Apr. 27, 2006, at 1.

entitled to exoneration from all liability.²¹³ A limitation action can, if successful, dramatically limit a cruise passenger's recoverable damages.²¹⁴

B. Passenger Ticket Print Size and 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 clearly and legibly in fonts not less than "eight points in depth or five and one-half points in depth for upper case type" in order to be admissible as evidence at trial.²¹⁵

The microscopic terms and conditions in passenger tickets are, clearly, meant to be unreadable. The law protects this practice. In fact, maritime law, which governs the rights and remedies of cruise passengers, preempts all state laws requiring consumer contracts to be in a specific type size.²¹⁶ In addition, the terms and conditions in passenger tickets are enforceable even though a passenger may be unable to read or understand the language in which the tickets are printed.²¹⁷

213. *Mashburn v. Royal Caribbean Cruises, Ltd.*, 55 F. Supp. 2d 1367, 1370, 1999 AMC 2475, 2477 (S.D. Fla. 1999), *aff'd sub nom. Royal Caribbean Cruises v. Hommen*, 214 F.3d 1356 (11th Cir. 2000) (unpublished table decision).

214. *In re UFO Chuting of Haw., Inc.*, 233 F. Supp. 2d 1254, 1260, 2002 AMC 954, 961 (D. Haw. 2001) (limiting liability for parasailing injuries to \$25,208); *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 2001 AMC 913 (2001); *In re Illusions Holdings, Inc.*, 78 F. Supp. 2d 238 (S.D.N.Y. 1999) (exonerating vessel owner under Limitation Act); *In re Vessel Club Med.*, 90 F. Supp. 2d 550, 551-52, 2000 AMC 1824, 1825 (D.N.J. 2000) (seeking to limit liability to \$80,000); *In re Bay Runner Rentals, Inc.*, 113 F. Supp. 2d 795, 808, 2001 AMC 894, 911 (D. Md. 2000) (denying exoneration under the Limitation Act); *In re See N Ski Tours, Inc.*, No. 98-1300-P-M, 2000 U.S. Dist. LEXIS 2983, at *8 (S.D. Ala. Feb. 25, 2000) (approving settlement of \$22,000); *Ginop v. A 1984 Bayliner 27' Cabin Cruiser*, 242 F. Supp. 2d 482, 2003 AMC 1200 (E.D. Mich. 2003); *In re Seadog Ventures, Inc.*, No. 98 C 1463, 2000 U.S. Dist. LEXIS 5805, at *2-3 (N.D. Ill. Mar. 30, 2000) (seeking to limit liability to \$543,200); *Beiswenger Enters. Corp. v. Carletta*, 46 F. Supp. 2d 1294, 1999 AMC 2078 (M.D. Fla. 1999); *Mashburn*, 55 F. Supp. 2d at 1372, 1999 AMC at 2480; *see also Tom Perrotta, City Seeks to Limit Liability for Ferry Crash in U.S. Court*, N.Y. L.J., Dec. 2, 2003, at 1 ("Facing a stack of legal claims from victims of the Oct. 15 Staten Island Ferry crash, the Bloomberg administration . . . moved to limit New York City's liability to \$14 million and consolidate all lawsuits before a single federal judge.").

215. N.Y. C.P.L.R. § 4544 (McKinney 2007); *see, e.g., Welch v. N.Y. Sports Club Corp.*, N.Y. L.J., Mar. 21, 2003, at 19 (applying N.Y. C.P.L.R. § 4544 to health club contracts); *Hamilton v. Khalife*, 735 N.Y.S.2d 564 (App. Div. 2001) (applying same to car rental contracts); *Bauman v. Eagle Chase Assocs.*, 641 N.Y.S.2d 107 (App. Div. 1996) (applying same to home improvement contracts).

216. *Lerner v. Karageorgis Lines, Inc.*, 488 N.E.2d 824, 827, 1986 AMC 1041, 1045-46 (N.Y. 1985) (enforcing a time-limitation provision in four-point type because maritime law preempts New York's statute requiring consumer contracts to be in eight-point type).

217. *Paredes v. Princess Cruises, Inc.*, 1 F. Supp. 2d 87, 90 (D. Mass. 1998) (enforcing the time-limitations in a passenger ticket even though the passenger could not read English).

C. *Time Limitations: Physical Injury Claims*

Many states allow injured consumers at least 2.5 years 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 filing claims and commencing lawsuits.

1. One Year in Which To File Suit

For physical injuries occurring on cruise vessels that touch U.S. ports,²¹⁸ passengers may be required to file a claim within six months and commence a lawsuit within one year.²¹⁹

2. Exceptions to the Rule

On occasion, courts may decide not to enforce the one-year time limitation.²²⁰

D. *Time Limitations: Nonphysical Injury Claims*

1. Six Months in Which To File Suit

For nonphysical injury claims, cruise lines may impose even shorter time limitation periods.²²¹

218. *Lerner*, 488 N.E.2d at 827, 1986 AMC at 1045-46 (holding that 46 U.S.C. § 183(b) time limitations apply only to cruise vessels touching U.S. ports).

219. *Hughes v. Carnival Cruise Lines, Inc.*, No. 01 Civ. 9681 (TPG), 2003 WL 1740460 (S.D.N.Y. Mar. 31, 2003) (enforcing the one-year time-limitation period); *Stone v. Norwegian Cruise Line*, No. CIV. A. 01-1343, 2001 WL 877580 (E.D. Pa. May 15, 2001) (same); *Angel v. Royal Caribbean Cruises, Ltd.*, No. 02-20409-CIV, 2002 WL 31553524 (S.D. Fla. Oct. 22, 2002) (same); *Wall v. Mikeralph Travel, Inc.*, No. CV020079209S, 2002 WL 178770 (Conn. Super. Ct. Jan. 6, 2003) (same); *Tateosian v. Celebrity Cruise Servs., Ltd.*, 768 A.2d 1248 (R.I. 2001) (per curiam) (same); *Konikoff v. Princess Cruises, Inc.*, No. 1999-224, 2001 U.S. Dist. LEXIS 14034 (D.V.I. Aug. 13, 2001) (same); *Burriss v. Regency Mar. Corp.*, No. 93 Civ. 0813 (PKL), 1993 U.S. Dist. LEXIS 8515, 1994 AMC 2355 (S.D.N.Y. June 24, 1993) (same); *Berg v. Royal Caribbean Cruises, Ltd.*, No. 91-4957, 1992 WL 609803, 1994 AMC 806 (D.N.J. Feb. 20, 1992) (same).

220. *Ward v. Cross Sound Ferry*, 273 F.3d 520, 2002 AMC 428 (2d Cir. 2001) (refusing to enforce a one-year time-limitation clause because the passenger received the ticket two minutes before boarding and did not have proper notice of the clause); *Gibbs v. Carnival Cruise Lines*, 314 F.3d 125, 2003 AMC 179 (3d Cir. 2002) (refusing to toll the one-year time-limitation period for a minor where the parent did not begin serving as the minor's guardian ad litem until after the filing of the lawsuit); *Long v. Holland Am. Line Westours, Inc.*, 26 P.3d 430, 436 (Alaska 2001) (refusing to enforce the one-year time-limitation period because passenger "received the [tour] vouchers just days before she was scheduled to embark on her journey, and after she had already paid for the tour"); *Dillon v. Admiral Cruises, Inc.*, 960 F.2d 743, 1992 AMC 2218 (8th Cir. 1992) (finding that the cruise line may be estopped from relying on the one-year time limitation); *Rams v. Royal Caribbean Cruise Lines, Inc.*, 17 F.3d 11, 1994 AMC 1573 (1st Cir. 1994) (refusing to apply the one-year time limitation to accidents that occurred during shore excursions).

2. Exceptions to the Rule

On occasion, courts may decide not to enforce these particularly short time limitations.²²²

E. Jurisdictional Issues

Most consumers purchase cruise tickets from a local retail travel agent. The cruise will depart from one of several domestic ports of call, typically from cities where the cruise line is headquartered, such as New York City or Miami. Modern consumers, perhaps naively, 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.

