

PANEL SIX

**ADMIRALTY LAW:
THE CRUISE PASSENGERS'
RIGHTS & REMEDIES 2016**

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Submitted By:

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ADMIRALTY LAW

THE CRUISE PASSENGERS' RIGHTS & REMEDIES 2016

By Thomas A. Dickerson¹

Introduction

Thank you for inviting me to present on the *Cruise Passengers' Rights And Remedies 2016*. For the last 40 years I have been writing about the travel consumer's rights and remedies against airlines, cruise lines, rental car companies, taxis and ride sharing companies, hotels and resorts, tour operators, travel agents, informal travel promoters, and destination ground operators providing tours and excursions. My treatise, *Travel Law*, now 2,000 pages and first published in 1981, has been revised and updated 65 times, now at the rate of every 6 months. I have written over 400 legal articles and my weekly article on Travel Law is available worldwide on www.eturbonews.com

Litigator

During this 40 years, I spent 18 years as a consumer advocate specializing in prosecuting individual and class action cases on behalf of injured and victimized

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travelers and other consumers.

Travel Consumer Philosophy

When consumers purchase travel services from suppliers and tour operators such as transportation [as provided by airlines, cruiselines, railroads, bus companies, rental car companies]; accommodations [as provided by hotels and resorts and cruiselines]; food and drink [as provided by the aforesaid and restaurants]; tours of local sights or more strenuous activities at the destination [as provided by destination ground operators often working with or for airlines, cruiselines, hotels and resorts and tour operators], they should receive the purchased travel services as promised and contracted for or which can reasonably be expected. If they don't receive those services, in whole or in part, then the injured or victimized traveler should be properly compensated in a court of law, preferably in the jurisdiction wherein the services were purchased and/or where the consumer resides and subject to local law.

The Evolution Of Traveler's Rights

When I first started writing about Travel Law in 1976, the rights and remedies available to travelers were few, indeed.

The Independent Contractor Defense

The concept that a principal, whether an airline, cruise line, hotel, resort or tour operator should be able to insulate itself from liability for the tortious and contractual misconduct of so called independent contractors was universally accepted by the Courts on the land and on the sea, until very recently.

The Barbetta Rule

In the context of maritime law the near universal enforcement of the rule in *Barbetta v. S/S Bermuda Star* (5th Cir. 1988), insulating a cruiseship from liability for the medical malpractice of the ship's medical staff is a perfect example of this rule. Indeed, a variation of this rule, that contractual disclaimers of liability for the misdeeds of ground service providers were also universally enforced.

The Franza Case

As noted in my 2004 Tulane Maritime Law Journal articleⁱ, maritime law, as it is related to passengers, was best described as 21st Century cruiseships and 19th Century passenger rights. However, to my surprise and satisfaction, the 11th Circuit Court of Appeals recently, not only agreed with this analysis but decided to dramatically transport passenger rights, at least in part, into the 21st Century.

As noted in *Franza v. Royal Caribbean Cruises, Ltd.* (2014), “We decline to adopt the rule explicated in *Barbetta*, because we can no longer discern a sound basis in law for ignoring the facts alleged in individual medical malpractice complaints and wholly discarding the same rules of agency that we have applied so often in other maritime tort cases...As Justice Holmes, famously put it, we should not follow a rule of law simply because ‘it was laid down in the time of Henry 4th’, particularly where ‘the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past...Here, the roots of the *Barbetta* rule snake back into a wholly different world. Instead of nineteenth-century steamships...we now confront state-of-the-art cruise ships that house thousands of people and operate as floating cities...In place of truly independent doctors and nurses, we must now acknowledge that medical professionals routinely work for corporate masters”.

A One-Sided Contractually Defined Relationship

Until recently, the relationship between travelers and suppliers, including cruiseships and tour operators was governed by contracts, often printed in nearly invisible print and loaded with self-serving and unconscionable clauses, both substantive and procedural in nature. These contracts, irregardless of whether the traveler saw or agreed to the terms therein, were routinely enforced. Indeed, there were cases which held that promises made in advertising material would not be enforced because they were disclaimed or limited by contractual clauses. In essence, the suppliers or tour operator’s contractual definition of their relationship to the consumer

was nearly universally enforced by the Courts.

The Franza Case

However, in *Franza* the Court noted that it is not the contract that should define the relationship between cruiseship and passenger but the facts of each case. “Royal Caribbean urges us to look beyond the complaint, to (the) passenger ticket contract...which purports to limit the ship’s liability for onboard medical services...even if we were to look to the contract at this stage, we would not consider the nurse and doctor to be independent contractors simply because that is what the cruise line calls them”. As noted by Michael Drennen in *Captaining The Ship Into Culpability*, Tulane Maritime Law Journal “This point strikes an ominous chord for cruise ship companies like Royal Caribbean which-in conjunction with the Barbetta rule-have faithfully relied on contractual limitation of liability clauses like the one in *Franza* to insulate them from imputed liability”.

Shore Excursions Big Business For Cruise Lines

Shore excursions are big business for the cruise lines

[See e.g., Perrin, What I Learned Moonlighting as a Cruise Ship Trainee www.cntraveler.com/perin-post/2013/04 (“Cardozo works year-round, planning, scheduling and executing shore excursion for demanding passengers...These day trips are big business for the cruise lines: Royal Caribbean expects Navigator of the Seas to earn between \$600,000 and \$1,100,000 per week in onboard revenue, including tour sales”); Carothers, Cruise Control, Stop Press, Conde Nast Traveler, July 2006, p. 56.(“Almost half of all cruise passengers-some five million a year-participate in shore excursions ranging from simple bus tours in port cities to more adventurous activities such as scuba diving trips and hot-air balloon rides. Excursions sold by a cruise line are generally the most convenient to book, and therefore are often more crowded-and more expensive-than those purchased independently... Perhaps, the safest bet is to purchase shore excursions through the cruise lines. Serious accidents on these trips are

extremely rare although the lines disclaim any liability for mishaps that occur on these excursions, they say that they make every effort to ensure that the businesses they work with are licensed and reputable...”); Solomon, *Voyage to the Great Outdoors*, New York Times Travel Section, October 2, 2005 at p. 12.(“ 250 passengers from a Carnival cruise ship had signed up and paid \$93 for the experience of floating in inner tubes through a rain forest cave...Cruise lines now offer a buffet of shore excursions for their guests at every port of call...Passengers can attend a race-car academy in Spain, get their scuba diving certificate in the Virgin Islands and even take a spin in a MIG fighter jet in Russia “).

Cruise lines actively promote shore excursions [See *Perry v. Hal Antillen NV*, 2013 WL 2099499 (W.D. Wash. 2013)(shore excursion accident; discussion of relationships between cruiseline, ground tour operator and subcontractor transportation providers; theories of liability); *Gayou v. Celebrity Cruises, Inc.*, 2012 WL 2049431 (S.D. Fla. 2012)(cruise passengers sustained injuries riding zip-line); *McLaren v. Celebrity Cruises, Inc.*, 2012 WL 1792632 (S.D. Fla. 2012)(cruise passenger injured disembarking snorkeling tour boat); *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308 (S.D. Fla. 2011)(cruise line passenger injured while participating in a “zip line” excursion tour in Montego Bay, Jamaica operated by independent contractor Chukka Caribbean Adventures); *Koens v. Royal Caribbean Cruises Ltd.*, 774 F. Supp. 2d 1215 (S.D. Fla. 2011)(cruise passengers robbed and assaulted in tour of Earth Village)].

Development Of New Duties

In an effort, perhaps, to circumvent the independent contractor defense, and faced with cases involving foreign ground providers not subject to U.S. long arm jurisdiction, the Courts a few years ago began applying common law principals to the liability of tour operators for tourist accidents abroad and, more recently, in the maritime context, to cruiselines for shore excursion accidents. In so doing these Courts have recognized several new duties to travelers and passengers.

Breach Of Warranty Of Safety

A warranty of safety may arise when a travel purveyor promises in a brochure that some or all of the travel services will be delivered in a safe or careful manner and it can be shown that the tourist relied on such representations. For example, terms such as “highly skilled boatmen” [Chan v. Society Expeditions, Inc., _____], “unsinkable boats” [Wolf v. Fico Travel, _____], “safe buses” [Rovinsky v. Hispanidad Holidays, Inc., _____], “perfectly safe” canoeing conditions [Glenview Park District v. Melhus, _____], “perfectly safe” catamaran ride [Wolff v. Holland America Lines, _____] and describing cliff jumping as “an approved and safe activity” [_____], may require the travel purveyor to actually deliver on the warranty.

Negligent Selection Of A Supplier Or Ground Services Provider.

In an early case in 1992, Winter v. I.C. Holidays, Inc., _____ the Court found a tour operator liable for the negligent selection of a foreign bus company which was not only negligent but was also insolvent, uninsured and otherwise unavailable to satisfy the claim of the injured travelers. Recently, the courts have recognized this duty.

The Zapata Case

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

The Perry Case

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

The Gibson Case

In *Gibson v. NCL (Bahamas) Ltd.*, 2012 WL 1952667 (S.D. Fla. 2012) the cruise passenger was injured attempting to board "Jungle Bus" to transport her to a zipline tour in the Mexican jungle". [no causes of action for negligent selection to excursion operator or "Jungle Bus", failure to warn and negligent supervision; but causes of action stated for apparent authority and joint venture].

The Reming Case

In *Reming v. Holland America Line, Inc.*, 2013 WL 594281 (W.D. Wash. 2013) the cruise passenger fell into a sink hole during shore excursion in Mazatlan City. [cruise ship contract clause disclaiming liability for negligent selection of local tour bus company unenforceable thus expanding the scope 26 U.S.C. § 30509 from accidents onboard to shore excursion accidents; cause of action for negligent selection of excursion operator stated; "HAL has failed to provide any evidence or argument regarding HAL's inquiry into Tropical Tour's competence and fitness as an excursion provider. Therefore, Plaintiff's claim regarding HAL's (negligent) selection and retention of Tropical Tours remains for trial].

Duty To Warn Of Dangerous Environments

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

Third Party Beneficiary Theory

The Perry Case

In *Perry v. Hal Antillen NV*, 2013 WL 2099499 (W.D. Wash. 2013) the cruise passenger was run over by a tour van hired as a subcontractor by the tour operator Rain Forest Aerial Tram, Ltd.(RFAT). RFAT had entered into a contract with the cruiselines (HAL) and executed a copy of a manual entitled 'Tour Operator Procedures and Policies'(TOPPS). TOPPS required "a tour operator in the Caribbean to obtain minimum limits of auto and general liability insurance of 'US\$2.0 million/accident or occurrence'... [s]hould the Operator subcontract for services (such as aircraft, rail, tour buses or watercraft), the Tour Operator must provide a list of its subcontractors and evidence of the subcontractor's insurance". The cruiseline asserted that RFAT "was

‘required to assure that any subcontractor it used to provide excursion related services had in place the equivalent USD 2,000,000 in auto and general liability coverage”. Here, it was discovered after the accident that the tour van operator only had \$85,000 in insurance coverage and the Court held that the plaintiffs were third party beneficiaries of TOPPS and had a claim against RFAT for failing to disclose to HAL that tour van operator was a subcontractor and was only insured up to \$85,000).

The Haese Case

In *Haese v. Celebrity Cruises, Inc.*, 2012 A.M.C. 1739 (S.D. Fla. 2012) the plaintiff and her mother were parasailing in tandem during shore excursion when “the guide rope supporting them broke and both women fell into the water”. As a result mother died and daughter sustained “catastrophic injuries” [causes of actions based upon third party beneficiary theory and joint venture stated)].

Apparent Agency/Agency By Estoppel

On-Board Medical Malpractice

Traditionally, cruise ships have not been held vicariously liable for the medical malpractice of the ship’s doctor or medical staff [*Barbetta v. S/S Bermuda Star*, 848 F. 2d 1364 (5th Cir. 1988)].

Policy Unfair

This policy was unfair and has been criticized by some Courts [see e.g., *Nietes v. American President Lines, Ltd.*, 188 F. Supp. 219 (N.D. Cal. 1959)(cruise ship vicariously liable for medical malpractice of ship’s doctor who was a member of the crew) and commentators [See e.g., 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 interests of the traveling public for admiralty courts to revoke this harsh policy of holding carriers harmless for the torts of physicians engaged by them. However, if admiralty courts continue to exonerate carriers in passenger medical

malpractice cases, there are three possible ways to provide better care to travelers: First, the legislature can amend current statutory descriptions of a ship's staff so that a doctor is specified as an employee of the carrier; second, passengers can invoke the doctrine of agency by estoppel; and third, a shipping company may indemnify itself against potential medical malpractice claims ")]

The Carlisle Case

In *Carlisle v. Carnival Corp.*, 2003 Fla. App. LEXIS 12794 (Fla. App. 2003) a 14 year old female passenger became " ill with abdominal pain, lower back pain and diarrhea and was seen several times in the ship's hospital by the ship's physician " who misdiagnosed her condition as flu when, in fact, she was suffering from an appendicitis. After several days of mistreatment she was removed from the cruise ship, underwent surgery after the appendix ruptured and was rendered sterile. In rejecting a long line cases in the 5th Circuit absolving cruise ships for the medical malpractice of a ship's doctor, the Carlisle Court stated " The rule of the older cases rested largely upon the view that a non-professional employer could not be expected to exercise control or supervision over a professionally skilled physician. We appreciate the difficulty inherent in such an employment situation, but we think that the distinction no longer provides a realistic basis for the determination of liability in our modern, highly organized industrial society. Surely, the board of directors of a modern steamship company has as little professional ability to supervise effectively the highly skilled operations involved in the navigation of a modern ocean carrier by its master as it has to supervise a physician's treatment of shipboard illness. Yet, the company is held liable for the negligent operation of the ship by the master. So, too, should it be liable for the negligent treatment of a passenger by a physician or nurse in the normal scope of their employment, as members of the ship's company, subject to the orders and commands of the master. ". Unfortunately, the Florida Supreme Court reversed this decision in Carlisle v. Carnival Corp., 953 So. 2d 461 (Fla. Sup. 2007).

Pre-Franza Cases

Recently, however, a few courts have allowed the victims of medical malpractice to assert a claim against the cruise line based on apparent agency and negligent or fraudulent misrepresentations [See *Lobegeiger v. Celebrity Cruises, Inc.*, 2911 WL 3703329 (S.D. Fla. 2011) (“Plaintiff alleges Celebrity ‘held out’ Dr. Laubscher as an officer of the ship’s crew ‘through his title, his uniform, his living quarters on board the ship and his offices on board the ship’...Taking these allegations as true, Plaintiff has sufficiently alleged that Celebrity made manifestations which could cause Plaintiff to believe Dr. Laubscher was an agent of Celebrity”; cause of action for fraudulent misrepresentation stated); *Lobegeiger v. Celebrity Cruises Inc.*, 2012 WL 2402785 (S.D. Fla. 2012)(summary judgment for defendant on apparent agency theory of liability for medical malpractice); *Hill v. Celebrity Cruises, Inc.*, 2011 WL 5360247 (S.D. Fla. 2011)(no actual agency; no apparent agency; but misrepresentation that ship would have two doctors but only provided one stated claim for negligent misrepresentation).

The Franza Case

In *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F. 3d 1225 (11th Cir. 2014) an elderly cruise passenger, Pasquale Vaglio, fell and bashed his head while on shore. Allegedly due to the “negligent medical attention” that he received from the ship’s Doctor and Nurse his life could not be saved. “In particular the ship’s nurse purportedly failed to assess his cranial trauma, neglected to conduct an diagnostic scans and released with no treatment to speak of. The onboard doctor, for his part, failed to meet with Vaglio for nearly four hours...Vaglio died about a week later”.

Indicia Of Apparent Agency

“For starters, Franza’s complaint plausibly established: (1) that Royal Caribbean ‘acknowledged’ that Nurse Garcia and Dr. Gonzalez would act on its behalf and (2) that each ‘accepted’ the undertaking. Most importantly, Franza specifically asserted that both medical professionals were ‘employed by’ Royal Caribbean, were ‘its employees or agents’ and were ‘at all times material acting within the scope and course of [their]

employment... Furthermore, the cruise line directly paid the ship's nurse and doctor for their work in the ship's medical center. Third, the medical facility was created, owned and operated by Royal Caribbean, whose own marketing materials described the infirmary in proprietary language...Fourth, the cruise line knowingly provided, and its medical personnel knowingly wore, uniforms bearing Royal Caribbean name and logo. And, finally, Royal Caribbean allegedly represented to immigration authorities and passengers that Nurse Garcia and Dr. Gonzalez were 'members of the ship's crew' and even introduced the doctor 'as one of the ship's Officers. Taken as true, these allegations are more than enough to satisfy the first two elements of actual agency liability'.

Barbetta Overruled

"We decline to adopt the rule explicated in *Barbetta* because we can no longer discern a sound basis in law for ignoring the facts alleged in individual medical malpractice complaints and wholly discarding the same rules of agency that we have applied so often in other maritime tort cases"

Apparent Agency Applies

"We are the first circuit to address whether a passenger may use apparent agency principals to hold a cruise line vicariously liable for the onboard medical negligence of its employees...we conclude that a passenger may sue a shipowner for medical negligence if he can properly plead and prove detrimental, justifiable reliance on the apparent agency of a ship's medical staff member...The federal circuits have made only passing references to apparent agency principals in maritime tort cases...Nonetheless, given the broad salience of agency rules in maritime law...and the important role the federal courts play in setting the bounds of maritime torts...we think apparent agency principals apply in this context. Indeed, the equitable foundations of apparent agency are just as important in tort as in contract...Having long applied the principals of apparent agency in maritime cases, we discern no sound basis for allowing

a special exception for onboard medical negligence, particularly since we have concluded that actual agency principals ought to be applied in this setting as well”

Additional Cruise Cases Discussing New Liability Theories

The Witover Case

In *Witover v. Celebrity Cruises, Inc.*, 2016 WL 661065 (S.D. Fla. 2016) a disabled passenger using a scooter disembarking for shore excursion fell to the ground and the scooter fell on top of her. The Court discussed several liability theories including breach of contract, duty to warn of foreseeable danger, negligent retention of tour operator and vicarious liability for tour operator negligence.

The Richards Case

In *Richards v. Carnival Corporation*, 2015 WL 1810622 (S.D. Fla. 2015) the cruise passenger was injured during a shore excursion tour when the ATV he was riding “flipped over throwing the Plaintiff off”. The Court discussed various liability theories including various alleged negligent acts, apparent agency or agency by estoppel, joint venture between cruiseline and ground operator and negligent misrepresentation.

Assumption Of Duty/Due Diligence Investigations

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

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

Update On Litigation Roadblocks

In our 2014 Tulane Maritime Law Journal articleⁱⁱ on cruise passenger rights we enumerated several substantive and procedural litigation roadblocks which make it difficult, if not impossible, to efficiently and fairly prosecute cruise passenger claims.

The Limitation Of Liability Act

The Limitation Act, 46 U.S.C. 30501 et al, established in 1851 "is premised on the notion that a vessel owner should not be liable beyond the value of the vessel for

incidents that occur outside the owner's control in the inherently risky business of the sea...The defense recently appeared on the general public's radar screen again when the ill fated cargo ship EL FARO sank with all hands en route to Puerto Rico in October 2015. On October 30, 2015, attorneys for Tote Maritime, owners of the EL FARO filed a petition for exoneration or limitation of liability in a Florida federal district court...Although the EL FARO is a total loss (with zero value) the limitation fund filed by its owner is \$15,309,003-a figure comprised of \$2,072,703 for 'pending freight' (as the statute requires) and...\$20 per gross ton to increase the fund in respect to injury or death claims"ⁱⁱⁱ.

"Since its inception, general maritime law (case law) has succeeded in expanding the reach of the Limitation Act to 'vessels' outside the realm of commercial shipping, such as yachts, pleasure craft and even jet skis"^{iv}. The Limitation Act should be modified or repealed, especially as it relates to cruise ships and jet skis. In 2010 a bill entitled "Fairness in Admiralty and Maritime Law Act" was introduced in the U.S. House of Representatives calling for the repeal of the Limitation Act.

"It was considered by the Senate on July 15, 2010, before being sunk by the Committee on Commerce, Science and Transportation later that year"^v.

Time Limitations

As noted in 2014 the time limitations for making a claim and filing a lawsuit for physical injuries [six months to file claim, one year to commence a lawsuit] and non-physical injury claims [thirty days to file claim, ninety days to commence a lawsuit] are way out of sync with land based statutes of limitations for commencing similar lawsuits running the spectrum from 2.5 years [physical injury] to 6 years [breach of contract, fraud].

Jurisdiction

There has been little change in asserting personal jurisdiction over out of state travel purveyors such as the cruiselines based in the states of Florida, New York and

Washington through the marketing efforts of travel agents and Internet travel sellers. The “solicitation plus doctrine” still remains the rule in many jurisdictions.

Forum Selection And Mandatory Arbitration Clauses

There has been little change in the enforceability of forum selection clauses including federal forum selection clauses in cruise passenger contracts. Even within the context of often misleading and deceptive Internet marketing, forum selection, choice of law and mandatory arbitration clauses, often lurking in hyper-links, have been enforced with some exceptions. [See our article Dickerson & Berman, Consumers’ Loss of Rights in the Internet Age, New York State Bar Association Journal, _____]. Although there still may be some dispute over what constitutes adequate notice of such clauses before purchase and before boarding the cruise ship [See Dickerson, Forum Selection Clauses in Travel Contracts: Should Adequate Notice Be Required, New State Bar Association NYLitigator (Spring 2016) Vol. 21, No. 1] they are still routinely enforced. As far as mandatory arbitration clauses coupled with class action and class arbitration waivers [See Gilroy v. Seabourne Cruise Line, Ltd., 2012 WL 1202343 (W.D. Wash. 2012)] are concerned they may or may not be enforceable based upon common defenses of fraud, duress and unconscionability [See Dickerson & Chambers, Challenging ‘Concepcion’ in New York State Courts, New York Law Journal (12/29/2015)].

Disclaimers Of Liability

As we noted above disclaimers of liability for the tortuous and contractual misconduct of ship’s medical personnel and of shore excursion ground operators are no longer enforced with rigidity that they once were. New theories of cruiseline liability have rapidly sprouted and been welcomed by many courts.

Athens Protocol

The Athens Protocol was approved by the European Union and ten individual countries and went into effect on April 23, 2014. It does not apply to cruiseships that depart from and return to U.S. ports unless a Court decides otherwise if the passenger contract mentions the Athens Convention and the limitation amount [See *Wallis v. Princess Cruises, Inc.*, 306 F. 3d 827 (9th Cir. 2002)]. The impact of this new regime remains to be seen but for the 20% of U.S. citizens that cruise on ships that do not touch U.S. ports, it substantially increases recoverable damages for injury or death claims. The new protocol makes the cruise line liable up to 250,000 SDRs and for more damages the limit is 400,000 SDRs. The new protocol has a two-tier provision for liability. The first is strict liability for personal injury and death caused by a 'shipping incident' defined as "shipwreck, capsizing, collision or stranding of the ship, explosion or fire of the ship or a defect in the ship". A "defect in the ship" is "any malfunction, failure or non-compliance with applicable safety regulations with 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".

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 traveling on a cruise vacation.

ENDNOTES

i. Dickerson, *The Cruise Passenger's Dilemma: Twenty-First-Century Ships, Nineteenth-Century Rights*, 28 Tul. Mar. L.J. 447 (2004).

ii. Dickerson, *The Cruise Passenger's Rights And Remedies 2014: The COSTA CONCORDIA Disaster: One Year After, Many More Incidents Both On Board Megaships And During Risky Shore Excursions*, 38 Tul. Mar. L.J. 515 (2014).

iii. Mercante, Admiralty's Arsenal: Limitation of Liability, New York Law Journal (2/24/2016).

iv. Id.

v. Id.

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TRAVEL LAW: AVOID DANGEROUS VACATIONS 2016

July 20, 2016

By Thomas A. Dickersonⁱ

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Planning a vacation? Please consider, among other things, your planned destination and the incidence of criminal activity, terrorism and disease in the local environment as well as the nature and type of accidents which tourists have previously sustained running the spectrum from wrongful death to slip, trips and falls. This is the fourth year that we have posted dangerous destination information collected from news articles and reported law cases.

The Safest Destinations

In D'Ambrosio, *Peace Index Rates The Safest Destinations*, www.travelmarketreport.com (6/20/2016) it was noted that "Iceland, Denmark and Austria are the three safest countries in the world. That's the finding of this year's Global Peace Index (GPI) published annually by the Institute of Economic and Peace. The study rates 163 countries

based on 23 factors, including violent crime, political terror, import/export of weapons, refugee influx and violent demonstrations. Rounding out the Top Ten peaceful destinations are New Zealand, Portugal, the Czech Republic, Switzerland, Canada, Japan and Slovenia".

Health Issues Abroad

As noted in *Tourism: 49 percent of the health problems when traveling related to the destination*, www.eturbonews.com (6/25/2015) "Observatory (TIO) with the support of the World Tourism Organization 49 percent of the health problems affecting tourists and travelers when they visit other countries are related to the county of destination, such as gastrointestinal or respiratory infections. 26 percent of the problems faced by travelers have to do with trauma, especially fractures".

Organization Of This Treatise

The information in this treatise is categorized by region, types of accidents and by country and includes some discussions about liability theories, personal jurisdiction, *forum non conveniens* and choice of law. Included in these misadventures is a section on Behaving

Yourself while abroad and being arrested for failing to respect local customs and traditions¹.

THE CARIBBEAN

The Caribbean is a very popular destination for United States citizens and others arriving by cruise ship or aircraft. There are many tourist accidents in the Caribbean some of which involve criminal activity.

[I] WRONGFUL DEATH

Wrongful death claims have arisen from accidents occurring in Antigua², Aruba³, Bahamas⁴, Bermuda⁵, British Virgin Islands⁶, Cuba⁷, Dominica⁸, Dominican Republic⁹, Great Shrimp Cay¹⁰, Jamaica¹¹, Martinique¹², Nassau¹³, Puerto Rico¹⁴, St. Maarten¹⁵, St. Thomas¹⁶, Trinidad & Tabago¹⁷ and Turks and Caicos Islands¹⁸.

[II] ASSAULTS, ROBBERIES & TERRORISM

Robberies and assaults are quite common in the Caribbean¹⁹ have taken place in the Bahamas²⁰, Barbados²¹, Cayman Islands²², Jamaica²³, Puerto Rico²⁴, St. Kitts²⁵, St. Lucia²⁶ and St. Thomas²⁷.

[III] RAPES, SEXUAL ASSAULTS & KIDNAPING

Rapes, sexual assaults and child molestations have taken place in Bahamas²⁸, Barbados²⁹, British West Indies³⁰, Cayman Islands³¹, Jamaica³², St. Thomas³³ and Turks and Caicos³⁴.

[IV] WATER SPORTS

Accidents involving water sports have taken place in Aruba³⁵, Bahamas³⁶, British Virgin Islands³⁷, Cayman Islands³⁸, Cuba³⁹, Dominica⁴⁰, Dominican Republic⁴¹, Grenada⁴², Jamaica⁴³, Netherlands Antilles⁴⁴, Puerto Rico⁴⁵, St. Lucia⁴⁶, Turks & Caicos⁴⁷ and U.S. Virgin Islands⁴⁸.

[V] SLIP & FALLS & VARIOUS OTHER INJURIES

Slips, trips, falls and various other injuries have taken place in Antigua⁴⁹, Aruba⁵⁰, Bahamas⁵¹, Barbados⁵², Bermuda⁵³, British Virgin Islands⁵⁴, Dominican Republic⁵⁵, Haiti⁵⁶, Jamaica⁵⁷, Puerto Rico⁵⁸, St. Kitts⁵⁹, St. John⁶⁰ and St. Thomas⁶¹.

[VI] RIDING, VIEWING AND BEING ATTACKED BY ANIMALS

Accidents involving animals have taken place in the Bahamas⁶², Jamaica⁶³, Nassau⁶⁴ and Puerto Rico⁶⁵.

[VII] **TRANSPORTATION**

Transportation accidents have taken place in the Bahamas⁶⁶, Bimini⁶⁷, Dominica⁶⁸, Dominican Republic⁶⁹, Jamaica⁷⁰ Florida: Tracy v. VRL Operators, Ltd., Case No: 50 2006 CA 005719, Fla. Cir. Ct. Palm Beach Cty (Jan. 29, 2008) (after stay at Hedonism III in Ocho Rios, Jamaica tourist injured in tour bus accident), aff'd 985 So. 2d 1101 (Fla. App. 2008) ., St. Lucia⁷¹, St. Maarten⁷², St. Thomas⁷³, Trinidad⁷⁴ and the U.S. Virgin Islands⁷⁵.

[VIII] **DISEASE, FOOD POISONING & MEDICAL MALPRACTICE**

Tourists are well advised not to rely on foreign clinics and medical professionals when a physical injury occurs. The best course of action for an injured tourist is to return to the U.S. as fast as possible for medical care. Medical malpractice and the contraction of disease has taken place in the Bahamas⁷⁶, Barbados⁷⁷ Dominican Republic⁷⁸, Netherlands Antilles⁷⁹ and Puerto Rico⁸⁰.

CENTRAL & SOUTH AMERICA, CANADA & UNITED STATES

Destinations in Central and South America generate accidents similar to those in the Caribbean. Mexico, in particular, has invested extraordinary sums in developing many beach destinations on both coasts and as a result has the highest number of travel accidents in this region.

[I] WRONGFUL DEATH

Accidents involving wrongful death have taken place in Argentina⁸¹, Belize⁸², Brazil⁸³, California⁸⁴, Canada⁸⁵, Chile⁸⁶, Columbia⁸⁷, Costa Rica⁸⁸, Florida⁸⁹, Honduras⁹⁰, Mexico⁹¹, New York⁹², Panama⁹³, Philadelphia⁹⁴, Peru⁹⁵ and Venezuela⁹⁶.

[II] ASSAULTS, ROBBERIES & TERRORISM

Assaults and robberies have taken place in California⁹⁷, Ecuador⁹⁸, Florida⁹⁹, Georgia¹⁰⁰, Mexico¹⁰¹, New York¹⁰², Peru¹⁰³ and Belize¹⁰⁴.

[III] RAPES, SEXUAL ASSAULTS & KIDNAPING

Rapes and sexual assaults have taken place in Brazil¹⁰⁵, the Galapagos Islands¹⁰⁶ and Mexico¹⁰⁷.

[IV] WATER SPORTS

Accidents involving water sports have taken place in Canada¹⁰⁸, Costa Rica¹⁰⁹ (Ill. App. 1998) (tourist purchased a fishing vacation tour to Costa Rica from travel agent Fish & Game Frontiers with accommodations at Rio Parismina Lodge; tourist joins fishing trip and is injured when his boat is swamped by waves as river empties into ocean). and Mexico¹¹⁰.

[V] SLIP & FALLS AND VARIOUS OTHER ACCIDENTS

Accidents involving major and minor injuries have taken place in Argentina¹¹¹, Belize¹¹², Brazil¹¹³, Canada¹¹⁴, Costa Rica¹¹⁵, Ecuador¹¹⁶, Mexico¹¹⁷ and Peru¹¹⁸.

[VI] RIDING, VIEWING & BEING ATTACKED BY ANIMALS

Accidents involving animals have taken place in Brazil¹¹⁹, Canada¹²⁰, Florida¹²¹, and Mexico¹²²

[VII] TRANSPORTATION

Transportation accidents have taken place in Argentina¹²³,

Bolivia¹²⁴, Canada¹²⁵, Costa Rica¹²⁶, Mexico¹²⁷, Philadelphia¹²⁸ and Virgin Islands¹²⁹.

[VIII] DISEASE, FOOD POISONING & MEDICAL MALPRACTICE

Medical malpractice and the contraction of diseases have taken place in Belize¹³⁰, Costa Rica¹³¹, Mexico¹³² and New York¹³³

AFRICA, MIDDLE EAST, ASIA & THE PACIFIC

Africa, Asia, The Middle East and the Pacific nations are attracting ever greater numbers of tourists while at the same time attracting terrorists, pirates and very scary diseases like Ebola.

[I] WRONGFUL DEATH

Travel accidents involving wrongful death have taken place in Afghanistan¹³⁴, Algeria¹³⁵, Australia¹³⁶, Bali¹³⁷, Bangladesh¹³⁸, Botswana¹³⁹, Cameroon¹⁴⁰; Cape Verde Islands¹⁴¹, China¹⁴², Congo¹⁴³, East Java¹⁴⁴, Egypt¹⁴⁵, French Polynesia¹⁴⁶, Ghana¹⁴⁷, Hong Kong¹⁴⁸, India¹⁴⁹, Indonesia¹⁵⁰, Iraq¹⁵¹, Jordan¹⁵², Kenya¹⁵³, Laos¹⁵⁴, Malaysia¹⁵⁵, Maldives¹⁵⁶, Mali¹⁵⁷, Myanmar¹⁵⁸, Nepal¹⁵⁹, New Caledonia¹⁶⁰, New Zealand¹⁶¹, Nigeria¹⁶², North Korea¹⁶³; Pakistan¹⁶⁴, Philippines¹⁶⁵, Red

Sea¹⁶⁶, Saudi Arabia¹⁶⁷ Somalia¹⁶⁸, South Africa¹⁶⁹, South Korea¹⁷⁰, Sudan¹⁷¹, Taiwan¹⁷², Tanzania¹⁷³, Tibet¹⁷⁴, Thailand¹⁷⁵, Tunisia¹⁷⁶, Turkey¹⁷⁷, Uganda¹⁷⁸ and Yemen¹⁷⁹.

[II] ASSAULTS, ROBBERIES & TERRORISM

Assaults and robberies have taken place in Afghanistan¹⁸⁰, Algeria¹⁸¹, Australia¹⁸², Bali¹⁸³, Bangladesh¹⁸⁴, Cape Verde Islands¹⁸⁵, China¹⁸⁶, Dubai¹⁸⁷, Egypt¹⁸⁸, Ethiopia¹⁸⁹, Fiji¹⁹⁰, India¹⁹¹, Iraq¹⁹², Israel¹⁹³, Kenya¹⁹⁴, Libya¹⁹⁵, Malaysia¹⁹⁶, Mali¹⁹⁷, Mongolia¹⁹⁸, Mozambique¹⁹⁹, Nigeria²⁰⁰, Pakistan²⁰¹, Saudi Arabia²⁰², Somalia²⁰³, South Africa²⁰⁴, Tanzania²⁰⁵, Thailand²⁰⁶, Tunisia²⁰⁷, Turkey²⁰⁸, Uzbekistan²⁰⁹, Vietnam²¹⁰, Zaire²¹¹, Zanzibar²¹², Zimbabwe²¹³ and the Indian Ocean waters off the coast of Somalia²¹⁴.

[III] RAPES, SEXUAL ASSAULTS, KIDNAPING & PIRACY

Rapes and sexual assaults have taken place in Australia²¹⁵, Dubai²¹⁶, Egypt²¹⁷, India²¹⁸, Israel²¹⁹, Malaysia²²⁰, Nepal²²¹ and Thailand²²². Kidnaping and piracy continue to be a problem in this region²²³.

[IV] WATER SPORTS

Accidents involving water sports have taken place in China²²⁴, Fiji²²⁵, Gabon²²⁶, Guam²²⁷, Hong Kong²²⁸, Indonesia²²⁹, Laos²³⁰, Northern Mariana Islands²³¹, Tahiti²³², Taiwan²³³ and Thailand²³⁴.

[V] SLIP & FALLS, FIRES & VARIOUS OTHER ACCIDENTS

Slips, trips and falls and various other injuries have taken place in Australia²³⁵, China²³⁶, Egypt²³⁷, Fiji²³⁸, Hong Kong²³⁹, Indonesia²⁴⁰, Israel²⁴¹, Japan²⁴², Jordan²⁴³, Kenya²⁴⁴, Northern Mariana Islands²⁴⁵, Philippines²⁴⁶, Saudi Arabia²⁴⁷, South Africa²⁴⁸, Tanzania²⁴⁹, Turkey²⁵⁰ and Wake Island²⁵¹.

[VI] RIDING, VIEWING AND BEING ATTACKED BY ANIMALS

Accidents involving animals have taken place in Australia²⁵², Egypt²⁵³, Namibia²⁵⁴, New Caledonia²⁵⁵, South Africa²⁵⁶, Sri Lanka²⁵⁷, and Thailand²⁵⁸.

[VII] TRANSPORTATION

Transportation accidents have taken place in, Australia²⁵⁹, Bali²⁶⁰, Bangladesh²⁶¹, China²⁶², Congo²⁶³, Egypt²⁶⁴, Fiji²⁶⁵, French

Polynesia²⁶⁶, Gabon²⁶⁷, Ghana²⁶⁸, India²⁶⁹, Israel, Jordan, Kenya²⁷⁰, Macau²⁷¹, Malaysia²⁷², Malawi²⁷³, Mali²⁷⁴, Morocco²⁷⁵, Myanmar²⁷⁶, Nepal²⁷⁷, New Zealand²⁷⁸, Philippines²⁷⁹, South Africa²⁸⁰, South Korea²⁸¹, Sudan²⁸², Taiwan²⁸³, Tanzania²⁸⁴, Thailand²⁸⁵, Turkey²⁸⁶ and Vietnam²⁸⁷.

[VIII] **DISEASE, FOOD POISONING & MEDICAL MALPRACTICE**

Incidents of medical malpractice and the contraction of disease have taken place in China²⁸⁸ awarded total damages of \$41,750,000; disclaimer not enforced)., Dubai²⁸⁹, Fiji²⁹⁰, Guinea²⁹¹, India²⁹², Kenya²⁹³, Liberia²⁹⁴, Lebanon²⁹⁵, Nigeria²⁹⁶, Saudi Arabia²⁹⁷, Sierra Leone²⁹⁸, South Korea²⁹⁹, Sudan³⁰⁰ and Uganda³⁰¹.

ARCTIC, ANTARCTIC, EUROPE, RUSSIA & CENTRAL ASIA

From frozen waste lands to old and traditional venues travel accidents occur here as well.

[I] **WRONGFUL DEATH**

Wrongful deaths have taken place in Albania³⁰², Austria³⁰³, Belgium³⁰⁴, Britain³⁰⁵, Bulgaria³⁰⁶, France³⁰⁷, Germany³⁰⁸, Greece³⁰⁹, Hungary³¹⁰, Iceland³¹¹, Italy³¹², Kazakhstan³¹³, Mallorca³¹⁴, Malta³¹⁵,

Norway³¹⁶, Portugal³¹⁷, Russia³¹⁸, Spain³¹⁹, Switzerland³²⁰,
Tajikistan³²¹, Turkey³²² and Ukraine³²³.

[II] ASSAULTS, ROBBERIES & TERRORISM

Assaults, robberies and terrorist acts have taken place in
Belgium³²⁴, Britain³²⁵, Bulgaria³²⁶, Dagestan³²⁷, France³²⁸, Greece³²⁹,
Ireland³³⁰, Italy³³¹, Poland³³², Scotland³³³, Tajikistan³³⁴ and
Ukraine³³⁵.

