

THE CRUISE PASSENGER'S RIGHTS & REMEDIES: 2006

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Floating Deluxe Hotels & Risky Shore Excursions

Modern cruise ships are best viewed as floating hotels¹ that transport their guests from exotic port to exotic port where they stay a few hours for shopping, snorkeling, scuba diving, jet skiing, parasailing and touring. Although there are problems onboard the cruise ship, generally, it is safer to be onboard than on a shore excursion where there may be uncertainty about

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the provider of the services [i.e., Is the provider insured, licensed and trained? Has the cruise line evaluated the reliability of the provider? Has the cruise line assumed responsibility for any injuries suffered by its passengers or has it disclaimed all liability for any injuries which passengers might sustain during the shore excursion?]. The danger to passengers of participating in shore excursions was recently demonstrated when twelve cruise passengers were killed during a stop over in Chile. The passengers were part of " 64-member B'nai B'rith group that was traveling aboard the cruise ship Millennium...(who) had made a side excursion to see the mountains on a tour bus that tumbled more than 300 feet down a mountainside "2.

21st Century Cruise Ships; 19th Century Passenger Rights

While a cruise vacation may very well be the best travel value available, consumers should be aware that the cruise ship's duties and liabilities are governed not by modern, consumer oriented common and statutory law, but by 19th century legal principals [See e.g., Barbetta v. S/S Bermuda Star³ (cruise ship insulated from vicarious liability for medical malpractice of ship's doctor based upon a rule (" If the doctor is negligent in treating a passenger, however, that negligence will not be

imputed to the carrier ") followed by " An impressive number of courts from many jurisdictions...for almost one hundred years ")], the purpose being to insulate cruiselines from the legitimate claims of passengers. The policy enunciated by the Second Circuit Court of Appeals nearly 50 years ago in Schwartz v. S.S. Nassau⁴, a case involving a passenger's physical injuries, applies equally today, " The purpose of [46 U.S.C. 183c]...' was to encourage shipbuilding and (its provisions) ...should be liberally construed in the shipowner's favor ` " .

Other Travelers Better Protected

Although recent years have seen the expansion of travel consumers' rights and remedies in actions against airlines⁵, domestic hotels⁶, international hotels⁷, tour operators⁸, travel agents⁹, informal travel promoters¹⁰ and depository banks¹¹, there has been little change in the passengers' rights and remedies in actions against cruise lines.¹² Cruise passengers are at a distinct disadvantage in prosecuting their claims.

Developments In Cruise Passengers' Rights 2003-2006

Since our last article on this subject [Dickerson, The Cruise Passengers' Rights & Remedies : 2003¹³; Dickerson, The

Cruise Passenger's Dilemma: Twenty-First-Century Ships, Nineteenth-Century Rights ¹⁴] there have been four important developments in cruise passenger rights¹⁵.

Americans with Disabilities Act

First, all cruise ships touching U.S. ports are now subject to the requirements of the Americans with Disabilities Act¹⁶.

Medical Malpractice By Ship's Doctor

Second, at least, in the States of Florida¹⁷ and Illinois¹⁸ cruise ships may now be held vicariously liable for the malpractice of the ship's doctor¹⁹.

Sexual Assaults

Third, in the State of Florida and other States in the Eleventh²⁰ Circuit, cruise ships may now be liable for the sexual assaults of their crew members or other passengers²¹.

State Environmental Enforcement Efforts

Fourth, some States are becoming more active in monitoring

the activities of cruise ships.

Alaska

In August of 2006 Alaska enacted legislation which imposes " a \$50 head tax on cruise passengers sailing to Alaska and subjects cruise lines to a host of new disclosures and environmental rules (such as)...Requires cruise lines to disclose to passengers the markup they charge for shore excursions... Requires cruise lines to get permits to discharge any wastewater in state marine waters... Provides that a ship cabin must be reserved for an onboard ' ocean ranger ' whose job it will be to monitor and enforce environmental statutes... Empowers citizens to file lawsuits against owners or operators of cruise ships for alleged violations of environmental statutes "²².

California

In September of 2003 " California became the second state- after Alaska- to decide that federal regulations governing what cruise ships can and cannot dump are too weak, and to respond by implementing its own laws. After a state task force report found that pollutants ' are routinely discharged from vessels into

California's coastal waters ' the state passed legislation that prohibits dumping of sewage sludge, hazardous materials and bilge water containing oil, and instructs California's Environmental Protection Agency to ask the federal government to prohibit all such discharges within the state's national marine sanctuaries. Although the laws do not include limits on the expulsion of backwater (from toilets) or graywater (from sinks, showers and laundry), many see this as an important first step "23.

But More Needs To Be Done

These are all positive developments, indeed. However, they have little impact upon the host of litigation road blocks which still make it difficult for injured or aggrieved cruise passengers to pursue their rights [Ericksen, Love boats on troubled waters, Trial Magazine, March 2006, p. 48 (" Cruise lines promise fun and romance and encourage partying aboard ship. When negligence or crime results in injury to passengers, what remedies does the law provide? "24)].

Cruising As A Growth Industry

The cruise industry is growing rapidly. For example, " A record 8.9 million North Americans took cruises in 2004...

compared with about 6.9 million in 2000 and 4.4 million in 1995
"25. The advertising for cruise vacations is seductive, indeed,
with cruise ships now being built that exceed 150,000 tons and
accommodate nearly 4,000 passengers. A recent study compared the
Titanic at 882 feet long with a registered gross tonnage of
46,328 tons with the 3,838 passenger Voyager of the Seas at 1,020
feet long with a registered gross tonnage of 142,000 tons²⁶.

The Bigger The Better

Bigger is better when it comes to cruise ships [Jainchill,
200K-ton megaship to cost \$1.24 billion, hold 5,400 cruisers ²⁷

(" Royal Caribbean last week said it has placed an order for
what will be the largest and most expensive cruise vessel in the
world. Called Project Genesis, the 220,000 ton-ship will have
5,400 berths and is scheduled for delivery in 2009 "].

Presently, the largest cruise ship is the Queen Mary 2 at 150,000
tons, a length of 1,132 feet, a cost of \$780 million, a height
from the waterline of 23 stories, amenities that include " deluxe
penthouses, a planetarium, the first Chanel and Dunhill shops at
seas, a Veuve Liqueur champagne bar and a ' pillow concierge '
offering nine types of pillows "28 The Queen Mary 2 entered
service in 2004.

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A] History Of Modern Cruising

" For much of the twentieth century, of course, sea passage was more about crossing than cruising. Only on the competitive transatlantic route could travelers readily book a stateroom on the kind of seagoing Art Deco museum that still fires the imagination. But in fact, many of these great vessels were short-lived: The Titanic sunk in 1912, the sleek Lusitania torpedoed in 1915, the France and her Louis XIV interiors sold for scrap in 1934, and the peerless Normandie stripped of her Lalique fixtures

(and every other extravagance) when she was transformed into a U.S. troopship in 1941.

Ultraluxury liners were phased out, losing travelers to jet airlines. But true cruising was only really beginning, and the industry had its own postwar baby boom, giving birth to a new generation of vessels that were built for pleasure cruising, not plain old crossing. Among the first and finest was the Carolina, a standard setter for Cunard. Launched in 1949, she mirrored both the past and the present: Her elegant interiors typified the great postwar liners, but she was also modern, with an outdoor swimming pool, a bathroom in every cabin (not just first class), and a crew-to-passenger ratio that approached one-to-one...Opulence had its day. Gone is the Queen Mary (now a \$150 a night floating hotel in Long Beach, California), along with the Louis Vuitton gown trunks and port of call baggage stickers that traveled with her. But if pomp has been lost, consider the gain in circumstances. Ships now not only frequent waters from the Inside Passage to the Aegean, they also sail to ports that most of us need five-pound atlases to locate, from Deception Island to Nosy Be to Muroran. More than six hundred cruise ships now ply the waves, with capacities ranging from fewer than thirty passengers to more than three thousand. With these kinds of numbers, the competition is relentless...more than fifty new ships are on order...The unsinkable dream is swell travel on the

high seas, and cruise lines aim to design ships that deliver. Dining rooms are becoming true restaurants, an onboard spa is all but guaranteed, and balconied cabins are increasingly commonplace.²⁹ ". See also Jainchill, Relics Of A Golden Age ³⁰ (" Ocean liners and cruise ships of the past generate a fond nostalgia that quickly translates into outrage when a beloved vessel is sent to the scrap yard ").

B] The Downside Of Rapid Expansion

" As the industry grows and more and more ships ply the seas, however, there are bound to be further incidents like those that have peppered the evening news in recent months : Last September, a fire on Carnival's Tropicale caused the ship to drift in the Gulf of Mexico for an entire day--during a tropical storm, no less--before the crew were able to restart the engines and return to port. Passengers complained of malfunctioning toilets and sewage in the hallways. That same month, the brand-new Norwegian Sky ran aground in the St. Lawrence Seaway, even though it had two local pilots on board. The vessel was stranded for three hours before the tide allowed it to float free. On a clear night last August the Norwegian Dream collided with a container ship in the English Channel. Its hull was dented and 21 passengers sustained minor injuries. Investigators... suspect

that one of the vessels had faulty navigation equipment or that the crew were not monitoring it properly. In July, Carnival disclosed that between 1993 and 1998, passengers and crew members made 108 allegations of rape or other sexual misconduct on board its ships. In December 1998, Royal Caribbean's Monarch of the Seas struck a reef off the coast of St. Martin; all 2,557 passengers had to be evacuated and flown home "31.

See also Jainchill, Princess: Human error caused list 32 (" Princess Cruises said that human error was responsible for the list that injured 240 people aboard the Crown Princess on July 18...Human error also was determined to have caused the listing of another Grand-class ship, the Grand Princess...In that incident, 27 people were injured when the ship tried to turn around and return to port after a passenger experienced cardiac arrest "); Hepburn, Caribbean cruise turns deadly as fire scorches 100 ship cabins33 (" A fire apparently started by a cigarette broke out on (The Star Princess)...leaving one passenger dead, 11 people injured and at least 100 rooms damaged "); Carothers, Cruise Control34 (" Experts are still investigating the March blaze aboard the Star Princess...The cause of the fire has not yet been determined, but it appears to have spread along the outside of the vessel, burning up balcony furniture and polycarbonate dividers. As a relatively new addition to cruise ships, polycarbonate dividers are not covered

by current fire codes "); Tobin, NCL stands by Norway, says it will repair ship, Travel Weekly, June 2, 2003, p. 1 (a blast in the boiler occurred " May 25 after the Norway had returned to Miami following a seven-day Caribbean cruise. Four crew members were killed; two more later died from injuries. About 20 other crew were injured...No passengers were injured in the incident...")].

C] Cruise Passenger Safety: Post September 11, 2001

On September 11, 2001 four regularly scheduled domestic commercial aircraft were hijacked by terrorists. Two of the aircraft were flown into both towers of the World Trade Center in New York City resulting in their collapse. A third hijacked aircraft was flown into the Pentagon in Washington, D.C.. And a fourth aircraft crashed into a field near Pittsburgh³⁵. The total number of dead may have exceeded 3,000³⁶. The ease with which the hijackers boarded the aircraft and seized control with knives and boxcutters³⁷ highlighted just how vulnerable our airports and commercial aircraft are to terrorist acts. This horrific disaster has and will continue to generate significant changes in passenger security at airports and on aircraft³⁸ and on other forms of mass transportation such as cruise ships³⁹.

Indeed, the Courts may have to change their thinking on

various airline matters in light of the events of September 11, 2001⁴⁰. In In re September 11 Litigation⁴¹ the Court found, inter alia, that the owners of the World Trade Center owed the occupants a duty to implement adequate fire safety measures and that the airlines failure to design an impenetrable cockpit door was the proximate cause of the disaster.

D] Passenger Cancellations Immediately After September 11, 2001

Immediately after September 11, 2001 some passengers canceled their cruises and demanded refunds [Casavant v. Norwegian Cruise Line, Ltd. ⁴² (passengers cancel September 16, 2001 cruise; court refuses to enforce forum selection clause because ticket delivered thirteen days before cruise and " expressly rejected the services offered in the contract due to legitimate safety concerns stemming from the catastrophic events of September 11, 2001...Whether their rejection of the passenger ticket contract entitled the (passengers) to a full refund of the ticket price under Norwegian's own policy is a matter for the fact finder at trial "); Sub-Zero Freezer Co., Inc. v. Cunard Line Limited ⁴³(freezer manufacturer cancels contract for cruise for its dealers because of September 11, 2001 terrorist attacks and seeks return of \$892,000 prepayment)].

E] Increased Security On Cruise Ships

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

" Passenger ships operating from the United States already had security procedures in place well before Sept. 11, according to Michael Crye, the president of the International Council of Cruise Lines...Those procedures have since been intensified. ' We implemented the highest level of security immediately after the attacks '... Security on cruise ships usually includes a trained staff and an officer who is a military veteran. On Royal Caribbean, and other major cruise lines, carry-ons, provisions and luggage are screened by one or more detectors-X-ray machines, metal detectors, hand searches and canine teams. And before passengers or crew members board or debark, each must swipe an identification card that contains a digital photograph and personal data on a magnetic strip; security personnel then compare the resulting photograph and data on the computer screen to the person standing before them "⁴⁴.

Maritime Transportation Safety Act of 2002

Congress passed the Maritime Transportation Safety Act of 2002, effective January 1, 2003. The Act " requires various security plans for U.S. Ports and mandates improved identification and screening of seaport personnel. When all is said and done, the U.S. will have security measures that are much more restrictive than other countries...It has been obvious that protection was needed, considering that some 7,500 foreign flagged ships make 51,000 ports of call each year in 361 U.S. Ports "⁴⁵.

Two Years Later : More Needs To Be Done

Two years later U.S. ports were struggling to meet new security standards [Milligan, Cruises may be most affected by new passport rule ⁴⁶ (" With just four months to go before new passport requirements kick in for certain North American air and cruise travelers, the travel industry is still wrestling with concerns about how the new rules could affect travel "); Luzadder, U.S. cruise ports struggle to meet security mandates⁴⁷ (" Port authority officials around the U.S. say they need more federal dollars to help meet security mandates...(including) More security personnel to monitor video cameras...Additional

audio surveillance...High-tech biometrics...Extra security equipment...Additional training of security personnel...Dredging harbors in some ports ")].

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

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

(1) **The Art Of Complaining**

Kevin Doyle of Conde Nast Traveler Magazine in his article Cruise Smart, How To Ensure Smooth Sailing, From Booking To Disembarking⁴⁸ recommends the following:

" This magazine has heard stories of cabin toilets being clogged for days, showers spraying putrid water, and air conditioning that either didn't work or turned the cabin into a deep-freeze. One reader even complained about a waiter aggressively soliciting tips, telling sad tales of his many hungry children on a far-off continent. These situations deserve immediate attention: Notify the chief purser or the hospitality director (or the maitre d' for dining room problems) and

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

(2) Suing The Cruiseline & Others

If the aggrieved passengers are unable to resolve the more minor of these problems through complaining then litigation may be necessary after the cruise is completed. In filing a claim and preparing a lawsuit the passenger should carefully read the cruise ticket since it contains numerous clauses limiting liability including very short time periods in which to file claims and commence lawsuits. Most importantly, the aggrieved

passengers and his or her attorney should be aware that the passenger's rights and remedies are governed by maritime law which in many important respects is very different from the common law. Lastly, the aggrieved passenger may wish to consider suing his or her local travel agent⁴⁹, tour operator⁵⁰ or sponsoring organization⁵¹ that arranged the cruise vacation.

G] Accidents Onboard The Cruise Ship

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

(1) **Slips, trips, falls & minor injuries** [Pratt v. Silversea Cruises, Ltd.⁵² (passenger " suffered a broken hip, a torn ACL in her right knee and severe ankle injuries when she fell on a cruise ship); Ward v. Cross Sound Ferry⁵³ (slip and fall on gangway boarding ferry); Morrow v. Norwegian Cruise Line Limited⁵⁴ (minor passenger injured " when the ladder she was climbing detached and fell backwards "); Carnival Corp. v. Stowers⁵⁵ (slip and fall on granite step after slipping on liquid on carpet); Gibbs v. Carnival Cruise Lines⁵⁶ (minor passenger burns foot stepping onto hot surface of deck); Watanabe v. Royal Caribbean Cruise Ltd.⁵⁷ (passengers forced to abandon ship after it struck a reef); Angel v. Royal Caribbean

Cruises Ltd.⁵⁸ (passenger falls overboard and survives);
Carnival Corp. v. Amato⁵⁹ (passenger falls down stairs and
recovers \$577,000 in damages); Norwegian Cruise Line Ltd. v.
Clark⁶⁰ (slip and fall on wet deck); Corona v. Costa Crociere
SPA⁶¹ (passengers who walked with cane falls when bathroom door
handle came off its housing); Kalendareva v. Discovery Cruise
Line⁶² (passenger seated in lounge chair struck by weighted end
of thrown mooring line); ; Bergonzine v. Maui Classic Cruises⁶³
(350 lb. passenger on honeymoon cruise falls on gangplank);
Rainey v. Paquet Cruises⁶⁴ (fall on disco dance floor); Lee v.
Regal Cruises⁶⁵ (fall on melting ice cubes on stairway); Kunken
v. Celebrity Cruises⁶⁶ (ankle broken entering cabin)];

(1.1) **Disappearances** [Cogswell, Wife settles, but
Smith family sues Royal Caribbean⁶⁷; Kelly, Bruising For Cruising
⁶⁸ (" More painful than losing a loved one is never finding out
what happened to him. Twenty-four Americans have disappeared from
cruise ships since 2003...The most recent to vanish was 26-year
old George Smith 4th...who disappeared in August 2005 off a Royal
Caribbean vessel during his honeymoon "); Luzadder, Under Siege,
Passenger disappearance case places cruise lines in the sites of
trial lawyers and lawmakers⁶⁹; Elliott, Mystery at Sea: Who
Polices the ships? ⁷⁰; Forster & Stockdale, Man Overboard: Part
Two ⁷¹].

(2) **Drownings and pool accidents** [Wallis v. Princess Cruises, Inc.⁷² (passenger drowns after falling off cruise ship); Smith v. Mitlof⁷³ (water taxi capsizes drowning one passenger and injuring others); Calhoun v. Yamaha Motor Corp.⁷⁴ (rider of Yamaha WaveJammer jet ski dies after collision with anchored vessel off Mexico coast); United Shipping Co. v. Witmer⁷⁵(passenger drowns during boat tour of Bahamas); Smith v. West Rochelle Travel Agency⁷⁶(passenger on booze cruise leapt overboard and was killed when he came into contact with the vessel's propellers); Kruempelstaedter v. Sonesta International Hotels Corp.⁷⁷(after exiting pool passenger burns feet on hot sun exposed surface); Benezra v. Holland America Line-Westours, Inc.⁷⁸ (passenger slips and falls on pool steps); Carron v. Holland America Line⁷⁹ (passenger in pool " propelled into a sharp statute...causing injury "); Brown v. New Commodore Cruise Line⁸⁰ (passenger fractures ankle recklessly jumping into pool from one deck above)];

(3) **Flying coconuts** [McDonough v. Celebrity Cruises⁸¹ (passenger struck in head with rum filled coconut [a drink called the " **Coco Loco** "] dropped from a deck above);

(4) **Stray golf balls** [Catalan v. Carnival Cruise Lines⁸² (passenger driving golf balls into sea strikes another

passenger)];

(5) **Discharging shot gun shells and cannons** [Fay v. Oceanic Sun Line⁸³ (skeet shooting passenger discharges shot gun shell into another passenger); Lawrence v. The IMAGINE...! YACHT, LLC⁸⁴(passenger suffers hearing loss when crew member fires cannon; " He was later diagnosed with permanent hearing loss and tinnitus as a result of exposure to the cannon blast ")];

(5.1) **Food poisoning** [Bird v. Celebrity Cruise Line, Inc.⁸⁵ (passenger " rushed to the emergency room several days after (cruise ended)...claims that she was diagnosed with bacterial enteritis, a disease she allegedly contracted as a result of poisoning from food ")]; Jackson v. Carnival Cruise Lines⁸⁶ (passenger became ill during cruise, initially treated in infirmary and dies after disembarking; no proof of food poisoning)];

(5.2) **Gastrointestinal disorders, seasickness and fear** [Hutton v. Norwegian Cruise Line⁸⁷ (cruise ship collides with cargo ship in English Channel; emotional injuries including " severe fright, trouble sleeping, nerves, headaches, depression and shaking. Many passengers also complained about aches, bumps

and bruises of their neck, back and knees associated with the collision "); Jackson v. Carnival Cruise Lines, Inc.⁸⁸ (passenger becomes ill during cruise and dies after disembarking; no proof that contaminated food caused illness); Tateosian v. Celebrity Cruise Services, Ltd.⁸⁹ (food poisoning; claim dismissed for failure to commence lawsuit within 1 year of accident); Adler v. Royal Cruise Line, Ltd.⁹⁰ (passengers become ill because of unsanitary conditions); Bounds v. Sun Line Cruises, Inc.⁹¹ (food contamination); Hernandez v. The Motor Vessel Skyward⁹² (contaminated food and water); Barbachym v. Costa Line⁹³ (food poisoning); Williams v. Carnival Cruise Lines⁹⁴ (seasickness; fear of seasickness)];

(5.3) **Pirates** [Klein, After Attack, Cruise Ships Rethink Security⁹⁵ (" 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 ")];

(5.4) **Rogue Waves** [Dobnik, Freak wave leaves vivid trip images⁹⁶ (" a freak seven-story-high wave that smashed windows, sent furniture flying and ripped out whirlpools...The Norwegian Dawn carrying more than 2,000 passengers...About 300

other passengers-many from the affected cabins-decided to disembark early ")];

(5.5) **Listing** [Jainchill, Princess: Human error caused list ⁹⁷(" Princess Cruises said that human error was responsible for the list that injured 240 people aboard the Crown Princess on July 18...Human error also was determined to have caused the listing of another Grand-class ship, the Grand Princess...In that incident, 27 people were injured when the ship tried to turn around and return to port after a passenger experienced cardiac arrest ")];

(5.6) **Malfunctioning Sliding Doors** [Galentine v. Holland America Line-Westours, Inc. ⁹⁸(passenger injured by automatic sliding doors on observation deck); Heinz v. Grand Circle Travel ⁹⁹(passenger on Rhine River cruise sustains injuries " when the ship's automatic doors failed ")];

(6) **Defective exercise equipment** [Berman v. Royal Cruise Lines ¹⁰⁰ (passenger injured exercising on treadmill)];

(7) **Diseases**

Legionnaires' Disease & Respiratory Infections

[See e.g., Petitt v. Celebrity Cruises, Inc.¹⁰¹(passengers develop upper respiratory tract infection); Enderson v. Carnival Cruise Lines, Inc.¹⁰² (passenger contracts appendicitis, initially treated in ship's infirmary and removed to Puerto Rican hospital); Hague v. Celebrity Cruises, Inc.¹⁰³ (passenger who suffered from Legionnaires' Disease awarded compensatory damages); Licensed Practical Nurses v. Ulysses Cruises, Inc.¹⁰⁴ (passengers suffer from bacterial infection); In re Horizon Cruises Litigation¹⁰⁵ (Legionnaires' Disease); Freeman v. Celebrity Cruises, Inc.¹⁰⁶(Legionnaires' Disease; class of passengers suffering from emotional distress and fear certified); Hirschhorn v. Celebrity Cruises, Inc.¹⁰⁷ (passengers became ill and needed medical treatment); Mullen v. Treasure Chest Casino¹⁰⁸ (respiratory disorder caused by improperly maintained air-conditioning and ventilating system)].

Norwalk Virus

" The norvirus, as the Norwalk virus has been renamed, has been making unwelcome headlines in the cruise industry for a decade or more, most recently when the Regal Princess...tied up in New York early this month with 301 of 1,529 passengers and 45 of a crew of 679 stricken with the illness. The virus is so closely associated with cruise ships that it has come to be

called the cruising sickness...cruise ships are an ideal vessel for spreading the virus, said Dave Forney chief of CDC's Vessel Sanitation Program...' You have 3,400 passengers in a relatively confined space for 10 days at a time, so if you have someone who throws up in an elevator or has an accident in a restroom,, the risk becomes actually quite high for many people "¹⁰⁹; Reno Hilton Resort Corp. v. Verderber ¹¹⁰ (" The underlying class action arose from an outbreak of a Norwalk-like virus at the Reno Hilton in...1998 "); Schlessinger v. Holland America, N.V. ¹¹¹ (passengers aboard MS Ryndam in 1992 claim " they allegedly contracted the Norwalk virus "); .

(8) **Rapes & sexual assaults** [Stires v. Carnival Corp. ¹¹² (head waiter sexually assaults passenger repeatedly calling her a " puta "); Doe v. Celebrity Cruises ¹¹³ (" female passenger...alleges to have been sexually assaulted, raped and battered by a male crewmember...while ashore in Bermuda during a roundtrip cruise from New York to Bermuda... (the Court held that) " a common carrier may be held strictly liable for its' employee's intentional torts that are committed outside the scope of employment "; case tried to a jury which awarded \$1 million in damages; judgment dismissed as to all defendants [operator, owner, caterer and service] because none of them are both a common carrier and the employer of the employee); State v.

