



# PACE LAW REVIEW

TRAVEL ABROAD, SUE AT HOME 2012:  
FORUM NON CONVENIENS & THE  
ENFORCEMENT OF FORUM SELECTION AND  
MANDATORY ARBITRATION CLAUSES

*HON. THOMAS A. DICKERSON*

---

VOLUME 32

SPRING 2012

NUMBER 2

---

# Travel Abroad, Sue at Home 2012: Forum Non Conveniens & the Enforcement of Forum Selection and Mandatory Arbitration Clauses

Hon. Thomas A. Dickerson\*

One of the most interesting areas of Travel Law involves accidents sustained by United States citizens that occur outside of the United States, whether in a foreign country or on a cruise ship,<sup>1</sup> including murders, assaults, and kidnappings by pirates in Somalia,<sup>2</sup> Mexico,<sup>3</sup> and

---

\* Hon. Thomas A. Dickerson is an Associate Justice of the Appellate Division, Second Department of the New York State Supreme Court. Justice Dickerson is the author of CLASS ACTIONS: THE LAW OF 50 STATES (2012); TRAVEL LAW (2012); *Consumer Protection*, in 2 COMMERCIAL LITIGATION IN NEW YORK STATE COURTS, SECTION 98 (3d ed. 2010); *New York State Class Actions Under CPLR Article 9*, in 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE: CPLR 901-09 (David Ferstendig ed., 2011); CONSUMER LAW 2011 UPDATE: THE JUDGE'S GUIDE TO FEDERAL AND NEW YORK STATE CONSUMER PROTECTION STATUTES (2011), available at <http://www.nycourts.gov/courts/9jd/taxcertatd.shtml>; and over three hundred articles on consumer law, class actions, travel law and tax certiorari.

1. See THOMAS A. DICKERSON, CRUISE PASSENGER'S RIGHTS AND REMEDIES: 2011 (2011), available at [http://www.nycourts.gov/courts/9jd/TacCert\\_pdfs/Dickerson\\_Docs/CRUISEPASSENGERSRIGHTS&REMEDIES2011.pdf](http://www.nycourts.gov/courts/9jd/TacCert_pdfs/Dickerson_Docs/CRUISEPASSENGERSRIGHTS&REMEDIES2011.pdf).

2. See Jeffrey Gettleman, *In Somali Civil War, Both Sides Embrace Pirates*, N.Y. TIMES, Sept. 2, 2010, at A1 ("For years, Somalia's heavily armed pirate gangs seemed content to rob and hijack on the high seas and not get sucked into the messy civil war on land. Now, that may be changing, and the pirates are taking sides—both sides . . . . Somalia's pirates are famous opportunists—'we just want the money' is their mantra—so it is not clear how long these new alliances of convenience will last."); Adam Nagourney & Jeffrey Gettleman, *Pirates Brutally End Yachting Dream*, N.Y. TIMES, Feb. 23, 2011, at A1 ("Jean and Scott Adam shared a dream through 15 years of marriage: to retire, build a boat and sail the world. And that is precisely what they did, heading out in 2004 from Marina Del Rey, Calif., on a custom-built 58-foot yacht for a permanent vacation that brought them to exotic islands and remote coastlines . . . . The dream came to a brutal end . . . when the Adams and their crew . . . were killed by pirates off the coast of Somalia in one of the most violent episodes since the modern-day piracy epidemic began several years ago . . . . The killings underscore how lawless the seas have become in that part of the world. Just about every week another ship gets hijacked. More than 50 vessels, from fishing trawlers . . . to giant freighters and oil tankers, are currently being held

Peru.<sup>4</sup>

A common litigation strategy is to sue in the U.S. in federal or state court against a solvent defendant subject to long-arm jurisdiction and the application of U.S. common law or statutory law. Such cases raise a variety of complex liability and procedural issues including liability shifting, jurisdiction, forum non conveniens, and choice of law. This Article will identify various types of travel accidents abroad, and discuss the doctrine of forum non conveniens and the enforceability of forum selection and mandatory arbitration clauses in travel consumer contracts.

## I. Types of Accidents Abroad

Traveling abroad, whether by international air carrier, aboard a cruise ship, or while participating in a tour, can be a wonderful experience—until you have an accident. This was especially true for

---

captive, with more than 800 hostages . . . . The Somali seas are now known as the most perilous in the world, crawling with young gunmen in lightweight skiffs cruising around with machine guns, looking for quarry . . . . Many pirate crews are paid by wealthy Somali businessmen who later get a cut of the ransom.”); *Somali Pirates Reportedly Release Saudi Tanker After Ransom Drop; 5 Drown With Their Share of Cash*, N.Y. DAILY NEWS (Jan. 9, 2009), [http://articles.nydailynews.com/2009-01-09/news/17914455\\_1\\_sirius-star-pirates-aramco](http://articles.nydailynews.com/2009-01-09/news/17914455_1_sirius-star-pirates-aramco) (“Five of the pirates who hijacked a Saudi supertanker drowned with their share of a \$3 million ransom . . . . Piracy is one of the few ways to make money in Somalia . . . . A recent . . . report said pirates raked in more than \$30 million in ransoms last year.”).

3. See, e.g., Kevin Vaughan, *Mexican Officer Investigating Falcon Reservoir Shooting Is Killed*, DENV. POST, Oct. 13, 2010, at A01 (“The hunt for clues in the attack on a Colorado man by Mexican drug bandits took a macabre twist Tuesday with the murder of a Mexican police commander involved in the investigation—his severed head delivered in a suitcase.”); Lisa Flam, *Did Mexican Pirates Attack Texas Man on Jet Ski?*, AOL NEWS (Oct. 5, 2010, 10:45 AM), <http://www.aolnews.com/2010/10/05/did-mexican-pirates-attack-texas-man-on-jet-ski/> (“The case of a Texas man whose wife said he was fatally shot by Mexican pirates while riding a Jet Ski grows more mysterious . . . . Hartley’s 29-year-old wife, Tiffany, told authorities the couple was taking in the sights on Jet Skis on Sept. 30 on the Mexican side of the border lake when several boats of gunmen began shooting at them, hitting her husband in the head. She said she tried to save him but then fled to safety. Authorities say the area on the Mexican side is abandoned and dangerous.”).

4. See Michelle Baran, *Peru Steps Up Security After Two Amazon River Ship Attacks*, TRAVEL WKLY. (Aug. 17, 2009), <http://www.travelweekly.com/Cruise-Travel/Peru-steps-up-security-after-two-Amazon-river-ship-attacks/> (“In the wake of two back-to-back pirate attacks on a tourist cruise ship sailing the Peruvian Amazon . . . . On Aug. 4, armed pirates attacked and robbed passengers on the Aqua, just nine days after a similar attack on the luxury vessel.”).

these unlucky tourists:

(1) Wrongful Death in:

A) Jamaica (*Abramson v. Ritz-Carlton Hotel Co.*<sup>5</sup> (hotel guest died of heart attack));

B) Martinique (*Bapte v. West Caribbean Airways*<sup>6</sup> (all passengers died in aircraft accident));

C) Antigua (cruise passengers killed during port call<sup>7</sup>);

D) Egypt (*Guidi v. Inter-Continental Hotels Corp.*<sup>8</sup> (guests murdered in hotel restaurant by terrorists); *Klinghofer v. Achille Lauro*<sup>9</sup> (tourist murdered on cruise ship by terrorists));

E) India (hotel guests murdered in terrorist attack at two hotels in

---

5. Civil Action No. 09-3264, 2010 WL 3943666 at \*1 (D.N.J. Oct. 6, 2010) (“Plaintiff and her husband Martin . . . contacted defendant American Express Travel Related Services, Inc. (Amex) . . . [which] assured and represented . . . that the Ritz Carlton Golf and Spa Resort, Rose Hill, Jamaica (hereinafter ‘Jamaica Ritz’) provided all of the necessary state of the art medical services and equipment . . . . On June 8, 2007, while eating dinner in the dining room of the . . . Jamaica Ritz, Martin . . . went into cardiac arrest. Plaintiff alleges that employees . . . failed to respond adequately when assistance was requested [who] did not attempt to perform cardio-pulmonary resuscitation (CPR), take other life saving emergency response measures, or promptly contact Emergency Medical Services . . . when the hotel employees attempted to use an automated external defibrillator [it] malfunctioned allegedly because it was not maintained in proper working condition and none of the hotel employees knew how to operate the device.”).

6. 370 F.App’x 71, 72 (11th Cir. 2010) (“In August 2005, while en route from Panama to Martinique, West Caribbean Airlines, S.A. Flight 708 crashed in Venezuela, killing all passengers and crew on board. Representative of the passengers filed several lawsuits, which were consolidated . . . . In addition, representatives of the crew members brought products liability lawsuits against manufacturers of the airplane [which] were consolidated with one another, but were not consolidated with the passenger cases.”). A forum non conveniens motion was granted as to passenger claims and denied as to crew member claims; the forum non conveniens dismissal was available under the Montreal Convention. *Id.* (citing *Pierre-Louis v. Newvac Corp.*, 584 F.3d 1052 (11th Cir. 2009)).

7. See Gay Nagle Myers & Johanna Jainchill, *Cruise Lines Continuing Antigua Port Calls After Tourist Killed*, TRAVEL WKLY. (Jan. 28, 2010), <http://www.travelweekly.com/article3.aspx?id=209728> (“Cruise lines serving Antigua have not pulled out of the destination following the killing of a passenger from Star Clippers’ Royal Clipper during a port call . . . . Meanwhile the killer of the 30-year-old passenger remains at large. The body of Nina Elisabeth Nilssen . . . was found on a secluded trail . . . near Pigeon Point Beach . . . . She suffered a stab wound to the neck and was partially unclothed when found.”).

8. 225 F.3d 142 (2d Cir. 2000).

9. 921 F.2d 21 (2d Cir. 1990).