1. Marketing Through Travel Agents

To be able to sue a cruise line locally, a consumer's court must have jurisdiction. Even though cruise lines may distribute brochures through, and take orders from, retail travel agents, such marketing activities are insufficient to serve as a basis for jurisdiction.²²³

221. *Insogna v. Princess Cruises, Inc.*, N.Y. L.J., June 10, 2002, at 37 (enforcing a six-month time-limitation clause in the ticket for filing a claim arising out of a cancelled flight); *Boyles v. Cunard Line, Ltd.*, No. 93 Civ. 5472 (JFK), 1994 U.S. Dist. LEXIS 21449, 1994 AMC 1631 (S.D.N.Y. Jan. 11, 1994) (enforcing a six-month time-limitation to file a lawsuit where plaintiff simply failed to read the contract); *Cronin v. Cunard Line Ltd.*, 672 N.Y.S.2d 864, 1998 AMC 2367 (App. Div. 1998) (enforcing a six-month time-limitation period in which to file a lawsuit where the plaintiffs conceded that they were apprised of the facts underlying their claim within the six-month period).

222. *Barton v. Princess Cruises, Inc.*, No. B123107, 2002 WL 31677178, at *7 (Cal. Ct. App. Nov. 27, 2002) (finding that a clause in a passenger ticket requiring the filing of a written notice of claims within fifteen days and the filing of a lawsuit within ninety days may be unenforceable if it was "unreasonable under the circumstances in that plaintiffs could not with reasonable diligence have discovered their injuries within the limitation periods."); *Johnson v. Commodore Cruise Lines, Ltd.*, 897 F. Supp. 740, 1996 AMC 666 (S.D.N.Y. 1995) (holding that the six-month time-to-sue provision in plaintiff's ticket was invalid because the claim for negligent infliction of emotional distress was governed by Mississippi's three-year statute of limitations).

223. *Falcone v. Mediterranean Shipping Co.*, No. 01-3918, 2002 U.S. Dist. LEXIS 11392, at *5 (E.D. Pa. Apr. 3, 2002) (finding that there is no general jurisdiction over an independent local travel agent that has "no authority to confirm reservations"); *Duffy v. Grand Circle Travel, Inc.*, 756 N.Y.S.2d 176, 177 (App. Div. 2003) (finding that there were insufficient business contacts with the state of New York to exercise jurisdiction over a Massachusetts cruise company for a passenger's injury suffered in France); *Sanderman v. Costa Cruises Inc.*, 55 Pa. D. & C.4th 328, 332 (Ct. Com. Pl. 2001) (finding no specific jurisdiction over a cruise line that was not a part of the contract in Pennsylvania); *Kauffman v. Ocean Spirit Shipping Ltd.*, No. 4:90-cv-49, 1990 WL 483909, at *1, 1993 AMC 179, 180 (W.D. Mich. Oct. 15, 1990) (finding that paying commissions to Michigan travel agents for booking Michigan residents' reservations,

2. The “Solicitation Plus” Doctrine

The “solicitation plus” doctrine governs jurisdiction in travel cases with the “plus” equivalent to contract formation in the local forum.²²⁴ With the possible exception of Internet sales through interactive Web sites,²²⁵ 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.²²⁶

3. Jurisdiction over Internet Travel Services

Increasingly, travel services, including cruises, are being sold over the Internet either directly by suppliers or through Internet travel sellers such as Expedia and Travelocity.²²⁷

4. Jurisdiction: Agent and Phone Number in Forum

If a foreign excursion operator advertises the availability of its services together with a local phone number in the forum and does business through an agent, then the assertion of personal jurisdiction may be appropriate.²²⁸

disseminating brochures, and advertising in magazines is insufficient to confer personal jurisdiction over a foreign corporation under Michigan’s long-arm statute).

224. *Afflerbach v. Cunard Line, Ltd.*, 14 F. Supp. 2d 1260, 1266, 1999 AMC 283, 290 (D. Wyo. 1998) (finding that national advertising of cruise vacations and sales through travel agents in Wyoming is insufficient for general jurisdiction over a British corporation).

225. See Thomas A. Dickerson, *False, Misleading & Deceptive Advertising in the Travel Industry: The Consumer’s Rights & Remedies 2003*, CLASS ACTION LITIG. INFO. § D (Oct. 22, 2003), <http://www.classactionlitigation.com/library/False%20Advertising%20Web.htm>.

226. *Nowak v. Tak How Inv. Ltd.*, 899 F. Supp. 25 (D. Mass. 1995), *aff’d*, 94 F.3d 708 (1st Cir. 1996) (weighing factors in favor of exercising jurisdiction and noting that a cruise line’s availability for litigation in a local forum is the reasonable cost of doing business in the forum).

227. For a discussion on establishing jurisdiction over Internet travel sellers, see Thomas A. Dickerson, Cheryl E. Chambers & Jeffrey A. Cohen, *Personal Jurisdiction and the Marketing of Goods and Services on the Internet*, 41 HOFSTRA L. REV. 31 (2012).

228. For example, the court in *Meyer v. Carnival Corp.* held that it had personal jurisdiction over an excursion operator under Florida’s long-arm statute. 938 F. Supp. 2d 1251, 1261 (S.D. Fla. 2013). The plaintiff took the defendant operator’s “excursion to the Piton’s, the eroded remnants of two volcanic formations on the southwestern coast of the island of St. Lucia,” where he was injured. *Id.* at 1254. The excursion operator had given Carnival authority to market and sell tickets for its excursion operators. *Id.* at 1260. However, the defendant operator’s Web site included a phone number with the area code for Miami-Dade County, and the court accordingly found that it had personal jurisdiction over the company. *Id.* at 1259, 1261.

5. Jurisdiction and Territorial Waters

Jurisdictional issues may arise when an accident occurs in territorial waters²²⁹ and may involve in rem claims against a ship.²³⁰

F. Forum Selection and Mandatory Arbitration Clauses

Passenger tickets may contain a forum selection clause and a choice-of-law clause, both of which can have a negative impact on the passenger's ability to prosecute their claim. A forum selection clause may require that all passenger lawsuits be brought in the local court where the cruise line is headquartered.²³¹ Recently, cruise lines have sought to require passengers to resolve their disputes in the context of mandatory arbitration proceedings.²³²

1. Forum Selection Clauses Are Generally Enforceable

Generally speaking, courts will enforce forum selection clauses provided they were validly entered into, and under some circumstances where the forum selection clause appears in terms and conditions only accessible in an Internet hyperlink.²³³ For example, in the recent case of

229. *Benson v. Norwegian Cruise Line Ltd.*, 859 So. 2d 1213, 1215, 2003 AMC 2973, 2974-75 (Fla. Dist. Ct. App. 2003) (finding personal jurisdiction under the Florida long-arm statute because the tortious act of the ship's medical doctor occurred while the vessel was in Florida territorial waters); *Rana v. Flynn*, 823 So. 2d 302, 303 (Fla. Dist. Ct. App. 2002) (finding personal jurisdiction over the ship's doctor because the tortious conduct occurred in Florida waters); *Pota v. Holtz*, 852 So. 2d 379, 382, 2003 AMC 2443, 2445-46 (Fla. Dist. Ct. App. 2003) (finding personal jurisdiction over a ship's doctor was obtained by personal service while aboard a ship docked in a Florida port).

230. *Freret Marine Supply v. M/V Enchanted Capri*, No. 00-3805, 2002 U.S. Dist. LEXIS 5130 (E.D. La. Mar. 8, 2002), *aff'd sub nom. Freret Marine Supply v. Harris Trust & Savings Bank*, 73 F. App'x 698 (5th Cir. 2003).

231. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 1991 AMC 1697 (1991).

232. *See Gilroy v. Seabourn Cruise Line, Ltd.*, No. C12-107Z, 2012 WL 1202343, at *4 (W.D. Wash. Apr. 10, 2012) (holding that the arbitration clause in a passenger's ticket is binding and valid).

