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A Qualitative Study of Victimization and  
Legal Issues Relevant to Cruise Ships

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### **Abstract**

The purpose of this project was to conduct a qualitative study examining the litigation process of U.S. citizens who were victims of crime while aboard a cruise ship. Data was collected through interviews with female U.S. citizens who were victims of sexual assault. All participants interviewed pursued litigation post assault, bringing claim against the cruise line and/or assaulter. Interviews are intended to capture the most prevalent maritime laws used today. Data was compared on a case-to-case basis, focused on court case outcome. Once data was collected, comparisons were made and conclusions drawn as represented in the results. This project does not encompass all of the laws and statutes applicable to the cruise line industry. Cruise line corporations are registered under several foreign countries. The differing laws amongst these countries affect which jurisdiction and subsequent laws apply. Maritime law is a complex legal system that differs greatly from federal and state law. Laws intertwine in international waters creating a sea of confusion with regard to which country is responsible for crime reporting and prosecution. In particular, differences among cruise line contractual agreements will often dictate different requirements in which to adhere. The laws discussed throughout this project were found to be enforced in various cases involving U.S. citizens.

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**Cruise Line History**

Whether the disaster in 1912 or the 1997 blockbuster hit, Titanic is perhaps the most well known and documented cruise of all time. However, the cruise industry today is not associated with icebergs and disasters, but large ships full of gaming activities on the way to beautiful destinations. “Cruise lines, diverging from the industry’s earlier affluence and glamour, began to market more affordable vacation cruises with a ‘fun ship’ image” (Tomlinson 2007, p. 133). This new image has proven to be very prosperous for the industry.

Cruise lines continually monitor their net worth in the industry, making growth predictions and future plans. The Cruise Line International Association (CLIA) evaluates the cruise industry and is composed of 23 major cruise companies, representing 97 percent of the cruise capacity in North America. According to CLIA: over 12.5 million people went on a cruise in 2007. In 1990, the total number of passengers was only 3.7 million. On average the cruise industry has experienced a growth rate of 7.4 percent annually.

U.S. citizens accounted for 76 percent of the global market share in 2004, gradually declining since, reporting 73 percent in 2006. CLIA remains optimistic, reporting that 34 new vessels are contracted to be added to the North American fleet between 2008 and 2012. This will accompany the 185 cruise ships already in existence.

The overall growth of the cruise line industry is surprising. Even though the percentage of U.S. passengers has declined, more Americans are taking cruise vacations now than ever before. The industry continues to grow, counteracting the sinking economy by focusing on

foreign markets and slashing prices. Aside from the majority revenue generated by U.S. passengers, cruise lines are independent of the U.S. economy. Even though nearly 75 percent of passengers are U.S. citizens “cruise line corporations and their ships are not traditionally American-owned or registered...” (Tomlinson, 2007, p.130) Thus, cruise ships are not affected by changing laws inflicted upon U.S. corporations. In reality, cruise lines are still flourishing while the U.S. economy suffers.

Cruise line companies are not concerned about increasing minimum wage, rising insurance premiums, or higher corporate taxes. Cruise lines escape federal taxes and labor laws by registering their corporations and vessels in foreign countries, i.e. Panama, Liberia, and the Bahamas. In fact, the common mistreatment of cruise line employees is not addressed due to lackadaisical labor laws. Worst of all, employees will find little to no recourse pursuing litigation. Likewise, a U.S. citizen passenger faces the same predicament.

For example:

“A person who goes out to his local neighborhood bar and becomes so intoxicated that he is unaware of his surroundings (and) subjects himself to any number of situations- including criminal acts by other persons. While that person may be able to sue the bar civilly if his drunkenness results in his own injury, if the same events happen on a cruise ship, he may have no recourse” (Porter, 2006, p. 597).

Employees and passengers may have difficulty litigating claims due to the fact that “international maritime law applies to the cruise industry because cruise ships sail in the waters of many countries, as well as in the waters of no country, otherwise known as the high seas” (Tomlinson, 2007, p.135).

Before immersing into the ramifications of maritime law, it is important to consider the

context and history in which this law was developed. "...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 nineteenth-century legal principles, the purpose being to insulate cruise lines from the legitimate claims of passengers" (Dickerson, 2004, p. 451).

Courts today base their decisions on federal statutes enacted almost a century ago. Essentially, these statutes are the reason cruise lines have been able to dismiss claims brought against them from both passengers and employees. "The antiquity of maritime law was made manifest in *Barbetta v. S.S. Bermuda Star* [italics added], a case approving the rule that 'shipowners are ... not vicariously liable for the negligence of ship's doctors in treating passengers'" (Dickerson, 2004, p.452).

