

Footnotes to “Litigating Cruise Line Cases in the 21st Century”
[Winter 2007 issue of The Gavel]

²Cruise Lines International Association.

<http://www.cruising.org/CruiseNews/news.cfm?NID=196> .

³Judge Thomas Dickerson. *The Cruise Passenger’s Rights and Remedies 2003*, a paper prepared for a CLE program, *Leisure Travel-Cruise Ships and Resorts*, sponsored by the Association of the Bar of the City of New York, Jan. 29, 2004.

⁴See *Hughes v. Carnival Cruise Lines, Inc.*, 2003 WL 1740460, at *1 (S.D.N.Y. Mar. 31, 2003) (one-year time limitation period enforced); *Angel v. Royal Caribbean Cruises, Ltd.*, 2002 WL 31553524, at *1, *5 (S.D. Fla. Oct. 22, 2002) (passenger fell overboard; one-year time limitation enforced); *Konikoff v. Princess Cruises, Inc.*, 2001 U.S. Dist. LEXIS 14034, at *6 (D.V.I. Aug. 13, 2001) (passenger sustained injury exiting taxi during shore excursion; claim dismissed as untimely); *Stone v. Norwegian Cruise Line*, 2001 WL 877580, at *1-*2 (E.D. Pa. May 15, 2001) (slip and fall in bathroom; time limitations period enforced); *Wall v. Mikeralph Travel, Inc.*, 2003 WL 178770, at *1 (Conn. Super. Ct. Jan. 6, 2003) (time limitations period enforced; “The fact that the ticket-contract, while never reaching the [passenger], resided with the travel agency...employed to purchase the ticket, inclines one to conclude that the opportunity to discover these restrictions existed for a significant period of time”); *Tateosian v. Celebrity Cruise Servs., Ltd.*, 768 A.2d 1248, 1252 (R.I. 2001) (food poisoning; one year time limitation period enforced); *Reeser v. NCL Bahamas Ltd.*, Civil Action No. 05-2344, 2005 U.S. Dist. LEXIS 17159 (E.D. Pa. August 17, 2005) (injured cruise lines passengers’ claims dismissed as time barred for failing to file suit within one year despite cruise line’s failure to inform plaintiff’s lawyer of such provision while communicating with the lawyer during limitations period); *Levick v. Steiner Transocean Limited*, 2005 U.S. Dist. LEXIS 14770 (S.D. Fla. July 13, 2005) (one year passenger ticket limitation to file suit applied to claims against independent contractor who ran the spa on the ship, and filing suit in state court did not toll the time period to file suit in federal court).

⁵*Ward v. Cross Sound Ferry*, 273 F.3d 520, 526 (2d Cir. 2001) (slip and fall on gangway; one-year time limitations clause not enforced; passenger receiving ticket two minutes before boarding did not have proper notice of time limitations clause).

⁶*Gibbs v. Carnival Cruise Lines*, 314 F.3d 125 (3d Cir. 2002) (minor burned feet on hot deck surface; one-year time limitations period tolled for minor until after parent began to serve as guardian ad litem after filing of lawsuit).

⁷ *Dillon v. Admiral Cruises, Inc.*, 960 F.2d 743, 746 (8th Cir. 1992) (trip and fall in ship’s lounge; cruise line may be estopped from relying on one-year time limitation).

⁸See *Long v. Holland Am. Line Westours*, 26 P.3d 430, 436 (Alaska 2001).

⁹*Rams v. Royal Caribbean Cruises, Inc.*, 17 F.3d 11, 13 (1st Cir. 1994) (one-year time limitation does not apply to accidents during shore excursions).

¹⁰*Berg v. Royal Caribbean Cruises*, 810-12 (D.N.J. 1994) (passenger misled into not filing lawsuit within one year).

¹¹*Insogna v. Princess Cruises, Inc.*, N.Y.L.J., June 10, 2002, at 37; *Cronin v. Cunard Line*, 672 N.Y.S. 2d 864, 864-65 (N.Y. App. Div. 1998) (deceptive port charges; six-month time limitation in which to commence lawsuit enforced).

¹²*Barton v. Princess Cruises, Inc.*, No. B123107, 2002 WL 31677178, at *7 (Cal. App. Nov. 27, 2002) (deceptive port charges; clause in passenger ticket requiring the filing of written notice of claims within fifteen days and the filing of a lawsuit within ninety days may be unenforceable).

¹³*Johnson v. Commodore Cruise Line Ltd.*, 897 F. Supp. 740, 744-45 (S.D.N.Y. 1995) (passenger raped by crew member; claim for negligent infliction of emotional distress governed by Mississippi's three-year statute of limitations; passenger ticket time limitations of fifteen days to file claim and six months to sue for nonphysical claims void).