233. *Chapman v. Norwegian Cruise Line Ltd.*, No. 01 C 50004, 2001 U.S. Dist. LEXIS 9360, at *4-5 (N.D. Ill. July 5, 2001) ("A forum selection clause is enforceable unless (1) 'the incorporation of the clause was the result of fraud, undue influence, or overweening 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 . . .'" (alterations in original) (quoting *AAR Int'l, Inc. v. Nimelias Enters. S.A.*, 250 F.3d 510, 525 (7th Cir. 2001))); *Heinz v. Grand Circle Travel*, 329 F. Supp. 2d 896, 904, 2004 AMC 2020, 2029 (W.D. Ky. 2004) (Basel, Switzerland, forum selection clause enforced); *Schlessinger v. Holland Am., N.V.*, No. BC278939, 2003 WL 21371851, at *4-5, 2003 AMC 892, 897 (Cal. App. Dep't Super. Ct. Jan. 29, 2003) (Washington forum selection clause enforced); *Hughes v. Carnival Cruise Lines, Inc.*, No. 01 Civ. 9681(TPG), 2003 WL 1740460, at *1 (S.D.N.Y. Mar. 31, 2003) (Florida forum selection clause enforced); *Pratt v. Silversea Cruises, Ltd.*, No. C 05-0693 SI, 2005 WL 1656891,

Starkey v. GAP Adventures, Inc.,²³⁴ Starkey, a New York resident, purchased a nine-day tour of the Galapagos Islands provided by a Canadian tour operator. “The trip . . . was scheduled for October 2011 and cost \$5,000. . . . After she purchased her ticket, Starkey received a confirmation email, confirmation invoice, and service voucher,” none of which contained any forum selection and choice of law clauses. However, each of these three communications stated “that in purchasing her ticket, Starkey read, understood and agreed to the contract’s ‘Terms and Conditions,’” which were available for review by clicking on a hyperlink leading to a separate Web page. Starkey, like many consumers, did not click on the hyperlink. If she had clicked on the hyperlink and read the thirty-second paragraph, she may have noticed a provision stating “that the ‘Terms and Conditions and Conditions of Carriage including all matters arising from it are subject to Ontario and Canadian Law and the exclusive jurisdiction of the Ontario and Canadian Courts.’”²³⁵ Starkey claimed that a tour leader sexually assaulted her during the Galapagos tour. Upon her return home Starkey complained to Gap Adventures (Gap) and underwent “psychological therapy.” In the subsequent lawsuit, Starkey alleged that Gap was negligent in hiring and training the tour leader and was “liable under the tort laws of both the United States and Canada” and “request[ed] one million dollars in compensatory damages plus attorneys’ fees.”²³⁶

As the court noted, the central issue in the case was the enforceability of the Ontario, Canada, forum selection clause, which lurked in the hyperlink-accessible Web page that Starkey never read. “The legal effect of a forum-selection clause depends in the first instance upon whether its existence was reasonably communicated to the plaintiff.”²³⁷ Starkey asserted that Gap should have set forth its “Terms and Conditions,” including the forum selection clause, “in the body of

at *4, 2006 AMC 99, 104 (N.D. Cal. July 13, 2005) (Florida forum selection clause enforced); *Morrow v. Norwegian Cruise Line Ltd.*, 262 F. Supp. 2d 474, 476 (M.D. Pa. 2002) (Florida forum selection clause enforced); *Falcone v. Mediterranean Shipping Co.*, No. 01-3918, 2002 U.S. Dist. LEXIS 11392, at *9-10 (E.D. Pa. Apr. 3, 2002) (Italy forum selection clause enforced); *Ferketich v. Carnival Cruise Lines*, No. 02-CV-3019, 2002 WL 31371977, at *6, 2002 AMC 2956, 2964-65 (E.D. Pa. Oct. 17, 2002) (Florida forum selection clause enforced); *Enderson v. Carnival Cruise Lines, Inc.*, No. 5:00CV160-H, 2001 U.S. Dist. LEXIS 1608, at *13 (W.D.N.C. Feb. 7, 2001) (Florida forum selection clause enforced); *Elliott v. Carnival Cruise Lines*, 231 F. Supp. 2d 555, 563, 2003 AMC 1055, 1061 (S.D. Tex. 2002) (Florida forum selection clause enforced); *Tateosian v. Celebrity Cruise Servs., Ltd.*, 768 A.2d 1248, 1252 (R.I. 2001) (per curiam) (New York forum selection clause enforced).

234. No. 12 Civ. 07837, 2014 WL 1271233 (S.D.N.Y. Mar. 27, 2014).

235. *Id.* at *1.

236. *Id.* at *2.

237. *Effron v. Sun Line Cruises, Inc.*, 67 F.3d 7, 9, 1996 AMC 253, 256 (2d Cir. 1995).

the three relevant communications—the confirmation email, the confirmation invoice, and the service voucher.”²³⁸ The court rejected this argument, noting that it had already decided that “a hyperlink is a reasonable form of communicating the ‘Terms and Conditions’ of a contract.”²³⁹ The court held that when a corporation provides access to its contractual “Terms and Conditions” via a hyperlink and the consumer chooses not to review them, the consumer is still bound by those conditions including a forum selection clause.²⁴⁰

Starkey argued that enforcing the forum selection clause would be inconvenient and, more importantly, that the relevant statute of limitations would bar her from pursuing the claim in Canada. The court was unmoved, noting that in bringing the lawsuit in New York rather than Canada, “Starkey chose to ignore the forum-selection clause that she in effect agreed to when booking her trip.”²⁴¹ The court held that it would not consider “any potential timeliness problems that this choice may have created.”²⁴² The court dismissed the complaint and stated that if Starkey wished to continue her litigation, she had to refile in Canada.

2. Notice Must Be Adequate

Notice of the forum selection clause should be adequate,²⁴³ and they should be reasonable and fair.²⁴⁴

238. *Starkey*, 2014 WL 1271233, at *2.

239. *Id.* at *3 (citing *Fteja v. Facebook, Inc.*, 841 F. Supp. 2d 829, 839 (S.D.N.Y. 2012)).

240. *Id.*

241. *Id.* at *4.

242. *Id.* (quoting *Street, Sound Around Electronics, Inc. v. M/V Royal Container*, 30 F. Supp. 2d 661, 663, 1999 AMC 1805, 1808 (S.D.N.Y. 1999) (internal quotation marks omitted)). Many other courts have similarly enforced online arbitration clauses accessible via hyperlink. *See, e.g.*, *Guadagno v. E*Trade Bank*, 592 F. Supp. 2d 1263, 1271 (C.D. Cal. 2008) (“[A] reasonably prudent offeree would have noticed the link and reviewed the terms before clicking on the acknowledgment icon.”); *Hubbert v. Dell Corp.*, 835 N.E.2d 113, 121 (Ill. App. Ct. 2005) (“The blue hyperlinks . . . should be treated the same as a multipage written paper contract.”). The enforceability of online mandatory arbitration clauses, however, remains unsettled. *See, e.g.*, *Specht v. Netscape Commc’ns Corp.*, 306 F.3d 17, 35-38 (2d Cir. 2002) (finding a mandatory arbitration clause contained in an online licensing agreement unenforceable).

243. *Casavant v. Norwegian Cruise Line, Ltd.*, 829 N.E.2d 1171, 1175, 2005 AMC 2239, 2242 (Mass. App. Ct. 2005) (refusing to enforce a forum selection clause because the passenger’s ticket was delivered only thirteen days before the cruise); *Ward v. Cross Sound Ferry*, 273 F.3d 520, 522, 525, 2002 AMC 428, 429, 433 (2d Cir. 2001) (refusing to enforce a forum selection clause because the passenger obtained the ticket “just two to three minutes before boarding the ferry” and “possession of the ticket for such a short period of time was insufficient to give . . . reasonable notice that the ticket contained important contractual limitations”); *Osborn v. Princess Tours, Inc.*, No. H-94-3516, 1995 WL 686632, at *1-2, 1995 AMC 2119, 2120-21 (S.D. Tex. June 22, 1995) (enforcing a forum selection clause where the passenger had “ample opportunity to examine its contents”); *Schaff v. Sun Line Cruises, Inc.*, 999 F. Supp. 924, 927 (S.D. Tex. 1998)

3. Federal Court Forum Selection Clauses

Recently, several major cruise lines have drafted and implemented a forum selection clause that not only requires that all lawsuits be brought in a specific state such as Florida or Washington, but that the lawsuit must also be brought in a federal district court within that state. The enforcement of what amounts to a “sovereign selection clause” may have the effect of eliminating jury trials otherwise available in state court.²⁴⁵

In 2002, Carnival began including 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 litigated, 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 Courts of the United States lack subject matter jurisdiction, before a court located in

(refusing to enforce a forum selection clause for Athens, Greece, because the ticket was delivered too late to allow the consumer to seek a refund).

244. *Shute*, 499 U.S. at 595, 1991 AMC at 1704 (explaining that forum selection clauses are subject to judicial scrutiny for fundamental fairness).