India<sup>10</sup>);

F) Uganda (*Haubner v. Abercrombie & Kent International, Inc.*<sup>11</sup> (tourists abducted from safari tents and murdered by rebels));

G) Botswana (*Shea v. Global Travel Marketing, Inc.*<sup>12</sup> (child mauled and killed by hyenas));

H) Dominican Republic (*Perez-Lang v. Corporacion De Hoteles, S.A.*<sup>13</sup> (hotel guest died operating golf cart); *Hernandez v. Barcelo Hotels*

---

10. See Somini Sengupta, *At Least 100 Dead in India Terror Attacks*, N.Y. TIMES, Nov. 26, 2008, at A1 ("Coordinated terrorist attacks struck the heart of Mumbai, India's commercial capital, on Wednesday night, killing dozens in machine-gun and grenade assaults on at least two five-star hotels, the city's largest train station, a Jewish center, a movie theater and a hospital. Even by the standards of terrorism in India, which has suffered a rising number of attacks this year, the assaults were particularly brazen in scale and execution. The attackers used boats to reach the urban peninsula where they hit and their targets were sites popular with tourists. The Mumbai police said Thursday that the attacks killed at least 101 people and wounded at least 250. Guests who had escaped the hotels told television stations that the attackers were taking hostages, singling out Americans and Britons . . . . Hours after the assaults began, the landmark Taj Mahal Palace & Tower Hotel, next to the famed waterfront monument the Gateway of India, was in flames. Guests banged on the windows of the upper floors as firefighters worked to rescue them. Fire also raged inside the luxurious Oberoi Hotel, according to the police. A militant hidden in the Oberoi told India TV on Thursday morning that seven attackers were holding hostages there. 'We want all mujahedeen in India released, and only after that we will release the people', he said . . . . Some guests, including two members of the European Parliament who were visiting as part of a trade delegation, remained in hiding in the hotels, making desperate cellphone calls, some of them, to television stations, describing their ordeal.") .

11. 812 N.E.2d 704, 707 (Ill. App. Ct. 2004) ("On March 1, 1999, Haubner and Rockwell were abducted from their tent and murdered by suspected Interahamwe rebels while vacationing at the Gorilla Forest Camp in the Bwindi Impenetrable Forest National Park . . . . The complaint alleged that the Illinois A & K defendants owned and operated the Gorilla Forest Camp where the decedents were lodging . . . . The complaint further alleged that the Illinois A & K defendants were negligent in failing to warn the decedents about various acts of civil unrest and armed violence occurring along the Ugandan border and in failing to provide adequate security at the Gorilla Forest Camp.") .

12. 870 So. 2d 20, 22 (Fla. Dist. Ct. App. 2003) ("The child, age eleven, was killed while on safari with his mother in Botswana . . . . He was sleeping alone in a tent at a campsite when he was dragged from his tent and mauled by hyenas."), *rev'd*, 908 So. 2d 392, 405 (Fla. 2005) ("Just as the mother in this case had the authority to enter into a contract for herself and her minor child to travel to Africa for a safari, she also had the authority to agree to arbitrate claims on his behalf . . . . [W]e hold that an arbitration agreement incorporated into a commercial travel contract is enforceable against the minor or minor's estate in a tort action arising from that contract.") .

13. 575 F. Supp. 2d 1345, 1347-48 (S.D. Fla. 2008) ("[Plaintiffs] purchased a vacation package to Casa de Campo . . . a resort located in La Romana, Dominican Republic. The package . . . included use of a motorized golf cart as a means of transportation. [Plaintiffs] while on the premises of the Resort and operating the golf cart,

& Resorts<sup>14</sup> (hotel guest drowned snorkeling); *Gianocostas v. Riu Hotels, S.A.*<sup>15</sup> (hotel guest allegedly died because of medical malpractice)).

(2) Assaulted in:

A) The Caribbean (including Puerto Rico)<sup>16</sup> (*Woods-Leber v. Hyatt*

---

were struck by an automobile. The accident produced severe and permanent injuries to both [plaintiff] . . . and her daughter . . . and fatal injuries to her husband.") (defendants' forum non conveniens motion granted; Dominican Republic held to be an adequate alternative forum).

14. Nos. B170853 & B172114, 2005 WL 67112 at \*1 (Cal. Ct. App. Jan. 13, 2005) ("The case arises from the fatal drowning of Roberto Hernandez. . . [which] occurred . . . during the Hernandez family vacation at the hotel, located in Punta Cana, Dominican Republic. Appellants allege that Roberto drowned after he was encouraged and allowed to snorkel in a dangerous reef without a life vest.") (court has personal jurisdiction over hotel defendants).

15. No. Civ.A. 00-2862, 2001 WL 758695 at \*2-3 (Mass. Super. June 27, 2001), *rev'd*, 797 N.E.2d 937 (Mass. App. Ct. 2003), *remanded to* No. 002862, 2005 WL 503931 (Mass. Super. Jan. 27, 2005) (Insulin-dependent diabetic takes vacation and "became ill, vomiting periodically throughout the night . . . a hotel representative put her in touch with the Doctor Correa International Touristic Medical Service [the Clinic] which had a contractual relationship with the Hotel Riu Mumbo to provide medical services to its guests . . . . The doctor did not appear to understand the words 'diabetic' or 'diabetes' . . . . The doctor [said] that [the patient] would be fine and that the pharmacy would re-open in the morning . . . . [She] was discharged from the . . . Clinic on . . . March 18 . . . but her vomiting and weakness persisted . . . [the Doctor at the Clinic who treated the patient] agreed that her condition was caused by 'nervousness' . . . [She was eventually taken to the hospital] . . . . According to [the patient's mother] the hospital was filthy and the medical equipment was 'very old' . . . . Hospital personnel were unresponsive to the [patient's] mother's inquiries. . . . [The patient] was transported to a hospital in Miami where she died one month later."). *See also* *Gianocostas v. Riu Hotels, S.A.*, No. MICV200002862C, 2006 WL 2089772 at \*10 (Mass. Super. May 24, 2006) (failure of hotel and local clinic to diagnose and properly treat tour participant with diabetes; negligent misrepresentation claims against tour operator dismissed), *vacated*, *Gianocostas v. Interface Group-Massachusetts, Inc.*, 881 N.E.2d 134, 144 (Mass. 2008) ("dismissal of the plaintiffs' negligent misrepresentation claim is conditioned on GWV's written agreement to waive any defenses based on the statute of limitations or lack of personal jurisdiction, and to waive any requirement that the plaintiffs post a bond, and on the further condition that the court in the Dominican Republic give full force and effect to such waivers").

16. *See* Michelle Higgins, *When Crimes Comes to Paradise*, N.Y. TIMES, Dec. 6, 2009, at TR4 ("Eighteen cruise passengers were robbed at gunpoint on Bahamas tours last month . . . . A retired British couple was seriously wounded in a machete attack at their second home in Tobago in August . . . . A pregnant American tourist was abducted and killed during a morning jog in Fajardo, P.R., in February . . . . Crime, in one form or another, is rising in Bermuda, Belize, St. Lucia and Trinidad and Tobago, based on a

*Hotels of Puerto Rico, Inc.*<sup>17</sup> (mongoose attacked guest sunbathing at hotel pool));

B) Jamaica (*Schreiber v. Camm*,<sup>18</sup> (guests at Jamaican vacation estate shot by security guard));

C) Cayman Islands (*Wilson v. American Trans Air, Inc.*<sup>19</sup> (guest assaulted at hotel)); and

D) St. Thomas (*Manahan v. NWA*<sup>20</sup> (tourist mugged on walk to restaurant from hotel)).

(3) Raped, Sexually Assaulted, or Molested in:

A) Puerto Rico (*Blankley v. Marriott Corp.*<sup>21</sup> (inappropriate

---

review of the State Department's consular information sheets, which provide data on safety and other issues in foreign countries. It continues to be an issue in places like the Dominican Republic, where pickpocketing and mugging are the most common crimes against tourists, and in Jamaica, where the United States Embassy has received several reports of sexual assaults against Americans this year, including two at resorts . . . . What is different, though, is how those crimes are handled . . . . 'Law enforcement, especially in the Caribbean, does not necessarily have the resources or response that you might expect in the U.S. . . . If you're victimized by a crime you need to be prepared for a slow justice process.'"); Gay Nagle Myers, *Caribe Noire*, TRAVEL WKLY. (January 12, 2010), <http://www.travelweekly.com/Caribbean-Travel/Caribe-noire/> ("Crime in the Caribbean is the elephant in the room that no one wants to talk about, but several headline-grabbing events in 2009 propelled the issue onto newspapers' front pages, social media outlets and websites . . . . Though examples of extreme violence remain isolated, a few have also been horrendously alarming: [(1)] Eighteen cruise passengers were ambushed and robbed in November by armed thugs in a daring daylight attack while they were touring the Earth Village nature attraction during a port call in Nassau[;] [(2)] That incident occurred just two weeks after the robbery of another group of cruisers during a tour stop at the Queen's Staircase, another attraction in Nassau[;] [(3)] In separate incidents in October on Tobago, a British couple was wounded in a machete attack and two British women were raped at knifepoint in their holiday villa[;] [(4)] Honeymooners from Wales were murdered on Antigua in 2008[;] [(5)] An Australian yachtsman was shot and killed on Antigua last January[;] [(6)] A pregnant U.S. jogger was abducted, raped and murdered in February during a run near Fajardo, Puerto Rico.").

17. 124 F.3d 47 (1st Cir. 1997).

18. 840 F. Supp. 1170 (D. N.J. 1994).

19. 847 F.2d 836 (7th Cir. 1989).

20. 821 F. Supp. 1105 (D.V.I. 1991).