[III] RAPES, SEXUAL ASSAULTS & KIDNAPING

Rapes and sexual assaults have taken place in France³³⁶ and
kidnapings in Cyprus³³⁷ and Pakistan³³⁸.

[IV] SLIP & FALLS AND VARIOUS OTHER ACCIDENTS

Slip and falls and other injuries have taken place in Czech
Republic³³⁹, England³⁴⁰, France³⁴¹, Greece³⁴², Hungary³⁴³, Ireland³⁴⁴,
Italy³⁴⁵, Russia³⁴⁶ and Spain³⁴⁷.

[V] RIDING. VIEWING & BEING ATTACKED BY ANIMALS

Riding accidents have taken place in Greece³⁴⁸, alligators have been reported in Spain³⁴⁹, polar bears attack tourists in Norway³⁵⁰ and seagulls terrorize tourists in Wales³⁵¹.

[VI] **TRANSPORTATION**

Transportation accidents have taken place in Antarctica³⁵², Austria³⁵³, England³⁵⁴, France³⁵⁵, Germany³⁵⁶, Greece³⁵⁷, Holland³⁵⁸, Hungary³⁵⁹, Italy³⁶⁰, Kazakhstan³⁶¹, Poland³⁶², Portugal³⁶³, Rumania³⁶⁴, Russia³⁶⁵, Scotland³⁶⁶, Spain³⁶⁷ and Ukraine³⁶⁸.

[VII] **DISEASE, FOOD POISONING & MEDICAL MALPRACTICE**

Medical malpractice and the contraction of disease have taken place in Europe³⁶⁹, Germany³⁷⁰, Greece³⁷¹, Italy³⁷², Slovakia³⁷³ and Ukraine³⁷⁴.

ENDNOTES

ⁱ Thomas A. Dickerson is an Associate Justice of the Appellate Division, Second Department of the New York State Supreme Court. <http://www.nycourts.gov/courts/9jd/taxcert.shtml> <http://members.aol.com/judgetad/index.html>. Justice Dickerson is the author of Travel Law, Law Journal Press, 2016; Class Actions: The Law of 50 States, Law Journal Press, 2016; ; <http://members.aol.com/travellaw/index.html>, Article 9 [New York State Class Actions] of Weinstein, Korn & Miller, New York Civil Practice CPLR, Lexis-Nexis (MB), 2016; Consumer Protection Chapter 111 in Commercial Litigation In New York State Courts: Fourth Edition (Robert L. Haig ed.) (West & NYCLA 2016); Dickerson, Gould & Chalos, Litigating Foreign Torts in United States Courts, Thomson-Reuters (West) 2016 <http://members.aol.com/class50/index.html>, and over 400 articles and papers on consumer law, class actions, travel law and tax certiorari and eminent domain issues, many of which are available at <http://www.eturbonews.com>; www.courts.state.ny.us/courts/ad2/justice_dickerson.shtml www.nycourts.gov/courts/9jd/taxcertatd.shtml www.classactionlitigation.com/library/ca_articles.html www.eturbonews.com

1. **BEHAVE YOURSELF**

Travelers not only need to be careful and protect themselves but they need to behave in accordance with the laws and customs of the destination country. For example, " In Singapore, which places a high value on order, prostitution is legal but careless disposal of chewing gum can invoke fines up to \$500...Jaywalking and spitting result in similar fines. On the bright side, Singapore saves canings for more serious offenses, such as vandalism, for which American teenager Michael Fay received a public lashing in 1994. Sensitivity to another country's values (is important as) Raffi Nernekian, a Lebanese tourist visiting the United Arab Emirates learned...when he was arrested for wearing a skin cancer awareness T-shirt depicting Posh Spice in her birthday suit. Though a strategic pose and lettering kept Mrs. Beckham's revelations from being explicit, Nernekian spent a month in jail...(and) Ireland, the land of creative invective, just passed a blasphemy law making it 1 25,000-euro (\$37,000) offense to say or print anything 'grossly abusive or insulting' about any subject held sacred by any religion" (Dougherty, *The Informer, Lost in Translation, Conde Nast Traveler*, p. 76).

See also: French tourists fines \$4000 each for animal cruelty

in Australia, www.eturbonews.com (4/17/2015); Cochrane, Indonesia Executes 8, Including 7 Foreigners, Convicted on Drug Charges, www.nytimes.com (4/28/2015); Reckless driver fined \$136K in Dubai, www.eturbonews.com (5/5/2015); Chinese teenager first tourist blacklisted for 'uncivilized behavior', www.eturbonews.com (5/8/2015); Tourists caught with 12 kilos of meth face life in prison (New Zealand), www.eturbonews.com (5/26/2015); Mallorca tourists warned: No stripping in public, www.eturbonews.com (6/8/2014); British tourists may face imprisonment for stripping on Malaysian mountain, www.eturbonews.com (6/11/2015); Habits of International Travelers: Pee in pool, taking hotel toiletries, cheating, www.eturbonews.com (6/15/2015); Japanese public bathhouses deny entry to tourists with tattoos, www.eturbonews.com (6/18/2015);

Malaysia state institutes dress code for tourists, www.eturbonews.com (3/2/2015); Tourists behaving badly, www.eturbonews.com (3/11/2015) ("Twitter user 'Princess Breanna' posted smiling selfie at the Auschwitz concentration camp"); Lord Buddha with headphones-not a good idea (in Myanmar), www.eturbonews.com (3/17/2015); Chinese tourist fined for washing her feet in public bathroom sink (in Thailand), www.eturbonews.com (3/16/2015); French tourist arrested in Rio for drugs and bribery is a French off duty police officer, www.eturbonews.com (6/23/2014); Turkewitz, A Fight as U.S. Girls Face Genital Cutting Abroad (in Guinea), www.nytimes.com (6/10/2014); Oman: Dress code for tourists, www.eturbonews.com (8/16/2014); Tourist fined E600 for stubbing out cigarette on the beach (in Sardinia), www.eturbonews.com (8/23/2014); Barcelona residents fed up with drunken tourists' antics, www.eturbonews.com (8/21/2014); Germany and UK wage 'towel war' in Spain, www.eturbonews.com (8/16/2014); The charm of Russian tourist starting to wane in Goa, www.eturbonews.com (2/17/2014); Chinese tourists scandalize Taipei restaurant, www.eturbonews.com (10/20/2014); Russian visitor fined 20,000 euros for vandalizing ancient monument (in Italy), www.eturbonews.com (11/24/2014); China to tourists: We may blacklist you for bas behavior. www.eturbonews.com (4/11/2015); Linda, Drink camel milk instead of alcohol says Sudan Tourism Minister, www.eturbonews.com (3/25/2013) ("Sudan's Tourism Minister...last week declared the country off limits for tourists expecting to be served alcohol or wanting to dance in a disco...he advised tourists to drink camel milk...hundreds of miles of sandy beaches along the Red Sea are off limits for those wearing bikinis"); Steinmetz, Photo of female tourist posing with Buddha statue irks Thais, www.eturbdonews.com (1/4/2013); Steinmetz, Saudi tourist, prostitute charged with consensual ("sex, illegal drinking in Dubai, www.eturbonews.com (12/15/2012) ("Drunk tourist from Saudi Arabia had sex with an Uzbek prostitute at a hotel apartment in Muraqabbat,

a court heard today"); Steinmetz, Myanmar warns visitors on child sex tourism, www.eturbonews.com (11/21/2012) ("Since last month, warning signs have been posted in every hotel room in Bagan to let foreigners know that committing child sexual exploitation is a serious crime in Myanmar")<http://www.eturbonews.com>; Steinmetz, Despite new regulations drunken tubing goes on in Laos, www.eturbonews.com (9/16/2012) ("After a spate of tourist deaths on the Nam Song River in Vang Vieng, Laos, authorities from the capital have closed more than two dozen of the riverside and late-night island bars that are pit-stops for tubing tourists...floating down the Nam Song River in a large tractor-tyre innertube, stopping at the legion of jerry-built bars on the waterside for free shots of drugs, has become a popular pastime"); Steinmetz, French tourists given jail terms in Sri Lanka for 'insulting religious feelings', www.eturbonews.com (8/21/2012) ("Two women and one man were detained in the southerntown of Galle after a photographic laboratory alerted police. The pictures show the travelers posing with Buddha statues and pretending to kiss one of them... Mistreatment of Buddhist images and artefacts is strictly taboo in the country"); Steinmetz, One Australian visitor dies in Bali every nine days, www.eturbonews.com (8/12/2012) ("Consular officials say alcohol and drugs fuel many of the accidents, while nightclub fights are among the biggest cause of trouble for thousands of Aussies who fly to the tropical island every year. Information release by the Department of Foreign Affairs reveals 39 Australians died in Bali in 2011-12. Another 93 sought consular help after being taken to hospital while 36 were arrested, 18 jailed and eight needed support after being attacked...traffic accidents were the biggest cause of deaths after natural causes"); Steinmetz, Foreign Tourists to be Banned From Getting Thai Religious Tattoos, www.eturbonews.com (June 2, 2011; Steinmetz, www.eturbonews.com (7/5/2012) ("Kashmir has asked tourists visiting the Valley to desist from wearing skimpy clothes and warned them of an angry reaction if they failed to do so. 'Some tourists, mostly foreigners, are seen wandering in short mini-skirts and other objectionable dresses openly which is against local ethos and culture"); Steinmetz, Abu Dhabi issues tourist flyer with guidelines on ethics and values of UAE, www.eturbonews.com (7/5/2012)<http://www.eturbonews.com> (Abu Dhabi has issued "flyers (that) provide guidelines to prevent tourist(s) from getting into trouble with the law. As an example, the information makes it clear that possession of drugs and drug usage are illegal in the UAE...other illegal acts such as prostitution, driving while intoxicated, alcohol consumption with license...the flyers provide guidelines on how to behave in public and behaviors that may be tolerable in other countries but considered either illegal or inappropriate in the UAE. It addresses issues such as physical displays of affection, attire,

smoking, drinking or eating during Ramadan, respect for religious sites and occasions, attire for beaches, photography of restricted areas"); Steinmetz, Swiss tourist arrested in Zimbabwe for 'insulting' Mugabe, www.eturbonews.com (9/18/2012) ("a Swiss tourist was arrested at the border of insulting the President...Insulting Mugabe is an offense under sweeping security laws and prosecutions are common...A Zimbabwean carpenter was arrested in February after he questioned whether Mugabe still had the strength to blow up balloons at his 88th birthday"); Steinmetz, Hindu shrine cops beat up US tourist, www.eturbonews.com (6/25/2012) ("An American tourist was allegedly beaten by Jagannath temple security men while he was trying to climb Jagannath's chariot on the second day of Rath Yatra on Friday"); Steinmetz, French tourist's strip dance on Uluru causes Aboriginal outrage, www.eturbonews.com (6/27/2010) ("Aboriginal elders are outraged and are calling for her deportation"); Steinmetz, German tourist jailed in New Zealand for smuggling lizards, www.eturbonews.com (3/3/2010) ("A German tourist was sentenced to jail time Wednesday after he admitted trying to smuggle native New Zealand lizards out of the country...The reptiles had a value of 192,000 New Zealand dollars (\$134,000) on the European market"). See also: 10 Super Weird Laws from Around the World, www.smartertravel.com (12/15/2012) (discussing the following laws which tourists should be aware of: Rome, Italy: eating and drinking near landmarks illegal; Dubai: sharing a hotel room outside of marriage illegal; Greece: stiletto heels illegal; Netherlands: soft drugs like marijuana and hash illegal; Doytona Beach, Florida: spitting in public illegal; Thailand: stepping on currency with the King's face on it illegal; Venice, Italy: feeding the pigeons illegal; Canada: using more than 25 pennies in a transaction illegal; Singapore: chewing gum illegal.

If you find yourself in jail in a foreign country you may wish to contact the U.S. Embassy or Consulate and a U.S. attorney (See International Legal Defense Counsel at www.ildc-law.com).

DANGEROUS DESTINATIONS

2. See Myers & Jainchill, Cruise lines continuing Antigua port calls, *Travel Weekly* (2/1/2010) (cruise passenger murdered near Pigeon Beach during shore excursion).

3. See *Vlasic v. Wyndham International, Inc.*, 451 F. Supp. 2d 1005 (C.D. Ill. 2006) (cruise passenger in lounge chair killed when palm tree fell on him).

4. See e.g.,
Eleventh Circuit: *Van Hoy v. Sandals Resorts International*, 2013

WL 1192316 (S.D. Fla. 2013)(resort guest "dies after he was trapped underwater by the suctioning mechanism in the resort's hot tub"); Walker v. Wedge Hotel, U.S. Dist. Ct. S.D. Fla. No. 01-3564 (CIV-GOLD, 27 ATLA Law Reporter 127 (Sept. 3, 2002) (" Walker, 27, went parasailing during a trip to the Bahamas. She and a friend were required to ride together [due to] inclement weather. During the ride the frayed towrope failed, causing Walker to be dragged through the water for several minutes. Walker drowned...Walker's mother sued the management company of the hotel located on the stretch of beach on which the vendor operated its parasailing business. Plaintiff alleged the vendor, which had an office in the hotel, was an agent of the hotel. Plaintiff asserted defendant was liable for the vendor's negligence in failing to maintain the towrope and failing to give Walker instructions on how to unclip herself in the event of an emergency...A jury awarded plaintiff \$1.88 million ").

State Law:

Florida: United Shipping Co. v. Winter, 724 So. 2d 722 (Fla. App. 1999) (cruise passenger drowns during shore excursion boat tour in the Bahamas).

New York: Smith v. West Rochelle Travel Agency, Inc., 238 A.D. 2d 398, 656 N.Y.S. 2d 340 (1997) (17 year old on spring break jumps to death from " booze cruise " during vacation in the Bahamas; tour operator not liable for actions of hotel in serving liquor to student and then allowing student to go on local booze cruise; student's act of jumping over cruise ship railing was intervening cause of accident).

5.5. See Barrett v. Ambient Pressure Diving, Ltd., 2008 WL 4280360 (D.N.H. 2008) (diving accident in Bermuda; defective re-breather).

6. See e.g.,

Fifth Circuit: Stutzman v. Rainbow Yacht Adventures Limited, 2007 WL 415355 (N.D. Tex. 2007) (" Steven and Susan Means...made reservations...to charter the Arabesque for a sailing and scuba diving trip in the British Virgin Islands. On January 16, 2006 the Means boarded the Arabesque in the BVI...Captain Rose...organized a scuba dive for the Means (during which) Susan Means experienced complications with her scuba equipment. After being unable to locate Captain Rose at the dive site, Mr. And Mrs. Means surfaced without his assistance. Upon reaching the surface Susan Means managed to board the Arabesque's dinghy; however, Steven Means drowned while trying to board ").

Eleventh Circuit: Zapata v. Royal Caribbean Cruises, Ltd., 2013 WL 1296298 (S.D. Fla. 2013)(cruise passenger drowns while "bell diving" during shore excursion in Bermuda).

7. See Steinmetz, Canadian visitor drowns in Cuba, www.eturbonews.com (3/1/2013)("A Canadian has died while on vacation in Cuba").

8. See Steinmetz, Six French tourists disappear from a boat in the Caribbean, www.eturbonews.com (10/29/2012) ("The four men and two women had been attending a music festival on Dominica...The boat was traveling to the nearby island of Martinique").

9. See e.g.,

Eleventh Circuit: *Perez-Lang v. Corporacion De Hoteles, SA*, 2008 WL 4181334 (S.D. Fla. 2008) (plaintiffs " purchased a vacation package to Casa de Campo...a resort located in La Romana Dominican Republic. The package...included use of a motorized golf cart as a means of transportation. (Plaintiffs) while on the premises of the Resort and operating the golf cart, were struck by an automobile. The accident produced severe and permanent injuries to both Plaintiff...and her daughter...and fatal injuries to her husband ").

State Law:

California: *Hernandez v. Barcelo Hotels & Resotrs*, 2005 WL 67112 (Cal. App. 2005) (" The case arises from the fatal drowning of Roberto Hernandez (which) occurred...during the Hernandez family vacation at the hotel, located in Punta Cana, Dominican Republic. Appellants allege that Roberto drowned after he was encouraged and allowed to snorkel in a dangerous reef without a life vest ").

Massachusetts: *Gianocotas v. RIU Hotels, S.A.*, 2001 WL 758695 (Mass. Super. 2001), judgment reversed 797 N.E. 2d 937 (Mass. App. 2003), on remand 2005 WL 503931 (Mass. Super. 2005) (insulin-dependent diabetic takes vacation and " became ill and vomited periodically through the night...A hotel representative put her in touch with Doctor Correa International Touristic Medical Service (" the Clinic ") which had a contractual relationship with the hotel to provide medical services to its guests...The doctor did not appear to understand the words ` diabetic ` or ` diabetes `. The doctor [said] that [patient] would be fine and that the pharmacy would re-open in the morning...[She] was discharged from the Clinic on March 18 but her vomiting and weakness persisted...[the Doctor at the Clinic who treated the patient] agreed that her condition was caused by ` nervousness `...[She was eventually taken to the hospital]. According to [the patient's mother] the hospital was filthy and the medical equipment antiquated. Hospital personnel were unresponsive to her inquiries...[The patient] was transported to a hospital in Miami where she died one month later as a result of an acute diabetic ketoacidotic come ").

See also: *Gianocostas v. RIU Hotels, SA*, 2006 WL 2089772 (Mass. Super. 2006) (failure of hotel and local clinic to diagnose and properly treat tour participant with diabetes; negligent misrepresentation claims against tour operator dismissed) vacated 450 Mass. 715, 2008 WL 483766 (Mass. Sup. 2008).

10. See *Balachander v. NCL (Bahamas) Ltd.* 800 F. Supp. 2d 1196 (S.D.

Fla. 2011) (cruise passenger drowns at resort on Great Shrimp Cay during stopover; Death on the High Seas Act exclusive remedy).

11. See Schmall, Violence Puts a Chill on Jamaica's Vital Tourism Industry, www.dailyfinance.com (June 5, 2010) ("In Jamaica, where tourism is a \$4 billion industry that accounts for around 20% of GDP, more than a week of negative headlines poses a serious risk to the island's economy...a four day gun battle in Kingston's Tivoli Gardens erupted last week, leaving dozens of people dead...'I don't fee safe, it's as simple as that'"); Myers, Caribe Noire, Travel Weekly, January 11, 2010, p. 18 ("Crime in the Caribbean is the elephant in the room that no one wants to talk about, but several headline-grabbing events in 2009 propelled the issue onto newspapers' front pages, social media outlets and websites...Though examples of extreme violence remain isolated, a few have also been horrendously alarming: (1) Eighteen cruise passengers were ambushed and robbed in November by armed thugs in a daring daylight attack while they were touring the Earth Village nature attraction during a port call in Nassau, (2) That incident occurred just two weeks after the robbery of another group of cruisers during a tour stop at the Queen's Staircase, another attraction in Nassau, (3) In separate incidents in October on Tobago, a British couple was wounded in a machete attack and two British women were raped at knife point in their Holiday villa, (4) Honeymooners from Wales were murdered on Antigua in 2008, (5) An Australian yachtsman was shot and killed on Antigua last January, (6) A pregnant U.S. jogger was abducted, raped and murdered in February during a run near Fajardo, Puerto Rico"); Higgins, When Crimes Comes to Paradise, N.Y. Times Online, December 6, 2009 ("Eighteen cruise passengers were robbed at gunpoint on Bahamas tours last month. A retired couple was seriously wounded in a machete attack at their second home in Tobago in August. A pregnant American tourist was abducted and killed during a morning jog in Fajardo, P.R. in February...Crime, in one form or another, is rising in Bermuda, Belize, St. Lucia and Trinidad and Tobago, based on a review of the State Department's consular information sheets, which provide data on safety and other issues in foreign countries. It continues to be an issue in places like to Dominican Republic, where pickpocketing and mugging are the most common crimes against tourists and in Jamaica, where the United States Embassy has received several reports of sexual assaults against Americans this year, including two at resorts...What is different, though, is how those crimes are handled. 'Law enforcement, especially in the Caribbean, does not necessarily have the resources or response that you might expect in the U.S....If you're victimized by a crime you need to be prepared for a slow justice process'").

12. See *Bapte v. West Caribbean Airways*, 370 Fed. Appx. 71 (11th Cir.

2010)(flight from Jamaica to Martinique crashes in the Venezuela killing all onboard).

13. See *Carlisle v. Ulysses Line Ltd.*, 475 So. 2d 248 (Fla. App. 1985) (" Mr. And Mrs. Carlisle (and another couple) were passengers aboard the S.S. Dolphin on a four day cruise to Freeport and Nassau. They were attracted to this particular cruise by promotional brochures advertising the beautiful beaches of Nassau...the two couples rented a jeep and headed for...

` Yamacraw Beach ` . On their return back...they were ambushed by three masked gunmen who opened fire on them with shotguns. All four of them were wounded. Mr. Carlisle later died from a gunshot wound to the head. After the incident, the survivors learned from members of the ship's crew that other tourists and a member of the ship's crew had been victims of violent acts perpetrated in various places on the island. Bahamian police reported that the particular beach where plaintiffs were attacked was `very bad` ").

14. See e.g.,

U.S. Supreme Court: *Yamaha Motor Corp. V. Calhoun*, 516 U.S. 199, 116 S. Ct. 619, 133 L. Ed. 2d 578 (1996) (12 year old infant killed in a collision in territorial waters off of Puerto Rico while riding jet ski).

First Circuit: *In re San Juan Dupont Plaza Hotel Fire Litigation*, 768 F. Supp. 912 (D.P.R. 1991) (attorneys fees).

15. See e.g., *Phillips v. Talty*, 555 F. Supp. 2d 265 (D.N.H. 2008) (car accident in St. Martin).

See also: Linda, St. Maarten issues statement concerning murders of 2 Americans, www.eturbonews.com (9/24/2012) ("couple found murdered at the Ocean Club in St. Maarten...The woman was tied onto a chair. The man was lying on the floor and partially over another chair. The motive of this horrific crime is yet unclear").

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

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

17. See Steinmetz, Trinidad & Tabago now murder capital of the Caribbean, www.eturbonews.com (3/6/2012) ("With a steady rise in violent crime including an alarming increase in homicides, Trinidad and Tobago has overtaken Jamaica as the 'murder capital of the Caribbean'. While homicides increased two percent in Jamaica in 2008, murders were up a staggering 38 percent in Trinidad and Tobago").

18. See Estate of Fraser v. Smith, 2007 WL 5007084 (S.D. Fla. 2007) (" This action arises out of an incident which took place on December 15, 2002, when an explosion occurred in the Turks and Caicos Islands aboard a small powerboat named the Sundance. As a result of the explosion, several passengers were injured and one passenger-Charles E. Fraser-died. The passengers were residents of South Carolina visiting the Turks and Caicos Islands as tourists ").

19. See Linda, Underfunded Belize police challenged by crime, www.eturbonews.com (8/20/2012) ("CNN Go rated Belize City as the tenth most hated city in the world...'consistently rated as the worst destination' among cruise ship passengers. Between January and June 2012 there were 35 murders in Belize City...In 2011, a Swedish tourist was robbed at gunpoint and her cash and passport stolen...Data combined with the United Nations Information and US Justice Department shows that most of the 5,500 US-bound human trafficking victims are from Central America, via Belize");

Myers, Caribe Noire, Travel Weekly, January 11, 2010, p. 18 ("Crime in the Caribbean is the elephant in the room that no one wants to talk about, but several headline-grabbing events in 2009 propelled the issue onto newspapers' front pages, social media outlets and websites...Though examples of extreme violence remain isolated, a few have also been horrendously alarming: (1) Eighteen cruise passengers were ambushed and robbed in November by armed thugs in a daring daylight attack while they were touring the Earth Village nature attraction during a port call in Nassau, (2) That incident occurred just two weeks after the robbery of another group of cruisers during a tour stop at the Queen's Staircase, another attraction in Nassau, (3) In separate incidents in October on Tobago, a British couple was wounded in a machete attack and two British women were raped at knife point in their Holiday villa, (4) Honeymooners from

Wales were murdered on Antigua in 2008, (5) An Australian yachtsman was shot and killed on Antigua last January, (6) A pregnant U.S. jogger was abducted, raped and murdered in February during a run near Fajardo, Puerto Rico"); Higgins, When Crimes Comes to Paradise, N.Y. Times Online, December 6, 2009 ("Eighteen cruise passengers were robbed at gunpoint on Bahamas tours last month. A retired couple was seriously wounded in a machete attack at their second home in Tobago in August. A pregnant American tourist was abducted and killed during a morning jog in Fajardo, P.R. in February...Crime, in one form or another, is rising in Bermuda, Belize, St. Lucia and Trinidad and Tobago, based on a review of the State Department's consular information sheets, which provide data on safety and other issues in foreign countries. It continues to be an issue in places like the Dominican Republic, where pickpocketing and mugging are the most common crimes against tourists and in Jamaica, where the United States Embassy has received several reports of sexual assaults against Americans this year, including two at resorts...What is different, though, is how those crimes are handled. 'Law enforcement, especially in the Caribbean, does not necessarily have the resources or response that you might expect in the U.S....If you're victimized by a crime you need to be prepared for a slow justice process'").

20. See e.g.,

Sixth Circuit: *Fling v. Hollywood Travel and Tours*, 765 F. Supp. 1302 (N.D. Ohio 1990)(tourist shot and robbed).

Eleventh Circuit: *Larsen v. Kerzner International Hotels Limited*, 2009 WL 1759585 (S.D. Fla. 2009)(guest at Atlantis Hotel in Nassau assaulted by unidentified man).

See also: Higgins, When Crime Comes to Paradise, www.nytimes.com (Dec. 6, 2009) ("Eighteen cruise passengers were robbed at gunpoint on Bahamas tours last month. A retired British couple was seriously wounded in a machete attack at their second home in Tobago in August...Crime, in one form or another, is rising in Bermuda, Belize, St. Lucia and Trinidad and Tobago...It continues to be an issue in places like the Dominican Republic where pickpocketing and mugging are the most common crimes against tourists and in Jamaica where the United States Embassy has received several reports of sexual assaults against Americans this year, including two at resorts").

21. See Steinmetz, UK cruise tourists attacked, shot in Barbados, www.eturbonews.com (March 18, 2013) (two British cruise passengers on a shore excursion were shot by a robber).

22. See *Wilson v. American Trans Air, Inc.*, 874 F. 2d 386

(7th Cir. 1989)(tour participant assaulted at Holiday Inn on Grand Cayman Island when intruders gain entry into room through second story balcony window).

23. See e.g.,

Third Circuit: Schreiber v. Camm, 1994 WL 131611 (D.N.J. 1994) (guests at Jamaican vacation estate, Mockingbird Hill, shot by security guard rendering one of the guests quadriplegic).

Fourth Circuit: Early v. Travel Leisure Concepts, Inc., 669 F. Supp. 130 (E.D. Va. 1987) (tourist purchased tour of Jamaica featuring accommodations at Sunflower Villas Hotel where she is assaulted).

Eleventh Circuit: Wagner v. Island Romance Holidays, Inc., 2013 WL 5718969 (S.D. Fla. 2013) (anonymous attack of guest on hotel grounds).

State Law:

New York: Creteau v. Liberty Travel, inc., 195 A.D. 2d 1012, 600 N.Y.S. 2d 576 (1993) (tourist raped and robbed in Jamaica).

24. See e.g., Woods-Leber v. Hyatt Hotels of Puerto Rico, 1997 WL 476360 (1st Cir. 1997) (mongoose attacks guest sunbathing at hotel pool); Gilmore v. Caribbean Cruise Line, 789 F. Supp. 488 (D.P.R. 1992) (passengers stabbed and robbed on pier).

25. See Gabrielle v. Allegro Resorts Hotels, 210 F. Supp. 2d 62 (D.R.I. 2002) (guests at Jack Tar Village in St. Kitts robbed and assaulted by intruder who gained entry through open balcony sliding window).

See also: Linda, Assuring the cruise industry and its ports of call, www.eturbonews.com (3/6/2012) ("cruise ships or cruise passengers have experienced multiple problems (in 2010-2012 to include) (1) Tourists robbed on shore excursion on...St. Kitts (November 2010), (2) Attacks in Matzalan (January 2011) caused cruise ships to drop the city as a port of call, (3) In Puerto Vallarta, some 22 cruise passengers were robbed (February 2012) while on what appears to be a cruise-sponsored shore excursion").

26. See Steinmetz, Armed bandits rob cruise ship tourists in St. Lucia, www.eturbonews.com (4/16/2013) ("Masked gunmen have held up a tour bus in St. Lucia, robbing 50 sightseers from a cruise ship").

27. See Manahan v. NWA, Inc., 821 F. Supp. 1105 (D.V.I. 1992), recon. denied 821 F. Supp. 1110 (D.V.I. 1992), aff'd 995 F. 2d 218 (3rd Cir. 1993) (tourist mugged and purse snatched on walk to restaurant from hotel).

28. See e.g.,

Third Circuit: Lorette v. Holiday Inns, Inc., 1986 WL 5339 (E.D. Pa. 1986) (tourist raped and robbed on beach in the Bahamas

).

Eleventh Circuit: Doe v. Sun International Hotels, Ltd., 20 F. Supp. 2d 1328 (S.D. Fla. 1998)(guest raped at resort).

29. Crocker v. Hilton International Barbados, Ltd., 976 F. 2d 797 (1st Cir. 1992)(guest at Hilton International Barbados, Ltd. Hotel in Bridgetown, Barbados raped at knife point).

30. Shanzer v. Club Med Sales, Inc., New York Law Journal, Sept. 7, 1994, p. 22, col. 5 (N.Y. Civ. 1994)(male guest at Club Med facility, Bay Providenciales, in the British West Indies sexually assaulted and wakes up in the morning sitting naked in " seashore's shallow waters ").

31. See e.g., Wilson v. American Trans Air, Inc., 874 F. 2d 386 (7th Cir. 1989)(intruder entered Mrs. Wilson's second floor hotel room through the balcony window and attempted to rape and rob her; tour operator not liable for assault at hotel); Wilson v. Humphreys Cayman Ltd., 916 F. 2d 1239 (7th Cir. 1990)(guest raped at hotel).

32. See Creteau v. Liberty Travel, Inc., 195 A.D. 2d 1012, 600 N.Y.S. 2d 576 (1993)(tourist raped and robbed in Jamaica).

33. See Flanagan v. Wyndham International, Inc., 231 F.R.D. 98 (D.C.D.C. 2005)(sexual assault by hotel employee of guest's child; " In December 2000, Flora Nicholas and Paul Gayter filed suit...on behalf of their minor daughter S.G. against (hotel and employee who " worked at the Kids Klub day-care program at the Wyndham Sugar Bay Resort in St. Thomas. The suit sought damages arising out of Hornby's alleged sexual molestation of S.G. while she was under his care. After the initiation of the civil suit (employee) was convicted of sexually molesting S.G. and is currently incarcerated in the Virgin Islands...Approximately two years after Nicholas [action] was filed, the plaintiffs in the two underlying actions, Flanagan and James, filed similar suits (alleging) that (employee) sexually molested the 9-year old Flanagan girl and the 8-year old James girl while they attended the Wyndham Kids Klub "); Nicholas v. Wyndham International, Inc., 301 F. Supp. 2d 407 (D.V.I. 2002).

See also: " Who's Minding The Kids? ", Conde Nast Traveler, August 2005, pp. 61 (" More hotels and resorts are opening children's programs every day, but few parents really know what separates the good ones from the bad...Our outlook changed radically, however, when we learned the story of a nine-year-old girl who was molested by a 22-year-old male counselor while staying with her parents at St. Thomas's Wyndham Sugar Bay Resort & Spa (Although the abuse occurred

in April 2000, the case gained widespread publicity only last year, after the man was denied an early prison release from his five-year sentence). Just this past April, the issue of safety at these facilities made headlines again when the Australian press reported allegations that in recent years, two Australian children had been abused at two hotel kids' clubs in Bali. In one case, a three-year-old girl was diagnosed with gonorrhoea after spending time at a hotel kids' club; in the other a five-year-old boy was molested by a man who entered the child-care facility at the resort where the boy and family were staying ").

34. See *Grossman v. Club Med Sales, Inc.*, 273 N.J. Super. 42, 640 A. 2d 1194 (1994) (guest at Club Med facility in Turks and Caicos sexually assaulted by former employee).

35. See e.g.,

Third Circuit: *Contino v. Blue Melody Tours*, 2010 WL 5479608 (D.N.J. 2010) (boating accident in Aruba).

Seventh Circuit: *Crawley v. Marriott Hotels, Inc.*, 2006 WL 2331143 (D. Ill. 2006) (" She stayed at the Aruba Marriott Resort & Stellaris Casino (where) the concierge recommended Crawley take a jeep island tour through ABC Tours...charging the deposit to her hotel room. While on this tour Crawley had a ' near drowning incident causing her to sustain serious personal injuries ' including permanent lung damage ' ").

Ninth Circuit: *Huang v. Marriott International, Inc.*, 2012 WL 170166 (E.D. Cal. 2012) (timeshare owners booked "a tour of Aruba with De Palm Tours that included scuba diving at Baby Beach (which) allegedly has a significant undertow that has previously caused fatalities, the Huangs were not warned about the dangerous conditions and were told that the beach was safe and that life jackets were unnecessary. While snorkeling... plaintiffs' wife and mother [were] pulled by an undertow and drowned").

36. See e.g.,

Sixth Circuit: *Matthews v. Kerzner International Limited*, 2011 WL 5122641 (N.D. Ohio 2011) (plaintiff "sustained injuries to his left leg and knee upon using an allegedly defective and dangerous water slide (Mayan Temple Waterslides)").

Seventh Circuit: *Carris v. Marriott International, Inc.*, 466 F. 3d 558 (7th Cir. 2006) (hotel patron injured in personal watercraft accident).

Eleventh Circuit: *Stubbs v. Wyndham Nassau Resort and Crystal Palace Casino*, 447 F. 3d 1357 (11th Cir. 2006) (" The complaint arises out of a diving accident in which Howard Stubbs...was severely injured when he dove into the shallow end of a swimming pool at the (Wyndham Nassau Resorts And Crystal Palace Casino) located in Nassau, Bahamas "); *Meier v. Sun International Hotels, Ltd.*, 288 F. 3d 1264

(11th Cir. 2002) (hotel guest struck by motorboat while snorkeling; motorboat operated by a Bahamian water-sports concessionaire conducting business at (another hotel) which, plaintiff claims, negligently supervised the motorboat operator); In re Matter of Royal Caribbean Cruises, 2013 WL 425837 (S.D. Fla. 2013) (jet ski accident in the Bahamas); Campbell v. Starwood Hotels & Resorts Worldwide, 2008 WL 2844020 (S.D. Fla. 2008) (guest swimming struck motorboat operated by Ocean Motion); Klima v. Carnival Corporation, 2008 WL 4559231 (S.D. Fla. 2008) (" The case involves a claim...for injuries Plaintiff suffered while taking a catamaran boat tour in the Bahamas...While aboard (the cruiseship ` Sensation `) the Klimas booked an excursion on the ` Thriller Powerboat `...Mrs. Klima was injured while aboard the Thriller Powerboat "); Miyoung Son v. Kerzner International Resorts, Inc., 2008 WL 4186979 (S.D. Fla. 2008) (tourist on excursion " received severe and extensive injuries as a result of being pulled through the churning propellers of the excursion boat "); Mashburn v. Royal Caribbean Cruises, Ltd., 55 F. Supp. 2d 1367 (S.D. Fla. 1999), aff'd 214 F. 3d 1356 (11th Cir. 2000) (cruise passenger disembarks at Coco Cay Island, Bahamas, an island owned by cruiseline; rents a jet ski owned by cruiseline and is injured in an accident).

37. See e.g.,

First Circuit: Binder v. McVey, 2007 WL 3391419 (D.V.I. 2007) (" While on an around-the-world sailing trip, the McVeys... sailed the Seahorse to Jost Van Dyke, British Virgin Islands...In the early morning on January 1, 2004, while leaving a bar and restaurant on Jost Van Dyke, P. McVey was asked by several individuals, including plaintiff Heidi Binder, for a ride on his dinghy back to their boats...While P. McVey and...Binder were in the dinghy, the dinghy was struck by a motorboat. Binder sustained injuries in the collision ").

Second Circuit: Matter of Illusions Holdings, Inc., 78 F. Supp. 2d 238 (S.D.N.Y. 1999) (scuba diver sustains injury to shoulder while diving in the British Virgin Islands).

38. See e.g.,

Second Circuit: Szollosy v. Hyatt Corporation, 396 F. Supp. 2d 147 (D. Conn. 2005) (" the Szollosys took a day trip to the nearby Rum Point recreation area. Rum Point offered a swimming beach and several restaurants and snack bars. Defendant Red Sail also operated a concession stand at Rum Point where sailboats, paddleboats, windsurfers and wave runners and other equipment were available for rental...The wave runner carried Dean across the Rum Point harbor and crashed directly into a stone jetty or break wall...as a result of the crash; he suffered injuries including come and brain hemorrhage").

Eighth Circuit: Lehman v. Humphreys Cayman Ltd., 713 F. 2d 339

(8th Cir. 1983)(guest at Grand Caymanian Holiday Inn, owned by defendant Humphreys Cayman, Ltd., a franchisee of defendant, Holidays Inns, Inc., in Cayman Islands rented a 16-foot "Hobie Cat" for a sailboat shop, Bob Soto's Diving, Ltd., located on hotel premises; guest and two companions lost at sea when boat overturned).

State Law:

Florida: LeValley v. Carnival Cruise Lines, Inc., 786 So. 2d 18 (Fla. App. 2001 (jury verdict for cruise passenger injured during shore excursion scuba dive in Grand Cayman Island reversed for failure of trial court to allow introduction of evidence of diver's asthmatic condition as a causative factor in accident)).

39. See Steinmetz, Canadian visitor drowns in Cuba, www.eturbonews.com (3/1/2013) ("A Canadian has died while on vacation in Cuba").

40. See Steinmetz, Six French tourists disappear from a boat in the Caribbean, www.eturbonews.com (10/29/2012) ("The four men and two women had been attending a music festival on Dominica...The boat was traveling to the nearby island of Martinique").

41. See Calvo v. Sol Melia, 761 So. 2d 461 (Fla. App. 2000)(resort guest struck by motorboat in Dominican Republic).

42. See Healy v. Renaissance Hotel Operating Co., 282 A.D. 2d 363, 724 N.Y.S. 2d 719 (2001)(Irish citizen living in London, England struck by motorboat while snorkeling in Grenada).

43. See e.g.,

Eleventh Circuit: Torres v. International Hotels (Jamaica) Ltd., 2007 WL 2254929 (S.D. Fla. 2007)(plaintiff " seeking relief for injuries sustained while vacationing at the Hedonism II Resort in Jamaica...she was injured while using Hedonism II's water slide, a tube like structure which opens into a pool...immediately after exiting the slide and landing in the pool, an inebriated hotel guest crashed on top of her while she was still submerged underwater, injuring her head and neck and rendering her unconscious. Plaintiff further alleges that Hedonism II's life guards made no attempt to aid or rescue her, that she was forced to seek medical attention on her own, and that, due to her injuries, she remained in bed in her hotel room for the next three days ").

