

TRAVEL LAW: ECO-TOURISM: THE CASE OF OLD AND HISTORIC CHARLESTON AGAINST THE *FANTASY*

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The start of the 20th Century saw the emergence of concerted efforts, both governmental and private, to protect and preserve our natural environments and the creatures that inhabit them from misuse and exploitation. Today such efforts are generally styled Eco-Tourism [*Travel Law* § 5.04[8]] which serves as an umbrella concept for many well advertised efforts by hotels and resorts [Chipkin, *Green Rush: Hotels and the Environment*, Travel Weekly 2007 (“It started with little things, like recycling and towel-reuse programs. Today, the race to be seen as green is at full throttle”)] and countries [Lindt, *In Cambodia, Koh Kong Emerges as an Eco-Tourism Destination*, NY Times 2011; Dreifus, *The Beasts and Beats of Belize*, NY Times 2012 (Cockscomb Basic Sanctuary and Jaguar Preserve “is a no-hunting haven for many species of...wild cats”); Scalza, *In Namibia, Conservation and Tourism Intersect*, NY Times 2013 (creation of communal conservancies); Steinmetz, *India’s Supreme Court lifts ban on tiger tourism*, eturbonews 2012 (new guidelines for tourism in tiger reserves must be implemented)] to be seen as “eco-friendly”.

Eco-Tourism And Beyond

Eco-Tourism also means protecting the oceans from contamination by cruise ships [*Travel Law* § 3.03[8][c]] and protecting wild animals [Boynton, *Is This the End of the Wild Rhino*, Conde Nast Traveler 2013 ("This current poaching spike...began in 2008 after a Vietnamese government official claimed to have been cured of cancer after taking rhino horn"); Gettleman, *Elephants Dying in Epic Frenzy as Ivory Fuels Wars and Profits*, NY Times 2012; Hack, *Force of Nature*, Conde Nast Traveler 2012 ("Cashing in on the skyrocketing demand for ivory and other wildlife products, international crime syndicates are wiping out elephant herds, slaughtering gorillas and leaving a trail of destruction across the African continent...Bush-meat hunters kill approximately 3,000 lowland gorillas in Cameroon annually"); Linda, *Fallout from cyanide poisoning of Hwange National Park waterhole*, www.eturbonews.com 2013 ("Over 100 elephants were from a poisoned waterhole")], Amazon tribes [Piore, *A Voice in the Wilderness*, Conde Nast Traveler 2011 ("The Amazon's tribes are guardians of a quarter of the earth's freshwater and its largest remaining rain forest"), marine mammals such as dolphins and whales from unnecessary encounters with humans [Klein, *Too Close For Comfort?*, Conde Nast Traveler 2004 ("Swimming with dolphins in the open sea is a thrill for

people, but (may) increase the dolphin's stress levels and cause them to alter their normal behaviors") and protecting UNESCO's World Heritage sites which may be a "blessing and a curse"

[Angel, *The Perils of Popularity*, Conde Nast Traveler 2012 ("In the 38 years since UNESCO launched its World Heritage program to help preserve cultural and natural treasures, nearly 900 sites...have earned the distinction. But some conservation experts now say that the uncontrolled tourism development that follows World Heritage designation may do more harm than good").

Marketing Eco-Tourism

In addition to term Eco-Tourism creative marketers and writers have invented new concepts and coined new terms such as "guilt free" vacations [Higgins, *Getaways That Are 'Guilt Free'*, NY Times 2009 ("travel companies are pushing trips that emphasize service, values and personal fulfillment"), "Sustainable tourism" [Steinmetz, *Flores Island: A Case for Sustainable Development Based on Tourism*, eturbonews 2012 ("Eco Flores...connects those interested in the long-term sustainability of the Flores economy, environment and cultures"); "responsible tourism" [Colin, Green Traveler, *Environmentally Friendly Honeymoons: Love, Honor, Leave No Carbon Footprint*, NY Times 2008), "meaningful travel" [McCarthy, *Meaningful Travel Found in Kathmandu Garden*,

www.canada.com 2010), "poorism" [Weiner, *Poverty Tours, Slum Visits: Tourism or Voyeurism?*, NY Times 2008; Baran, *Poorism: The Economics of Exploitation*, Travel Weekly 2008 ("Travelers in search of authentic experiences are touring the world's most notorious slum areas. Do their dollars truly benefit the communities they visit?") and "volunteerism" [Kauremszky, *Hard work...and soft sheets*, www.theglobeandmail.com 2008 ("luxury hotels and resorts are helping guests do good work without giving up the perks of high-end travel").

Absence Of Global Standards

The rush to be seen as green may lead to confusion and misrepresentations [Garin, *Green is not Black-And-White*, Conde Nast Traveler 2008 ("Now that green means business, determining which companies are delivering on their environmental claims is an increasingly tricky affair"), especially without the discipline of uniform global standards [Newton, *It's Not Easy Being Green*, Conde Nast Traveler 2004 ("the lack of any global certification program is making the search for authentically green destinations a confusing affair. Historically, companies have used the term eco simply because they offer outdoor activities, regardless of whether their practices are environmentally friendly")]. The absence of standards has been

ameliorated to some extent by the efforts of publications such as ETN Global Travel Industry News and Conde Nast Traveler in the selection of recipients of it's annual Environmental Awards and World Savers Awards.