245. *See, e.g.*, *Garnand v. Carnival Corp.*, No. G-06-024, 2006 WL 1371045, at *1 (S.D. Tex. May 16, 2006) (enforcing a Florida forum selection clause providing that any lawsuits “shall be litigated, if at all, before the United States District Court for the Southern District of Florida in Miami”); *Taylor v. Carnival Corp.*, No. 05-CV-72656, 2006 WL 508632, at *3 (E.D. Mich. Mar. 1, 2006) (refusing to enforce a Florida federal court forum selection clause because of a factual dispute as to whether the passenger received the ticket prior to embarking); *Farries v. Imperial Majesty Cruise Line*, No. C-06-1656 (JCS), 2006 WL 2472189, at *5, 2006 AMC 2253, 2259 (N.D. Cal. Aug. 24, 2006) (enforcing a forum selection clause providing that all lawsuits must be litigated in a court located in Broward County, Florida, or the United States District Court for the Southern District of Florida); *Oltman v. Holland Am. Line-USA, Inc.*, No. C05-1408JLR, 2006 WL 2222293, at *1, 2006 AMC 2550, 2551 (W.D. Wash. Aug. 1, 2006), *rev'd*, 538 F.3d 1271, 2008 AMC 1960 (9th Cir. 2008) (“A forum-selection clause in the cruise contract required Plaintiffs to bring their lawsuit in [federal] court.”); *Barry v. Carnival Corp.*, 424 F. Supp. 2d 1354, 1357 (S.D. Fla. 2006) (challenging a federal court forum selection clause on grounds that it deprived the plaintiffs of their constitutional right to trial by jury); *Assiff v. Carnival Corp.*, 930 So. 2d 776, 778 (Fla. Dist. Ct. App. 2006) (finding that a federal court forum selection clause did not permit the state trial court to transfer the action to a federal court); *Carnival Corp. v. Middleton*, 941 So. 2d 421, 425, 2006 AMC 2812, 2815 (Fla. Dist. Ct. App. 2006) (enforcing a federal court forum selection clause and dismissing the refiled case in federal court because it was time barred); *Finkelschtein v. Carnival Cruise Lines*, 2006 WL 1492469, at *3 (N.J. Super. Ct. App. Div. June 1, 2006) (enforcing a Florida federal court forum selection clause); *Oltman v. Holland Am. Line USA, Inc.*, 148 P.3d 1050, 1058 (Wash. Ct. App. 2006), *aff'd in part, rev'd in part*, 178 P.3d 981, 2008 AMC 2891 (Wash. 2008) (en banc) (enforcing a Washington federal court forum selection clause); *see also* *Eriksen*, *supra* note 74, at 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).”).

Miami-Dade County, Florida, U.S.A., to the exclusion of the Courts of any other county, state or country.²⁴⁶

Norwegian Cruise Line (NCL) adopted an identical clause in 2005. These provisions operate, without expressly saying so, to require suit in a nonjury federal admiralty court for all claims failing any requirement for federal diversity (law side) jurisdiction (namely, citizenship or 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. 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 trials produce significantly lower median damage awards than jury trials in comparable cases.

Practically, however, 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 proverbial federal cases.

4. Application to Nonsignatories

May a nonsignatory to the passenger contract such as a tour operator benefit from a contractual forum selection clause? The answer is yes, according to the court in *Morag v. Quark Expeditions, Inc.*²⁴⁷ The *Morag* court held:

246. Plaintiffs' Response to Defendant Carnival's Motion To Strike Affidavit of Roger A. Vaughan, Jr. at 3, *Barry*, 424 F. Supp. 2d 1354 (No. 05-22551-CIV), 2006 WL 1046048.

247. No. 3:07-cv-1062 (PCD), 2008 WL 3166066, 2009 AMC 2309 (D. Conn. Aug. 5, 2008); see also *Oran v. Fair Wind Sailing, Inc.*, No. 08-0034, 2009 WL 4349321, at *13 (D.V.I. Nov. 23, 2009) (holding that the plaintiff's release applied to a nonsignatory); *Bernstein v. Wysoki*, 907 N.Y.S.2d 49, 57 (App. Div. 2010) (concluding that a forum selection clause in a camp contract could not be relied upon by the nonsignatory medical personnel who treated the camper at a local hospital because they "do not have a sufficiently close relationship with the Camp such that enforcement of the forum selection clause . . . was foreseeable to the plaintiffs by virtue of that relationship"). In *Hofar v. The Gap, Inc.*, the traveler was injured "when a 'flip-flop' sandal that she was wearing broke while she was descending a stairway, which made her . . . fall into an ornamental pond containing sharp rocks." In the subsequent lawsuit against, inter alia, Expedia, Inc., which had sold the tour online, the issue arose as to the enforceability of Expedia's liability disclaimer that "[t]he . . . hotels and other suppliers providing . . . services for Expedia, Inc., are independent contractors and not agents or employees of Expedia, Inc., [which] [is] not liable for the acts [of] negligence of any such suppliers." 516 F. Supp. 2d 161, 165, 174-75 (D. Mass. 2007) (third alteration in original). Expedia's "Terms and Conditions" containing the disclaimer were accessible in the sense "that in order to finalize the reservation [the purchaser]

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’s 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.²⁴⁸

5. The Importance of Forum Selection Clauses

Stated simply, it is less expensive and more convenient for injured passengers to hire an attorney and sue in a local court than to travel to, and prosecute their claim in, Greece,²⁴⁹ Italy,²⁵⁰ the state of Washington,²⁵¹ or Miami, Florida.²⁵² 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.

6. Cancellation Fees and Adequacy of Notice

To be enforceable, forum selection clauses in cruise tickets or brochures must be fundamentally fair.²⁵³ 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

had to ‘click through’ Expedia’s Web Site *Terms, Conditions and Notices*, which included the liability disclaimer.” *Id.* at 174. Of particular interest in *Hofer* is the fact that the plaintiff never used Expedia’s Web site because her companion made all the reservations. Nonetheless, the court held that Hofer would be bound by the Expedia online disclaimer of liability. *Id.* at 176. Whether nonsignatories should be bound by the terms and conditions of travel contracts still remains unsettled. *See D’Elia v. Grand Caribbean Co.*, No. 09-1707 (NLH) (KMW), 2011 WL 6153704 (D.N.J. Dec. 12, 2011) (holding that a Mexico forum selection clause was inapplicable to a nonsignatory).

248. *Morag*, 2008 WL 3166066, at *5-6, 2009 AMC at 2317 (quoting *Cfirstclass Corp. v. Silverjet PLC*, 560 F. Supp. 2d 324, 328 (S.D.N.Y. 2008)).

249. *Effron v. Sun Line Cruises, Inc.*, 67 F.3d 7, 11, 1996 AMC 253, 259 (2d Cir. 1995) (finding the plaintiff’s arguments about the financial difficulty of litigating in Greece to be “less than persuasive when made by someone who owns homes in Palm Beach and New York and who has just returned from an expensive foreign vacation”).

250. *Hodes v. S.N.C. Achille Lauro ed Altri-Gestione*, 858 F.2d 905, 916, 1988 AMC 2829, 2846 (3d Cir. 1988) (rejecting plaintiff’s assertions that “financial, linguistic, and cultural difficulties posed by an Italian lawsuit would prove insurmountable”).

251. *Carron v. Holland Am. Line-Westours Inc.*, 51 F. Supp. 2d 322, 326, 1999 AMC 2206, 2210 (E.D.N.Y. 1999) (“[C]oast to coast traveling has become commonplace in today’s high-tech, modernized, global world.”).

252. *Hicks v. Carnival Cruise Lines, Inc.*, No. 93-5427, 1994 U.S. Dist. LEXIS 10194, 1995 AMC 281 (E.D. Pa. July 26, 1994).

253. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595, 1991 AMC 1697, 1704 (1991).

selected was adequate, and (4) the consumer had a reasonable opportunity to reject the cruise contract without penalty.²⁵⁴

Some courts have interpreted the fourth requirement to mean that passengers should receive the cruise contract early enough to be able to cancel without being subject to a cancellation fee.²⁵⁵ Other courts, however, have rejected this concept.²⁵⁶ Some courts may not enforce a

254. See, e.g., *id.*; *Cismaru v. Radisson Seven Seas Cruises, Inc.*, No. 07-00-00100-CV, 2001 WL 6546, at *1 (Tex. App. Jan. 2, 2001); *Stobaugh v. Norwegian Cruise Line Ltd.*, 5 S.W.3d 232, 235, 2001 AMC 215, 218 (Tex. App. 1999).