State Law:

California: McCollum v. Friendly Hills Travel Center, 217 Cal. Rptr. 919 (Cal. App. 1985)(water skiing accident at hotel; " the driver then made too fast a turn for prevailing water condition which caused (plaintiff) to fall hitting ' the water hard and twisted [his] head '...22 days after the accident he suffered a stroke as a result of that fall and is now paralyzed on the left side of his

body from the stroke ").

44. See *Cutchin v. Habitat Curacao*, 1999 WL 33232277 (S.D. Fla. 1999) (guest at Habitat Curacao in Netherlands Antilles suffers decompression sickness during scuba dive; complaint asserts that Habitat negligent in failing to properly conduct dive and in failing to administer necessary medical treatment).

45. See e.g.,

First Circuit: *Santos v. Posadas De Puerto Rico Associates, Inc.*, 452 F. 3d 59 (1st Cir. 2006) (guest at Wyndham Condado Plaza Hotel and Casino in Puerto Rico injured entering hotel pool; jury verdict for vacationers in the amount of \$1,000,000 for injured guest and \$250,000 to wife for loss consortium affirmed; " Knowing that guests used the steps to enter and exit the pool, the Hotel neither made them safe for this readily foreseeable use nor warned of the inherent danger. These failures, the jury plausibly could have found, caused the accident "); *Fiorentino v. Rio Mar Associates, LP*, 381 F. Supp. 2d 43 (D.P.R. 2005) (guest at Westin Rio Mar Beach Resort & Casino in Puerto Rico rendered quadriplegic after " body whomping " in surf at Rio Mar beach " when he was suddenly hit by a wave which caused him to topple over and strike his head and neck on the ocean bottom rendering him partly unconscious"); *Torres v. National Association of Underwater Instructors*, 928 F. Supp. 134 (D.P.R. 1996) (scuba accident in Puerto Rico).

Second Circuit: *Pollack v. Hyatt Hotels of Puerto Rico, Inc.*, 85 Civ. 5564 (EW) (S.D.N.Y. 1985) (hotel guest nearly drowns by falling into underwater hole off of beach).

46. See e.g.,

Third Circuit: *Neely v. Club Med Management Services, Inc.*, 63 F. 3d 166 (3d Cir. 1995) (U.S. citizen employed as scuba instructor at St. Lucia Club Med resort sucked into propellers of dive boat, *Long John*).

Eleventh Circuit: *Henderson v. Carnival Corp.*, 125 F. Supp. 2d 1375 (S.D. Fla. 2000) (honeymoon couple on cruise purchase tickets for ride on catamaran in St. Lucia which struck coral reef injuring couple).

47. See *Craig v. Sandals Resorts International*, 2014 WL 6610342 (E.D.N.Y. 2014) (hotel guest dies after being struck by motorboat while snorkeling; forum non conveniens motion granted); *O'Donnell v. Club Mediterranee, S.A.*, 2008 WL 794975 (E.D.N.Y. 2008) (" At some point during the (scuba diving) excursion, plaintiff abandoned the dive and attempted to board the boat by climbing a side ladder, which provided access between the water and the boat...the ladder was slippery and the dive boat did not have a lookout on board to help plaintiff climb on board. Plaintiff slipped as she was trying to board the Bat Ray and suffered an ankle fracture, for which she was treated immediately by a physician in Turks & Caicos "); *Welch-Rubin v.*

Sandals Corp., 2004 WL 2472280 (D. Conn. 2004) (" The central issue in this case is whether Defendants—a resort company and a tour operator owned, operated or controlled the Beaches Resort which Plaintiff...injured her shoulder while attempting to board a boat ").

48. See Oleksiuk v. Caribbean watersports and Tours, LLC, 2005 WL 1668906 (D.V.I. 2005) (guest at Elysian Beach Resort on St. Thomas owned and operated by Equivest broke leg in accident with jet ski provided by concessionaire Caribbean Watersports and Tours LLC); Wyatt v. Rosewood Hotels and Restorts, LLC, 2005 WL 1706134 (D.V.I. 2005) (campground patron went swimming at Cinnamon Bay beach in Virgin Islands National Park on St. John and " was struck by a breaking wave [and] was driven into the sand and suffered a broken neck which left him quadriplegic "); Fabend v. Rosewood Hotels, 181 F. Supp. 2d 439 (D.V.I. 2002) (tourist vacationed at Cinnamon Bay Campgrounds and was injured while body surfing in Virgin Islands National Park).

49. See Feinstein v. Curtain Bluff, 1998 WL 458060 (S.D.N.Y. 1998) (guests at Curtain Bluff hotel in Antigua contract ciguatera poisoning after eating fish in hotel restaurant).

50. See e.g.,

Second Circuit: Wenzel v. Marriott International, Inc., 2014 WL 6603414 (S.D.N.Y. 2014) (accident at hotel; forum non conveniens motion granted); Clarke v. Marriott International, Inc., 2014 WL 476720 (D.V.I. 2014) (slip and fall in bathtub; summary judgment for hotel); Andrei v. DHC Hotels and Resorts, Inc., 2000 WL 343773 (S.D.N.Y. 2000) (guest at Tamarign Aruba Beach Resort takes shower outside of room, enters room and slips and falls onto floor; no personal jurisdiction over hotel); Passero v. DHC Hotels, 1996 WL 931767 (D. Conn. 1996) (tour participant trips over a flotation mat placed near a chair at hotel pool).

Third Circuit: Plinio v. Americana Aruba Beach Resort & Casino, 1998 WL 1286233 (D.N.J. 1997) (slip and fall in hotel bathtub).

Eleventh Circuit: Leinhart & Caribbean Hospitality Services, Inc., 426 F. 3d 1337 (11th Cir. 2005) (" Lienhart was vacationing at the Aruba Grand (which) is located next to the public beach and it provides lounge chairs and tiki huts on the beach exclusively for use of its guests. Leinhart and a friend were spending the day relaxing and had been led to chairs by an Aruba Grand employee who placed the chairs under a tiki hut for their use...Leinhart was asleep in a lounge chair when...she was struck by a pickup truck and boat trailer operated by an employee of Unique Sports of Aruba. The boat and trailer were

backing up along the beach ").

State Law:

Connecticut: *Cicchiello v. Reney Tours Plane Brokers, Inc.*, 1996 WL 278348 (Conn. Super. 1996) (tourists purchase tour to Aruba featuring accommodations at the La Cabana; " The plaintiffs allege that...Emanuel ' turned on the gas stove in his room... when suddenly and without warning there was a gas explosion from the gas stove ' causing injury").

51. See e.g.,

First Circuit: *McElheny v. Trans National Travel, Inc.*, 165 F. Supp. 2d 190 (D.R.I. 2001) (on " the second day of her vacation...she met with a certain representative at the Club Fortuna Beach. Plaintiff asserts that this representative intended to sell Plaintiff vacation-related products, including a time-share. Plaintiff pulled up a chair to sit with the representative, but due to a defect (Plaintiff alleges that the chair had only three legs), Plaintiff slip and fell off the chair. As a result, Plaintiff broke her ankle ").

Eleventh Circuit: *Moseley v. Carnival Corporation*, 2014 WL 6601147 (11th Cir. 2014) (cruise passenger injured on shore when public bathroom sink dislodges and falls on her; complaint against cruise line dismissed); *Pappas v. Kerzner International Bahamas Limited*, 585 Fed. Appx. 962 (11th Cir. 2014) (water slide accident at hotel; Bahamas forum selection clause enforced); *McArthur v. Kerzner International Bahamas Limited*, 2015 WL 1404409 (11th Cir. 2015) (slip and fall at hotel; Bahamas forum selection clause enforced); *Barilotti v. Island Hotel Company, Ltd.*, 2014 WL 1803374 (S.D. Fla. 2014) (slip and fall in puddle of water at Atlantis Resort on Paradise Island).

State Law:

Florida: *Kerzner International Resorts, Inc. v. Raines*, 983 So. 2d 750 (Fla. App. 2008) (guest injured at resort in the Bahamas).

New York: *Meshel v. Resorts International of New York*, 160 A.D. 2d 211, 553 N.Y.S. 2D 342 (1990) (guest at Britannia Tower suffers heart attack; complaint alleges that hotel was negligent in providing defective oxygen equipment including spent or inadequate oxygen cylinders).

52. See e.g.,

Third Circuit: *O'Connor v. Sandy Land Hotel Co., Ltd.*, 2007 WL 2135274 (3rd Cir. 2007) (" They booked a five-night stay at Sandy Lane (in Barbados which) then mailed the O'Connors a brochure highlighting the many treatments available at the on-site spa...Sandy Land agreed to provide spa treatments at specific dates and times and the O'Connor's agreed to pay a set price...Mr. O'Connor was due one of his massages. He went to the spa at the appointed time and the staff began to ' rejuvenate ' his ' mind, body and spirit '. As

part of that process, a Sandy Land employee instructed Mr. O'Connor to step into the shower and wash up. Unfortunately, Mr. O'Connor's feet were still slick with massage oils, and there were no mats on the shower's wet floor. As he stepped into the shower, Mr. O'Connor slipped, fell and tore his rotator cuff ").

Great Britain: Japp v. Virgin Holidays [2013] EWCA Civ (guest at hotel in Barbados walks into balcony glass door which shatters causing lacerations).

53.

See See e.g.,

Second Circuit: Klein v. Marriott International, Inc., 34 F. Supp. 2d 176 (S.D.N.Y. 1999) (guests at Marriott Castle Harbor Resort in Bermuda becomes ill from consuming contaminated water).

State Law:

New York: Amsellem v. Host Marriott Corp., 280 A.D. 2d 357, 721 N.Y.S. 2d 318 (2001) (guest at Marriott Castle Harbour Resort in Tucker's Town, Bermuda operated by Marriott International Services, Ltd (MLTD) became ill from consuming contaminated water; " Castle Harbour's water tanks and filtration system are monitored by the Bermuda Ministry of Health (the Ministry) pursuant to Bermuda law. On February 13, 1998 the Ministry was summoned to Castle Harbour after a large number of guests reported nausea, vomiting and diarrhea. Ministry officials subsequently advised MLTD personnel that there was nothing unusual in the stool and water samples that they had analyzed and that the outbreak was, they believed, the result of an airborne virus...on February 16, 1998 MLTD was informed by the Ministry that contrary to its earlier pronouncement, additional sample tested by the Ministry indicated that the water supply was contaminated ").

54. See Heidle v. The Prospect Reef Resort, Ltd., 364 F. Supp. 2d 312 (W.D.N.Y. 2005) (" Heidle vacationed with her boyfriend...at Prospect Reef's resort on Tortola in the British Virgin Islands (and while there she fell into a cistern)").

55. See e.g.,

Third Circuit: Miloseska v. Liberty Travel, Inc., 2013 WL 178065 (D.N.J. 2013) (accident at hotel in Dominican Republic); Callista v. Inversora Internacional Hotelera, S.A., 2009 WL 137332 (D.N.J. 2009) (" Plaintiff...was a guest at the Grand Flamenco Resort...in Punta Cana (and) during his stay...he contracted food poisoning ")..

Sixth Circuit: Viches v. MLT, Inc., 124 F. Supp. 2d 1092 (E.D. Mich. 2000) (tour participants injured in Dominican Republic when resort sprayed insecticide on its premises).

56. See Rams v. Royal Caribbean Cruise Lines, 17 F. 3d 11 (1st Cir. 1994) (cruise passenger on shore excursion in Haiti slips and falls in hotel owned by cruise line).

57. See e.g.,

First Circuit: *Hofer v. The Gap, Inc.*, 2007 WL 2827380 (D. Mass. 2007) (" She contends that as she turned around to descend the stairs, the thong of her right sandal became detached by pulling through the sole. This caused her to lose her balance, and she fell to her right into the turtle pond. As she fell, she gouged her left leg on the sharp rocks in the pond...It is well settled that travel agents are not generally liable for the negligence or dangerous conditions of third-party hotel or travel operators... Plaintiff contends, however, that this case should fall outside the general rule for three reasons (1) Expedia ` controlled ` the Turtle Beach Towers resort as a result of inspections it allegedly conducted at the hotel, (2) Expedia as plaintiff's agent owed her a duty to warn of dangerous hazards of which Expedia was aware through its ` inside information ` and (3) Expedia voluntarily assumed a duty to warn her of safety hazards ").

Eleventh Circuit: *Campbell v. Air Jamaica Ltd.*, 2012 WL 3562126 (S.D. Fla. 2012) ("The above-styles action arises from Defendants' alleged refusal to allow Plaintiff Campbell to board a flight (departing from Kingston, Jamaica) for which he was ticketed which (allegedly) caused him to suffer a heart attack"; complaint dismissed as failing to come within Article 17 or Article 19 of the Montreal Convention); *Smolnikar v. Royal Caribbean Cruises Ltd.*, 787 F. Supp. 2d 1308 (S.D. Fla. 2011) ("while participating on an offshore `zip line' excursion tour in Montego Bay, Jamaica... (plaintiff) collided at a high speed with a tree and suffered a herniated disk in her neck... (alleges) (1) negligent selection (of) a zip line tour operator and (2) failure to warn of dangerous conditions present in the zip line tour"); *Prophet v. International Lifestyles, Inc.*, 2011 WL 1388576 (S.D. Fla. 2011) (accident at hotel gym (defective power rack)).

58. See e.g.,

First Circuit: *Kaden v. Wyndham Conquistador Resort & Country Club*, 2005 WL 1949694 (D.P.R. 2005) (guest slips and falls on Jacuzzi platform at Wyndham El Conquistador Resort & Country Club in Puerto Rico); *Raybourne v. San Juan Marriott Resort*, 2003 WL 1984482 (D.P.R. 2003) (guest falls in bathtub; award of \$500,000 compensatory damages grossly excessive and award of \$150,000 in lost earnings unsupported by evidence); See *In re San Juan Dupont Plaza Hotel Fire Litigation*, 768 F. Supp. 912 (D.P.R. 1991) (attorneys fees); *In re San Juan Dupont Plaza Hotel Fire Litigation*, 117 F.R.D. 30 (D.P.R. 1987) (discovery).

Fourth Circuit: *Camasso v. Dorado Beach Hotel Corp.*, 689 F. Supp. 384 (D. Del. 1988) (outbreak of salmonella poisoning at Hyatt Regency Cerromar Resort at Dorado Beach, Puerto Rico).

Fifth Circuit: *Room v. Caribe Hilton Hotel*, 659 F. 2d 5 (5th

Cir. 1981) (hotel directory stated " A registered nurse is on duty, and a qualified physician is available at all times...After hours and Saturday and Sunday call: Telephone operator "; hotel guest felt weak and nauseous and called operator at 7:30PM asking for a doctor and was assured by the operator that a doctor would be obtained. At 11:30PM the guest called again and was assured that a doctor would be called. The telephone operator was unable to get a doctor to come and so advised the guest who took a cab to the local hospital where he was diagnosed with a myocardial infarction and remained in the hospital for a month. The lawsuit asserts, inter alia, that the hotel's delay in obtaining a doctor and providing promised medical assistance caused the guest permanent brain damage).

State Law:

New York: Smith v. Atlas International Tours, 80 A.D. 2d 62, 436 N.Y.S. 2d 722 (1981) (tour operator fails to deliver Glatt Kosher food during Passover holiday at resort hotel in Puerto Rico; Compare: Jaraslawicz v. Prestige Caterers, Inc., 292 A.D. 2d 232, 739 N.Y.S. 2d 670 (2002) (food poisoning at Miami hotel during Passover tour); Sacks v. Loews Theatres, Inc., 47 Misc. 2d 854, 263 N.Y.S. 2d 253 (1965) (guest slips and falls at Americana Hotel in Puerto Rico).

59. See Clarke v. Marriott International, Inc., 2013 WL 47581999 (D.V.I. 2013)(slip and fall in bathtub in St. Kitts hotel).

60. See Family poisoned at tourist resort: 2 children in comas, www.eturbonews.com (4/8/2015)(family from Delaware stayed "at the Sirensa Condominium Resort in Cruz Bay, St. John, in the Virgin Islands (and) became seriously ill and it is believed that it was due to exposure to a pesticide known as methyl bromide").

61. See Tross v. Ritz Carlton Hotel Company, LLC, 928 F. Supp. 2d 498 (D. Conn. 2013)(ceiling tile in bathroom falls on hotel guest's head).

62. See Tucker v. Whitaker Travel, Ltd., 620 F. Supp. 578 (E.D. Pa. 1985), aff'd Mem. 800 F. 2d 1140 (3rd Cir. 1986), cert. denied 107 S. Ct. 578 (1986) (horse riding accident).

63. See Colby v. Norwegian Cruise Lines, Inc., 1996 WL 1752 (D. Conn. 1996) (cruise passenger on shore excursion thrown from horse).

64. See Snyder v. Dolphin Encounters Limited, 235 F. Supp. 2d 433 (E.D. Pa. 2002) (" a large dolphin landed on plaintiff's head and pushed her underwater...The dolphin trapped the plaintiff underwater for several seconds...she suffered permanent partial hearing loss

in one ear and cervical injury "; no personal jurisdiction; discussion of jurisdiction and Internet websites).

65. See *Woods-Leber v. Hyatt Hotels of Puerto Rico*, 1997 WL 476360 (1st Cir. 1997)(guest at Cerromar Beach Hotel in Dorado Beach, Puerto Rico attacked by mongoose in pool area).

66. See *Ward v. Kerzner International Hotels Limited*, 2005 WL 2456191 (S.D. Fla. 2005)(guest at Ocean Club on Paradise Island, Bahamas " used one of the bicycles provided by the Ocean Club's sports facility, but the bicycle did not have lights and she was not given a helmet...after dark, she hit some unpainted speed bumps in the unlighted driveway, was thrown over the handlebar and was seriously injured ").

67. See *Spaziano v. Price*, 763 So. 2d 1047 (Fla. App. 1999)(tourist injured when plane approaching Bimini crash lands with wheels up; legal malpractice action).

68. See *Randolph v. Baron*, 2006 WL 2627977 (D.N.J. 2006)(cruise passenger injured in tour van accident on the island of Dominica).

69. See *Lang v. Corporacion De Hoteles, SA*, 2007 WL 3286385 (D.P.R. 2007)(" The complaint alleges that plaintiffs... traveled to the Dominican Republic for a vacation at Casa de Campo resort after purchasing and booking their vacation package through MK Tours (PR), Inc., a travel agency in Puerto Rico. During their stay...the family suffered an accident when their golf cart , which is claimed have been part of the vacation package deal, was struck by a truck in the premises of Casa de Campo resort. As a result Mr Lang died while plaintiffs were seriously"). See also *Perez-Lang v. Corporacion De Hoteles, SA*, 2008 WL 4181334 (S.D. Fla. 2008).

70. See e.g.,

Eleventh Circuit: *Bridgewater v. Carnival Corporation*, 2011 WL 4383312 (S.D. Fla. 2011)("Plaintiff, a passenger on the Carnival Conquest, participated in a catamaran sailing excursion on Montego Bay, Jamaica which was operated by (Jamaican company Rapsody Tours, Charters & Cruise Limited). Lightning struck at or near the catamaran and Plaintiff was injured as a result"; discovery to establish relationship between domestic cruise line and foreign ground service provider).

State Law:

71. See e.g.,

Third Circuit: *Santoro v. Unique Vacations, Inc.*, 2015 WL 179540 (D.N.J. 2015)(vehicle accident in St. Lucia; disclaimer of liability

may not be enforceable); Santoro v. Unique Vacations, Inc., 2014 WL 1614861 (D.N.J. 2014) (taxi accident in St. Lucia).

Eighth Circuit: DeSirey v. Unique Vacations, inc., 2014 WL 272369 (E.D. Mo. 2014) (dune buggy accident in St. Lucia).

72. See Heyden v. Celebrity Cruises, Inc., 2013 WL 773477 (S.D. Fla. 2013) (Segway accident during cruise shore excursion in St. Maarten); Ash v. Royal Caribbean Cruises, Ltd., 2013 WL 6970900 (S.D. Fla. 2013) (tour bus accident in St. Maarten).

73. See e.g.,

Second Circuit: Jerome v. Water Sports Adventure Rentals, 2013 WL 692471 (D.V.I. 2013) (jet ski accident in St. Thomas); Stotesbury v. Pirate Duck Adventure, LLC, 2013 WL 3199353 (D.V.I. 2013) (cruise shore excursion accident when Duckaneer crashes after brakes fail); Piche v. Stockdale Holdings, LLC, 2009 WL 799659 (D.V.I. 2009) (cruise passenger " was injured onboard the Ocean Rider (during snorkeling excursion) while traveling on navigable water off the coast of St. Thomas "); Welch-Rubin v. Sandals Corp., 2004 WL 2472280 (D. Conn. 2004) (" The central issue in this case is whether Defendants—a resort company and a tour operator owned, operated or controlled the Beaches Resort which Plaintiff...injured her shoulder while attempting to board a boat "); Lubick v. Travel Services, Inc., 573 F. Supp. 904 (D.V.I. 1983) (cruise passenger injured in tour bus accident during shore excursion of St. Thomas).

Fourth Circuit: Poe v. Budget Rent A Car System, Inc., 2006 WL 2161865 (D. Md. 2006) (rental car accident in Virgin Islands " when the brakes on a (rental) car...failed").

State Law:

California: Fisher v. Olde Towne Tours, LLC, 2011 WL 3310362 (Cal. App. 2011) ("During the trip to the snorkeling site, Fisher's dinghy was struck by a large wave. Fisher grabbed the mooring line but it did not provide a secure hand hold. Fisher lost her balance and fell backward against the edge of the bench, striking her back. She sustained a serious injury...that required surgery").

74. See Taylor v. Costa Lines, Inc., 441 F. Supp. 783 (E.D. Pa. 1977) (cruise passenger purchased shore excursion tour of Trinidad aboard cruise ship during which taxi cab struck tree causing severe injuries).

75. See Poe v. Budget Rent A Car System, Inc., 2006 WL 2161865 (D. Md. 2006) (rental car accident).

76. See e.g.,

Second Circuit: Hoch v. Venture Enterprises, Inc., 473 F. Supp. 541 (D.V.I. 1979) (diners eat poisonous hind fish and contract "typical ciguatera poisoning").

Eleventh Circuit: Howard v. Kerzner International Limited, 2013

WL 5353417 (S.D. Fla. 2013) (poisonous fish with ciguatoxins consumed by hotel guest).

State Law:

New York: Meshel v. Resorts International of New York, 160 A.D. 2d 211, 553 N.Y.S. 2d 342 (1990) (guest at Britannia Tower suffers heart attack; complaint alleges that hotel was negligent in providing defective oxygen equipment including spent or inadequate oxygen cylinders).

77. See Ure v. Oceania Cruises, Inc., 2014 WL 5523122 (S.D. Fla. 2014) (cruise ship passenger became ill and disembarked in Barbados and alleged medical malpractice while at Bay View Hospital in Barbados; complaint dismissed).

78. See Gianocostas v. RIU Hotels, S.A., 2001 WL 758695 (Mass. Super. 2001), judgment reversed 797 N.E. 2d 937 (Mass. App. 2003), on remand 2005 WL 503931 (Mass. Super. 2005) (insulin-dependent diabetic takes vacation and " became ill and vomited periodically through the night...A hotel representative put her in touch with Doctor Correa International Touristic Medical Service (" the Clinic ") which had a contractual relationship with the hotel to provide medical services to its guests...The doctor did not appear to understand the words ' diabetic ' or ' diabetes '. The doctor [said] that [patient] would be fine and that the pharmacy would re-open in the morning...[She] was discharged from the Clinic on March 18 but her vomiting and weakness persisted...[the Doctor at the Clinic who treated the patient] agreed that her condition was caused by ' nervousness '...[She was eventually taken to the hospital]. According to [the patient's mother] the hospital was filthy and the medical equipment antiquated. Hospital personnel were unresponsive to her inquiries...[The patient] was transported to a hospital in Miami where she died one month later as a result of an acute diabetic ketoacidotic coma ").

See also: Gianocostas v. RIU Hotels, SA, 2006 WL 2089772 (Mass. Super. 2006) (failure of hotel and local clinic to diagnose and properly treat tour participant with diabetes; negligent misrepresentation claims against tour operator dismissed) vacated 450 Mass. 715, 2008 WL 483766 (Mass. Sup. 2008).

79. See Cutchin v. Habitat Curacao, 1999 WL 33232277 (S.D. Fla. 1999) (guest at Habitat Curacao in Netherlands Antilles suffers decompression sickness during scuba dive; complaint asserts that Habitat negligent in failing to properly conduct dive and in failing to administer necessary medical treatment).

80. See e.g.,

Second Circuit: Henderson v. Carnival Cruise Lines, Inc., 2001 WL 114401 (W.D.N.Y. 2001) (cruise passenger contracts appendicitis, treated initially in ship's infirmary and removed from cruise ship

and placed in shore medical facility in Puerto Rico; claims " negligence and breach of contract for... failure to ;provide adequate medical facilities and treatment "); Pollack v. Hyatt Hotels of Puerto Rico, Inc., 85 Civ. 5564 (EW) (S.D.N.Y. 1985) (hotel guest nearly drowns after stepping into hidden hole off of beach).

Fifth Circuit: Room v. Caribe Hilton Hotel, 659 F. 2d 5 (5th Cir. 1981) (hotel directory stated " A registered nurse is on duty, and a qualified physician is available at all times...After hours and Saturday and Sunday call: Telephone operator "; hotel guest felt weak and nauseous and called operator at 7:30PM asking for a doctor and was assured by the operator that a doctor would be obtained. At 11:30PM the guest called again and was assured that a doctor would be called. The telephone operator was unable to get a doctor to come and so advised the guest who took a cab to the local hospital where he was diagnosed with a myocardial infarction and remained in the hospital for a month).

81. See Breeden & Gilbert, 3 French Athletes Are Mourned After Argentine Air Crash, www.nytimes.com (3/10/2015) ("The three French athletes were flying in two helicopters...on their way into a remote gorge in northwestern Argentina for the filming of a new reality show, 'Dropped', in which they would be left to fend for themselves and find their way back to civilization. But the two helicopters touched briefly in midair and then fell to the ground").

82. See Delgado v. Reef Resort Limited, 364 F. 3d 642 (5th Cir. 2004) (scuba diver " never surfaced during a recreational scuba diving trip off the coast of Belize...organized by Ramon's Village Resort").

83. See e.g.,

Second Circuit: Darby v. Compagnie Nationale Air France, 13 Fed. Appx. 37 (2d Cir. 2001) (guest of hotel drowns off public beach in Brazil; hotel has no duty to warn of dangerous surf even though it encouraged and facilitated the use of the beach); In re Air Crash Near Peixoto De Azeveda, Brazil, 2008 WL 4093568 (E.D.N.Y. 2008) (Brazilian passengers killed when commercial aircraft " crashed into the Amazon rainforest").

State Law:

New York: Darby v. Compagnie Nationale Air France, 96 N.Y. 2d 343, 728 N.Y.S. 2d 732, 735 N.E. 2d 160 (2001) (hotel guest drowned while swimming at Copacabana Beach, a public facility in Rio de Janeiro, Brazil. He and his wife were guests at the Meridien Copacabana Hotel, which is separated from the beach by a four-lane public highway. The hotel marketed its proximity to the beach and encouraged guests to use it, even providing them with chairs, umbrellas, towels and

a security escort service. It also furnished guests with pamphlets warning about sun exposure and crime on the beach. The pamphlets did not, however, say anything about possibly dangerous surf conditions; Brazilian hotel " across the road from a public beach, use of which by hotel guests was encouraged and facilitated by the hotel [had no duty] to warn of rip tides that caused injury to...[guest] swimming off that beach "; hotel had no duty " to take reasonable care to discover the actual condition of the land under water in the area wherein [guests] were invited and permitted to bathe, and...warn them of its dangerous condition...Moreover, that the hotel chose to warn its guests of the risks of sun exposure and crime does not create any duty to warn against hazards of the sea ").

See also: Not safe for tourism? 42,000 people shot dead in Brazil, www.eturonews.com (5/15/2015).

84. See Nagourney, Masood & Schmidt, Killers Were Long Radicalized, F.B.I. Investigators Say, www.nytimes.com (12/7/2015) ("The couple who carried out the deadly attack that killed 14 people here last week had long been radicalized and had been practicing at a target range days before their murder spree, the Federal Bureau of Investigation said Monday... 'As the investigation has progressed, we have learned and believe that both subjects were radicalized and have been for quite some time', David Bowdich. The F.B.I. assistant director in charge of the Las Angeles field office, said at a news conference here"); Medina, Perez-Pena, Schmidt & Goodstein, F.B.I. Treats San Bernardino Attack as Possible Terrorism Case, www.nytimes.com (12/3/2015) ("The couple who the police say killed 14 people and left 21 wounded here had stockpiled thousands of rounds of ammunition and a dozen homemade pipe bombs on their home...a sign that they might have been planing future attacks. The F.B.I. is treating the Wednesday shooting as a potential terrorist act, though the agency is far from concluding that it was"); Baker, A Nation Wonders When Bloodshed Becomes Terrorism, www.nytimes.com (12/3/2015) it was noted that "The attackers assembled a bristling arsenal of guns and bombs...The authorities were still trying to piece together enough information on Thursday to answer that question, looking at the main gunman's travels to the Middle East, searching for any contacts with extremist groups, examining his life for evidence of radicalization").

85. See See also: Tourists on a whale watching boat: 5 dead, 21 rescued, www.eturbonews.com (10/26/2015) ("The British Columbia, Canada, Coroners Service confirms 5 are dead after a whale watching boat capsized near Tofino. 27 people, mostly tourists, were on the vessel").

See e.g.,

Sixth Circuit: *Brunner v. Hampson*, 441 F. 3d 457 (6th Cir. 2006) (" Defendant Canada North is an international booking agent and outfitter providing sport hunting excursions...Moore, a resident of Ohio, was contacted by...a ' booking agent '...regarding a muskox hunt to be offered by Canada North in 2001...Moore then booked the hunt for himself, Brunner and Hampson...Canada North used a cabin in the Ellice River in the Province of Nunavut...On August 26, 2001, Jerry Hampson, while in the cabin placed a pot on a Coleman stove and it caught fire. Hampson then grabbed a container with clear liquid which he threw on the flames. The liquid, however, was naphtha, a highly flammable substance, which caused an explosion. The cabin caught fire...Hampson died and plaintiffs...suffered severe burns. A fire investigation concluded that (1) the hunting party was accommodated in an inadequate hunting camp that was neither inspected nor licensed for commercial operation, (2) camp safety orientation was not provided, (3) portable fire extinguishers were not provided and (4) the Coleman camp stove was operated contrary to the manufacturer's instructions "; no personal jurisdiction over Canadian defendants); *Rafferty v. Blake's Wilderness Outpost Camps*, 1997 WL 14795 (E.D. Mich. 1997) (plane crash during bush tour in Canada); *Goldstein v. D.D.B. Needham*, 740 F. Supp. 461 (S.D. Ohio 1990) (white water rafting accident in British Columbia).

State Law:

California: *Van Humbeck v. Robinson Helicopter Company, Inc.*, 2007 WL 4340996 (Cal. App. 2007) (" The lawsuit arose from the crash in British Columbia, Canada of a helicopter en route to a remote logging camp...plaintiffs are citizens of Canada ").

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

87. See *UK tourist found dead in Columbia* (ETN (4/25/2014) ("A British teenager has been found dead in Columbia afer taking a hallucinogenic drug in a tribal ritual").

88. See e.g.,

Second Circuit: *Mayer v. Cornell University*, 107 F. 3d 3 (2d Cir. 1977), cert. denied 1997 WL 336602 (1997) (bird watcher on Cornell University sponsored 28 day tour of Costa Rica drowns while snorkeling off Il DeCano in the Pacific Ocean; defendants owed no duty to drowning victim " the evidence amply demonstrates that neither Cornell nor Brown was in a position to ensure the safety of the snorkeling activity because neither had any particular ex[pertise

in snorkeling...and more significantly neither had any authority over the actions of Marengo or its employees...Indeed, there was no realistic opportunity for Brown or Cornell in particular to control the circumstances of the snorkeling because in planning its sponsorship of the tour, Cornell could not have anticipated Marengo's unexpected offer for the group to join the del Cano day trip...We see no reason for extending New York law to impose a duty of care on the basis of what appellant characterizes as the ' special relationship ' between a sponsor and the third party controlling an event or between a sponsor and the event participants ").

Third Circuit: *Wolf v. Fico Travel*, 2011 WL 5920918 (D.N.J. 2011) ("members of New Jersey based Cutty Sharks Fishing Club traveled to Costa Rica on a fishing expedition (purchased through defendant Florida travel agent Tico Travel which made arrangements with defendant California booking agent Bob Marriott's Flyfishing Store d/b/a Travel Center which made arrangements for accommodations with defendant Costa Rican fishing resort Casa Mar Lodge Del Caribe and fishing adventures with defendant Costa Rican Casa Mar Fishing Club, S.A.)...two of the travelers went out on the Don Carlo which capsized "due to turbulent and choppy" waters, one drowned and one swam to shore).

State Law:

Massachusetts: *Tongier v. EF Institute For Cultural Exchange*, Mass. Sup. Ct. Civil Action No. 08-01916 Middlesex (April 29, 2012) (three high school students and teacher on student tour to Costa Rica drown in rip tides; defendants summary judgment motion denied; strict liability under Swiss and Costa Rican law); See also: *Tongier v. EF Institute*, 2011 WL 7090713 (Mass. Super.) (violation of Massachusetts consumer protection statute claim reinstated).

See also: American tourist drowns in Costa Rica, www.eturbonews.com (6/29/2015).
89. In Steinmetz, *ISIS claims responsibility on Orlando terror attack killing 50, injuring 53*, www.eturbonews.com (6/12/2016) it was noted that "According to Syrian News agency Amaq, ISIS had claimed responsibility for Orlando mass shooting".

In Santora, *Last Call at Pulse Nightclub, and Then Shots Rang Out*, www.nytimes.com (6/12/2016) it was noted that "The music was still pounding but the night was drawing to a close at the Pulse nightclub in Orlando when shots rang out...A man, identified by law enforcement officials as Omar Mateen, had come to the club to kill. And over the course of the next three hours, until he was shot and killed himself, he executed dozens of people. By the time the shooting ended, it would rank as the deadliest mass shooting in American history".

In Callimachi, *Was Orlando Shooter Really Acting for ISIS? For ISIS, It's All the Same*, www.nytimes.com (6/12/2016) it was noted that "The revelation that the 29-year-old man who opened fire on Sunday in a gay nightclub had dedicated the killing to the Islamic State has prompted a now-familiar question" Was the killer truly acting under orders from the Islamic State, or just seeking publicity and the group's approval for a personal act of hate? For the terror planners of the Islamic State, the difference is mostly irrelevant. Influencing distant attackers to pledge allegiance to the Islamic State and then carry out mass murder has become a core part of the group's propaganda over the past two years. It is a purposeful blurring of the line between operations that are planned and carried out by the terror group's core fighters and those carried out by its sympathizers".

See also: In Madigan & Hauser, *Divers Find Body of Toddler Snatched by Alligator at Disney Resort*, www.nytimes.com (6/15/2016) it was noted that "Lane Graves was doing what any 2-year-old boy would be doing on a hot Florida evening-splashing around in the shallow waters of a lagoon. His parents and sister, Nebraskans all, were nearby on the beach at a Disney resort here, relaxing, carefree. Suddenly, an alligator sprang from the water and clamped its jaws around the boy. Lane's father, Matt Graves, bounded into the lagoon to wrestle his son from the animal's steel-trap grasp, but lost the battle...The alligator made off with the boy and an intense search for him yielded nothing in the wide, murky expanse of water until more than 16 hours later...when divers found him about six feet below the surface and only 10 to 15 feet from where he had last been seen...'His body was completely intact' Sheriff Demings said...Alligators are a common sight in Florida ponds, lakes, lagoons and canals. *The sheriff said five alligators were taken from the lagoon after the boy went under.* They have been euthanized to determine if any of the them killed the boy...Thomas Scolaro, a partner at the Miami law firm Leesfield Scolaro, which has represented families after alligator attacks elsewhere, said that in this case, 'the facts look horrible for Disney'. *'While this is a tragedy, it was entirely preventable had Disney acted reasonably and not left }softlineunwitting tourists at the mercy of dangerous and wild animals that roam its resorts'*...Wildlife experts estimate that there are 1.3 million alligators in Florida, and that they can be found in all 67 counties".

90. See *Fojtasek v. NCL*, 613 F. Supp. 2d 1351 (S.D. Fla. 2009) (during shore excursion in Honduras cruise passenger falls to death from zip-line).

91. See e.g.,

Second Circuit: *Barker v. Goldberg*, 1987 WL 10820 (E.D.N.Y. 1987) (tourist drowned during white water river rafting expedition

on the Rio Grande River in Mexico).

Fifth Circuit: Gardemal v. Westin Hotel Company, 186 F. 3d 588 (5th Cir. 1999)(" Gardemal and her husband John..., a physician, traveled to Cabo San Lucas, Baja California Sur, Mexico at attend a medical seminar at the Westin Regina Resort Los Cabo...According to Gardemal, the concierge at the Westin Regina directed the group to ` Lovers Beach ` which, unbeknownst to the group, was notorious for its rough surf and strong undercurrents. While climbing the beach's rocky shore, five men in the group were swept into te Pacific Ocean by a rogue wave and thrown against the rock. Two of the men, including John Gardemal drowned "); Snaza v. Howard Johnson Franchise Systems, Inc., 2008 WL 5383155 (N.D. Tex. 2008)(" This is a wrongful death action brought by the parents of Duane Snaza...who in March 2005 fatally fell from his balcony on the tenth floor of a Howard Johnson hotel in Mazatlan, Mexico "); Sacks v. Four Seasons Hotel Limited, 2006 WL 783441 (E.D. Tex. 2006)(guest dies at Mexican hotel).

Seventh Circuit: Wozniak v. Wyndham Hotels and Resorts, LLC, 2009 WL 901134 (N.D. Ill. 2009)(" While walking in the Wyndham CZM lobby...Jim Wozniak slipped and fell over the side of a stairwell. Mr. Wozniak died later that day from injuries sustained from the fall "); Simmelroth v. American Airlines, 448 F. Supp. 730 (E.D. Ill. 1978)(travel agent on Fam trip murdered by bandits).

Ninth Circuit: Loya v. Starwood Hotels & resorts, 2007 WL 1991163(W.D. Wash. 2007)(guest at Club Regina Los Cabos in Baja California Sur, Mexico dies during scuba dive).

Eleventh Circuit: Joseph v. Carnival Corporation, 2011 WL 3022555 (S.D. Fla. 2011)(cruise passengers during shore excursion in Cozumel, Mexico dies while para-sailing; Death on the High Seas Act; liability theories).