Stepansky¹¹⁴ (crew member charged with crimes of attempted sexual assault and burglary onboard cruise ship); Royal Caribbean Cruises, Ltd. v. Doe¹¹⁵(passenger claims that bartender put drugs into her drink and sexually assaulted her); Nadeau v. Costly¹¹⁶(rape of passenger); Morton v. De Oliveira¹¹⁷ (rape); Johnson v. Commodore Cruise Lines¹¹⁸ (rape of passenger and cover up on cruise); York v. Commodore Cruise Line¹¹⁹ (sexual assault); Travel Weekly, August 16, 1999 (" Cruising Holds Steady Despite Assault Reports...As reported, 108 allegations of sexual misconduct were included in a lawsuit filed in July by a former Carnival employee, who said she was raped by a Carnival officer..."); See also Navin, Stalking Sexual Predators at Sea: The response of the cruise industry to sexual assaults onboard¹²⁰];

(9) **Assaults by crew members** [O'Hara v. Celebrity Cruises, Inc.¹²¹(two passengers assaulted by crew member); Corna v. American Hawaii Cruises¹²² (crewman assaults passenger)];

(10) **Assaults by passengers** [Marmer v. Queen of New Orleans¹²³ (patron of riverboat casino assaulted in restroom); Colavito v. Carnival Cruise Lines, Inc.¹²⁴ (assault by intoxicated passenger)];

(11) **Malpractice by ship's doctor** [Carlisle v. Carnival Corp¹²⁵ (14 year old passenger with appendicitis misdiagnosed by ship's doctor as suffering from flu removed from ship suffers ruptured appendix and rendered sterile after surgery; Florida Appellate Court rejects majority rule that cruise ships are not liable for torts of ship's doctors and holds that " where a ship's physician is in the regular employment of a ship, as a salaried member of the crew " the ship will be held liable for his " negligent treatment of a passenger "); Mack v. Royal Caribbean Cruises¹²⁶; Pota v. Holtz,¹²⁷(pregnant passenger complaining of stomach cramps misdiagnosed as having bladder infection goes into contractions and bleeding and cruiseline denies request for airlift to hospital in Grand Cayman Island; passenger taken to hospital only after ship docks, gives birth and baby dies a few hours later); Jackson v. Carnival Cruise Lines, Inc.¹²⁸ (passenger becomes ill during cruise, treated in onboard infirmary and dies after disembarkation; no proof that contaminated food caused death); Stires v. Carnival Corp.¹²⁹ (head waiter sexually assaults passenger repeatedly calling her a " puta "; medical malpractice claim against cruise ship dismissed); Doe v. Celebrity Cruises¹³⁰ (passenger sexually assaulted by crewmember; claim that ship's physician failed to examine her correctly, preserve evidence of the sexual assaults, protect her from a sexually transmitted disease or pregnancy or administer a

rape kit; medical malpractice claim against cruise ship dismissed); Benson v. Norwegian Cruise Line Limited¹³¹ (passenger ate " shellfish and had an allergic reaction. Due to swelling in the windpipe he could not breath...(passenger) died before intubation could be successfully completed "; medical malpractice occurred 11.7 nautical miles from Florida and, hence, Florida has jurisdiction over medical doctor); Cimini v. Italia Crociere International¹³²(cruise ship disclaimer of liability for malpractice of ship's doctor enforced); Cross v. Kloster Cruise Lines, Limited¹³³(passenger bitten by brown recluse spider; medical malpractice); Afflerbach v. Cunard Line Ltd.¹³⁴(passenger falls while disembarking injuring buttocks, elbow and right shoulder; medical malpractice and failure to assist); Fairley v. Royal Cruise Line Ltd.¹³⁵(ship may be liable for ship's doctor's malpractice); Meitus v. Carnival Cruise Lines, Inc.¹³⁶ (crew member contracts viral encephalitis; misdiagnosis and medical malpractice); Rand v. Hatch¹³⁷(failure to diagnose passenger's blood sugar level and render proper medical treatment); Johnson v. Commodore Cruise Lines¹³⁸ (passenger raped by crew member and misdiagnosed as having had heart attack; removed from ship and abandoned on shore); see also: Konick, Malpractice on the High Seas: The Liability of Owners and Physicians for Medical Errors ¹³⁹; Herschaft, Cruise Ship Medical Malpractice Cases: Must Admiralty Courts Steer By The Star Of Stare Decisis?¹⁴⁰].

(12) **Fires** [Hepburn, Caribbean cruise turns deadly as fire scorches 100 ship cabins¹⁴¹ (" A fire apparently started by a cigarette broke out on (The Star Princess)...leaving one passenger dead, 11 people injured and at least 100 rooms damaged "); Carothers, Cruise Control¹⁴² (" Experts are still investigating the March blaze aboard the Star Princess...The cause of the fire has not yet been determined, but it appears to have spread along the outside of the vessel, burning up balcony furniture and polycarbonate dividers. As a relatively new addition to cruise ships, polycarbonate dividers are not covered by current fire codes "); Tobin, NCL stands by Norway, says it will repair ship, Travel Weekly, June 2, 2003, p. 1 (a blast in the boiler occurred " May 25 after the Norway had returned to Miami following a seven-day Caribbean cruise. Four crew members were killed; two more later died from injuries. About 20 other crew were injured...No passengers were injured in the incident..."); Wade, Fire Safety For Ships at Sea¹⁴³ (" 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.¹⁴⁴ (fire onboard M.S. Tropicale in September 16, 1999; passengers " were held inside a smoke-filled, unventilated ' muster station ' within the ship, after it caught fire...As significant portions of the M.S. Tropicale were ablaze, its sanitary system and engines allegedly became inoperable (which)

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

(13) **Collisions & striking reefs** [Travel Weekly, Aug. 30, 1999 (" Norwegian cancels sailings in wake of ship collision "); Watanabe v. Royal Caribbean Cruises, Ltd.¹⁴⁵ (passengers injured when Monarch of the Seas struck reef forcing them to abandon ship)];

(14) **Falling Bunk Beds** [Angulo v. Carnival Corp¹⁴⁶ (" Angulo, 48, was a passenger on a Carnival cruise ship. While in her cabin, she was struck in the head when the top bunk, weighing 115 pounds, became unhinged and fell open...jury awarded (her) about \$333,600 ")];

(15) **Heart attacks** [Bailey v. Carnival Cruise Lines, Inc.¹⁴⁷; Warren v. Ajax Navigation Corp¹⁴⁸. (passenger claimed malpractice by ship's doctor in treatment after heart attack)];

(16) **Malfunctioning toilets** [Kornberg v. Carnival Cruise Lines¹⁴⁹];

(17) **Pool jumping** [Brown v. New Commodore Cruise Line Limited ¹⁵⁰(passenger jumps from deck above into pool below and suffers broken ankle after landing on " wooden bench " about a foot short " of the pool ")];

(18) **Sliding down banisters** [Meyer v. Carnival Cruise Lines, Inc. ¹⁵¹(intoxicated passenger injured while sliding down banister)];

(19) **Poorly designed bathrooms, sofas, bunkbeds, passageways & railings** [Carnival Corp. v. Amato¹⁵²(passenger falls down flight of stairs and recovers \$577,000; claims negligence " for allowing grease to accumulate on the top of the stairs...maintaining a defective handrail...failure to put non-skid strips on the stairs and...building the stairs too steeply and too overlapped "); Corona v. Costa Crociere SPA¹⁵³ (passenger fell after loose screws released bathroom door handle); Hood v. Regency Maritime Corp.¹⁵⁴ (while using bathroom passenger struck by piece of tub); Palmieri v. Celebrity Cruise Lines, Inc.¹⁵⁵ (jury verdict for passenger injured falling over sofa bed); Kunken v. Celebrity Cruises, Inc. ¹⁵⁶(passenger breaks ankle entering passageway to cabin); Marchewka v. Bermuda Star Lines, Inc. ¹⁵⁷(passenger falls when rungs of bunk bed ladder gave way)];

(20) **Open hatches** [In re Vessel Club Med¹⁵⁸ (passenger steps into open engine hatch and hurts ankle); Hendricks v. Transportation Services of St. John, Inc.¹⁵⁹ (passenger falls into open hatchway on ferry)];

(21) **Storms & hurricanes** [Domblakly v. Celebrity Cruises, Inc.¹⁶⁰ (passengers injured when cruise ship battered by hurricane); In re Catalina Cruises, Inc.¹⁶¹ (passengers injured during rough weather caused by storm); Stobaugh v. Norwegian Cruise Line Limited¹⁶² (passengers injured when cruise ship sails into Hurricane Eduardo)];

(22) **Spider bites** [Ilan v. Princess Cruises, Inc.¹⁶³ (passenger failed to prove that he was bitten by a hobo spider); Cross v. Kloster Cruise Lines, Limited¹⁶⁴ (passenger bitten by brown recluse spider)];

(23) **Snapping mooring lines** [Kalendaeva v. Discovery Cruise Line,¹⁶⁵ (passenger sitting in lounge chair struck by heaving line thrown from dock to second deck); Douville v. Casco Bay Island Transit¹⁶⁶ (ferry passengers injured because of a failure to detach mooring line before departing)];

(24) **Medical emergency disembarkation.** A cruise ship's

medical doctor may " medically disembark " a sick passenger without the passenger's consent. In Larsen v. Carnival Corporation¹⁶⁷ a disabled cruise passenger, " diagnosed with severe obstructive sleep apnea, severe morbid obesity at approximately 450 lbs. and chronic obstructive pulmonary disease and has utilized a prescribed Bi-Pap ventilator and oxygen concentrator at night to help him breath during sleep ", was medically disembarked by the ship's doctor because a functioning Bi-Pap ventilator could not be supplied. In Larsen the Court found that the ship's medical doctor's " decision to disembark (passenger) was based upon a reasonable concern for safety (and to do otherwise) would have represented a serious threat to (passenger's) health and even his life ".

(25) **Torture and hostage taking** [Simpson v. Socialist People's Libyan Arab Jamahiriya¹⁶⁸ (passenger forcibly removed from cruise ship by Libyan authorities claims she was held hostage and tortured)];

(26) **Forced to abandon ship** [Watanabe v. Royal Caribbean Cruises, Ltd.¹⁶⁹ (passengers injured when forced to abandon ship after it struck a reef)];

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

[Wallis v. Princess Cruises, Inc.¹⁷⁰ (passenger drowns after falling off cruise ship); Stires v. Carnival Corp.¹⁷¹(head waiter sexually assaults passenger repeatedly calling her a " puta ")].

[I] **The Standard of Care**

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

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

Cruise ships are common carriers once held to a high standard of care but more recently governed by a reasonable standard of care under the circumstances of each case [Kermarec v. Compagnie Generale Transatlantique¹⁷²; Ginop v. A 1984 Bayliner 27' Cabin Cruiser¹⁷³(" The general principals of admiralty law require that an owner exercise such care as is reasonable under the circumstances "); Ilan v. Princess Cruises, Inc.¹⁷⁴(" A shipowner owes passengers a duty to take ordinary reasonable care under the circumstances...A prerequisite to liability is that the shipowner have had actual or constructive notice of the risk-creating condition "); Watanabe v. Royal Caribbean Cruises¹⁷⁵(" The duty of care of the owner of an excursion ship is a matter of federal maritime law...That duty is to exercise

reasonable care under the circumstances "); Kalendareva v. Discovery Cruise Line¹⁷⁶ (" A ship owner, however, may have a higher duty of care than a land owner, depending on the danger...The extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more danger to the passenger, will determine how high a degree of care is reasonable in each case "); Galentine v. Holland America Line-Westours, Inc.¹⁷⁷(passenger injured by automatic sliding doors on observation deck; reasonable standard of care); Lawrence v. The IMAGINE...! YACHT, LLC¹⁷⁸(passenger suffers hearing loss when crew member fires cannon; standard of reasonable care of vessel owner to passenger does not create a duty on part of charter broker);

(b) **Comparative Negligence & Assumption Of The Risk**

The doctrines of comparative negligence [Ginop v. A 1984 Bayliner 27' Cabin Cruises¹⁷⁹(passenger's failure to use reasonable care for his own safety was proximate cause of his injuries not the negligence of the cruise ship)] and assumption of the risk [Hirschhorn v. Celebrity Cruises, Inc.¹⁸⁰ (assumption of risk under the doctrine of comparative negligence is valid defense)] apply.

© **Res Ipsa Loquitur**

The doctrine of *res ipsa loquitur* may apply thereby raising an inference of negligence [O'Conner v. Chandris Lines, Inc.¹⁸¹ (falling bunk; *res ipsa loquitur* applied); Hood v. Regency Maritime Corp.¹⁸² (passenger using bathroom struck by piece of tile that came loose)].

(d) **Vicarious Liability For Sexual Misconduct**

Cruise ships may be vicariously liable for the sexual misconduct of their employees [Stires v. Carnival Corp.¹⁸³(head waiter sexually assaults passenger repeatedly referring to her as a " puta "); Doe v. Celebrity Cruises¹⁸⁴ (" female passenger... alleges to have been sexually assaulted, raped and battered by a male crewmember...while ashore in Bermuda during a roundtrip cruise from New York to Bermuda... (the Court held that) " a common carrier may be held strictly liable for its' employee's intentional torts that are committed outside the scope of employment ")].

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

Cruise ships may be vicariously liable for the malpractice

of the ship's doctor [Carlisle v. Carnival Corp¹⁸⁵ (14 year old passenger with ruptured appendix misdiagnosed by ship's doctor as suffering from flu; Florida Appellate Court rejects majority rule that cruise ships are not liable for torts of ship's doctors and holds that " where a ship's physician is in the regular employment of a ship, as a salaried member of the crew " the ship will be held liable for his " negligent treatment of a passenger "); Mack v. Royal Caribbean Cruises¹⁸⁶].

(f) **Sea-Worthiness Doctrine**

The sea-worthiness doctrine has not yet been applied to actions involving passengers [Kornberg v. Carnival Cruise Lines¹⁸⁷].

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

" Admiralty law will not imply a warranty of safe passage... where the warranties are not expressly make a part of passenger's contract "¹⁸⁸ [Jackson v. Carnival Cruise Lines¹⁸⁹ (" The general rule of admiralty law is that a ship's passengers are not covered by the warranty of seaworthiness, a term that imposes absolute liability on a sea vessel for the carriage of cargo and seaman's injuries...there is an exception to this rule

if the ship owner executes a contractual provision that expressly guarantees safe passage "); Stires v. Carnival Corp.¹⁹⁰(head waiter sexually assaults passenger repeatedly referring to her as a " puta "; no breach of contract of carriage permitted); Hass v. Carnival Cruise Lines, Inc¹⁹¹. (" (a) review of the contract of carriage reveals no provision guaranteeing safe passage and the law of admiralty will not imply one "); Rockey v. Royal Caribbean Cruises, Ltd.¹⁹²(no implied warranties of seaworthiness or contract of carriage guaranteeing safe passage)].

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

In Bird v. Celebrity Cruise Line, Inc.¹⁹³, a case involving a passenger who claimed to have been " diagnosed with bacterial enteritis, a disease she allegedly contracted as a result of food poisoning ", the Court refused to imply a warranty of merchantability [" courts have manifested a strong reluctance to imply warranties in contracts governed by admiralty law "], especially, where such a warranty is expressly disclaimed [" the only mention of food or beverage in the parties' contract disclaims any warranty as to the food or drink furnished: ' No undertaking or warranty shall be given or shall be implied as to the seaworthiness, fitness or condition of the Vessel or any food or drink supplied on board ' "]].

(I) **No Strict Liability**

With the exception of the application of the doctrine of vicarious liability for the sexual misconduct of crew members and the medical malpractice of a ship's doctor cruise ships have not been held strictly liable for onboard accidents including slip and falls and food poisoning [Bird v. Celebrity Cruise Line, Inc.¹⁹⁴ (" While precedent establishes reasonable care under the circumstances as the operative standard of care in ' slip and fall ' and other cases involving the physical condition of the ship, (this) Court must also determine whether there is any reason to depart from this standard for injuries resulting from a ship operator's provision of food and/or drink to its passengers...there is no principled basis to establish a new exception to the general duty owed by (cruise ships) to their ship passengers ")].

(j) **Americans With Disabilities Act**

All cruise ships touching U.S. ports including foreign cruise lines must comply with the requirements of the Americans with Disabilities Act [Spector v. Norwegian Cruise Lines¹⁹⁵; Stevens v. Premier Cruises, Inc.¹⁹⁶ ("...this case is about whether Title III requires a foreign-flag cruise ship reasonably

to accommodate a disabled, fare-paying, American passenger while the ship is sailing in American waters "); Association For Disabled Americans, Inc. v. Concorde Gaming Corp.¹⁹⁷ (crap tables too high for wheelchair-bound players did not violate ADA but handicapped toilet violated Title III); Access Now, Inc. v. Cunard Line Limited, Co.¹⁹⁸ (settlement provided that cruiseline would spend \$7 million on " installing fully and partially accessible cabins, accessible public restrooms, new signage, coamings, thresholds, stairs, corridors, doorways, restaurant facilities, lounges, spas "); Walker v. Carnival Cruise Lines¹⁹⁹(cruiseline misrepresented that its cruise ship, Holiday, had rooms and facilities which were " disabled accessible "; travel agents liable under Americans with Disabilities Act for " failing to adequately research, and for misrepresenting the disabled accessible condition of the Holiday "); Briefer v. Carnival Corp.²⁰⁰ (travel agents governed by Americans with Disabilities Act); Deck v. American Hawaii Cruises, Inc.²⁰¹(passengers claim cruise ship violated Americans with Disabilities Act); Considine, Lowering the Barriers for Disabled Visitors²⁰² (" Cruising is a popular way for disabled travelers to reach the Caribbean, partly because some lines have been building increasingly accessible ships. According to the 2002 Open Doors study, 12 percent of disabled adults had taken a cruise in the previous five years, compared with 8 percent of all

travelers "); Greenhouse, Does the Disability Act Stop at the Shoreline?²⁰³(contains a sampling of services for the disabled provided by Carnival, Celebrity, Holland America, Norwegian Cruise Line, Princess and Royal Caribbean)];

(k) **Dram Shop Liability**

State dram shop acts creating liability for the purveyors of alcoholic beverages to patrons that subsequently injure third parties have been inconsistently applied to cruise ships [See Edelman & Mercante, The Floating Dram Shop²⁰⁴ (" The popularity of gambling ` cruises to nowhere ` and ` booze cruises ` have increased the incidents of lawsuits against vessel owners...a tort involving a cruise...an alcohol-related injury to a third party by an intoxicated passenger or crew member, will typically sustain admiralty jurisdiction (but may or may not sustain a claim based upon the violation of a state dram shop act)...In Voillat v. Red and White Fleet²⁰⁵ alcohol was served by a catering company aboard a harbor cruise on San Francisco Bay. The alcohol turned some passengers courageous and flirtatious resulting in a fight over a girl. In the aftermath, Mr. Voillat, a young man (with the girl) was allegedly thrown overboard...by another passenger, Mr. Monaghan (who wanted the girl). Mr. Voillat did not surface and his decomposed body was found nearly one month

later. The vessel owner, catering company, security firm and Mr. Monaghan were sued for wrongful death. One of the causes of action, for improper service of alcohol to obviously intoxicated passenger is commonly known as dram shop liability...California's dram shop statute does not recognize liability for the negligent service of alcohol (which) actually immunizes providers of alcoholic beverages from liability for merely furnishing alcohol...Faced with...California's anti-dram statute (the Court dismissed the) liquor liability cause of action...other courts have found that liability...in admiralty law exists for ` providing alcohol without adequate supervision ` and for ` failing to monitor alcohol consumption onboard, fostering a party atmosphere and failing to prohibit drunk officers from driving " (Their v. Lykes Bros., Inc.²⁰⁶); Young v. Players Lake Charles, LLC,²⁰⁷; Hall v. Caribbean Cruises, Ltd.²⁰⁸). See also: Taylor v. Costa Cruises, Inc.²⁰⁹ (cruise ship has responsibility for conduct of crew in serving alcoholic beverages to passengers); Guinn v. Commodore Cruise Line, Ltd.²¹⁰; Petersen v. Scotia Prince Cruises²¹¹];

(1) **Causation**

Causation must be proven [Petitt v. Celebrity Cruises, Inc.²¹² (passengers suffer upper respiratory infections

(URTI) during cruise; failure to prove that cruise ship's negligence, if any, caused the URTI; only 3.3% of 1,935 passengers visited ship's infirmary with colds or URTI); Jackson v. Carnival Cruise Lines²¹³ (passenger became ill during cruise, initially treated in infirmary and dies after disembarking; no proof of food poisoning)].

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

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

Prior to arriving at a port of call the cruise ship's staff will give lectures about the shopping to be expected and the availability of tours to include snorkeling and scuba diving areas, archaeological sites, catamaran rides, para-sailing, helicopter rides and so forth. Cruise ships may generate substantial income from these tours²¹⁴, which are typically delivered by independent contractors not subject to the jurisdiction of U.S. courts, which may be uninsured, unlicensed and irresponsible [See e.g., Winter v. I.C. Holidays, Inc.²¹⁵ (tourists injured in bus accident; foreign bus company insolvent, uninsured and irresponsible; tour operator has duty to select responsible independent contractors)] and whose negligence [for which the cruise line disclaims responsibility]

can be dramatic, indeed [e.g., twelve cruise passengers, part of " 64-member B'nai B'rith group that was traveling aboard the cruise ship Millennium...(who) had made a side excursion to see the mountains on a tour bus that tumbled more than 300 feet down a mountainside "²¹⁶ were killed in March of 2006 in Chile. " Soon after the accident, reports surfaced that the company which provided the tour was unlicensed and not one of those recommended by the cruise ship "²¹⁷.

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

Shore excursions are big business for the cruise lines [Carothers, Cruise Control ²¹⁸ (" 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 Outdoors²¹⁹ (" 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 ")].

© The Law To Be Applied

The law to be applied in the event of an accident on shore will depend upon the extent to which a given court wishes to extend the principals of maritime law beyond the confines of the cruise ship. Some courts have taken a conservative position holding that maritime law ends at the gangplank [Matter of Konoa, Inc.²²⁰ (scuba accident; maritime law does not apply); Musumeci v. Penn's Landing Corp.²²¹ (maritime law applies to accident on gangplank)]. More progressive courts have extended maritime law to the pier [Gilmore v. Caribbean Cruise Line²²² (passengers robbed and stabbed on pier; failure to warn of high level of criminal activity on pier)] and beyond to cover accidents that occur far away from the ship [Chan v. Society Expeditions, Inc.²²³ (inflatable raft transporting passengers to

shore capsizes; maritime law applies to accident away from cruise ship); Carlisle v. Ulyssess Line Ltd.²²⁴ (passengers ambushed on remote beach; cruise line has continuing duty to warn of dangerous conditions on shore)].

(d) **Three Zones Of Danger**

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

First, accidents may occur while passengers are being transported from ship to shore [Chan v. Society Expeditions²²⁵ (inflatable raft ferrying passengers to shore capsizes); Favorito v. Pannell²²⁶ (engineer drives inflatable tender with 15 passengers into other vessel)].

Second, accidents may occur on **the pier** or areas immediately adjacent thereto [Smith v. Commodore Cruise Line Limited²²⁷ (passenger falls on bathroom floor of boarding facility used by cruise ship fracturing hip and knee); Sharpe v. West Indian Company, Ltd.²²⁸ (a railing from cruise ship falls on passenger walking on dock to board tour bus); Gillmore v. Caribbean Cruise Line²²⁹ (passengers stabbed and robbed on pier); Sullivan v. Ajax Navigation Corp.²³⁰ (passenger injured on Mexican pier)].