255. *Lavoie v. Suncruz Casino Cruises, LLC*, No. 4:08-cv-2183-RBH, 2009 WL 425815, at *3, 2009 AMC 781, 785 (D.S.C. Feb. 18, 2009) (refusing to enforce a forum selection clause because the passenger did not have a reasonable time to reject the clause); *Cismaru*, 2001 WL 6546, at *2 (refusing to enforce a Florida forum selection clause because the passenger received the cruise contract twenty-one days before departure); *Casavant v. Norwegian Cruise Line, Ltd.*, 829 N.E.2d 1171, 1175, 2005 AMC 2239, 2242 (Mass. App. Ct. 2005) (refusing to enforce a forum selection clause when passengers cancelled a cruise a few days after September 11, 2001); *Long v. Holland Am. Line Westours, Inc.*, 26 P.3d 430, 436 (Alaska 2001) (refusing to enforce a forum selection clause when a passenger “received the vouchers just days before she was scheduled to embark on her journey, and after she had already paid for the tour”); *Ward v. Cross Sound Ferry*, 273 F.3d 520, 522, 2002 AMC 428, 429 (2d Cir. 2001) (refusing to enforce a forum selection clause when a passenger obtained the ticket “just two or three minutes before boarding the ferry”); *McTigue v. Regal Cruises, Inc.*, No. 97 Civ. 7444 (JSM), 1998 U.S. Dist. LEXIS 5568 (S.D.N.Y. Apr. 22, 1998); *Schaff v. Sun Line Cruises, Inc.*, 999 F. Supp. 924, 927 (S.D. Tex. 1998) (refusing to enforce a Greece forum selection clause because the passenger received the ticket four days before departure and cancellation would have resulted in a 100% penalty); *Grivesman v. Carnival Cruise Lines*, No. 00 C 2091, 2001 U.S. Dist. LEXIS 661, at *8 (N.D. Ill. Jan. 24, 2001) (enforcing a Florida forum selection clause because passengers received the ticket early enough to have “forfeited only their deposit if they had canceled their trip at that time”); *Corna v. Am. Haw. Cruises, Inc.*, 794 F. Supp. 1005, 1011-12, 1992 AMC 1787, 1795-96 (D. Haw. 1992) (refusing to enforce a California forum selection clause because the tickets were received two days before the cruise and cancellation would have resulted in a 100% cancellation fee); *Stobaugh*, 5 S.W.3d at 235-36, 2001 AMC at 218-19 (refusing to enforce a Florida forum selection clause because passengers received the ticket twenty-three days before departure and immediate cancellation would have resulted in a \$400 penalty).

256. *Ferketich v. Carnival Cruise Lines*, No. 02-CV-3019, 2002 WL 31371977, at *5, 2002 AMC 2956, 2962-63 (E.D. Pa. Oct. 17, 2002) (“Although [passenger] would be subject to a \$350 cancellation fee . . . we believe [passenger] had adequate and reasonable notice to support enforcing the forum selection clause despite the cancellation fee.”); *Elliott v. Carnival Cruise Lines*, 231 F. Supp. 2d 555, 561, 2003 AMC 1055, 1061 (S.D. Tex. 2002) (enforcing a forum selection clause despite the fact that “fifty percent of the purchase price was refundable”); *Natale v. Regency Mar. Corp.*, No. 94 Civ. 0256 (LAP), 1995 U.S. Dist. LEXIS 3413, at *8-9 (S.D.N.Y. Mar. 15, 1995) (enforcing a time-limitation clause notwithstanding the 90% cancellation penalty); *Boyles v. Cunard Line, Ltd.*, No. 93 Civ. 5472 (JFK), 1994 U.S. Dist. LEXIS 21449, at *11-12, *14, 1994 AMC 1631, 1636-38 (S.D.N.Y. Jan. 11, 1994) (finding a ticket contract enforceable notwithstanding the significant cancellation fee); *Hicks v. Carnival Cruise Lines, Inc.*, No. 93-5427, 1994 U.S. Dist. LEXIS 10194, at *16, 1995 AMC 281, 288 (E.D. Pa. July 26, 1994) (finding the contract terms not necessarily unreasonable because of the imposition of penalties if the passenger canceled); *Lauri v. Cunard Line Ltd.*, No. 00-CV-70656-DT, 2000 U.S. Dist. LEXIS 8627, at *7 (E.D. Mich. May 15, 2000) (enforcing a Florida forum selection clause even though immediate cancellation after receipt of the ticket would have resulted in a 100% penalty); *Bounds v. Sun Line Cruises, Inc.*, 1997 AMC 25, 28-29 (C.D. Cal. 1996) (enforcing a Greece

cancellation or liquidated damages charge if it is a penalty or unreasonable.²⁵⁷

7. Physical Disabilities Exception

Some courts have refused to enforce a forum selection clause on public policy grounds.²⁵⁸

G. Choice-of-Law Clauses

In addition to forum selection clauses, passenger tickets may also designate the law to be applied in resolving any dispute that may arise. The law selected may be that of the Bahamas,²⁵⁹ China,²⁶⁰ Italy,²⁶¹ England,²⁶² or France,²⁶³ or the law applied pursuant to the Strasbourg

forum selection clause notwithstanding the minimum cancellation penalty of 25% “no matter when they purchased the ticket”); *Cross v. Kloster Cruise Lines, Ltd.*, 897 F. Supp. 1304, 1308-09, 1996 AMC 1215 (D. Or. 1995) (AMC reporter summarizing case) (enforcing a Florida forum selection clause notwithstanding a \$400 cancellation penalty); *Schulz v. Holland Am.-Line Westours, Inc.*, No. 99-0621-FT, 1999 WL 693461, at *1 (Wis. Ct. App. Sept. 8, 1999) (per curiam) (enforcing a time-limitation clause).

257. *Sub-Zero Freezer Co. v. Cunard Line Ltd.*, No. 01-C-0664-C, 2002 WL 32357103, at *6 (W.D. Wis. Mar. 12, 2002) (refusing to enforce a cancellation clause because it did not represent “a reasonable substitute for defendant’s actual damages”).

258. In *Walker v. Carnival Cruise Lines*, 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. 107 F. Supp. 2d 1135, 1136, 2001 AMC 741, 742 (N.D. Cal. 2000). Although the cruise line 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. *Id.* at 1137, 2001 AMC at 742. While the passenger claimed misrepresentations and a violation of the ADA, the cruise line sought to enforce a forum selection clause and transfer the case from California to Florida. Initially, the court granted the cruise line’s request, finding the forum selection clause reasonable and fair and dismissing the case. *Walker v. Carnival Cruise Lines*, 63 F. Supp. 2d 1083, 1090 (N.D. Cal. 1999). Upon reconsideration, the court refused to enforce the Florida forum selection clause for two reasons. “[F]irst, 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 and, second, the fact that plaintiffs are seeking to vindicate important civil rights.” *Walker*, 107 F. Supp. 2d at 1138, 2001 AMC at 744. *But see Caputo v. Holland Am. Line, Inc.*, No. 08-CV-4584 (CPS) (SMG), 2009 WL 2258326, at *4 (E.D.N.Y. July 29, 2009) (enforcing a Washington forum selection clause despite an elderly plaintiff’s claim that the clause violated public policy); *Pratt v. Silversea Cruises, Ltd.*, No. C 05-0693 SI, 2005 WL 1656891, at *4, 2006 AMC 99, 104 (N.D. Cal. July 13, 2005) (enforcing a Florida forum selection clause against a plaintiff with a physical disability).

259. *Kirman v. Compagnie Francaise De Croisieres*, 1994 AMC 2848 (Cal. Super. Ct. 1993) (enforcing a Bahamian choice-of-law clause).

260. *Jewel Seafoods Ltd. v. M/V Peace River*, 39 F. Supp. 2d 628, 1999 AMC 2053 (D.S.C. 1999) (enforcing a Chinese choice-of-law clause).

261. *Falcone v. Mediterranean Shipping Co.*, No. 01-3918, 2002 U.S. Dist. LEXIS 11392 (E.D. Pa. Apr. 3, 2002) (enforcing an Italian choice-of-law clause).

262. *Morag v. Quark Expeditions, Inc.*, No. 3:07-cv-1062 (PCD), 2008 WL 3166066, 2009 AMC 2309 (D. Conn. Aug. 5, 2008) (enforcing a London forum selection clause).