State Law:

Arizona: Knoell v. Cerkvenik-Anderson Travel, Inc., 181 Ariz. 394, 891 P. 2d 861 (1995)(student on a student tour to Mazatlan, Mexico spent three days drinking alcoholic beverages and then decided to jump from the balcony of his hotel and was killed); Meurer v. Cervenik-Anderson Travel, Inc., 181 Ariz. 294, 890 P. 2d 69 (1994)(student falls to death under steel wheels of party train to Matzalan).

California: Princess Hotels v. Superior Court, 33 Cal. App. 4th 645, 39 Cal. Rptr. 457 (1995)(guest at Mexican hotel drowns off public beach adjacent to hotel where guest registered).

New York: Hernandez v. Quality Inns, inc., New York Law Journal, March 23, 1993, p. 21, col. 6 (N.Y. Sup.) (a tourist was fatally injured while using the parasailing equipment rented for a local Mexican company having no legal connection to the hotel where the tourist was a guest. To establish the liability of the hotel the

complaint sought " to hold Quality Inns vicariously liable for Hotel Calinda's failure to hire a competent parasailing concessionaire with sufficient training in parasailing and/or life saving, for advertising parasailing on its grounds and creating an illusion of safety without first checking on the competency of the operators of the parasailing concessionaire, and for failing to properly supervise and observe the parasailing activity. The record indicates Hotel Calinda contracted with the parasailing concessionaire ` Deportee Aquaticos `, received a monthly fee pursuant to the contract, and that employees of the hotel were responsible for regularly inspecting the activity and equipment of the parasailing concessionaire. The parasailing activity was conducted along the Hotel Calinda beach and signs were posted on the grounds of the hotel directing guests to the parasailing facility...In fact, plaintiff's husband was instructed by a clerk of the hotel's front desk to go the beach area to sign-up for parasailing ").

See also: Steinmetz, Bus crash killed 21 tourists on way to the beach, www.eturbonews.com (7/23/2012) ("The bus full of tourists heading to the beach in the resort town of Rincon de Guayabitos, Mexico crashed and killed at least 21"); " Nineteen Die on HAL Tour Excursion ", *Travel Weekly*, p. 56 (September 17, 2001) (" Sixteen passengers from Holland America Line's Maasdam, along with two pilots and one tour escort were killed Sept. 12 when their sightseeing plane crashed in a jungle near Mexico's Yucatan Peninsula ").

92. See Hu, *Brisk Business at Bronx Hotel, Center of Legionnaires' Outbreak*, www.nytimes.com (8/27, 2015) ("The Opera House Hotel had to turn off its air-conditioning one hot day this month so that a cleaning crew could scrub away the Legionella bacteria lurking in the cooling tower on its roof...Not much else has changed at the hotel at the center of the worst outbreak of Legionnaires' disease in the city's history. Business has been, if anything a little brisker. Occupancy rates have hovered between 90 and 95 percent for the past two months, slightly higher than a year ago, the management said...The Opera House Hotel...remained open throughout the outbreak, which claimed 12 lives and sickened more than 120 people, including two hotel guests, before city health officials declared it officially over last week. City health officials identified the hotel's cooling tower as the source of the outbreak. Legionnaire's disease, often described as a severe form of pneumonia, is contracted by inhaling contaminated mist from water sources harboring Legionella bacteria...But for the most part, the Opera House Hotel seems to have escaped the notoriety and stigma that kept guests away from the Philadelphia hotel that was the site of the first outbreak of Legionnaires' disease in July 1976...In contrast, many guests staying at the Opera House Hotel this summer have shown no hesitation in wheeling their suitcases past its rooftop cooling tower, and the

journalists camped out front. 'I think the hotel is more popular than before', said (Mr. X), who owns a CD shop next to the hotel. 'Now everybody knows about the Opera House. People are not afraid. They come no matter what'").

93. See Panamanian authorities resume search for tourists missing since March (ETN (5/27/2014) ("A search for female Dutch tourists who went missing in Panama almost two months ago is resuming").

94. See Amtrak Train Derailment; Pennsylvania. See In Flegenheimer, McGeehan, Mouawad & Stolberg, *Amtrak Crash Illuminates Obstacles to Plan for Controlling Train Speeds*, www.nytimes.com (5/18/2015) it was noted that "Nearly seven years after Congress instructed the nation's railroads to install an automatic speed control system by the end of 2015, the crash of a speeding Amtrak train last week has laid bare the industry hurdles, regional rivalries and often dismal economies of rail safety. Miles of track on Southern California's commuter lines still lack the system years after 1 2008 crash that killed 25 people there, fueling the drive to install the technology, known as positive train controls. Chicago's commuter rails are not likely to have the safety system for years, while comparatively sleepy train service on Amtrak's Michigan line already has it...Rail safety experts have noted that far less costly upgrades, including an older braking system found on tracks opposite the site of last week's crash in Philadelphia, would have prevented high-speed derailments like this one. And they say that even with positive rain control, not all accidents can be avoided"; D'Annunzio, 'Indescribable Horror' of Amtrak Derailment Prompts Suits, www.law.com (5/18/2015) it was noted that "A cluster of lawsuits against Amtrak stemming from last week's derailment that injured over 200 people and killed eight has been filed in Philadelphia"; In Stolberg, Mouawad & Fitzsimmons, *Amtrak Train Derailed Going 106 M.P.H. on Sharp Curve; at Least 7 killed*, www.nytimes.com (5/13/2015) it was noted that "An engineer jammed on the emergency brakes just seconds before Tuesday's fatal Amtrak derailment, but the train-traveling at 106 miles an hour, more than twice the speed limit-slowed only slightly, federal authorities said, before hurtling off its tracks, killing at least seven people and injuring more than 200. Survivors who emerged battered and bloodied described a chaotic scene, with passengers thrown against walls, furniture and one another, and luggage and other items and falling on terrified riders". In Passarella, *Valuing Damages in Amtrak Crash Made Trickier by \$200M Cap*, www.law.com (5/14/2015) it was noted that "Lingering over the liability claims expected to be raised by victims of the Amtrak 188 derailment is a 1997 federal law that creates a \$200 million damages cap to be paid out for any

single railroad accident". In Shear and Mouawad, Amtrak Says Shortfalls and Rules Delayed Its Safety System, www.nytimes.com (5/14/2015) it was noted "The Amtrak train that derailed in Philadelphia on Tuesday night was equipped with an automatic speed control system that officials say could have prevented the wreck, which killed eight passengers and injured hundreds. But the system, which was tantalizingly close to being operational, was delayed by budgetary shortfalls, technical hurdles and bureaucratic rules, officials said Thursday".

95. See *Vivas v. The Boeing Company*, 2009 WL 1686539 (Ill. App. 2009) (plane crash in Peru).

See also: Steinmetz, Peruvian police: No survivors in helicopter crash, www.eturbonews.com (6/11/2012) (12 tourists including South Korean, Dutch, Swiss, Czech and Peruvian passengers killed in crash).

96. See *Bapte v. West Caribbean Airways*, 370 Fed. Appx. 71 (11th Cir. 2010) (flight from Jamaica to Martinique crashes in the Venezuela killing all onboard).

97. See Nagourney, Masood & Schmidt, Killers Were Long Radicalized, F.B.I. Investigators Say, www.nytimes.com (12/7/2015) ("The couple who carried out the deadly attack that killed 14 people here last week had long been radicalized and had been practicing at a target range days before their murder spree, the Federal Bureau of Investigation said Monday... 'As the investigation has progressed, we have learned and believe that both subjects were radicalized and have been for quite some time', David Bowdich. The F.B.I. assistant director in charge of the Las Angeles field office, said at a news conference here"); Medina, Perez-Pena, Schmidt & Goodstein, F.B.I. Treats San Bernardino Attack as Possible Terrorism Case, www.nytimes.com (12/3/2015) ("The couple who the police say killed 14 people and left 21 wounded here had stockpiled thousands of rounds of ammunition and a dozen homemade pipe bombs on their home... a sign that they might have been planing future attacks. The F.B.I. is treating the Wednesday shooting as a potential terrorist act, though the agency is far from concluding that it was"); Baker, A Nation Wonders When Bloodshed Becomes Terrorism, www.nytimes.com (12/3/2015) it was noted that "The attackers assembled a bristling arsenal of guns and bombs... The authorities were still trying to piece together enough information on Thursday to answer that question, looking at the main gunman's travels to the Middle East, searching for any contacts with extremist groups, examining his life for evidence of radicalization").

98. See Steinmetz, Kidnaped tourists freed in Ecuador,

www.eturbonews.com (9/30/2012) ("Two female tourists Kidnaped in the north-eastern Ecuador, near the border with Columbia, have been freed...They had been traveling in a canoe while visiting a remote nature reserve in the Amazon jungle").

99. In Steinmetz, *ISIS claims responsibility on Orlando terror attack killing 50, injuring 53*, www.eturbonews.com (6/12/2016) it was noted that "According to Syrian News agency Amaq, ISIS had claimed responsibility for Orlando mass shooting".

In Santora, *Last Call at Pulse Nightclub, and Then Shots Rang Out*, www.nytimes.com (6/12/2016) it was noted that "The music was still pounding but the night was drawing to a close at the Pulse nightclub in Orlando when shots rang out...A man, identified by law enforcement officials as Omar Mateen, had come to the club to kill. And over the course of the next three hours, until he was shot and killed himself, he executed dozens of people. By the time the shooting ended, it would rank as the deadliest mass shooting in American history".

In Callimachi, *Was Orlando Shooter Really Acting for ISIS? For ISIS, It's All the Same*, www.nytimes.com (6/12/2016) it was noted that "The revelation that the 29-year-old man who opened fire on Sunday in a gay nightclub had dedicated the killing to the Islamic State has prompted a now-familiar question" Was the killer truly acting under orders from the Islamic State, or just seeking publicity and the group's approval for a personal act of hate? For the terror planners of the Islamic State, the difference is mostly irrelevant. Influencing distant attackers to pledge allegiance to the Islamic State and then carry out mass murder has become a core part of the group's propaganda over the past two years. It is a purposeful blurring of the line between operations that are planned and carried out by the terror group's core fighters and those carried out by its sympathizers".

100. See In *Six Flags Fights \$35M Verdict, Says Site of Attack Wasn't Its Responsibility*, www.law.com/sites/articles (7/16/2015) it was noted that "Six Flags Over Georgia's lawyer were at the Georgia Court of Appeals...hoping to persuade an appellate panel to toss the state's biggest verdict of 2013. Before the three judges is a \$25 million verdict awarded by a Cobb County jury to (Mr. X) who was randomly attacked by a gang in 2007 as he waited for a bus outside the theme park entrance. (Mr. X) sued Six Flags and four employees who were convicted of crimes from the attack. The jury held the individual defendants responsible for 8 percent of the award-with the remaining \$32.2 million levied against the them park".

101. See Linda, Assuring the cruise industry and its ports of call, www.eturbonews.com (3/6/2012) ("cruise ships or cruise passengers have experienced multiple problems (in 2010-2012 to include) (1) Tourists robbed on shore excursion on...St. Kitts (November 2010), (2) Attacks in Matzalan (January 2011) caused cruise ships to drop the city as a port of call, (3) In Puerto Vallarta, some 22 cruise passengers were robbed (February 2012) while on what appears to be a cruise-sponsored shore excursion").

102. See Clifford, *Trial Stemming From Lufthansa Heist Provides a Flashback to Another Mob Era*, <http://nyti.ms/1RT7Wg3> (10/19/2015) ("The Mafia of another era was on display Monday, as a trial began in Brooklyn in a case stemming from the spectacular-and long-unsolved-1978 heist from a Lufthansa terminal at Kennedy International Airport...The testimony on Monday gave a flavor of what was to come, including references to reputed mobsters with old-timey nicknames like 'Johnny One-Arm', 'Skinny Don' and 'Good-Looking Sal', along with referenced to goodfellas (members of the mob) and nods to 'Goodfellas' (the movie, which depicted some of the events and men discussed at trial)...Ms. Gerdes (one of the prosecutors) said that Mr. Asaro and his friend James Burke-a Lucchese associate known as Jimmy the Gent-planned the heist, picking the robbery crew and scoping out the terminal ahead of time. (In 'Goodfellas', Robert De Niro plays a character based on Mr. Burke)").

103. See Billard, *Pink Dolphins and Sunsets Along the Amazon*, www.nytimes.com (April 11, 2014) ("In 2009, the luxury Aqua Expeditions cruise ship had been boarded by armed pirates, who robbed the passengers of cameras, cash and jewelry. Ever since then, the Aqua and its sister ship, the Aria, have been accompanied by three armed guards"); Baran, *Peru steps up security after two Amazon river ship attacks*, *Travel Weekly* (8/17/2009, p. 36.).

104. See Linda, *Underfunded Belize police challenged by crime*, www.eturbonews.com (8/20/2012) ("CNN Go rated Belize City as the tenth most hated city in the world...'consistently rated as the worst destination' among cruise ship passengers. Between January and June 2012 there were 35 murders in Belize City...In 2011, a Swedish tourist was robbed at gunpoint and her cash and passport stolen...Data combined with the United Nations Information and US Justice Department shows that most of the 5,500 US-bound human trafficking victims are from Central America, via Belize").

105. See Romero, *American Woman Gang-Raped and Beaten on Brazilian Transit Van*, www.nytimes.com (4/4/2013) ("The attackers pummeled the

woman's face and tied up her male companion, a French citizen, then beta him with a metal bar as he witnessed the harrowing assault").

106. See *Doe v. Abercrombie & Kent, Inc.*, 2010 WL 286640 (S.D.N.Y. 2010) (sexual assault in Ecuador during tour of Galapagos Islands; lack of jurisdiction); *O'Keefe v. Inca Floats, Inc.*, 1997 WL 703784 (N.D. Cal. 1997) (tourist purchases package tour featuring travel to and accommodations in Peru and a cruise to the Galapagos Islands operated by Ecuadorian company Quasar Nautical S.A. during which crew member attempts to rape and sexually assault Ms. O'Keefe).

107. See e.g.,

Eleventh Circuit: *Burdeaux v. Royal Caribbean Cruises, Ltd.*, 2012 WL 3202948 (S.D. Fla. 2012) (during shore excursion in Cozumel, Mexico passenger relied on ship's recommended list of shops which provided a "sixty-day 'Buyers Guarantee' for repairs and returns"; during shopping passenger decided to shop at a jewelry store not recommended and was pushed down "a hallway and into a restroom...he forced her to perform oral sex on him. Following this, Burdeaux was forced to have oral and vaginal sex with four additional unknown local men (then) the men let go"; complaint dismissed; no duty owed; "the issue of foreseeability hinges on evidence of sexual assault in the Cozumel shopping district at issue...Burdeaux presents no record evidence of this risk");

State Law:

Massachusetts: *Deacy v. Studentcity.Com, Inc.*, 916 N.E. 2d 422 (Mass. App. 2009) ("The plaintiff...purchased a Cancun, Mexico tour package from the defendant...This spring break vacation to Cancun was advertised as 'the ultimate student spot' and 'hassle free' with 'non-stop partying', 'loaded with fund'...Also advertised were certain 'side tours' or events with emphasis on alcohol and sex (After attending such a side tour) billed as a 'Booze Cruise'...consuming a minimum of seven to eight alcoholic beverages...she returned to the hotel in the Early morning hours...went down to pool" and was raped in the pool").

See also: Women Alert To Travel's Darker Side, www.nytimes.com (5/23/2014) ("An Italian tourist was reportedly raped by police officers in Mexico").

108. See *Goldstein v. D.D.B. Needham*, supra, at N. 23 (five passengers killed during white Water rafting accident in British Columbia).

109. See e.g.,

Second Circuit: *Mayer v. Cornell University*, supra, at N. 39 (bird watcher on Cornell University sponsored 28 day tour of Costa Rica drowns while snorkeling off Il DeCano in the Pacific Ocean).

Eleventh Circuit: *McLane v. Marriott International, Inc.*, 2013 WL 1810649 (S.D. Fla. 2013) (back injury sustained during fishing excursion in Costa Rica).

State Law:

Illinois: *Stein v. Rio Parismina Lodge*, 695 N.E. 2d 518

110. See e.g.

Third Circuit: *Yurchak v. Atkinson & Mullen Travel, Inc.*, 2006 WL 3076675 (3rd Cir. 2006) (tourist injured on personal watercraft in Mexico; " The Yurchaks allege that in December 2002 they received an advertisement...soliciting them to purchase a vacation package. The advertisement included a picture of a jet ski in use. Before purchasing the package the Yurchaks asked about their safety while vacationing in Mexico but they were given no warnings...beyond a general assurance that travel to the country was safe. They were not told of a Consular Information Sheet from the United States Department of State that included a warning about jet skiing in Mexico...The Yurchaks's claims of misrepresentations-both negligent and fraudulent-are similarly faulty...Even assuming that the...general assurances of safety in Mexico could have been understood as an assurance that jet skiing there would be safe, such a statement would not have been material to the transaction between these parties. The rental and use of a jet ski was not part of the vacation package the Yurchaks purchased...it is not tenable based on the alleged facts that their decision to purchase the vacation package...turned on whether or not they believed it would be safe to jet ski on their vacation "); *Colvin v. Van Wormer Resorts, Inc.*, 2008 WL 5245987 (D.N.J. 2008) (fishing accident at Hotel Punta Colorado; " while boarding a boat via a movable dock, Mary Colvin alleges that she stepped into a hole in the dock with her right foot. Her leg plunged through the break in the dock, up to her groin. Since only one leg broke through the dock, she fell into a painful split. Her body twisted and rusty nails punctured her leg in several spots ").

Fourth Circuit: *Dunham v. Hotelera Canco, S.A.*, 1996 WL 421844 (E.D. Va. 1996) (guest sustains injuries after ingesting water during snorkeling trip off the coast of Mexico).

Sixth Circuit: *Sova v. Apple Vacations*, 984 F. Supp. 1136 (S.D. Ohio 1997) (" she went on a vacation trip to Cancun, Mexico (and once there) she considered the information provided in the travel guide and elected to go on the Isla Mujeres snorkeling excursion. Plaintiff states that there was no ladder at the side of the boat, and that at the conclusion of the snorkeling portion of the tour, the tour participants were pulled from the water by their arms by the tour guides. Plaintiff asserts that as she was being pulled from the water by her arms, her body was forced against the side of the boat, resulting in severe and permanent injury to her back ").

Seventh Circuit: Elayyan v. Sol Melia, SA, 571 F. Supp. 2d 886 (N.D. Ind. 2008) (" the Plaintiffs...who are Indiana residents, stayed at the hotel Melia Puerto Vallarta, located in Puerto Vallarta, Mexico...Plaintiffs Ayah Elayyan was injured while in the hotel's outdoor swimming pool ").

Eleventh Circuit: Belik v. Carlson Travel Group, 2012 WL 4511236 (S.D. Fla. 2012) "a port-of-call excursion in Cozumel, Mexico known as the 'Cozumel Beach Party'. The event was at the ½ Senor Frogs Restaurant in the port of Cozumel...(and plaintiff alleges that Carnival and SinglesCruise) knew the passengers attending...would be drinking and partying and would be encouraged to slide, jump and dive into the waters from seawall adjacent to the ½ Senor Frogs Restaurant (which plaintiff did) hit(ing) his head on the ocean floor resulting in tetraplegia").

State Law:

California: Schneider v. Suntrips, Inc., 2003 WL 21153476 (Cal. App. 2003) (guest at Bahia Condo Hotel in Cabo San Lucas, Mexico dives into pool at another hotel and is rendered quadriplegic).

Michigan: Chimenti v. Apple Vacations, Inc., 2000 Mich. App. LEXIS 452 (Mich. At. App. 2000) (tourist purchased a package tour featuring accommodations at the Sol Caribe Hotel on the island of Cozumel, Mexico, rented jet ski at resort and spent two says in the ocean after jet ski stalled and was swept away by strong currents).

New Jersey: Mastondrea v. Occidental Hotels Management S.A., 918 A. 2d 27 (N.Y.A.D. 2007) (plaintiff purchased " a vacation package for accommodations at an all inclusive resort known as Royal Hideaway Playacar located in Quintana Roo, Mexico...while at the resort, plaintiff slip and fell on a wet exterior staircase, breaking her ankle ").

111. See Morag v. Quark Expeditions, Inc., 2008 WL 3166066 (D. Conn. 2008) (" Plaintiff...who is a citizen and resident of Israel...were passengers aboard a cruise ship traveling from Antarctica to Argentina...During the ship's two-day crossing of the Drake Passage, M. Morag fell and suffered extensive spinal and other injuries which have rendered him quadriplegic ").

112. See e.g.,

Eleventh Circuit: Isbell v. Carnival Corp., 462 F. Supp. 2d 1232 (S.D. Fla. 2006) (" The excursion consisted of floating down a river in the rain forest in Belize, in and out of caves, while on an inner tube...During the course of the excursion, Plaintiff began to feel ill. Plaintiff's husband removed her life vest and notice two small puncture wounds on her left upper arm...it was determined that

Plaintiff had been bitten by a snake...On October 29, 2004 Plaintiff allegedly suffered a heart attack. Subsequently Plaintiff underwent a successful cardiac surgery... Plaintiff alleges that the snake bite and the treatment that she received as a result thereof have caused a ' myriad of long term physical and psychological effects that are compensable in this action '").

State Law:

California: *Fiduccia v. Princess Cruise Lines, Ltd.*, 2007 WL 2181888 (Cal. App. 2007)(cruise passenger " alleged that while onboard, (he) purchased a ticket for an onshore excursion to the Crooked Tree Wildlife Sanctuary near Belize City; during the excursion, (he) fell through a rotten, broken and defective boardwalk, causing him to suffer serious personal injuries ").

113. See *Stevenson v. Four Winds Travel, Inc.*, 462 F. 2d 899 (5th Cir. 1972)(tour participant slips and falls on slimy pier in Amazon jungle).

114. See *Cohen v. Heritage Motor Tours, inc.*, 205 A.D. 2d 105, 618 N.Y.S. 2d 387 (1994)(tour participant slips and falls on slippery rocks crossing stream in Canadian Rockies).

115. See e.g.,

Third Circuit: *Gilbertson v. Hilton Worldwide, Inc.*, 2013 WL 13522146 (D.N.J. 2013)(slip and fall in hotel in Costa Rica).

Eleventh Circuit: *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F. 3d 1210 (11th Cir. 2009)(" Richard Oldfield...while searching the internet at his home (in Florida)...came across the website for Parrot Bay Village. The website, whose text was entirely in English, described the resort as both a ' full service resort ' and a ' unique sport fishing and rainforest eco-lodge '...He made arrangements with a charter service for a one-day fishing trip(during which he was injured)"); *Gayou v. Celebrity Cruises, Inc.*, 2012 WL 2049431 (S.D. Fla. 2012)(cruise passenger injured in Costa Rica while participating in "Jungle Breezes Canopy Tour" zip-lining excursion; claims against cruise line for negligence, misleading advertising, negligent misrepresentation, actual agency and breach of third-party beneficiary theory dismissed; claim for apparent authority sustained).

116. See *Caplan v. Boyce*, 2003 WL 22495836 (Cal. App. 2003) (tourist participating in boat tour of Galapagos Islands falls off cliff in Ecuador during soccer game; tour boat owners not liable).

117. See e.g.,

Second Circuit: *Squires v. Atkinson & Muller Travel, Inc.*, 1997 WL 1068659 (S.D.N.Y. 1997)(guest at Hotel Solymar in Cancun, Mexico slips and falls on damp sloping sidewalk and breaks ankle).

Third Circuit: *Wilson v. RIU Hotels & Resorts (Riusa II, S.A.)*,

2011 WL 3241386 (E.D. Pa. 2011) (guest at resort in Cabo San Lucas, Mexico slips and falls in bathtub/shower in her hotel room; no personal jurisdiction over foreign hotel; guest did not visit hotel's website; guest "booked her vacation at Riu Palace through the (tour operator/travel agent) Apple Vacations website... Plaintiff needs to demonstrate that Riusa II specifically targeted this forum, which she has not done"); Colvin v. Van Wormer Resorts, 2008 WL 5245987 (D.N.J. 2008) (" Plaintiffs arrived at Hotel Punta Colorado...The fishing camp. Two days later, while boarding a boat via a movable dock, Mary Colvin alleges that she stepped into a hole in the dock with her right foot. Her leg plunged through the break in the dock, up to her groin. Since only one leg broke through the dock, she fell into a painful split. Her body twisted and rusty nails punctured her leg in several spots...Following the accident Mary Colvin received treatment from a local Mexican clinic...Her legs swelled and she needed a tetanus shot to treat the puncture wounds. Since that time, she alleges that she has required continued care "); Inzillo v. The Continental Plaza, 2000 WL 1752121 (M.D. Pa. 2000) (guest slips and falls on footbridge at the Continental Plaza in Cancun, Mexico); Hurley v. Cancun Playa Oasis, 1999 WL 718556 (E.D. Pa. 1999) (guest slips and falls at Reserve Hotel in Cancun, Mexico).

Sixth Circuit: Conley v. MLT, Inc., 2012 WL 1893509 (E.D. Mich. 2012) (plaintiff purchases MLT tour through Michigan travel agent featuring accommodations at Mexican resort and was seriously injured "when one of the support poles of the hammock upon which she was laying broke, causing him to fall and suffer serious head injuries. J.C. fractured his skull and was subsequently airlifted from Cozumel, Mexico to Broward County, Florida where he underwent emergency surgery"; defendants included Massachusetts tour operator, MLT, Mexican resorts, Diamond Hotels Cozumel and Holiday Village White Sands, Dutch management companies, Occidental Hotels Management B.V and Occidental Hoteles Management S.L., and a Florida based marketing company, Allegro, owned by the Occidental companies; motion by Occidental companies to dismiss for lack of jurisdiction denied based upon alter ego theory of personal jurisdiction based upon their relationship with Allegro).

Seventh Circuit: Breschia v. Paradise Vacation Club, inc., 2003 WL 22872128 (N.D. Ill. 2003) (guest at Paradise Village Beach Resort and Spa in Mexico slips and falls on uneven floor).

Ninth Circuit: Focht v. Sol Meklia, S.A., 2012 WL 162564 (N.D. Cal. 2012) (resort guest injured "after falling from a zip line at the Hotel Melia Puerto Valarta (in Mexico)").

Eleventh Circuit: Focht v. Sol Melia, S.A., 2012 WL 162564 (N.D. Cal. 2012) (hotel guest injured falling from zip-line); Manning v. Carnival Corporation, 2012 WL 3962997 (S.D. Fla. 2012) ("Manning's son, Tyler, is terminally ill and it was his wish to swim with the

dolphins. After discussions with Carnival regarding selection of the tour operator, Manning selected the Control adora Dolphin SA de CV as the tour operator for the dolphin encounter at Cozumel, Mexico. After the dolphin encounter...Plaintiff walked down an unreasonably dangerous stairway to get to the beach and lost her footing, falling and fracturing her left ankle"; McLaren v. Celebrity Cruises, Inc., 2012 WL 1792632 (S.D. Fla. 2012) (cruise passenger severely injured disembarking from tour boat to dock); Gibson v. NCL (Bahamas) Ltd., 2012 WL 1952667 (S.D. Fla. 2012) (cruise passenger injured when tour bus employee "without warning roughly grabbed her in an attempt to heave her unto the 'Jungle Bus'").

State Law:

Arizona: Wendelken v. Superior Court, 671 P. 2d 896 (Ariz. Sup. 1983) (Arizona resident attends " Arizona Singles Who's Who " weekend party at private residence in Senora, Mexico and skips and falls and breaks hip).

118. See Kalter v. Grand Circle Travel, 2009 WL 1916242 (C.D. Cal. 2009) (" Jill Kalter purchased a Grand Circle ` Amazon River Cruise & Rain Forest ` tour along with an optional post-trip extension to visit the Inca ruins at Machu Picchu... Approximately one hour after venturing out on her own, Kalter became lost and disoriented and was concerned about connecting with her group so that she would not miss the train...In an effort to get a better view of where she was, Kalter stepped up onto the bottom two floating steps of a vertical wall...Kalter did not think this was a dangerous act...As a result Kalter fell and suffered serious injuries and is now a quadriplegic ").

119. See Steinmetz, Flesh-eating piranhas invade Brazilian beach popular with tourists, www.eturbonews.com (11/18/2011) ("I saw that I had lost the tip of my toe. I took off running out of the water afraid that I would be further attacked because of the blood. I am not going back in for a long time").

120. See Rawlins v. Clipper Cruise Line, 1998 A.M.C. 1260 (E.D. Mo. 1996) (accident during whale-watching excursion in waters off Victoria Harbor, British Columbia, Canada).

121. In Madigan & Hauser, *Divers Find Body of Toddler Snatched by Alligator at Disney Resort*, www.nytimes.com (6/15/2016) it was noted that "Lane Graves was doing what any 2-year-old boy would be doing on a hot Florida evening-splashing around in the shallow waters of a lagoon. His parents and sister, Nebraskans all, were nearby on the beach at a Disney resort here, relaxing, carefree. Suddenly, an alligator sprang from the water and clamped its jaws around the boy. Lane's father, Matt Graves, bounded into the lagoon to wrestle his

son from the animal's steel-trap grasp, but lost the battle...The alligator made off with the boy and an intense search for him yielded nothing in the wide, murky expanse of water until more than 16 hours later...when divers found him about six feet below the surface and only 10 to 15 feet from where he had last been seen...'His body was completely intact' Sheriff Demings said...Alligators are a common sight in Florida ponds, lakes, lagoons and canals. *The sheriff said five alligators were taken from the lagoon after the boy went under.* They have been euthanized to determine if any of the them killed the boy...Thomas Scolaro, a partner at the Miami law firm Leesfield Scolaro, which has represented families after alligator attacks elsewhere, said that in this case, 'the facts look horrible for Disney'. *'While this is a tragedy, it was entirely preventable had Disney acted reasonably and not left unwitting tourists at the mercy of dangerous and wild animals that roam its resorts'...*Wildlife experts estimate that there are 1.3 million alligators in Florida, and that they can be found in all 67 counties".

122. See e.g.,

Second Circuit: Valad v. Club Mediterranee, S.A., 84-CIV-1980 (LBS)(S.D.N.Y. 1980)(horse riding accident alleging failure to give proper riding instructions and failure to render proper medical care; complaint alleged, inter alia, a breach of warranty claim based on the following representation in the tour operator's brochure " Very special people staff our villages...They're eager to offer you expert instruction in a wide variety of sports..and not only do we supply first-rate equipment, we supply first-rate instruction...We teach sports seriously at our villages and with safety our foremost consideration. All sports are conducted under the supervision of our trained and certified instructors ").

Third Circuit: May v. Club Med Sales, inc., 832 F. Supp. 937 (E.D. Pa. 1993)(" Plaintiff had a reservation at the Sonora Bay Resort. As part of her activities, Plaintiff went horseback riding. Plaintiff claims that while she was horseback riding, the saddle slipped because it was improperly adjusted, causing her to fall and sustain various injuries); Tucker v. Whitaker Travel, Ltd., 620 F. Supp. 578 (E.D. Pa. 1985), aff'd mem. 800 F. 2d 1140 (3rd. Cir.), cert. denied 107 S. Ct. 578 (1986)(horse riding accident in the Bahamas).

Fourth Circuit: Honeycutt v. Tour Carriage, Inc., 997 F. Supp. 694 (1996)(tourist on package tour to Copper Canyon in Mexico thrown from horse and breaks ankle; tour operator not liable; " Because Plaintiff was in a far better situation to assess the situation she was in [steep terrain and unfit horses during horseback riding excursion] than GOGO Tours and Mann Travelers, they had no duty to warn her of a danger she could have observed but about which they

knew nothing ").

State Law:

New York: Barber v. Princess Hotels International, Inc., 134 A.D. 2d 312, 520 N.Y.S. 2d 789 (1987) (guest of Acapulco Princess Hotel thrown from horse and seriously injured for which hotel not liable because horse riding incident " arranged by local Mexican residents having no affiliation with the hotel and since the accident occurred on property owned by the Mexican government defendants owed no duty to plaintiff ").

See also: Drunk tourist attacked by crocodiles, www.eturbonews.com (7/19/2015) (in Cancun Mexico at resort hotel). 123. See Breeden & Gilbert, 3 French Athletes Are Mourned After Argentine Air Crash, www.nytimes.com (3/10/2015) ("The three French athletes were flying in two helicopters...on their way into a remote gorge in northwestern Argentina for the filming of a new reality show, 'Dropped', in which they would be left to fend for themselves and find their way back to civilization. But the two helicopters touched briefly in midair and then fell to the ground").

124. See Philippe v. Lloyd's Aero Boliviano, 589 So. 2d 536 (La. App. 1992), rev'd 710 So. 2d 807 (La. App. 1998) (tour participant suffered bilateral cerebral hemorrhages, rupture of blood vessels in the brain and edema resulting from exposure to inadequate oxygen levels at high altitude and rapid decompression during flight in Bolivia).

125. See Tourists on a whale watching boat: 5 dead, 21 rescued, www.eturbonews.com (10/26/2015) ("The British Columbia, Canada, Coroners Service confirms 5 are dead after a whale watching boat capsized near Tofino. 27 people, mostly tourists, were on the vessel").

See also: King v. Car Rentals, Inc., 29 A.D. 3d 205, 813 N.Y.S. 2d 448 (2006) (car rental accident in Quebec, Canada); Lowy v. Heimann's Bus Tours, Inc., 240 A.D. 2d 548, 658 N.Y.S. 2d 452 (1997) (accident during bus tour in Quebec, Canada; U.S. based tour operator not liable).

126. See e.g.,

Third Circuit: Wolf v. Fico Travel, 2011 WL 5920918 (D.N.J. 2011) (members of Cutty Sharks Fishing Club traveled to Costa Rica on a fishing expedition...two of the travelers went out on the Don Carlo which capsized "due to turbulent and choppy" waters, one drowned and one swam to shore).

Eleventh Circuit: McLane v. Marriott International, Inc., 2013 WL 1810649 (S.D. Fla. 2013) (back injury sustained during fishing

excursion in Costa Rica).

State Law:

Illinois: *Stein v. Rio Parismina Lodge*, 695 N.E. 2d 518 (Ill. App. 1998) (tourist purchased a fishing vacation tour to Costa Rica from travel agent Fish & Game Frontiers with accommodations at Rio Parismina Lodge; tourist joins fishing trip and is injured when his boat is swamped by waves as river empties into ocean).

127. See e.g.,

Third Circuit: *Hunt v. Global Incentive & Meeting Management, SA*, 2010 WL 3740808 (D.N.J. 2010) (same accident involving the Caldwells in Cancun; wrongful death of both plaintiffs; "The van, driven by...Castro and carrying the Hunts along with (the Caldwells) left the airport. Castro did not have a license to drive a motor vehicle...lost control of the van").

Sixth Circuit: *Caldwell v. CheapCaribbean.Com, Inc.*, 2010 WL 3603778 (E.D. Mich. 2010) (tourists being transported from "Cancun, Mexico airport to their hotel rooms in Cancun when a car collision took the lives").

Ninth Circuit: *Rockard v. Mexicocoach*, 680 F. 2d 1257 (9th Cir. 1982) (bus accident in Tijuana, Mexico); *Velasco v. Americanos USA, LLC*, 2014 WL 266803 (C.D. Cal. 2014) (tour bus accident in Mexico); *Dubret v. Holland America Line Westours, Inc.*, 25 F. Supp. 2d 1151 (W.D. Wash. 1998) (cruise passengers purchased a shore excursion in Acapulco and while being transported by tour bus were severely injured in accident; bus chaperones having identified themselves as cruiseline's " representatives " was " insufficient to establish apparent authority ").

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

District of Columbia Circuit: *Stromberg v. Marriott International, Inc.*, 2007 WL 4165428 (D.C. Cir. 2007) (" Appellant is a Norwegian citizen alleging claims arising from a taxi cab accident that occurred in Mexico while riding in a cab driven by a Mexican national and owned by a Mexican company); *Chung v. Chrysler Corp.*, 1995 WL 669183 (D.C.D.C. 1995) (students killed in rental car crash in Mexico).

State Law:

Arizona: *Mauer v. Cerkenvenik-Anderson Travel, inc.*, 181 Ariz.

294, 890 P. 2d 60 (1994) (student falls to death under steel wheels of party train to Mazatlan, Mexico).

California: DeRoche v. Commodore Cruise Line, Ltd., 31 Cal. Rptr. 2d 278 (Cal. App. 1994) (cruise passenger on shore excursion injured in motor scooter accident in Cozumel, Mexico); Pena v. Sita World Travel, Inc., 88 Cal. App. 3d 642, 152 Cal. Rptr. 17 (1978) (tour participant injured in Mexico when tour bus overturns).

Connecticut: Davies v. General Tours, Inc., 774 A. 2d 1063 (Conn. App. 2001) (tour participant broke ankle alighting from tour bus in Mexico).

Florida: Varey v. Canadian Helicopters Limited, Case Co: 95-13755-18 (Fla. Cir. Ct. Broward County) (cruise passengers drowned when helicopter crashes on return to Cozumel, Mexico from tour of ruins at Chichen Itza).

New York: Glasser v. Liberty Travel Service, inc., New York Law Journal, Sept. 6, 1991, p. 21, col. 5 (N.Y. Sup. 1991), aff'd 190 A.D. 2d 616, 593 N.Y.S/ 2d 820 (1993) (tour bus accident in Mexico); Blue v. General Tours, Inc., 15 CCH Aviation Cases 17,660 (N.Y. Sup. 1979) (tour bus accident in Mexico).

Texas: Hudson v. Continental Bus Systems, Inc., 317 S.W. 2d 584 (Tex. Civ. App. 1958) (bus accident in Mexico; discussion of liability theories); Casey v. Sanborns Inc. of Texas, 478 S.W. 2d 234 (Tex. App. 1972) (rental car accident in Mexico; Texas tour operator held itself out as being in charge and in control of Mexican service provider).

Wisconsin: Griffin v. Mark Travel Corp., 296 Wis. 2d 642, 742 N.W. 2d 900 (2006) (plaintiffs " claim that they were injured when a van in which they were riding from the Cancun, Mexico airport to their hotel crashed).