21. Civil No. 08-2011CC, 2010 WL 3069224 at \*1 (D.P.R. July 30, 2010) ("Bethany Blankley [alleged] that, while a guest at defendant Courtyard by Marriott Isla Verde Beach Resort . . . she was sexually assaulted by Cesar Gonzalez-Cardona, a concierge at the hotel who, pretending to be a masseuse to gain access to her room, touched her inappropriately under the guise of providing a massage. The hotel then sued Gonzalez-Cardona's employer, third-party defendant Group Services, Inc., (GSI), the

touching during massage));

B) Galapagos Islands (*O'Keefe v. Inca Floats, Inc.*<sup>22</sup> (sexual assault during cruise to Galapagos Islands));

C) Bahamas (*Doe v. Sun International Hotels, Ltd.*<sup>23</sup> (guest raped at resort)); *Loretti v. Holiday Inns, Inc.*<sup>24</sup> (hotel guest raped on beach));

D) Jamaica (*Girden v. Sandals International*<sup>25</sup> (tourist sexually assaulted on small boat); *Catalano v. N.W.A., Inc.*<sup>26</sup> (tourist raped during sailing excursion on a two-person sunfish sailboat); *Creteau v. Liberty Travel, Inc.*<sup>27</sup> (tourist raped and robbed in Jamaica));

E) Cayman Islands (*Wilson v. Humphreys (Cayman) Ltd.*<sup>28</sup> (guest raped at hotel));

F) St. Thomas (*Flanagan v. Wyndham International, Inc.*<sup>29</sup> (children

---

company it hired pursuant to a concession contract to provide tour and travel services for its guests, as well as concierge services at the hotel.") (hotel's motion for summary judgment against Group Services Inc., seeking to defend and hold harmless the hotel from any claims against the hotel arising out of services performed by Group Services is denied).

22. No. C-97-1225 VRW, 1997 WL 703784 (N.D. Cal. Oct. 31, 1997).

23. 20 F. Supp. 1238 (S.D. Fla. 1998).

24. Civ. A. No. 85-0709, 1986 WL 5339 (E.D. Pa. May 6, 1986).

25. 67 Fed.App'x 27, 27-28 (2d Cir. 2003) ("Plaintiff arranged to take a sailing lesson from David Titus, an employee of the resort . . . after navigating the small boat into the open sea, Titus sexually assaulted her."), *aff'g*, 206 F. Supp. 2d 605 (S.D.N.Y. 2002).

26. No. PI 98-7768, 1998 WL 777023 (D. Minn. Sept. 15, 1998).

27. 600 N.Y.S.2d 576 (App. Div. 1993).

28. 916 F.2d 1239 (7th Cir. 1990).

29. 231 F.R.D. 98, 100 (D.D.C. 2005) (Sexual assault by hotel employee of guest's child) ("In December 2000, Flora Nicholas and Paul Gayter filed suit . . . on behalf of their minor daughter S.G. against [hotel and employee who] . . . worked at the Kids Klub day-care program at the Wyndham Sugar Bay Resort in St. Thomas. The suit sought damages arising out of [employees'] alleged sexual molestation of S.G. while she was under his care. After the initiation of the civil suit, [employee] was convicted of sexually molesting S.G. and is currently incarcerated in the Virgin Islands . . . . Approximately two years after *Nicholas* was filed, the plaintiffs in the two underlying actions, *Flanagan* and *James*, filed similar suits [alleging] that [employee] sexually molested the 9-year old Flanagan girl and the 8-year old James girl while they attended the Wyndham Kids Klub."). See also Bob Payne, *Who's Minding The Kids?*, CONDÉ NAST TRAVELER (Aug. 2005), <http://www.concierge.com/cntraveler/articles/1083> ("More hotels and resorts are opening children's programs every day, but few parents really know what separates the good ones from the bad . . . . Our outlook changed radically, however, when we learned the story of a nine-year-old girl who was molested by a 22-year-old male counselor while staying with her parents at St. Thomas's Wyndham Sugar Bay Resort & Spa. (Although the abuse occurred in April 2000, the case gained widespread publicity only last year, after the man was denied an early prison release from his five-year sentence). Just this past April, the issue of safety at these facilities made headlines again when the Australian

molested in hotel day care facility)).

(4) Robbed in:

A) Puerto Rico (*Gillmor v. Caribbean Cruise Line, Ltd.*<sup>30</sup> (cruise passengers robbed and stabbed on pier));

B) Grand Bahamas (*Fling v. Hollywood Travel and Tours*<sup>31</sup> (tourist shot and robbed));

C) Kenya (*Dow v. Abercrombie & Kent International, Ltd.*<sup>32</sup> (tourists on safari assaulted and robbed by bandits while camping in the Ooloo Escarpment in the Masai Mara reserve)).

(5) Drowned and Other Water Sports Accidents in:

A) Dominican Republic (*Calvo v. Sol Melia, S.A.*<sup>33</sup> (tourist struck by motorboat while swimming off the beach));

B) Costa Rica (*Mayer v. Cornell University*<sup>34</sup> (tourist on bird-watching tour drowned while snorkeling off the Il de Cano));

C) Cayman Islands (*Lehman v. Humphrey Cayman Ltd.*<sup>35</sup> (tourist drowned in ocean));

D) Hawaii (*Rygg v. County of Maui*<sup>36</sup> (hotel guest is paralyzed and rendered a quadriplegic in surfing accident off of Kamaeole II Beach); *Tancredi v. Dive Makai Charters*<sup>37</sup> (scuba diver drowned diving in the Deep Reef));

E) Jamaica (*Reid-Walen v. Hansen*<sup>38</sup> (tourist run over by motor boat while swimming in the crystal-clear waters of Jamaica));

---

press reported allegations that in recent years, two Australian children had been abused at two hotel kids' clubs in Bali. In one case, a three-year-old girl was diagnosed with gonorrhea after spending time at a hotel kids' club; in the other a five-year-old boy was molested by a man who entered the child-care facility at the resort where the boy and family were staying.").

30. 789 F. Supp. 488 (D.P.R. 1992).

31. 765 F. Supp. 1302 (N.D. Ohio 1990).

32. No. 99 C 6923, 2000 WL 688949 (N.D. Ill. May 24, 2000).

33. 761 So. 2d 461 (Fla. Dist. Ct. App. 2000).

34. 909 F. Supp. 81 (N.D.N.Y. 1995).

35. 713 F.2d 339 (8th Cir. 1983).

36. 122 F. Supp. 2d 1140 (D. Haw. 2000).

37. 823 F. Supp. 778 (D. Haw. 1993).

38. 933 F.2d 1390 (8th Cir. 1991).

F) Taiwan (*Sun v. Taiwan*<sup>39</sup> (tourist drowned during recreational visit to Ken-Ting National Park));

G) Guadeloupe (*Sankaran v. Club Mediterranee, S.A.*<sup>40</sup> (guest on snorkeling excursion abandoned and forced to return to Club Med facility by swimming and walking on sharp reef));

H) Mexico (*Gardemal v. Westin Hotel Company*<sup>41</sup> (tourist drowned snorkeling off of Lovers' Beach); *Yurchak v. Atkinson & Mullen Travel, Inc.*<sup>42</sup> (jet ski accident); *Walker v. Wedge Hotel*<sup>43</sup> (para-sailing accident); *Rodriguez v. Class Travel Worldwide*<sup>44</sup> (minor tourist on Grad Trip 1998 to Cancun pushed into hotel pool and suffered tragic injuries); *Sova v. Apple Vacations*<sup>45</sup> (tourist injured back during scuba dive on snorkeling excursion); *Feldman v. Acapulco Princess Hotel*<sup>46</sup> (accident at hotel pool));

---

39. 201 F.3d 1105 (9th Cir. 2000).

40. No. 97 Civ. 8318(RPP), 1998 WL 433780 (S.D.N.Y. July 31, 1998).

41. 186 F.3d 588 (5th Cir. 1999).

42. 207 Fed. App'x 181, 183-84 (3d Cir. 2006) ("The Yurchaks allege that in December 2002, they received an advertisement . . . soliciting them to purchase a vacation package. The advertisement included a picture of a jet ski in use. Before purchasing the package, the Yurchaks asked about their safety while vacationing in Mexico, but they were given no warnings . . . beyond a general assurance that travel to the country was safe. They were not told of a Consular Information Sheet from the United States Department of State that included a warning about jet skiing in Mexico . . . . The Yurchaks' claims of misrepresentations-both negligent and fraudulent-are similarly faulty . . . . Even assuming that the . . . general assurances of safety in Mexico could have been understood as an assurance that jet skiing there would be safe, such a statement would not have been material to the transaction between these parties. The rental and use of a jet ski was not part of the vacation package the Yurchaks purchased . . . it is not tenable based on the alleged facts that their decision to purchase the vacation package . . . turned on whether or not they believed it would be safe to jet ski on their vacation.") (tourist injured on personal watercraft in Mexico).

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

44. No. Civ.A. 99-1706, 2000 WL 222165 (E.D. La. Feb. 18, 2000).

45. 984 F. Supp. 1136 (S.D. Ohio 1997).

46. 520 N.Y.S.2d 477 (Sup. Ct. 1987).

- I) Hong Kong (*Nowak v. Tak How Inv. Ltd.*<sup>47</sup> (guest drowned in hotel pool));
- J) Brazil (*Darby v. Societe Des Hotels Meridien*<sup>48</sup> (hotel guest drowned in ocean)).
- K) Gabon (*Irwin v. World Wildlife Fund, Inc.*<sup>49</sup> (boating accident in Gamba lagoon));
- L) Indonesia (*Lee v. Choice Hotels International, Inc.*<sup>50</sup> (near drowning in hotel pool in Indonesia));
- M) Aruba (*Crawley v. Marriott Hotels, Inc.*<sup>51</sup> (near drowning));
- N) Turks & Caicos (*Welch-Rubin v. Sandals Corp.*<sup>52</sup> (shoulder injury boarding boat)).