However, in August of 2003, the Florida Third Circuit Court of Appeal rejected *Barbetta* and held that a ship's doctor's negligence should be imputed to a cruise line (*Carlisle v. Carnival corp.*, 2003). In February of 2007, the Florida Supreme Court quashed the decision of the district court and held that the ship owner is not vicariously liable under the theory of respondeat superior for the medical negligence of the shipboard physician (*Carnival Corporation v. Carlisle*, 2007). In most cases, however, under the Jones Act cruise lines can be held liable for the negligent acts of its cruise ship staff (e.g., a shipboard doctor).

"Most importantly, the aggrieved passenger 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 common law" (Dickerson, 2004, p. 476). Unlike common law, maritime law enables cruise lines to significantly limit their personal liability, as well as a passenger's rights and remedies. Worst of all, the ticket-passenger contracts and the limiting-liability clauses within are enforced in most U.S. courts.

## Flags of Convenience

Cruise lines have avoided U.S. laws and regulations since as early as 1920. “A number of U.S. vessels, namely the cruise liners the M/V RELIANCE and the M/V RESOLUTE, were ‘re-flagged’ in Panama in order to circumvent the U.S. law banning the sale of alcohol on U.S. registered ships (during prohibition)” (Wing, 2003, p. 175). The International Maritime Organization (IMO), of which the United States is a member, “requires all ships engaged in international trade to have a country of registry in order to sail in international waters. A ship is considered the territory of the country in which it is registered...” (Tomlinson, 2007, p. 137) The verbiage of this clause is particularly important as it states “a country” and could pertain to any country, developed or undeveloped. Even more importantly Tomlinson states that the ship is considered the territory of its country, thus making them subject to that country’s laws and regulations.

“By opting to re-flag in a new nation, a vessel owner becomes subject to the safety, labor, and environmental codes of that nation. Thus, those nations whose open registries have become the most popular also tend to be those who possess the most lax labor, safety, and environmental codes” (Wing, 2003, p.176).

A vessel’s country of registration is commonly referred to as the “flag of convenience (FOC).” Flagging a ship under a foreign flag for the convenience of the cruise line is nothing new, nor is it rare. The majority of cruise ships today are registered to Panama, Liberia, or the Bahamas. It is important to pay close attention, as many vessels within the same fleet are often registered to different countries. Carnival Corporation for example, flagged their cruise vessel *Celebration* under Panama, and *Destiny* under the Bahamas. Cruise lines often avoid drawing attention to the FOC of by using the term “headquartered in Miami, Florida.” It is important to

understand that while the majority of these cruise lines have their headquarters in Miami, they are not registered in the U.S. Thus, U.S. laws do not apply and passengers are at the mercy of maritime law.

### **Consequences of Flags of Convenience**

The legal rights and remedies of U.S. passengers are greatly inhibited due to flags of convenience, partly because ticket-passenger contracts are written under the registered country's law and can include limited-liability clauses. Under maritime law, such clauses are acceptable and enforced in court. Regardless of litigation locale, the majority of courts consent that for crimes occurring while at sea must be filed in accordance to maritime law.

“Most passengers do not realize that a cruise ticket forms a binding contract between the passenger and the cruise line. These passenger-ticket contracts have been heavily litigated because they contain limited-liability clauses such as forum-selection clauses, choice-of-law provisions, and notice-requirement clauses that limit the rights of passengers” (Porter, 2006, p. 598).

“Forum-selection clauses, provide that any controversy arising out of the cruise contract are to be litigated, if at all, in a certain jurisdiction to the exclusion of all others” (Burke, 2000, p. 699). The most important case to date in regards to forum-selection clauses is *Carnival Cruise Lines v. Shute*. In 1991, the “United State Supreme Court made several rulings that remain the law today” (Porter, 2006, p. 601). The forum-selection clause, as printed in the ticket-passenger contract, mandated that *Shute* bring claim and file suit against Carnival Cruise Lines only in the state of Florida. The Shutes argued that the forum-selection clause “was not the product of negotiation, and enforcement effectively would deprive [them] of their day in court.’ If enforced, the clause violated the Limitation of Vessel Owner’s Liability Act, codified in 46 U.S.C. § app.

183c” (Porter, 2006, p. 602). The court dismissed the case based on precedent set in *Bremen v. Zapata Off-Shore Company* (1972).

In doing so, the court solidified the enforcement of forum-selection clauses on three accounts:

"First, the court observed that because a cruise line carries passengers from many locales, it could be subject to litigation in several different forums, and would thus have a ‘special interest in limiting the for[ums] in which it potentially could be subject to suit.’<sup>n59</sup>

Second, the court noted that such clauses have the practical effect of dispelling any confusion about where suits must be brought and defended, as a result, spare ‘the time and expense of pretrial motions to determine the correct forum and [conserve] judicial resources that otherwise would be devoted to deciding those motions.’ Third, the Court opined that ‘passengers who purchase tickets containing a forum clause... benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the for[ums] in which it may be sued’ (Burke, 2000, p. 700).