Convention.²⁶⁴ 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.²⁶⁵

Choice-of-law clauses are generally enforceable unless the passenger can demonstrate that enforcement would be unreasonable to prevent fraud or overreaching²⁶⁶ or that “enforcement would contravene a strong public policy of the forum in which suit is brought.”²⁶⁷

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 \$20,000.²⁶⁸ In another case, a traveler was seriously injured when she was thrown from a horse during a vacation in the Bahamas. She sued the several Bahamian entities she considered 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.²⁶⁹ In yet another instance, a 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 determine 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

263. *Seung v. Regent Seven Seas Cruises, Inc.*, 393 F. App’x 647 (11th Cir. 2010) (enforcing a French forum selection clause); *Burns v. Radisson Seven Seas Cruises, Inc.*, 867 So. 2d 1191, 2004 AMC 769 (Fla. Dist. Ct. App. 2004).

264. *Heinz v. Grand Circle Travel*, 329 F. Supp. 2d 896, 2004 AMC 2020 (W.D. Ky. 2004) (enforcing a Basel, Switzerland, forum selection clause in a cruise contract that also provided that liability issues would be resolved pursuant to the Strasbourg Convention).

265. *Klinghoffer v. S.N.C. Achille Lauro*, 795 F. Supp. 112, 115-16, 1993 AMC 1387, 1392-94 (S.D.N.Y. 1992).

266. *Long v. Holland Am. Line Westours, Inc.*, 26 P.3d 430, 431 (Alaska 2001) (applying Alaska law even though choice-of-law clause in tour contract stated that “except when maritime law applied, the contract would be construed according to Washington state law”).

267. *Milanovich v. Costa Crociere, S.P.A.*, 954 F.2d 763, 768, 1993 AMC 1034, 1040 (D.C. Cir. 1992) (quoting *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, 1972 AMC 1407, 1418 (1972)).

268. *Barkanic v. Gen. Admin. of Civil Aviation of China*, 923 F.2d 957 (2d Cir. 1991).

269. *Tucker v. Whitaker Travel, Ltd.*, 620 F. Supp. 578 (E.D. Pa. 1985), *aff’d*, 800 F.2d 1140 (3d Cir.).

law of Arizona.²⁷⁰ 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.²⁷¹

H. Disclaimers of Liability for Onboard Accidents

As a general rule, cruise ships are common carriers and are held to a reasonable standard of care.²⁷² 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.²⁷³ Additionally, some courts have held that disclaimers of simple negligence, particularly regarding the health and safety of passengers, are ineffective and unenforceable.²⁷⁴ However, as noted in Part IV.I, some courts will enforce passenger ticket contract provisions that disclaim any implied warranty of merchantability.²⁷⁵

I. Disclaimer of Liability for 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.²⁷⁶ This policy is unfair and has been criticized by some courts²⁷⁷ and commentators.²⁷⁸

270. *Wendelken v. Superior Court*, 671 P.2d 896, 899 (Ariz. 1983) (en banc).

271. *Feldman v. Acapulco Princess Hotel*, 520 N.Y.S.2d 477, 478 (Sup. Ct. 1987).

272. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 629-30, 1959 AMC 597, 601 (1959).

273. *Royal Ins. Co. of Am. v. Sw. Marine*, 194 F.3d 1009, 1016, 1999 AMC 2873, 2879 (9th Cir. 1999).

274. *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1334, 1985 AMC 826, 828 (11th Cir. 1984) (refusing to enforce clauses in a cruise contract that disclaimed all liability for the discomfort of passengers and negligence of the vessel after malfunctioning toilets ruined a cruise vacation).

275. *See supra* notes 120-123 and accompanying text.

276. *Barbetta v. S/S Bermuda Star*, 848 F.2d 1364, 1988 AMC 2650 (5th Cir. 1988) (finding the cruise ship not liable for medical malpractice of the ship's doctor in failing to discover during treatment that a passenger had diabetes); *Stires v. Carnival Corp.*, 243 F. Supp. 2d 1313 (M.D. Fla. 2002) (dismissing a medical malpractice claim against cruise ship for negligent acts by the ship's doctor and nurse); *Cimini v. Italia Crociere Int'l S.P.A.*, 1981 AMC 2674 (S.D.N.Y. 1981) (enforcing a cruise ship's disclaimer of liability for malpractice of the ship's doctor).

277. *Nietes v. Am. President Lines, Ltd.*, 188 F. Supp. 219, 220-21, 1960 AMC 1603, 1605 (N.D. Cal. 1959) (finding the cruise line vicariously liable for medical malpractice of the ship's doctor who was a member of the crew); *Fairley v. Royal Cruise Line Ltd.*, 1993 AMC 1633,

In *Carlisle v. Carnival Corp.* a fourteen-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 appendicitis.²⁷⁹ After several days of mistreatment, she was removed from the cruise ship, underwent surgery after her appendix ruptured, and was rendered sterile. In rejecting a long line of Fifth Circuit cases²⁸⁰ 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.²⁸¹

Unfortunately, the Florida Supreme Court reversed this decision.²⁸²

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.²⁸³

1639-40 (S.D. Fla. 1993) (finding that a cruise ship may be liable for the medical practice of the ship’s doctor).

278. Beth-Ann Erlic Herschaft, *Cruise Ship Medical Malpractice Cases: Must Admiralty Courts Steer by the Star of Stare Decisis?*, 17 NOVA L. REV. 575, 592 (1992) (“It would be in the best interest 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.”).

279. 864 So. 2d 1, 2, 2003 AMC 2433, 2433 (Fla. Dist. Ct. App. 2003).

280. See, e.g., *Barbetta v. S/S Bermuda Star*, 848 F.2d 1364, 1372, 1988 AMC 2650, 2651 (5th Cir. 1988) (holding that general maritime law does not impose *respondent superior* liability on the carrier for negligence of a ship’s doctor).

281. *Carlisle*, 864 So. 2d at 4, 2003 AMC at 2436.

282. 953 So. 2d 461, 2007 AMC 305 (Fla. 2007).

J. Shore Excursion Disclaimers

Some courts have been willing to enforce disclaimers of liability regarding accidents that occur during shore excursions.²⁸⁴ Recently, in *Brozyna v. Niagara Gorge Jetboating, Ltd.*, wherein a passenger was injured while riding 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 preaccident waiver of all liability, noting, “[T]here is a clearly stated rule in maritime jurisprudence in favor of allowing parties to enter into enforceable agreements to allocate the risks inherent in marine recreational activities [in recognition of] the long-recognized national interest in the development of a uniform body of maritime law.”²⁸⁵

However, in *Johnson v. Royal Caribbean Cruises, Ltd.*, a cruise passenger was injured while using a ship’s simulated surfing and body boarding activity, and the court refused to enforce a waiver of all liability, citing 46 U.S.C. § 30509.²⁸⁶

1. Warranties of Safety

Disclaimers may not be enforceable if the injured passenger relied on representations or warranties regarding the safety,²⁸⁷ competence, and reliability of onshore suppliers of travel services.

2. Limited Scope

While disclaimers may be enforceable against cruise ships, they do not insulate ground service providers such as bus companies and dock

283. See *Lobegeiger v. Celebrity Cruises, Inc.*, No. 11-21620-CIV, 2011 WL 3703329, 2012 AMC 202 (S.D. Fla. Aug. 23, 2011) (fraudulent misrepresentation); *Lobegeiger v. Celebrity Cruises Inc.*, 869 F. Supp. 2d 1356, 2013 AMC 1254 (S.D. Fla. 2012) (granting summary judgment for the defendant on an apparent agency theory of liability for medical malpractice); *Hill v. Celebrity Cruises, Inc.*, No. 09-231815-CIV, 2011 WL 5360247, 2012 AMC 234 (S.D. Fla. 2011) (allowing a claim for negligent misrepresentation when the cruise line advertised that the ship would have two doctors and only one was provided).

284. *Dubret v. Holland Am. Line Westours, Inc.*, 25 F. Supp. 2d 1151, 1153, 1999 AMC 859, 861-62 (W.D. Wash. 1998) (disclaimer of liability enforced); *Henderson v. Carnival Corp.*, 125 F. Supp. 2d 1375, 1377, 2001 AMC 264, 266 (S.D. Fla. 2000) (disclaimer of liability for negligence of catamaran company enforced); *Mashburn v. Royal Caribbean Cruises, Ltd.*, 55 F. Supp. 2d 1367, 1372, 1999 AMC 2475, 2480 (S.D. Fla. 1999), *aff’d*, *Royal Caribbean Cruises v. Hommen*, 214 F.3d 1356 (11th Cir. 2000).