128. See Amtrak Train Derailment; Pennsylvania. See In Flegenheimer, McGeehan, Mouawad & Stolberg, *Amtrak Crash Illuminates Obstacles to Plan for Controlling Train Speeds*, www.nytimes.com (5/18/2015) it was noted that "Nearly seven years after Congress instructed the nation's railroads to install an automatic speed control system by the end of 2015, the crash of a speeding Amtrak train last week has laid bare the industry hurdles, regional rivalries and often dismal economies of rail safety. Miles of track on Southern California's commuter lines still lack the system years after 1 2008 crash that killed 25 people there, fueling the drive to install the technology, known as positive train controls. Chicago's commuter rails are not likely to have the safety system for years, while comparatively sleepy train service on Amtrak's Michigan line already has it...Rail safety experts have noted that far less costly upgrades, including an older braking system found on tracks opposite the site of last week's crash in Philadelphia, would have prevented high-speed derailments like this one. And they say that even with positive rain control, not all

accidents can be avoided"; *D'Annunzio, 'Indescribable Horror' of Amtrak Derailment Prompts Suits*, www.law.com (5/18/2015) it was noted that "A cluster of lawsuits against Amtrak stemming from last week's derailment that injured over 200 people and killed eight has been filed in Philadelphia"; In *Stolberg, Mouawad & Fitzsimmons, Amtrak Train Derailed Going 106 M.P.H. on Sharp Curve; at Least 7 killed*, www.nytimes.com (5/13/2015) it was noted that "An engineer jammed on the emergency brakes just seconds before Tuesday's fatal Amtrak derailment, but the train-traveling at 106 miles an hour, more than twice the speed limit-slowed only slightly, federal authorities said, before hurtling off its tracks, killing at least seven people and injuring more than 200. Survivors who emerged battered and bloodied described a chaotic scene, with passengers thrown against walls, furniture and one another, and luggage and other items and falling on terrified riders". In *Passarella, Valuing Damages in Amtrak Crash Made Trickier by \$200M Cap*, www.law.com (5/14/2015) it was noted that "Lingering over the liability claims expected to be raised by victims of the Amtrak 188 derailment is a 1997 federal law that creates a \$200 million damages cap to be paid out for any single railroad accident". In *Shear and Mouawad, Amtrak Says Shortfalls and Rules Delayed Its Safety System*, www.nytimes.com (5/14/2015) it was noted "The Amtrak train that derailed in Philadelphia on Tuesday night was equipped with an automatic speed control system that officials say could have prevented the wreck, which killed eight passengers and injured hundreds. But the system, which was tantalizingly close to being operational, was delayed by budgetary shortfalls, technical hurdles and bureaucratic rules, officials said Thursday".

129. See *Harvey v. Sav-U Car Rental*, 2010 WL 2949570 (D.V.I. 2010) (rental car accident in Virgin Islands); *Banks v. International Rental And Leasing Corp.*, 2008 WL 2149380 (D.V.I. 2008) (rental car accident in Virgin Islands).

130. See *Isbell v. Carnival Corp.*, 462 F. Supp. 2d 1232 (S.D. Fla. 2006) (" The excursion consisted of floating down a river in the rain forest in Belize, in and out of caves, while on an inner tube...During the course of the excursion, Plaintiff began to feel ill. Plaintiff's husband removed her life vest and notice two small puncture wounds on her left upper arm...it was determined that Plaintiff had been bitten by a snake...On October 29, 2004 Plaintiff allegedly suffered a heart attack. Subsequently Plaintiff underwent a successful cardiac surgery...Plaintiff alleges that the snake bite and the treatment that she received as a result thereof have caused a ' myriad of long term physical and psychological effects that are compensable in this action ' ").

131. See *Mayer v. Cornell University*, 107 F. 3d 3 (2d Cir. 1977), cert. denied 1997 WL 336602 (1997)(bird watcher on Cornell University sponsored 28 day tour of Costa Rica drowns while snorkeling off Il DeCano in the Pacific Ocean; plaintiffs alleged that defendants were negligent, inter alia, in failing to have personnel trained in CPR and life-saving techniques available to assist after the drowning and failing to make available and timely provide emergency medical care ").

132. See e.g.,

Second Circuit: *Valad v. Club Mediterranee, S.A.*, 84-CIV-1980 (LBS)(S.D.N.Y. 1980)(horse riding accident alleging failure to give proper riding instructions and failure to render proper medical care).

State Law:

California: *DeRoche v. Commodore Cruise Line, Ltd.*, 31 Cal. Rptr. 2d 278 (Cal. App. 1994)(a cruise ship passenger who was injured during a shore excursion in Mexico was treated and underwent surgery at a local Mexican clinic which the cruiseship doctor recommended. The treatment was substandard and upon returning to San Francisco, the passenger underwent additional surgery to correct the malpractice performed on him in Mexico).

133. See Hu, *Brisk Business at Bronx Hotel, Center of Legionnaires' Outbreak*, www.nytimes.com (8/27, 2015) ("The Opera House Hotel had to turn off its air-conditioning one hot day this month so that a cleaning crew could scrub away the Legionella bacteria lurking in the cooling tower on its roof...Not much else has changed at the hotel at the center of the worst outbreak of Legionnaires' disease in the city's history. Business has been, if anything a little brisker. Occupancy rates have hovered between 90 and 95 percent for the past two months, slightly higher than a year ago, the management said...The Opera House Hotel...remained open throughout the outbreak, which claimed 12 lives and sickened more than 120 people, including two hotel guests, before city health officials declared it officially over last week. City health officials identified the hotel's cooling tower as the source of the outbreak. Legionnaire's disease, often described as a severe form of pneumonia, is contracted by inhaling contaminated mist from water sources harboring Legionella bacteria...But for the most part, the Opera House Hotel seems to have escaped the notoriety and stigma that kept guests away from the Philadelphia hotel that was the site of the first outbreak of Legionnaires' disease in July 1976...In contrast, many guests staying at the Opera House Hotel this summer have shown no hesitation in wheeling their suitcases past its rooftop cooling tower, and the journalists camped out front. }softline'I think the hotel is more popular than before', said (Mr. X), who owns a CD shop next to the

hotel. 'Now everybody knows about the Opera House. People are not afraid. They come no matter what'").

134. See Terrorists execute group of tourists in central Afghanistan, ETN (7/25/2014); Ahmed & Rosenberg, Deadly Attack at Kabul Restaurant Hints at Changing Climate for Foreigners, www.nytimes.com (1/18/2014); Nordland & Rosenberg, Suicide Bomber Strikes Vehicles Carrying Foreigners in Kabul, www.nytimes.com (9/18/2012) ("Fourteen people, 10 of them foreigners, were killed by a suicide bomber on Tuesday, bringing to at least 28 the number of deaths attributed to unrest sweeping the Muslim world as a result of an amateurish video parodying the Prophet Muhammad").

135. See Air Algeria planes cashes in "high risk" flight zone, ETN (7/24/2014); Nossiter, Militants Seize Americans and Other Hostages in Algeria, www.nytimes.com (1/16/2013) ("Algerian officials said at least two people, including a Briton, were killed in the assaults which began with a predawn ambush on a bus"); Steinmetz, Report warns of new al-Qaeda hub in North African 'Arc of Instability', www.eturbonews.com (3/1/2013) ("A new report on terrorism in North Africa warns of a new al-qaeda hub for jihadi recruits and a potential launching pad for terrorist attacks...The report say al-Qaeda-led extremists attempted seizure of Mali's capital and their deadly attack on Algeria killed 37 foreign hostages resulted from a regional terrorism threat").

136. See See Tourist falls to his death while scaling crane in Brisbane, www.eturbonews.com (6/30/2015); Steinmetz, Deadly shark attacks killing tourism in Western Australia, www.eturbonews.com (7/19/2012).

137. See Steinmetz, Singaporean visitor dies while climbing Mount Batur, www.eturbonews.com (12/23/2012) ("A Singaporean tourist died suddenly while climbing Mount Batur on the resort island of Bali"); Steinmetz, One Australian visitor dies in Bali every nine days, www.eturbonews.com (8/12/2012) ("Consular officials say alcohol and drugs fuel many of the accidents, while nightclub fights are among the biggest cause of trouble for thousands of Aussies who fly to the tropical island every year. Information release by the Department of Foreign Affairs reveals 39 Australians died in Bali in 2011-12. Another 93 sought consular help after being taken to hospital while 36 were arrested, 18 jailed and eight needed support after being attacked...traffic accidents were the biggest cause of deaths after natural causes").

138. In Manik, Anand & Barry, *Bangladesh Attack Is New Evidence That*

ISIS Has Shifted Its Focus Beyond the Mideast, www.nytimes.com (7/2/2016) it was noted that "Friday night's assault on the Holey Artisan Bakery in the diplomatic district of Dhaka, in which at least 20 hostages and two police officers were killed, marks a scaling up of ambition and capacity for Bangladesh's Islamist militancy...Among the dead...were nine Italians, seven Japanese, two Bangladeshis, one American and One Indian".

See also: Passenger train crashes into a tour bus leaving 9 dead, 50 injured, ETN (8/1/2014).

139. See *Shea v. Global Travel Marketing, Inc.*, 2003 WL 1916874 (Fla. App. 2003) (" The child, age eleven, was killed while on safari with his mother in Botswana. He was sleeping alone in a tent at a campsite when he was dragged from his tent and mauled by hyenas ") reversed and remanded 908 So. 2d 392 (Fla. Sup. 2005).

See also: Steinmetz, Pilot, seven tourists die in Botswana charter plane crash, www.eturbonews.com (10/18/2011).

140. See *Petitt v. Boeing Co.*, 2010 WL 3861066 (N.D. Ill. 2010) (Kenya Airways aircraft crashes in Cameroon killing all 114 passengers onboard).

141. In Steinmetz, *Terror in Cape Verde Islands: Airport closed, 10 dead*, www.eturbonews.com (4/26/2016) it was noted that "Media reports in the Cape Verde islands off West Africa say Cape Verde's main airport and country's airspace have been closed after 8 soldiers and 3 civilians were found dead at army barracks on Tuesday. The website of local newspaper A Semana says two of the dead civilians are from Spain".

142. See In Wong, *Hundreds Missing After Chinese Cruise Ship Sinks on Yangtze*, www.nytimes.com (6/1/2015) it was noted that "Most of the 458 people aboard a chartered cruise ship in China were still missing on Tuesday morning, more than a dozen hours after the vessel sank during a torrential rainstorm along the central Yangtze River...Just 13 people had been rescued, local news media reported, making this perhaps the worst passenger maritime disaster in East Asia since the sinking of the South Korean ferry Sewol last year. The water where the boat sank is about 50 feet deep. Rescuers could hear the sounds of people trapped inside...Most of the passengers were 50 to 80 years old and had been traveling on a group tour...The ship capsized, with part of the hull above the surface of the water".

See e.g.,

Second Circuit: *Barkanic v. General Administrator of Civil Aviation*, 923 F. 2d 957 (2d Cir. 1991) (" On January 18, 1985, Peter Barkanic and Donald Fox, citizens of the District of Columbia and New Hampshire, respectively, were killed in the crash of a Chinese

plane en route from Nanking to Beijing, China... (liability limited to \$20,000 applying Chinese law; Warsaw and Montreal Conventions do not apply to intra-country air transportation).

Foreign Law:

Great Britain: *Wong Mee Wan v. Kwan Kin Travel Services Ltd.*, 4 All. ER 745 (1995) (Hong Kong tourist drowns as a result of speedboat accident crossing a lake in China).

See also: Canadian tourist kills Chinese woman on the Great Wall, www.eturbonews.com (4/10/2015); Shenzhen airport car crash: Five dead, www.eturbonews.com (3/1/2015) ("At least five people died and 24 were injured when a red Mercedes-Benz sedan ploughed into a group of people on an overpass leading into Shenzhen Baoan International Airport"); Steinmetz, US and Taiwanese tourists killed in China's Hunan province, www.eturbonews.com (4/30/2013) ("tour bus "turned over and fell from a cliff in China's Hunan province"); www.eturbonews.com (11/5/2012) (three Japanese tourists dead after being stranded overnight on the Great Wall); Santora, Two Americans Are Buried a Year After a Train Crash in China, www.nytimes.com (9/1/2012) ("A year ago Cao Erxing and his wife, Chen Zengrong, both 56, were killed in a high speed train crash in China...which left 40 people dead and 191 passengers injured in July 2011. The accident rattled the Chinese government and raised questions about the safety of the nation's high-speed rail system"); 51 Dead in China Travel Accidents, www.voanews.com (May 22, 2010) (bus and railroad accidents kill 51 persons and injure 71 other rail passengers).

143. See At least 60 dead in Congo train crash, ETN (4/24/2014); Linda, Another plane crash in Goma shakes Congo travelers, www.eturbonews.com (5/4/2013) ("A Fokker 50 aircraft owned and operated by...Compagnie Africaine d'Aviation, crashed this afternoon while attempting to land in Goma...killing at least 36 crew and passengers").

144. See Steinmetz, Seven dead in East Java tourist bus crash, www.eturbonews.com (5/8/2012).

145. In Walsh & Fahim, *EgyptAir Flight Believed to Have Crashed at Sea; Egypt Cites Possible Terrorism*, www.nytimes.com (5/19/2016) it was noted that "The EgyptAir red-eye from Paris to Cairo, an Airbus A320 jetliner less than half full had just entered Egyptian airspace early Thursday (when it) plunged 28,000 feet, disappearing from the radar screens of Greek and Egyptian air traffic controllers...Egyptian officials suggested that terrorism was a more likely cause for the disappearance than mechanical failure...The loss of the flight was the second civilian aviation disaster to hit Egypt in the past seven months"; Walsh, *Egypt Sends Submersible in Search*

for EgyptAir Jet's Black Boxes, www.nytimes.com (5/22/2016) it was noted that "A statement from the Islamic State on Saturday failed to mention the EgyptAir crash, confounding speculations that the group, which claimed to have been behind the bombing of a Russian airliner in Sinai in October, might have been responsible"; Mexico 'dissatisfied' with Egypt's failure to probe the killing of tourists, www.eturbonews.com (5/13/2016) it was noted that "Mexico has expressed its dissatisfaction with the Egyptian government's response to an aerial bombing last year in which eight Mexican tourists were killed".

See Schmidt, Consensus Grows for Bomb as Cause of Russian Jet Crash, Officials Say, www.nytimes.com (11/8/2015) it was noted that "there was a mounting consensus among American intelligence officials that a bomb brought down the Russian airliner jet that crashed last month in the Sinai Peninsula in Egypt, killing all 224 people aboard". See also: Castle, Britain, Concerned About Russian Crash, Halts Sinai Flights, www.nytimes.com (11/4/2014); 'Rescue flights' to fly stranded British tourists out of Sharm el Sheikh, www.eturbonews.com (11/5/2015); <http://www.eturbonews.com> Stack, Egypt Security Forces Accidentally Kill Mexican Tourists, www.nytimes.com (9/13/2015) ("Egyptian security forces opened fire on a caravan of tourist vehicles in the country's Western Desert late Sunday night, killing at least 12 people from Mexico injuring 10 others, among them Mexican tourists and their Egyptian tour guides, officials said...The security forces said that they had believed that the vehicles were being used to transport terrorists. The statement said the group had been driving in a restricted area where unauthorized access is banned"; Thomas & Kirkpatrick, Egyptian Military Said to Fire on Mexican Tourists During Picnic, www.nytimes.com (9/14/2015) ("The convoy of four sport utility vehicles full of Mexican tourists about three hours southwest of Cairo on a typical adventure trip through the White Desert...with the blessing of their police escort, and the apparent added security of an Apache military helicopter buzzing on the horizon, the group pulled off for a picnic...Then the helicopter opened fire, killing at least a dozen people-including at least two Mexicans- while wounding a tourist police officer and at least nine others");

See also: *Guidi v. Inter-Continental Hotels Corp.* 203 F. 3d 180 (2d Cir. 2000) (" In October 1993 [the guests] were in Egypt on business. While eating dinner in the restaurant of the Semiramis Inter-Continental Hotel...all three men were shot by an Egyptian gunman named Farahat...In addition to the three Americans, Farahat shot a Syrian lawyer, a French lawyer and Italian judge "; defendants' *forum non conveniens* motion denied; plaintiff's emotional burden

in being to litigate in Egypt must be considered); Niv v. Hilton Hotels Corporation, 2008 WL 4849334 (S.D.N.Y. 2008)(" This action arises out of the tragic events that took place on October 7, 2004 at the Hilton Taba Hotel in Taba City, South Sinai, Egypt when a terrorist drove a vehicle with explosives into the lobby of the hotel, causing an explosion and the hotel's collapse. Plaintiffs are 157 individuals who were guests or whose decedents were guests of the Hilton Taba Hotel on October 7, 2004. Plaintiffs contend that the Hilton Taba Hotel is 'a long-favored holiday destination ' for Israelis and that the hotel markets to Israeli tourists "); Klinghofer v. S.N.C. Achille Lauro, 795 F. Supp. 112 (S.D.N.Y. 1992)(cruise passenger in wheelchair murdered by PLO terrorists).

See also: Shark attacks, kills German visitor in al-Qusair, www.eturboneews.com (3/24/2015); Two killed in Egyptian tourist resort bombing, www.eturboneews.com (3/2/2015); Sheikh & Fahim, Dozens Are Killed in Street Violence Across Egypt, www.nytimea.com (10/6/2013); Baran, Fatal hot-air balloon crash latest in Egypt's tourism setbacks, Travel Weekly, May 4, 2013 p. 9 ("At least 18 foreign tourists were killed last week in a hot-air balloon crash near Luxor...caught on fire and crashed into a field (plunging 1000 feet)"); Steinmetz, 1 Chinese tourist killed, 3 injured in Egypt, www.eturbones.com (3/3/2013) ("A mini-bus overturned Saturday morning on the highway from Egypt's Aswan to tourist attraction Abu Simbel, killing one Chinese tourist and leaving another 143 people on board injured—among them three Chinese nationals"); See Steinmetz, 19 tourists killed as hot air balloon explodes, crashes in Egypt, www.eturboneews.com (2/25/2013) ("19 foreign tourists were killed when a hot air balloon exploded and plummeted from the sky in southern Egypt...A total of 21 people were in the balloon when it fell about 300 meters...in the city of Luxor"); Steinmetz, Egyptian Jihadist leader calls for destruction of pyramids and the Sphinx, www.eturboneews.com (11/12/2012) ("El-Gohary, a Salafist Jihadist leader in Egypt, fought with the Taliban movement in Afghanistan in the 1990s...'We will demolish the pyramids and the Sphinx like we did with Buddha"); Linda, Why are terrorists attacking tourists?, www.eturboneews.com (4/17/2012) ("With the rebels, including Islamist factions preaching Sharia of Island, now in control of Timbuktu's streets, tourists may not return soon...On October 21, 1992, militants ambushed a tourist bus, killing a British woman and injuring two British men. The woman was the first foreigner to die in militant-related violence in Egypt...Egyptian militants considered this development real success as it got international attention about their fight against the then Egyptian government and it was an easy way to promote their struggle....To understand the trend of terrorism against tourism, one can cite the following terrorist attacks on tourists or tourism

destinations to look at the similarities of these events (1) Gunmen in Ethiopia's arid north attacked a group of European tourists traveling in one of the world's lowest and hottest regions, killing five, wounding two and kidnaping two... (on) January 18, 2012. (2) The 2005 Sharm el-Sheikh attacks were a series of terror attacks on July 23, 2005, perpetuated by an Islamist organization, targeting the Egyptian resort city of oftlineCharm el-Sheikh...Eight-three people were killed, the majority of them Egyptians and over 200 were wounded by the blasts...(3) The 2003 Casablanca bombings were a series of suicide bombings on May 16, 2003...Forty-five people were killed...(12 suicide bombers and 33 victims)...(4) The Luxor Massacre refers to the killings of 62 people, mostly tourists that took place of November 17, 1997... the majority of attacks on tourists were in the poorest countries of the world where tourism could play a pivotal role to enhance economies"); Steinmetz, Eleven Hungarian tourists killed in Egypt, www.eturbonews.com (11/7/2011).

146. See Steinmetz, Tourist feared to have been eaten by cannibals in French Polynesia, www.eturbonews.com (10/17/2011).

147. See Steinmetz, Two crashes in one weekend shock Africa's frequent flyers, www.eturbonews.com (6/4/2012)(147 passengers die in crash of Dana Air commercial aircraft in Lagos preceded by crash in Accra killing a dozen people)

148. See e.g.,

First Circuit: Nowak v. Tak How Inc. Ltd., 1995 WL 521874 (D. Mass. 1995)(guest drowns in hotel pool in Hong Kong).
Ninth Circuit: Beaudu v. Starwood Hotels and Resorts Worldwide, Inc., 2005 WL 1877344 (W.D. Wash. 2005)(Marcel Beaudu, a FedEx international airline pilot experienced a heart attack and died at the Sheraton Hong Kong Hotel & Towers).

Foreign Law:

Great Britain: Wong Mee Wan v. Kwan Kin Travel Services Ltd., 4 All ER 745 (1995)(Hong Kong tourist drowns in boating accident crossing Chinese lake).

149. See Deadly rafting accident for tourist in Kashmir, ETN (5/9/2014); Sengupta, " At Least 100 Dead in India Terror Attacks ", The New York Times at nytimes.com, November 27, 2008 (" Coordinated terrorist attacks struck the heart of Mumbai, India's commercial capital, on Wednesday night, killing dozens in machine-gun and grenade assaults on at least two- five star hotels, the city's largest train station, a Jewish center, a movie theater and a hospital. Even by the standards of terrorism in India, which has suffered a rising number of attacks this year, the assaults were particularly brazen in scale and execution. The attackers used boats to reach the

urban peninsula where they hit and their targets were sites popular with tourists. The Mumbai police said Thursday that the attacks killed at least 101 people and wounded at least 250. Guests who had escaped the hotels told television stations that the attackers were taking hostages, singling out Americans and Britons...Hours after the assaults began, the landmark Taj Mahal Palace & Tower Hotel, next to the famed waterfront monument the Gateway of India, was in flames. Guests banged on the windows of the upper floors as firefighters worked to rescue them. Fire also raged inside the luxurious Oberoi Hotel according to the police. A militant hidden in the Oberoi told India TV on Thursday morning that seven attackers were holding hostages there. ' We want all mujahedeen in India released and only after that we will release the people ', he said. Some guest, including two members of the European Parliament who were visiting as part of a trade delegation, remained in hiding in the hotels, making desperate cellphone calls, some of them, to television stations, describing their ordeal ").

See also: Steinmetz, Dutch tourist confesses to murdering British backpacker, www.eturbonews.com (4/9/2013) ("The Dutch tourist who was arrested for the alleged murder of a British woman... (who) had also been raped (and) stabbed ...repeatedly in the private parts, thighs and the abdomen"); Steinmetz, Tourist from Switzerland found dead in India hotel, www.eturbonews.com (10/14/2012) ("A 65-year-old tourist from Switzerland was found dead at a hotel in Pushkar town of Sunday"); Steinmetz, Indian Mujahideen bandits target growing tourism industry, www.eturbonews.com (12/5/2011) ("India's growing tourism industry is now on the radar of the Indian Mujahideen terror outfit which appears determined to project India being unsafe for tourists").

150. See Manado, Indonesia: 17 killed in a packed karaoke bar early Sunday, www.eturbonews.com (10/25/2015) ("Seventeen people were killed in a fire that raced through a packed karaoke bar early Sunday on Indonesia's Sulawesi island, and 71 others were hospitalized for smoke inhalation").

In Cochrane, *Indonesian Plane Carrying 54 Is Declared Missing in Papua*, www.nytimes.com (8/16/2015) it was noted that "Rescue teams were searching Monday for the wreckage of an Indonesian commercial aircraft carrying 54 people that was believed to have crashed on Sunday amid inclement weather in the eastern region of Papua...Trigana Air Service (operated the aircraft and) has had 14 crashes-three of them resulting in fatalities-since it began operations in 1991, including a crash in 2006, also in Papua Province, that killed all 12 passengers and crew aboard, according to the Aviation Safety Network".

151. In Hassan, Arango & Al-Jawoshy, *Bombing Kills More Than 140 in Baghdad*, www.nytimes.com (7/3/2016) it was noted that "As

celebrations for the Muslim holy month of Ramadan stretched past midnight into Sunday in central Baghdad, where Iraqis had gathered to eat, shop and just be together, a minivan packed with explosives blew up and killed at least 143 people—the third mass slaughter across three countries in less than a week”.

152. See Siegel v. Global Hyatt Corporation, 2013 WL 5436610 (Ill. App. 2013) (suicide bomber blows up hotel in Jordan).

See also: Three French visitors killed in Jordan, ETN (3/10/2014); Steinmetz, Belgian visitors killed in Jordan coach accident, www.eturbonews.com (10/28/2012) (“Four Belgium tourists have been killed in a coach accident in central Jordan...vehicle carrying the tourists overturned after a collision with another vehicle”).

153. See e.g.,

Third Circuit: Abercrombie & Kent v. Carlson Marketing Group, 1990 WL 20213 (E.D. Pa. 1990) (tour participants on safari tour killed when plane crashes into mountain in Kenya; passengers claims settled for \$3,000,000; indemnification sought).

State Law:

Washington: Rizzutti v. Basin Travel Service, 125 Wash. App. 602, 105 P. 3d 1012 (2005) (“ In early 1999, Ms. Rizzuti contacted... (Basin Travel Agency) ”) about booking travel on the Livingstone Safari, a package tour of Africa arranged by Amercrombie & Kent International (A&K) an Illinois based tour operator. The Livingstone Safari included roundtrip airfare from Los Angles and all transportation, accommodations, and meals during the 15-day tour of Africa...The Livingstone Safari included a flight between Nairobi, Kenya and Arusha, Tanzania, that A&K chartered on Northern Air. Ms. Rizzuti and all other passengers and crew were killed in early September 1999 when the Northern airplane crashed into Mount Meru ”).

See also: See Somali Militants Kill 147 at Kenyan University, www.nytimes.com (4/2/2015); Steinmetz, German tourists killed in Kenyan plane crash, www.eturbonews.com (8/23/2012) (“Four people dies when a small passenger plane crashed on the runway in Kenya’s renowned Masai Mara national park...There were 11 foreign tourists on board of the aircraft: five Germans, two Americans and two Czechs. Two Kenyan pilots and two German tourists were killed”); Steinmetz, Attack on British and Swiss Tourists in Kenya, www.eturbonews.com (11/7/2011) (“ The attack took place north of Isiolo in an area with several games reserves that is also known for banditry”); Steinmetz, Terror attack in Nairobi disco leaves 14 wounded, www.eturbonew.com (10/24/2011) (“A grenade exploded in a nightclub in the bustling centre of Kenyan

capital Nairobi...the attack came a week after Kenya launched a cross-border operation against al Qaeda-linked al Shabaab militants in Southern Somalia after a wave of kidnaps of foreigners on Kenyan soil"); Sayare, Frenchwoman Abducted in Kenya Dies, www.nytimes.com (10/21/2011) ("The woman, Marie Dedieu, 66, was dragged from a beachfront bungalow on Manda, an island that is a tourist destination... Witnesses said a small group of heavily armed Somalis beached their speedboat in front of her home...A recovering cancer patient and quadriplegic who had lived on the island for years, Ms. Dedieu was taken without her wheelchair or medication").

154. See Steinmetz, Despite new regulations drunken tubing goes on in Laos, www.eturbonews.com (9/17/2012) ("Attempts by Laos authorities to limit the damage caused by the tourist craze of 'tubing'-floating down river in the inner-tube of a tire-may have had mixed success. After a spate of tourist deaths on the Nam Song River in Vang Vieng, Laos, authorities from the capital have closed more than two dozen of the riverside and late-night island bars that are pit-stops for tubing tourists").

155. See British visitor vanishes in Malaysian jungle, ETN (6/1/2014); British tourist killed in Malaysia bus crash, ETN (4/20/2014).

156. See Maldives no longer safe for Israeli tourists?, ETN (7/30/2014) ("34 tourists were threatened and evacuated by Maldives security authorities on the Maldives holiday of Kaafu Thulusdhoo").

157. See Searcey, Nossiter, Gali & Sengupta, Hotel Attack in Mali Reverses Gains in Flight Against Extremism, www.nytimes.com ("With its marble floors, open atrium and lipstick-red lounge, the Radisson BLU Hotel served as a lifeline to the world, a gathering place where diplomats, contractors and others doing business in Mali, one of the poorest countries on earth, could all be found. Now, bullet holes pockmark the walls and blood is pooled on stairs... (the Radisson Blu is the site of a massacre in which terrorists killed 19 people"). <http://www.nytimes.com>

See also: 2014 Mali Air Algeria MD-83 crash: Pilot was warned, www.eturbonews.com (4/4/2015) ("France's BEA crash investigation agency, which is helping Mali to investigate the crash that killed 116 people"); Steinmetz, How safe is Mali?, www.eturbonews.com (11/30/2011) ("Following the recent kidnaping of three tourists-one of which is a Dutchman-and the killing of a German in the town of Timbuktu in North Mali...His safe is Mali?").

158. See Myanmar ferry accident kills 21, www.eturbonews.com

(3/14/2015) (" A passenger ferry has sunk off the coast of western Myanmar, leaving at least 21 people dead and 26 missing").

159. See Hundreds of European tourists still "not accounted for" in Nepal, www.etrubonews.com (5/2/2015) ("More than 6,200 deaths have been caused by the April 25 earthquake"); Steinmetz, Belgian tourist missing in Himalayas found dead with her head cut off, www.eturbonews.com (6/27/2012) ("A female hiker who went missing in the Himalayas was found ten days later with her head cut off...The Belgian's death in Langtan National Park, on the border with Tibet, is the latest in a string of assaults and disappearances of young women in Nepal's Himalaya national parks. The U.S. Embassy has now issued a warning against women trekking solo in the region"); Steinmetz, 19 dead in plane crash near Kathmandu, www.eturbonews.com (9/27/2012) ("Sita Air Dornier aircraft, which was carrying 16 passengers and three crew members, caught fire and crashed on Friday morning near Kathmandu airport. All 19 people...reportedly have died in the crash...the plane was heading to the city of Likla-a transit hub for the tourists and mountain climbers heading for Mount Everest").

160. See Tourist killed in brutal shark attack (off coast of New Caledonia), www.eturbonews.com (5/11/2015).

161. See Steinmetz, NZ police wants tourist warned after visitor killed in car crash, www.eturbonews.com (1/6/2013) ("A 61 year old Israeli woman died and two others were taken to Southland Hospital after their rented Toyota Corolla left the road and crashed into a tree'); Steinmetz, Mad Dog River Boarding fined over tourist's death, www.eturbonews.com (8/25/2009) ("A New Zealand court fined an adventure tourism company...and ordered it to pay reparations to the family of an English woman who drowned while river boarding. Mad Dog River Boarding pleaded guilty to two counts of negligence").

162. See Armed bandits hack French tourist to death in southeast Nigeria, www.eturbonews.com (6/5/2015); Amnesty International Shocking Report from Nigeria: Boko Haram, www.eturbonews.com (4/14/2015) ("At least 2,000 women and girls have ben abducted by Boko Karam since the start of 2014 and many have been forced into sexual slavery and trained to fight"); Experts analyze terrorism bombing of Nigerian bus terminal, ETN (4/21/2014); Steinmetz, Two crashes in one weekend shock Africa's frequent flyers, www.eturbonews.com (6/4/2012) (147 passengers die in crash of Dana Air commercial aircraft in Lagos, Nigeria preceded by crash in Accra, Ghana killing a dozen people).

163. See Steinmetz, North Korea blames Seoul for the death of Mt. Kungang tourist, www.eturbonews.com (12/10/2012) ("North Korea...claimed the July 2008 shooting death of South Korean tourist by the North's troops at Mt. Kungang resort was the 'product of a deliberate scheme' from Seoul...North Korea blames South Korea for failing to control visitors and insists the tours, which had been a substantial cash cow for the cash-strapped regime, must resume, even though the Stalinist country has adamantly refused to offer security guarantees or permit the South to investigate the incident").

164. See In Hassan, Inayat & Masood, *Keen Pain in Pakistan Over Lives 'Shattered Into Pieces'*, www.nytimes.com (3/28/2016) it was noted that "Extremist groups have long made a campaign of attacking religious or ethnic minorities in Punjab. The attack on Sunday was claimed by Jamaat-e-Ahrar, a splinter group of the Pakistan Taliban, which said it was targeting Christians who had gathered in the park for Easter...Most of the victims were working-class or poorer. The attack came just days after the National Assembly adopted a resolution to recognize Easter and the Hindu festivals of Holi and Diwali, as public holidays, in what some here saw as a vital call for tolerance and others saw as offensive in a state officially built on Islam. That gesture, too, was marred by the bomber's strike".

See also: DeFederico v. Marriott International, Inc., 2013 WL 1811872 (4th Cir. 2013) (terrorist attack on hotel in Pakistan).

See also: Pakistan train derails: 15 dead, over 100 injured, www.eturbonews.com (11/17/2015) ("At least 15 persons were killed and over 100 injured as a Rawalpindi-bound Jaffar Express derailed near Aab-e-Gum Railway Station in Bolan district Tuesday afternoon"). Suicide bomber attacks Pakistan-Zimbabwe cricket match, www.eturbonews.com (5/30/2015); Sea view beach tragedy: 24 bodies of tourists recovered so far, many still missing, ETN 8/1/2014); Terror attack on PIA flight-one woman killed, ETN (6/24/2014); Linda, Taliban killed 22 more in Mansehra, www.eturbonews.com (8/17/2012) ("After ruling Swat Valley for years and destroying the tourism industry, the Taliban has successfully established their base in another beautiful valley of Pakistan-Naran Valley-and they have killed 22 people on 3 passenger buses that (were) traveling on Karakoram Highway from the Babusar Pass"); Bradsher, "Analysts Say It Will Be Difficult to Shield Luxury Hotels From Terrorist Attacks", The New York Times, nytimes.com, December 1, 2008 (" For decades, luxury hotels have been an oases for travelers in developing countries, places to mingle with the local elite, enjoy a lavish meal or a dip in the pool and sleep in a clean, safe room. But last week's lethal attack on two of India's most famous hotels-coming just two

months after a hugh truck bomb devastated the Marriott in Islamabad, Pakistan-have underlined the extent to which these hotels are becoming magnets for terrorists. Worse, hotel executives and security experts say that little can be done to stop extensively trained gunmen with, military assault rifles and grenades who launch attacks like the ones that left this city's Oberoi and Taj Mahal Palace & Tower strewn with bodies ").

165. See Philippines deadly ferry accident with 176 tourists and local passengers on board, www.eturbonews.com (7/2/2015) ("Kim Nirvana, a ferry heading from the central city of Ormoc to the island of Manotes in the Philippines, capsized with 173 tourists and passengers on board, killing at least 16 according to the Coast Guard stationed in Ormac". And in Antonio, Whatever Happened to...? Justice eludes 'Princess of the Stars' victims, <http://newsinfo.inquirer.net> (6/23/2015) it was noted that "The struggle for justice for hundreds of victims of the ill-fated *MV Princess of the Stars* is far from over. On June 21, 2008, the 23,824-ton ferry sailed from Manila...on a 22-hour trip to Cebu City, carrying 851 passengers ...when it ran into an approaching typhoon and keeled over. Only 32 survived the sinking, one of the Philippine's worst sea tragedies. The remains of 300 were later recovered, but another 400 remained missing...A total of 135 cases have been lodged in Manila and Cebu by families of the victims against Sulpicio Lines, seeking damages worth P1.04 billion for negligence and breach of contract of carriage...But no one has been held criminally liable for the disaster"; Two Chinese diplomats killed, one wounded in restaurant attack in Philippines, www.eturbonews.com (10/21/2015) ("China's consul general in the Philippines' second biggest city was wounded and two of his staff members were killed on Wednesday during a lunchtime gun attack at a restaurant, police said").

See also:<http://www.eturbonews.com> One Chinese tourist killed, another wounded in Manila shooting, ETN (5/5/2014); Philippines and Hong Kong settle row over killed tourists, ETN (4/25/2014); Steinmetz, German tourists, tour guide killed in Philippine volcano eruption, www.eturbonews.com (5/8/2013) ("Three German tourists and their Filipino tour guide were killed yesterday when the Mayon volcano exploded into life, spewing massive boulders 'as big as cars' and a giant ash cloud").

166. See Steinmetz, German tourists die in bizarre submarine accident in Red Sea, www.eturbonews.com (2/10/2012).

167. In Hubbard, *Suicide Bombings Hit 3 Cities in Saudi Arabia, One Near a Holy Site*, www.nytimes.com (7/4/2016) it was noted that "Bombings rocked three cities across Saudi Arabia on Monday, including near the Prophet's Mosque in the holy city of Medina... The blasts in Saudi Arabia followed a bloody week in which terrorists

attacks caused mass casualties in the largest cities of three predominantly Muslim countries: Turkey, Bangladesh and Iraq”.

See More than 700 killed in massive hajj stampede near Mecca, www.eturbonews.com. (9/24/2015) (“A massive stampede killed at least 717 people and injured hundreds at the hajj in Saudi Arabia...in one of the worst-ever tragedies at the annual Muslim pilgrimage. The stampede, the second deadly accident to hit the pilgrims this month following a crane collapse in Mecca, broke out during the symbolic stoning of the devil ritual...Bodies of pilgrims wearing traditional white clothing were left scattered by the crush”).

168. In Steinmetz, *Hotel under attack: 15 dead*, www.eturbonews.com (6/25/2016) it was noted that “It’s a scene of terror and death on Saturday. The Naso Hablod Hotel in Mogadishu, Somalia is a hotel known with a high degree of safety and comfort for business travelers and tourists...At least 15 people are dead and 25 others are injured as a result of Saturday’s car bombing and gun attack at the hotel”.

In Steinmetz, *Deadly attack on Mogadishu Hotel*, www.eturbonews.com (6/1/2016) it was noted that “At least 10 killed, 25 injured in Mogadishu hotel attack. We understand the attack on a Mogadishu hotel started with a car bomb and gunfire followed”.

See Seven people killed, hostages held at Mogadishu hotel, www.eturbonews.com (3/27/2015).

169. See Lerner, *Lion mauls Rye woman in S. Africa*, *The Journal News*, June 4, 2015, p. 1 (“A Rye native mauled to death by a lion in South Africa was about to start a two-week volunteer stint on a wildlife preserve dedicating to saving rhinoceroses and elephants...Kate Chapell was killed Monday when a lion dragged her from her car as she was riding through a safari park near Johannesburg...Lt. Col. Lungelo Dlamini, a spokesman for the police (said) ‘The allegation is that while she was driving, the window was open and the lion attacked’. Simpson, the park spokesman, said opening windows is against park policy, and numerous signs-plus leaflets given to visitors-reinforce those rules. About 180,000 tourists visit the park every year”).

See also: Steinmetz, *Two dead, dozens injured in South Africa tourist boat disaster*, www.eturbonews.com (10/14/2012) (“A Brit is reported to be among the dead after a seal-watching boat carrying 41 passengers capsized in rough waters of Cape Town...The locally-owned motorized boat (carried) regular whale, dolphin and seal watching tours”); Geldenhuys, *Crimes Against Tourists* www.servamus.co.za (4/30/2008) (“The escalation of crime in South

Africa has caused feelings of fear among local foreign tourists who visit holiday resorts...Some tourist attacks that have made news headlines are the following: On 24 March 2008, 14 tourists from Canada, Britain and the USA were robbed at gunpoint by three men of money, cameras and cellphones...On 24 January 2008 two German tourists were robbed in the Johannesburg City Centre. Three men forced open the windows of the vehicle the tourists were traveling in and stole passports, cameras...On 2 July 2005 a group of tourists...were attacked and held at knife point while on a hike just outside Port St. Johns...In 2000 a Polish honeymoon couple were brutally attacked at a look-out post at the Sterkfontein dam near Harrissmith. After murdering the groom, the criminals gang-raped the women on several occasions").