¹⁴See Important Notices to Guests; Important Terms and Conditions of Contract, available at http://www.carnival.com/CMS/Static_Templates/ticket_contract.aspx (last visited January 23, 2006).

¹⁵United States District Court for the Western District of Texas, El Paso Division. 2005 U.S. Dist. LEXIS 18235.

¹⁶United States District Court for the Southern District of New York, 2005 U.S. Dist. LEXIS 6811.

¹⁷*Fisk v. Royal Caribbean Cruises, Ltd.*, 141 Idaho 290 (2005); *Hellman v. Royal Caribbean International*, 2005 U.S. Dist. LEXIS 14177.

¹⁸See *Carnival Cruise, Inc. v. Shute*, 499 U.S. 585 (1991)

¹⁹ See *id.*; *Cismaru v. Radisson Seven Seas Cruises, Inc.*, No. Civ. A. 07-00-00100-CV, 2001 WL 6546, at *1 (Tex. App. Jan. 2, 2001); *Stobaugh v. Norwegian Cruise Lines, Ltd.*, 5 S.W. 3d 232, 235 (Tex. App. 1999).

²⁰See *Ward v. Cross Sound Ferry*, 273 F.3d 520, 525 (2d Cir. 2001).

²¹*Casavant v. Norwegian Cruise Line, Ltd.*, 63 Mass. App. Ct. 785 (2005).

²²See *Long v. Holland Am. Line Westours, Inc.*, 26 P.3d 430 (Alaska 2001) (passenger fell during land tour of museum; maritime law does not govern land tour; choice of law clause in tour contract stating that “except when maritime law applied, the contract would be construed according to Washington state law” was rejected and the law of Alaska applied).

²³*Milanovich v. Costa Crociere, SPA*, 954 F.2d 763, 768 (D.C. Cir. 1992).

²⁴See *Klinghoffer v. S.N.C. Achille Lauro*, 795 F. Supp. 112, 115-16 (S.D.N.Y. 1992).

²⁵See *Benson v. Norwegian Cruise Line Ltd.*, 859 So.2d 1213 (Fla. Ct. App. 2003) (physician was subject to personal jurisdiction in Florida under Florida’s long-arm statute for wrongful death action because cruise ship was within Florida territorial boundaries); *Pota v. Holtz*, 852 So.2d 379, 381 (Fla. Ct. App. 2003) (pregnant passenger complaining of stomach cramps misdiagnosed as having bladder infection goes into contractions and bleeding and cruise line denies request for airlift to hospital in Grand Cayman Island; passenger taken to hospital only after ship docks, gives birth and baby dies a few hours later; jurisdiction over ship’s doctor onboard a ship docked in Florida port); *Rana v. Flynn*, 823 So.2d 302, 303 (Fla. Ct. App. 2002) (passenger suffered heart attack and was treated by ship’s doctor as cruise ship sailed into Florida waters and docked in the port of Miami; jurisdiction over ship’s doctor found).

²⁶*Dickerson, Thomas A., The Cruise Passenger’s Dilemma: 21st Century Ships, Nineteenth Century Rights.* 28 Tul. Mar. L.J. 447 at 482.

²⁷See *Falcone v. Mediterranean Shipping Co.*, Civil Action No. 01-3918, 2002 U.S. Dist. LEXIS 11392, at *5 (E.D. Pa. Apr. 3, 2002) (passenger suffered physical injury aboard cruise ship; no jurisdiction based upon sales by local travel agent “with no authority to confirm reservations”); *Kauffman v. Ocean Spirit Shipping, Ltd.*, 1993 AMC 177, 180 (Mich. 1990) (dissemination of cruise brochures through travel agents and advertising in scuba magazine insufficient to support long arm jurisdiction); *Duffy v. Grand Circle Travel, Inc.*, 756 N.Y.S. 2d 176, 177 (N.Y. App. Div. 2003) (passenger sustained injury in France; no jurisdiction over Massachusetts cruise company); *Sanderman v. Costa Cruises, Inc.*, 55 Pa. D & C. 4th 328, 333 (Pa. C.P. 2001) (consumer paid Florida travel agent \$21,775 for cruise on Costa Romantica that failed to remit any money to cruise line; no jurisdiction over cruise line not doing business in Pennsylvania).

²⁸*Id.*

²⁹Kornberg v. Carnival Cruise Lines, Inc., 741 F.2d 1332, 1334 (11th Cir. 1984).

³⁰See Royal Ins. Co. Of Am. v. Southwest Marine, 194 F.3d 1009, 1016 (9th Cir. 1999).