---

47. 94 F.3d 708 (1st Cir. 1996).

48. No. 88 CIV. 7604(RWS), 1999 WL 459816 (S.D.N.Y. June 29, 1999).

49. 448 F. Supp. 2d 29, 32 (D.D.C. 2006) ("Plaintiffs allege that in June of 2002, Missa arranged, through the Gabonese entity Cecotour, for a trip in a small wooden boat on a lagoon adjacent to Gamba for himself, Irwin, and two others . . . a second boat . . . collided with the left side of plaintiffs' boat . . . . The bow of the oncoming boat struck Ms. Irwin in the face, dislodging her orbital ridge and shattering her face. In addition, the bow of the oncoming boat hit metal supports in the boat Ms. Irwin occupied, and the metal supports impaled Ms. Irwin's skull and tattooed her skin . . . . Ms. Irwin's injuries are long-term, severe, painful and extensive, and they include: loss of sensation and motor function, complete loss of smell and a diminished sense of taste, diminished cognitive skills, short-term and working memory loss, shattered sinuses . . . and diminished ability to perceive visual depth.").

50. C.A. No. 02C-10-280(CHT), 2006 WL 1148755 at \*1 (Del. Super. Ct. March 21, 2006) ("[T]he Lees . . . residents of Seoul, South Korea, embarked upon a vacation tour of Southeast Asia. The tour was arranged by a South Korean travel agency, Freedom Travel. The tour was to include an afternoon and one night at the Quality Resort Waterfront City, Batam, Indonesia . . . . Of particular interest to the Lees was the large free form pool with a sunken bar which was connected to the children's pool. The resort was advertised as 'family friendly' . . . . The boys ultimately entered the pool behind their parents but became separated . . . . Bo Hyun found [his son] at the bottom of the large pool unconscious. No lifeguard was seen on duty during this period of time and no other staff assisted in finding Chan Young . . . . [who] suffered brain damage and is in a permanent vegetative state.").

51. No. 05 CV 05805, 2006 WL 2331143 at \*1 (N.D. Ill. Aug. 10, 2006) ("She stayed at the Aruba Marriott Resort & Stellaris Casino . . . . [Where] the concierge recommended Crawley take a jeep island tour through ABC Tours . . . . [C]harging the deposit to her hotel room . . . . While on this tour Crawley had a 'near drowning incident causing her to sustain serious personal injuries' including permanent lung damage.").

52. No. 3:03CV481 (MRK), 2004 WL 2472280 at \*1 (D. Conn. Oct. 20, 2004) ("The central issue in this case is whether Defendants—a resort company and a tour operator-owned, operated, or controlled the Beaches Resort where Plaintiff . . . injured her shoulder while attempting to board a boat.").

(6) Slip and Fell in: Jamaica (*Hofer v. The Gap, Inc.*<sup>53</sup> (guest fell into turtle pond at hotel after flip-flop breaks)).

(7) On the Beach in: Aruba (*Lienhart v. Caribbean Hospitality Services, Inc.*<sup>54</sup> (hotel guest lying on beach in lounge chair struck by truck)).

(8) Riding Accidents in:

A) Egypt (*MacLachlin v. Marriott Corporation*<sup>55</sup> (tourist in Egypt thrown from angry camel broke eight ribs and fractures pelvis));

B) Jamaica (*Colby v. Norwegian Cruise Lines, Inc.*<sup>56</sup> (horse riding accident during shore excursion));

C) Mexico (*Honeycutt v. Tour Carriage, Inc.*<sup>57</sup> (tourist at Club Med facility thrown from horse and broke ankle); *May v. Club Med Sales, Inc.*<sup>58</sup> (guest at Sonora Bay Club Med thrown from horse); *Barber v. Princess Hotels International*<sup>59</sup> (horse riding accident));

D) Bahamas (*Tucker v. Whitaker Travel, Ltd.*<sup>60</sup> (tourist thrown from

---

53. 516 F. Supp. 2d 161, 167, 176 (D. Mass. 2007) ("She contends that as she turned around to descend the stairs, the thong of her right sandal became detached by pulling through the sole. This caused her to lose her balance, and she fell to her right into the turtle pond. As she fell, she gouged her left leg on the sharp rocks in the pond. . . . It is well-established that travel agents are not generally liable for the negligence or dangerous conditions of third-party hotel or travel operators . . . . Plaintiff contends, however, that this case should fall outside the general rule for three reasons: (1) Expedia 'controlled' the Turtle Beach Towers resort as a result of inspections it allegedly conducted at the hotel; (2) Expedia, as plaintiff's agent, owed her a duty to warn her of dangerous hazards of which Expedia was aware through its 'inside information;' and (3) Expedia voluntarily assumed a duty to warn her of safety hazards.").

54. 426 F.3d 1337, 1338 (11th Cir. 2005) ("Lienhart was vacationing at the Aruba Grand [which] is located next to the public beach, and it provides lounge chairs and tiki huts on the beach exclusively for the use of its guests. Lienhart and a friend were spending the day relaxing, and had been led to chairs by an Aruba Grand employee who placed the chairs under a tiki hut for their use . . . . Lienhart was asleep in a lounge chair when . . . she was struck by a pickup truck and boat trailer operated by an employee of Unique Sports of Aruba. The boat and trailer were backing up along the beach.").

55. *MacLachlin v. Marriott Corp.*, N.Y. L.J., Jan. 18, 1994, at 29 (N.Y. Sup. Ct. 1994).

56. 921 F. Supp. 86 (D. Conn. 1996).

57. 997 F. Supp. 694 (W.D.N.C. 1996).

58. 832 F. Supp. 937 (E.D. Pa. 1993).

59. 520 N.Y.S.2d 789 (App. Div. 1987).

60. 620 F. Supp. 578 (E.D. Pa. 1985).

horse));

E) Hawaii (*Courbat v. DaHano Ranch, Inc.*<sup>61</sup> (horse riding accident));

F) Namibia (*Hall v. Voyagers International Tours, Inc.*<sup>62</sup> (tourist trampled by wild elephant)).

(9) Riding in Tour Buses, Limos, and Golf Carts in:

A) Vietnam (*Pearl Cruises v. Cohon*<sup>63</sup> (cruise passengers injured in automobile accident during shore excursion));

B) Morroco (*Davies v. General Tours, Inc.*<sup>64</sup> (tourist injured exiting tour bus));

C) St. Thomas (*Lubick v. Travel Services, Inc.*<sup>65</sup> (driver lost control and wrecked tour bus));

D) Scotland (*Ramage v. Forbes International, Inc.*<sup>66</sup> (tour bus accident));

E) Mali (*Winter v. I.C. Holidays, Inc.*<sup>67</sup> (bus accident; driver unlicensed and uninsured));

---

61. 141 P.3d 427, 431, 434-37 (Haw. 2006) (Consumers purchased tour through "Island Incentives, Inc., an internet-based tour organizer" and suffered injuries from horse riding accident at ranch) ("The Courbats do not dispute that they both signed the Ranch's waiver form . . . prior to their ride. Nor do they dispute that waivers are an accepted method by which businesses may limit their liability. Rather, they assert that the Ranch's practice of booking ride reservations through an activity company, receiving payment prior to arrival of the guest, and then, upon the guest's arrival at the Ranch, requiring the guest to sign a liability waiver as a precondition to horseback riding is an unfair and deceptive business practice . . . . The Courbats maintain...that the practice of withholding the waiver had 'the capacity or tendency to mislead' customers . . . . If on remand the trier of fact determines that the nondisclosure of the waiver was a deceptive trade practice, rendering the waiver void, then the Courbats' negligence claims proceed free of the waiver defense.").

62. No. 5:01-CV-1375, 2007 WL 2088878 at \*1 (N.D.N.Y. July 19, 2007) ("This action stems from the death of Donald Hall . . . when he was trampled by a wild elephant during a photographic safari in Namibia . . . . There is evidence in the record that, if believed by a jury, would support a determination of direct negligence on the part of Voyagers . . . there is evidence that would support a determination that Voyagers was vicariously liable for the conduct of Wilderness under a theory of apparent agency or agency by estoppel.").

63. 728 So.2d 1226 (Fla. Dist. Ct. App. 1999).

64. 774 A.2d 1063 (Conn. App. Ct. 2001).

65. 573 F. Supp. 904 (D.V.I. 1983).

66. 987 F. Supp. 810 (C.D. Cal. 1997).

67. *Winter v. I.C. Holidays, Inc.*, N.Y.L.J., Jan. 9, 1992, at 23 (N.Y. Sup. Ct. 1992).

F) Germany (*Chouest v. American Airlines, Inc.*<sup>68</sup> (tour bus door closed on tourist's arm));

G) Bahamas (*Fertel v. Resorts International, Inc.*<sup>69</sup> (motor vehicle accident in the Bahamas));

H) Canada (*Lowy v. Heimann's Bus Tours, Inc.*<sup>70</sup> (tour bus accident));

I) Spain (*Rovinsky v. Hispanidad Holidays, Inc.*<sup>71</sup> (accident in tour bus that had been advertised as being safe));

J) Egypt (*Paredes v. Princess Cruises, Inc.*<sup>72</sup> (tour van accident));

K) England (*McCartney v. Windsor, Inc.*<sup>73</sup> (tour bus accident));

L) Peru (*Vermeulen v. Worldwide Holidays, Inc.*<sup>74</sup> (tour van accident in Peru));

M) Dominican Republic (*Lang v. Corporacion De Hoteles, SA*<sup>75</sup>

---

68. 839 F. Supp. 412 (E.D. La. 1993).

69. 350 N.Y.S.2d 913 (App. Div. 1974).

70. N.Y.S.2d 452 (App. Div. 1997).

71. 580 N.Y.S.2d 49 (App. Div. 1992).

72. 1 F. Supp. 2d 87 (D. Mass. 1998).