170. See S Korea court gives captain life sentence for murder, www.bbc.com (4/28/2015) it was noted that "An appeals court has sentenced the South Korean captain of the Sewol ferry to life in prison on a murder charge, strengthening an earlier conviction.

Lee-Joon-seok was at the helm when the ferry went down in April 2014 killing more than 300 people, mostly children. He had been found guilty in November of gross negligence and sentenced to 36 years, but relatives of the dead were furious he was not convicted of murder".

171. See Cholera kills hundreds in South Sudan, 5000 children at risk, www.eturbonews.com (7/3/2015); Linda, Another Antonov crash rocks Sudan, www.eturbonews.com (10/7/2012) ("Sudan has suffered a significant number of civilian and military air accidents, often with former Soviet Union era aircrafts involved, as is the case here, and suspicions regularly focused on poor maintenance, often allegedly falsified maintenance records and lack of crew training on simulators...While many African countries have moved to ban the registration and in part even the use of these ancient aircraft, the Sudan-as has the Congo DR with an equally bad aviation record-has continued to permit the use of such stone age birds"). Steinmetz, Sudan airline crash kills 31, www.eturbonews.com (8/20/2012) ("The Sudan has one of the worst aviation accident records in Africa, often attributed to poor aircraft maintenance and the lack of regular crew training as required for commercial aviation and also the use of 'stone-age' generation Soviet era aircraft, which have long been banned from registration and use in many other jurisdictions"). See also: Clark, E.U. Expands Airline "Blacklist", www.nytimes.com (4/1/2010) ("The European Union on Tuesday banned all airlines from the Philippines and Sudan from flying into the region's airports, citing 'serious safety deficiencies' found by the United Nations and U.S. aviation authorities").

172. See Sun v. Taipei Economic, 2002 WL 464512 (9th Cir. 2002) (

student drowns at Little Bay beach; failure to warn of " beach was dangerous because it was exposed to severe undertow, high waves and surf "); Sun v. Taiwan, 1998 WL 738002 (N.D. Cal. 1998), rev'd 201 F. 3d 1105 (9th Cir. 2000)(tourist drowns during recreational visit to Ken-Ting National Park).

See also: TransAsia passenger plane crashed in Taiwan, ETN (7/23/2014).

173. See Weinberg v. Grand Circle Travel LLC, 2012 WL 4096611 (D. Mass. 2012) ("This negligence action...involves two Florida resident who planned an African safari vacation with a Massachusetts travel agent, only to become victims of a tragic hot air balloon crash in the Serengeti. One victim was killed in the crash and the other, the deceased's fiancée, sustained severe bodily injuries, allegedly due to the negligence of the balloon company...brought action against a Massachusetts company, Grand Circle Travel ('Overseas Adventure'), a Tanzanian corporation, Tourism and Public Relations Services Limited trading as Serengeti Balloon Safaris ('Tourism Services') and an English company, Serengeti Balloon Safaris, LTD ('Serengeti Balloon')

seeking compensatory and punitive damages on claims of strict liability, negligence, gross negligence and recklessness"; motion of Tourism Services and Serengeti Balloon to dismiss for lack of personal jurisdiction granted; "It seems unfair that the Serengeti defendants can reap the benefits of obtaining American business and not be subject to suit in our country").

See also: Alcantara, Bomb attack hits Arusha church, killing one and injuring others, www.eturbonews.com (5/6/2013) ("suspected terror attack in Tanzania's northern tourist city of Arusha"); Linda, Another robbery gone wrong kills tourist in Dar es Salaam, www.eturbonews.com (9/25/2012) ("A visiting medical doctor from Greece, walking along the Ali Hassan Mwinyi Road in the center of Dar es Salaam with a number of her colleagues on Sunday, saw a car drive up to her, and then arms stretched from the window, grabbing hold of her handbag, dragging her to her death when attempting to speed away"); Linda, Bandits kill Dutch tourist and his guide at Serengeti National Park, www.eturbonews.com (6/25/2012) ("A Dutch tourist and a Tanzanian national were on Thursday killed by suspected bandits after the latter invaded the Ikona Wildlife Management Area on the outskirts of the Serengeti National Park").

See also: Steinmetz, Belgian tourist missing in Himalayas found dead with her head cut off, www.eturbonews.com (6/28/2012).

149.

174. See e.g., Paulissen v. United States Life Insurance Co., 205 F. Supp. 2d 1120 (C.D. Cal. 2002)(climber ascending a mountain

in the Himalayas in Tibet dies of high-altitude pulmonary edema).

175. See British tourist beaten to death in Thai prison, ETN (5/10/2014); Five tourists killed in Thai game reserve, ETN (3/14/2014); Happy New Year Thailand: 102 killed, 893 injured, first two days of Songkran 2014, ETN (4/14/2014); Steinmetz, Phuket police chief asks for help to reduce number of crimes against visitors, www.eturbonews.com (3/14/2013) (Phuket police chief "called for 5,000 more officers to help protect tourists from... 'mafia-style' crime... The figures revealed that seven ex-pats have been murdered in the resort since 2010 and that last year, foreigners were the victims of two rapes, 13 violent crimes, 13 attempted robberies and 46 cases of fraud. In the same year, 193 foreigners were also arrested for drinks, drugs drink driving offenses. The biggest cause of death to foreigners in the resort was drowning... with right deaths in 2012"); Steinmetz, Body of Dutch visitor found off Phuket's famous Patong Beach, www.eturbonews.com (1/13/2013) ("The body of a 17 year old Dutch tourist was found floating in the sea (had been) struck by solid object on the back of the skull"); Steinmetz, Thai suspect arrested over murder of UK visitor, www.eturbonews.com (1/2/2013) ("Police in Thailand arrested as man in connection with the killing of a British tourist who was shot dead at a New Year's Eve party after getting caught in the crossfire of a gunfight between two local gangs"); Steinmetz, Australian and Canadian visitors die in Bangkok hotel, www.eturbonews.com (10/26/2012) ("An Australian and a Canadian tourist have been found dead in a Bangkok hotel after a suspected drug overdose"); Steinmetz, Korean tourist drowns in Phuket, www.eturbonews.com (9/30/2012); Steinmetz, 4 killed, 20 injured in Phuket nightclub inferno, www.eturbonews.com (8/17/2012) ("A fire ripped through a nightclub popular with foreign tourists in Thailand early Friday... Hospital workers said foreigners were among the casualties in the blaze at the Tiger disco on the island of Phuket"); Steinmetz, Four foreign tourists killed Phuket crash, www.eturbonew.com (3/6/2012) ("a pileup that brought the total toll in that area to 14 dead in three horror smashes in just over a month"); Steinmetz, German tourist killed while elephant trekking in Krabi, www.eturbonews.com (12/1/2011) ("A German woman has been killed in controversial circumstances in an elephant trekking tragedy in the [province of Krabi not far from Phuket... One tourist has been killed and two other tourists have been seriously injured... over the past two years in male elephant rampages").

176. See King & Hassan, State of Emergency declared in Tunisia, www.latimes.com (7/5/2015) p. A5 ("but the June 26 attack on the idyllic seaside town of Sousse, which killed at least 38 people, most of them British vacationers, coupled with Islamic militants' assault

in March on a landmark museum in the capital, seemingly forced the government's hand"); Kirkpatrick, Tunisia Museum Attack Is Blow to Nation's Democratic Shift, www.nytimes.com (3/18/2015) ("Gunmen in military uniforms killed 19 people...in a midday attack of a museum in downtown Tunis...17 foreign visitors-including Polish, Italian, Spanish and German tourists").

177. In Arango, Tavernise & Yeginsu, *Victims in Istanbul Airport Attack Reflect City's International Character*, www.nytimes.com (6/29/2016) it was noted that "There were taxi drivers and a customs officer. And there was a Turkish couple who worked together, and died together, in the suicide attack Tuesday night at Istanbul Ataturk Airport that killed dozens of people and wounded more than two hundred...the death toll from the attack had risen to 41...At least 23 were from Turkey...The victims reflected the cosmopolitan and international character of Istanbul whose airport is among the world's busiest, a hub for tens of millions of passengers each year connecting to Europe, the Middle East, Africa and beyond".

In Callimachi, *Turkey, a Conduit for Fighters Joining ISIS, Begins to Feel Its Wrath*, www.nytimes.com (6/29/2016) it was noted that "When the bodies of Islamic State fighters are recovered on the Syrian battlefield, the passports found on them have often been stamped in Turkey, which thousands of recruits pass through on their way to join the terror group. Fighters who call relatives abroad often do so using Turkish cellphone numbers, and when they need cash, the head to the Western Union offices in southern Turkey".

In Akyol, *What Comes After the Istanbul Airport Attack?*, www.nytimes.com (6/29/2016) it was noted that "The assault on the airport is the latest in a series of horrible traumas in Turkey. In the past year, the country has endured almost a dozen major terrorist attacks. Some were the work of the Islamic State, which kills in the name of God; others were the work of the Kurdistan Workers' Party or P.K.K., which kills in the name of the people".

Cruise Ships Stay Away From Istanbul

In Sloan, *More cruise lines cancel Istanbul calls in wake of attack*, www.usatoday.com (6/30/2016) it was noted that "Several cruise lines including Celebrity and Windstar on Wednesday canceled ship visits to Istanbul for the rest of the year...Also canceling calls in Istanbul for the rest of the year was Cunard".

In Steinmetz, *Bomb exploded! Istanbul close to University main campus*, www.eturbonews.com (6/7/2016) it was noted that "While Turkey remains a safe tourism destination, the security situation and perception for the travel and tourism world remain tough. Today the sad count are 11 people dead".

In *Car bomb explosion injures seven in Istanbul*, www.eturbonews.com (5/13/2016) it was noted that "Six soldiers and a civilian have been wounded after an explosives-laden car blew up near a military base in Turkey's port city of Istanbul, the latest in a spate of bombings this year".

See also: *Terror Attack In Turkey*, www.eturbonews.com (10/10/2015) it was noted that "tourists See Many dead at Central train station terror attack in Ankara, Turkey and local travelers arriving and leaving from Ankara's Central Railway station Saturday morning had a horrifying experience when an alleged suicide bomber attacked outside the train station with two explosions at a road junction next to the train station"); Arango, *Deadly Ankara Attack Not Enough to Unify a Polarized Turkey*, www.nytimes.com (10/12/2015) ("two suicide bombers killed nearly 100 people").

See also: *Women Alert to Travel's Darker Side*, www.nytimes.com (5/23/2014) ("Ms. Sierra, a New Yorker and a first-time traveler abroad, disappeared...What happened to her is still a little unclear, but a Turkish man has reportedly confessed to killing her after supposedly trying to kiss her").

178. See *Haubner v. Abercrombie & Kent International, Inc.*, 351 Ill. App. 3d 112, 812 N.E. 2d 704, 285 Ill. Dec. 884 (2004)

(" On March 1, 1999 Haubner and Rockwell were abducted from their tent and murdered by suspected Interhamwe rebels while vacationing at the Gorilla Forest Camp in the Bwindi Impenetrable Forest National Park...The complaint alleged that the Illinois A&K defendant owned and operated the Gorilla Forest Camp where the decedents were lodging. The complaint further alleged that the Illinois A&K defendants were negligent in failing to warn the decedents about various acts of civil unrest and armed violence occurring along the Ugandan border and in failing to provide adequate security at the Gorilla Forest Camp ").

179. See *France charges Yemen Airways with manslaughter over 2009 crash*, ETN (1/29/2014) ("France has charged Yeminia Airways with manslaughter over a 2009 crash off the Comoros islands in which 152 people were killed...The 19-year old jet (A310) had been banned from French airspace").

180. See *Zahori & Sukhanyar, Taliban Attack Lakeside Resort Hotel Near Kabul, Taking Families Hostage*, www.nytimes.com (6/21/2012) ("

As families ate a late dinner at a popular lakeside resort hotel here on a warm summer night, at least three Taliban shot their way into the compound, entered the dining room and took an unknown number of hostages”).

181. See Nossiter, *Militants Seize Americans and Other Hostages in Algeria*, www.nytimes.com (1/16/2013) (“Algerian officials said at least two people, including a Briton, were killed in the assaults which began with a predawn ambush on a bus”).

182. See Steinmetz, *Dingo steals bag with cash and jewelry from British tourist*, www.eturbonews.com (12/17/2012) (“A dingo has been put down after stealing a British tourist’s bag containing cash and jewelry on a New South Wales beach...’It was established that this animal has been the subject of numerous complaints in the prior three months, jumping onto barbecues in the van park and approaching and stealing things from people”).

183. See *Thieves take \$350,000 from Australian hotel mogul*, ETN (6/19, 2014).

184. In Manik, Anand & Barry, *Bangladesh Attack Is New Evidence That ISIS Has Shifted Its Focus Beyond the Mideast*, www.nytimes.com (7/2/2016) it was noted that “Friday night’s assault on the Holey Artisan Bakery in the diplomatic district of Dhaka, in which at least 20 hostages and two police officers were killed, marks a scaling up of ambition and capacity for Bangladesh’s Islamist militancy...Among the dead...were nine Italians, seven Japanese, two Bangladeshis, one American and One Indian”.

185. In Steinmetz, *Terror in Cape Verde Islands: Airport closed, 10 dead*, www.eturbonews.com (4/26/2016) it was noted that “Media reports in the Cape Verde islands off West Africa say Cape Verde’s main airport and country’s airspace have been closed after 8 soldiers and 3 civilians were found dead at army barracks on Tuesday. The website of local newspaper A Semana says two of the dead civilians are from Spain”.

186. See *Visitors to Guanzhou, China: Be aware of violent and deadly knife attacks*, ETN (5/6/2014).

187. See *Tourist in Dubai court for drugging, robbing businessmen*, www.eturbonews.com (4/19/2015); Steinmetz, *Ukrainian tourist arrested at Dubai airport for assaulting police officer*, www.eturbonews.com (12/27/2012) (“A woman tourist insulted a female police officer and assaulted her with a water bottle while being detained at Dubai airport”).

188. See In Walsh & Fahim, *EgyptAir Flight Believed to Have Crashed at Sea; Egypt Cites Possible Terrorism*, www.nytimes.com (5/19/2016) it was noted that "The EgyptAir red-eye from Paris to Cairo, an Airbus A320 jetliner less than half full had just entered Egyptian airspace early Thursday (when it) plunged 28,000 feet, disappearing from the radar screens of Greek and Egyptian air traffic controllers...Egyptian officials suggested that terrorism was a more likely cause for the disappearance than mechanical failure...The loss of the flight was the second civilian aviation disaster to hit Egypt in the past seven months"; Walsh, *Egypt Sends Submersible in Search for EgyptAir Jet's Black Boxes*, www.nytimes.com (5/22/2016) it was noted that "A statement from the Islamic State on Saturday failed to mention the EgyptAir crash, confounding speculations that the group, which claimed to have been behind the bombing of a Russian airliner in Sinai in October, might have been responsible"; Mexico 'dissatisfied' with Egypt's failure to probe the killing of tourists, www.eturbonews.com (5/13/2016) it was noted that "Mexico has expressed its dissatisfaction with the Egyptian government's response to an aerial bombing last year in which eight Mexican tourists were killed".

See also: Schmidt, Consensus Grows for Bomb as Cause of Russian Jet Crash, Officials Say, www.nytimes.com (11/8/2015) it was noted that "there was a mounting consensus among American intelligence officials that a bomb brought down the Russian airliner jet that crashed last month in the Sinai Peninsula in Egypt, killing all 224 people aboard". See also: Castle, Britain, Concerned About Russian Crash, Halts Sinai Flights, www.nytimes.com (11/4/2014); 'Rescue flights' to fly stranded British tourists out of Sharm el Sheikh, www.eturbonews.com (11/5/2015); <http://www.eturbonews.com> Stack, *Egypt Security Forces Accidentally Kill Mexican Tourists*, www.nytimes.com (9/13/2015) ("Egyptian security forces opened fire on a caravan of tourist vehicles in the country's Western Desert late Sunday night, killing at least 12 people from Mexico injuring 10 others, among them Mexican tourists and their Egyptian tour guides, officials said...The security forces said that they had believed that the vehicles were being used to transport terrorists. The statement said the group had been driving in a restricted area where unauthorized access is banned"; Thomas & Kirkpatrick, *Egyptian Military Said to Fire on Mexican Tourists During Picnic*, www.nytimes.com (9/14/2015) ("The convoy of four sport utility vehicles full of Mexican tourists about three hours southwest of Cairo on a typical adventure trip through the White Desert...with the blessing of their police escort, and the apparent added security of an Apache military

helicopter buzzing on the horizon, the group pulled off for a picnic...Then the helicopter opened fire, killing at least a dozen people-including at least two Mexicans- while wounding a tourist police officer and at least nine others”);

See e.g.,

Third Circuit: *Hodes v. S.N.C. Achille Lauro ed Altri-Gestione*, 858 F. 2d 904 (3d Cir. 1988), cert. denied 480 U.S. 1001 (1989) (The Achille Lauro, Italian owned and flagged, was scheduled for an 11-day Mediterranean cruise, departing and returning to Genoa, Italy. While off the coast of Egypt, it was boarded and seized by Palestinian terrorists. The ships and its passengers were held hostage for three days. One passenger, an American citizen named Leon Klinghoffer, was murdered).

Second Circuit: *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione*, 739 F. Supp. 854 (S.D.N.Y. 1990), rev'd and remanded 937 F. 2d 44 (2d Cir. 1991), on remand 795 F. Supp. 112 (S.D.N.Y. 1992) (Leon Klinghoffer, an elderly, wheelchair-bound American citizen, was murdered by Palestinian terrorists when he was thrown overboard apparently after biting a hijacker).

See also: Two killed in Egyptian tourist resort bombing, www.eturbonews.com (3/2/2015); Terror attack on Luxor tourist site foiled, www.eturbonews.com (6/10/2015); Steinmetz, Bedouin tribesmen kidnap two American tourists in Sinai, www.eturbonews.com (7/19/2012); Steinmetz, Bedouin gunmen kidnap Brazilian tourists in Sinai, www.eturbonew.com (3/19/2012) (“Egypt’s security sources say that two Brazilian visitors traveling through Egypt’s Sinai Peninsula on Sunday have been abducted after a visit to an isolated mountain monastery”); Steinmetz, Kidnaped Korean tourists released in Egypt, www.eturbonew.com (2/13/2012) (“29 hours after they were kidnaped in Egypt’s Sinai peninsula, three Korean tourists have been safely released”); Steinmetz, Two US tourists kidnaped in Sinai released, www.eturbonew.com “officials secured the release of two female American tourists and their guide”).

189. See Linda, Ethiopian tourist abductions and attacks blamed on Eritrea, www.eturbonews.com (1/30/2012).

190. See Steinmetz, Fiji torture and beatings may put a damper on tourism, www.eturbonews.com (3/7/2013) (“The brutal beating and torture of prisoners in Fiji, captured on video, could prove a turn off for tourists”).

191. See Islamic terrorists target Israeli tourists in India, ETN

(19/22/2013); Steinmetz, Kidnappers set conditions for release of abducted Italian tourists, www.eturbonews.com (3/19/2012) ("New Delhi, India. The whereabouts of two Italian tourists kidnaped by Maoists from the Daringbadi area of Odisha's Kandhamal district remained unknown till Sunday evening").

192. In Hassan, Arango & Al-Jawoshy, *Bombing Kills More Than 140 in Baghdad*, www.nytimes.com (7/3/2016) it was noted that "As celebrations for the Muslim holy month of Ramadan stretched past midnight into Sunday in central Baghdad, where Iraqis had gathered to eat, shop and just be together, a minivan packed with explosives blew up and killed at least 143 people-the third mass slaughter across three countries in less than a week".

193. In Militant attack: 15 wounded in Jerusalem bus explosion, www.eturbonews.com (4/18/2016), it was noted that "The massive explosion occurred in Hebron Way, west Jerusalem, with police citing 'a militant attack' as the probably cause of the blast".

194. See e.g., *Dow v. Abercrombie & Kent*, 2000 U.S. Dist. LEXIS 7290 (N.D. Ill. 2000) (tourists on safari assaulted and robbed by bandits while camping in the Oloolo Escarpment in the Masai Mara reserve).

See also German tourist shot dead in Mombasa's Old Town, ETN (7/24/2014); Russian tourist murdered in Kenya, ETN (7/7/2014); Terrorism and Violence has escalated in Kenya with no end in sight, ETN (7/6/2014); Gettleman, Kenya's Future Clouds as Tensions Rise and Tourists Flee, www.nytimes.com (6/27/2014); Kushkush & Bilefsky, www.nytimes.com (6/17/2014) ("second lethal attack on coastal village...has left 57 people dead"); Struggling Kenya's tourism hit by fresh travel advisories, ETN (5/25/2014); Hundreds of British holidaymakers evacuated after terror threat, ETN (5/15/2014); Another blast hits Kenya near Kasarani Sports Complex killing at least two and injuring scores more, ETN (5/4/2014); Kenya Forces Said to Be Securing Mall After Long Standoff, www.nytimes.com (9/13/2013); Two grenade attacks in Mombasa compound worries for tourism sector, ETN (5/3/2014); Linda, Mass attack on Malindi Casino leaves 8 dead and several injured, www.eturbonews.com (3/29/2013) ("a local terrorist group...attacked an Italian-owned casino last night in the wee hours"); Linda, Harissa Hotel in Kenya scene of another Al Shabab attack, www.eturbonews.com (1/20/2013) ("The attackers...drew their weapons, separated local patrons from upcountry guests before starting to shoot their victims"); Steinmetz, Attack on British and Swiss Tourists in Kenya, www.eturbonews.com (11/7/2011) (" The attack took place north of Isiolo in an area with several game reserves that is also known for banditry"); Steinmetz,

Terror attack in Nairobi disco leaves 14 wounded, www.eturbonew.com (10/24/2011) ("A grenade exploded in a nightclub in the bustling centre of Kenyan capital Nairobi...the attack came a week after Kenya launched a cross-border operation against al Qaeda-linked al Shabaab militants in Southern Somalia after a wave of kidnaps of foreigners on Kenyan soil").

195. See *Simpson v. Socialist People Libyan Arab Jamahiriya*, 362 F. Supp. 2d 168 (D.C.D.C. 2005) (passengers held hostage were " informed that they would be shot if they attempted to leave ").

See also: Kirkpatrick, Before Dangers at Sea, African Migrants Face Perils of a Lawless Libya, www.nytimes.com (4/27/2015) ("Human trafficking from Libya across the Mediterranean was a \$170 million business last year"); France and Britain orders citizens in Libya to leave now, ETN (7/28/2014); Two dead, planes damaged, control tower hit by rocket in airport attack, ETN (7/15/2014).

196. See Steinmetz, American tourist robbed and raped in Malaysia, www.eturbonews.com (3/13/2013) ("A 25-year-old American tourist was robbed and raped by two men after being taken on a 80km ride in a taxi"); Steinmetz, Moroccan tourists robbed in Penang, www.eturbonews.com (1/4/2013) ("Three Moroccan tourists who had just arrived at the Penang International Airport here were given a horrifying ride when their taxi driver robbed them and left them in a oil palm estate").

197. See Steinmetz, How safe is Mali?, www.eturbonews.com (11/30/2011) ("Following the recent kidnaping of three tourists-one of which is a Dutchman-and the killing of a German in the town of Timbuktu in North Mali...How safe is Mali?"). See also: Schmitt, American Commander Details Al Qaeda's Strength in Mali, www.nytimes.com (12/3/2012) ("Al Qaeda's affiliate in North Africa is operating terrorist training camps in northern Mali and providing arms, explosives and financing to a militant Islamist organization in northern Nigeria, the top American military commander in Africa said on Monday. The affiliate, Al Qaeda in the Islamic Maghreb, has used the momentum gained since seizing control of the northern part of the impoverished country in March to increase recruiting across sub-Saharan Africa, the Middle East and Europe").

198. See Neo-Nazi group in Mongolia attacked tourists, www.eturbonews.com (4/5/2015) ("In Mongolia...several Chinese tourists were attacked by a Mongolian neo-Nazi group known as Khukh Mongol while traveling on the Burkhan Khaldun mountain").

199. See Mozambique: Rebel attacks ruining tourism, ETN (5/18/2014).

200. See Experts analyze terrorism bombing of Nigerian bus terminal, ETN (4/21/2014).

201. See In Hassan, Inayat & Masood, *Keen Pain in Pakistan Over Lives 'Shattered Into Pieces'*, www.nytimes.com (3/28/2016) it was noted that "Extremist groups have long made a campaign of attacking religious or ethnic minorities in Punjab. The attack on Sunday was claimed by Jamaat-e-Ahrar, a splinter group of the Pakistan Taliban, which said it was targeting Christians who had gathered in the park for Easter...Most of the victims were working-class or poorer. The attack came just days after the National Assembly adopted a resolution to recognize Easter and the Hindu festivals of Holi and Diwali, as public holidays, in what some here saw as a vital call for tolerance and others saw as offensive in a state officially built on Islam. That gesture, too, was marred by the bomber's strike".

See also: Two churches bombed during Sunday prayer service, www.eturbonews.com (3/15/2015); Suicide bomber attacked Pakistan-Zimbabwe cricket match, www.eturbonews.com (5/30/2015); Walsh, Assault on Pakistan Airport Signals Taliban's Reach and Resilience, www.nytimes.com (6/9/2014); Khan & Masood, A Deadly Week in Northwestern Pakistan Ends With a Car Bomb Blast, www.nytimes.com (9/29/2013); Steinmetz, Czech tourists kidnaped in Pakistan, www.eturbonews.com (3/13/2013) ("Unidentified gunmen...kidnaped two women tourists from the Czech Republic in Pakistan's insurgency-hit southwestern province of Balochistan"); Steinmetz, Swiss tourists claim they escaped from Taliban, www.eturbonew.com (3/19/2012) ("Two Swiss tourists have been found safe and well after an eight month ordeal as hostages of the Pakistani Taliban").

202. In Hubbard, *Suicide Bombings Hit 3 Cities in Saudi Arabia, One Near a Holy Site*, www.nytimes.com (7/4/2016) it was noted that "Bombings rocked three cities across Saudi Arabia on Monday, including near the Prophet's Mosque in the holy city of Medina... The blasts in Saudi Arabia followed a bloody week in which terrorists attacks caused mass casualties in the largest cities of three predominantly Muslim countries: Turkey, Bangladesh and Iraq".

203. In Steinmetz, *Hotel under attack: 15 dead*, www.eturbonews.com (6/25/2016) it was noted that "It's a scene of terror and death on Saturday. The Naso Hablod Hotel in Mogadishu, Somalia is a hotel known with a high degree of safety and comfort for business travelers and tourists...At least 15 people are dead and 25 others are injured as a result of Saturday's car bombing and gun attack at the hotel".

In Steinmetz, *Deadly attack on Mogadishu Hotel*, www.eturbonews.com (6/1/2016) it was noted that "At least 10 killed, 25 injured in Mogadishu hotel attack. We understand the attack on a Mogadishu hotel started with a car bomb and gunfire followed".

See also: Seven people killed, hostages held at Mogadishu hotel, www.eturbonews.com (3/27/2015).

204. See Geldenhuys, Crimes Against Tourists www.servamus.co.za (4/30/2008) ("The escalation of crime in South Africa has caused feelings of fear among local foreign tourists who visit holiday resorts...Some tourist attacks that have made news headlines are the following: On 24 March 2008, 14 tourists from Canada, Britain and the USA were robbed at gunpoint by three men of money, cameras and cellphones...On 24 January 2008 two German tourists were robbed in the Johannesburg City Centre. Three men forced open the windows of the vehicle the tourists were traveling in and stole passports, cameras...On 2 July 2005 a group of tourists...were attacked and held at knife point while on a hike just outside Port St. Johns...In 2000 a Polish honeymoon couple were brutally attacked at a look-out post at the Sterkfontein dam near Harrissmith. After murdering the groom, the criminals gang-raped the women on several occasions").

205. See Linda, Another robbery gone wrong kills tourist in Dar es Salaam, www.eturbonews.com (9/25/2012) ("A visiting medical doctor from Greece, walking along the Ali Hassan Mwinyi Road in the center of Dar es Salaam with a number of her colleagues on Sunday, saw a car drive up to her, and then arms stretched from the window, grabbing hold of her handbag, dragging her to her death when attempting to speed away").

206. In Steinmetz, *Crimes on Tourists: Don't trust the media in Thailand*, www.eturbonews.com (5/1/2016) it was noted "Thailand is known to be a world class travel and tourism destination with an image of peace, smiling people, white sandy beaches...A recent brutal assault on three British tourists during the Thai New Year celebration known as Songkran last month painted a very different picture".

See also: Songkran Thai New Year tourism season begins with a bomb attack today, www.eturbonews.com (4/11/2015); Steinmetz, Tourists canceling trips after 'Evil man from Krabi' video emerges, www.eturbonews.com (11/8/2012) ("Large numbers of tourists have cancelled their trips to Krabi after a video clip emerged as a sign of protest against provincial authorities who gave bail to a man accused of (beating and) raping a...27-year-old Dutch woman...in Ao Nang")...Another incident concerned teenagers attacking a tourist couple. The man was stabbed and wounded severely which his girlfriend barely escaped").

207. See King & Hassan, State of Emergency declared in Tunisia, www.latimes.com (7/5/2015) p. A5 ("but the June 26 attack on the idyllic seaside town of Sousse, which killed at least 38 people, most of them British vacationers, coupled with Islamic militants' assault

in March on a landmark museum in the capital, seemingly forced the government's hand"); Steinmetz, French politician: Violent Islamist mobs attack tourists in Tunisia, www.eturbonews.com ("Tunisia is falling prey to violent Islamist mobs, a Franco-Tunisian politician from the L:oire valley has warned, after he narrowly escaped a 'lynching' when he returned to his native town for a family holiday"); Gladstone, Anti-American Protests Flare Beyond the Mideast, www.nytimes.com (9/14/2012) ("Anti-American rage that began last week over a video insult spread to nearly 20 countries across the Middle East and beyond...The anger stretched from North Africa to South Asia and Indonesia").

208. In Arango, Tavernise & Yeginsu, *Victims in Istanbul Airport Attack Reflect City's International Character*, www.nytimes.com (6/29/2016) it was noted that "There were taxi drivers and a customs officer. And there was a Turkish couple who worked together, and died together, in the suicide attack Tuesday night at Istanbul Ataturk Airport that killed dozens of people and wounded more than two hundred...the death toll from the attack had risen to 41...At least 23 were from Turkey...The victims reflected the cosmopolitan and international character of Istanbul whose airport is among the world's busiest, a hub for tens of millions of passengers each year connecting to Europe, the Middle East, Africa and beyond".

In Callimachi, *Turkey, a Conduit for Fighters Joining ISIS, Begins to Feel Its Wrath*, www.nytimes.com (6/29/2016) it was noted that "When the bodies of Islamic State fighters are recovered on the Syrian battlefield, the passports found on them have often been stamped in Turkey, which thousands of recruits pass through on their way to join the terror group. Fighters who call relatives abroad often do so using Turkish cellphone numbers, and when they need cash, the head to the Western Union offices in southern Turkey".

In Akyol, *What Comes After the Istanbul Airport Attack?*, www.nytimes.com (6/29/2016) it was noted that "The assault on the airport is the latest in a series of horrible traumas in Turkey. In the past year, the country has endured almost a dozen major terrorist attacks. Some were the work of the Islamic State, which kills in the name of God; others were the work of the Kurdistan Workers' Party or P.K.K., which kills in the name of the people".

Cruise Ships Stay From Istanbul

In Sloan, *More cruise lines cancel Istanbul calls in wake of attack*, www.usatoday.com (6/30/2016) it was noted that "Several cruise lines including Celebrity and Windstar on Wednesday canceled

ship visits to Istanbul for the rest of the year...Also canceling calls in Istanbul for the rest of the year was Cunard".

In Steinmetz, *Bomb exploded! Istanbul close to University main campus*, www.eturbonews.com (6/7/2016) it was noted that "While Turkey remains a safe tourism destination, the security situation and perception for the travel and tourism world remain tough. Today the sad count are 11 people dead".

In *Car bomb explosion injures seven in Istanbul*, www.eturbonews.com (5/13/2016) it was noted that "Six soldiers and a civilian have been wounded after an explosives-laden car blew up near a military base in Turkey's port city of Istanbul, the latest in a spate of bombings this year".

See also: *Terror Attack In Turkey*, www.eturbonews.com (10/10/2015) it was noted that "tourists See Many dead at Central train station terror attack in Ankara, Turkey and local travelers arriving and leaving from Ankara's Central Railway station Saturday morning had a horrifying experience when an alleged suicide bomber attacked outside the train station with two explosions at a road junction next to the train station"); Arango, *Deadly Ankara Attack Not Enough to Unify a Polarized Turkey*, www.nytimes.com (10/12/2015) ("two suicide bombers killed nearly 100 people").

See also: *Steinmetz, Istanbul tourist attractions attacked by heavily-armed gunmen*, www.eturbonews.com (12/1/2011).

209. See *Fear of terrorism in Central Asia*, ETN (12/10/2013) ("The ultimate target of Islamists is to launch an Islamic code of life on the patron of Saudi Arabia in the region including Pakistan, China, Afghanistan, Tajikistan, Uzbekistan, Turkmenistan, Kazakhstan and Russia").

210. See *Steinmetz, Vietnamese authorities: Ha Long Bay tourists being ripped off*, www.eturbinews.com (9/25/2012) ("Tour boats in Ha Long Bay...have been banned from stopping at floating fishing villages during tour...the move was aimed at preventing tourist from being disturbed, overcharged or even ripped off which has become a common occurrence at private floating fishing houses").

211. See *Naghiu v. Inter-Continental Hotels Group, Inc.*, 165 F.R.D. 413 (D. Del. 1996) (during plaintiff's " stay as a guest of defendant's hotel in Zaire, Africa in March 1993, he was attacked in his room, causing him to suffer personal bodily injury and a loss of \$146,000 in property ").

212. See Linda, Tourists in Zanzibar advised to stay in resorts and use extreme caution, www.eturbonews.com (5/31/2012) (two Christian churches burned to ground by mobs of rioters).

213. See Steinmetz, Swiss tourist arrested in Zimbabwe for 'insulting' Mugabe, www.eturbonews.com (9/18/2012) ("a Swiss tourist was arrested at the border of insulting the President...Insulting Mugabe is an offense under sweeping security laws and prosecutions are common...A Zimbabwean carpenter was arrested in February after he questioned whether Mugabe still had the strength to blow up balloons at his 88th birthday").

214.184. See Klein, " After Attack, Cruise Ships Rethink Security ", Practical Traveler, N.Y. Times Sunday Travel Section, at p. 6 (December 4, 2005) (" Now the armed attack on the Seaborne Spirit off Somalia has the cruise industry checking its bearings on security. The Spirit was carrying 151 passengers and 161 crew members when it was fired upon at dawn from two small vessels off the Somalia coast ").

215. See Raped by an Uber driver in Sydney—a case of misleading body language?, www.eturbonews.com (10/22/2015) ("Uber issued a statement after a British tourist visiting Sydney, Australia was allegedly raped by a Uber driver. The Uber statement says: 'Our thoughts remain with the victim. We will do everything we can to work with police'...The Uber driver was charged with allegedly raping the young British tourist after he offered to drive her home from a Sydney bar").

216. Women Alert to Travel's Darker Side, www.nytimes.com (5/23/2014) ("A Norwegian woman was raped (then jailed, for having 'unlawful sex') in Dubai; she and the man accused in her attack were eventually pardoned last summer").

217. See Women Alert to Travel's Darker Side, www.nytimes.com (5/23/2014) ("a British woman said she was raped by a security guard in a luxury hotel in Egypt").

218. See Barry, In Indian Rapists' Neighborhood, Smoldering Anger and Code of Silence, www.nytimes.com (3/8/2015); Barry, Man Convicted of Rape in Delhi Blames Victim, www.nytimes.com (3/3/2015); Women Alert to Travel's Darker Side, www.nytimes.com (5/23/2014) ("On Jan. 15, a Danish woman, 51, reported being raped at knife point in New Delhi. She said she had approached the seven or eight men who attacked her to ask for directions to her hotel"); Steinmetz, Female tourist jumps from hotel balcony to escape sexual assault in India, www.eturbonews.com (March 19, 2013) ("A British woman has been injured

after jumping from a hotel balcony to escape from alleged harassment in Agra, India...

The (British) Foreign Office recently updated its advice for women visiting India...they should use caution and avoid traveling on public transport, or in taxis or auto-rickshaws especially at night...Following an alleged gang rape of a Swiss tourist in Madhya Pradesh state last week, police arrested six people"); New Indian law against rape to include death penalty, www.eturbonews.com (2/5/2013) ("The new law against rape in India will help to control ever increasing trend of rapes").

219. See Women Alert to Travel's Darker Side, www.nytimes.com (5/23/2014) ("An American tourist was raped in a store in Israel last June").

220. See Steinmetz, American tourist robbed and raped in Malaysia, www.eturbonews.com (3/13/2013) ("A 25-year-old American tourist was robbed and raped by two men after being taken on a 80km ride in a taxi").

221. See 71 year old Canadian Tourist raped local boy in Nepal, www.eturbonews.com (3/2/2015).

222. See Steinmetz, Tourists canceling trips after 'Evil man from Krabi' video emerges, www.eturbonews.com (11/8/2012) ("Large numbers of tourists have cancelled their trips to Krabi after a video clip emerged as a sign of protest against provincial authorities who gave bail to a man accused of (beating and) raping a...27-year-old Dutch woman...in Ao Nang").

223. See e.g., Kidnaped Chinese tourist and Filipino worker freed in Malaysia, ETN (5/30/2014); Cost of maritime piracy has fallen but the plight of hostages remains of concern, ETN (5/8/2014) (discussion of the costs incurred from piracy off the coast of Somalia and in the Gulf of Guinea); Nossiter, Nigerian Islamist Leader Threatens to Sell Kidnaped Girls, www.nytimes.com (5/5/2014) ("The Nigerian Islamist group Boko Haram...claimed responsibility for the kidnaping of hundreds of school girls nearly three weeks ago"); Officials: Kidnaped tourist taken to jungle stronghold in southern Philippines, ETN (4/26/2014).

224. See Steinmetz, 24 Tourists rescued after falling into river in China, www.eturbonews.com (5/2/2013) ("A total of 24 tourists have been rescued after they fell into a river from a tilted suspension bridge at a popular town in central China").

225. See Australian visitor dies while snorkeling in Fiji, ETN

(5/26/2014).