The federal courts have adapted a test for measuring the enforceability of forum-selection clauses, known as the two-prong test. In order for forum-selection clauses to be enforceable, the terms of the contract must be reasonably communicated to the passenger and the clause must be fundamentally fair. There are some exceptions in which forum-selection clauses are not enforced. However, for the most part, the rule solidified by *Shute* sustains, and passengers must litigate at the location stated in the ticket contract. *Shute* additionally brought claim that forum-selection clauses were unenforceable on the basis of bad faith (the cruise line was trying to dissuade passengers from pursuing legitimate claims), but the Court ruled that no evidence existed. Mostly in part because Carnival Cruise Line is headquartered in Miami and the majority of their vessels depart from Florida, thus giving them motive to litigate in Florida.

## Arguing Forum-Selection Clauses

“Plaintiffs bear a heavy burden of proof in order to invalidate a forum-selection clause on these grounds, and concerns about cost, distance, disability, or age are not considered tantamount to depriving litigants of their day in court” (Burke, 2000, p. 703). Although most courts uphold forum-selection clauses, there are a few exceptional circumstances in which they rule against them.

“According to the ‘two-prong test’ the passenger’s inability to reject the ticket-passenger contract without sacrificing part or all of their monetary investment is unfair and thus, unenforceable. U.S. courts validate contracts if: (1) they are reasonable; (2) the contract is not fraudulently induced; and (3) the passenger is given the opportunity to reject that contract”(Tomlinson, 2007, p. 140). If the cruise line “sent (a cruise ticket) at a time when (the passenger) could not conceivably have canceled without avoiding a penalty” (Dickerson, 2004, p. 491), the court may rule the contract as invalid.

In order for a contract to be considered fair, a passenger must be able to negotiate or disagree to the terms without consequence. As litigated in *Schaff v. Sun Line Cruise, Inc.* (1998), the plaintiff did not have the opportunity to reject the ticket contract without forfeiting the entire price of the cruise and therefore “the forum-selection clause as it applied to the plaintiff was fundamentally unfair” (Porter, 2006, p. 606). If the passenger receives the contract and still has time to cancel their cruise provided a full refund, then the court will hold the forum-selection clause as enforceable (*Vega-Perez v. Carnival Cruise Lines, Inc.*, 2005). “Some courts have agreed that imposition of a cancellation penalty means that the notice was inadequate rendering the forum selection clause unenforceable while other courts have rejected this concept” (Dickerson, 2004, p. 491).

Another instance where the forum-selection clause was not enforced is in the case of

*Walker v. Carnival Cruise Lines* (2008). Walker purchased a cruise ticket from a travel agent who had assured him (along with the cruise line) that both his room and the cruise ship would be disabled accessible. After boarding, he found that neither his room nor the ship itself was in compliance with the ADA (American Disabilities Act, 1990). The court first dismissed the claim and moved the case from California to Florida, on account of the forum-selection clause. Later, the court decided not to enforce the forum-selection clause for two reasons. “First, the plaintiffs’ physical disabilities and economic constraints were so severe that, in combination, they would preclude plaintiffs from having their day in court. Second, was the fact that the plaintiffs were seeking to vindicate important civil rights”(Dickerson, 2004, p. 492).

### **Choice-of-Law Provisions**

Similar to forum-selection clauses, the ticket-passenger contract dictates which laws will apply if claims are brought against the cruise line. For instance in the case of *Mansoor v. M/V Zaandam* (2006) the court ruled that:

“[T]his contract and its interpretation shall . . . be governed by and construed in accordance with the general maritime law of the United States; to the extent such maritime law is not applicable, it shall be governed by and construed in accordance with the laws of the State of Washington (U.S.A.)”(Porter, 2006, p. 607).

For the most part, maritime law applies to any claims brought against a cruise line for incidents that occur while at sea.

In the absence of relevant maritime law, courts may apply state law, so long as the application of state law “does not frustrate the national interest in having uniformity in admiralty law” (*Doe v. Celebrity Cruises*, 2001; *Erin Lynn Baker v. Carnival Corp.*, 2006).