73. No. 95-6592, 1996 WL 65471 (E.D. Pa. Feb. 14, 1996).

74. 922 So.2d 271, 272-73 (Fla. Dist. Ct. App. 2006) ("The day before his departure from Ft. Lauderdale to South America, Vermeulen called Worldwide, located in South Miami . . . to book a cruise to the Galapagos Islands . . . Worldwide told Vermeulen that someone from Chasquitur, the local Peruvian tour operator, would meet him upon his arrival to give him his tickets, but did not tell him that Chasquitur was its agent . . . Vermeulen was met at the airport by a Chasquitur employee . . . [Who] escorted Vermeulen to a van" with a driver who proceeded to have accident causing injuries to Vermeulen).

75. 522 F. Supp. 2d 349, 354-55, 366-67 (D.P.R. 2007) ("The complaint alleges that plaintiffs . . . traveled to the Dominican Republic for a vacation at Casa de Campo resort after purchasing and booking their vacation package through MK Tours (PR), Inc., a travel agency in Puerto Rico. During their stay . . . the family suffered an accident when their golf cart, which is claimed [sic] have been part of the vacation package deal, was struck by a truck in the premises of Casa de Campo resort. As a result of the accident, Mr Lang died while plaintiffs were seriously injured. . . . Plaintiffs allege that MK . . . is liable in tort because it advertised, marketed and sold a vacation package, which included a golf cart, and 'knew or should have known that golf carts were permitted or allowed to be operated on the same roads . . . [that regular vehicles use] at Casa de Campo and that under such circumstances the Lang family would be placed in a foreseeable zone of danger . . . . We take all of plaintiffs' allegations as true, that is: that MK . . . advertised and sold plaintiffs the vacation package to Casa de Campo resort and that the package included a golf cart; that it assured plaintiffs that they would enjoy a safe, healthy and protected environment during their vacation; that it knew or should have known about the dangerous conditions of the roads/trails [where] golf carts are operated in the resort; that it negligently failed to warn plaintiffs about said conditions; and that the injuries they suffered were the result of MK . . . placing them in a foreseeable zone of danger . . . .

(golf cart struck by truck));

(10) Driving a Rental Car in:

A) Bahamas (*Sadkin v. Avis Rent A Car System, Inc.*<sup>76</sup> (rental car accident));

B) Mexico (*Chung v. Chrysler Corp.*<sup>77</sup> (students killed in rental car crash));

C) Italy (*Travalja v. Maieliano Tours*<sup>78</sup> (rental car accident));

D) England (*Weiner v. British Overseas Airway Corp.*<sup>79</sup> (rental car accident));

E) Rumania (*Kermisch v. Avis Rent A Car System, Inc.*<sup>80</sup> (tourists arrested in Rumania for mistreating their rental vehicle)).

(11) Jumping off of Trains (*Maurer v. Cerkvnik-Anderson Travel, Inc.*<sup>81</sup> (female student crushed by steel wheels of party train)) and balconies (*Knoell v. Cerkvnik-Anderson Travel, Inc.*<sup>82</sup> (eighteen-year-old student jumped to death from hotel balcony); *Powell v. Trans Global Tours, Inc.*<sup>83</sup> (guest leaned against hotel balcony rail and fell to ground)) in Mexico.

(12) Riding in Airplanes in:

A) China (*Barkanic v. General Administrator of Civil Aviation of the People's Republic of China*<sup>84</sup> (tourist killed in airplane crash during tour));

B) Bolivia (*Philippe v. Lloyd's Aero Boliviano*<sup>85</sup> (tourist took plane to La Paz traveling from sea level to an altitude of 13,313 feet within

---

These allegations, if true, are sufficient under Article 1802 to hold MK . . . liable for the injuries suffered by plaintiffs.”).

76. 638 N.Y.S.2d 435 (App. Div. 1996).

77. 903 F. Supp. 160 (D.D.C. 1995).

78. 622 N.Y.S.2d 961 (App. Div. 1995).

79. 401 N.Y.S.2d 91 (App. Div. 1978).

80. 419 N.Y.S.2d 793 (App. Div. 1979).

81. 890 P.2d 69 (Ariz. Ct. App. 1994).

82. 917 P.2d 689 (Ariz. 1996).

83. 594 N.W.2d 252 (Minn. Ct. App. 1999).

84. 923 F.2d 957 (2d Cir. 1991).

85. 710 So.2d 807 (La. Ct. App. 1998).

forty minutes, during which he suffered cerebral injuries due to hypoxia));

C) Kenya (*Abercrombie & Kent International, Inc. v. Carlson Marketing Group*<sup>86</sup> (tourists killed when plane crashed into a mountain); *Rizzutti v. Basin Travel Service*<sup>87</sup> (tourists killed in crash of aircraft).

(11) Walking in:

A) Volcanos National Park, Hawaii (*Schechter v. Tauck Tours, Inc.*<sup>88</sup> (tourist falls on hot lava rocks));

B) South Africa (*Connolly v. Samuelson*<sup>89</sup> (tourist falls during walking safari));

C) Fiji Islands (*Lavine v. General Mills, Inc.*<sup>90</sup> (tourist falls on slippery rocks));

D) Minahasu Highlands, Indonesia (*Carney v. Singapore Airlines*<sup>91</sup> (tourist wearing only shorts and sandals falls into steaming hot sulfur vent and is severely burned));

E) Brazil (*Stevenson v. Four Winds Travel, Inc.*<sup>92</sup> (tourist falls on slimy pier in Amazon River, Brazil));

F) Egypt (*Sanders v. Nabila Tours & Cruises*<sup>93</sup> (tourist injured during tour of Catacombs Hala)).

---

86. Civ. A. No. 88-7889, 1989 WL 46222 (E.D. Pa. Feb. 28, 1990).

87. 105 P.3d 1012, 1022 (Wash. Ct. App. 2005) ("Maryanne Rizzuti died in an airplane crash during a safari trip to Africa. Basin Travel Service of Othello, Inc., the travel agency that booked the trip, provided automatic transportation insurance through Travel Insured International, Inc . . . for clients whose tickets were issued by the agency. . . . [A]fter the insurance company disclaimed coverage because a tour operator issued tickets for transportation on the aircraft that crashed, Ms. Rizzuti's heirs sued for recovery under the policy and damages for bad faith and Consumer Protection Act (CPA). . . . [T]hey did not establish unfair or deceptive trade practices in the investigation of and timely response to their claim . . . a reasonable basis for denying coverage constitutes a complete defense to any claim that the insurer denied coverage in bad faith or in violation of the CPA.").

88. 17 F. Supp. 2d 255 (S.D.N.Y. 1998).

89. 613 F. Supp. 109 (N.D. Ill. 1985).

90. 519 F. Supp. 332 (N.D. Ga. 1981).

91. 940 F. Supp. 1496 (D. Ariz. 1996).

92. 462 F.2d 899 (5th Cir. 1972).

93. No. AO79884 (Cal. App. 1st Dist. May 1, 1998).

## II. Life Can Be Very Different Abroad

Travelers assume that should they have an accident in a foreign country they will be protected by the same safety standards, high quality medical care, consumer protection laws, and user-friendly legal system available in the United States. The reality, however, is quite the opposite.

### A. Safety Standards

In many foreign countries the safety standards may be much lower (*Wilson v. Best Travel*<sup>94</sup> (tourist fell through weak plate glass window in Athens hotel; plate glass thickness standards lower in Greece than in England where tourist resided); *Carley v. Theatre Development Fund*<sup>95</sup> (tourist fell through window at hotel in St. Petersburg, Russia); *Knoell v. Cerkenik-Anderson Travel, Inc.*<sup>96</sup> (eighteen-year-old tourist from Arizona consumed large quantities of alcoholic beverages for three days and jumped to death from third-story hotel balcony; Arizona Dram Shop law does not apply; drinking age in Mexico is lower than in Arizona); *Cicchiello v. Reney Tours Plane Broker, Inc.*<sup>97</sup> (tourist injured when gas stove at hotel exploded)).

### B. Emergency Medical Care

The quality of medical care may be much lower in foreign countries (*Gianocostas v. Riu Hotels, SA*<sup>98</sup> (diabetic tourist misdiagnosed at hotel

---

94. (1993) 1 All ER 353.

95. 22 F. Supp. 2d 224 (S.D.N.Y. 1998).

96. 917 P.2d 689 (Ariz. 1996).

97. No. CV 940460805S, 1996 WL 278348 (Conn. Super. Ct. May 3, 1996).

98. No. 002862, 2005 WL 503931 (Mass. Super. Ct. Jan. 27, 2005). This case was remanded "for further consideration of whether the Dominican Republic offers an adequate remedy with respect to the plaintiffs' claims against [tour operator] and, if so, whether the action should proceed against the defendants jointly in Massachusetts or the Dominican Republic." *Id.* at \*1. See *Gianocostas v. Riu Hotels, SA*, No. MICV200002862C, 2006 WL 2089772, at \*7-9 (Mass. Super. Ct. May 24, 2006), *vacated*, 450 Mass. 715 (2008) (negligent selection of suppliers claim to be tried in Dominican Republic and negligent misrepresentation claim to be tried in Massachusetts; failure of hotel and local clinic to diagnose and properly treat tour participant with diabetes; negligent misrepresentation claims against tour operator dismissed) ("The [plaintiffs] seek damages against GWV for the death of Jennifer under a theory of negligent misrepresentation . . . [plaintiffs] argue that they relied on false representations

and local hospital); *DeRoche v. Commodore Cruise Line, Ltd.*<sup>99</sup> (cruise passenger on shore excursion suffered injuries in motor scooter accident; medical malpractice by local infirmary in Cozumel, Mexico); *Gillmor v. Caribbean Cruise Line, Ltd.*<sup>100</sup> (malpractice by ship's doctor); *Di Bonaventure v. Home Lines, Inc.*<sup>101</sup> (malpractice by ship's doctor); *Blinzler v. Marriott International, Inc.*<sup>102</sup> (guest suffered heart attack at hotel; surviving spouse claimed delay in obtaining medical assistance caused death; hotel liable for delay in calling emergency aid); *Johnson v. Commodore Cruise Lines, Ltd.*<sup>103</sup> (passenger raped by crewmember and misdiagnosed as having had heart attack); *Room v. Caribe Hilton Hotel*<sup>104</sup> (delay in providing medical assistance to heart attack victim)).