Environmental Lawsuits

Over the years governmental agencies such as the Federal Aviation Administration, the U.S. Forest Service and the National Park Service and private conservation groups have sued to limit access to the (1) Grand Canyon by limiting the number of overflights and creating flight free zones [See *U.S.T.O.A. v. FAA* (D.C. Cir. 2002) (FAA rule limiting number of air tours permitted to fly over the Grand Canyon National Park remanded for further consideration), *River Runners For Wilderness v. Martin* (9th Cir. 2010) (plaintiffs challenge National Park Service's decision to permit the continued use of motorized rafts...in Grand Canyon National Park...as impair(ing) the wilderness character of the Canyon)], (2) the National Parks in Alaska including Glacier Bay National Park by limiting the number of cruise ships which may enter Glacier Bay [See *National Parks & Conservation Association v. Babbitt* (9th Cir. 2001) ("Injunction reducing entry quotas to previous levels was warranted")] and Chugach National Forest by limiting the number of helicopter skiing and hiking tours [See

Alaska Center for the Environment v. U.S. Forest Service (9th Cir. 1999) (environmentalists challenge categorical exclusion of one year permits for commercially guided helicopter skiing and hiking tours), (3) Hawaii by prohibiting the number of air tour helicopters and aircraft from flying below 1,500 feet [See *Safari Aviation, Inc. v. Garvey* (9th Cir. 2002) (exceptions to 1,500 feet minimum altitude rule for air tour overflights lawful), controlling the number of tour boats [See *Whitney's Boat Cruises, Inc. v. Napali-Kauai Boat Charters, Inc.* (Haw. Sup. 2006) (ongoing dispute between tour boat operators and tour boat promoters) and protests against a Superferry [See *Sierra Club v. DOT* (Haw. Sup. 2009); Pala, *Not In My Tropical Backyard, Heads Up Hawaii Superferry*, NY Times 2007 (Hawaii Superferry is a "350-foot catamaran which can accommodate 866 passengers and 286 cars... Local protesters say increased congestion and loss of access to beaches from the spread of luxury homes must be considered"), Steinmetz, *Matson takes responsibility for disastrous Honolulu Harbor molasses spill*, eturbonews 2013, (4) Rainbow Bridge National Monument [See *Friends of the Earth v. Armstrong* (D. Utah 1973) (environmentalists challenge unlawful release of waters into Rainbow Bridge National Park) and (5) New York City [See *Sea Air NY, Inc. v. City of New York* (S.D.N.Y. 2000) (New York City has authority to 'further minimize noise impacts on the general public, commercial air tour operations shall not be permitted at

any time”).

Historic Charleston v. The *Fantasy*

Charleston, South Carolina is one of America’s best preserved historical and cultural cities and since 2010 “the (Charleston) Ports Authority has contracted with (Carnival Corporation) for the use of the (Union Pier Terminal) as the *Fantasy’s* home port” [*Carnival Corporation v. Historic Ansonborough Neighborhood Association*, 2014 WL 229894 (S.C. Sup. 2014)]. The Terminal “is within the City’s Old and Historic District which is listed on the National Register of Historic Places maintained by the United States Department of the Interior”. Now imagine the *Fantasy* which “is 855 feet long and more than 60 feet tall from the water line and can carry up to 2,056 passengers and 829 crewmembers” being parked within Charleston’s Old and Historic District.

As a result a variety of neighborhood associations, conservationists and preservationists sued the City and it’s Ports Authority and Carnival Corporation seeking injunctive relief based on ten claims, “seven based on (violating) City ordinances (e.g., various zoning codes and “the *Fantasy* exceeds the applicable height ordinance and the ship blocks views of the Cooper Rover in violation of the applicable view corridor

provisions"), a public nuisance claim, a private nuisance claim and a claim based on the South Carolina Pollution Control Act". The plaintiffs claimed that the Old and Historic District was harmed in a number of ways such as (1) it "can be seen above the historic buildings...and...disrupts the historic skyline", (2) thousands of passengers and crew "cause major traffic congestion in the area", and (3) unwanted emission of noise and particulates "produced by its diesel engines".

No Standing

The South Carolina Supreme Court dismissed the *Historic Ansonborough Neighborhood Association's* Complaint on the grounds that plaintiffs lacked standing. "Defendants focus on the...injury-in-fact element of standing, asserting Plaintiffs allege only generalized grievances suffered by the public as a whole and fail to allege any particularized harm...we conclude Plaintiffs fail to allege a concrete, particularized harm to a legally protected interest and therefore Plaintiffs lack standing...Courts are not bodies for the resolution of public policy and generalized grievances. Harms suffered by the public at large, like those Plaintiffs allege here, are to be remedied by the legislature and executive branches. If existing laws and ordinances or their enforcement fail to protect the public from

harm, it is incumbent upon the public to seek reform through their elected officials or failing that, at the ballot box".

Justice Dickerson has been writing about travel law for 38 years including his annually updated law books, *Travel Law*, Law Journal Press and *Litigating International Torts in U.S. Courts*, Thomson Reuters WestLaw, and over 300 legal articles many of which are available at

www.nycourts.gov/courts/9jd/taxcertatd.shtml.