An instance in which state law replaced the absence of maritime law was in the case of *Jane Doe v. Celebrity Cruises, Zenith Shipping Corp.*, et al. (2004):

“The general rule is that the assault and rape of a plaintiff by the defendant's employee is considered to be outside the scope of employment and, therefore, insufficient to impose vicarious liability on the employer (citations omitted). However, like other states, Florida recognizes an exception for common carriers (citations omitted). For example, (citations omitted), a Florida court held that an ambulance service was vicariously liable for an ambulance attendant's sexual assault of a passenger because the assault occurred en route to the hospital. The court explained that an ‘established exception to the general rule [of nonliability] is where the employer is a common carrier for hire to the public, and the tort or attack is by an employee upon a passenger while the contract for transport is being accomplished (citations omitted).”

Although state laws may favor passengers, cruise lines are aware of the laws that apply in each state and are likely to have well established defenses. Furthermore, cruise lines purposefully select states in their forum-selection clauses that will rule in their benefit. Certain states such as: Idaho, Montana, North Carolina, Alabama, and Georgia do not enforce forum-selection clauses. Therefore, cruise lines will limit passengers to only bring claims in states that enforce such clauses, as well as other clauses in their favor.

### **Notice-Requirement Clauses**

Notice-requirement clauses (also stated in the ticket-passenger contract) limit the time in which passengers can file a claim against the cruise line. “Under maritime law, plaintiffs generally are afforded a three-year statute of limitations for personal-injury claims. However, the Limitation of Vessel Owner's Liability Act (2000) allows cruise lines to establish, through passenger tickets, a one-year statute of limitations” (Porter, 2006, p. 608). “For nonphysical injury claims, cruise lines may impose even shorter time limitation periods such as requiring that written suit be filed within six months instead of the one year allowed for physical injury

lawsuits or requiring that written claims be filed within days as opposed to months after the accident” (Dickerson, 2004, p. 480).

In the case of *Johnson v. Commodore Cruise Lines, Ltd.* (1995) the defendant asserted that the plaintiff failed to notify it of the claim within the constraints stated in the ticket-passenger contract. According to the contract, Johnson would have had to notify Commodore within six months of the alleged rape and would have needed to initiate a suit within one year. Johnson brought the suit one year and seven months later, thus the court found that Johnson’s claims were time-barred.

In contrast, in *Deck v. American Hawaii Cruises, Inc.* (1999), American Hawaii Cruises stated in their ticket contract that “other” claims must be filed within 6 months with a 15-day notice provision.

“The court concluded that such language might not reasonably alert a passenger of the time limitation applied to federal and state statutory rights, as might the use of a more inclusive term, such as ‘any’ instead of ‘other.’<sup>n115</sup> Thus, the court held the limitation to be unenforceable, particularly because [c]ruise passenger tickets are contracts of adhesion and as such, ambiguities in them must be construed against the carrier” (Burke, 2000, p. 709).

Typically, courts enforce notice-requirement clauses, unless the ticket-passenger contract is unclear in language. Or as in the case above, failed to specify which claims are time-barred. In response to these outcomes, cruise lines alter their contracts to avoid the use of ambiguous language. Thus, making it very difficult for the passenger to argue against notice-requirement clauses held within the contract.

## **Negligence**

To prove negligence, a plaintiff must show: (1) that defendant owed plaintiff a duty; (2)

that defendant breached that duty; (3) that this breach was the proximate cause of plaintiff's injury; and (4) that plaintiff suffered damages (*Erin Lynn Baker v. Carnival Corporation, et al.*, 2006).

“Under general maritime law a shipowner owes passengers the duty of exercising reasonable care under the circumstances. *Kermarec v. Compagnie Generale Transatlantique* (1957). However, a shipowner is not an insurer of its passengers' safety. . . . There must be some failure to exercise due care before liability may be imposed. The standard of reasonable care generally requires that a carrier have actual or constructive notice of the risk-creating condition. Where it is alleged, however, that defendant created an unsafe or foreseeably hazardous condition, a plaintiff need not prove notice in order to show negligence. The question becomes whether the defendant created an unsafe or foreseeably hazardous condition” (*Erin Lynn Baker v. Carnival Corporation, et al.*, 2006, p. 5).

Today, most passenger tickets include clauses that disclaim liability for problems that may occur during the cruise. In the U.S., contracts cannot dismiss claims for negligence that is willful and wanton or gross.

As stated in Royal Caribbean's ticket-passenger contract:

12. (c) THE CARRIER HEREBY DISCLAIMS ALL LIABILITY TO THE PASSENGER FOR DAMAGES FOR EMOTIONAL DISTRESS, MENTAL SUFFERING OR PSYCHOLOGICAL INJURY OF ANY KIND UNDER ANY CIRCUMSTANCES, EXCEPT TO THE EXTENT PROHIBITED BY 46 U.S.C. 183C.  
(B). WITHOUT LIMITING THE PRECEDING SENTENCE, IN NO EVENT WILL CARRIER BE LIABLE TO PASSENGER FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES.