Third, accidents may occur

(1) **In the town** [Petro v. Jada Yacht Charters²³¹ (two passengers have fight in bar in town)];

(2) **On local transportation** [Esfeld v. Costa Crociere²³² (passenger injured in tour van accident during shore excursion of Da Nang area in Vietnam); Konikoff v. Princess Cruises, Inc.²³³ (passenger sustained injury exiting taxi during shore excursion); Dubret v. Holland America Line²³⁴ (bus accident during shore excursion); Paredes v. Princess Cruises²³⁵ (tour bus accident during ground tour in Egypt); DeRoche v. Commodore Cruise Line²³⁶ (motor scooter accident during shore excursion); Lubick v. Travel Services, Inc.²³⁷];

(3) **On a private beach** [Berg v. Royal Caribbean Cruise²³⁸ (accident at private beach); Carlisle v. Ulysses Line²³⁹ (passengers ambushed, raped and robbed at private beach)];

(4) **At a hotel** [Rams v. Intrav, Inc.²⁴⁰ (passenger fell at hotel owned by cruise line during shore excursion)];

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

Canadian Helicopters Limited²⁴¹ (cruise passengers drown when helicopter crashes on return to Cozumel, Mexico from tour of ruins in Chichen Itza); See also: Nineteen die on HAL tour excursion, Travel Weekly²⁴² (" Sixteen passengers from Holland America Line's Maasdam, along with two pilots and one tour escort, were killed Sept. 12 when their sightseeing plane crashed in a jungle near Mexico's Yucatan Peninsula ") Passenger killed in shore excursion accident, Travel Weekly²⁴³; Six passengers, pilot killed in Maui tour helicopter crash, Travel Weekly²⁴⁴];

(6) **Touring a local site** [Parry, Dead, injured in Chilean bus crash return home, The Journal News, March 25, 2006 at p. 7B (twelve passengers of a " 64-member B'nai B'rith group that was traveling aboard the cruise ship Millennium...(who) had made a side excursion to see the mountains on a tour bus that tumbled more than 300 feet down a mountainside " ²⁴⁵ were killed in March of 2006 in Chile; Long v. Holland America Line Westours, Inc.²⁴⁶, (slip and fall during tour of museum); Metzger v. Italian Line²⁴⁷ (accident during shore excursion)];

(7) **Renting A Villa** [Garin, Stay Safe ²⁴⁸ (" In 2005, a young British man was shot to death in a vacation villa on Barbados where he was staying with his family, and in separate incidents, two American couples were robbed at gunpoint outside

their rental villas on St. John. The first half of this year has seen villa break-ins across the Caribbean. In January, on laid-back Anguilla, two American tourists in their 70's were shot and left for dead (both survived) inside the villa they'd been renting for nearly a month. This past spring, the robberies on St. John continued when an American couple were held at gunpoint, bound and robbed at their rental villa. Perhaps, most disturbing, a rash of violent rapes and robberies of tourists at vacation villas on Tobago (two in May alone) has led both the U.S. State Department and the British Foreign Office to issue warnings related to renting villas on the island ")].

[I] **Types Of Shore Accidents**

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

[Gillmore v. Caribbean Cruise Line²⁴⁹; Carlisle v. Ulysses Line²⁵⁰; See also: Travel Weekly²⁵¹ (" A dozen passengers sailing on Holland America Line's Noordam were robbed at gunpoint at the Prospect Plantation In Ocho Rios, Jamaica ")];

(2) **Horseback riding** [Colby v. Norwegian Cruise Lines²⁵² (horse riding accident during shore excursion)];

(3) **Jet skis** [Calhoun v. Yamaha Motor Co., Ltd.²⁵³

(rider of Yamaha WaveJammer jet ski dies after collision with anchored vessel off the Mexican coast); Mashburn v. Royal Caribbean Cruises, Ltd.²⁵⁴ (passenger injured riding a Sea-Doo provided by cruise ship); In re Complaint of Royal Caribbean Cruises²⁵⁵ (passengers on jet skis collide)];

(4) **Scuba diving** [Carnival Cruise Lines, Inc. v. LeValley²⁵⁶(judgment for passenger injured during cruiseship sponsored scuba dive reversed for concealing asthmatic condition from dive instructor); Gershon v. Regency Diving Center, Inc.²⁵⁷(exculpatory release does not prevent heirs of decedent from commencing wrongful death action); Neely v. Club Med Management Services, Inc.²⁵⁸(American employed as scuba instructor at St. Lucia Club Med resort sucked into dive boat propellers); Sinclair v. Soniform, Inc.²⁵⁹ (scuba diver suffers decompression sickness due to defect in buoyancy compensator vest and failure of crew to detect his symptoms); Matter of Pacific Adventures, Inc.²⁶⁰ (scuba diver's leg entangles in dive boat propeller); McClenahan v. Paradise Cruises, Ltd.²⁶¹ (snuba diver injured (" Snuba diving differs from more traditional Scuba diving; Snuba diving is apparently similar to snorkeling and uses a common air supply on the surface with air hose for a group of divers); Tancredi v. Dive Makai Charters²⁶² (scuba accident during shore excursion); Courtney v. Pacific Adventures²⁶³

(scuba diver's leg becomes entangled in boat propeller);
Shultz v. Florida Keys Dive Venter, Inc.²⁶⁴ (scuba diver
drowns); Cutchin v. Habitat Curacao²⁶⁵ (scuba accident at dive
resort); Borden v. Phillips²⁶⁶ (scuba diver drowns)].

(5) **Snorkeling** [Mayer v. Cornell University²⁶⁷
(bird watcher on tour of Costa Rica drowns during snorkeling
expedition to Isle de Cano)];

(6) **Boat tours** [United Shipping Co. v. Witmer²⁶⁸
(cruise passengers drown during boat tour in the Bahamas)];

(7) **Traffic accidents** [Young v. Players Lake Charles²⁶⁹
(intoxicated gamblers leave casino boat and have traffic
accident)];

(8) **Fist fights** [Petro v. Jada Yacht Charters²⁷⁰ (two
passengers fight each other on shore)];

(9) **Catamaran rides** [Henderson v. Carnival Corp.²⁷¹
(passenger injured during catamaran trip)];

(10) **Medical malpractice at local clinics** [Morris v.
Princess Cruises, Inc.²⁷² (sick passenger removed from cruise to

inadequate and filthy intensive care facility in Bombay);
DeRoche v. Commodore Cruise Line²⁷³ (passenger suffered injuries
from motor scooter accident in Cozumel, Mexico and subsequent
malpractice of Mexican doctors);

(11) **Abandoned on shore** [Daniel v. Costa Armatori²⁷⁴
(passenger abandoned on shore)];

(12) **Parasailing** [Matter of the Complaint of UFO
Chuting of Hawaii, Inc.²⁷⁵(" (plaintiffs) went parasailing.
Unfortunately for them, the rope that attached them to the boat
snapped, causing (plaintiffs) to fall into the water");
Ransier v. Quirk Marine, Inc.²⁷⁶(parasailing accident; " we find
that plaintiff raised questions of fact...whether her risk of
injury was increased by having another patron who was not an
employee of or trained by, defendant...act as a ' spotter ' for
the operator of the boat while plaintiff was parasailing ");
Matter of See N Ski Tours²⁷⁷ (parasailing accident); Matter of
Beiswenger Enterprises Corp.²⁷⁸ (parasailing accident); See also
49 A.T.L.A. Law Reporter March 2006 at p. 57 (Comment: For a
case involving a hotel management company's liability where a
guest drowned while parasailing, see Walker v. Wedge Hotel
Management (Bahamas) Ltd., 47 ATLA L. Rep. 127 (May 2004).
There, plaintiff claimed that the defendant management company

was liable because the vendor who ran the parasailing business was an agent of defendant. A jury awarded plaintiff \$1.88 million in the case ")];

(13) **Waterskiing** [O'Hara v. Bayliner²⁷⁹ (water skiing accident)];

(14) **Snowmobiling** [See Passenger killed in shore excursion accident, Travel Weekly²⁸⁰ (" A female passenger aboard Orient Lines' Marco Polo was killed in a snowmobiling accident...during a shore excursion on Langjokull Glacier near Reykjavik, Iceland ")];

(15) **Helicopter & airplane rides** [See Rogers, Risky Business?²⁸¹ (" On June 14, 2004, a Bell flightseeing helicopter plunged into New York City's East River soon after takeoff from a Wall Street heliport, injuring the pilot and six tourists on board. This followed the crash of a four passenger Cessna on the beach at Brooklyn's Coney Island a month earlier, in which the pilot and three sightseers were killed. More recently, on September 23, three passengers died after a Heli USA Airways flightseeing helicopter plummeted into the sea off the island of Kauai. Flightseeing-known in the aviation industry as air-touring, be it aboard a hot-air balloon, a fixed wing plane, or a

helicopter-attracts more than two million passengers a year and generates revenues in excess of \$625 million in the United States alone "); Klein, Spate of Copter Crashes Prompts Concern ²⁸² (" The N.T.S.B. has recorded more than 140 sightseeing-flight accidents nationally since January 2000, 19 of them fatal. The accidents are split almost evenly among helicopters, balloons and small planes, but helicopter flights made up more than half of the fatal crashes killing 43 people, 24 in Hawaii "); Rizzuti v. Basin Travel Service²⁸³ (tourist dies in airplane crash during a safari trip in Africa); Abercrombie & Kent v. Carlson ²⁸⁴(tourists killed in air crash during African safari); Varey v. Canadian Helicopters Limited²⁸⁵ (cruise passengers drown when helicopter crashes on return to Cozumel, Mexico from tour of ruins in Chichen Itza); See also: Nineteen die on HAL tour excursion²⁸⁶ (" Sixteen passenger from Holland America Line's Maasdam, along with two pilots and one tour escort, were killed Sept. 12 when their sightseeing plane crashed in a jungle near Mexico's Yucatan Peninsula ") Passenger killed in shore excursion accident²⁸⁷, Six passengers, pilot killed in Maui tour helicopter crash²⁸⁸];

(16) **Personal watercraft rides** [Matter of Bay Runner Rentals, Inc.²⁸⁹ (passengers sustain injuries when personal watercraft collides with a bulkhead)];

(17) **Wake boarding** [Wheeler v. Ho Sports Inc.²⁹⁰

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

(18) **Mig Fighter Jet Flying** [Jainchill, Luxury cruising sector is booming as mass-market products struggle²⁹¹

(" 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 ")].

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

Besides physical injuries cruise passengers may have claims arising from

(1) **Cancellations** [Odyssey Travel Center, Inc. v. RO Cruises, Inc.²⁹² (cruise line cancels group contracts); Unger v. Travel Arrangements, Inc.²⁹³ (cruise line becomes insolvent); Dimon v. Cruises By De²⁹⁴ (travel agent absconds with consumer's payment); Sanderman v. Costa Cruises, Inc.²⁹⁵ (passengers send cruise tour operator \$21,775 which fails to remit payment to

cruise line or make refund); Slade v. Cheung & Risser Enterprises²⁹⁶ (Great Lakes cruise line absconded with passenger payment; travel agent liable for failing to investigate financial responsibility);

(2) **Flight delays** [Flamenbaum v. Orient Lines, Inc.²⁹⁷ (passengers sail without baggage because it was placed on wrong flight; claims against cruise ship and airlines for " irresponsible scheduling of connecting flights " and " mishandling of their baggage "); Insoqnia v. Princess Cruises, Inc.²⁹⁸ (passengers purchased " a seven-day Caribbean cruise on...the Grand Princess...and airline tickets on an American Airlines flight to Miami...the flight was unexpectedly canceled due (to) an American Airlines strike. As a result (passengers) were unable to arrive at their destination in time to depart on the cruise..."); Bernstein v. Cunard Line, Ltd.²⁹⁹ (snowstorm delays air transportation to port of cruise departure); Harden v. American Airlines³⁰⁰ (passengers miss two days of cruise because of delayed air transportation)];

(3) **Port skipping and unannounced itinerary changes**
[Elliott v. Carnival Cruise Lines³⁰¹ (passengers purchased cruise scheduled to make " two stops-one in Cozumel and the other either in Playa del Carmen or in Cancun "; second stop canceled

due to engine trouble); Yollin v. Holland American Cruises³⁰²
(Bermuda skipped); Desmond v. Holland American Cruises³⁰³ (port
skipping); Casper v. Cunard Line³⁰⁴ (mechanical breakdown and
scheduled itinerary changed); Bloom v. Cunard Line³⁰⁵ (two ports
of call, Puerto Rico and Nassau, canceled); See also: Elliott,
Maybe Barbados, Maybe Someplace Else³⁰⁶(" Cruise lines make a lot
of claims about their itineraries and ports of call. But they may
be under no contractual obligation to keep to their schedules,
and they sometimes do not. When that happens, the compensation to
passengers is entirely up to the lines. Their policies are
uneven, ranging from a small credit for port taxes issued to a
passenger's onboard account to, in extreme cases, a free cruise.
These responses do not always sit well with passengers or
authorities. New Jersey's attorney general recently sued Royal
Caribbean Cruises, a sister brand of Celebrity Cruises, for
diverting a Bermuda cruise to New Brunswick and Nova Scotia,
Canada, last summer when a hurricane was feared in Bermuda.
(The company offered a 25 percent discount on a future sailing
and a \$42.50 port fee refund, but no refund for the cruise
itself...(Celebrity's) cruise contract allows it to ` cancel,
advance, postpone or deviate from any scheduled sailing or port
of call ` for any reason, at anytime and without notice.
Regarding compensation, the contract is equally clear. Celebrity
is not ` liable for any loss whatsoever ` for a cancellation...

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

(4) **Forced Disembarkation**

The captain of a cruise ship [and a commercial aircraft³⁰⁷] may, under appropriate circumstances, order the disembarkation of passengers. Typically, a medical disembarkation will seek to protect the well being of an individual passenger [Larsen v. Carnival Cruise Corp. ³⁰⁸(" Since 1989, (passenger) has been a paraplegic and utilizes a motorized wheelchair. Since 1997, (passenger) was diagnosed with severe obstructive sleep apnea...chronic obstructive pulmonary disease and has utilized a prescribed Bi-Pap ventilator " which was discovered not be functioning properly after boarding. As a result the passenger was " medically disembarked "; " The undisputed testimony of the ship's doctor, ship's nurse, (passenger's) own treating

physician and defendant's medical expert all confirm that permitting (the passenger) to sail without a functioning Bi-Pap would have posed an unacceptable risk to his very life and that the medical disembarkation of (passenger) was a sound and reasonable medical decision ")] while the disembarkation of a passenger may be necessary to protect the remaining passengers [Afkhami v. Carnival Corporation ³⁰⁹(passengers of Iranian descent brought onboard a wooden container of 50 to 60 live bees [the venom of which was used as a non-prescribed treatment for multiple sclerosis] in direct violation of clause in cruise contract prohibiting passengers from bringing live animals onboard; " The ship's doctor...stated that the bees were a danger to other passengers because bee stings may have life-threatening consequences for those who are allergic to bee venom "; passengers were disembarked and in a subsequent lawsuit failed to establish discrimination based on Iranian descent).

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

(1) **Deceptive port charges** [Cruiselines have generated substantial profits by forcing passengers to pay " port charges " in addition to the cost of the cruise. Sometimes these " port charges " have exceeded \$150 per passenger and were explained to passengers as required by port authorities and governmental

agencies. In reality, very little of the " port charge " was ever paid to port authorities or governmental agencies, most, if not all of the collected revenues, being pocketed by the cruise line as profit. This practice is deceptive, has been the subject of an enforcement proceeding brought by the Florida Attorney General [See " Cruise Lines Fined for ' Misleading ' Cruise Costs " ³¹⁰ (" Six cruise ship lines operating from Florida ports will pay a total of \$295,000 and revise their advertising policies to settle allegations that they misled consumers about cruise costs, according to Florida attorney general Bob Butterworth...accused the lines of charging consumers more for so-called ' port charge ' than necessary to cover actual dockage costs and keeping the difference ")] and has been the subject of several consumer class actions alleging fraud and violation of state consumer protection statutes [In Re: Carnival Cruise Lines Port Charges Litigation, Notice Of Settlement Of Class Action ³¹¹ (" This action was commenced on April 19, 1996 against Carnival for allegedly misrepresenting the nature and purpose of the ' port charges ' it advertised and collected from its cruise passengers. The action alleges that Carnival's advertising and other promotional materials implied ' port charges ' represented monies paid by Carnival to governmental authorities, that Carnival paid less to those governmental authorities than it collected from passengers and that Carnival's passengers are due the difference

between the amount collected from them and the amount paid to governmental authorities "); Latman v. Costa Cruise Lines ³¹² (" We therefore conclude that where the cruise line bills the passenger for port charges but keeps part of the money for itself, that is a deceptive practice...Reliance and damages are sufficiently shown by the fact that the passenger parted with money for what should have been a ' pass-through ' port charge, but the cruise line kept the money "); N.G.L. Travel Associates v. Celebrity Cruises, Inc. ³¹³ (travel agents sue for damages arising from deceptive port charges; complaint dismissed because travel agents are not consumers and cruise line was not unjustly enriched at the expense of travel agents); Renaissance Cruises, Inc. v. Glassman ³¹⁴(deceptive port charges; certification of nationwide class granted); Premier Cruise Lines, Ltd., v. Picaut ³¹⁵(deceptive port charges; summary judgment or cruiseline reversed); Cronin v. Cunard Line Limited ³¹⁶(deceptive port charges; complaint dismissed; six months time limitation in which to file lawsuit enforced); Pickett v. Holland America Line-Westours, Inc. ³¹⁷(deceptive port charges; nationwide class certified; proposed settlement adequate); Ames v. Celebrity Cruises, Inc. ³¹⁸ (deceptive port charges; time limitations enforced; complaint dismissed; not a class action);

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

In Hotels.Com, LLP v. Canales³¹⁹ the hotel guest " contacted Hotels.com to make a reservation at a hotel in San Antonio, Texas...Each customer is charged a room rate, entitled ' published rate ', which is higher than Hotel.com's negotiated rate with the hotel. A surcharge entitled ' taxes/fees ' or ' tax recovery charge/service fees ' is subsequently added to the published rate, but the exact percentages are not delineated for the customer...By its own admission, Hotels.com neither charges nor collects taxes nor does it remit taxes directly to any taxing authority. Rather, after the customer completes his or stay, Hotels. com pays the hotel the negotiated rate and keeps the difference between the negotiated and the published rate. Hotels.com also pays an additional amount to cover any applicable sales and/or occupancy taxes, based on the negotiated rate, directly to the hotel...Hotels.com retains the difference between the amount paid by the customer for ' taxes/fees ' and the amount paid to the hotel for applicable taxes ").

(2) **Passenger's cabin** [Vallery v. Bermuda Star Line³²⁰ (" The drapes were partly dirty and dingy...the headboards of the beds were broken and the mattresses of the beds were concave...The stateroom...did not meet the quality as described in the brochure as being special, luxurious and beautiful nor was it exquisite..."); Ames v. Celebrity Cruises, Inc.³²¹

(passengers purchase a Deluxe Suite and cruiseship substituted its Standard Cabin which was lower in quality); Mirra v. Holland America Lines³²² (cabin smaller than promised, wrong sized bed and no sitting area); Donnelly v. Klosters Rederi³²³ (room unclean); Blair v. Norwegian Caribbean Lines³²⁴ (smaller room and bed than promised with stained bedspread); Kornberg v. Carnival Cruise Lines, Inc.³²⁵ (malfunctioning toilets); Cismaru v. Radisson Seven Seas Cruises, Inc.³²⁶ (accommodations during shore excursion less than satisfactory)];

(3) **Cruise ship's facilities & services** [Godwin, Clients sue agency over Pride of Aloha sailing ³²⁷(" Passengers on a charter cruise of NCL's Pride of Aloha in Hawaii last summer brought a class action lawsuit...(alleging) that the ship was experiencing severe staffing problems and that the crew could not provide adequate food-and-beverage service, cleaning services or safety drills. The ship smelled badly and the food was inedible "); Poulos v. Caesars World, Inc., 379 F. 3d 654 (9th Cir. 2004)(allegations that casinos including those onboard cruise ships " have engaged in ' a course of fraudulent and misleading acts and omissions intended to induce people to play their video poker and electronic slot machines based on a false belief concerning how those machines actually operate as well as the extent to which there is actually an opportunity to win on

any given play "); Gelfand v. Action Travel Center³²⁸ (cruise vessel misrepresented as being new when only refurbished); Boyles v. Cunard Line³²⁹ (cruise line misrepresented availability of " Spa at Sea " program); Ricci v. Hurley³³⁰ (unclean recreational deck facilities); Donnelly v. Klosters Rederi³³¹ (failure to provide clean decks and children's playroom); Grivesman v. Carnival Cruise Lines³³² (poor quality of service aboard cruiseship); Hollingsworth v. Cunard Line Ltd.³³³ (Poker game not available on Queen E II)];

(4) **Disabled accessible rooms & facilities** [Disabled travelers³³⁴ present special problems which airlines, both domestic³³⁵ and foreign³³⁶, hotels³³⁷ and cruise ships need to address. Now, all cruise ships touching U.S. ports are subject to the requirements of the Americans with Disability Act³³⁸.

However, until recently, some cruiselines did not feel bound by the directives of the Americans with Disabilities Act³³⁹. This changed in 2001 when a disabled passenger purchased a cruise represented to have rooms and public facilities which were wheelchair accessible. The passenger paid " a fee in excess of the advertised price to obtain a purportedly wheelchair-accessible cabin ", discovered after boarding that her cabin and the public areas were not wheelchair accessible and was "" denied the benefits of services, programs and activities of the vessel

and its facilities `” The passenger’s subsequent lawsuit, Stevens v. Premier Cruises, Inc.³⁴⁰, established that the Americans with Disabilities Act applies to foreign flagged cruise ships touching U.S. ports [“...this case is about whether Title III requires a foreign-flag cruise ship reasonably to accommodate a disabled, fare-paying, American passenger while the ship is sailing in American waters “].

Other Courts have ruled upon the application of the Americans with Disabilities Act to cruise ships [Larsen v. Carnival Corp.³⁴¹ (a disabled passenger a disabled cruise passenger “ diagnosed with severe obstructive sleep apnea, severe morbid obesity at approximately 450 lbs. and chronic obstructive pulmonary disease and has utilized a prescribed Bi-Pap ventilator and oxygen concentrator at night to help him breath during sleep “, was medically disembarked by the ship’s doctor because a functioning Bi-Pap ventilator could not be supplied); decision to disembark “ based upon a reasonable concern for safety “); Association For Disabled Americans, Inc. v. Concorde Gaming Corp.³⁴² (crap tables too high for wheelchair-bound players did not violate ADA but handicapped toilet violated Title III); Resnick v. Magical Cruise Co.³⁴³ (no standing to sue under ADA); Access Now, Inc. v. Cunard Line Limited, Co.³⁴⁴ (settlement provided that cruiseline would spend \$7 million on “ installing fully and partially accessible cabins, accessible

public restrooms, new signage, coamings, thresholds, stairs, corridors, doorways, restaurant facilities, lounges, spas "); Walker v. Carnival Cruise Lines ³⁴⁵(cruiseline misrepresented that its cruise ship, Holiday, had rooms and facilities which were " disabled accessible "; travel agents liable under Americans with Disabilities Act for " failing to adequately research, and for misrepresenting the disabled accessible condition of the Holiday "); Briefer v. Carnival Corp. ³⁴⁶(travel agents governed by Americans with Disabilities Act); Deck v. American Hawaii Cruises, Inc. ³⁴⁷(passengers claim cruise ship violated Americans with Disabilities Act)];

(5) **Contaminated food & water** [Jackson v. Carnival Cruise Lines, Inc. ³⁴⁸ (passenger becomes ill during cruise and dies after disembarkation; no proof that food poisoning caused illness); Benson v. Norwegian Cruise Line Limited ³⁴⁹ (passenger eats shellfish, suffers allergic reaction which causes windpipe to swell leading to death " before intubation would be successfully completed "); Tateosian v. Celebrity Cruise Services ³⁵⁰ (salmonella poisoning); Barbachym v. Costa Lines, Inc. ³⁵¹ (food poisoning); Bounds v. Sun Line Cruises, Inc. ³⁵² (salmonella food poisoning from contaminated food and water obtained in Turkey)];

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

[Neenan v. Carnival Corp.³⁵³ (fire causes breakdown in sanitation and air conditioning systems); Mullen v. Treasure Chest Casino³⁵⁴ (defective ventilation system causes respiratory illness); Silvanch v. Celebrity Cruises, Inc.³⁵⁵ (defective filter in whirlpool spa causes Legionnaires Disease); Charleston-Coad v. Cunard Line³⁵⁶ (QEII sailed before major refitting work on cabins and other facilities was complete; asbestos removal); Casper v. Cunard Line Ltd.³⁵⁷ (cruise " suffered a breakdown "); Simon v. Cunard Line³⁵⁸ (lack of fresh water and malfunctioning air conditioning system)];

(7) **The Absence of Medical Care Standards**

Unfortunately, there are no uniform standards for the qualifications of ship's doctors or nurses or for the nature and quality of medical equipment on board the cruise ship [(" Many passengers would be surprised to discover that there are no international standards for medical care on passenger cruise ships-not even one requiring that a physician be on board. Although most cruise ships generally do carry doctors, many of them are not US-trained or licensed to practice medicine in the States...No international agency regulates the infirmary

facilities or equipment, or requires a standard of training for cruise ship doctors...Bradley Feuer, DO, surveyed the medical facilities and staff qualifications of 11 cruise lines in 1996... Among the findings: 27% of nurses and doctors were not certified in advanced cardiac life support; 54% of doctors and 72% of nurses were not certified in advanced trauma life support. Nearly half the doctors-45%-weren't board certified in their areas of practice "³⁵⁹)].

[L] **Lost, Damaged or Stolen Baggage** [Mainzer v. Royal Olympic Cruises³⁶⁰ (cruise vessel losses one piece of passenger's baggage for four days); Cada v. Costa Lines, Inc.³⁶¹ (baggage damaged by fire); Ames v. Celebrity Cruises, Inc.³⁶² (baggage loss)].