### C. Foreign Substantive Law

The law may be less sympathetic<sup>105</sup> to the injured traveler in, among

---

made by Harris [GWV employee] about Jennifer's condition and the quality of medical care available . . . in the Dominican Republic, as a result of which [Plaintiffs] delayed their efforts to evacuate Jennifer . . . Here, to the extent that Harris represented that Jennifer would receive satisfactory medical treatment in the Dominican Republic, those statements were her opinion . . . Harris was not, however, in a position to obtain actual knowledge of the truth or falsity of her statements. The degree of competence of the medical providers and the standard of medical care in the Dominican Republic are not matters in respect to which Harris could have actual knowledge. Nor are such matters ones over which Harris would be expected to have special or superior knowledge. . . . [Plaintiffs'] reliance on Harris' expressions of opinion was unreasonable under the circumstances of this case . . . Reliance has been deemed unreasonable in circumstances in which the plaintiff alleging misrepresentation has reason to know of facts which then make his or her reliance unjustifiable . . . The record further demonstrates that the [plaintiffs] had contacted Jennifer's endocrinologist and had communicated with the doctors at the Clinic concerning Jennifer's illness, who made assurances about Jennifer's well-being. Those communications occurred the same day as Harris' statements to the [plaintiffs] . . . Once in contact with medical professionals involved in the treatment of Jennifer, however, the [plaintiffs] could not have justifiably relied on Harris' statements regarding Jennifer's condition and medical care.").

99. 46 Cal. Rptr. 2d 468 (Cal. Ct. App. 1994).

100. 789 F. Supp. 488 (D.P.R. 1992).

101. 536 F. Supp. 100 (E.D. Pa. 1982).

102. 81 F.3d 1148 (1st Cir. 1996).

103. 897 F. Supp. 740 (S.D.N.Y. 1995).

104. 659 F.2d 5 (1st Cir. 1981).

105. If the tour is governed by the law of the European Community, specifically, E.C. Council Directive of June 13, 1990 (90/314/EEC) then the tour operator may be liable for the defaults of travel suppliers such as hotels, airlines, cruise lines, and so forth. See THOMAS A. DICKERSON, TRAVEL LAW § 5.04 (2012); Paul S. Edelman & James E. Mercante, *Passenger Accidents Abroad*, N.Y. L.J., Feb. 21, 2008, at 3.

other places:

A) Egypt (*MacLachlin v. Marriott Corporation*<sup>106</sup> (tourist thrown from angry camel in Egypt; “an Egyptian forum which is based partially on Koranic law would be unduly harsh to plaintiff”));

B) France (*In re Air Crash off Long Island, New York, on July 17, 1996*<sup>107</sup> (air crash; France does not allow punitive damages));

C) Dominican Republic (*Calvo v. Sol Melia, S.A.*<sup>108</sup> (tourist struck by motor boat while swimming; Dominican Republic does not recognize product liability claims); *Gianocostas v. Interface Group-Massachusetts, Inc.*<sup>109</sup> (diabetic tourist misdiagnosed in Dominican Republic));

D) Turkey (*Mercier v. Sheraton International, Inc.*<sup>110</sup> (contract dispute; Turkey may recognize claims for breach of contract or tortious interference with contract));

E) Hong Kong (*Nowak v. Tak How Investments, Ltd.*<sup>111</sup> (drowning accident; law uncertain in Hong Kong));

F) Malaysia (*Simcox v. McDermott International*<sup>112</sup> (slip and fall on barge; Malaysia has similar substantive law to the United States));

G) Cayman Islands (*Lehman v. Humphrey Cayman, Ltd.*<sup>113</sup> (recovery for wrongful death in Cayman Island may not exceed five thousand dollars));

H) China (*Barkanic v. General Administrator of Civil Aviation of the People's Republic of China*<sup>114</sup> (air crash; maximum recoverable damages limited to twenty thousand dollars));

I) Mexico (*Wendelken v. Superior Court*<sup>115</sup> (slip and fall; Mexico

---

106. *MacLachlin v. Marriott Corporation*, N.Y. L.J., Jan. 18, 1994, at 29 (N.Y. Sup. Ct. 1994).

107. 209 F.3d 200 (2d Cir. 2000).

108. 761 So.2d 461 (Fla. Dist. Ct. App. 2000).

109. 881 N.E.2d 134, 142 (Mass. 2008) (“The record contains affidavits of six lawyers licensed to practice in the Dominican Republic. Four lawyers indicate that reparations may be sought, under the Dominican Civil Code, for negligent misrepresentations causing physical injury . . . . The plaintiffs make no argument . . . as a matter of law, a plaintiff cannot recover for negligent misrepresentation in the Dominican Republic.”).

110. 981 F.2d 1345 (1st Cir. 1992).

111. 94 F.3d 708 (1st Cir. 1996).

112. 152 F.R.D. 689 (S.D. Tex. 1994).

113. 713 F.2d 339 (8th Cir. 1983).

114. 923 F.2d 957 (2d Cir. 1991).

115. 671 P.2d 896 (Ariz. 1983) (en banc).

limits lost wage damages to twenty-five pesos per day)); *Hernandez v. Burger*<sup>116</sup> (auto accident; Mexican law limits recovery to the amount of the injured party's medical and rehabilitative expenses and lost wages at the minimum rate)).

#### D. Foreign Procedural Law

The applicable foreign legal system may discourage litigation as we know it in the United States by, among other things, barring contingency fee arrangements with attorneys and jury trials in, among other places:

A) Bermuda (*Bruemmer v. Marriott Corp.*<sup>117</sup> (hotel guest playing golf fell off cliff adjacent to tee area for eighteenth hole and subsequently died from his injuries; no contingent fees in Bermuda));

B) Bahamas (*Doe v. Sun International Hotels, Ltd.*<sup>118</sup> (eighteen-year-old female guest raped at hotel; no jury trials or contingency fees in Bahamas));

C) France (*In re Air Crash off Long Island, New York, on July 17, 1996*<sup>119</sup> (air crash; France does not allow contingency fee arrangements));

D) Cayman Islands (*Wilson v. Humphreys Cayman Ltd.*<sup>120</sup> (rape at hotel; no contingency fees or jury trials in Cayman Islands); *Lehman v. Humphrey Cayman, Ltd.*<sup>121</sup> (no contingency fees or jury trials in Cayman Islands));

E) Jamaica (*Reid-Walen v. Hansen*<sup>122</sup> (motorboat accident; no contingency fees or jury trials in Jamaica); *Lugones v. Sandals Resorts, Inc.*<sup>123</sup> (no contingency fees or jury trials in Jamaica));

F) England (*Neville v. Anglo American Management Corp.*<sup>124</sup> (tour bus accident; no contingency fees or jury trials in England));

G) Trinidad and Tobago (*Flynn v. General Motors, Inc.*<sup>125</sup> (car

---

116. 162 Cal. Rptr. 564 (Ct. App. 1980).

117. No. 90 C 4190, 1991 WL 30141 (N.D. Ill. Mar. 4, 1991).

118. 20 F. Supp. 2d 1328 (S.D. Fla. 1998).

119. 209 F.3d 200 (2d Cir. 2000).

120. 916 F.2d 1239 (7th Cir. 1990).

121. 713 F.2d 339 (8th Cir. 1983).

122. 933 F.2d 1390 (8th Cir. 1991).

123. 875 F. Supp. 821 (S.D. Fla. 1995).

124. 594 N.Y.S.2d 747 (App. Div. 1993).

125. 141 F.R.D. 5 (E.D.N.Y. 1992).

accident; no jury trial in Trinidad and Tobago));

H) Finland (*Carnival Cruise Lines, Inc. v. Oy Wartsila Ab*<sup>126</sup> (accident aboard cruise ship; no jury trials in Finland));

I) Israel (*Gyenes v. Zionist Organization of America*<sup>127</sup> (student drowned in Jordan River; no right to jury trial in Israel)).

### III. Is the Forum Selected Convenient?

Travelers injured abroad may commence a lawsuit in a United States court against a cruise line, foreign hotel, tour bus company, or various other ground operators. In response the defendants may seek to dismiss the lawsuit because the United States forum selected is not convenient (forum non conveniens) or a clause in the cruise passenger ticket, hotel registration form, or tour participant contract states that all lawsuits must be brought in a specific forum (forum selection clause).

#### A. Application of Foreign Law

In addition, the defendants may seek an early determination by the court that the law of a foreign country applies to one or more issues in the case (choice of law). The applicable law, foreign or domestic, bears on the convenience of the selected forum. The theory underpinning this general principle is that foreign courts are better able to interpret their own law than the courts of a United States forum (*Mercier v. Sheraton International, Inc.*<sup>128</sup> (contract dispute; difficulty in interpreting Turkish law one reason for dismissal); *Rudisill v. Sheraton Copenhagen Corp.*<sup>129</sup> (fall in Danish hotel bathtub; Danish courts better able to apply Danish law); *Carnival Cruise Lines, Inc. v. Oy Wartsila Ab*<sup>130</sup> (contract dispute; Finnish courts better able to interpret Finnish law)).

#### B. Conditions for Dismissal

Should the court grant a forum non conveniens motion it may condition dismissal upon the defendant agreeing to the transfer of the

---

126. 159 B.R. 984 (S.D. Fla. 1993).

127. 564 N.Y.S.2d 155 (App. Div. 1991).