Under common law, the clauses held within Royal Caribbean's ticket-passenger contract would not be upheld in court. Fortunately, the Jones Act allows cruise ship employees to hold cruise lines accountable for incidents occurring as a result of the cruise line's negligence. Additionally, passengers are often successful at obtaining damages by filing negligence claims against the cruise line.

However, "as with consumer contracts on dry land, instances of gross negligence and intentional misconduct may not be disclaimed by common carriers" (Dickerson, 2004, p. 494). The challenge becomes providing enough evidence to prove that carriers were negligent in their actions.

According to the Shipping Act, a ship-owner owes to its passengers the duty of a high degree of care. The ruling of *Kermarec v. Compagnie Generale Transatlantique* (1957) applied the rule of reasonable care under the circumstances.

The problem arises however, when laws and regulations have not been established, of which 'reasonable care' can be based upon. For example: a company in the U.S. must abide by labor laws. An employed sixteen-year-old is allowed to work for X amount of hours and requires X amount of breaks. If this employee is injured from working too many hours without a break, a breach has occurred. There was a duty of care owed; that duty was explicit, the employer ignored it, and thus negligent.

Now, consider a sixteen-year-old employee on a cruise ship who abides by the labor laws of foreign flags. Without strict labor laws, the duty of care owed becomes ambiguous. Aforementioned, one must prove there was a breach of contract in order to prove negligence. An employee has a difficult time proving breach existed because the duty of care owed is not explicit. The fewer rules, regulations, and guidelines a company has, the more difficult it becomes to prove the company was negligent.

Furthermore, depending on the claim, ticket-passenger contracts can greatly limit the amount of punitive and compensatory damages one can receive. Thus, even if the passenger proves the alleged negligence, damages received are bound to the constraints of the contract and maritime law.

### **Medical "Malpractice"**

Traditionally, cruise ships were not been held vicariously liable for the medical misdiagnosis and mistreatment of the ship's doctor or medical staff. Presently however, more and more courts have held cruise lines accountable for the misdiagnosis and mistreatment of its' crew and passengers by the shipboard physician.

In the case of *Barbetta v. S.S. Bermuda Star*, the Fifth Circuit stated: ... "When a carrier undertakes to employ a doctor aboard a ship for its passengers' convenience, the carrier has a duty to employ a doctor who is competent and duly qualified. If the carrier breached its duty, it is responsible for its own negligence. If the doctor is negligent in treating a passenger, however, that negligence will not be imputed to the carrier" (Dickerson, 2004, p. 495).

Fortunately, today more courts are holding cruise lines vicariously liable for the intentional torts of their employees. [See *Nadeau v. Costley* (1994)]

As of now, there are no requirements for the training and competency of hired medical personnel aboard cruise ships. In fact, a study conducted by Feuer and Prager, which evaluated both medical facilities and medical staff aboard eleven passenger cruise liners found that "27% of doctors were not certified in advanced cardiac life support; 54% of doctors were not certified in advanced trauma life support, and 45% of doctors were not board certified in their area of practice" (Gionis, 2001, p. 754). The extent of which cruise lines are held vicariously liable is truly determined on a case-by-case basis. As recently as 2005, the Southern District of Florida upheld *Barbetta* (1987) which held that cruise lines are not liable for ship doctor's malpractice"

(*Doonan v. Carnival Corp.*, 2005).

The mistreatment and misdiagnosis of medical physicians aboard cruise ships and the extent to which cruise lines are held accountable will continue to be a problem until something is done to change it. Laws and regulations need to be established to prevent cruise lines from hiring inadequate personnel. Regulations need to be in place to hold cruise lines accountable.

## **Methods**

### *Participants*

Interviews were conducted with female U.S. citizens over the age of 18 who were victims of assault while aboard a cruise ship. Should certain circumstances prevent a victim from interviewing, then someone directly related to the victim had the opportunity to voice their story. To obtain participants, a memo was distributed, to which victims responded at will.

### *Materials*

Interviews were conducted over the phone and participants had the option of being audio recorded. Audio recording was not required to participate in the study. The interviewer conducted interviews in an isolated soundproof area with no distractions. Interviewees had the option of interviewing in any location they felt comfortable. If the interviewee agreed to be audio recorded, a small audio recording device was used. The memo, consent forms, and interview questions were prepared and approved by the University of Florida Institutional Review Board prior to interviewing.

### *Measures*

Interview questions were designed to obtain a general overview of the litigation process relevant to cruise ship crimes. Responses were divided into two categories: criminal and civil.