[M] **Passenger Protection Rules**

Cruise ship passengers are the beneficiaries of various consumer protection regulations. State consumer protection statutes provide passengers with remedies for damages arising from deceptive and unfair business practices³⁶³ [Vallery v. Bermuda Star Line, Inc.³⁶⁴ (quality of cruise ship misrepresented in brochures; " the drapes were partly dirty and dingy; the tables were painted with white enamel paint with nicotine stains; the headboards of the beds were concave; the lamp shade had a

hole; the light flickered; and the knobs on the dressers were broken "; cruiseline liable under New York State General Business Law § 349 (deceptive business practices) and § 350 (false advertising)].

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

(1) **Financial protection for cruise passengers**

Federal Maritime Regulations³⁶⁵ provide that entities which " arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility ". These regulations provide that cruiselines must establish sufficient funds, through combinations of surety bonds, insurance or escrow arrangements, to pay the full cruise contract price under circumstances where the cruise is not performed³⁶⁶. Unfortunately, most problems with cruiselines involve a failure to deliver part of what is promised while the aforesaid financial security devices would appear to only provide recourse in the event of insolvency or bankruptcy. In addition, the F.M.C. bonds are limited to a maximum of \$15 million which may be inadequate to cover all passenger claims³⁶⁷].

(2) Sanitary Inspection Of Vessels

The Federal Department of Health and Human Services conducts monthly inspections of cruise ships touching U.S. ports. The results of these inspections are published and made available upon request from the Center for Disease Control and should be examined³⁶⁸ before selecting a cruise ship].

(3) Protecting the oceans

Cruise passengers have a vital interest in monitoring the way in which cruise ships deliver their services. The oceans must be protected from illegal dumping by cruise ships of garbage, wastes and spent fuel [Wald, A Cruise Line Starts to Clean Up After Itself³⁶⁹(" Royal Caribbean International, which pleaded guilty in 1999 to 21 felony (counts) of violating water pollution laws, and paid \$18 million in fines...In October, it turned on new systems on two ships...advanced wastewater treatment plants "; Carothers, Full Steam Ahead³⁷⁰(" When Royal Caribbean said in May that it plans to retrofit its entire fleet with advanced wastewater treatment systems, environmental groups welcomed the news, hoping it might signal a change for the better in the industry's dumping practices "); McDowell, For Cruise

Ships, A History of Pollution ³⁷¹ (" On April 19 the Carnival Corporation pleaded guilty in United States District Court in Miami to criminal charges related to falsifying records of the oil-contaminated bilge water that six of its ships dumped into the sea from 1996 through 2001...Carnival engineers circumvented the 1980 Federal Act to Prevent Pollution From Ships by intentionally flushing clean water instead of bilge water past the sensors of oil content meters, which are required on all ships and are designed to register the oil content in the bilge waste. That tricked the meters into measuring the oil in the clean water instead of in the bilge waster, which was dumped, unfiltered into the sea. The Carnival Corporation was ordered to pay \$18 million in fines and perform community service..."³⁷².

(a) **California Environmental Enforcement Efforts**

The States are now enacting legislation prohibiting dumping which may be tougher than federal regulations. " In September, California became the second state-after Alaska- to decide that federal regulations governing what cruise ships can and cannot dump are too weak, and to respond by implementing its own laws. After a state task force report found that pollutants ` are routinely discharged from vessels into California's coastal waters ` the state passed legislation that prohibits dumping of

sewage sludge, hazardous materials and bilge water containing oil, and instructs California's Environmental Protection Agency to ask the federal government to prohibit all such discharges within the state's national marine sanctuaries. Although the laws do not include limits on the expulsion of backwater (from toilets) or graywater (from sinks, showers and laundry), many see this as an important first step ")³⁷³.

(b) **Alaska Environmental Enforcement Efforts**

In August of 2006 Alaska enacted legislation which imposes " a \$50 head tax on cruise passengers sailing to Alaska and subjects cruise lines to a host of new disclosures and environmental rules (such as)...Requires cruise lines to disclose to passengers the markup they charge for shore excursions... Requires cruise lines to get permits to discharge any wastewater in state marine waters...Provides that a ship cabin must be reserved for an onboard ' ocean ranger ' whose job it will be to monitor and enforce environmental statutes... Empowers citizens to file lawsuits against owners or operators of cruise ships for alleged violations of environmental statutes "³⁷⁴. Cruise ship passengers must be observant and report any instance of illegal dumping to the U.S. Attorney as soon as possible.

(4) **Insurance: Cancellation Waivers/ Third Party Policies**

Krista Carothers of Conde Nast Traveler Magazine prepared an excellent comparison of cruise line policies and third-party policies in 2005 in Playing It Safe³⁷⁵ (" When it comes to protecting your vacation investment...nothing is more important than determining whether you need insurance and, if so, choosing the policy that meets your needs...But that doesn't mean you should automatically accept whatever policy the cruise line or tour operator offers...Almost all travel insurance is sold in packages that bundle together various types of coverage and cost between 4 and 12 percent of the total trip price. The three most important benefits-trip cancellation, trip-interruption and medical coverage will protect you from the kinds of losses that could send you to the poorhouse...Perhaps the most important coverage of all, trip cancellation insurance will reimburse the cost of a cruise or tour if you're forced to call off your plans for any number of covered reasons. These include your falling ill, death or illness of a family member (which companies define differently)...and a flood or fire in your home...Make sure that whatever policy you buy protects you until the moment your trip begins. Some plans won't cover cancellations within 24 or 48 hours of departure...As an enhancement to an insurance policy, some cruise lines and tour operators offer a cancellation waiver

that allows you to back out of your vacation-for any reason-up to a day or two before departure and receive a refund or travel credit, usually for between 75 and 90 percent of the cost of the trip. But a waiver won't cover other things that insurance does. It won't, for instance, pay to help you reach your ship or tour if a blizzard delays your flight, or to get you home if you have to leave your trip early...It can be perilous though to rely on a waiver as your only protection against the unexpected ")].

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

Generally, the rights of the cruiseline under maritime law are paramount to those of the injured or victimized passenger [See e.g., Schwartz v. S.S. Nassau³⁷⁶, a case involving a passenger's physical injuries, applies equally today, " The purpose of [46 U.S.C. 183c]...' was to encourage shipbuilding and (its provisions) ...should be liberally construed in the shipowner's favor ` "]. Here's how maritime law works to protect the cruise lines against the legitimate claims of passengers.

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

Ship owners are permitted under The Limitation Of Vessel Owner's Liability Act³⁷⁷ to limit their liability for passenger

claims to the value of vessel. The Limitation Act provides in relevant part that " [t]he liability of the owner of any vessel...for any...loss...without the privity or knowledge of such owner...shall not...exceed the amount or value of the interest of such owner in such vessel, and the freight then pending " ³⁷⁸. The most recent use of the Limitation Act was by the City of New York in seeking to limit it's liability for the 2003 death of eleven passengers in a crash of the Staten Island Ferry. " The dispute stems from the city's attempt to limit its liability to \$14 million-the value of the ferry after the crash-based on a maritime law from 1851 " ³⁷⁹.

(a) **Filing A Limitation Proceeding**

A limitation action is instituted by the posting of security in an amount equal to the value of the vessel with notice given to all prospective claimants. After claims are filed the Court conducts a two step analysis. First, the Court must establish what acts of negligence or conditions of unseaworthiness, if any, caused the accident. Second, the Court must establish whether (the cruise line) had ' knowledge or privity ' of negligence or the unseaworthiness of the vessel. In a Limitation proceeding the claimant must present some evidence of negligence or unseaworthiness before the burden shifts to the

cruise line to establish lack of knowledge or privity. " If there is no evidence of (the cruise line's) negligence or contributory fault, then (the cruise line) is entitled to exoneration from all liability "³⁸⁰. A Limitation action can, if successful, dramatically limit a passenger's recoverable damages [Matter of the Complaint of UFO Chuting of Hawaii, Inc.³⁸¹ (" (plaintiffs) went parasailing. Unfortunately for them, the rope that attached them to the boat snapped, causing (plaintiffs) to fall into the water "; letters from plaintiffs' attorneys insufficient to start six-month limitation period for filing of petition); Lewis v. Lewis & Clark Marine, Inc.³⁸² (Limitation of Liability Act grants owners the right to seek to limit their liability for ship board injuries); Matter of Illusions Holdings, Inc.³⁸³ (scuba accident; claimed acts of negligence included (1) failing to give proper diving instructions, (2) abandoning injured diver; no negligence; exoneration under Limitation Act granted); In Re Vessel Club Med³⁸⁴(passenger steps into open hatchway and injures ankle; owner seeks to limit liability under Limitation Act to \$80,000 value of vessel); Matter of Bay Runner Rentals, Inc.³⁸⁵(personal watercraft accident; negligent acts included (1) failure to warn that watercraft did not have off-throttle steering, (2) failure to give proper instructions in lack of off-throttle steering; exoneration under Limitation Act denied); Matter Of See N Ski

Tours, Inc. ³⁸⁶(para-sailing accident; claimed acts of negligence included (1) failure to train para-sailing crew, (2) operating in adverse weather conditions, (3) towing to close to shore, (4) failing to maintain tow rope and para-sailing equipment; settlement of \$22,000 approved); Ginop v. A 1984 Bayliner 27' Cabin Cruiser³⁸⁷ (injured diver sues boat owner who seeks limitation of liability under Limitation of Liability Act; owner used reasonable care under circumstances and diver's lack of reasonable care was proximate cause of injuries); In Re Seadog Ventures, Inc. ³⁸⁸(for-hire pleasure boat strikes swimmer in Lake Michigan; owner seeks to limit liability under the Limitation Act to \$543,200 interest in vessel); Matter of Beiswenger Enterprises Corp. ³⁸⁹(para-sailing accident); Mashburn v. Royal Caribbean Cruises, Ltd.³⁹⁰ (passengers on day trip excursion to Coco Cay Island rent Sea-Doo jet ski from cruise line and are injured in a collision; claimed acts of negligence included (1) allowing inexperienced riders to operate in a restricted area, (2) failing to properly train and supervise riders, (3) failing to enforce safety rules, (4) selling alcohol to riders and (5) failing to provide jet skis with sound warning devices; no negligence found; release enforced; had negligence been established then liability of cruise line would have been limited to \$7,200 value of Sea-Doo); See also: Perrotta, City Seeks to Limit Liability For

Ferry Crash in U.S. Court³⁹¹(" Facing a stack of legal claims from victims of the Oct. 15 Staten Island Ferry crash (the Mayor) moved to limit New York City's liability to \$14 million (value of ship minus cost of repairs plus tonnage value) and consolidate all lawsuits before a single federal judge ")].

(2) Passenger Ticket Print Size & Language

A cruise passenger's rights are, to a large extent, defined by the terms and conditions set forth in the passenger ticket. Modern consumers expect the size of the print in consumer contracts to be large enough to be visible and readable. New York State, for example, requires consumer transaction contracts to be " printed...clear and legible [in print] eight points in depth or five and one-half points in depth for upper case type [to be admissible] in evidence in any trial "³⁹².

The microscopic terms and conditions in passenger tickets are, clearly, meant to be unreadable and invisible. In fact, maritime law, which governs the rights and remedies of cruise passengers, preempts all State laws requiring consumer contracts to be in a given type size [Lerner v. Karageorgis Lines, Inc.³⁹³ (enforcement of time limitation provision in four-point type; maritime law preempts New York's statute requiring consumer contracts to be in ten-point type)]. In addition, the terms and

conditions in passenger tickets are enforceable even though the passenger can neither read nor understand the language in which the tickets are printed [Paredes v. Princess Cruises³⁹⁴ (time limitations in passenger ticket in English language enforced even though passenger was unable to read English)].

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

Many States allow injured consumers, at least, 2½ years in which to commence physical injury lawsuits and up to 6 years for breach of contract and fraud claims. Maritime law, however, allows cruise lines to impose very short time limitations for the filing of claims and the commencement of lawsuits.

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

For physical injuries occurring on cruise vessels that touch U.S. ports [Lerner v. Karageorgis Lines³⁹⁵ (46 U.S.C. 183b time limitations apply only to cruise vessels touching U.S. shores)] passengers may be required to file a claim within six months and commence a lawsuit within one year [Hughes v. Carnival Cruise Lines, Inc.³⁹⁶ (one year time limitation period enforced); Stone v. Norwegian Cruise Line³⁹⁷ (slip and fall in bathroom; time limitations period enforced); Angel v. Royal Caribbean Cruises,

Ltd.³⁹⁸(passenger falls overboard; one year time limitation enforced); Wall v. Mikeralph Travel, Inc.³⁹⁹ (time limitations period enforced; " The fact that the ticket-contract, while never reaching the (passenger), resided with the travel agency...employed to purchase the ticket, inclines one to conclude that the opportunity to discover these restrictions existed for a significant period of time "); Tateosian v. Celebrity Cruise Services, Ltd.⁴⁰⁰ (food poisoning; one year time limitation period enforced); Konikoff v. Princess Cruises, Inc.⁴⁰¹ (passenger sustained injury exiting taxi during shore excursion; claim dismissed as untimely); Buriss v. Regency Maritime Corp⁴⁰² (passenger's bunk crashed to floor; one year time limitation enforced)].

(b) **Exceptions To The Rule**

On occasion the Courts may decide not to enforce the one year time limitation [Ward v. Cross Sound Ferry⁴⁰³, (slip and fall on gangway; one year time limitations clause not enforced; passenger receiving ticket two minutes before boarding did not have proper notice of time limitations clause); Gibbs v. Carnival Cruise Lines⁴⁰⁴ (minor burns feet on hot deck surface; one year time limitations period tolled for minor until after parent began to serve as guardian ad litem after filing of

lawsuit); Long v. Holland America Line Westours⁴⁰⁵ (slip and fall at museum during land tour; one year time limitation period not enforced; " there are indications of contractual overreaching...Holland America...made no effort to inform (passenger) of the contractual limitation until the company sent (the) tour vouchers. She received the vouchers just days before she was scheduled to embark on her journey and after she had already paid for the tour...Thus if Long found the newly announced contractual language unacceptable, she could reasonably have believed that she had no recourse—that the contract left her no realistic choice but to travel on Holland America's unilaterally dictated, last-minute terms "); Dillon v. Admiral Cruises⁴⁰⁶ (trip and fall in ship's lounge; cruise line may be estopped from relying on one year time limitation); Rams v. Royal Caribbean Cruise Lines⁴⁰⁷ (one year time limitation does not apply to accidents during shore excursions); Berg v. Royal Caribbean Cruises⁴⁰⁸ (passenger misled into not filing lawsuit within one year)].

(4) Time Limitations: Non-Physical Injury Claims

(a) Six Months In Which To Commence A Lawsuit

For non-physical injury claims cruise lines may impose even

shorter time limitation periods [Insogna v. Princess Cruises, Inc.⁴⁰⁹ (passengers purchase " seven-day Caribbean cruise on...the Grand Princess...and tickets on an American Airlines flight to Miami...(Which) was unexpectedly canceled due (to) an American Airlines strike "; six months time limitation clause in ticket for filing lawsuit enforced; claim time barred); Boyles v. Cunard Line⁴¹⁰ (cruise vessel misrepresented availability of exercise facilities in " Spa at Sea "; six months time limitation to file lawsuit enforced); Cronin v. Cunard Line⁴¹¹ (deceptive port charges; six months' time limitation in which to commence lawsuit enforced)].

(b) **Exceptions To The Rule**

On occasion the Courts may decide not to enforce these particularly short time limitations[Barton v. Princess Cruises, Inc.⁴¹² (deceptive port charges; clause in passenger ticket requiring the filing of written notice of claims within 15 days and the filing of a lawsuit within 90 days may be unenforceable if they " were unreasonable under the circumstances, in that plaintiffs could not with reasonable diligence have discovered their injuries within the limitation periods "); Johnson v. Commodore Cruise Line⁴¹³ (passenger raped by crew member; claim for negligent infliction of emotional distress governed by

Mississippi's 3 year statute of limitations; passenger ticket time limitations of 15 days to file claim and 6 months to sue for non-physical claims void)].

(5) **Jurisdictional Issues**

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

(a) **Marketing Through Travel Agents**

To be able to sue a cruise company locally the consumer's court must have jurisdiction. Even though cruise companies may distribute brochures through and take orders from retail travel agents, such marketing activities are insufficient to serve as a basis for jurisdiction [Falcone v. Mediterranean Shipping Co.⁴¹⁴ (passenger suffers physical injury aboard cruise ship; no jurisdiction based upon sales by local travel agent " with no

authority to confirm reservations "); Duffy v. Grand Circle Travel, Inc.⁴¹⁵ (passenger sustains injury in France; no jurisdiction over Massachusetts cruise company); Sanderman v. Costa Cruises, Inc.⁴¹⁶ (consumer pays Florida travel agent \$21,775 for cruise on Costa Romantica which fails to remit any money to cruise line; no jurisdiction over cruise line not doing business in Pennsylvania); Kaufman v. Ocean Spirit Shipping⁴¹⁷ (dissemination of cruise brochures through travel agents and advertising in scuba magazine insufficient to support long arm jurisdiction)].

(b) **The Solicitation Plus Doctrine**

The " solicitation-plus doctrine " doctrine governs jurisdiction in travel cases with the " plus " equivalent to contract formation in the local forum [Afflerbach v. Cunard Line, Ltd⁴¹⁸ (national advertising of cruise vacations and sales through travel agents insufficient for jurisdiction)]. With the possible exception of Internet sales through interactive web sites [Dickerson, Selling Travel Over The Internet & Personal Jurisdiction⁴¹⁹, Appendix A] the Courts have, generally, held that contract formation does not take place at the consumer's location. Some courts, however, have been willing to assume jurisdiction on little more than local advertising [Nowak v. Tak

How Inv.⁴²⁰ (guest drowns in Hong Kong hotel pool; being available for litigation in local forum is reasonable cost of doing business in the forum)].

© **Jurisdiction Over Internet Travel Sellers**

More and more travel services including cruises are being sold over the Internet either directly by suppliers or through Internet travel sellers such as Expedia and Travelocity. Establishing jurisdiction over Internet Travel Sellers is discussed in Appendix A.

(d) **Jurisdiction And Territorial Waters**

Jurisdictional issues may arise when an accident occurs in territorial waters [Benson v. Norwegian Cruise Line Limited⁴²¹ (passenger " ate shellfish and suffered an allergic reaction... (ship's medical personnel unable to) insert a breathing tube several times "; passenger dies; claim of medical malpractice aboard cruise ship; jurisdiction under Florida long arm statute because tortious act of ship's medical doctor occurred in Florida territorial waters, 11.7 miles east of Florida shore); Rana v. Flynn⁴²² (passenger suffers heart attack and treated by ship's doctor as cruise ship sails into Florida waters and docks in Port

of Miami; jurisdiction over ship's doctor); Pota v. Holtz,⁴²³
(pregnant passenger complaining of stomach cramps misdiagnosed
as having bladder infection goes into contractions and bleeding
and cruiseline denies request for airlift to hospital in Grand
Cayman Island; passenger taken to hospital only after ship docks,
gives birth and baby dies a few hours later; jurisdiction over
ship's doctor on aboard ship docked in Florida port)] and may
involve *in rem* claims against the ship [Frefet Marine Supply v.
M/V Enchanted Capri⁴²⁴ (passengers sue bankrupt cruise line for
return of contract payments; sureties on performance bond
intervene in this *in rem* proceeding)].

(6) **Forum Selection Clauses**

The passenger ticket may contain a forum selection clause
and a choice of law clause, both of which can have a negative
impact upon the passenger's ability to prosecute his or her
claim. A forum selection clause may require that all passenger
lawsuits be brought in the local court where the cruise line is
headquartered [Carnival Cruise Lines, Inc. v. Shute⁴²⁵ (a clause
in the ticket provided that " It is agreed...that all
disputes...shall be litigated...before a Court located in the
State of Florida, U.S.A., to the exclusion of the Courts of any
other state or country ")].

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

Forum selection clauses are, generally, enforceable [Chapman v. Norwegian Cruise Line Ltd.⁴²⁶ (" A forum selection clause is enforceable unless (1) ' the incorporation of the clause was the result of fraud, undue influence or overreaching bargaining power, (2) the selected forum is so gravely difficult and inconvenient that [the complaining party] will for all practical purposes be deprived of its day in court or (3) enforcement...would contravene a strong public policy of the forum in which the suit is brought...' "); Heinz v. Grand Circle Travel⁴²⁷ (passenger on Rhine River cruise sustains injuries " when the ship's automatic doors failed " ; Basel, Switzerland forum selection clause enforced); Schlessinger v. Holland America⁴²⁸ (Washington forum selection clause enforced); Hughes v. Carnival Cruise Lines, Inc.⁴²⁹ (passenger breaks hip aboard ship; Florida forum selection clause enforced); Pratt v. Silversea Cruises, Ltd.⁴³⁰ (Florida forum selection clause enforced); Morrow v. Norwegian Cruise Line Limited⁴³¹ (minor passenger injured when ladder detaches; Florida forum selection clause enforced); Falcone v. Mediterranean Shipping Co.⁴³² (passenger suffers personal injuries on Mediterranean cruise ship; Italy forum selection clause and Italian choice of law clause enforced); Ferketich v. Carnival Cruise Lines⁴³³ (passengers

trips and falls on stairs; Florida forum selection clause enforced); Enderson v. Carnival Cruise Lines, Inc.⁴³⁴ (passenger contracts appendicitis and removed from ship to shore hospital; Florida forum selection clause enforced); Elliott v. Carnival Cruise Lines⁴³⁵ (port skipping because of engine malfunction; Florida forum selection clause enforced); Tateosian v. Celebrity Cruise Services, Ltd.⁴³⁶ (food poisoning; New York forum selection clause appropriate); Watanabe v. Royal Caribbean Cruises, Ltd.⁴³⁷ (passengers injured when Monarch of the Seas struck reef; forum selection clause enforced)].

(b) **Notice Must Be Adequate**

Notice of the forum selection clause should be adequate [Casavant v. Norwegian Cruise Line, Ltd.⁴³⁸ (passengers cancel September 16, 2001; court refuses to enforce forum selection clause because ticket delivered thirteen days before cruise; clause unenforceable " where the course of conduct of Norwegian was unreasonable and unjust. Here the ticket purchasers took no affirmative action to accept the contract but rather to the contrary, in fact expressly rejected the services offered in the contract due to the legitimate safety concerns stemming from the catastrophic events of September 11, 2001. In these circumstances, as there was neither under Federal maritime law,

the allowance of an opportunity...to reject the ticketing contract ' with impunity ' nor, under State contract law, did (the passengers') actions give rise to an accepted contract, we conclude that the forum selection clause is unenforceable "); Ward v. Cross Sound Ferry⁴³⁹ (passenger obtained ticket " just two or three minutes before boarding the ferry...possession of the ticket for such a short period of time was insufficient to give (passenger) reasonable notice that the ticket contained important contractual provisions "); Osborn v. Princess Tours⁴⁴⁰ (passenger must have " ample opportunity to examine... contents " of passenger ticket); Schaff v. Sun Line Cruises⁴⁴¹ (forum selection clause (Athens, Greece) not enforced; ticket delivered too late to allow consumer to seek refund of \$1,770 ticket price)] and they should be reasonable and fair [Carnival Cruise Lines, Inc. v. Shute⁴⁴² (forum selection clauses subject to judicial scrutiny for fundamental reasonableness)].

(7) **Why Are Forum Selection Clauses Important?**

Stated, simply, it is less expensive and more convenient for injured passengers to be able hire an attorney and sue in a local court than being forced to travel to and prosecute their claim in Greece [Effron v. Sun Line Cruises⁴⁴³], Peru [Affram Carriers,

Inc. V. Moeykens⁴⁴⁴], Naples, Italy [Hodes v. SNC Achille Lauro⁴⁴⁵], the State of Washington [Carron v. Holland America Line-Westours, Inc.⁴⁴⁶] or Miami, Florida [Hicks v. Carnival Cruise Lines⁴⁴⁷]. When faced with prosecuting a claim in a distant forum some passengers may be discouraged from doing so. This is the practical result of enforcing forum selection clauses and explains why cruise lines favor their use in passenger tickets.

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

To be enforceable forum selection clauses in cruise tickets or brochures must be fundamentally fair [Carnival Cruise Lines, Inc. v. Shute⁴⁴⁸]. Fundamental fairness means (1) that the forum was not selected to discourage pursuit of legitimate claims, (2) there was no fraud or overreaching, (3) notice of the forum selected was adequate and (4) the consumer had a reasonable opportunity to reject the cruise contract without penalty⁴⁴⁹.