226. See *Irwin v. World Wildlife Fund, Inc.*, 448 F. Supp. 2d 29 (D.C.D.C. 2006)(" Plaintiffs allege that in June of 2002, Missa arranged, through the Gabonese entity Cecotour, for a trip in a small wooden boat on a lagoon adjacent to Gamba for himself, Irwin and two others...a second boat...collided with the left side of plaintiffs' boat...The bow of the oncoming boat struck Ms. Irwin in the face, dislodging her orbital ridge and shattering her face. In addition, the bow of the oncoming boat hit metal supports in the boat Ms. Irwin occupied, and the metal supports impaled Ms. Irwin's skull and tattooed her skin...Ms. Irwin's injuries are long-term, severe, painful and extensive and they include: loss of sensation and motor function, complete loss of smell and diminished sense of taste, diminished cognitive skills, short-term and working memory loss, shattered sinuses...diminished ability to perceive visual depth ").

227. See *Ogawa v. U.S. Explore & Study, Inc.*, 2013 WL 2256220 (D. Guam 2013)(tourist dives into basin, hits head and is rendered quadriplegic; plaintiff's liability theories included "failing to provide appropriate warnings and instructions at the beginning of the tour and at the spot where the tour participants were encouraged to dive into the waterfall basin, that all entries into the water must only be feet first"; summary judgment for defendants denied).

228. See *Nowak v. Tak How Inc. Ltd.*, 1995 WL 521874 (D. Mass. 1995)(guest drowns in hotel pool in Hong Kong).

229. See *Lee v. Choice Hotels International, Inc.*, 2006 WL 1148755 (Del. Super. 2006)(" the Lees...residents of Seoul, South Korea, embarked upon a vacation tour of Southeast Asia. The tour was arranged by a South Korean travel agency, Freedom Travel. The tour was to include an afternoon and one night at the Quality Resort Waterfront City, Batam, Indonesia...Of particular interest to the Lees was the large free form pool with a sunken bar which was connected to the children's pool. The resort was advertised as family friendly...The boys ultimately entered the pool behind their parents but became separated...Bo Hyun found (his son) at the bottom of the large pool unconscious. No lifeguard was seen on duty during this period of time and no other staff assisted in finding Chan Young (who) suffered brain damage and is in a permanent vegetative state ").

230. See Steinmetz, Despite new regulations drunken tubing goes on in Laos, www.eturbonews.com (9/16/2012)("After a spate of tourist deaths on the Nam Song River in Vang Vieng, Laos, authorities from the capital have closed more than two dozen of the riverside and

late-night island bars that are pit-stops for tubing tourists...floating down the Nam Song River in a large tractor-tyre innertube, stopping at the legion of jerry-built bars on the waterside for free shots of drugs, has become a popular pastime").

231. See *Furuoka v. Dai-Chi Hotel*, 2002 N. Mar. I. LEXIS 8 (2002) (swimming pool accident at hotel in the Mariana Islands; " It is undisputed that the hotel did not have a lifeguard on duty and that [local law] required a lifeguard to be provided by the hotel ").

232. See *Addy v. Club Med*, 1997 WL 30205 (E.D. La. 1997) (couple honeymoon at Club Med facility in Tahiti whereat they were injured during scuba excursion).

233. See *Sun v. Taipei Economic*, 2002 WL 464512 (9th Cir. 2002) (student drowns at Little Bay beach; failure to warn of " beach was dangerous because it was exposed to severe undertow, high waves and surf "); *Sun v. Taiwan*, 1998 WL 738002 (N.D. Cal. 1998), rev'd 201 F. 3d 1105 (9th Cir. 2000) (tourist drowns during recreational visit to Ken-Ting National Park).

234. See Steinmetz, Korean tourists injured in speedboat crash off Pattaya, www.eturbonews.com (4/24/2013); Steinmetz, Korean tourist drowns in Phuket, www.eturbonews.com (9/30/2012) ("A 29-year-old Korean tourist on holiday in Phuket has died while snorkeling off Phi Phi Island").

235. See Tourist falls to his death while scaling crane in Brisbane, www.eturbonews.com (6/30/2015).

236. See *Lachina v. Pacific Best Tours, Inc.*, 1996 WL 51193 (S.D.N.Y. 1996) (tour participant falls into manhole at Chinese airport during tour).

237. See e.g.,

First Circuit: *Paredes v. Princess Cruises, Inc.*, 1 F. Supp. 2d 87 (D. Mass. 1998) (cruise passenger injured during shore excursion in tour van accident in Egypt).

Eleventh Circuit: *Sachs v. TWA Getaway Vacations, Inc.*, 125 F. Supp. 2d 1368 (S.D. Fla. 2000) (tourist slips and falls disembarking tour bus in Egypt; " Defendant further asserts that it did not act negligently in selecting Destination Egypt as an independent contractor responsible for the provision of ground-handling services for its ` Best of Egypt ` tour. Defendant claims that it entered into a contract with Destination Egypt based upon [its] ` reputation in the travel industry as one of the largest and best ground service providers in Egypt `...since January 1994, approximately, 4,000 individuals have participated in the ` Best of Egypt ` tour and that

during that time period Defendant has never received any reports that any of the 4,000 tour participants had any problems with boarding or disembarking from any of the motorcoaches provided by Destination Egypt ").

State Law:

California: Sanders v. Nabila Tours & Cruises, No. A079884 (Cal. App. 1st Dept May 1, 1998)(tourist injured during tour of Catacombs Hala in Egypt).

New Jersey: Slotnick v. Club ABC Tours, Inc., 2013 WL 830865 (N.J. Super. L. 2013)(slip and fall during tour of a cave; liability theories of tour operators and travel agents for torts of independent contractors).

New York: Elsis v. TWA, 1989 N.Y. Misc. LEXIS 899 (N.Y. Sup. 1989(Nile cruise boat burns to the waterline requiring passengers to jump into the river leaving their possessions in the burning boat; " defendants undertook a duty to provide a cruise ship with expected safety features such as life boats and preservers ").

238. See Lavine v. General Mills, Inc., 519 F. Supp. 332 (N.D. Ga. 1981)(tour participant slips and falls on slippery rock in Fiji Islands).

239. See Brasher, " Hong Kong Tourism Battered by Outbreak ", N.Y. Times Sunday Travel Section, p. 4 (April 13, 2003)(The skyscrapers and the verdant hills ringing one of the world's loveliest natural harbors are still here, but most of the tourists have been scared off by an outbreak of the new and deadly disease called SARS, for severe acute respiratory syndrome ").

240. See Carney v. Singapore Airlines, 1996 WL 598667 (D. Ariz. 1996)(tourist falls into steaming hot liquid in volcanic sulphur pit in Indonesia).

241. See Fosman, The Law of the Tourist's Country or the Forum Law when awarding Damages?, Travel Law Journal, Issue 2, p. 47 (1995) ("The suit was filed by the parents of a 17 year old American, John Cohen, who suffered injuries in a fall while touring Israel, when he was taken together with a group of youngsters by the Tour Guide in the Golan Heights on a path explicitly marked 'forbidden' falling deeply into a canyon and suffering brain damage almost complete(ly) paralyzed and unable to speak...the (Israeli Supreme Court) reduced damages (from \$6,863,585.42) to \$4,137,037.77 (in accordance with New York State standards for compensatory damages including loss of future earnings and reduced pain and suffering damages from "\$250,000 to \$60,000-which according to the Court is more in (line) with the Israeli Standards...set by Israeli Courts for its inhabitants").

242. See *Walton v. Fujitsa Tourist Enterprises*, 380 N.W. 2d 198 (Minn. App. 1986)(tourist slips and falls at Japanese hotel).

243. See *Slotnik v. Club ABC Tours, Inc.*, 2012 N.J. LEXIS 194 (N.J. Super. 2012)(slip and fall during tour of Jordan).

244. See *Ross v. Trans National Travel*, 1990 WL 79229 (D. Mass. 1990)(tourist purchased safari tour of Kenya U.S. based tour operator through U.C.L.A. Alumni Association and during safari injures back and sued U.S. based tour operator and Kenyan safari operator).

245. See *Taniguchi v. Kan Pacific Saipan, Ltd.*, 132 S. Ct. 1997 (2012)(“Kouichi Taniguchi, a professional baseball player in Japan...was injured when his leg broke through a wooden deck during a tour of (a resort located in the Northern Mariana Islands owned by Kan Pacific Saipan, Ltd.)”).

246. See *Larsen v. Hyatt International Corporation*, 2011 WL 6937366 (Guam Sup. 2011)(a Guam resident “sprained his ankle while walking off the driveway of the Hyatt Resort and Casino in Manila, Philippines”; motion by defendants U.S. Hyatt International Corporation and Hotel Hotels Corporation to dismiss for lack of personal jurisdiction denied pending limited jurisdictional discovery).

247. See 1000 pilgrims evacuated from burning Mecca hotel, www.eturbonews.com (9/15/2015)(“About 1,000 Asian pilgrims were evacuated early on Thursday from their hotel in the Saudi city of Mecca, hit by a fire that injured two people...The hajj has been almost incident-free for the past decade, but at least 107 people, including some from Asia, died on Friday when a construction crane collapsed on Mecca Grand Mosque”).

248. See *Connolly v. Samuelson*, 671 F. Supp. 1312 (D. Kan. 1987)(tour participant injured during walking tour of Saba Saba Reserve in South Africa).

249. See *Lhotka v. Geographic Expeditions, Inc.*, 181 Cal. App. 4th 816, 104 Cal. Rptr. 844 (2010), cert denied 131 S. Ct. 288(2010)(37 year old decedent “died of an altitude-related illness while on a GeoEx expedition up Mount Kilimanjaro”).

See also: *Steinmetz*, British tourist dies after climbing Mount Kilimanjaro, www.eturbonews.com (2/10/2012)(“A British man collapsed and died just a few minutes after reaching Africa’s highest peak, Mount Kilimanjaro, the climb which he wished to fulfill during his lifetime...trip organized by Team Kilimanjaro, a company which

specializes in climbing holidays on the mountain”).

250. See Korean tourists hurt in Turkish hot-air balloon crash, www.etrubonews.com (3/11/2015).

251. See *Isham v. Pacific Far East Line, Inc.*, 476 F. 2d 835 (9th Cir. 1973) (passenger broke both wrists in accident while being transported ashore to Wake Island).

252. See Italian tourist viciously mauled by Rottweiler, www.eturbonews.com (7/12/2015); Crocodile bites golfer at Australian tourist resort, www.eturbonews.com (4/14/2015); Tourists warned about deadly crocodile attacks in Australia, ETN (6/8/2014); Steinmetz, Tourists spend 22 hours trapped up a tree hiding from crocodiles, www.eturbonews.com (1/21/2013) (“Four Dutchmen who spent a terrifying day trapped up a tree hiding from a crocodile finally rescued yesterday-luckily with only bites from mosquitoes and sand flies”); Steinmetz, British tourist wrestles 6.5 foot shark away from paddling children, www.eturbonews.com (1/20/2013) (“British tourist came to the rescue of a group of paddling toddlers as he wrestled a shark heading towards them”).

253. See *MacLachlin v. Marriott Corporation*, New York Law Journal, January 18, 1994, p. 29, col. 2 (N.Y. Sup. 1994) (“ Plaintiff and a friend...Yorke booked the Q8 Marriott Vacation Tour under Marriott’s Honored Guest’s Awards Program (HGA) which, inter alia, included air-fare to Egypt and a stay at the Cairo Marriott Hotel & Casino (the Cairo Marriott). Plaintiff and Yorke claim that upon arriving at the Cairo Marriott, they arranged to take various tours through the Marriott tour desk. Plaintiff alleges that on the morning of August 25, 1991, Abou Aziza (Aziza), the Cairo Marriott bell captain, stated that he could arrange a tour of the Sound and Light Show at the Pyramids that evening, to which the plaintiff and her companion agreed. Plaintiff contends that Aziza subsequently drove her and Yorke to a stable and informed them that a horse or camel were the only means available to reach the Pyramids. Plaintiff maintains that she explained to Aziza that she was afraid to ride a camel but was assured by Aziza that the camel and the camel path were ‘ perfectly safe ’ and that a trained handler would guide the camel along the route. Plaintiff alleges that her camel was subsequently tied to Yorke’s camel and they were led down the trail by a young boy (the Camel Guide), a practice plaintiff avers was not in keeping with Egyptian law which requires one adult handler per camel. Plaintiffs claim that the path she was taken on was rocky, unlevel and strewn with debris, and that the Camel Guide continually beat the legs of both camels to prod them along. At some point, plaintiff avers that her camel stumbled and tripped, ‘ probably on

some rocks or debris ` and with a loud cry the camel threw her into the air. Plaintiff landed on the rocky road where she remained until Aziza assisted her into his car and drove to the Pyramid Hospital. The fall allegedly caused plaintiff to break six ribs and fracture her pelvis...Even assuming that Aziza arranged the Pyramid Tour on his own accord, the allegations of plaintiff concerning how she was offered and subsequently booked the camel trip by the Bell Captain in the lobby of the Caro Marriott and subsequently driven to the camel stable in what appears to be an official Cairo Marriott car, in addition to Marriott's brochures which promoted the Q8 vacation and lauded the preferential treatment plaintiff and her companion would receive, raise factual issues as to whether defendant should be estopped from disclaiming liability for the negligence of an independent contractor...and as to whether that contractor's negligence was the proximate cause of plaintiff's injuries. Contrary to defendant's contention, the question is not whether plaintiff was a sophisticated traveler and was at fault, but, rather was the employee of Marriott's subsidiary negligent in the performance of his official duties and whether such duties included the planning, arranging and booking of the ill-fated camel ride to the Pyramids "). See also: Steinmetz, EgyptAir passenger bitten by a snake on plane, www.eturbonews.com (12/3/2012) ("An EgyptAir pilot made an emergency landing...after a snake bit a Jordanian passenger. The snake was apparently concealed in his luggage").

254. See *Hall v. Voyagers International Tours, Inc.*, 2007 WL 2088878 (N.D.N.Y. 2007)(" This action stems from the death of Donald Hall...when he was trampled by a wild elephant during a photographic safari operated by Wilderness Safaris Namibia in Namibia...There is evidence in the record that, if believed by a jury, would support a determination of direct negligence on the part of Voyagers...there is evidence that would support a determination that Voyagers was vicariously liable for the conduct of Wilderness under a theory of apparent agency or agency by estoppel ").

255. See *Tourist killed in brutal shark attack (off coast of New Caledonia)*, www.eturbonews.com (5/11/2015).

256. See Lerner, *Lion mauls Rye woman in S. Africa*, *The Journal News*, June 4, 2015, p. 1 ("A Rye native mauled to death by a lion in South Africa was about to start a two-week volunteer stint on a wildlife preserve dedicating to saving rhinoceroses and elephants...Kate Chapell was killed Monday when a lion dragged her from her car as she was riding through a safari park near Johannesburg...Lt. Col. Lungelo Dlamini, a spokesman for the police (said) 'The allegation is that while she was driving, the window was open and the lion

attacked'. Simpson, the park spokesman, said opening windows is against park policy, and numerous signs-plus leaflets given to visitors-reinforce those rules. About 180,000 tourists visit the park every year").

See also: Steinmetz, German tourist badly injured by white rhino in SA Park, www.eturbonews.com (11/15/2012) ("A white rhino badly injured one German tourist when it charged a group of visitors on a morning walk in South Africa's famous Kruger National Park").
257. See Australian tourists injured in wasp attack, ETN (7/28/2014).

258. See Steinmetz, German tourist killed while elephant trekking in Krabi, www.eturbonews.com (12/1/2011) ("A German woman has been killed in controversial circumstances in an elephant trekking tragedy in the [province of Krabi not far from Phuket...One tourist has been killed and two other tourists have been seriously injured...over the past two years in male elephant rampages").

259. See Chinese tourist killed in Tasmanian crash, ETN (4/18/2014).

260. Steinmetz, Investigators trying to determine cause of Lion Air Crash, www.eturbonews.com (4/16/2013) ("All 108 people on board survived Saturday's crash, which has renewed questions about how safe it is to fly in Indonesia...The plane snapped in half as it crashed and came to rest in shallow water near the airport").

261. See Passenger train crashes into a tour bus leaving 9 dead, 50 injured, ETN (8/1/2014).

262. See Wong, *Hundreds Missing After Chinese Cruise Ship Sinks on Yangtze*, www.nytimes.com (6/1/2015) it was noted that "Most of the 458 people aboard a chartered cruise ship in China were still missing on Tuesday morning, more than a dozen hours after the vessel sank during a torrential rainstorm along the central Yangtze River...Just 13 people had been rescued, local news media reported, making this perhaps the worst passenger maritime disaster in East Asia since the sinking of the South Korean ferry Sewol last year. The water where the boat sank is about 50 feet deep. Rescuers could hear the sounds of people trapped inside...Most of the passengers were 50 to 80 years old and had been traveling on a group tour...The ship capsized, with part of the hull above the surface of the water".

See e.g.,

Second Circuit: *Barkanic v. General Administrator of Civil Aviation*, 923 F. 2d 957 (2d Cir. 1991) (" On January 18, 1985, Peter Barkanic and Donald Fox, citizens of the District of Columbia and

New Hampshire, respectively, were killed in the crash of a Chinese plane en route from Nanking to Beijing, China...(liability limited to \$20,000 applying Chinese law; Warsaw and Montreal Conventions do not apply to intra-country air transportation).

Foreign Law:

Great Britain: *Wong Mee Wan v. Kwan Kin Travel Services Ltd.*, 4 All. ER 745 (1995) (Hong Kong tourist drowns as a result of speedboat accident crossing a lake in China).

See also: www.eturbonews.com (11/5/2012) (three Japanese tourists dead after being stranded overnight on the Great Wall); Santora, Two Americans Are Buried a Year After a Train Crash in China, www.nytimes.com (9/1/2012) ("A year ago Cao Erxing and his wife, Chen Zengrong, both 56, were killed in a high speed train crash in China...which left 40 people dead and 191 passengers injured in July 2011. The accident rattled the Chinese government and raised questions about the safety of the nation's high-speed rail system"); 51 Dead in China Travel Accidents, www.voanews.com (May 22, 2010) (bus and railroad accidents kill 51 persons and injure 71 other rail passengers).

263. See At least 60 dead in Congo train crash, ETN (4/24/2014)

264. See e.g.,

Eleventh Circuit: *Sachs v. TWA Getaway Vacations, Inc.*, 125 F. Supp. 2d 1368 (S.D. Fla. 2000) (tour participant injured disembarking tour bus in Egypt).

State Law:

California: *Goldner v. Abercrombie & Kent International, Inc.* (Cal. Super. Ct., Los Angeles Co., June 1, 1998, No. BC 183207) slip op. (granting motion to compel arbitration and stating case; plaintiff rendered paraplegic in slipping of vehicle during tour in Western Desert of Egypt).

New York: *Elses v. TWA*, 22 CCH Aviation Cases 17,806 (N.Y. Sup. 1989) (tour participants on Nile river boat cruise forced to jump into river when boat burns to the waterline; tour operator may be liable for failure to detect obvious defects in ship's safety).

See also: Russian tourists injured in bus crash in Egypt, ETN (5/7/2014).

265. See e.g.,

Ninth Circuit: *Rollins v. Maui Dreams Dive Company*, 2010 WL 4386755 (D. Hawaii 2010) ("while on a shark dive in Fiji she suffered severe injuries to her hand due to a faulty ladder").

State Law:

New York: *Braka v. Travel Assistance International*, 7 Misc. 3d 1019 (N.Y. Sup. 2005) (" plaintiff and his wife [on an extended

honeymoon] were seriously injured in a car accident while vacationing in Fiji. Upon learning of the accident, plaintiff's parents flew to Fiji...there was a determination made that plaintiff was not receiving adequate medical treatment and, therefore, he needed to be transported via air ambulance back to the United States...parents paid for the transportation at a cost of approximately \$350,000 ").

266. See *Chan v. Society Expeditions, Inc.*, 123 F. 3d 1287 (9th Cir. 1998), cert. denied 118 S. Ct. 906 (1998)(plaintiffs purchased a cruise and boarded ship in Tahiti and the " next day passengers were ferried in inflatable raft called a Zodiac to Makatea, a coral atoll located in French Polynesia " during which the Zodiac capsized drowning the driver and one passenger and severely injuring the plaintiffs).

267. See *Irwin v. World Wildlife Fund, Inc.*, 448 F. Supp. 2d 29 (D.C.D.C. 2006)(plaintiffs injured in boat collision in Gabon)

268. See *Auster v. Ghana Airways, Ltd.*, 514 F. 3d 44 (D.C. Cir. 2008)(passengers injured when Ghana Airways flight crashed while flying between two cities in Ghana).

269. See Indian High Speed Passenger train under deadly terror attack, ETN (6/25/2014); India travel alert: Another 11 tourists dead at fatal bus accident, ETN (6/17/2014); Indian passenger train ripped by deadly bomb attack, ETN (5/1/2014).

270. See also: Steinmetz, German tourists killed in Kenyan plane crash, www.eturbonews.com (8/23/2012) ("Four people dies when a small passenger plane crashed on the runway in Kenya's renowned Masai Mara national park...There were 11 foreign tourists on board of the aircraft: five Germans, two Americans and two Czechs. Two Kenyan pilots and two German tourists were killed").

271. See Accident involving tourists: High-speed ferry HongKong-Macau, ETN (6/13/2014)(high speed ferry slams into breakwater in Macau injuring 57 passengers).

272. See British tourist killed in Malaysia bus crash, ETN (4/20/2014).

273. See *Winter v. I.C. Holidays, Inc.*, New York Law Journal, Jan. 9, 1992, p. 23, col. 4 (N.Y. Sup. 1992)(tour bus accident).

274. See Searcey, Nossiter, Gali & Sengupta, Hotel Attack in Mali Reverses Gains in Flight Against Extremism, ("With its marble floors, open atrium and lipstick-red lounge, the Radisson BLU Hotel served

as a lifeline to the world, a gathering place where diplomats, contractors and others doing business in Mali, one of the poorest countries on earth, could all be found. Now, bullet holes pockmark the walls and blood is pooled on stairs...(the Radisson Blu is the site of a massacre in which terrorists killed 19 people").<http://www.nytimes.com>

See also: 2014 Mali Air Algerie MD-83 crash: Pilot was warned, www.eturbonews.com (4/4/2015) ("France's BEA crash investigation agency, which is helping Mali to investigate the crash that killed 116 people").

275. See *Davies v. General Tours, Inc.*, 1999 WL 712917 (Conn. Sup. 1999) (tour participant injured in tour bus accident in Morocco).

See also: Passenger bus crash: 31 young athletes dead, www.eturbonews.com (4/10/2015).

276. See *See Myanmar ferry accident kills 21*, www.eturbonews.com (3/14/2015) ("A passenger ferry has sunk off the coast of western Myanmar, leaving at least 21 people dead and 26 missing"); Steinmetz, *Passenger Jet with foreign tourists crash-landed*, www.eturbonews.com (12/25/2012) ("A Myanmar passenger jet packed with foreign tourists crash-landed and burst into flames...killing two people and injuring 11 others").

277. See Steinmetz, *19 dead in plane crash near Kathmandu*, www.eturbonews.com (9/27/2012) ("Sita Air Dornier aircraft, which was carrying 16 passengers and three crew members, caught fire and crashed on Friday morning near Kathmandu airport. All 19 people...reportedly have died in the crash...the plane was heading to the city of Likla-a transit hub for the tourists and mountain climbers heading for Mount Everest").

278. See Steinmetz, *NZ police wants tourist warned after visitor killed in car crash*, www.eturbonews.com (1/6/2013) ("A 61 year old Israeli woman died and two others were taken to Southland Hospital after their rented Toyota Corolla left the road and crashed into a tree"); Steinmetz, *Chinese tourist impaled by fence pole in NZ bus crash*, www.eturbonews.com (1/14/2013) ("A 17 year old tourist was been impaled in the chest by a fence post after the bus he was a passenger in crashes...near Roturia").

279. See *Philippines deadly ferry accident with 176 tourists and local passengers on board*, www.eturbonews.com (7/2/2015) ("Kim Nirvana, a ferry heading from the central city of Ormoc to the island of Manotes in the Philippines, capsized with 173 tourists and passengers on board, killing at least 16 according to the Coast Guard stationed

in Ormac". And in Antonio, Whatever Happened to...? Justice eludes 'Princess of the Stars' victims, <http://newsinfo.inquirer.net> (6/23/2015) it was noted that "The struggle for justice for hundreds of victims of the ill-fated *MV Princess of the Stars* is far from over. On June 21, 2008, the 23,824-ton ferry sailed from Manila...on a 22-hour trip to Cebu City, carrying 851 passengers ...when it ran into an approaching typhoon and keeled over. Only 32 survived the sinking, one of the Philippine's worst sea tragedies. The remains of 300 were later recovered, but another 400 remained missing...A total of 135 cases have been lodged in Manila and Cebu by families of the victims against Sulpicio Lines, seeking damages worth P1.04 billion for negligence and breach of contract of carriage...But no one has been held criminally liable for the disaster"; Two Chinese diplomats killed, one wounded in restaurant attack in Philippines, www.eturbonews.com (10/21/2015) ("China's consul general in the Philippines' second biggest city was wounded and two of his staff members were killed on Wednesday during a lunchtime gun attack at a restaurant, police said").

280. See Steinmetz, Two dead, dozens injured in South Africa tourist boat disaster, www.eturbonews.com (10/14/2012) ("A Brit is reported to be among the dead after a seal-watching boat carrying 41 passengers capsized in rough waters of Cape Town...The locally-owned motorized boat (carried) regular whale, dolphin and seal watching tours").

281. See S Korea court gives captain life sentence for murder, www.bbc.com (4/28/2015) it was noted that "An appeals court has sentenced the South Korean captain of the Sewol ferry to life in prison on a murder charge, strengthening an earlier conviction. Lee-Joon-seok was at the helm when the ferry went down in April 2014 killing more than 300 people, mostly children. He had been found guilty in November of gross negligence and sentenced to 36 years, but relatives of the dead were furious he was not convicted of murder".

282. See Linda, Another Antonov crash rocks Sudan, www.eturbonews.com (10/7/2012) ("Sudan has suffered a significant number of civilian and military air accidents, often with former Soviet Union era aircrafts involved, as is the case here, and suspicions regularly focused on poor maintenance, often allegedly falsified maintenance records and lack of crew training on simulators...While many African countries have moved to ban the registration and in part even the use of these ancient aircraft, the Sudan-as has the Congo DR with an equally bad aviation record-has continued to permit the use of such stone age birds"); Steinmetz, Sudan airline crash kills 31, www.eturbonews.com (8/20/2012) ("The Sudan has one of the worst aviation accident records in Africa, often attributed to poor aircraft maintenance and the lack

of regular crew training as required for commercial aviation and also the use of 'stone-age' generation Soviet era aircraft, which have long been banned from registration and use in many other jurisdictions").

See also: Clark, E.U. Expands Airline "Blacklist", www.nytimes.com (4/1/210) ("The European Union on Tuesday banned all airlines from the Philippines and Sudan from flying into the region's airports, citing 'serious safety deficiencies' found by the United Nations and U.S. aviation authorities").

See also: <http://europa.eu/rapid/pressRelease> (4/17/2012) ("The European Commission has adopted today (April 3, 2012) the 19th update of the European list of air carriers banned (in the EU)").
283. See Steinmetz, 31 Chinese visitors injured in Taiwan tour bus crash, www.eturbonews.com (9/25/2012) ("A tour bus carrying 35 Chinese nationals from Beijing overturned in Hualien County yesterday afternoon, leaving three passengers seriously injured and 28 with minor injuries").

284. See Weinberg v. Grand Circle Travel LLC, 2012 WL 4096611 (D. Mass. 2012) ("This negligence action...involves two Florida resident who planned an African safari vacation with a Massachusetts travel agent, only to become victims of a tragic hot air balloon crash in the Serengeti. One victim was killed in the crash and the other, the deceased's fiancée, sustained severe bodily injuries, allegedly due to the negligence of the balloon company...brought action against a Massachusetts company, Grand Circle Travel ('Overseas Adventure'), a Tanzanian corporation, Tourism and Public Relations Services Limited trading as Serengeti Balloon Safaris ('Tourism Services') and an English company, Serengeti Balloon Safaris, LTD ('Serengeti Balloon') seeking compensatory and punitive damages on claims of strict liability, negligence, gross negligence and recklessness"; motion of Tourism Services and Serengeti Balloon to dismiss for lack of personal jurisdiction granted; "It seems unfair that the Serengeti defendants can reap the benefits of obtaining American business and not be subject to suit in our country").

See also: Steinmetz, Tourists escape death after dramatic ocean rescue, www.eturbonews.com (8/21/2012) ("According to a regular source from the Tanzanian coast, three foreign tourists had to be pulled from the sea, as their boat, sailing from Pangani to Zanzibar sank after running into heavy weather...In recent years Tanzania has been struck by a series of ferry accident, on Lake Victoria and between Zanzibar and Pemba Island").

285. See Stone v. Pacific Delight Tours, New York Law Journal, Dec. 27, 1978, p. 1, col. 4 (N.Y. Sup. 1978) (accident when trishaw over

turns into ditch).

286. See Korean tourists hurt in Turkish hot-air balloon crash, www.etrubonews.com (3/11/2015).

287. See e.g.,

Eleventh Circuit: *Esfeld v. Costa Crociere*, 289 F. 3d 1300 (11th Cir. 2002) (cruise passenger on shore excursion injured in tour van accident in Da Nang, Vietnam; lawsuit against Italian cruise line).

State Law:

Florida: *Pearl Cruises v. Cohon*, 728 So. 2d 1226 (Fla. App. 1999) (cruise passengers injured in automobile accident during shore excursion in Da Nang, Vietnam).

288. See *Munn v. Hotchkiss School*, 2012 U.S. Dist. LEXIS 40787 (D. Conn. 2013) (15 year old student on a school trip in China when she was infected with an insect-borne disease leaving her permanently disabled; school found to have failed to warn of risk of insect-borne disease and to take adequate precautions; jury

289. See *Boyle v. Starwood Hotels & Resorts Worldwide, Inc.*, 2013 WL 5731729 (N.Y.A.D. 2013) (contraction of Legionnaire's disease during stay at hotel located in Dubai".

290. See *Lavine v. General Mills, Inc.*, 519 F. Supp. 332 (N.D. Ga. 1981) (tourist purchases package tour featuring trip to Australia and New Zealand with an optional 3 day ocean cruise from New Zealand to the Fiji Islands provided by Blue Lagoon; participant in disembarking cruise ship slips and falls on slippery rock on beach in Fiji Islands; refuses local medical care and returns to the United States for emergency medical treatment; plaintiff claims that defendants negligently " failed to provide to her adequate medical care, equipment, supplies or staff to handle known medical emergencies ").

291. Nossiter, *Fear of Ebola Breeds a Terror of Physicians, 2 Americans Test Positive for Ebola in Liberia*, www.nytimes.com (7/27/2014).

292. See *Morris v. Princess Cruises, Inc.*, 236 F. 3d 1061 (9th Cir. 2001) (sick passenger removed from cruise ship to Aradhana Intensive Care and Nursing Home in Bombay, India where she kept in filthy conditions for six hours and then transferred to Breach Candy Hospital in Bombay after being forced to pay \$1,200 to leave the nursing home. " Mrs. Morris testified to the wretched conditions prevailing at the Aradhana facility. There was half an inch of urine on the floor, flies and roaches were everywhere. There was no medical

equipment of any kind there ").

See also: Protecting against the swine flu in India, www.eturbonews.com (3/17/2015).

293. See Steinmetz, Dengue Fever outbreak reported from Kenya coast, www.eturbonews.com (3/25/2013) ("Health officials were quoted (as) confirming at least 15 cases of Dengue Fever at the Kenya coast").

294. See Nossiter, Fear of Ebola Breeds a Terror of Physicians, 2 Americans Test Positive for Ebola in Liberia, www.nytimes.com (7/27/2014); Ebola Examines: The History of a Viral Scourge, <http://hlconverge.com> (6/30/2014); Canadians respond to Ebola outbreak in Liberia with rapid generosity, ETN (4/28/2014).

295. See Tourism Alert: Deadly MERS virus spread to Lebanon, ETN (5/9/2014).

296. See Urgent Nigeria tourism alert: Ebola is deadly and is now in Nigeria, ETN (7/26/2014).

297. See Travel and tourism threat: Killer virus Middle East Respiratory Syndrome (MERS) is spreading, ETN (4/27/2014) ("Saudi Arabia, where MERS was discovered around two years ago and which remains the country most affected. Has now had 323 confirmed cases of MERS, of which 94 have been fatal").

298. See Nossiter & Cowell, Ebola Virus Is Outpacing Efforts to Control It, World Health Body Warns, www.nytimes.com (8/1/2014); Ebola: Deadly, no cure, no vaccine-WHO team in Sierra Leona fighting virus, ETN (5/29/2014).

299. See MERS fears hit flight bookings to South Korea, www.eturbonews.com (6/11/2015) ("The first case in South Korea of MERS, a virus which produces cold-like symptoms including fever, cough and breathing difficulties, was reported on May 20, 2015").

300. See Cholera kills hundreds in South Sudan, 5000 children at risk, www.eturbonews.com (7/3/2015).

301. See Linda, Fresh ebola outbreak hits Uganda, www.eturbonews.com (11/14/2012) ("ebola has yet again reappeared and already claimed two victims in the Luwero District in Uganda"); Linda, Marburg outbreak in Uganda should not be a threat to tourists, www.eturbonews.com (10/24/2012) ("Five people have died and several dozen more are under confinement and quarantine to avoid the spread of the disease further, in a similar approach which last month saw the successful elimination

of an Ebola outbreak. Both diseases are suspected to have been brought into the country through refugees from Congo, who fled the intense fighting in the border region with Uganda and Rwanda”).

302. See Albania tourism: Two Czech tourists murdered enjoying Albania’s mountain region, www.eturbonews.com (7/4/2015).

303. See *In re Ski Train Fire In Kaprun Austria On November 11, 2000*, 499 F. Supp. 2d 437 (S.D.N.Y. 2007) (“ These cases arise from a disaster that occurred on November 11, 2000 in which a ski train in Kaprun, Austria caught fire, killing 155 people ”).

See also: Steinmetz, Russian tourist dies in Austrian avalanche, www.eturbonews.com (12/20/2012) (“Coming down from the mountain, the man entered into the avalanche and was instantly covered with two meters of snow”).

304. In Rubin, Breeden and Raghavan, *Strikes Claimed by ISIS Shut Brussels and Shake European Security*, www.nytimes.com (3/22/2016) it was noted that “Bombs packed with nails terrorized Brussels on Tuesday in the deadliest assault on the European heartland since the Islamic State’s attacks on Paris four months ago, hitting the airport and subway station in coordinated attacks that were also claimed by the militant extremist group...At least 30 people were killed by two blasts at the Brussels airport departure area around 8:00AM and one in a subway station shortly after 9. The police found at least one other unexploded bomb in a search of a Brussels house hours later”; Rubin, De-Freytas-Tamura & Breeden, *Brothers Among 3 Brussels Suicide Attackers; Another Assailant Is Sought*, www.nytimes.com (3/23/2016) it was noted that “The Brussels suicide bombers included two-Belgium-born brothers with a violent criminal past and suspected links to plotters of the Islamic State’s Paris attacked last November...raising new alarms about Europe’s defenses against a militant organization that has terrorized two European capitals with seeming impunity”.

See also: Nossiter, *A Shot, a Glimpse of an AK-47, and U.S. Servicemen Pounced in Gunman on Train in France*, www.nytimes.com (8/22/2015) (“It was 5:45 p.m., a normal Friday afternoon on the sleek high-speed train that takes high-level European diplomats, businesspeople, tourists and ordinary citizens between Amsterdam, Brussels and Paris...The man with the gun kept going down to carriage, holding his AK-47 and a Luger pistol. In a pocket was a sharp blade capable of inflicting grievous harm. He had at least none cartridges of ammunition, enough for serious carnage. Alek Skarlatos, a specialist in the National Guard from Oregon vacationing in Europe with a friend in the Air Force, Airman First Class Spencer Stone and

another American, Anthony Sadler, looked up and saw the gunman. Mr. Skarlatos, who was returning from a deployment in Afghanistan, looked over at the powerfully built Mr. Stone, a martial arts enthusiast. 'Let's go, go'! He shouted...Their actions saved many lives on the train, which was packed with over 500 passengers... The attack took place in Oignies, near the historic town of Arras". And in Breeden, *Americans and Briton Receive Top French Honor for Stopping Train Gunman*, www.nytimes.com (8/24/2015) it was noted that "President Francois Hollande of France on Monday awarded the Legion of Honor, France's highest award, to three Americans and a Briton for their role in stopping a gunman on a high-speed train to Paris from Amsterdam on Friday".

See also: Steinmetz, Five killed, 19 injured in Belgium tour bus crash, www.eturbonews.com (4/16/2013).

305. See Erlanger, 10 Years After London Bombings, Warnings of a Greater Threat, www.nytimes.com (7/7/2015) ("As Britain mourned the 52 civilians killed 10 years ago in its most devastating terrorist attacks, government officials warned on Tuesday that the threat of terrorism had only increased, though its nature has shifted. Four suicide bombers linked to Al Qaeda detonated explosives on a London bus and on three subway trains in the attacks on July 7, 2005. About 700 people were wounded").

306. See Steinmetz, Israeli tourists killed in Bulgarian bus bombing, www.eturbonews.com (7/19/2012) ("Israeli officials say that seven people died (30 were injured) in a bomb explosion on a bus carrying Israeli tourists in the city of Burgas, Bulgaria").

307.263. See Breeden & Blaise, 43 Killed in Southwestern France as Bus and Truck collide, www.nytimes.com (10/23/2015) ("In the worst traffic disaster in 33 years in France, a truck collided head-on with a bus carrying elderly people on a sightseeing excursion...killing at least 43 people...The bus passengers, members of a senior citizens' club in Petit-Palais-et-Cornemps...were headed first to a tasting of the neighboring region's famous cured hams").

See also: Reers v. Deutsche Bahn, AG, 320 F. Supp. 2d 140 (S.D.N.Y. 2004) (12 passengers, some U.S. citizens, died in a German owned railcar on a French train because an attendant " assigned to Railcar 120 that night started a fire and failing to extinguish it, abandoned his port without warning the sleeping passengers...the maximum compensation that would be available to each estate in a French Court would be approximately \$100,000").