In regards to criminal, data was measured based on: attempt of conviction, the statutes/case law/regulations that affected conviction, and overall impact of the governing law.

In regards to civil cases, data was first sorted based on what type of lawsuit was filed and the governing law that applied. Cases were reviewed for allegations against the cruise line for negligence regarding a crewmembers' assault. If alleged, outcomes were reviewed to see if the cruise line was held liable for the intentional torts of their employee.

For both civil and criminal cases, if maritime law applied then cases were reviewed for the enforcement of limited-liability clauses. Cases were then reviewed for all other applicable laws specific to maritime law.

All cases were reviewed for risk management procedures, focused on collection of evidence.

### *Procedure*

After informed consent procedures, interview times and dates were arranged between interviewees and principal investigator (Caitlin Burke). Interviews conducted lasted approximately an hour in length and followed the interview questions. Follow up interviews were not necessary for the purpose of this project. Interviews that chose to be recorded were transcribed within 9 days of the interview. Victims were at liberty to discuss what they felt comfortable following the parameters of the interview. Any personal information given during the interview regarding specific details of an assault or case were omitted. Interview results were first compared on a case-by-case basis, and then cross-examined for similarities and differences amongst participants.

### *Results*

Case 1: Victim and alleged assaulter were U.S. citizen passengers. The incident took place in international waters on a foreign flagged vessel. Evidence was not collected. The

victim's room was sealed with security tape and guarded by cruise ship security. Victim's mother was told (by cruise line) "they are not in the business of conducting investigations." Mother brought a lawsuit against the cruise line for negligence and wrongful death. Victim's mother still wants to press charges against the victim's cabin mate but lacks sufficient evidence. Maritime law governed plaintiff's claim against the defendant because the incident happened more than three nautical miles (12 miles) off the coast. Forum-selection, notice-requirement, and choice-of-law clauses were all enforced in court. The court ruled that the cruise line could not be held vicariously liable for the ship doctor's alleged mistreatment. Under maritime law, the Death on the High Seas Act (DOSHA) applied. Recovery under DOSHA is limited to fair compensation for the pecuniary loss sustained by the individuals for whose benefit the action is brought (46 U.S.C.S. § 30303, 1983). Non-pecuniary damages are not recoverable. As, far as outcome is concerned, the enforcement of this law severely limited the damages received. Monetary value was based on her daughter's worth prior to death (worth meaning how much she earned annually). DOSHA does not provide compensation for pain, suffering, grief, or bereavement.

Case 2: Victim was a U.S. citizen. The alleged assaulter was a foreign crewmember employed by the cruise line at the time of the assault. The incident took place in international waters on a foreign flagged vessel. Evidence was not properly collected; evidence personally collected by the victim was turned over to cruise ship security personnel. The victim was later told that the FBI was given all evidence. The crewmember was fired and sent to his home country immediately following the incident, thus victim has not been able to press charges against him until he is found. The victim brought a lawsuit against the cruise line for negligence in regards to several torts. The incident occurred over three nautical miles (12 miles) off the coast, thus, maritime law applied. Forum-selection, notice-requirement, and choice-of-law

clauses were all enforced in court. The case was eventually settled after over a year of trial without judgment. Victim stated: “I needed to redirect my focus on continuing to heal myself and getting better so that I could help people like (victim’s name omitted) and other women out there. You know I just couldn’t deal with (cruise line name omitted), I wasn’t going to get anywhere with them! I was better to get out of that and end it... and then move on from that.” Victim is not at liberty to discuss the amount she received.

Case 3: Victim and assaulter were both U.S. citizens and crewmembers. The incident took place at a U.S. port on a vessel registered to the U.S. Evidence was not collected properly and the victim was refused a rape kit and examination. Victim was “taken to a U.S. hospital where I met the U.S. police department, and they couldn’t figure out who would be in jurisdiction.” The victim was unable to press charges against the alleged crewmember due to lack of evidence. When questioned, the alleged assaulter claimed he never entered the victim’s room. He later changed his story saying that she seduced him and that it was consensual. The FBI claimed that it could not be tried in court, because it was a he-said, she-said case due to lack of evidence. The victim later tried to file a lawsuit against the cruise line and the U.S. hospital. However, her lawyer dropped the case when she refused to sign a gag order.