285. No. 10-cv-602-JTC, 2011 WL 4553100, at *2, *5 (W.D.N.Y. Sept. 29, 2011).

286. 449 F. App’x 846, 849, 2011 AMC 1171, 1178-79 (11th Cir. 2011).

287. *Bergonzine v. Maui Classic Charters, Inc.*, No. 94-00489 SPK, at *2-3, 1995 AMC 2628, 2630-31 (D. Haw. Aug. 9, 1995) (awarding \$42,500 in special damages to a 350-pound disabled passenger who broke his ankle because of inattention and lack of assistance by crew).

operators from liability.²⁸⁸ In addition, recreational disclaimers may be limited to only the signatory and not the heirs of his or her estate.²⁸⁹

K. Force Majeure or Act of God Defense

Cruise lines may claim that a delay in sailing, a cancellation of the cruise vacation, or an itinerary change caused by a storm or hurricane²⁹⁰ was an Act of God. As stated by the United States Supreme Court in 1897 in *The Majestic*, “[T]he act of God is limited . . . to causes in which no man has any agency whatever”²⁹¹ Acts of God may include hurricanes,²⁹² storms at sea,²⁹³ snowstorms,²⁹⁴ a typhoon or volcanic eruption,²⁹⁵ a revolution or civil disorder,²⁹⁶ or a pilot’s strike.²⁹⁷ 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.

288. *Sharpe v. W. Indian Co.*, 118 F. Supp. 2d 646, 650-51, 2001 AMC 995, 1000-01 (D.V.I. 2000) (refusing to enforce a time limitation in a cruise contract against dock operators and a local truck company that were responsible for the accident).

289. *Gershon v. Regency Diving Ctr., Inc.*, 845 A.2d 720, 722 (N.J. Super. Ct. App. Div. 2004) (holding that an exculpatory release did not prevent the heirs of the decedent from commencing a wrongful death action).

290. *DeNicola v. Cunard Line Ltd.*, 642 F.2d 5, 6, 1981 AMC 1388, 1388-89 (1st Cir. 1981) (storm); *Domblakly v. Celebrity Cruises, Inc.*, No. 96 Civ. 8333 (AJP)(LBS), 1998 U.S. Dist. LEXIS 16549, at *1 (S.D.N.Y. Oct. 20, 1998) (hurricane caused injuries on board); *Catalina Cruises, Inc. v. Luna*, 137 F.3d 1422, 1424-25, 1998 AMC 1282, 1284 (9th Cir. 1998) (passengers injured when cruise ship sailed into storm); *Williams v. Carnival Cruise Lines, Inc.*, 907 F. Supp. 403, 404, 1996 AMC 729, 729 (S.D. Fla. 1995) (storm caused seasickness in 207 people).

291. 166 U.S. 375, 386 (1897).

292. Paul S. Edelman & James E. Mercante, *Of Hurricanes, Acts of God and Admiralty Jurisdiction*, N.Y. L.J., Oct. 28, 2005, at 3 (“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.’”).

293. *DeNicola*, 642 F.2d at 6, 1981 AMC at 1388-89; *Domblakly*, 1998 U.S. Dist. LEXIS 16549 at *1; *Luna*, 137 F.3d at 1424-25, 1998 AMC at 1284; *Williams*, 907 F. Supp. at 404, 1996 AMC at 729.

294. *Ahlstrom Machinery Inc. v. Associated Airfreight Inc.*, 675 N.Y.S.2d 161, 162 (App. Div. 1998); *Klakis v. Nationwide Leisure Corp.*, 422 N.Y.S.2d 407, 408-09 (App. Div. 1979) (passengers confined in airport for 2 ½ days during snowstorm).

295. *DeVera v. Japan Airlines*, Nos. 92 Civ. 6698 (JES), 92 Civ. 6699 (JES), 1994 WL 698330, at *1 (S.D.N.Y. Dec. 13, 1994) (Manila Airport closed because of volcano and typhoon).

296. *Jamil v. Kuwait Airways Corp.*, 773 F. Supp. 482, 483 (D.D.C. 1991) (flight delayed four days due to coup in Pakistan).

297. *Leake v. Am. Airlines, Inc.*, No. 000598649, 2000 Conn. Super. LEXIS 2667, at *2-3 (Super. Sept. 26, 2000) (passengers missed cruise because of airline strike).

In addition, the carrier must prove that it acted reasonably to reinstitute the transportation service once the snowstorm or unexpected event ceased.²⁹⁸

L. Limitations on Recoverable Damages

Cruise vessels that touch U.S. ports may not disclaim liability for loss, death, damage, or delay caused or contributed to by the vessel's negligence.²⁹⁹ In 1996, the cruise industry was able to convince the United States Congress to enact statutory permission for cruise lines to include "provision[s] in a contract or in ticket conditions of carriage with a passenger that relieves an . . . operator of a vessel from liability for infliction of emotional distress, mental suffering, or psychological injury."³⁰⁰ Such a disclaimer does not apply to physical injuries or to those arising from being "at actual risk of physical injury"³⁰¹ caused by the negligence or intentional misconduct of the cruise line or crew. Nor does such a disclaimer limit liability arising from "sexual harassment, sexual assault, or rape."³⁰²

M. The Athens Convention: Cruises Not Touching U.S. Ports

Passenger tickets may also contain a disclaimer seeking to limit recoverable damages to those authorized by the Athens Convention.³⁰³ 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.³⁰⁴

Though 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 the Athens Convention's liability limiting provisions. Some cruise contracts contain language limiting the passenger's recoverable damages under the Athens Convention to Special Drawing Rights

298. *Bernstein v. Cunard Line Ltd.*, No. 83 Civ. 2206 (SWK), 1985 WL 1980, at *5 (S.D.N.Y. June 27, 1985).

299. 46 U.S.C. § 30509(a) (2006); *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1334-35, 1985 AMC 826, 829 (11th Cir. 1984) (disclaimers not enforced); *Johnson v. Royal Caribbean Cruises, Ltd.*, 449 F. App'x 846, 849, 2011 AMC 1171, 1179 (11th Cir. 2011) (refusing to enforce a waiver of all liability, citing 46 U.S.C. § 30509).

300. 46 U.S.C. § 30509(b)(1).

301. *Id.*

302. *Id.* § 30509(b)(2).

303. *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 834, 2002 AMC 2270, 2277 (9th Cir. 2002).

304. *Wajnstat v. Oceania Cruises, Inc.*, 684 F.3d 1153, 1155-56, 2012 AMC 1805, 1806-08 (11th Cir. 2012).

(SDRs). SDRs, as “determined by the International Monetary Fund,” are based on currency exchange rates.³⁰⁵ The 1976 Protocol to the Athens Convention provides a damage limit of 46,666 SDRs, while the 1990 Protocol provides for 175,000 SDRs.

1. Application to U.S. Cruise Passengers

The Athens Convention is important because it may apply to as much as 20% of U.S. cruise passengers who annually “sail from, and back to, foreign ports, like [on] a Mediterranean or Caribbean cruise,” for example.³⁰⁶ In order to encourage the United States to sign the Athens Convention, it was 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 a 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.³⁰⁷

2. 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. ports³⁰⁸ as long as there has been sufficient notice.³⁰⁹

305. *Mills v. Renaissance Cruises, Inc.*, No. C 91-3001 BAC ARB, 1993 WL 471301, at *1 n.2, 1993 AMC 131, 132 n.2 (N.D. Cal. Aug. 17, 1992).

306. Paul S. Edelman, *The Athens Convention and American Lawyers*, N.Y.L.J., May 29, 2003, at 3; *see also* Viliam Chovanec, *Cruise Ship Passengers and Their Rights* (unpublished master thesis, Lund Univ. 2013) (available at <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=3808227&fileId=3808228>) (discussing the Athens Convention from a European Union perspective and domestic and regional maritime laws in the United Kingdom, European Union, and United States).

307. Edelman, *supra* note 306, at 3.

308. *Berman v. Royal Cruise Line, Ltd.*, 1995 AMC 1926, 1928-29 (Cal. Super. Ct. 1995) (holding that injuries on a cruise from Italy to Portugal were governed by the monetary limits of the Athens Convention); *Kirman v. Compagnie Francaise de Croisieres*, 1994 AMC 2848, 2852 (Cal. Super. Ct. 1993) (applying the Athens Convention to an accident on a cruise between Singapore and Australia).