128. 981 F.2d 1345 (1st Cir. 1992).

129. 817 F. Supp. 443 (D. Del. 1993).

130. 159 B.R. 984 (S.D. Fla. 1993).

case to a distant forum for trial (*Gianocotas v. Interface Group-Massachusetts, Inc.*<sup>131</sup> (dismissal conditioned on various waivers); *Chhawchharia v. Boeing Co.*<sup>132</sup> (dismissal subject to defendant submitting to jurisdiction of English or Scottish courts, waiving any statute of limitation defense, conceding liability for all compensatory damages, providing access to all evidence, and paying the awarded damages); *Diaz v. Mexicana de Avion, S.A.*<sup>133</sup> (dismissal subject to defendant accepting service in and jurisdiction of Mexican courts, waiving statute of limitations, producing all evidence and witnesses, and agreeing to satisfy any judgments); *Fertel v. Resorts International, Inc.*<sup>134</sup> (dismissal subject to accepting service and waiving statute of limitations)).

### C. Plaintiff's Choice Is Important

Although it is not dispositive (*Piper Aircraft Co. v. Reyno*<sup>135</sup> (air crash)) the forum selected by the plaintiff, particularly if he or she resides in that forum, will be given serious consideration prior to dismissing a lawsuit on the grounds of forum non conveniens (*Guidi v. Inter-Continental Hotels Corp.*<sup>136</sup> (murder in Egyptian hotel; "the choice of an American court over a foreign court should be given the heightened deference"); *Doe v. Sun International Hotels, Ltd.*<sup>137</sup> (guest raped at hotel in Bahamas); *Anderson v. Marriott Hotel Services, Inc.*<sup>138</sup> (guest fell on hotel tennis court); *Smith v. Chason*<sup>139</sup> (minor tourist drowned during

---

131. 881 N.E.2d 134, 143 (Mass. 2008). Specifically, the court stated:

[D]ismissal of the plaintiffs' negligent misrepresentation claim is conditioned on GWV's written agreement to waive any defenses based on the statute of limitations or lack of personal jurisdiction, and to waive any requirement that the plaintiffs post a bond, and on the further condition that the court in the Dominican Republic give full force and effect to such waivers.

*Id.*

132. 657 F. Supp. 1157 (S.D.N.Y. 1987).

133. No. SA-86-CA-1065, 1987 WL 275695 (W.D. Tex. Jan. 23, 1987).

134. 350 N.Y.S.2d 913 (App. Div. 1974).

135. 454 U.S. 235 (1981).

136. 224 F.3d 142 (2d Cir. 2000).

137. 20 F. Supp. 2d 1328 (S.D. Fla. 1998).

138. No. CV990432587S, 2002 WL 31819097 (Conn. Super. Ct. Nov. 25, 2002).

139. No. CIV. A. 96-10788-PBS, 1997 WL 298254 (D. Mass. Apr. 10, 1997).

booze cruise); *Schechter v. Tauck Tours, Inc.*<sup>140</sup> (tourist fell on hot lava rocks at Volcanoes National Park); *Chierchia v. Treasure Cay Services, Inc.*<sup>141</sup> (boating accident in the Bahamas); *Carter v. Trafalgar Tours Ltd.*<sup>142</sup> (auto accident in Austria)).

#### D. *Residing or Doing Business in the Forum*

If the plaintiff and the defendant reside in or are doing business in the selected forum the courts will rarely dismiss the lawsuit (*Flynn v. General Motors, Inc.*<sup>143</sup> (accident in Trinidad and Tobago; plaintiff from New York; lawsuit in New York; defendant doing business in New York); *Bruemmer v. Marriott Corp.*<sup>144</sup> (accident in Bermuda; plaintiff from Illinois; lawsuit in Illinois; one of defendants doing business in Illinois); *Wilson v. Humphreys Cayman Ltd.*<sup>145</sup> (accident in Cayman Islands; plaintiff from Indiana; lawsuit in Iowa; defendant-franchisor Tennessee corporation had agent in Iowa; defendant-franchisee Cayman Island corporation with offices in Tennessee); *Kermisch v. Avis Rent A Car System, Inc.*<sup>146</sup> (tort in Rumania; plaintiff from New York; defendant-franchisor doing business in New York)).

The reasoning is that taxpayers should have access to the local courts. The converse—that non-taxpayers should not have easy access to the local courts—is also true. Some courts presume that a defendant who can afford an office in the forum is also able to respond to local lawsuits. In *Sadkin v. Avis Rent A Car System, Inc.*,<sup>147</sup> a case involving a rental car accident in the Bahamas, the court refused to dismiss the lawsuit because the rental car franchisor and decedent resided in New York State.

#### E. *Advertising in the Forum*

If a defendant advertises and solicits business in the forum it should expect to be available for lawsuits brought by injured residents. In

---

140. 17 F. Supp. 2d 255 (S.D.N.Y. 1998).

141. 738 F. Supp. 1386 (S.D. Fla. 1990).

142. 704 F. Supp. 673 (W.D. Va. 1989).

143. 141 F.R.D. 5 (E.D.N.Y. 1992).

144. No. 90 C 4190, 1991 WL 30141 (N.D. Ill. Mar. 4, 1991).

145. 916 F.2d 1239 (7th Cir. 1990).

146. 419 N.Y.S.2d 793 (App. Div. 1979).

147. 638 N.Y.S.2d 435 (App. Div. 1996).

*Reid-Walen v. Hansen*,<sup>148</sup> a case involving a motorboat accident in the Bahamas, the court found that, because of a Bahamian hotel's solicitation of business in the United States, it "should not be . . . total(ly) surprised . . . that they may be sued in the courts of the U.S."<sup>149</sup> In *Nowak v. Tak How Inv. Ltd.*,<sup>150</sup> a case involving a drowning in a Hong Kong hotel pool, the court held that a cost of doing business is being available to respond to lawsuits in the United States. The *Nowak* court also declared that Massachusetts, where the lawsuit was brought, had a strong interest in protecting its citizens from solicitations for unsafe services (*Carter v. Trafalgar Tours Ltd.*<sup>151</sup> (auto accident in Austria); *Bruemmer v. Marriott Corp.*<sup>152</sup> (golfing accident in Bermuda); *Lehman v. Humphrey Cayman Ltd.*<sup>153</sup> (tourist drowns in ocean off of Cayman Islands); *Radigan v. Innisbrook Resort and Golf Club*<sup>154</sup> (tourist falls in Florida hotel)).

#### F. Availability of Alternative Forum

Generally, the court will not dismiss a lawsuit unless there is an alternative forum available to hear the plaintiff's claim. The courts differ widely on just how different the alternative forum can be to still be "available." Such factors as whether the foreign forum recognizes American legal theories (*Mercier v. Sheraton International, Inc.*<sup>155</sup> (failure to show that Turkish law expressly recognizes claims for breach of contract and tortious interference with contract)), allows contingency fee arrangements with attorneys (*Lugones v. Sandals Resorts, Inc.*<sup>156</sup> (no contingency fees in Jamaica)), provides for jury trials (*Flynn v. General Motors, Inc.*<sup>157</sup> (no jury trials in Trinidad and Tobago)), and limits recoverable damages (*Abouchalache v. Hilton International Co.*<sup>158</sup> (limit on punitive damages not dispositive)).

---

148. 933 F.2d 1390 (8th Cir. 1991).

149. *Id.* at 1400.

150. 94 F.3d 708 (1st Cir. 1996).

151. 704 F. Supp. 673 (W.D. Va. 1989).

152. No. 90 C 4190, 1991 WL 30141 (N.D. Ill. Mar. 4, 1991).

153. 713 F.2d 339 (8th Cir. 1983).

154. 375 A.2d 1229 (N.J. Super. Ct. App. Div. 1977).

155. 981 F.2d 1345 (1st Cir. 1992).

156. 875 F. Supp. 821 (S.D. Fla. 1995).

157. 141 F.R.D. 5 (E.D.N.Y. 1992).

158. 464 F. Supp. 94 (S.D.N.Y. 1978).

### G. *Plaintiff's Emotional Burden*

In *Guidi v. Inter-Continental Hotels Corp.*,<sup>159</sup> tourists were shot and murdered at a hotel restaurant in Egypt. In denying a motion to dismiss the lawsuit the court noted the emotional burden of having family members travel to Egypt:

Plaintiffs are atypical in that they are either the widows or the victim of a murderous act directed specially against foreigners. Understandably, they are strongly adverse to litigating in a country where foreigners have been the target of hostile attacks and have concerns for their own safety if required to travel there.<sup>160</sup>

### H. *Location of Witnesses and Evidence*

Proving or defending an accident case may require the production of witnesses and documentary and physical evidence which is located in the distant forum where the accident occurred. In arguing for dismissal the defendant will show the court a list of essential witnesses which are beyond the court's jurisdiction and, hence, unavailable for trial (*Gianocotas v. Interface Group-Massachusetts, Inc.*<sup>161</sup>; *Dunham v. Hotelera Canco S.A. de C.V.*<sup>162</sup> (snorkeling accident in Mexico; witnesses not subject to subpoena power of United States courts); *Carney v. Singapore Airlines*<sup>163</sup> (tour accident in Indonesia; defendant would not be able to subpoena witnesses if action brought in United States); *Magnin v. Teledyne Continental Motors*<sup>164</sup> (French witnesses not subject to subpoena power of United States courts); *Carnival Cruise Lines, Inc.*

---

159. 224 F.3d 142 (2d Cir. 2000).

160. *Id.* at 147.

161. 881 N.E.2d 134, 142-43 (Mass. 2008) ("Most, if not all, of the litigation will center on live testimony concerning the quality of medical care Jennifer received in Puerto Plata . . . All of the medical personnel who were in contact with Jennifer during the relevant time period are in the Dominican Republic, as are all clinic and hospital records.").