Case 4: Victims were U.S. citizens. The alleged assaulter was a foreign crewmember employed by the cruise ship at the time of the assault. The incident took place in international waters on a foreign flagged vessel. Assaulter entered 5 different staterooms, sexually assaulting 5 women in the same night. Crewmember was caught by a victim’s cabin mate and was severely beaten by cruise ship security while trying to jump ship. At the next port, Bermuda police came on board to collect evidence and statements. Trial was held in Bermuda as it was the governing jurisdiction and law applied. The court ruled that the assaulter was guilty on all 5 accounts and was sentenced to 9 months in jail for each assault, which he served concurrently before he was

deported back to his home country. Of the five victims, three settled and two brought lawsuits against the cruise line for negligence. Forum-selection, notice-requirement, and choice-of-law clauses were all enforced in court. Because punitive damages were not available under the Death on the High Seas Act, the court reasoned that the policy of maintaining uniformity in maritime law dictated a finding that punitive damages were not available under general maritime law. Since allowing punitive damages under state law would have antagonized the policy of uniformity, and maritime law set the standards for liability in the passengers' personal injury actions, the court held that punitive damages were unavailable to the passengers. The jury found the cruise line was not liable at all to one of the victims, and liable to the other in an amount (\$20,000). The court found that the cruise line was not negligent to one of the victims because she was the first of the five assaulted, thus the cruise line insinuated there was never a breach of contract. The other victim was the last of the five victimized and thus there was a breach in the duty of care owed. She was granted \$20,000 for her past pain and suffering and nothing for her future pain and suffering.

All victims interviewed were asked at some point to sign a gag order and refused. These women are rare, most victims of sexual assault settle with the cruise line, and per the gag order commit to never talking about the assault or the recompense.

### *Conclusions*

“A not uncommon problem is the allegation of sexual assault on passengers by crewmembers, particularly cabin, table or bar stewards. Members must have rigorous policies prohibiting socializing between crew and passengers. Any crewmember, found in a passenger area where he should not be, should be subject to dismissal for the first offense. A cruise operator must take reasonable care to investigate a crewmember's background before hiring him. There is at present a split of authority between US courts

as to whether cruise operators are strictly liable for assaults by crew or whether operators are only liable if they are negligent in hiring or supervising crew members. The majority of the circuits have decided that operators are only liable for negligence. (A Guide to P&I Cover, The Standard, 2007, Testimony by Ross Klein on June 19, 2008).

Court case outcomes would have been different had assaults been properly investigated and U.S. laws applied. Failure to collect evidence and the improper handling of evidence is a significant problem in regards to cruise ship crime. If authority personnel aboard are properly trained and complete investigations in a timely, thorough manner, victims would have a better chance of conviction. Cabins are routinely cleaned twice a day, using products that are chlorine bleach based to prevent outbreaks of Noroviruses. The use of such products destroys pertinent evidence during the delay between attack and subsequent port.

Cruise lines need to have risk management procedures for handling sexual assault cases. Instead of firing a crewmember and sending them to their home country, they need to be questioned, trialed, and convicted. Paper trails do not exist without conviction, making it easy for crewmembers to gain employment under a different cruise line immediately following termination. Serial rapists should not have the ability to move from company to company and habitually assault women. In one case, for example, “it was subsequently learned that the crewmember had previously worked for a different cruise line that had ‘do not rehire’ marked on his personnel file. But he passed background checks and was hired by the current cruise line. It seems the cruise line also failed to notice that the name under which the man had applied for employment was different than the name on his passport” (Ross Klein, 2008).

*“My greatest fear is that sexual offenders figure out  
that they can continuously go on cruise ships and  
take advantage of the lax regulations.” –*

Anonymous, 2009

Passengers who have been victims of cruise related incidents are often unaware that their rights have been severely limited through the ticket-passenger contract. It is disheartening that individuals interviewed later found out they unknowingly entered a contract limiting or forfeiting their rights. "He (the attorney) had us bring the ticket book (victim's friend's name and I) and he opened it to the back, and he's the one who read to us that for any theft... or anything really, that happens while out to sea, would have to be trialed in Florida, as a civil or criminal case" (Anonymous, 2009). It is "fundamentally unfair to the unsuspecting passenger who does not realize the clauses exist until the ticket has already been purchased" (Porter, 2006, p. 616).

*"In very small print, but yea... it's in there."*

-Anonymous, 2009

"Currently, U.S. federal law enforcement agencies, including the FBI, Navy, and Coast Guard, must obtain permission from a cruise ship's flag country before beginning a criminal investigation; U.S. agents cannot even board a cruise ship that may be the scene of a crime committed by or against an American citizen if the ship is located beyond U.S. waters" (Tomlinson, 2007, p. 151).

The Cruise Line International Association claims that cruise ships are inherently secure because ships offer a controlled environment with limited access. "However, there has been some startling statistics between 2003 and 2005: 24 people were reported missing and 178 people reported a claim against sexual assault. Additionally, the FBI has opened investigations on 305 cruise-based crimes, from 2000-2005" (Porter, 2006, p.597). CLIA compares these statistics to U.S. crime rates and harps on being the safest form of transportation and inherently secure. They fail however, to examine the context to which these statistics apply.