309. *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 830, 2002 AMC 2270, 2271 (9th Cir. 2002) (declining to enforce a clause in the passenger’s ticket that limited recoverable damages to

N. The Athens Protocol: 2002 and Beyond

The Athens Protocol has been approved by the European Union and ten individual countries. Therefore, a new Athens Convention will go into effect on April 23, 2014. The impact of this new regime remains to be seen, but it will certainly affect the 20% of U.S. citizens that cruise on ships that do not touch U.S. ports.

In his article *The Athens Convention as Applied in the United States and Abroad to Cruise Line Accident Litigation*, Paul Edelman clarified the significance of the proposed changes to the Athens Protocol, which the United States has not yet ratified. What follows is a full reproduction of Edelman's article:

There is a new regime on the Athens Convention as of December 31, 2012, applicable to the European Union countries. 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). Although early on there was some confusion as to whether U.S. courts would enforce this provision, since the U.S. was not a party to it, more recent cases do enforce it as a matter of contract, the only caveat being a case like that from the Ninth Circuit which held that it would not be enforced where the ticket mentioned only the Athens Convention without stating the limitation amount. [*Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 2002 AMC 2270 (9th Cir. 2002)]. Other cases have followed [*Wallis*], and some have held the information properly presented. Since this case, the tickets usually add the explanatory language. The only advantage of the old 1974 Convention is that it provides two years to sue[,] which gives additional time to negotiate a settlement, whereas U.S. voyages usually have a one year limitation. However, there is a U.S. case where despite finding coverage for the Convention, a one-year statute of limitations was applied by the [United States Court of Appeals for the Eleventh Circuit]. [*Farris v. Celebrity Cruises, Inc.*, 487 F. App'x 542 (11th Cir. 2012).] The ticket referring to the one-year limitation stated: "NOTWITHSTANDING ANY PROVISION OF LAW OF ANY STATE OR COUNTRY TO THE CONTRARY." [*Id.* at 543] The 2002 Protocol would probably not allow this result. Article 9 provides for a three-year limitation period from the time the claimant knew or should have known of the cause of his injury, loss or damages. The forum law can toll this period[,] but no later than five years from the date of disembarkation or when disembarkation should have occurred. Article 18 voids any contractual provision purporting to relieve

the amount prescribed by the Athens Convention because the passenger did not have sufficient notice).

any person of liability. One other U.S. case said the Convention was inapplicable where there was an intent to cause damage, e.g., assault, rape or recklessness knowing the result.

The 2002 Protocol makes a radical change in the amount recoverable. On December 12th of 2011 the European Council [(EC)] promulgated an adherence to the 2002 Protocol. It was mandatory for each of the 27 EC countries to follow it and make it enforceable by December 3rd of 2012 (28 countries in July 2013). EC Regulation (EC) No. 392/2009. As in the prior Protocol [(SDR)] amounts are expressed in Special Drawing Rights, the value of which is made by the International Monetary Fund, and day-to-day changes are on its web site. It is a basket of currencies, dollar, euro, pound and Japanese yen. As of December 28, 2012, the last posted date for 2012[,] the value was \$1.536920, just over a dollar and one half. The new Protocol makes the cruise line liable up to 250,000 SDR's and for more damages the limit is 400,000 SDR's. But the cruise line must prove it was not at fault for amounts beyond the 250,000 SDR's. Cabin luggage is up to 2250 SDR's and other baggage at 3375 SDR's. Thus there is liability at the end of 2012 of up to \$384,230, and for 400,000 SDR's \$614,768. Even prior to the EC Regulation the UK adopted the 2002 Protocol[,] and in Canada damages were 175,000 SDR's for personal injury and death, and it is also domestic law. In the UK recovery is allowed for emotional distress where a ship caught fire and sank. Incidentally, Italy [was] not a signatory to the 1974 Protocol, but will be bound after December 31st of 2012. The international aviation conventions also provide a large amount with absolute liability up to 113,100 SDR's. The new Protocol has a two-tier provision for liability. The first is strict liability for personal injury or death caused by a "shipping incident." A "shipping incident" is a "shipwreck, capsizing, collision or stranding of the ship, explosion or fire of the ship or a defect in the ship." [Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea art. 111, Dec. 13, 1974, 1463 U.N.T.S. 19. *Id.* A "defect in the ship" is "any malfunction, failure or non-compliance with applicable safety regulations to respect to any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers, or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding or when used for the launching of life-saving appliances." *Id.*

The second tier puts the burden of proof on the claimant for the carrier's "fault or neglect." *Id.*

In the recent U.S. case of [Myhra v. Royal Caribbean, Ltd., 695 F. 3d, 1233, 2012 AMC 2678 (11th Cir. 2012),] a Florida forum was denied in favor of an English forum clause. The cruise line may or may not be aware that the 2002 Protocol amount should apply in an English court prior to December 31, 2012[,] where passengers were English and bought their tickets there. Depending on the facts, there might be strict liability.

Other important provisions include a direct action against an insurer and compulsory insurance or a bank guarantee, etc. Interest and costs are not included in the recoverable limits. The parties can agree to higher limits but not lower limits. Periodic payments are allowed.

Punitive damages are not recoverable under Article 3. [Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea art. 111, Dec. 13, 1974, 1463 U.N.T.S. 19.]

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 to the court's jurisdiction. It is conceivable that there is a U.S. forum, although the Convention may assume an EU forum only.

The Protocol applies if a flag state is involved or the contract is issued in a party state or the state of departure or destination is involved. The EC did not adopt the provisions of the 2002 Protocol dealing with jurisdiction and enforcement of judgments (Articles 10 and 11). The EC has its own law on these issues. A vessel must have a \$500 million insurance policy to cover a terrorist attack on the vessel.

The only defenses are acts of war, hostilities, civil war, insurrection, a natural phenomenon of an exceptional and irresistible nature, or wholly caused by a third party with an intent to harm. Ten countries must accede to the Protocol to put it in force and the EC countries do not count towards those ten countries. Belgium became the tenth[,] so a new Athens Convention will come into force on April 23, 2014. It will replace the present Convention, presumably in the ten countries involved. The ten countries are Albania, Belgium, Belize, Denmark, Latvia, The Netherlands, Palau, St. Kitts and Nevis, Serbia and Syria.

How the cruise lines will react to the changes and how tickets will read after 2012 is anybody's guess. Will they stick to the \$68,000 and will courts say the 1974 Protocol is no longer in effect and invalidate such language? Will the new limits be applied? What will the cruise line lobbies do about this major change? Will the courts allow enforcement of a 1974 Convention involving countries which have repudiated it in favor of the 2002 Protocol and the new Convention in 2014? What of the old two-year statute of limitations? The new Protocol requires a longer period. The Bahamas is the flag state for many cruise ships. It is a signatory to the 1974 Convention, and is not covered by the EC Directive. How will a new Convention effect this situation in a ticket?

O. Death on the High Seas Act: Pecuniary Damages

As noted in *Cruise Ship Litigation*, the Death on the High Seas Act (DOHSA) provides a wrongful death remedy limited to pecuniary

damages for fatalities on the high seas.³¹⁰ DOHSA 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,³¹¹ the death of a snorkeler in Jamaican waters when the decedent was struck by the propeller of a twenty-two-foot motorboat,³¹² and the death of a cruise ship passenger due to complications from an injury sustained on a gangway of a vessel in Mexican territorial waters.³¹³

VIII. CONCLUSION

Cruise vacations can be wonderful experiences. However, potential cruise passengers are well advised to think carefully about their legal rights should they be dissatisfied, injured, or worse while travelling on a cruise vacation.

310. Ira H. Leesfield, *Cruise Ship Litigation*, PLAINTIFF MAG. (Oct. 2009), http://plaintiffmagazine.com/Oct09/Leesfield_Cruise_ship_litigation_Plaintiff_magazine.pdf.

311. Moyer v. Klosters Rederi, 645 F. Supp. 620, 1987 AMC 1404 (S.D. Fla. 1986).

312. Kunreuther v. Outboard Marine Corp., 757 F. Supp. 633, 1991 AMC 1812 (E.D. Pa. 1991).

313. Howard v. Crystal Cruises, Inc., 41 F.3d 527, 1995 AMC 305 (9th Cir. 1994); *see also* Lasky v. Royal Caribbean Cruises, Ltd., 850 F. Supp. 2d 1309, 1311, 2012 AMC 2630, 2631-32 (S.D. Fla. 2012).