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

This latter requirement has been interpreted to mean that passengers should receive the cruise contract early enough to be able to cancel without being subjected to a cancellation fee

[Cismaru v. Radisson Seven Seas Cruises,⁴⁵⁰ (a Florida forum selection clause was not enforced because the passenger received the cruise contract 21 days before departure. Were the passenger to cancel the cruise contract on the day of receipt he would have been subjected to a 50% cancellation fee. " This falls short of the ability to reject the contract ' with impunity ' contemplated in Shute. In other words...Radisson sent (a cruise ticket) at a time when (the passenger) could not conceivably have canceled without avoiding a penalty "); Long v. Holland America Line Westours, Inc.⁴⁵¹ (" there are indications of contractual overreaching...Holland America...made no effort to inform (passenger) of the contractual limitation until the company sent (the) tour vouchers. She received the vouchers just days before she was scheduled to embark on her journey and after she had already paid for the tour...Thus if Long found the newly announced contractual language unacceptable, she could reasonably have believed that she had no recourse—that the contract left her no realistic choice but to travel on Holland America's unilaterally dictated, last-minute terms "); Ward v. Cross Sound Ferry⁴⁵² (passenger obtained ticket " just two or three minutes before boarding the ferry...possession of the ticket for such a short period of time was insufficient to give (passenger) reasonable notice that the ticket contained important contractual provisions "); McTigue v. Regal Cruises, Inc.⁴⁵³ (passenger

sustains physical injury during cruise; clause which provided that " Passage money shall be considered earned at the earlier of the time of payment or embarkation. Carrier is entitled to receive and retain earned passage money under all circumstances and is not liable to make any refund " rendered the ability of passenger to cancel without penalty illusory; " Absent prior notice, the Court will not enforce a (Florida forum selection clause)...that substantially limits a passenger's legal rights "); White v. Sun Line Cruises, Inc.⁴⁵⁴ (passenger falls down gangplank; ticket received 4 days before departure and cancellation would have resulted in 100% penalty; Greece forum selection clause not enforced); Grivesman v. Carnival Cruise Lines⁴⁵⁵ (Florida forum selection clause enforced; passengers received ticket early enough to have " forfeited only their deposit if they had canceled their trip at that time "); Corna v. American Hawaii Cruises, Inc.⁴⁵⁶ (passengers assaulted by crew members; California forum selection clause not enforced because tickets received 2 days before cruise and cancellation would have resulted in a 100% cancellation fee); Stobaugh v. Norwegian Cruise Line Limited⁴⁵⁷ (passengers injured when cruise ship sailed into Hurricane Eduardo; passengers received ticket 23 days before departure and immediate cancellation would have resulted in \$400 penalty; Florida forum selection clause not enforced)].

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

Other Courts, however, have rejected this concept [Ferketich v. Carnival Cruise Lines⁴⁵⁸ (" Although (passenger) would be subject to a \$350 cancellation fee...we believe (passenger) has adequate and reasonable notice to support enforcing the forum selection clause despite the cancellation fee "); Elliot v. Carnival Cruise Lines⁴⁵⁹ (" although (passenger) characterizes the tickets as ' nonrefundable ' he admits that he received them almost a month before departing, at which time, according to the ticket, fifty percent of the purchase price was refundable "); Natale v. Regency Maritime Corp.⁴⁶⁰ (time limitations clause enforced notwithstanding cancellation penalty of 90%); Boyles v. Cunard Line Ltd.⁴⁶¹ (passenger ticket contract enforceable notwithstanding significant cancellation fee); Hicks v. Carnival Cruise Lines, Inc.⁴⁶² (contract terms not necessarily unreasonable because of the imposition of penalties if passenger canceled); Lauri v. Cunard Line Limited⁴⁶³ (passenger became ill onboard Queen Elizabeth II; Florida forum selection clause enforced; receipt of ticket 19 days before departure meant that immediate cancellation would have resulted in 100% penalty; refundability of tickets not dispositive on issue of notice); Bounds v. Sun Line Cruises, Inc.⁴⁶⁴(contaminated food and water onboard Stella Solaris; Greek

forum selection clause enforced notwithstanding minimum cancellation penalty of 25% " no matter when they purchased the ticket "); Cross v. Kloster Cruise Lines, Limited⁴⁶⁵(passenger bitten by a brown recluse spider suffers from medical malpractice; Florida forum selection clause enforced notwithstanding \$400 cancellation penalty); Schulz v. Holland America-Line Westours, Inc.⁴⁶⁶ (passenger sustains physical injury; time limitation clause enforced; " The Schulzes' argument is premised on the false assertion that they could not cancel their tickets without incurring financial penalty. Had they checked with their travel agent, they would have found that the entire purchase price, including the travel agent's fee, would have been refunded ")].

© **Cancellation Penalties Must Be Reasonable**

Some courts may not enforce a cancellation or liquidated damages charge if it is a penalty or unreasonable [Sub-Zero Freezer Co., Inc. v. Cunard Line Limited ⁴⁶⁷(freezer manufacturer cancels contract for cruise for its dealers because of September 11, 2001 terrorist attacks and seeks return of \$892,000 prepayment none of which cruise ship agrees to refund relying on " clause 9 "; " I cannot say that Clause 9 of the contract is a reasonable substitute for defendant's actual damages...no evidence about the

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

(9) **Physical Disabilities Exception**

Some courts have refused to enforce a forum selection clause on the grounds of public policy [Walker v. Carnival Cruise Line⁴⁶⁸ (a travel agent had been informed that the passenger was disabled, used a wheelchair, and would require a disabled accessible guest room and disabled accessible facilities. Although the cruiseline and the travel agent assured the passenger that the ship and his room would be disabled accessible he discovered that neither his room nor the ship were disabled accessible. While the passenger claimed misrepresentations and a violation of the Americans with Disabilities Act the cruiseline sought to enforce a forum selection clause and transfer the case from California to Florida. Initially, the Court granted the cruiseline's request finding the forum selection clause reasonable and fair and dismissed the case as to it. Upon reconsideration, the Court refused to enforce the Florida forum selection clause for two reasons. First, " the fact that plaintiffs' physical disabilities and economic constraints are so severe that, in combination, they would preclude plaintiffs from having their day in court ". Second, " the fact that plaintiffs are seeking to vindicate

important civil rights "); Pratt v. Silversea Cruises, Ltd.⁴⁶⁹(Florida forum selection clause enforced; " While the Court does not adopt a broad rule that a physical disability alone is never enough, it cannot conclude from the facts here that this plaintiff will be deprived of her day in court ")].

(10) **Choice Of Law Clauses**

In addition to forum selection clauses, passenger tickets may also designate the law to be applied in resolving any dispute which may arise. The law selected may be that of the **Bahamas** [Kirman v. Compagnie Francaise⁴⁷⁰ (choice of Bahamian law clause enforced; cruise between Singapore and Australia)], **China** [Jewel Seafoods Ltd. v. M/V Peace River⁴⁷¹ (choice of Chinese law clause enforced)] or **Italy** [Falcone v. Mediterranean Shipping Co.⁴⁷² (" In light of the fact that its passengers hail from around the world (cruise line) acted reasonably in selecting an ...Italian venue...cruise departed on an Italian vessel from Genoa, Italy, and (cruise line) is headquartered in Italy...The choice of law provision in the ticket contract selects Italian law...which Italian courts are in the best position to interpret ")] or pursuant to the **Strasbourg Convention** [Heinz v. Grand Circle Travel⁴⁷³(passenger sustains injuries on Rhine River

cruise; Basel, Switzerland forum selection clause enforced; cruise contract also provides that liability issues will be resolved pursuant to the Strasbourg Convention)]. In determining whether choice of law clauses should be enforced, the courts may consider several factors including (1) the place of the wrongful act, (2) the law of the flag, (3) the allegiance of domicile of the injured passenger, (4) the allegiance of the ship owner, (5) the place of the contract, (6) the inaccessibility of the foreign forum and (7) the law of the forum [Klinghoffer v. S.N.C. Achille Lauro⁴⁷⁴].

Choice of law clauses are, generally, enforceable unless the passenger can demonstrate that enforcement would be unreasonable, to prevent fraud or overreaching [Long v. Holland America Line Westours, Inc.⁴⁷⁵ (passenger falls during land tour of museum; maritime law does not govern land tour; choice of law clause in tour contract stating that " except when maritime law applied, the contract would be construed according to Washington state law " rejected; Alaska law applied) or that " enforcement would contravene a strong public policy of the forum in which the suit is brought " [Milanovich v. Costa Crociere, SPA⁴⁷⁶].

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

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

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

For example, in a wrongful death case involving a crash in China in which two Americans were killed, the court, relying on New York choice of law rules, decided to apply Chinese law which limited the maximum recoverable damages to \$20,000 [Barkanic v. General Administration of Civil Aviation⁴⁷⁷]. In another case, the traveler was seriously injured when she was thrown from a horse during a vacation in the Bahamas. She sued several Bahamian entities most responsible for her injuries. However, the application of the Foreign Sovereign Immunities Act meant that the foreign entities would be insulated from any liability [Tucker v. Whitaker Travel, Ltd⁴⁷⁸]. In yet another instance, the traveler slipped and fell on an unlighted path while vacationing in Mexico. At issue was whether the court should apply Arizona or Mexican law to the issue of recoverable damages. The difference was dramatic. Mexico allowed no more than twenty-five pesos per day in lost wage claims, while Arizona had no such limits. The court applied the more generous law of Arizona [Wendelken v. Superior Court⁴⁷⁹]. Just the opposite happened in a case involving an accident on a water slide at a Mexican hotel in which the court applied Mexican damages law resulting in a severe limit on the plaintiff's pain and suffering damages [Feldman v. Acapulco Princess Hotel⁴⁸⁰].

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

As a general rule, cruise ships are common carriers and held to a reasonable standard of care [Kermarec v. Compagnie Generale Transatlantique⁴⁸¹]. The passenger ticket will contain a host of nearly invisible clauses many of which seek to disclaim liability for a variety of problems that may arise during the cruise. As with consumer contracts on dry land instances of gross negligence and intentional misconduct may not be disclaimed by common carriers [Royal Ins. Co. v. Southwest Marine⁴⁸²].

(a) **Implied Warranties Of Merchantability**

In Bird v. Celebrity Cruise Line, Inc., 428 F. Supp. 2d 1275 (S.D. Fla. 1279), a case involving a passenger who claimed to have been " diagnosed with bacterial enteritis, a disease she allegedly contracted as a result of food poisoning ", the Court refused to imply a warranty of merchantability [" courts have manifested a strong reluctance to imply warranties in contracts governed by admiralty law "], especially, where such a warranty is expressly disclaimed [" the only mention of food or beverage in the parties' contract disclaims any warranty as to the food or drink furnished: ` No undertaking or warranty shall be given or

shall be implied as to the seaworthiness, fitness or condition of the Vessel or any food or drink supplied on board ' "] .

(b) **Health & Safety**

Some Courts have held that disclaimers of simple negligence, particularly, regarding the health and safety of the passengers can not be disclaimed [Kornberg v. Carnival Cruise Lines⁴⁸³ (malfunctioning toilets ruin cruise vacation; clause in cruise contract seeks to disclaim all liability for the discomfort of passengers; " Of the three disclaimers, the disclaimer of liability for negligence appears to be the most applicable to this suit. Yet, for good reason Carnival does not rely on this disclaimer. 46 U.S.C.A. §§ 183c expressly invalidates any contract provision purporting to limit a ship's liability for negligence to its passengers. It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability. Even prior to 1936, the year §§ 183c was enacted, such provisions were held to be void under common law as against

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

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

" A cruise passenger at sea and in medical distress does not have any meaningful choice but to seek treatment from the ship's doctor " [Carlisle v. Carnival Corp⁴⁸⁴]. Traditionally, cruise ships have not been held vicariously liable for the medical malpractice of the ship's doctor or medical staff [see e.g., Barbetta v. S/S Bermuda Star⁴⁸⁵ (cruise ship not liable for medical malpractice of ship's doctor in failing to discover during treatment that passenger had diabetes); Stires v. Carnival Corp.⁴⁸⁶ (medical malpractice claim against cruise ship for " negligent acts of the ship's doctor and nurse " dismissed); Cimini v. Italia Crociere International⁴⁸⁷(cruise ship disclaimer of liability for malpractice of ship's doctor enforced)].

(a) **Policy Unfair**

This policy is unfair and has been criticized by some Courts [see e.g., Nietes v. American President Lines, Ltd.⁴⁸⁸ (cruise ship vicariously liable for medical malpractice of ship's doctor

who was a member of the crew); Fairley v. Royal Cruise Line Ltd.⁴⁸⁹ (cruise ship may be liable for medical practice of ship's doctor)] and commentators [See e.g., Herschaft, Cruise Ship Medical Malpractice Cases: Must Admiralty Courts Steer By The Star Of Stare Decisis⁴⁹⁰ (" It would be in the best interests of the traveling public for admiralty courts to revoke this harsh policy of holding carriers harmless for the torts of physicians engaged by them. However, if admiralty courts continue to exonerate carriers in passenger medical malpractice cases, there are three possible ways to provide better care to travelers: First, the legislature can amend current statutory descriptions of a ship's staff so that a doctor is specified as an employee of the carrier; second, passengers can invoke the doctrine of agency by estoppel; and third, a shipping company may indemnify itself against potential medical malpractice claims ")]

(b) **The Carlisle Case**

In Carlisle v. Carnival Corp⁴⁹¹ a 14 year old female passenger became " ill with abdominal pain, lower back pain and diarrhea and was seen several times in the ship's hospital by the ship's physician " who misdiagnosed her condition as flu when, in fact, she was suffering from an appendicitis. After several days of mistreatment the she was removed from the cruise ship, underwent

surgery after the appendix ruptured and was rendered sterile. In rejecting a long line cases in the 5th Circuit⁴⁹² absolving cruise ships for the medical malpractice of a ship's doctor, the Carlisle Court stated " The rule of the older cases rested largely upon the view that a non-professional employer could not be expected to exercise control or supervision over a professionally skilled physician. We appreciate the difficulty inherent in such an employment situation, but we think that the distinction no longer provides a realistic basis for the determination of liability in our modern, highly organized industrial society. Surely, the board of directors of a modern steamship company has as little professional ability to supervise effectively the highly skilled operations involved in the navigation of a modern ocean carrier by its master as it has to supervise a physician's treatment of shipboard illness. Yet, the company is held liable for the negligent operation of the ship by the master. So, too, should it be liable for the negligent treatment of a passenger by a physician or nurse in the normal scope of their employment, as members of the ship's company, subject to the orders and commands of the master. "

(14) **Shore Excursion Disclaimers**

The Courts have been willing to enforce disclaimers of

liability regarding accidents that occur during shore excursions [Dubret v. Holland America Line Westours⁴⁹³ (bus accident during shore excursion; disclaimer of liability enforced); Henderson v. Carnival Corp.⁴⁹⁴ (passenger injured on catamaran trip while on excursion from cruise; notwithstanding Carnival logo on catamaran and crew member shirts cruise ship disclaimer of ownership or control of catamaran company enforced); Mashburn v. Royal Caribbean Cruises, Ltd.⁴⁹⁵ (day trip to Coco Cay Island owned by cruiseline; passengers rent Sea-Doo, sign waiver and are injured in accident; no negligence found)].

(a) **Warranties Of Safety**

Such a disclaimer may not be enforceable if the injured passenger relied upon representations, or warranties regarding safety [Bergonzine v. Maui Classic Charters⁴⁹⁶ (350 lb. handicapped passenger broke ankle because of inattention and lack of assistance by crew; misrepresentations in brochure that cruises were " suitable for handicapped individuals "; \$42,500 in special damages awarded)], competence and reliability of on-shore suppliers of travel services.

(b) **Limited In Scope**

While disclaimers may be enforceable as against cruise ships they do not insulate ground service providers such as bus companies and dock operators from liability [Sharpe v. West Indian Company⁴⁹⁷ (passenger leaves cruise ship to board waiting tour bus and is struck by falling railing; time limitation in cruise contract enforced as against cruise ship; clause that stated " The Exclusions Or Limitations Of Liability Of Carrier Set Forth In The Provisions Of This Contract Shall Also Apply To And Be For The Benefit Of Agents, Independent Contractors, Concessionaires And Suppliers Of Carrier, As Well As Owners And Operators Of All Shoreside Properties At Which The Vessel May Call " not enforced as against dock operators and local truck company responsible for accident)]. In addition, recreational disclaimers may be limited to only the signatory not the heirs of his or her estate [Gershon v. Regency Diving Center, Inc.⁴⁹⁸ (exculpatory release does not prevent heirs of decedent from commencing wrongful death action; " On its face the release only manifests decedent's intention to waive defendants' duty of care pertaining to his personal safety. In order for such a waiver to also apply to decedent's heirs, the agreement must manifest the unequivocal intention of such heirs to be so bound ")].

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

The cruiseline may claim that a delay in sailing or a cancellation of the cruise vacation or an itinerary change was caused by a storm or hurricane [DeNicola v. Cunard Line Limited⁴⁹⁹ (storm); Domblakly v. Celebrity Cruises, Inc.⁵⁰⁰ (passengers injured when cruise ship battered by hurricane); In re Catalina Cruises, Inc.⁵⁰¹ (passengers injured when cruise ship sails into storm); Williams v. Carnival Cruise Lines, Inc.⁵⁰² (207 passengers seasick after cruise ship sails into storm)] is an Act of God. As stated by the U.S. Supreme Court in 1887 in the Majestic⁵⁰³ " the act of God is limited...to causes in which no man has any agency whatever; because it was never intended to arise ". Acts of God may include storms at sea⁵⁰⁴, snowstorms [Alstrom Machinery, Inc. v. Associated Airfreight, Inc.⁵⁰⁵(air carrier breached contract in failing to deliver cargo notwithstanding force majeure clause in contract of carriage and unanticipated snowstorm); Klakis v. Nationwide Leisure Corp.⁵⁰⁶ (charter tour passengers confined in airport for 2 ½ days during snowstorm), a typhoon or volcanic eruption [DeVera v. Japan Airlines⁵⁰⁷ (Manila Airport closed because of volcano and typhoon) or a revolution or civil disorder [Jamil v. Kuwait Corp.⁵⁰⁸ (flight delayed 4 days due to coup in Pakistan) or a pilot's strike [Leake v. American Airlines, Inc.⁵⁰⁹ (passengers missed cruise because of airline strike)]. To prevail, however, the carrier must establish a causal connection between the Act of God

or force majeure and its failure to deliver timely transportation. In addition, the carrier must prove that it acted reasonably to reinstitute the transportation service once the snowstorm or unexpected event ceased [Bernstein v. Cunard Line⁵¹⁰].

(a) **Hurricane Season**

[Edelman & Mercante, Of Hurricanes, Acts of God and Admiralty Jurisdiction⁵¹¹(" Hurricane season is here. No one disputes that a hurricane is an act of Mother Nature, or at law, an ' act of god '. The disputes arise when it is asserted as a defense...A shipowner will invoke this defense, sometimes referred to as ' peril of the sea ' against cargo lost or damaged at sea, sinking, charter disputes, third-party property damage and personal injury claims...Similar phrases such as ' inevitable accident ' and ' force majeure ' are sometimes used as the functional equivalent of ' act of god. This is not always accurate, however. For example, unlike an act of god a force majeure can constitute governmental intervention resulting from the necessities of war...A severe weather condition of hurricane force is considered in law to be an act of god. A hurricane also qualifies as ' heavy weather ' ")].

(16) **Limitations On Recoverable Damages**

Cruise vessels that touch U.S. shores may not disclaim liability for loss, death, damage or delay caused or contributed to by the vessel's negligence [46 U.S.C. 183c; Kornberg v. Carnival Cruise Lines⁵¹² (malfunctioning toilets; disclaimers not enforced)]. In 1996 the cruise industry was able to convince Congress to enact a provision permitting " provisions or limitations in contracts, agreements or ticket conditions of carriage with passengers which relieve...operator of a vessel from liability for infliction of emotional distress, mental suffering or psychological injury " [46 U.S.C. 183c(b)(1)]. Such a disclaimer does not apply to physical injuries, or those arising from being " at actual risk of physical injury " caused by the negligence or intentional misconduct of the cruise vessel or crew. Nor does such a disclaimer limit liability arising from " sexual harassment, sexual assault or rape ".

(a) **Athens Convention Disclaimer**

In addition, the passenger ticket may contain a disclaimer seeking to limit recoverable damages to those authorized by the Athens Convention [Wallis v. Princess Cruises, Inc.⁵¹³ (passenger drowned after falling off of cruise ship; clause in

passenger ticket limiting recoverable damages to the " amount prescribed by the Athens Convention (" Carrier shall be entitled to any and all liability limitations, immunities and rights applicable to it under the ` Convention Relating to the Carriage of Passengers and Their Luggage by Sea of 1976 (` Athens Convention `) which limits the Carrier's liability for death of or personal injury to a Passenger to no more than the applicable amount of Special Drawing Rights as defined therein, and all other limits for damage or loss of personal property "]" not enforced; " We think it is unrealistic to assume the average passenger with no legal background would even attempt to analyze the conditions under which the Athens Convention would or would not apply ")]. Such a clause may not be enforceable if the passenger was not given sufficient notice to be able to understand the significance of the Athens Convention.

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

While the United States is not yet a signatory to the Athens Convention passengers on cruises that do not touch a U.S. port should be aware of it's liability limiting provisions. Some cruise contracts contain language limiting the passenger's recoverable damages under the Athens Convention to Special Drawing Rights (SDRs). SDRs, as " determined by the International Monetary Fund,

are based on exchange rates for the American Dollar, German Mark, British Pound, French Franc and Japanese Yen " [Mills v. Renaissance Cruise, Inc.⁵¹⁴]. The 1976 Protocol to the Athens Convention provides a damage limit of 46,666 SDRs, while the 1990 Protocol provides for 175,000 SDRs.

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

The Athens Convention is important since it may apply to as much as 20% of U.S. cruise passengers who annually " sail from, and back to, foreign ports, like a Mediterranean or Caribbean cruise "⁵¹⁵. In order to encourage the United States to sign the Athens Convention it was recently modified in the 2002 Convention Protocol " to raise liability limits to 250,000 SDRs (about \$359,000). If ratified by at least 10 states, the convention would come into force and there would be a compulsory insurance requirement per passenger in this amount for passenger ship operators...By its terms, the convention applies to ships flying the flag of the signatory country or where the place of departure or destination is a signatory country. Suit may be brought in the principal place of defendant's place of business; the place of departure or destination; claimant's domicile, if defendant does business there or is subject to jurisdiction there; and the place where the contract of carriage was made, if defendant does business there or is subject to jurisdiction

there ⁵¹⁶

(b) Limitations Enforceable

Such a contractual limitation has been held to be enforceable when the passenger's injuries occur on cruises that do not touch U.S. ports [Berman v. Royal Cruise Line, Ltd.⁵¹⁷ (cruise from Italy to Portugal governed by monetary limits of Athens Convention); Kirman v. Compagnie Francaise⁵¹⁸(accident on cruise between Singapore and Australia; Athens Convention applies)] as long as there has been sufficient notice [Wallis v. Princess Cruises, Inc.⁵¹⁹ (passenger drowned after falling off of cruise ship; clause in passenger ticket limiting recoverable damages to the amount prescribed by the Athens Convention not enforced)].

© Proposed Changes In Athens Convention

The Athens Convention is presently the subject of discussions amongst interested parties of proposed changes which are available from The International Maritime Organization⁵²⁰.

Conclusion

Cruise vacations can be wonderful experiences. However,

potential cruise passengers are well advised to think carefully about their legal rights should they be injured and otherwise be dissatisfied with a cruise vacation.

APPENDIX A

Selling Travel Over The Internet & Personal Jurisdiction

Consumer use of the Internet to make travel arrangements has risen dramatically in recent years⁵²¹. While consumers remain cautious about the reliability of information, the prospect of hidden fees and insecure credit card transactions, travel shopping on the Web is increasing⁵²², particularly, as travel suppliers, e.g., hotels and air carriers, and travel sellers, e.g., Cheap Tickets, Expedia, One Travel, Travelocity, TravelNow and Orbitz⁵²³, offer exclusive fares on their own Web sites with 24 hour accessibility and retailers continue to develop creative ways to sell travel services, e.g., Priceline⁵²⁴, Travelot⁵²⁵, Site59's "last-minute-air-plus-land-packages"⁵²⁶. While offering many

conveniences the unlimited access of unlicensed, uninsured and irresponsible travel suppliers and travel sellers to the Internet threatens consumers by exposing them to complex travel scams⁵²⁷. However, the Internet, as opposed to selling travel services through travel agents or over an "800" telephone number, may give injured travelers an edge in establishing personal jurisdiction over foreign travel suppliers and travel sellers.

1] The Solicitation Plus Doctrine

If a foreign travel supplier, e.g., a hotel or an air carrier conducts business through an agent⁵²⁸, a wholly owned subsidiary⁵²⁹, a parent corporation⁵³⁰ or joint venturer⁵³¹ or maintains an office with a staff, a bank account and a local telephone number then the assertion of personal jurisdiction would, generally, be appropriate. In the absence of such indicia of physical presence in the forum, however, the assertion of personal jurisdiction is more problematic. For example, a foreign travel supplier or travel seller may conduct business through an independent contractor⁵³², travel agent⁵³³, tour operator⁵³⁴ or the Internet. Under these circumstances New York Courts have found personal jurisdiction if there was active solicitation of business plus " some financial or commercial dealings in New York or (the foreign company) holds

itself out as operating in New York "⁵³⁵ and/or contract formation in New York State. This concept, known as the " solicitation-plus " doctrine, is still followed with some exceptions⁵³⁶ by most U.S. Courts⁵³⁷ .