See also: Nossiter, Breeden & Bennhold, Three Teams of

Coordinated Attackers Carried Out Assault on Paris, Officials Say; Hollande Blames ISIS, www.nytimes.com (11/14/2015) ("Three teams of Islamic State attackers acting in unison carried out the terrorist assault in Paris on Friday night...As the death toll rose to 129—with 352 other wounded, 99 of them critically... the attackers were all armed with assault rifles and suicide vests"); Schmitt & Kirkpatrick, Strategy Shifts for ISIS: Inflicting Terror in Distant Lands, www.nytimes.com (11/14/2015) "defying Western efforts to confront the Islamic State on the battlefield, the group has evolved in its reach and organizational capability... (and) strategies that call for using spectacular acts of violence against civilians"); In Editorial Board, *What Will Come After Paris*, www.nytimes.com (11/15/2015) ("The terrorist attacks in Paris on Friday, along with twin bombings in Beirut on the day before and the downing of a Russian jetliner over the Sinai Peninsula...show a new phase in the Islamic State's war against the West...The challenge for threatened countries is huge"); ISIS promises France to remain top target—names of victims released, www.eturbonews.com (11/16/2015) it was noted that "The Islamic State group on Saturday claimed responsibility for a wave of attacks in Paris that killed 129 people and said France would remain at the "top of the list" of its targets"; Breeden & Blaise, 43 Killed in Southwestern France as Bus and Truck collide, www.nytimes.com (10/23/2015) ("In the worst traffic disaster in 33 years in France, a truck collided head-on with a bus carrying elderly people on a sightseeing excursion...killing at least 43 people...The bus passengers, members of a senior citizens' club in Petit-Palais-et-Cornemps...were headed first to a tasting of the neighboring region's famous cured hams").

See also: Clerk, Germanwings Co-Pilot Accelerated During Descent, Data From 2nd Recorder Shows, www.nytimes.com (4/3/2015) ("The co-pilot of the German airliner that crashed into the French Alps last week accelerated as he deliberately guided the aircraft toward the ground...based on data from the plane's second so-called black box...the data showed that the 27-year-old co-pilot...had used the autopilot to direct the plane to descend to an altitude of 100 feet. Then, 'several times during the... descent, the pilot adjusted the automatic pilot so as to increase the speed of the plane as it descended'") Steinmetz, British Tourists Murdered in France, www.eturbonews.com (9/13/2012) ("Engineer Saad at-Gilli, his wife and mother-in-law were brutally murdered in a remote spot close to Lake Annecy a week ago"); Steinmetz, English-speaking tourist jumps to his death from Eiffel Tower, www.eturbonews.com (6/26/2012 ("Eiffel Tower has highest number of suicides for any French landmark").

308. See Two tour busses collide in Dresden: 9 dead, 40 injured, ETN

(7/19/2014) ("A large Polish tour bus collided with a small Ukrainian tourist bus").

309. See *Clerides v. Boeing Company*, 534 F. 3d 623 (7th Cir. 2008) (commercial aircraft " scheduled to fly from Larnaca, Cyprus to Athens, Greece...After takeoff, the aircraft failed properly to pressurize. As a result, the crew and passengers lost consciousness and asphyxiated; the plane crashed near Athens, Greece, when it ran out of fuel ").

See also: Steinmetz, 6 tourists injured in explosion on Greek mock pirate ship, www.eturbonews.com (10/7/2012) ("Greek officials say that a tour boat captain was killed and 6 foreign tourists were injured when a replica cannon exploded Saturday on a mock pirate ship of the southern Aegean island of Koa...Two Dutch passengers, a Belgian and two German children were hurt"); U.S. Tourist Killed in Rockslide on Santorini Island, Greece, <http://gogreece.about.com> (5/23/2011) ("A 52-year-old male tourist from the United States was killed by falling rocks while riding a donkey...on a popular donkey trail leading up the cliffs to Oia");

310. See Steinmetz, US visitor dies in Hungary after being refused seat on three New York flights, www.eturbonews.com (11/26/2012) ("Vilma Slotesz, 56, from New York, weighed about 425 lbs...had only one leg and used a wheelchair. She dies from health complications in Hungary nine days after she was kicked off the first of three flights and now her death could...be the cause of a multimillion-dollar lawsuit against the airlines").

311. See " Passenger Killed in Shore Excursion Accident ", *Travel Weekly*, p. 8 (July 31, 2000) (" A female passenger aboard Orient Lines' Marco Polo was killed in a snowmobiling accident...during a shore excursion on Langjokull Glacier near Reykjavik, Iceland ").

312. *King v. Cessna Aircraft Co.*, 562 F. 3d 1374 (11th Cir. 2009) (" The case arises out of a tragic plane crash that occurred at Linate Airport in Milan, Italy...On that foggy morning, a private Cessna jet operated by Air Evex, a German charter company, made a wrong turn and taxied toward an active runway, causing it to collide with Scandinavian Airlines Flight 686, which was just taking flight. One hundred eighteen people died, including everyone on board both planes and four people on the ground ").

As noted in Piangiani, Captain of Ship That Capsized Off Italy in '12 Is Convicted, www.nytimes.com (2/11/2015) "An Italian court...convicted the captain of a cruise liner that capsized in 2012,

killing 32 people, of manslaughter and sentenced him to just over 16 years in prison for his role in one of the worst maritime disasters in modern Italian history. The captain, Francesco Schettino, 54, was convicted of multiple counts of manslaughter, causing a shipwreck and abandoning the vessel, the Costa Concordia, before all of its 4,229 passengers and crew members had been evacuated. The court also barred him from commanding a ship for five years...In closing arguments that went on for days, prosecutors attacked Captain Schettino's conduct...calling him a 'reckless idiot' and accusing him of making deadly mistakes and lying to passengers, maritime authorities and rescue officials...The court also ordered Captain Schettino and the company that operated the ship, Costa Cruises, to pay damages of 30,000 euros or about \$34,000 in compensation to each passenger and several million euros to local and national government bodies for the environmental harm caused by the accident...The company has already paid 1 million (euros) in administrative sanctions in connection with the disaster...Under Italian law, companies can be held responsible for their employees conduct, but (curiously) the ship's operator, Costa Cruises, was not indicted in the case. Costa Cruises is controlled by the Carnival Corporation".

313. See Roth, Planes Crashes in Fog in Kazakhstan, Killing All 21 on Board, www.nytimes.com (1/30/2013).

314. See Steinmetz, Third British tourist dies in Mallorca in less than a month, www.eturbonews.com (5/8/2012) ("A British tourist has fallen to her death from a hotel balcony in Mallorca in the third such British death on the Spanish island in less than a month").

315. See British tourist drowns in Malta, www.eturbonews.com (6/22/2015); Steinmetz, Two bodies recovered during search for French tourists missing off Malta, www.eturbonews.com (5/8/2013).

316. See Russian tourist dies in Norway, ETN (7/13/2014) ("Russian tourist died after falling into the waterfall Voringfossen in western Norway").

317. See 33 Dutch tourists injured, 3 dead in Portugal airport bush accident, www.eturbonews.com (6/18/2015).

318. See e.g.,

Second Circuit: *Esheva v. Siberia Airlines*, 499 F. Supp. 2d 493 (S.D.N.Y. 2007) ("While 79 passengers and crew members survived the crash, 124 died. Sixteen of the passengers were residents of countries other than Russia but none were U.S. residents"); *Harris v. VAO Intourist Moscow*, 481 F. Supp. 1056 (E.D.N.Y. 1979) (tourist

dies in fire in Moscow hotel).

Ninth Circuit: *Vorbiev v. McDonnell Douglas Helicopters, Inc.*, 2009 WL 1765675 (N.D. Cal. 2009) (three passengers survive helicopter crash in " the village of Ulvat, Tyumen in the Russian Federation ").

See also: After 100 injured and dozens dead Russia launches 'safe selfie' campaign, www.eturbonews.com (7/10/2015); Kramer, Subway Train in Moscow Derails, Killing at Least 20 During Morning Commute, www.nytimes.com (7/15/2014); Steinmetz, Passenger jet in Moscow overshot runway, www.eturbonews.com (12/31/2012) ("A Passenger jet crashed into a highway...At least four people were killed and four critically wounded"); Levy, Subway Blasts Kill Dozens in Moscow, www.nytimes.com (3/29/2010).

319. See *Melgares v. Sikorsky Aircraft Corp.*, 613 F. Supp. 2d 231 (D. Conn. 2009) (" product liability action arising out of a July 2006 helicopter crash near Tenerife, Spain that killed six persons ").

See also: Scottish tourist dies in Spain, ETN (3/10/2014) ("A Scots tourist has died after falling from a hotel balcony in Benidorm, Spain"); Swiss tourist killed, two others injured in Canary Islands crash, ETN (3/10/2014) ("A bus carrying 17 Swiss tourists overturned on Spain's Gran Canaria island").

320. See Steinmetz, Belgium Christian Group mourns 22 children after Swiss Ski Holidays, www.eturbonews.com (3/14/2012) (bus crash against tunnel wall in Swiss canton of Valais).

321. See Terrorist attacks in Tajikistan: Airport attacked twice, UK issues travel advisory, www.eturbonews.com (9/4/2015) ("Dushanbe, Tajikistan...was rocked by terrorist attacks on security personnel as the capital of Tajikistan witnessed two separate incidents in which around 11 policemen and security personnel were killed").

322. See *Sarai Sierra Dead: Missing NYC Woman Found Dead In Istanbul*, www.huffingtonpost.com (2/3/2013) ("A New York City woman who went missing while vacationing alone in Istanbul was found dead").

323. See *In Clark & Kramer, Malaysia Airlines Flight 17 Most Likely Hit by Russian-Made Missile, Inquiry Says*, www.nytimes.com (10/13/2015) ("A 15-month inquiry into the disintegration of Malaysia Airlines Flight 17 in the skies over eastern Ukraine has concluded that the aircraft was struck by a Russian-made missile, Dutch air accident investigators said Tuesday...'Flight MH17 crashed as a result of the detonation of a warhead outside the airplane above the

left-hand side of the cockpit'...The explosion tore off the forward part of the plane, which broke up in the air. The crash killed all 298 people aboard; the investigation found that many died instantly, while others quickly lost consciousness. 'It is likely the occupants were barely able to comprehend their situation'"); Pounian & Green, *Legal Challenges Faced by Victims of Plane Shootdown Over Ukraine*, www.newyorklawjournal.com (6/26/2015) ("This coming July 17 will mark the first anniversary of the shootdown of Malaysia Airlines Flight 17 over eastern Ukraine...But was the airline negligent for operating its aircraft over the eastern Ukraine during a time of known hostilities? Three days before the flight 17 disaster, a Ukrainian military transport at 21,000 feet was shot down by a surface-to-air missile over eastern Ukraine and there had been similar attacks on other Ukrainian government aircraft. Indeed, during the several weeks prior to the disaster, other airlines-including Asiana, China Airlines & Qantas-decided to change their flight routes to avoid overflying eastern Ukraine". The airspace over eastern Ukraine, however, was officially closed only up to 32,000 feet and remained legally open to commercial jets like Flight 17 that were operating above that altitude...The question is therefore raised: If airspace remains open for flight according to the responsible government authorities, to what extent must airlines question that decision and take it upon themselves to assess the risk of possible military or terrorist activity?");

324. In Rubin, Breeden and Raghavan, *Strikes Claimed by ISIS Shut Brussels and Shake European Security*, www.nytimes.com (3/22/2016) it was noted that "Bombs packed with nails terrorized Brussels on Tuesday in the deadliest assault on the European heartland since the Islamic State's attacks on Paris four months ago, hitting the airport and subway station in coordinated attacks that were also claimed by the militant extremist group...At least 30 people were killed by two blasts at the Brussels airport departure area around 8:00AM and one in a subway station shortly after 9. The police found at least one other unexploded bomb in a search of a Brussels house hours later"; Rubin, De-Freytas-Tamura & Breeden, *Brothers Among 3 Brussels Suicide Attackers; Another Assailant Is Sought*, www.nytimes.com (3/23/2016) it was noted that "The Brussels suicide bombers included two-Belgium-born brothers with a violent criminal past and suspected links to plotters of the Islamic State's Paris attacked last November...raising new alarms about Europe's defenses against a militant organization that has terrorized two European capitals with seeming impunity".

325. See Erlanger, *10 Years After London Bombings, Warnings of a*

Greater Threat, www.nytimes.com (7/7/2015) ("As Britain mourned the 52 civilians killed 10 years ago in its most devastating terrorist attacks, government officials warned on Tuesday that the threat of terrorism had only increased, though its nature has shifted. Four suicide bombers linked to Al Qaeda detonated explosives on a London bus and on three subway trains in the attacks on July 7, 2005. About 700 people were wounded").

326. See Bulgaria: Sunny Beach resort region dangerous and not fit to receive EU tourists? ETN (5/30/2014).

327. See Suspects dead: Dagestan bomb attack on restaurant, ETN (1/18/2014) ("Russian security forces have killed seven people suspected of involvement in a grenade and bomb attack on a restaurant in Dagestan").

328. See Nossiter, Breeden & Bennhold, Three Teams of Coordinated Attackers Carried Out Assault on Paris, Officials Say; Hollande Blames ISIS, www.nytimes.com (11/14/2015) ("Three teams of Islamic State attackers acting in unison carried out the terrorist assault in Paris on Friday night...As the death toll rose to 129-with 352 other wounded, 99 of them critically... the attackers were all armed with assault rifles and suicide vests"); Schmitt & Kirkpatrick, Strategy Shifts for ISIS: Inflicting Terror in Distant Lands, www.nytimes.com (11/14/2015) "defying Western efforts to confront the Islamic State on the battlefield, the group has evolved in its reach and organizational capability...(and) strategies that call for using spectacular acts of violence against civilians"); In Editorial Board, *What Will Come After Paris*, www.nytimes.com (11/15/2015) ("The terrorist attacks in Paris on Friday, along with twin bombings in Beirut on the day before and the downing of a Russian jetliner over the Sinai Peninsula...show a new phase in the Islamic State's war against the West...The challenge for threatened countries is huge"); ISIS promises France to remain top target-names of victims released, www.eturbonews.com (11/16/2015) it was noted that "The Islamic State group on Saturday claimed responsibility for a wave of attacks in Paris that killed 129 people and said France would remain at the "top of the list" of its targets"; Breeden & Blaise, 43 Killed in Southwestern France as Bus and Truck collide, www.nytimes.com (10/23/2015) ("In the worst traffic disaster in 33 years in France, a truck collided head-on with a bus carrying elderly people on a sightseeing excursion...killing at least 43 people...The bus passengers, members of a senior citizens' club in Petit-Palais-et-Cornemps...were headed first to a tasting of the neighboring region's famous cured hams").

See also: Steinmetz, Are Chinese tourists safe in France?, www.eturbonews.com (4/30/2013) ("In early March, 23 members of a Chinese tour group were robbed after dinner in Paris. Their passports, passenger tickets and cash were looted, and the group leader was injured"); Steinmetz, Gypsy criminal gangs from eastern Europe overrun Paris tourist attractions, www.eturbonews.com (4/16/2013) ("Hundreds of armed police have been placed around Paris' major tourist monuments because of an influx of criminal gangs from eastern Europe. It follows a huge increase in the number of aggressive beggars and pickpockets flooding into the French capital from Romania and Bulgaria");

329. See Steinmetz, Greek police arresting, beating tourists, www.eturbonews.com (1/10/2013) ("Greek police have stepped up efforts to catch illegal immigrants in recent months...But tourists have been picked up in the sweeps-and at least two have been badly beaten").

330. See Roma gangs of thieves target popular European tourist destinations, ETN (5/25/2014) ("The Roma gang members were first noticed hanging around the Dublin Tourism Information office"); Steinmetz, Dublin criminals prey on sightseeing female tourists, www.eturbonews.com (March 19, 2013) ("Criminals preying on tourists are most likely to target young women sightseeing in Dublin during the afternoon...Almost 740 tourists-at the brunt of 433 separate crimes and traumatic incidents sought help from (The Irish Tourist Assistance Service in 2012)").

331. See *Paneno v. Centres for Academic Programmes Abroad Ltd.*, 118 Cal. App. 4th 1447 (Cal. App. 2004) (student falls from balcony in Florence).

See also: Japanese tourist drugged, robbed in Naples, www.eturbonews.com (6/30/2015).

332. See NZ visitor in Slovak hospital after violent assault in Poland, ETN (6/18/2014).

333. See Thieves impersonated cops and targeted tourists in Edinburgh, ETN (5/29/2014).

334. See Terrorist attacks in Tajikistan: Airport attacked twice, UK issues travel advisory, www.eturbonews.com (9/4/2015) ("Dushanbe, Tajikistan...was rocked by terrorist attacks on security personnel as the capital of Tajikistan witnessed two separate incidents in which around 11 policemen and security personnel were killed").

335. See Tavernise, Schmitt & Gladstone, Jetline Explodes Over Ukraine; Struck by Missile, Officials Say, www.nytimes.com (7/17/2014) ("A Malaysia Airlines Boeing 777 with 298 people aboard

explodes, crashed and burned on a flowered wheat field Thursday in a part of eastern Ukraine controlled by pro-Russia separatists, blown out of the sky at 33,000 feet by what Ukrainian and American officials described as a Russian-made anti-aircraft missile"); Steinmetz, British tourists kidnaped in Ukraine, rescued by elite special ops, www.eturbonews.com (3/11/2013) ("The man was a tourist. His kidnapers demanded \$30,000...from his relatives for his release").

336. See Paris police officers charged with raping Canadian tourist, ETN (4/28/2014) ("Two elite French police officers have been charged with raping a Canadian tourist in their Paris headquarters in a case that has sent shock waves across France").

337. See Child-snatchers target British and Irish tourists in Cyprus, www.eturbonews.com (6/18/2015),

338. See Chinese tourist kidnaped in Pakistan, ETN (5/19/2014).

339. See Steinmetz, Prague tourism center rocked by explosions, www.eturbonews.com (4/30/2013) ("Dozens of people have been injured after a suspected gas explosion rocked the center of Prague this morning").

340. See *Frummer v. Hilton Hotels International, Inc.*, 19 N.Y. 2d 533, 281 N.Y.S. 2d 41 (1967) (guest at London Hilton Hotel leased by Hilton Hotels (U.K.), Ltd. ("Hilton (UK) ") slips and falls in "an 'ovular' modernistic type bathtub").

341. See *Duffy v. Grand Circle Travel, Inc.*, 302 A.D. 2d 324 (2003) (tourist purchased a package tour featuring a cruise in France during which he was injured); *Gutman v. Club Mediterranee International*, 218 A.D. 2d 640, 630 N.Y.S. 2d 343 (1995) (tourist injured in ski accident at Club Med facility at Tignes Val Claret, France).

342. See e.g.,

Third Circuit: *Schwartz v. Hilton Hotels Corporation*, 2009 WL 1936784 (D.N.J. 2009) ("Schwartz alleges that...she entered the bathroom of her (Greek) hotel room, slipped on a puddle of water on the floor and broke her leg").

Foreign Law:

Great Britain: *Wilson v. Best Travel* (1993) 1 All ER 353 (English tourist falls through glass window in Greek hotel).

See also: U.S. Tourist Killed in Rockslide on Santorini Island, Greece, <http://gogreece.about.com> (5/23/2011) ("A 52-year-old male tourist from the United States was killed by falling rocks while riding

a donkey...on a popular donkey trail leading up the cliffs to Oia").
343. See *Dorfman v. Marriott International Hotels*, 2001 WL 69423 (S.D.N.Y. 2001) (guest at Marriott Hotel in Budapest, Hungary slips and falls on unlevelled elevator); *Dorfman v. Marriott International Hotels*, 2002 WL 14363 (S.D.N.Y. 2002) (jurisdiction found).

344. See *McDermott v. Travelers Air Services, Inc.*, 462 F. Supp. 1335 (M.D. Pa. 1979) (slip and fall at hotel in Ireland).

345. See *Paneno v. Centres for Academic Programmes Abroad Ltd.*, 118 Cal. App. 4th 1447 (Cal. App. 2004) (student falls from balcony in Florence); *Santora v. Starwood Hotel and Resorts Worldwide, Inc.*, 2006 WL 1371432 (N.D. Ill. 2006) (guest at Hotel Danieli-Venice trips and falls on carpet).

346. See *Carley v. Theatre Development Fund*, 22 F. Supp. 2d 224 (S.D.N.Y. 1998) (tourists purchase tour of Russia and during a stay at Hotel Pulkovskaya in St. Petersburg " Anne Marie Carley sustained serious injuries while trying to open her hotel window...Mrs. Carley fell approximately six floors when the window swung into the room unexpectedly and she fell out ").

347. See *Wukowitz, UK: Birmingham County Court decides in broken glass door case*, <http://iftta.org/content> (10/17/2012) ("The Russell family booked a holiday package to Spain (and) specially requested accommodations which (were) suitable for young children...They were duly reassured. At the hotel they were allocated to a room with a glass balcony. Shortly after arrival while the parents were unpacking, the (4 year old) girl ran towards the door (and) collided with it. The glass which was only 5mm thin and not reinforced with any kind of safety film or wiring, broke and causes serious injury...The claimant was successful before the Birmingham County Court is establishing liability...The Court found that a reasonable holidaymaker in their position, have been specially reassured that the room was suitable for a young family, should have been told that the glass was not safety glass and was very thin. It was foreseeable that young children would run around and bump into objects and it was not surprising that the family had sought reassurance in what was there first trip abroad. The judge accepted that had they been given an appropriate warning, they would not have chosen to stay in this particular hotel at all" (Case: *Russell v. Thomas Cook Tour Operations* (2012))).

See also: *Tourist survives fall from hotel balcony*, ETN (7/20/2014) ("The man was staying at the TRH hotel in Magaluf, Calle Marti Ros Garcia").

348. See U.S. Tourist Killed in Rockslide on Santorini Island, Greece, <http://gogreece.about.com> (5/23/2011) ("A 52-year-old male tourist from the United States was killed by falling rocks while riding a donkey...on a popular donkey trail leading up the cliffs to Oia").

349. See Steinmetz, 7ft alligator on the loose at Spanish resort, www.eturbonews.com (3/25/2013) ("Police on Spain was warning tourists to watch out for a 7ft alligator they have dubbed 'the Costa Croc'").

350. See Polar bear attacks tourist group, www.eturbonews.com (3/22/2015) ("A group pf tourists from the Czech Republic was attacked by a polar in Norwegian Svalbard...the bear was shot to death"); Tourists who shot polar bear that attacked them fined \$1230, www.eturbonews.com (7/15/2015) ("because they failed to put a member of their group on 'polar bear watch'").

351. See Seagulls terrorize tourists at Welsh seaside resort, ETN (8/1/2014).

352. See Jainchill, Antarctica cruise operators approve new safety guidelines, Travel Weekly, July 27, 2009, p. 8 ("The 43 members of the International Association of Antarctica Tour Operators (IAATO) agreed to participate in a satellite vessel tracking system, to replace open lifeboats and enclosed ones and to require that ships have at least one ice captain or ice pilot with Antarctica experience on the bridge... (following) the April report by the government of Liberia on the 2007 sinking of GAP Adventures' Explorer cruise ship, in which the lack of Antarctica experience on the part of the captain was cited as a major contributing factor").

353. See In re Ski Train Fire In Kaprun, Austria, 499 F. Supp. 2d 437 (S.D.N.Y. 2007) (" These cases arise from a disaster that occurred on November 11, 2000 in which a ski train in Kaprun, Austria caught fire, killing 155 people).

354. See e.g.,

Third Circuit: D'Amato v. Horizon Holidays, Inc., 1997 U.S. Dist. LEXIS 19120 (D.N.J. 1997) (tourist injured boarding shuttle bus at Gatwick Airport); McCartney v. Windsor, Inc., 1996 U.S. Dist. LEXIS 1623 (E.D. Pa. 1996) (tour bus accident in England; " At the time of the accident the coach's anti-lock braking system was broken, the braking system warning light was broken, the speed limiter had been disconnected, the coach was traveling at an excessive rate of speed, the driver lacked adequate sleep, he was exceeding his driving hour limit...

[Plaintiffs allege that the tour operator's] brochure falsely tour

the safety of the tour...Plaintiffs' claims...for negligent failure to investigate and disclose pertinent safety information, for making false representations and breaching warranties regarding tour safety cannot fairly be characterized as frivolous or lacking any colorable basis ").

State Law:

New York: Ashkenazi v. Hertz Rent A Car, 18 A.D. 3d 584, 795 N.Y.S. 2d 624 (2005)(rental car accident in Mexico); Neville v. Anglo American Management, 191 A.D. 2d 240, 594 N.Y.S. 2d 747 (1993)(car rental accident during student tour of England); Weiner v. B.O.A.C., 60 A.D. 2d 427, 401 N.Y.S. 2d 91 (1978)(air carrier which organized tour of England not liable for rental car accident).

355. See Breeden & Blaise, 43 Killed in Southwestern France as Bus and Truck collide, www.nytimes.com (10/23/2015) ("In the worst traffic disaster in 33 years in France, a truck collided head-on with a bus carrying elderly people on a sightseeing excursion... killing at least 43 people...The bus passengers, members of a senior citizens' club in Petit-Palais-et-Cornemps...were headed first to a tasting of the neighboring region's famous cured hams").

See also: Reers v. Deutsche Bahn, AG, 320 F. Supp. 2d 140 (S.D.N.Y. 2004)(12 passengers, some U.S. citizens, died in a German owned railcar on a French train because an attendant " assigned to Railcar 120 that night started a fire and failing to extinguish it, abandoned his post without warning the sleeping passengers "; maximum compensation under French law would be approximately \$100,000 "); Milgrim v. Backroads, Inc., 142 F. Supp. 2d 471 (S.D.N.Y. 2001), aff'd 91 Fed. Appx. 702 (2d Cir. 2002)(tourist injured during bike tour of Loire Valley in France).

356. See Chouset v. American Airlines, Inc., 1993 WL 501607 (E.D. La. 1993)(tour participant in an American Flyaway Tour injured when " door of a tour bus closed on his arm at a freeway rest stop ").

See also: See Two tour busses collide in Dresden: 9 dead, 40 injured, ETN (7/19/2014) ("A large Polish tour bus collided with a small Ukrainian tourist bus").

357. See Steinmetz, 6 tourists injured in explosion on Greek mock pirate ship, www.eturbonews.com (10/7/2012) ("Greek officials say that a tour boat captain was killed and 6 foreign tourists were injured when a replica cannon exploded Saturday on a mock pirate ship of the southern Aegean island of Koa...Two Dutch passengers, a Belgian and two German children were hurt").

358. See Dorkin v. American Express Co., 74 Misc. 2d 673, 345 N.Y.S. 2d 891, aff'd 43 A.D. 2d 877, 351 N.Y.S. 190 (tour participant injured when tour bus suddenly stops during tour of Holland).

359. See Steinmetz, US visitor dies in Hungary after being refused seat on three New York flights, www.eturbonews.com (11/26/2012) ("Vilma Slotesz, 56, from New York, weighed about 425 lbs...had only one leg and used a wheelchair. She dies from health complications in Hungary nine days after she was kicked off the first of three flights and now her death could...be the cause of a multimillion-dollar lawsuit against the airlines").

360. See e.g.,

Tenth Circuit: *Cameron v. Group Voyagers, Inc.*, 2004 WL 585872 (D. Colo. 2004) (" These personal injury actions arise out of a tour bus crash that took place near Venice, Italy on June 12, 2001, injuring some or all of the approximately 30 passengers on board. Most of the passengers were citizens of the United States, Great Britain or Australia, although two were citizens of Malaysia and the tour director was a citizen of Slovenia").

State Law:

New York : *Travalja v. Maieliano Tours*, 622 N.Y.S. 2d 961 (N.Y.A.D. 1995) (rental car accident in Italy); *Fogel v. Hertz International*, 141 A.D. 2d 375, 529 N.Y.S. 2d 484 (1988) (rental car accident in Florence, Italy).

361. See Plane bursts into flames as horrified passengers look on, www.eturbonews.com (6/17/2015); Roth, Plane Crashes in Fog in Kazakhstan, Killing All 21 on Board, www.nytimes.com (1/30/2013).

362. See Car slams into group of tourists, 22 injured, ETN (7/20/2014) ("car ran into a group of people in Polish seaside resort of Sopot").

363. See 33 Dutch tourists injured, 3 dead in Portugal airport bush accident, www.eturbonews.com (6/18/2015).

364. See *Kermisch v. Avis Rent-A-Car*, 71 A.D. 2d 790, 419 N.Y.S. 2d 793 (1979) (tourists arrested in Rumania for mistreating their rental vehicle).

365. See e.g.,

Second Circuit: *Esheva v. Siberia Airlines*, 499 F. Supp. 2d 493 (S.D.N.Y.. 2007) (" While 79 passengers and crew members survived the crash, 124 died. Sixteen of the passengers were residents of countries other than Russia but none were U.S. residents "); *Harris v. VAO Intourist Moscow*, 481 F. Supp. 1056 (E.D.N.Y. 1979) (tourist dies in fire in Moscow hotel).

Ninth Circuit: *Vorbiev v. McDonnell Douglas Helicopters, Inc.*, 2009 WL 1765675 (N.D. Cal. 2009) (three passengers survive helicopter crash in " the village of Ulvat, Tyumen in the Russian Federation

").

See also: Kramer, Subway Train in Moscow Derails, Killing at Least 20 During Morning Commute, www.nytimes.com (7/15/2014); Steinmetz, Passenger jet in Moscow overshoot runway, www.eturbonews.com (12/31/2012) ("A Passenger jet crashed into a highway...At least four people were killed and four critically wounded"); Levy, Subway Blasts Kill Dozens in Moscow, www.nytimes.com (3/29/2010).

366. See Ramage v. Forbes International, Inc., 1997 WL 785613 (C.D. Cal. 1997) (tour participant injured when tour bus hit bump in road outside Glasgow, Scotland).

367. See Rovinsky v. Hispanidad Holidays, Inc. 580 N.Y.S. 2d 49 (1992) (tour bus accident in Spain; tour operator represented that it owned and operated a fleet of safe buses operated by experienced staff).

See also: Swiss tourist killed, two others injured in Canaries crash, ETN (3/10/2014) ("A bus carrying 17 Swiss tourists overturned on Spain's Gran Canaria island").

368. See See Tavernise, Schmitt & Gladstone, Jetline Explodes Over Ukraine; Struck by Missile, Officials Say, www.nytimes.com (7/17/2014) ("A Malaysia Airlines Boeing 777 with 298 people aboard explodes, crashed and burned on a flowered wheat field Thursday in a part of eastern Ukraine controlled by pro-Russia separatists, blown out of the sky at 33,000 feet by what Ukrainian and American officials described as a Russian-made anti-aircraft missile"); Chivers, Jet Wreckage Bears Signs of Impact by Supersonic Missile, Analysis Shows, www.nytimes.com (7/21/2014) ("A piece of wreckage from the Malaysia Airlines Boeing 777-200 that was shot down in eastern Ukraine last week bears telltale marks of small pieces of high-velocity shrapnel that apparently crippled the jet in flight").

369. See Gartland v. Doucette, 2002 WL 1815982 (Conn. Super. 2002) (tourist purchases " European Whirl " tour during which she becomes stricken with severe respiratory infection and dies in a hotel room; tourist discussed plans with travel agent and informed of heart problems; travel agent recommended Trafalgar Tours because " it was fully escorted tour which would be the easiest type of tour "; lawsuit charged tour operator, inter alia, with failing " to recognize signs of medical problems or illness of tour participants in order to insure timely medical intervention and failure to take steps to insure timely medical intervention ").

370. See Deadly MERS virus may be spreading in Germany and Slovakia,

www.eturbonews.com (6/16/2015).

371. See Fleming v. American Automobile Association, 2000 La. App. 1761 (La. App. 2000)(medical malpractice by Greek doctors who replaced tour participants hip in Athens).

372. . See Martinides v. Holland America Line-Westours, inc., C 94 1386 (W.D. Wash.)(cruise passenger had angina attack and stabilized in ship's infirmary, then transferred to Naples hospital recommended as the best for cardiac care; allegedly the facility was a maternity hospital with neither the equipment nor the trained staff to care for cardiac patients. Three days later passenger died and family sued cruiseline alleging " failure to provide adequate medical care, failure to properly provide information regarding medical care options and failure to recommend a facility with proper medical services and/or equipment and directing the deceased...to a medical facility which was inadequate ").

373. See Deadly MERS virus may be spreading in Germany and Slovakia, www.eturbonews.com (6/16/2015).

374. See Wajnstat v. Oceania Cruises, Inc., 2011 WL 465340 (S.D. Fla. 2011)(cruise passenger becomes ill and diagnosed by ship's doctor as having bleeding hemorrhoids; symptoms worsened and passenger was medically disembarked in the Ukraine and transported to a medical facility wherein more than half of his colon was removed; plaintiff claimed her received substandard medical care in Ukraine; the Court dismissed a cause of action against the cruise line alleging a failure to investigate the competency of land based medical providers).

**THE CRUISE PASSENGER'S RIGHTS
AND REMEDIES 2014:
THE COSTA CONCORDIA DISASTER:
ONE YEAR LATER, MANY MORE
INCIDENTS BOTH ON BOARD
MEGASHIPS AND DURING R:SKY
SHORE EXCURSIONS**

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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

Justice Thomas A. Dickerson*

I.	A VERY BAD YEAR FOR MEGASHIPS.....	4
	A. <i>Floating Hotels and Dangerous Shore Excursions</i>	5
	B. <i>Shore Excursion Questions To Ask</i>	7
	C. <i>What About Those Pesky Somali Pirates?</i>	7
	D. <i>Some Improvements in Pirate Control</i>	8
II.	TWENTY-FIRST-CENTURY CRUISE SHIPS, NINETEENTH-CENTURY PASSENGER RIGHTS	9
III.	RECENT DEVELOPMENTS	10
	A. <i>The COSTA CONCORDIA Disaster: Under Investigation</i>	10
	B. <i>Lawsuits and Settlements</i>	11
	C. <i>International Cruise Line Passenger Bill of Rights 2013—Not Much There</i>	12
	D. <i>The Passenger Bill of Rights: An Interposed Analysis</i>	12
	E. <i>The Cruise Vessel Security and Safety Act of 2010</i>	14
	1. The Safety Act Needs Some Adjustments	15

* © 2014 Justice Thomas A. Dickerson. Thomas A. Dickerson is an Associate Justice of the Appellate Division, Second Department of the New York State Supreme Court. Justice Dickerson is the author of TRAVEL LAW (2014); CLASS ACTIONS: THE LAW OF 50 STATES (2014); *Class Actions*, in 3 JACK B. WEINSTEIN, HAROLD L. KORN & ARTHUR L. MILLER, NEW YORK CIVIL PRACTICE art. 9 (David L. Ferstendig ed., 2d ed. 2011); *Consumer Protection*, in 4C COMMERCIAL LITIGATION IN NEW YORK STATE COURTS ch. 98 (Robert L. Haig ed., 3d ed. 2013); and THOMAS A. DICKERSON, RODNEY E. GOULD & MARK CHALOS, LITIGATING INTERNATIONAL TORTS IN U.S. COURTS (2013). Justice Dickerson has also authored over 300 articles and papers on consumer law, class actions, travel law, and tax certiorari issues, many of which are available at the following Web sites: *Justices of the Court: Associate Justice Thomas A. Dickerson*, APPELLATE DIVISION, SUP. CT. OF THE STATE OF N.Y., http://www.courts.state.ny.us/courts/ad2/justice_dickerson.shtml (last visited Apr. 12, 2014); *Tax Certiorari & Condemnation Proceedings*, NYCOURTS.GOV, 9TH JUDICIAL DISTRICT, <http://www.courts.state.ny.us/courts/9jd/taxcertatd.shtml> (last visited Apr. 12, 2014). REPRINTED WITH PERMISSION

2. Victims Group Questions Crime Data 16

F. *Americans with Disabilities Act*..... 16

G. *More Needs To Be Done*..... 17

IV. ACCIDENTS ON BOARD CRUISE SHIPS: THE STANDARD OF CARE, LIABILITIES, AND WARRANTIES..... 17

A. *Reasonable Care* 25

B. *Res Ipsa Loquitur* 25

C. *Strict Liability for Cruise Employees’ Sexual Misconduct*..... 26

D. *Vicarious Liability for Ship Doctor Malpractice*..... 26

E. *No Strict Liability*..... 27

F. *Dram Shop Liability*..... 27

G. *Seaworthiness Doctrine*..... 28

H. *No Implied Warranty of Safe Passage*..... 28

I. *No Implied Warranty of Merchantability*..... 28

J. *Causation and Notice*..... 29

V. ACCIDENTS ON SHORE: HOW FAR DOES MARITIME LAW EXTEND?..... 29

A. *Risky Business: Shore Excursions* 29

1. Due Diligence Investigations 30

2. Big Business for the Cruise Lines 30

3. The Applicable Law 30

4. Three Zones of Danger 31

B. *Types of Shore Excursion Accidents* 32

C. *Theories of Liability for Shore Excursion Accidents*..... 35

VI. OTHER LIABILITY ISSUES 36

A. *Cancellations, Delays, Port Skipping, and Itinerary Changes* 36

B. *Misrepresentations and Discomfort Aboard the Cruise Ship* 37

1. Port Charges..... 37

2. Hotel Taxes and Fee Surcharges 37

3. Passengers’ Cabins 38

C. *Cruise Ship Facilities and Services* 39

D. *Lost, Damaged, or Stolen Baggage*..... 41

E. *Passenger Protection Rules*..... 41

1. Financial Protection for Cruise Passengers..... 41

2. Sanitary Inspection of Vessels 42

3. Protecting the Oceans..... 43

F. *Insurance: Cancellation Waivers and Third-Party Policies* 43

VII. LITIGATION ROADBLOCKS IN PROSECUTING PASSENGER CLAIMS 44

A. The Limitation of Liability Act.....44

B. Passenger Ticket Print Size and Language.....45

C. Time Limitations: Physical Injury Claims46

 1. One Year in Which To File Suit..... 46

 2. Exceptions to the Rule 46

D. Time Limitations: Nonphysical Injury Claims.....46

 1. Six Months in Which To File Suit 46

 2. Exceptions to the Rule 47

E. Jurisdictional Issues.....47

 1. Marketing Through Travel Agents..... 47

 2. The “Solicitation Plus” Doctrine 48

 3. Jurisdiction over Internet Travel Services 48

 4. Jurisdiction: Agent and Phone Number in Forum 48

 5. Jurisdiction and Territorial Waters 49

F. Forum Selection and Mandatory Arbitration Clauses.....49

 1. Forum Selection Clauses Are Generally Enforceable 49

 2. Notice Must Be Adequate 51

 3. Federal Court Forum Selection Clauses 52

 4. Application to Nonsignatories 53

 5. The Importance of Forum Selection Clauses..... 54

 6. Cancellation Fees and Adequacy of Notice 54

 7. Physical Disabilities Exception 56

G. Choice-of-Law Clauses56

H. Disclaimers of Liability for Onboard Accidents58

I. Disclaimer of Liability for Medical Malpractice by Ship’s Doctor.....58

J. Shore Excursion Disclaimers60

 1. Warranties of Safety 60

 2. Limited Scope..... 60

K. Force Majeure or Act of God Defense61

L. Limitations on Recoverable Damages.....62

M. The Athens Convention: Cruises Not Touching U.S. Ports.....62

 1. Application to U.S. Cruise Passengers 63

 2. Limitations Enforceable 63

N. The Athens Protocol: 2002 and Beyond.....64

O. Death on the High Seas Act: Pecuniary Damages.....66

VIII. CONCLUSION 67

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*, ETURBONNEWS (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*, CONDÉ 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 capsize 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.V.I. 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); *Wajnstat 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. VI. 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*, CTRS. 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 *Hofer 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).