Ross Klein, a professor at Memorial University of Newfoundland, conducted a study

based on the total number of passengers, total number of passenger nights, and the likelihood that someone will be sexually assaulted during that time. Klein testified at a congressional hearing on March 27, 2007. During his testimony he stated:

“I conclude that one has a 50% greater chance of sexual assault on a Royal Caribbean International ship as compared to the US generally and that the pattern on Royal Caribbean International is consistent with that of other mass market cruise lines operating ships of similar size and style... a rate that is 48.065 sexual assaults per 100,000... The U.S. rate of sexual assaults... is 32.2 per 100,000.”

### **Future Progress**

On the bright side, cruise ship crime is finally starting to receive media attention and is slowly beginning to create awareness. The highly publicized disappearance of 26-year-old George Allen Smith IV on his honeymoon aboard the *Brilliance of the Sea* in July, 2005 was the final straw that pushed cruise related crime to the forefront. Jennifer, (George's wife) settled with the cruise line the same day his parents brought a lawsuit against the cruise line for deliberately portraying the incident as an accident, intentionally destroying evidence, and failing to not only properly investigate the crime, but failure to accurately report details to the FBI.

Congressman Christopher Shays not only pushed but also chaired the first two congressional hearings regarding cruise ship crime. On March 27, 2007 during the congressional hearing “Crimes Against Americans on Cruise Ships” Ross Klein's testimony explained the high propensity for sexual assault aboard cruise ships. Fortunately, progress was made in April, 2007 when the industry voluntarily signed an agreement with the FBI and the Coast Guard to report all incidents against Americans. “The only apparent weakness of this approach is that it does not define what constitutes a crime. This is important given the industry's propensity for manipulating definitions” (Ross Klein, 2008). Furthermore, because the agreement was a

voluntary compliance, cruise lines cannot be penalized for failure to report crimes. Taking into account cruise lines were already required to report crimes against U.S. citizens prior to the agreement; it is unlikely this voluntary compliance will motivate them to radically change their behaviors and accurately portray cruise ship crime.

Although the industry has been firmly resistant to change and continuously denies that a problem exists, their actions acknowledge otherwise. Royal Caribbean Cruise Line (RCCL) recently installed peepholes in all passenger stateroom doors of their entire fleet. Whether Royal Caribbean's action was motivated by pressure from an increasing public awareness or their personal desire to keep passengers safe is unknown. However, it is important to note that RCCL did not install deadbolts or top locks along with the peepholes. Thus, crewmembers possessing keycards are no less prohibited from making an attack than they were before. The industry needs to implement significant change in order to insure the safety of its passengers.

Presently, Representative Doris Matsui of the 5th district of California introduced a bill, The Cruise Vessel Security and Safety Act of 2009 on March 12, 2009 (S. 588, 2009). This bill has been introduced, in some form every year since 2004, and has never been voted on. The bill was prepared in conjunction with suggestions made by the International Cruise Victims (ICV) association during previous congressional hearings. Areas addressed in the bill are: improving ship safety, providing transparency in reporting, improving crime scene response, improving training procedures, enforcing safety and environmental standards, and amending the Death on the High Seas Act. The amendments of this bill are of the utmost importance and needs to be passed.

Even if passed, the cruise industry has a long way to go to insuring safety at a high degree of care. Passengers at sea need to be as equally protected as they are on land. U.S. citizens should not be allowed to unknowingly enter contracts forfeiting the same rights and remedies

customary to common law.

### **Moving in the Right Direction**

Only recently has the court mandated that cruise lines adhere to the guidelines established by the Americans with Disabilities Act (1990). The U.S. Supreme Court ruling was based on a class action lawsuit pursuant to Title III of the ADA. It was decided that foreign flagged vessels must comply with the public accommodations requirements established by the ADA. For the most part, the U.S. Supreme Court adheres to maritime law, removing itself from interference. It is doubtful this law would have passed had it not been such a severe case of injustice against civil rights. Hopefully, through awareness and perseverance, the cruise industry will feel the pressure to change for the benefit of everyone. Cruise lines have failed to prevent and protect passengers from devastating experiences. Taking a cruise can be the experience and memory of a lifetime. It is imperative that this is the case for everyone, and not brush aside those who have suffered. The victims interviewed were individuals taking a cruise for the same reason as most others, to have a fun and enjoyable experience. Instead, they suffered an unthinkable tragedy. Clearly, if it happened to those interviewed it could happen to anyone.

*“Passengers check their brain at the door, thinking  
it’s a perfectly safe environment, but it’s not...” -*

*Anonymous, 2009*

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