2] Jurisdiction And The Internet

The extent to which an Internet Web site confers personal jurisdiction in the forum in which the traveler's computer is located [and through which reservations can or have been made] has been addressed recently by several courts⁵³⁸. Initially, it is important to identify two non-issues relied upon by some Courts in rejecting interactive Internet reservation Web sites as a basis for the assertion of personal jurisdiction.

First, at least, one Court has made a distinction between the purchase of goods and services over the Internet⁵³⁹ and the making of travel arrangements over the Internet, finding the former but not the latter, as a sufficient basis for the assertion of personal jurisdiction⁵⁴⁰. Such a distinction is unwarranted since the focus of a proper jurisdictional analysis should be on the situs of the transaction which is the consumer's computer screen and not on when the actual delivery of the purchased service takes place.

Second, some Courts have refused to assert personal

jurisdiction over foreign travel suppliers by trivializing the marketing of travel services over the Internet and analogizing interactive Internet reservation Web sites to little more than a hotel reservations "800" number⁵⁴¹. These two instrumentalities, however, are qualitatively different in their impact upon the assertion of personal jurisdiction over foreign travel suppliers and travel sellers.

3] A Transactional Analysis Of Internet Commerce

A useful jurisdictional analysis appears in Zippo Manufacturing Co. v. Zippo Dot Com, Inc.,⁵⁴² a trademark infringement action brought by the manufacturer of " Zippo " lighters against a computer news service using the Internet domain name of " zippo.com ". In Zippo, the defendant was a California based news service with an interactive Web site " through which it exchanges information with Pennsylvania residents in hopes of using that information for commercial gain later ". The defendant had entered into news service contracts⁵⁴³ with 3,000 Pennsylvania residents and 7 " contracts with Internet access providers to furnish services to their customers in Pennsylvania ". Since it was defendant's " conscious choice to conduct business (in Pennsylvania)" the Court asserted personal

jurisdiction based upon the following analysis. " At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper...At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise (of) personal jurisdiction ...The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site."

4] Passive Web Sites

If the foreign company maintains an informational Web site accessible to the general public but which can not be used for making reservations then most⁵⁴⁴, but not all⁵⁴⁵, Courts would find it unreasonable to assert personal jurisdiction. For example, in Weber v. Jolly Hotels⁵⁴⁶ a New Jersey resident purchased a tour

packaged by a Massachusetts travel agent, not an exclusive selling agent, which featured accommodations at a Sicilian hotel owned by an Italian corporation, Itajolly Compagnia Italiana Dei Jolly Hotels [" Jolly Hotels "]. Jolly Hotels conducted no business in New Jersey but had a subsidiary which owned a hotel in New York City which could make reservations at all of its hotels. The plaintiff sustained injuries at defendant's Sicilian hotel and brought suit against Jolly Hotels in New Jersey. Jolly Hotels maintained a Web site accessible in New Jersey which provided "photographs of hotel rooms, descriptions of hotel facilities, information about numbers of rooms and telephone numbers ". The Web site could not be used to make reservations at any of Jolly Hotels. Finding the Web site to be passive in nature the Court dismissed the complaint for a lack of personal jurisdiction but transferred the case to New York because defendant's subsidiary's New York City hotel could make reservations at all Jolly Hotels.

5] Passive Web Sites Plus

However, passive Web sites combined with other business activity, e.g., the activities of subsidiary corporations in the forum⁵⁴⁷, providing trainees to a company doing business in the forum⁵⁴⁸, entering into a licensing agreement with a company in the forum and selling to three companies in the forum⁵⁴⁹, entering into

a contract with a company in the forum which contained a forum selection clause and multiple e-mail communications to the forum⁵⁵⁰, e-mail, fax and telephone communications⁵⁵¹, contracts and various correspondence surrounding those contracts⁵⁵², various support services incident to sales⁵⁵³, e-mail, fax, telephone and regular mail communications⁵⁵⁴ and 12 sales in the forum and plans to sell more⁵⁵⁵, mortgage loan applications printed out and chats online with mortgage representatives⁵⁵⁶, fielding e-mail questions about products and sending information about orders⁵⁵⁷, " the web site contains several interactive pages which allow customers to take and score performance tests, download product demos, and order products on-line (and) provides a registration form whereby customers may obtain product brochures, test demonstration diskettes or answers to questions "⁵⁵⁸, may provide a reasonable basis for the assertion of personal jurisdiction.

6] Interactive Web Sites

If the Web site provides information, e-mail communication, describes the goods or services offered, downloads a printed order form or allows on-line sales⁵⁵⁹ with the use of a credit card and sales are, in fact, made⁵⁶⁰ in this manner in the forum, particularly by the injured consumer⁵⁶¹, then some Courts⁵⁶² but not all⁵⁶³ may find the assertion of personal jurisdiction reasonable.

This seems to be the trend for the sale of goods and services that are delivered after they are ordered by the consumer on his or her home computer. As noted above, however, at least one court has made an unwarranted distinction between placing Internet orders for the immediate delivery of goods and services and making reservations for delivery of hotel accommodations some time in the future⁵⁶⁴. Although this area of the law is developing it is fair, at this point, to make the following conclusions.

First, the lowest level of travel Web site interactivity, involving e-mail communications which allow travelers to request information but not make reservations, would be an insufficient basis for jurisdiction [Smith v. Basin Park Hotel, Inc.⁵⁶⁵

(although the hotel had a Web site the Court found no basis for asserting jurisdiction since " There is no evidence that any commercial transactions are actually completed on (the hotel's) website. The website merely permits a user to submit an email to (the hotel) requesting reservations information. No reservation is confirmed over the website "); Cervantes v. Ramparts, Inc.⁵⁶⁶

(" Ramparts' only ' continuous ' contact with this state is that it maintained a Web site that allowed Internet users in California, or anywhere else, to learn about and send e-mail to the Luxor Hotel. That the Ramparts Web site permitted limited interactivity does not distinguish it from maintenance of an '800' telephone number for purposes of establishing general jurisdiction

")].

Second, the middle level of travel Web site interactivity, involving the ability to obtain information, communicate by email and, in fact, make hotel reservations has generated cases finding a sufficient basis for jurisdiction [In Brown v. Grand Hotel Eden-A Summit Hotel⁵⁶⁷, a case in which a guest was injured at a Swiss hotel the services of which were marketed through a joint reservation Web site, the Court found that " Hotel Eden's presence on the Summit Hotels website, which also permits reservations to be confirmed automatically supports our finding that Hotel Eden is ' doing business ' in the State of New York " .

After discovery Brown was modified⁵⁶⁸ finding that, in actuality, neither Summit's Web site nor the Hotel Eden's Web site could confirm reservations. " The only interactivity Hotel Eden's website allows is the opportunity for users to inquire into room availability. Upon receiving these inquiries, the hotel responds, through e-mail or fax, with an offer if a suitable room is available; the user then must respond to the hotel to accept the offer "); Decker v. Circus Circus Hotel⁵⁶⁹ ("...it is clear that any customer can reserve a room through the Web site...by making reservations available on the Internet, the defendants have effectively placed their hotel and its services into an endless stream of commerce "); Grutkowski v. Steamboat Lake Guides⁵⁷⁰ (" This site does not permit a reader to purchase or reserve

tours over the Internet and thus, does not permit SLO to ` transact business ` over the Internet `)] and cases finding an insufficient basis for jurisdiction [Rodriguez v. Circus Circus Casinos, Inc.⁵⁷¹ (no jurisdiction based upon interactive reservations Web site); Imundo v. Pocono Palace, Inc⁵⁷² (no jurisdiction based upon interactive reservations Web site); Snyder v. Dolphin Encounters Limited⁵⁷³ (no jurisdiction based on interactive reservations Web site); Bell v. Imperial Palace Hotel/Casino, Inc.⁵⁷⁴ (no jurisdiction based upon interactive reservations Web site); Arriaga v. Imperial Palace, Inc.⁵⁷⁵ (no jurisdiction based upon interactive reservations Web site)].

Third, the highest level of travel Web site interactivity, involving the purchase of travel services on the Web site together with other business contacts with the forum, would provide a sufficient basis for jurisdiction [Silk Air v. Superior Court⁵⁷⁶ (general jurisdiction over foreign air carrier ` based upon (1) Silk Air's continuing and substantial revenue in California, (2) its advertising in California by means of flyers distributed through its parent company's Los Angeles offices and (3) its interactive internet site allowing Californians to purchase tickets on its airline `); In re Ski Train Fire in Kaprun, Austria⁵⁷⁷ (` Siemens AG conducts substantial and continuous business...conducting sales in New York over the Internet, being

listed on the New York Stock Exchange...buying a New York company...employs a press contact here and has sued in New York ")].

7] Interactive Web Sites & Forum Selection Clauses, Choice of Law Clauses & Arbitration Agreements

To reduce the likelihood of being haled into the consumer's local Court foreign travel suppliers and travel sellers may rely upon forum selection clauses, arbitration clauses and choice of law clauses contained in the Internet transaction documents.

" For instance, an Internet business may want its users to agree that any dispute arising between them shall be resolved in the courts of the Internet business's home state or city, or that it shall be resolved before an arbitration tribunal rather than a court, or that a judge rather than a jury will decide the case, or that the law of a particular state will govern the relationship
"578 .

a] Forum Selection Clauses: The enforceability of an Internet forum selection clause was addressed by the Court in Decker v. Circus Circus Hotel⁵⁷⁹. In Decker, New Jersey consumers made reservations at a Nevada hotel using an interactive Web site.

The reservation form which appeared on the computer screen contained a forum selection clause informing guests that should they wish to commence a lawsuit against the hotel it could only be brought in Nevada. In the Decker case the Court decided to enforce the Nevada forum selection clause. The Court also found that the combination of an interactive Web site with a forum selection clause negates any intent of being haled into a local courtroom.

Forum selection clauses are used by **cruiselines** [Carnival Cruise Lines, Inc. v. Shutte⁵⁸⁰ (Florida forum selection clause enforced); Kessler v. Royal Caribbean Cruises, Ltd.⁵⁸¹ (Florida forum selection clause enforced); Elliott v. Carnival Cruise Lines⁵⁸² (Miami, Florida forum selection clause enforced); Moeller v. Cruiseshipcenters⁵⁸³ (Washington forum selection clause enforced); Effron v. Sun Line Cruises, Inc.⁵⁸⁴ (Greek forum selection clause enforced); Schaff v. Sun Line Cruises, Inc.⁵⁸⁵ (Greek forum selection clause not enforced); Hodes v. SNC Achille Lauro⁵⁸⁶ (Naples forum selection clause enforced); O.C. Harden v. American Airlines⁵⁸⁷ (Hawaii forum selection clause enforced); Jewel Seafoods, Ltd. v. M/V Peace River⁵⁸⁸ (Chinese forum selection clause enforced); Carron v. Holland America Line-Westours, Inc.⁵⁸⁹ (Washington forum selection clause enforced); Rawlins v. Clipper Cruise Lines⁵⁹⁰ (Missouri forum selection clause enforced); Hollmann v. Cunard Line Limited⁵⁹¹ (England forum selection clause enforced)]; **hotels** [Doe v. Sun

International Hotels, Ltd.⁵⁹² (female guest raped at hotel; Bahamas forum selection clause in guest registration form signed by minor guest's step father not enforced; void by reason of guest reaching age of majority); **tour operators** [Shea v. Global Travel Marketing, Inc.⁵⁹³ (estate of child tourist on safari killed by hyenas not bound by contract clause requiring arbitration of disputes in Fort Lauderdale, Florida); Sachs v. TWA Getaway Vacations, Inc.⁵⁹⁴ (tour participant contract stated that " Any litigation concerning the trip may be brought only within the state of Missouri and nowhere else, and Missouri law will be applicable to any and all such litigation "); Rodriquez v. Class Travel Worldwide⁵⁹⁵ (minor tourist injured after being pushed into hotel pool; California forum selection clause in tour operator's registration form enforced); Paster v. Putney Student Travel, Inc.⁵⁹⁶ (tourist contracted oral yeast infection on the Blackfeet Indian Reservation in Montana during a " sweat ceremony ", one portion of which included the passing of a tobacco filed pipe; Vermont forum selection clause in tour participant contract enforced)] and **resort time share operators** [World Vacation Travel, S.A. v. Brooker⁵⁹⁷ (time share purchasers alleged breach of time share agreement; Mexico forum selection enforced)].

With respect to **airline** tickets, however, the D.O.T. has prohibited the use of forum selection clauses [see July 15, 1996 D.O.T. Industry Letter from Samuel Podberesky (We are sending...

this letter to advise you of...problematic practices...(1) choice of forum provisions in contracts of carriage and tariffs...We view such provisions to be unlawful (and) unconscionable "); see <http://airconsumer.ost.dot.gov/rules.htm>] .

b) **Arbitration Clauses**: The enforceability of arbitration clauses in tour contracts has been addressed by some courts [Shea v. Global Travel Marketing, Inc.⁵⁹⁸ (child tourist 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 ". The tour contract, signed by the child's mother, provided " that all disputes between the parties be settled by binding arbitration in Fort Lauderdale, Florida ". The Court refused to enforce the clause finding that the parent did not have " the authority to bind a minor child to arbitrate potential personal injury claims "); Milgrim v. Backroads, Inc.⁵⁹⁹(tourist injured on bicycle tour of Loire Valley; clause in tour participant contract stating that " the dispute shall be settled by binding arbitration through the American Arbitration Association at San Francisco, California " enforced)].

c) **Choice Of Law Clauses**: Choice of law clauses often appear in cruise contracts. The law selected may be that of the **Bahamas** [Kirman v. Compagnie Francaise⁶⁰⁰ (choice of Bahamian law

clause enforced; cruise between Singapore and Australia)], **China** [Jewel Seafoods Ltd. v. M/V Peace River⁶⁰¹ (choice of Chinese law clause enforced)] or **Italy** [Falcone v. Mediterranean Shipping Co.⁶⁰²]. Recently tour operators have used choice of law clauses [Sachs v. TWA Getaway Vacations, Inc.⁶⁰³ (tour participant contract stated that " Any litigation concerning the trip may be brought only within the state of Missouri and nowhere else, and Missouri law will be applicable to any and all such litigation "; court applied Missouri and Florida law in dismissing claims against tour operator)].

Choice of law clauses are, generally, enforceable unless the passenger can demonstrate that enforcement would be unreasonable, to prevent fraud or overreaching [Long v. Holland America Line Westours, Inc.⁶⁰⁴ (passenger falls during land tour of museum; maritime law does not govern land tour; choice of law clause in tour contract stating that " except when maritime law applied, the contract would be construed according to Washington state law " rejected; Alaska law applied) or that " enforcement would contravene a strong public policy of the forum in which the suit is brought " [Milanovich v. Costa Crociere, SPA⁶⁰⁵].

8] The Internet May Have Expanded Jurisdiction

The Internet may have changed the way in which the Courts

decide what types of business contacts justify the assertion of personal jurisdiction. Although the Courts are not yet in agreement on what constitutes a threshold of interactivity in the marketing of travel services over the Internet [often coupled with more traditional contacts with the forum], there has been some movement towards a re-evaluation of the archaic solicitation plus doctrine as an appropriate analytical framework for resolving jurisdictional issues within the context of travel consumer litigation.

ENDNOTES

1. See e.g.,

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

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

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

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

State Courts:

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

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

Contra:

Second Circuit: York v. Commodore Cruise Line, 1994 WL 511581 (S.D.N.Y. 1994)(passenger sexually assaulted by crew members; cruise ships are not floating hotels; no negligence for doors having locks with easy access from outside; policy of rescuing passengers outweighs increased security).

2. Parry, Dead, injured in Chilean bus crash return home, The Journal News, March 25, 2006 at p. 7B.

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

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

5. Dickerson, Travel Law, Law Journal Press (2006), at Chapter 2.

6. Id at Chapter 4.

7. Id.

8. Id. at Chapter 5.

9. Id.

10. Id.

11. Id. at Chapters 2 & 5.

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

13. www.classactionlitigation.com/library/CruisePassengerWeb.htm

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

15. See Carothers, *Cruise Control. Conde Nast Traveler*, July 2006, pp. 56-62.

16. *Spector v. Norwegian Cruise Lines*, 125 S. Ct. 2169 (2005).

17. *Carlisle v. Carnival Corp.*, 2003 Fla. App. LEXIS 12794 (Fla. App. 2003), Petition for review by Florida Supreme Court granted 904 So. 2d 430 (Fla. Sup. 2005).

18. *Mack v. Royal Caribbean Cruises*, 2005 WL 2679436 (Ill. App. 2005).

19. *Carlisle v. Carnival Corp.*, 2003 Fla. App. LEXIS 12794 (Fla. App. 2003), Petition for review by Florida Supreme Court granted 904 So. 2d 430 (Fla. Sup. 2005) (14 year old passenger with ruptured appendix misdiagnosed by ship's doctor as suffering from flu; Florida Appellate Court rejects majority rule [see discussion below] that cruise ships are not liable for torts of ship's doctors and holds that " where a ship's physician is in the regular employment of a ship, as a salaried member of the crew " the ship will be held liable for his " negligent treatment of a passenger ").

20. *Doe v. Celebrity Cruises, Inc.*, 2003 WL 22351426 (S.D. Fla. 2003), aff'd in part and rev'd in part, 394 F. 3d 891 (11th Cir. 2004).

21. *Stires v. Carnival Corp.*, 2002 WL 31971728 (S.D. Fla. 2002) (head waiter sexually assaults passenger repeatedly referring to her as a " puta "); *Doe v. Celebrity Cruises* (" female passenger... alleges to have been sexually assaulted, raped and battered by a male crewmember...while ashore in Bermuda during a roundtrip cruise from New York to Bermuda... (the Court held that) " a common carrier may be held strictly liable for its' employee's intentional torts that are committed outside the scope of employment "; case tried to a jury which awarded \$1 million in damages; judgment dismissed as to all defendants [operator, owner, caterer and service] because none of them are both a common carrier and the employer of the employee)].

22. Jainchill, Upside the head tax: Alaska vote a blow to the cruise lines, Travel Weekly, August 28, 2006, p. 1.
23. Carothers, Stop Press, Environment Pollution Progress, October 2003, p. 76.
24. Ericksen, Love boats on troubled waters, Trial, March 2006, p. 48 (" Cruise lines promise fun and romance and encourage partying aboard ship. When negligence or crime results in injury to passengers, what remedies does the law provide? ").
25. Solomon, Voyage to the Great Outdoors, New York Times Travel Section, October 2, 2005 at p. 12.
26. Conde Nast Traveler, March 2000, p. 163.
27. Jainchill, 2000K-ton megaship to cost \$1.24 billion, hold 5,400 cruiser, Travel Weekly, February 13, 2006, p. 1.
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29. The Golden Age Of Cruising, Conde Nast Traveler, March 2001.
30. Jainchill, Relics Of A Golden Age, Travel Weekly, June 19, 2006, at p. 18.
31. Carothers, A Steady Course?, Stop Press, Conde Nast Traveler, October 2000, p. 25. See also Blum, Ecstasy fire prompts closer look at safety on the seas, Travel Weekly, March 1, 1999, p. 6.
32. Jainchill, Princess: Human error caused list, Travel Weekly, July 31, 2006 at p. 6.
33. Hepburn, Caribbean cruise turns deadly as fire scorches 100 ship cabins, The Journal News, March 24, 2006 at p. 3B.
34. Carothers, Cruise Control, Stop Press, Conde Nast Traveler, July 2006, at p. 54.
35. See Schmemann, U.S. Attacked, N.Y. Times, Sept. 12, 2001, at p.1.
" Hijackers rammed jetliners into each of New York's World Trade Center Towers yesterday, toppling both in a hellish storm of ash, glass, smoke and leaping victims while a third jetliner crashed into the Pentagon in Virginia...The attacks seemed

carefully coordinated. The hijacked planes were all en route to California, and therefore gorged with fuel, and their departures were spaced within an hour and 40 minutes. The first, American Airlines Flight 11, a Boeing 767 out of Boston for Los Angeles, crashed into the north tower at 8:48 a.m. Eighteen minutes later, United Airlines Flight 175, also headed from Boston to Los Angeles, plowed into the south tower. Then an American Airlines Boeing 757, Flight 77, left Washington's Dulles International Airport bound for Los Angeles, but instead hit the western part of the Pentagon...at 9:40a.m. Finally, United Airlines Flight 93, a Boeing 757 flying from Newark to San Francisco, crashed near Pittsburgh, raising the possibility that its hijackers had failed in whatever their mission was. "

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

37. Id.

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

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

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

39. See McDowell, Security Is Tightened On Ships and at Ports, N.Y. Times Travel Section, Dec. 9, 2001, p. 3 (" But since Sept. 11, security has been ramped up at ports and on cruise ships and other vessels to its highest level since World War II...The Coast Guard, which oversees maritime security, added uniformed armed ` sea marshals ` to cruise ships in October and Coast Guard cutters

equipped with machine guns often escort cruise and cargo ships to and from port. "; Increased Security, Consumer Reports Travel Letter, May 2002, p. 6 (" In fact, in port you may encounter multiple security checkpoints before being allowed to board. Expect intensified scrutiny of your personal identification and other documents...The new Transportation Security Administration will oversee security assessments and enhancements at U.S. seaports. Congress recently authorized \$93 million for the Port Security Grants Program to assist in this effort...Because of the higher security level, the U.S. Coast Guard has activated directives for all cruise lines sailing into and out of U.S. territorial waters. These rules mean all baggage, cargo and stores should be screened and each terminal should undergo a ' definitive security review ' prior to the arrival of a cruise ship. At some ports, cruise ships may be escorted into and out of port, and a 300 foot security zone may be maintained for all cruise ship ").

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

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

42. *Casavant v. Norwegian Cruise Line, Ltd.*, 2005 WL 1523886 (Mass. App. 2005).

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54. *Morrow v. Norwegian Cruise Line Limited*, 2002 WL 32091779 (M.D. Pa. 2002).
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56. *Gibbs v. Carnival Cruise Lines*, 314 F. 3d 125 (3d Cir. 2002).
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418. Afflerbach v. Cunard Line, Ltd., 14 F. Supp. 2d 1260 (D. Wyo. 1998).
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425. Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 111 S. Ct. 39, 113 L. Ed. 2d 622 (1991).
426. Chapman v. Norwegian Cruise Line Ltd., 2001 U.S. Dist. LEXIS 9360 (N.D. Ill. 2001).
427. Heinz v. Grand Circle Travel, 329 F. Supp. 2d 896 (W.D. Ky. 2004).
428. Schlessinger v. Holland America, N.V., 2003 WL 21371851 (Cal. App. 2003).
429. Hughes v. Carnival Cruise Lines, Inc., 2003 WL 1740460 (S.D.N.Y. 2003).
430. Pratt v. Silversea Cruises, Ltd., 2005 WL 1656891 (N.D. Cal. 2005).
431. Morrow v. Norwegian Cruise Line Limited, 2002 WL 32091779 (M.D. Pa. 2002).
432. Falcone v. Mediterranean Shipping Co., 2002 U.S. Dist. LEXIS 11392 (E.D. Pa. 2002).

433. Ferketich v. Carnival Cruise Lines, 2002 WL 31371977 (E.D. Pa. 2002).
434. Enderson v. Carnival Cruise Lines, Inc., 2001 U.S. Dist. LEXIS 1608 (W.D.N.C. 2001).
435. Elliott v. Carnival Cruise Lines, 231 F. Supp. 2d 555 (D. Tex. 2002).
436. Tateosian v. Celebrity Cruise Services, Ltd., 768 A. 2d 1248 (R.I. Sup. 2001).
437. Watanabe v. Royal Caribbean Cruises, Ltd., 2001 WL 1511268 (Cal. App. 2001).
438. Casavant v. Norwegian Cruise Line, Ltd., 2005 WL 1523886 (Mass. App. 2005).
439. Ward v. Cross Sound Ferry, 273 F. 3d 520 (2d Cir. 2001).
440. Osborn v. Princess Tours, Inc., 1995 American Maritime Cases 2119 (S.D. Texas. 1995).
441. Schaff v. Sun Line Cruises, Inc., 1998 WL 141661 (S.D. Tex. 1998).
442. Carnival Cruise, Inc. V. Shute, 499 U.S. 585, 595, 111 S. Ct. 1522, 133 L. Ed. 2d 622 (1991).
443. Effron v. Sun Line Cruises, Inc., 67 F. 3d 2 (2d Cir. 1995).
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449. See e.g.,
Supreme Court: Carnival Cruise, Inc. V. Shute, 499 U.S. 585, 595, 111 S. Ct. 1522, 133 L. Ed. 2d 622 (1991).
State Courts:
Texas: Cismaru v. Radisson Seven Seas Cruises, Inc., 2001 Tex. App. LEXIS 16 (Tex. App. 2001); Stobaugh v. Norwegian Cruise Lines, Ltd., 5 S.W. 2d 232, 235 (Tex. App. 1999).
450. Cismaru v. Radisson Seven Seas Cruises, Inc., 2001 Tex. App. LEXIS 16 (Tex. App. 2001).
451. Long v. Holland America Line Westours, Inc., 26 P. 3d 430 (Alaska Sup. 2001).
452. Ward v. Cross Sound Ferry, 273 F. 3d 520 (2d Cir. 2001).
453. McTigue v. Regal Cruises, Inc., 1998 U.S. Dist LEXIS 5568 (S.D.N.Y. 1998).
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455. Grivesman v. Carnival Cruise Lines, 2001 U.S. Dist. LEXIS 661 (N.D. Ill. 2001).
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457. Stobaugh v. Norwegian Cruise Line Limited, 5 S.W. 3d 232 (Tex. App. 1999).
458. Ferketich v. Carnival Cruise Lines, 2002 WL 31371977 (E.D. Pa. 2002).
459. Elliot v. Carnival Cruise Lines, 231 F. Supp. 2d 555 (D. Tex. 2002).
460. Natale v. Regency Maritime Corp., 1995 U.S. Dist. LEXIS 3413 (S.D.N.Y. 1995).
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462. Hicks v. Carnival Cruise Lines, Inc., 1994 U.S. Dist LEXIS 10194 (E.D. Pa. 1994).