162. 933 F. Supp. 543 (E.D. Va. 1996).

163. 940 F. Supp. 1496 (D. Ariz. 1996).

164. 91 F.3d 1424 (11th Cir. 1996).

v. *Oy Wartsila Ab*<sup>165</sup> (Finnish witnesses and experts beyond subpoena power of United States courts)). The defendant may also assert that the jury must have a view of the accident scene (*Rudisill v. Sheraton Copenhagen Corp.*<sup>166</sup> (guest fell in hotel bathtub; view of site important consideration)). The court must examine the actual necessity of each listed witness (*Calvo v. Sol Melia, S.A.*<sup>167</sup> (Spanish tourist struck by motorboat while swimming off of the beach in Dominican Republic; all forty-one witnesses to the accident lived in Dominican Republic and spoke only Spanish; motion to dismiss granted); *Chierchia v. Treasure Cay Services, Inc.*<sup>168</sup> (boating accident in the Bahamas; all witnesses to the accident in the Bahamas; motion to dismiss granted); *Anderson v. Marriott Hotel Services, Inc.*<sup>169</sup> (guest fell on hotel tennis court; although most witnesses reside in Hawaii the defendant failed to identify any of them; motion to transfer denied); *Abouchalache v. Hilton International Co.*<sup>170</sup> (bomb explosion at London hotel; necessary witnesses and view of accident scene in London; motion to dismiss granted); *Sarfaty v. Rainbow Helicopters, Inc.*<sup>171</sup> (witnesses to helicopter accident located in Canada)) and decide whether there are alternative forms of evidence which will make the witness's presence unnecessary, such as depositions, video presentations, and sworn statements (*Delarosa v. Holiday Inn*<sup>172</sup> (guest fell at North Carolina hotel; testimony of New York medical witnesses may be videotaped; motion to transfer to North Carolina granted); *Broussard v. Deauville Hotel Resorts, Inc.*<sup>173</sup> (guest fell in Miami hotel; motion to transfer granted; medical witnesses may testify via video deposition); *Bruemmer v. Marriott Corp.*<sup>174</sup> (admissions, video tapes, models, and photographs deemed acceptable alternative evidence)). Foreign witnesses may (*MacLachlin v. Marriott Corp.*<sup>175</sup> (Egyptian bell captain could be ordered to appear at trial in New York by resident employer hotel corporation)) or may not (*Gianocostas v.*

---

165. 159 B.R. 984 (S.D. Fla. 1993).

166. 817 F. Supp. 443 (D. Del. 1993).

167. 761 So.2d 461 (Fla. Dist. Ct. App. 2000).

168. 738 F. Supp. 1386 (S.D. Fla. 1990).

169. No. CV990432587S, 2002 WL 31819097 (Conn. Super. Ct. Nov. 25, 2002).

170. 464 F. Supp. 94 (S.D.N.Y. 1978).

171. 634 N.Y.S.2d 164 (App. Div. 1995).

172. No. 99 Civ. 2873, 2000 WL 648615 (S.D.N.Y. May 19, 2000).

173. No. CIV. A. 98-3157, 1999 WL 621527 (E.D. La. Aug. 13, 1999).

174. No. 90 C 4190, 1991 WL 30141 (N.D. Ill. Mar. 4, 1991).

175. *MacLachlin v. Marriott Corp.*, N.Y. L.J., Jan. 18, 1994, at 29 (N.Y. Sup. Ct. 1994).

*Interface Group-Massachusetts, Inc.*,<sup>176</sup>) be compelled by a United States court to appear for depositions or a trial.

### I. Choice of Law and Court Congestion

If the case involves the application of foreign law then the court may wish to consider whether a foreign court would not be in better position to interpret its own law (*Mercier v. Sheraton International, Inc.*<sup>177</sup> (contract dispute; difficulty in interpreting Turkish law one reason for dismissal); *Rudisill v. Sheraton Copenhagen Corp.*<sup>178</sup> (fall in Danish hotel bathtub; Danish courts better able to apply Danish law); *Carnival Cruise Lines, Inc. v. Oy Wartsila Ab*<sup>179</sup> (contract dispute; Finnish courts better able to interpret Finnish law)). Another factor which a court may consider is the extent to which the transferee-court is able to handle the case sent to it. In *Bhatnagar v. Surrendra Overseas, Ltd.*,<sup>180</sup> the court refused to transfer a case to the Calcutta High Court in India because there were only two judges available to handle a backlog of 156,477 pending cases. Describing the Indian court as "almost on the verge of collapse" the court concluded that it was not "available" in any practical sense.<sup>181</sup>

### IV. Forum Selection Clauses

It is quite common for travel suppliers to insert a clause into their consumer contracts requiring dissatisfied customers to file lawsuits in a specific forum—typically one which is convenient for the travel supplier but not for the consumer. Such clauses can have a dramatic effect upon the consumer's enthusiasm in prosecuting his or her claim. Stated simply, the further away the court is, the less likely it is that the aggrieved consumer will file a lawsuit. This is because the cost of

---

176. 881 N.E.2d 134, 143 (Mass. 2008) ("Judicial notice may be taken of the likely fact that witnesses on this issue would be Dominican residents, and . . . neither the parties nor a Massachusetts court can compel their testimony.").

177. 981 F.2d 1345 (1st Cir. 1992).

178. 817 F. Supp. 443 (D. Del. 1993).

179. 159 B.R. 984 (S.D. Fla. 1993).

180. 52 F.3d 1220 (3d Cir. 1995).

181. *Id.* at 1228. See also *Schechter v. Tauck Tours, Inc.* 17 F. Supp. 2d 255 (S.D.N.Y. 1998) (Hawaii courts less congested than those in New York; motion to transfer to Hawaii granted).

traveling to a distant court house and the cost of retaining out-of-state and, particularly, out-of-country attorneys (no contingency fee arrangements in most foreign jurisdictions) is too great to justify serious litigation. And this is, of course, the very reason why forum selection clauses are so popular with travel suppliers.

#### A. Cruise Lines

Forum selection clauses are used by cruise lines (*Carnival Cruise Lines, Inc. v. Shute*<sup>182</sup> (Florida forum selection clause enforced); *Heinz v. Grand Circle Travel*<sup>183</sup> (passengers sustained injuries from malfunctioning doors aboard Blue Danube cruise ship on the Rhine in Germany; travel contract's forum selection clause enforced); *Moeller v. Cruiseshipcenters*<sup>184</sup> (Washington forum selection clause enforced); *Effron v. Sun Line Cruises, Inc.*<sup>185</sup> (Greek forum selection clause enforced); *Hodes v. SNC Achille Lauro*<sup>186</sup> (Naples forum selection clause enforced)).

Recently, two major cruise lines have drafted and implemented a forum selection clause that not only requires that all lawsuits be brought in a specific forum but that the lawsuit must be brought in a U.S. district court. The enforcement of what amounts to a "sovereign selection clause" may have the effect of eliminating jury trials otherwise available in state court.<sup>187</sup>

#### B. Hotels and Resorts

Forum selection clauses are used by hotels (*Doe v. Sun International Hotels, Ltd.*<sup>188</sup> (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;

---

182. 499 U.S. 585 (1991).

183. 329 F. Supp. 2d 896 (W.D. Ky. 2004).

184. No. C-00-3260, 2001 WL 34057009 (N.D. Cal. Oct. 9, 2001).

185. 67 F.3d 7 (2d Cir. 1995).

186. 858 F.2d 905 (3d Cir. 1988).

187. THOMAS A. DICKERSON, TRAVEL LAW § 3.02(2)(b)(iv) (2012). See also Michael D. Eriksen, *U.S. Maritime Public Policy Versus Ad-Hoc Federal Forum Provisions in Cruise Tickets*, FLA. B. J., Dec. 2006, at 20.

188. 20 F. Supp. 2d 1328 (S.D. Fla. 1998).

*Decker v. Circus Circus Hotel*<sup>189</sup> (Nevada forum selection clause enforced; combination of an interactive website with a forum selection clause negates any intent of being hailed into a local courtroom)).

### C. *Tour Operators*

Forum selection clauses are used by tour operators (*Global Travel Marketing, Inc. v. Shea*<sup>190</sup> (estate of child tourist on safari killed by hyenas bound by contract clause requiring arbitration of disputes in Fort Lauderdale, Florida); *Cameron v. Group Voyagers, Inc.*<sup>191</sup> (tour bus accident in Venice involving British passengers who entered into travel contract with British tour operators providing that "any dispute. . . will be dealt with under the ABTA Arbitration Scheme or by the Court of England and Wales only"; enforceability based upon United States law although the application of British law may have been appropriate); *Milgrim v. Backroads, Inc.*<sup>192</sup> (bike tour accident in France; clause in travel contract providing arbitration in California enforced); *Sachs v. TWA Getaway Vacations, Inc.*<sup>193</sup> (tour participant contract stated that "[a]ny 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 Worldwide, L.L.C.*<sup>194</sup> (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.*<sup>195</sup> (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)).

## V. Conclusion

In litigating a travel law case involving accidents in a foreign jurisdiction counsel should carefully consider how the travel services

---

189. 49 F. Supp. 2d 743 (D.N.J. 1999).

190. 908 So.2d 392 (Fla. 2005).

191. 308 F. Supp. 2d. 1232, 1237 (D. Colo. 2004).

192. 91 Fed. App'x 702 (2d Cir. 2002).

193. 125 F. Supp. 2d 1368, 1370 (S.D. Fla. 2000).

194. No. Civ.A. 99-1706, 2000 WL 222165 (E.D. La. Feb. 18, 2000).

195. No. CV 99-2062 RSWL, 1999 WL 1074120 (C.D. Cal. June 9, 1999).

were marketed and the presence of forum selection, arbitration, and choice of law clauses in the travel contract in an effort to fashion a complaint which can be brought in and remain in the courts of the United States.