463. Lauri v. Cunard Line Limited, 2000 U.S. Dist. LEXIS 8627 (E.D. Mich. 2000).
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467. Sub-Zero Freezer Co., Inc. v. Cunard Line Limited, 2002 WL 32357103 (W.D. Wis. 2002).
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471. Jewel Seafoods Ltd. M/V Peace River, 1999 WL 166559 (D.S.C. 1999).
472. Falcone v. Mediterranean Shipping Co., 2002 U.S. Dist. LEXIS 11392 (E.D. Pa. 2002).
473. Heinz v. Grand Circle Travel, 329 F. Supp. 2d 896 (W.D. Ky. 2004).
474. Klinghoffer v. S.N.C. Achille Lauro, 795 F. Supp. 112, 115-116 (S.D.N.Y. 1992).
475. Long v. Holland America Line Westours, Inc., 26 P. 3d 430 (Alaska Sup. 2001).
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481. Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 79 S. Ct. 406, 3 L. Ed. 2d 550 (1958).
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483. Kornberg v. Carnival Cruise Lines, Inc., 741 F. 2d 1332, 1334 (11th Cir. 1984).
484. Carlisle v. Carnival Corp., 2003 Fla. App. LEXIS 12794 (Fla. App. 2003).
485. Barbetta v. S/S Bermuda Star, 848 F. 2d 1364 (5th Cir. 1988).
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495. Mashburn v. Royal Caribbean Cruises, Ltd., 55 F. Supp. 2d 1367 (S.D. Fla. 1999), aff'd 214 F. 3d 1356 (11th Cir. 2000).
496. Bergonzine v. Maui Classic Charters, 1995 American Maritime Cases 2628 (D. Hawaii 1995)].
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498. Gershon v. Regency Diving Center, Inc., 368 N.J. Super. 237, 845 A. 2d 720 (2004).
499. DeNicola v. Cunard Line Limited, 642 F. 2d 5 (1st Cir. 1981).
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505. Alstrom Machinery, Inc. v. Associated Airfreight, Inc., 675 N.Y.S. 2d 161 (N.Y. App. Div. 1998).
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518. Kirman v. Compagnie Francaise, 1994 A.M.C. 2848 (Cal. Sup. 1993).
519. Wallis v. Princess Cruises, Inc., 306 F. 3d 827 (9th Cir. 2002).
520. www.imo.org/index.htm
521. Pfenning, **Internet travel shows moment of weakness**, Travel Weekly, October 14, 2002, p. 10 (“ For the past seven years, the Travel Industry Association of America (TIA) has been tracking Internet use...each year...TIA has reported a rise in Internet travel planning...until this year...According to the TIA’s newly released study, Traveler’s Use of the Internet, 2002 Edition, 45% of all travelers and 67% of travelers with online access used the Internet to plan a trip in

2002...Online travel agency sites—such as Expedia, Travelocity and Priceline—are still as popular as they were a year ago “).

522. See Limone, **Report: Direct sales on the rise**, Travel Weekly, June 30, 2003, p. 43 (“ Traditional travel agencies don’t sell cruises as well as they should and will lose significant market share to supplier-direct initiatives and online agencies in the next three years...traditional agencies’ share of the cruise market will shrink from 90% to 60% by 2006, while supplier-direct sales (Web and phone) will reach 25% by that time...online agencies will be selling 15% of cruises by 2006 “); **Untangling the Web**, Stop Press, Conde Nast Traveler, June 2002, pp. 57-64.

523. For a comparison of these travel seller Web sites see **Travel web sites: You still need to compare**, Consumer Reports Travel Letter, June 2002, p. 1 (We looked at five key factors: ability to provide lowest fares, ability to provide viable flight itineraries that make sense for most travelers, ease of use, customer services and privacy and security policies “).

524. See **How Low Can You Go? Priceline Adds Hotel Bids**, Consumer Reports Travel Letter, December 1998, p. 1 (“ Priceline.com. The Internet bidding system that claims it lets travelers name their own prices for airline tickets, quietly launched a similar service for hotel rooms in 26 cities “); Wilkening, **The ins and outs of Priceline.com: Good fares come with drawbacks**, Travel Weekly, June 24, 1999, p. 1 (“ But if you think the price is right, don’t overlook the minuses—including uncertain hours of travel, nonstandard purchase conditions and some potential hidden costs “).

525. See **Matter of Travelot Company**, 286 B.R. 447, 450 (S.D. Ga. 2002)(“ The concept developed by Travelot involves coupling the benefits of on-line bookings with the customized services of a pre-screened, high quality travel agent in the destination locality so that a given traveler could obtain not only availability and cost information but also qualitative comments about various facilities and attractions. Through continuing e-mail contacts, that traveler would then be able to develop a customized travel itinerary. Travelot conceived of a business model whereby it would link to a pre-existing high traffic website to attract customers, advertise the availability of its services through broadcast and internet advertising, and obtain its revenue through commissions paid to Travelot by travel agents in the destination localities who arrange the bookings. The agents would, in turn, derive their commissions from the providers of hotel, auto and other requested services. “

526. See **Untangling the Web**, Stop Press, Conde Nast Traveler, June 2002, p. 62.

527. See **D.O.T. Prohibition on Deceptive Practices In the Marketing of Airfare to the Public Using the Internet**, January 18, 2001, at <http://airconsumer.ost.dot.gov/rules.htm>.

528. See e.g.,

Second Circuit: Brown v. Grand Hotel Eden, 2003 WL 21496756 (S.D.N.Y. 2003) (“ a hotel is subject to the general jurisdiction of the New York courts...(Where) full

confirmation powers (have been granted) to their New York agents “); **In re Ski Train Fire in Kaprun, Austria**, 2002 U.S. Dis. LEXIS 14563 (S.D.N.Y. 2002)(subsidiary qualified as an agent in the forum); **Pavis v. Club Med, Inc.**, 1998 WL 229912 (D. Conn. 1998)(solicitation through travel agents in the forum by agent sufficient basis for jurisdiction over principal); **Sankaran v. Club Mediterranee, S.A.**, 1998 WL 433780 (N.D.N .Y. 1998)(“ Defendants’ activities through their agents also suffice to show that they have established the requisite contacts with New York “).

Sixth Circuit: **Catalano v. BRI, Inc.**, 724 F. Supp. 1580 (E.D. Mich. 1989)(Michigan has personal jurisdiction over Las Vegas hotel based upon conducting business through an agent with offices in Michigan).

Seventh Circuit: **Cummings v. Club Mediterranee, S.A.**, 2002 WL 1379128 (N.D. Ill. 2002)(solicitation through travel agents in the forum by agent sufficient basis for jurisdiction over principal);

529. See e.g.,

Eleventh Circuit: **Meier v. Sun International Hotels**, 288 F. 3d 1264 (11th Cir. 2002) (jurisdiction over foreign parent corporation based upon activities of subsidiary corporations in the forum).

State Courts:

Connecticut: **Hersey v. Lonrho, Inc.**, 807 A. 2d 1009 (Conn. App. 2002)(no jurisdiction over parent hotel based solicitation of subsidiary in the forum).

Florida: **Universal Caribbean Establishment v. Bard**, 543 So. 2d 447 (Fla. App. 1989)(jurisdiction based upon activities of subsidiary corporations in the forum).

New York: **Taca Intl. Airlines v. Rolls-Royce of England**, 15 N.Y. 2d 97, 256 N.Y.S. 2d 129, 204 N.E. 2d 329 (1965).

530. See e.g.,

Intermor v. Walt Disney Company, 250 F. Supp. 2d 116, 119-120 (E.D.N.Y. 2003) (the presence of Walt Disney Company in New York insufficient to impose jurisdiction over subsidiary Walt Disney World themepark in Florida); **Dorfman v. Marriott International Hotels, Inc.**, 2002 WL 14363 (S.D.N.Y. 2002)(New York has jurisdiction over Hungarian elevator company which is a mere department of U.S. elevator company); **Grill v. Walt Disney Co.**, **683 F. Supp. 66, 69** (S.D.N.Y. 1988)(“ There is nothing in the record which suggests that Disney Co. acts as agent for Disney World Co. or that Disney World Co. is merely a department of Disney Co. Accordingly, the presence of the parent company in New York does not confer jurisdiction over...Disney World Co. “).

Third Circuit: **Weintraub v. Walt Disney World Co.**, 825 F. Supp. 717 (E.D. Pa. 1993)(Pennsylvania has jurisdiction over Florida resort Walt Disney World based upon connections of parent corporation Walt Disney Company to Pennsylvania).

531. See e.g.,

Second Circuit: **Dorfman v. Marriott International Hotels, Inc.**, 2002 WL 14363 (S.D.N.Y. 2002)(Hungarian and U.S. elevator companies joint venturers);

532. See e.g.,

Second Circuit: **Gelfand v. Tanner Motor Tours, Ltd.**, 385 F. 2d 116 (2d Cir. 1967).

State Courts:

New York: **Guile v. Sea Island Co., Inc.**, 11 Misc. 2d 496, 66 N.Y.S. 2d 467 (1946),
aff'd 272 App. Div. 881, 71 N.Y.S. 2d 911 (1947).

533. See e.g.,

Second Circuit: **Pavis v. Club Med, Inc.**, 1998 WL 229912 (D. Conn. 1998)(solicitation through travel agents in the forum by agent sufficient basis for jurisdiction over principal);

Third Circuit: **Romero v. Argentinas**, 1993 WL 416547 (D.N.J. 1993).

Tenth Circuit: **Afflerbach v. Cunard Line. Ltd.**, 11 F. Supp. 2d 1260 (D. Wyo. 1998).

State Courts:

New York: **Savoleo v. Couples Hotel**, 136 A.D. 2d 692, 524 N.Y.S. 2d 52 (1988).

534. See e.g.,

Sixth Circuit: **Hughes v. Cabanas del Caribe Hotel**, 744 F. Supp. 788 (E.D. Mich. 1990).

Seventh Circuit: **Wilson v. Humphreys**, 916 F. 2d 1239 (7th Cir. 1990).

535. See e.g.,

Second Circuit: **Intermor v. Walt Disney Company**, 250 F. Supp. 2d 116, 119-120 (E.D.N.Y. 2003).

536. See

First Circuit: **Sigros v. Walt Disney World Co.**, 129 F. Supp. 2d 56 (D. Mass. 2001) (advertising sufficient basis for jurisdiction); **Edwards v. Radventures, Inc.**, 164 F. Supp. 2d 190 (D. Mass. 2001)(solicitation sufficient basis for jurisdiction); **Szafarowicz v. Gotterup**, 1999 WL 782028 (D. Mass. 1999)(Massachusetts may have jurisdiction over Cayman Island diving company if a significant amount of business was done in the U.S.); **Nowak v. Tak How Inc. Ltd.**, 1995 WL 521874 (D. Mass. 1995).

Second Circuit: **Pavia v. Club Med, Inc.**, 1998 WL 229912 (D. Conn. 1998) (solicitation through travel agents in the forum sufficient basis for jurisdiction); **Sankaran v. Club Mediterranee, S.A.**, 1998 WL 433780 (N.D.N.Y. 1998)(solicitation through travel agents in the forum sufficient basis for jurisdiction); **Mallon v. Walt Disney World Co.**, 42 F. Supp. 2d 143 (D. Conn. 1998)(continuous and extensive advertising in the forum, without contract formation, is sufficient to establish jurisdiction over foreign resort); **Begley v. Maho Bay Camps, 1994 WL 136016** (E.D.N.Y. 1994)(jurisdiction based upon newspaper ads and contact in New York City).

Third Circuit: **Weintraub v. Walt Disney World Co.**, 1993 WL 244064 (E.D. Pa. 1993)(advertising, staffing and customer relations activities sufficient to support jurisdiction); **Gavigan v. Walt Disney World, Inc.**, 646 F. Supp. 786 (E.D. Pa. 1986)(jurisdiction based upon ongoing promotional activities in the forum).

Fifth Circuit: **Kervin v. Red River Ski Area, Inc.**, 711 F. Supp. 1383 (E.D. Tex. 1989)(solicitation of business sufficient for jurisdiction).

Sixth Circuit: **Raftery v. Blake's Wilderness Outpost Camps**, 1997 WL 14795 (E.D. Mich. 1997)(advertising sufficient for jurisdiction).

Seventh Circuit: **Wilson v. Humphreys**, 916 F. 2d 1239 (7th Cir. 1990)(advertising and contacts with local tour operators sufficient for jurisdiction); **Cummings v. Club Mediterranee, S.A.**, 2002 WL 1379128 (N.D. Ill. 2002)(solicitation through travel agents in the forum sufficient basis for jurisdiction).

State Courts:

Connecticut: **Stewart v. Air Jamaica Holdings Ltd.**, 2000 U.S. Conn. Super. 1107 (Conn. Super. 2000)(plaintiff fails to prove solicitation of business in Connecticut).

537. See e.g.,

First Circuit: **Rosich v. Circus & Circus Enterprises, Inc.**, 3 F. Supp. 2d 148 (D.P.R. 1998)(advertising through travel guide and brochures insufficient contact); **Clark v. City of St. Augustine, Florida**, 977 F. Supp. 541 (D. Mass. 1997) (advertising in forum insufficient contact).

Second Circuit: **Brown v. Grand Hotel Eden**, 214 F. Supp. 2d 235 (S.D.N.Y. 2002) mod'd, **Brown v. Grand Hotel Eden**, 2003 WL 21496756 (S.D.N.Y. 2003) (“ there is well-developed law addressing jurisdiction over foreign hotels. If a New York agent possesses independent authority to make and confirm reservations on behalf of a hotel, the hotel is considered present...merely soliciting business from prospective customers in New York does not suffice to establish jurisdiction); **Dorfman v. Marriott International Hotels, Inc.**, 2002 WL 14363 (S.D.N.Y. 2002)(no jurisdiction over Marriott Hotel in Budapest, Hungary or Marriott International Hotels, Inc. based upon solicitation without contract formation in the forum; reservations contracts entered into in Nebraska at worldwide reservations system); **Ciarcia v. Venetianm Resort Hotel Casino**, 2002 WL 265160 (S.D.N.Y. 2002) (“ mere solicitation by mailings and telephone calls does not confer jurisdiction “); **Muse v. Vagabond Inn Hotel**, 2002 WL 15803 (E.D.N.Y. 2002)(solicitation of business through toll-free telephone number insufficient for assertion of jurisdiction); **Hinsch v. Outrigger Hotels Hawaii**, 153 F. Supp. 2d 209 (E.D.N.Y. 2001)(placement of ad in publication insufficient for assertion of jurisdiction); **Andrei v. DHC Hotels and Resorts**, 2000 U.S. Dist. LEXIS 4107 (S.D.N.Y. 2000)(mere solicitation of business insufficient for jurisdiction); **Feldman v. Silverleaf Resorts, Inc.**, 2000 U.S. Dist. LEXIS 1005 (S.D.N.Y. 2000)(solicitation, regardless of how substantial, is insufficient to establish jurisdiction); **Swindell v. Florida East Coast Railway Co.**, 42 F. Supp. 2d 320 (S.D.N.Y. 1999)(railroad ticket sales by travel agents and employees at separately owned train stations insufficient to establish jurisdiction); **Weinberg v. Club ABC Tours, Inc.**, 1997 WL 37041 (E.D.N.Y. 1997)(ticket of ticket insufficient to confer jurisdiction); **Lane v. Vacations Charters, Ltd.**, 750 F. Supp. 120 (S.D.N.Y. 1990)(ads and toll free number insufficient contact).

Third Circuit: **Inzillo v. Continental Plaza**, 2000 U.S. Dist. LEXIS 20103 (M.D. Pa. 2000)(advertising and selling hotel accommodations through travel agents and 800 number insufficient basis for jurisdiction); **Poteau v. Walt Disney World Company**, 1999 U.S. Dist.

LEXIS 12459 (E.D. Pa. 1999)(solicitation of business through travel agents insufficient to establish jurisdiction); **Romero v. Holiday Inn, Utrecht**, 1998 U.S. Dist. LEXIS 19997 (E.D. Pa. 1998)(advertising through franchisor's Worldwide Directory and making reservations through 800 number insufficient for jurisdiction).

Fourth Circuit: **Pearson v. White Ski Company, Inc.**, 228 F. Supp. 2d 705 (E.D. Va. 2002)(solicitation through advertising and Internet in the forum insufficient to establish jurisdiction in the absence of a connection between advertising and the injury sustained).

Fifth Circuit: **Luna v. Compagnie Paramena de Aviacion**, 1994 WL 173369 (S.D. Tex. 1994)(solicitation of business and 800 number insufficient).

Sixth Circuit: **Denham v. Sampson Investments**, 997 F. Supp. 840 (E.D. Mich. 1998)(sending brochures to forum and reserving rooms at hotels insufficient contact).

Seventh Circuit: **Dresden v. Treasure Island, LLC**, 2001 U.S. Dist. LEXIS 13928 (N.D. Ill. 2001)(indirect advertising in the forum insufficient contact).

Tenth Circuit: **Rainbow Travel Service, Inc. v. Hilton Hotels Corp.**, 896 F. 2d 1233 (10th Cir. 1990)(jurisdiction based upon solicitation and contract formation in the forum); **Afflerbach v. Cunard Line, Ltd.**, 14 F. Supp. 2d 1260 (D. Wyo. 1998) (national advertising and selling tours through travel agents insufficient contact).

State Courts:

California: **Silk Air v. Superior Court**, 2003 WL 40818 (Cal. App. 2003)(“ It is true that case law holds jurisdiction cannot be assumed over a foreign corporation based solely upon sales by independent non-exclusive agents “).

Connecticut: **Hersey v. Lonrho, Inc.**, 807 A. 2d 1009 (Conn. App. 2002)(no jurisdiction over parent hotel based on solicitation of subsidiary in the forum).

Illinois: **Stein v. Rio Parismina Lodge**, 296 Ill. App. 3d 520, 521, 695 N.E. 2d 518, 231 Ill. Dec. 1 (1998)(transaction of business through travel agents insufficient contact); **Kadala v. Cunard Lines, Ltd.**, 226 Ill. App. 3d 302, 304, 589 N.E. 2d 802, 168 Ill. Dec. 402 (1992) (solicitation of business in the forum insufficient contact).

New York: **Sedig v. Okemo Mountain**, 204 A.D. 2d 709, 612 N.Y.S. 2d 643 (1994) (mere solicitation insufficient).

Texas: **M.G.M. Grand Hotel, Inc. v. Lee Castro**, 8 S.W. 3d 403 (Tex. App. 1999) (solicitation plus doctrine followed in Texas).

538. See e.g.,

Second Circuit: **Brown v. Grand Hotel Eden**, 214 F. Supp. 2d 235 (S.D.N.Y. 2002) *mod' d*, **Brown v. Grand Hotel Eden**, 2003 WL 21496756 (S.D.N.Y. 2003); **Rodriguez v. Circus Circus Casinos, Inc.**, 2001 U.S. Dist. LEXIS 61 (S.D.N.Y. 2001); **In re Ski Train Fire in Kaprun, Austria**, 2002 U.S. Dist. LEXIS 14929 (S.D.N.Y. 2002)..

Third Circuit: **Imundo v. Pocono Palace, Inc.**, 2002 WL 31006145 (D.N.J. 2002); **Snyder v. Dolphin Encounters Limited**, 2003 WL 31771189 (E.D. Pa. 2002) ; **Decker v. Circus Hotels**, 49 F. Supp. 2d 743, 748 (D.N.J. 1999); **Romero v. Holiday Inn, Utrecht**, 1998 U.S. Dist. LEXIS 19997 (E.D. Pa. 1998); **Weber v. Jolly Hotels**, 977 F. Supp. 327 (D.N.J. 1997)..

Fourth Circuit: **Pearson v. White Ski Company, Inc.**, 228 F. Supp. 2d 705 (E.D. Va.

2002).

Fifth Circuit: **Arriaga v. Imperial Palace, Inc.**, 252 F. Supp. 2d 380 (S.D. Texas 2003).

Eighth Circuit: **Bell v. Imperial Palace Hotel/Casino, Inc.**, 200 F. Supp. 2d 1082, 1087-1088 (E.D. Mo. 2001).

Tenth Circuit: **Smith v. Basin Park Hotel, Inc.**, 178 F. Supp. 2d 1225 (N.D. Okla. 2001).

State Courts:

California: **Silk Air v. Superior Court**, 2003 WL 40818 (Cal. App. 2003); **Cervantes v. Ramparts, Inc.**, 2003 WL 257770 (Cal. App. 2003).

539. See e.g., **Imundo v. Pocono Palace, Inc.**, 2002 WL 31006145 (D.N.J. 2002)(“ personal jurisdiction has been found over operators of Web sites who could enter into contracts through the Web site to provide goods and services over the Internet. **CompuServe, Inc. v. Patterson**, 89 F. 3d 1257 (6th Cir. 1996)(contracts to distribute software over the Internet); **Zippo (Manuf. Co. v. Zippo Dot Com**, 952 F. Supp. 1119 (W.D. Pa. 1996)(contracts to provide news service over the Internet); **Thompson v. Handa Lopez, Inc.**, 998 F. Supp. 738, 744 (W.D. Tex. 1998)(continuous interaction with players on their casino Web site ”). See also: **American Eyewear, Inc. v. Peeper’s Sunglasses**, 106 F. Supp. 2d 895, 899-903 (N.D. Tex. 2000)(personal jurisdiction proper over defendant which established virtual store on its web site).

540. See e.g., **Bell v. Imperial Palace Hotel/Casino, Inc.**, 200 F. Supp. 2d 1082, 1087-1088 (E.D. Mo. 2001)(“ Although reservations can be made over the internet this case is clearly distinguishable from those where goods may be ordered over the internet...In internet cases involving the sale of goods, the entire transaction (order, payment and confirmation) can be completed online. The resident can bring about the transmission of the goods into the forum state through the order alone. Hotels, on the other hand, are somewhat unique in the internet context. Neither party anticipates that goods, services or information of intrinsic value will be transmitted or provided in the forum state as a result of the interest exchange of information. To the contrary, both parties recognize that the internet exchange is simply preliminary to the individual traveling outside the forum state to use the service. In this respect, the exchange of information over the internet is not unlike a toll-free reservation hotline. The purpose of the internet interaction is not achieved until the resident customer leaves the forum state and arrives at the hotel destination. “).

541. See e.g.,

Second Circuit: **Brown v. Grand Hotel Eden**, 214 F. Supp. 2d 235 (S.D.N.Y. 2002) *mod’ d*, **Brown v. Grand Hotel Eden**, 2003 WL 21496756 (S.D.N.Y. 2003)(“ The only interactivity Hotel Eden’s website allows is the opportunity for users to inquire into room availability. Upon receiving these inquires, the hotel responds, through e-mail or fax, with an offer if a suitable room is available; the user then must respond to the hotel to accept the offer. This type of interaction is similar to corresponding through a telephone and is insufficient to establish jurisdiction over the defendant “); **Rodriguez v. Circus Circus Casinos, Inc.**, 2001 U.S. Dist. LEXIS 61 (S.D.N.Y. 2001)(“ For jurisdictional purposes, there is no material

difference between using the Internet to make a reservation with an out-of-state entity and placing a telephone call to that entity for the same purpose “).

Third Circuit: **Romero v. Holiday Inn, Utrecht**, 1998 U.S. Dist. LEXIS 19997 (E.D. Pa. 1998)(“ an Internet connection allows a consumer to contact a hotel chain for reservations directly and without charge. The distinction of using a computer hooked to a telephone/data line is not relevantly different from using a handset connected to that same line; one is in writing and one is by voice—a distinction without difference in this context “).

Eighth Circuit: **Bell v. Imperial Palace Hotel/Casino, Inc.**, 200 F. Supp. 2d 1082, 1087-1088 (E.D. Mo. 2001)(“ the exchange of information over the internet is not unlike a toll-free reservation hotline “).

State Courts:

California: **Cervantes v. Ramparts, Inc.**, 2003 WL 257770 (Cal. App. 2003) (“ Maintenance of an Internet Web site accessible from California also does not support general jurisdiction. Such an activity is directly analogous to maintaining an ‘ 800 ‘ telephone number... That the Ramparts Web site permitted limited interactivity does not distinguish it from maintenance of an ‘ 800 ‘ number for purposes of establishing general jurisdiction “).

542. **Zippo Manufacturing Co. v. Zippo Dot Com, Inc.**, 952 F. Supp. 1119 (W.D. Pa. 1997).

543. Id at 952 F. Supp. 1121 (“ Dot Com’s Web Site contains information about the company, advertisements and an application for its Internet news service...A customer who wants to subscribe ...fills out an on-line application...Payment is made by credit card over the Internet or the telephone. The application is then processed and the subscriber is assigned a password which permits the subscriber to view and/or download Internet newsgroup messages that are stored on the defendant’s server in California “).

544. See

Second Circuit: **American Homecare Federation, Inc. v. Paragon Scientific Corp.**, 1998 WL 790590 (D. Conn. 1998)(“ The Website does not list...products which are sold nor does it provide any process for ordering..No sales..occur through the Website and an individual accessing the site cannot order..It does not provide anyone with files to download nor does it link to anyone else’s Website “); **Edberg v. Neogen Corp.**, 17 F. Supp. 2d 104 (D. Conn. 1998)(“ there is no evidence that any user in Connecticut accessed Neogen’s Web site or purchased products based upon the Web site advertisement...Internet users could not order products directly from the Web site...it required them to call an ‘ 800 ‘ number in Michigan or write Neogen in Michigan or Kentucky “); **Hearst Corp. v. Goldberger**, 1997 WL 97097 (S.D.N.Y. 1997) (Web site with E-mail contact); **Benusan Restaurant Corp. v. King**, 937 F. Supp. 295, 301 (S.D.N.Y. 1996), *aff’d* 126 F. 3d 25 (2d Cir. 1997)(Missouri nightclub’s passive web site).

Third Circuit: **Remich v. Manfredy**, 1999 WL 257754 (E.D. Pa. 1999)(passive web site offering general information and advertising insufficient contact with forum); **Molnlycke Health Care AB v. Dumex Medical Surgical Products Ltd.**, 1999 WL 695579 (E.D. Pa. 1999)(passive website does not confer jurisdiction); **Grutkowski v. Steamboat Lake Guides & Outfitters, Inc.**, 1998 U.S. Dist. LEXIS 20255 (E.D. Pa. 1998)(web site contains information, photographs, map and e-mail connection; reservations can not be made on

the web site).

Fourth Circuit: **American Information Corp. v. American Infometrics, Inc.**, 2001 U.S. Dist. LEXIS 4534 (D. Md. 2001)(“ A visitor (to Web site) may not enter into a contract, purchase goods or services or transact business on the Web site “); **Roche v. Worldwide Media, Inc.**, 90 F. Supp. 2d 714 (E.D. Va. 2000)(pornographic web site can only be described as passive); **Esab Group, Inc. v. Centricut, LLC**, 1999 WL 27514 (D.S.C. 1999)(web page which provides information but requires customer to place an order through an 800 telephone number is insufficient for assertion of personal jurisdiction).

Fifth Circuit: **Mink v. AAAA Development, L.L.C.**, 190 F. 3d 333 (5th Cir. 1999)(no long arm jurisdiction based upon printable mail-in order form and toll free number and e-mail address); **Amazon Tours, Inc. v. Wet-A.Line Tours, LLC**, 2002 U.S. Dist. LEXIS 1649 (N.D. Tex. 2002)(tour operator’s Web site “ provides information about tours offered by the company. It includes a bulletin board that allows customers to post messages...a fishing report...a form to request a brochure...If a user wants further information about a tour, he or she must contact the company at its offices in Georgia “); **Lofton v. Turbine Design, Inc.**, 100 F. Supp. 2d 404 (N.D. Miss. 2000)(“ the primary purpose of the website is for advertising. The website does not contain a price list for services, contract for engagement of services, or order form. It is not suited for shopping or ordering online “); **Nutrition Physiology Corp. v. Enviros Ltd.**, 87 F. Supp. 2d 648 (N.D. Tex. 2000)(passive web site does not confer jurisdiction); **Broussard v. Deauville Hotel Resorts, Inc.**, 1999 WL 62152 (E.D. La. 1999)(slip and fall in Florida hotel; no long arm jurisdiction based upon passive website); **Mid-City Bowling Lanes & Sports Palace, Inc. v. Ivercrest, Inc.**, 35 F. Supp. 507 (E.D. La. 1999)(no personal jurisdiction based upon passive website).

Sixth Circuit: **Bailey v. Turbin Design, Inc.**, 86 F. Supp. 2d 790 (W.D. Tenn. 2000)(“ there is no indication whatsoever that TDI’s website is anything other than wholly passive “).

Seventh Circuit: **MJC-A World v. Wishpets Co.**, 2001 U.S. Dist. LEXIS 13178 (N.D. Ill. 2001)(passive Web site and sale of 90 toys insufficient basis for jurisdiction); (**Dow v. Abercrombie & Kent International, Inc.**, 2000 U.S. Dist. LEXIS 7290 (N.D. Ill. 2000)(passive web site touting quality of services); **First Financial Resources v. First Financial Resources, Corp.**, 2000 U.S. Dist. LEXIS 16866 (N.D. Ill. 2000)(web “ site does not allow customers to enter into contracts or receive financial planning services over the Internet “).

Ninth Circuit: **Cybersell, Inc. v. Cybersell, Inc.**, 130 F. 3d 414, 419 (9th Cir. 1997) (“ conducted no commercial activity over the Internet in Arizona. All that it did was post an essentially passive home page on the Web “); **McDonough v. Fallon McElligott, Inc.**, 1996 WL 753991 (S.D. Cal. 1996)(“ fact that (defendant) has a web site used by (forum state residents) cannot establish jurisdiction by itself “).

Tenth Circuit: **Soma Med. Int’l v. Standard Chartered Bank**, 196 F. 3d 1292 (10th Cir. 1999)(no jurisdiction based on web site that only provided information); **SF Hotel Company, L.P. v. Energy Investments, Inc.**, 985 F. Supp. 1032, 1035 (D. Kan. 1997)(“ Boto’s advertisement in a trade publication appears on the Internet. Boto did not contract to sell any goods or services...over the Internet site “).

Eleventh Circuit: **JB Oxford Holdings, Inc.**, 1999 WL 1068444 (S.D. Fla. 1999)(web site providing connections to Internet, listing of national toll free telephone number and a

pending application to do business in Florida provided insufficient contacts with Florida to permit exercise of personal jurisdiction).

District of Columbia Circuit: **GTE New Media Serv. Inc. v. Bellsouth Corp.**, 199 F. 3d 1343 (D.C. Cir.

2000)(Yellow Pages accessibility insufficient for long arm jurisdiction); **Mallinckrodt Medical, Inc. v. Sonus Pharmaceuticals, Inc.**, 989 F. Supp. 265, 272 (D.C.D.C. 1998) (“ The act of posting a message on an AOL electronic bulletin board-which certain AOL subscribers may or may not choose to access (is not sufficient for personal jurisdiction) “).

State Courts:

California: **Jewish Defense Organization, Inc. v. Superior Court**, 85 Cal. Rptr. 2d 611 (Cal. App. 1999)(defamation action; a passive web site delivering only information insufficient contact with forum for assertion of personal jurisdiction).

New Jersey: **Ragonese v. Gaston Rosenfeld**, 318 N.J. Super. 63, 722 A. 2d 991 (1998)(foreign air carrier’s passive web site insufficient for jurisdiction).

New York: **Nationwide Insurance Co. v. Holiday Inn**, New York Law Journal, Jan. 27, 2000 (N.Y. Sup.)(passive web site and 800 number insufficient for jurisdiction; **Messelia v. Costa**, New York Law Journal, Feb. 14, 2000 (N.Y. Civ.)(passive web site providing information insufficient for assertion of personal jurisdiction).

Oregon: **Millenium Enterprises v. Millenium Music**, 49 USPQ2d 1878 (Oregon Jan. 4, 1999).

545. See

Second Circuit: **Inset Systems, Inc. v. Instruction Set, Inc.**, 937 F. Supp. 161, 164 (D. Conn. 1996)(Web site and toll free number; “ advertising via the Internet is solicitation of a sufficient repetitive nature “).

Fourth Circuit: **Bochan v. La Fontaine**, 1999 WL 343780 (E.D. Va. 1999)(posting of libelous messages on the Internet by Texas and New Mexico residents sufficient grounds for the assertion of personal jurisdiction in Virginia where web site was accessed).

Ninth Circuit: **Panavision Int’l, L.P. v. Toeppen**, 938 F. Supp. 616 (C.D. Cal. 1996)(fraud claims; jurisdiction based upon Web site contact alone).

District of Columbia Circuit: **Heroes, Inc. v. Heroes Found**, 958 F. Supp. 1 (D.C.D.C. 1996)(Web site, toll free number and local newspaper ad).

546. **Weber v. Jolly Hotels**, 977 F. Supp. 327 (D.N.J. 1997).

547. See **Meier v. Sun International Hotels**, 288 F. 3d 1264, 1274 (11th Cir. 2002) (jurisdiction in Florida over Bahamian parent hotel corporations based upon activities of subsidiary corporations in the forum and passive web site; “ The Sun Defendants maintain and staff several Florida telephone numbers listed on the ‘ Sun ‘ website as contacts for the Sun Defendants. See www.sunint.com(last visited March 22, 2002 ”).

548. See **Hasbro, Inc. v. Clue Computing, Inc.**, 994 F. Supp. 34, 38 (D. Mass. 1997).

549. See **Digital Equipment Corp. v. Altavista Tech**, 960 F. Supp. 456 (D. Mass 1997).
550. See **CompuServe, Inc. v. Patterson**, 89 F. 3d 1257 (6th Cir. 1996).
551. See **EDIAS Software Int'l v. BASIS Int'l Ltd.**, 947 F. Supp. 413 (D. Ariz. 1996).
552. See **Catalytic Combustion Corp. v. Vapor Extraction Technology, Inc.**, 2000 Wisc. App. LEXIS 774 (Wisc. App. 2000).
553. See **Amazon Tours, Inc. v. Wet-A-Line Tours, LLC.**, 2002 U.S. Dist. LEXIS 1649 (N.D. Tex. 2002)(presence of booking agent in the forum who booked no tours in the forum insufficient contact); **American Eyewear, Inc. v. Peeper's Sunglasses And Accessories, Inc.**, 2000 U.S. Dist. LEXIS 6875 (N.D. Texas 2000).
554. See **Resuscitation Tech., Inc. v. Continental Health Care Corp.**, 1997 WL 148567 (S.D. Ind. 1997).
555. See **Gary Scott International, Inc. v. Baroudi**, 981 F. Supp. 714 (D. Mass. 1997).
556. See **Citigroup Inc. v. City Holding Co.**, 97 F. Supp. 2d 549 (S.D.N.Y. 2000).
557. See **TY, Inc. v. Max Clark**, 2000 U.S. Dist. LEXIS 383 (N.D. Ill. 2000)(no jurisdiction; “ However, at the same time, the defendants do not clearly do business over their web site, for they do not take orders nor enter into contracts over the web site “).
558. See **People Solutions, Inc. v. People Solutions, Inc.**, 2000 U.S. Dist. LEXIS 10444 (N.D. Tex. 2000).
559. See e.g.,
 Second Circuit: Andrei v. DHC Hotels, 2000 U.S. Dist. LEXIS 4107 (S.D.N.Y. 2000) (tourist injured at Aruba hotel made reservations through American Airlines website but actual hotel reservations were confirmed when tour operator GoGo Tours contacted Aruba hotel; no jurisdiction over Aruba hotel).
 Tenth Circuit: Smith v. Basin Park Hotel, Inc., 178 F. Supp. 2d 1225 (N.D. Okla. 2001)(slip and fall at Arkansas hotel; no jurisdiction found; “ The website merely permits a user to submit an email to BPH requesting reservation information. No reservation is confirmed over the website “).
230. See e.g.,
 First Circuit: Dagesse v. Plant Hotel, N.V., 113 F. Supp. 2d 211 (D.N.H. 2000) (although hotel had interactive reservations Web site plaintiff failed to show that any reservations were actually made using the Web site).

Third Circuit: **Hurley v. Cancun Playa Oasis Hotel**, 1999 U.S. Dist. LEXIS 13716 (E.D. Pa. 1999)(Mexican hotel’s Georgia booking agent had 800 number and interactive reservations Web site but plaintiff used neither and failed to show that any actual reservations were made using Web site).

Tenth Circuit: **D.J.’s Rock Creek Marina v. Imperial Foam**, 2002 U.S. Dist. LEXIS 13470 (D. Kan. 2002). Defendant’s Web site had the capacity for accepting orders but there was no evidence of sales or other activity in Kansas. “ CW has had no actual Internet-based contacts with residents of Kansas: no sales, no inquiries, no requests for quotes, no emails, nor any phone calls, letters or contacts emanating from the web site information...CW has never made a sale to a Kansas resident.”); **Smith v. Basin Park Hotel, Inc.**, 178 F. Supp. 2d 1225 (N.D. Okla. 2001) (“ There is no evidence that any commercial transactions are actually completed on BPH’s website. No reservation is confirmed over the website “).

561. See e.g.,

Eighth Circuit: **Bell v. Imperial Palace Hotel/Casino, Inc.**, 200 F. Supp. 2d 1082 (E.D. Mo. 2001)(“ The central reason why plaintiffs fail to establish the necessary minimum contacts for specific jurisdiction, however, is because they have failed to demonstrate that their cause of action has any relation to Imperial Palace’s contacts with Missouri. From the record before the Court, the defendant’s only contact with Missouri is a website that is accessible to residents in Missouri. The subject matter of plaintiff’s suit is a slip and fall accident that occurred on the hotel premises in Las Vegas. That event is entirely unrelated to the defendant’s website. While the Court is not suggesting that these facts would necessarily change the analysis, the plaintiffs do not maintain that they used the website to make reservations with the Imperial Palace, that their travel agent used the website to secure their reservations, or that they were enticed by the website to visit the Imperial Palace. In fact, they do not claim to have ever viewed the website prior to their visit to the defendant’s hotel. The Court can see no causal link or connection between Mr. Bell’s accident and the sole forum contact by Imperial Palace, its website “).

Contra:

Second Circuit: **Rodriguez v. Circus Circus Casinos, Inc.**, 2001 WL 21244 (S.D.N.Y. 2001)(“ Even if Rodriguez has made his hotel reservations over CCC’s website—and it is not alleged that he did—the personal injuries at the heart of this lawsuit arose, if at all, from the allegedly negligent conduct of the defendants in Nevada rather than from the making of a hotel reservation. Absent the requisite nexus, there is no basis for long-arm jurisdiction over CCC “).

562. See e.g.,

Second Circuit: **American Network, Inc. v. Access America/Connect Atlanta, Inc.**, 975 F. Supp. 494 (S.D.N.Y. 1997)(subscriptions for Internet services sold to customers in the forum through contracts entered into on Web site).

Third Circuit: **Zippo Manufacturing Co. v. Zippo Dot Com, Inc.**, 952 F. Supp. 1119 (W.D. Pa. 1997).

Fourth Circuit: **Easb Group, Inc. v. Centricut, LLC**, 1999 WL 27514 (D.S.C. 1999) (web page which provides information but requires customer to place an order using an 800 telephone number is insufficient to confer jurisdiction).

Fifth Circuit: **Origin Instruments v. Adaptive Computer Systems**, 1999 U.S. Dist. LEXIS 1451 (N.D. Texas 1999)(no jurisdiction; failure to show sales in forum through interactive Web site); **Thompson v. Handa-Lopez, Inc.**, 998 F. Supp. 738 (W.D. Tex. 1998)(corporation subject to personal jurisdiction in Texas based upon entering into contracts to play casino games with Texas citizens); **Mieczkowski v. Masco Corp.**, 997 F. Supp. 782, 785 (E.D. Texas 1998)(“ Web site lists various categories...individuals can view various furniture selections..individual pieces of furniture can be viewed..as well as price information..an order form can be printed..(customers may) check the status of their purchases.. information is available regarding freight costs..communicate directly with ‘ on-line ‘ sales representatives “).

Eighth Circuit: **Uncle Sam’s Safari Outfitters, Inc. v. Uncle Sam’s Army Navy Outfitters**, 96 F. Supp. 2d 919 (E.D. Mo. 2000)
(inoperable interactive web site still under construction insufficient for jurisdiction).

Ninth Circuit: **Stomp, Inc. v. NeatO**, 61 F. Supp. 2d 1074
(C.D. Cal. 1999)(web site functioned as a “ virtual store “ where “ consumers [could] view descriptions, prices and pictures of various products [and could] add items to their “ virtual shopping cart “ and “ check out “ by providing credit card and shipping information); **Park Inns International v. Pacific Plaza Hotels, Inc.**, 5 F. Supp. 2d 762, 764-65 (D. Ariz. 1998)(interactive Web site accepted seven hotel reservations from customers in the forum).

District of Columbia Circuit: **Gorman v. Ameritrade Holding Corp.**, 293 F. 3d 506 (D.C. Cir. 2002)(continuous and systematic sale of securities on Internet Web site sufficient basis for personal jurisdiction); **Blumenthal v. Drudge**, 992 F. Supp. 44, 56 (D.C.D.C. 1998) (“ The Drudge Report’s web site allows browsers..to directly e-mail defendant..thus allowing an exchange of information..browsers who access the website may request subscriptions to the Drudge Report, again by directly e-mailing their requests to Drudge’s host computer..the Drudge Report is..sent..to every e-mail address on his subscription list..constant exchange of information and direct communication “).

State Courts:

Connecticut: **Gates v. Royal Palace Hotel**, 1998 Conn. Super. LEXIS 3740 (Conn. Super. 1998)(jurisdiction based upon concentrated advertising, bookings through travel agents and “ invitation to Connecticut citizens to make reservations and other arrangements directly through the Internet “).

Oregon: **Millunium Enterprises v. Millenium Music**, 49 USPQ2d 1878 (Oregon, Jan. 4, 1999).

563. See also:

Eleventh Circuit: **Butler v. Beer Across America**, 83 F. Supp. 2d 1261 (N.D. Ala. 2000)(interactive web site allowing consumers to purchase beer by using a credit card does not confer jurisdiction; “ Beer Across America’s site does not even anticipate the regular exchange of information across the Internet...Rather it is closer to an electronic version of a postal reply card “).

564. See e.g., **Bell v. Imperial Palace Hotel/Casino, Inc.**, 200 F. Supp. 2d 1082, 1087-1088 (E.D. Mo. 2001)(“ Although reservations can be made over the internet this case is clearly distinguishable from those where goods may be ordered over the internet...In internet cases involving the sale of goods, the entire transaction (order, payment and confirmation) can be completed online. The resident can bring about the transmission of the goods into the forum state through the order alone. Hotels, on the other hand, are somewhat unique in the internet context. Neither party anticipates that goods, services or information of intrinsic value will be transmitted or provided in the forum state as a result of the interest exchange of information. To the contrary, both parties recognize that the internet exchange is simply preliminary to the individual traveling outside the forum state to use the service. In this respect, the exchange of information over the internet is not unlike a toll-free reservation hotline. The purpose of the internet interaction is not achieved until the resident customer leaves the forum state and arrives at the hotel destination. “).

565. **Smith v. Basin Park Hotel, Inc.**, 2001 WL 1682810 (N.D. Okla. 2001).

566. **Cervantes v. Ramparts, Inc.**, 2003 WL 257770 (Cal. App. 2003).

567. **Brown v. Grand Hotel Eden-A Summit Hotel**, 2002 U.S. Dist. LEXIS 7773 (S.D.N.Y. 2002).

568. **Brown v. Grand Hotel Eden-A Summit Hotel**, 2003 WL 21496756 (S.D.N.Y. 2003) (“ Hotel Eden withholds from Summit the right to book rooms during time periods of Hotel Eden’s choosing and thus Summit’s power to reserve rooms is subject to the hotel’s grant of authority. Absent an outright grant of authority to confirm reservations, an agent is not ‘ doing business ‘ on behalf of a hotel “).

569. **Decker v. Circus Circus Hotel**, 49 F. Supp. 2d 743, 748 (D.N.J. 1999).

570. **Grutkowski v. Steamboat Lake Guides**, 1998 U.S. Dist. LEXIS 20255 (E.D. Pa. 1998).

571. **Rodriguez v. Circus Circus Casinos, Inc.**, 2001 WL 21244 (S.D.N.Y. 2001).

572. **Imundo v. Pocono Palace, Inc.**, 2002 WL 31006145 (D.N.J. 2002).

573. **Snyder v. Dolphin Encounters Limited**, 2003 WL 31771189 (E.D. Pa. 2002).

574. **Bell v. Imperial Palace Hotel/Casino, Inc.**, 200 F. Supp. 2d 1082 (E.D. Mo. 2001).

575. **Arriaga v. Imperial Palace, Inc.**, 252 F. Supp. 2d 380 (S.D. Texas 2003).

576. **Silk Air v. Superior Court**, 2003 WL 40818 (Cal. App. 2003).

577. **In re Ski Train Fire in Kaprun, Austria**, 2002 U.S. Dist. LEXIS 14563 (S.D.N.Y. 2002).

578. Dee Lewis, **Avoiding Internet Litigation in Inconvenient Forums**, New York Law Journal, May 14, 2002, p. (“ Such precautions...include having users of Internet services or products enter into binding agreements before using the services or products in which they agree on how and where any dispute that arises will be resolved. “).
579. **Decker v. Circus Circus Hotel**, 1999 WL 319056 (D.N.J. 1999).
580. **Carnival Cruise Lines, Inc. v. Shutte**, 499 U.S. 585, 111 S. Ct. 39, 113 L. Ed. 2d 622 (1991).
581. **Kessler v. Royal Caribbean Cruises, Ltd.**, 2002 WL 32130105 (E.D. Pa. 2003).
582. **Elliott v. Carnival Cruise Lines**, 231 F. Supp. 2d 555 (D. Tex. 2002)
583. **Moeller v. Cruiseshipcenters**, 2001 WL 34057009 (N.D. Cal. 2001).
584. **Effron v. Sun Line Cruises, Inc.**, 67 F. 3d 7 (2d Cir. 1995).
585. **Schaff v. Sun Line Cruises, Inc.**, 999 F. Supp. 924 (S.D. Tex. 1998).
586. **Hodes v. SNC Achille Lauro**, 858 F. 2d 905 (3d Cir. 1988).
587. **O.C. Harden v. American Airlines**, 178 F.R.D. 583 (M.D. Ala. 1998).
588. **Jewel Seafoods Ltd. v. M/V Peace River**, 39 F. Supp. 2d 628 (D.S.C. 1999).
589. **Carron v. Holland America Line-Westours, Inc.**, 51 F. Supp. 2d 322 (E.D.N.Y. 1999).
590. **Rawlins v. Clipper Cruise Lines**, 1998 American Maritime Cases 1254 (N.D. Cal. 1995).
591. **Hollmann v. Cunard Line Limited**, 1998 American Maritime Cases 2168 (N.Y. Sup. 1996).
592. **Doe v. Sun International Hotels, Ltd.**, 20 F. Supp. 2d 1328 (S.D. Fla. 1998).
593. **Shea v. Global Travel Marketing, Inc.**, 2003 WL 1916874 (Fla. App. 2003).
594. **Sachs v. TWA Getaway Vacations, Inc.**, 125 F. Supp. 2d 1368 (S.D. Fla. 2000).
595. **Rodriguez v. Class Travel Worldwide**, 2000 U.S. Dist. LEXIS 1926 (E.D. La. 2000).
596. **Paster v. Putney Student Travel, Inc.**, 1999 U.S. Dist. LEXIS 9194 (C.D. Cal. 1999).

597. **World Vacation Travel, S.A. v. Brooker**, 799 So. 2d 410 (Fla. App. 2001).
598. **Shea v. Global Travel Marketing, Inc.**, 2003 WL 1916874 (Fla. App. 2003).
599. **Milgrim v. Backroads, Inc.**, 142 F. Supp. 2d 471 (S.D.N.Y. 2001).
600. **Kirman v. Compagnie Francaise**, 1994 American Maritime Cases 2848 (Cal. Sup. 1993).
601. **Jewel Seafoods Ltd. M/V Peace River**, 1999 WL 166559 (D.S.C. 1999).
602. **Falcone v. Mediterranean Shipping Co.**, 2002 U.S. Dist. LEXIS 11392 (E.D. Pa. 2002).
603. **Sachs v. TWA Getaway Vacations, Inc.**, 125 F. Supp. 2d 1368 (S.D. Fla. 2000).
604. **Long v. Holland America Line Westours, Inc.**, 26 P. 3d 430 (Alaska Sup. 2001).
605. **Milanovich v. Costa Crociere, SPA**, 954 F. 2d 763, 768 (D.C..Cir. 1992).