³¹See Washington Metropolitan Area Transit Authority v. Reading, 674 A.2d 44 (Md.App. 1996); Bellocchio v. Italia Flotte Riunite Cosulich Line, 84 F.2d 975 (2d Cir. 1936). Tullis v. Fidelity and Casualty Co. of New York, 397 F.2d 22 (5th Cir. 1968); Marshall v. Westfal-Larsen & Co., 259 F.2d 575 (9th Cir. 1958); Goode v. Oceanic Steam Nav. Co., 251 F. 556 (2d Cir. 1918); see also, White v. United States of America 53 F.3d 43 (4th Cir. 1995), Florida Fuels, Inc. v. Citgo Petroleum Corp. 6 F.3d 330 (5th Cir. 1993) and Romero Reyes v. Marine Enterprises, Inc. 494 F.2d 866 (1974); Russell v. City Ice & Fuel Co., 539 F.2d 1318 (4th Cir. 1976); Kermarec v. Compagnie Generale Trans-Atlantic, 358 U.S. 625, 79 s.Ct 406 (1959); Marshall v. Westfal-Larsen Co., 259 F.2d 575 (9th Cir. 1958); Meyers v. M/V Eugenio C, 842 F. 2d 815 (5th Cir. 1988); Urian v. Milstead, 473 F.2d 948 (8th Cir. 1973).

³²See Liverpool & Great W. Steam Co. v. Phoenix Ins., 129 U.S. 397, 441 (1889).

³³741 F.2d 1332, 1985 AMC 826 (11th Cir. 1984).

³⁴Id. at 1335, 1985 AMC at 828.

³⁵See Henderson v. Carnival Corp., 125 F. Supp. 2d 1375, 1377 (S.D. Fla. 2000) (passenger injured on catamaran trip while on excursion from cruise; notwithstanding Carnival logo on catamaran and crew member shirts, cruise ship disclaimer of ownership or control of catamaran company enforced); Mashburn v. Royal Caribbean Cruises, Ltd., 55 F. Supp. 2d 1367, 1370 (S.D. Fla. 1999) (day trip to Coco Cay Island owned by cruise line; passengers rented Sea-Doo, signed waiver and were injured in accident; no negligence found); Dubret v. Holland Am. Line Westours, Inc., 25 F. Supp. 2d 1151, 1153 (W.D. Wash. 1998) (bus accident during shore excursion; disclaimer of liability enforced).

³⁶Hernandez v. Holiday Inn, N.Y.L.J., Mar. 23, 1993, at 21.

³⁷Winter v. I.C. Holidays, Inc., N.Y.L.J., Jan. 9, 1992, at 23 (holding that tour operator has duty to select responsible independent contractors).

³⁸See Berzonzine v. Maui Classic Charters, 1995 AMC 2628 (D. Haw. 1995) (350-pound handicapped passenger broke ankle because of inattention and lack of assistance by crew; misrepresentations in brochure that cruises were “suitable for handicapped individuals”; \$42,500 in special damages awarded); Sharpe v. W. Indian Co., 118 F. Supp. 2d 646, 652 (D.V.I. 2000) (passenger left cruise ship to board waiting tour bus and was struck by failing railing; time limitations in cruise contract enforced as against cruise ship and clause that stated, “the exclusions or limitations of liability of carrier set forth in the

provisions of this contract shall also apply to and be for the benefit of agents, independent contractors, concessionaires and suppliers of carrier as well as owners and operators of all shoreside properties at which the vessel may call” was unenforceable against dock operators and local truck company responsible for accident).

³⁹Act of June 5, 1920, ch. 250, 41 Stat. 988 (codified at 46 U.S.C. app. §688 (2000)).

⁴⁰Death on the High Seas Act, ch.111, 41 Stat. 537 (codified as amended at 46 U.S.C. app. §§761-767).

⁴¹*Moyer v. Klosters Rederi*, 645 F. Supp. 620, 1987 (S.D. Fla. 1986).

⁴²*Kunreuther v. Outboard Marine Corp.*, 757 F. Supp. 633, (E.D. Pa 1991).

⁴³*Howard v. Crystal Cruises Inc.*, 41 F.3d 527, (9th Cir. 1994).

⁴⁴46 App. U.S.C.A. §762.

⁴⁵*Dooley v. Korean Airlines Co., Ltd.*, 524 U.S. 116 (1998).

⁴⁶*In Re Korean Airlines Disaster of Sept. 1, 1983*, 117 F.3d 1477 (D.C. Circuit 1997), *aff’d*, 524 U.S. 116 (1998).

⁴⁷*Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970).

⁴⁸41 F.3d 527, 1995 A.M.C. 305 (9th Cir. 1994).

⁴⁹*Id.* at 529.

⁵⁰210 F.3d 565, 2000 A.M.C. 1521 (5th Cir. 2000).

⁵¹*Motts*, 210 F.3d at 569.

⁵²*Id.* at 569-70 (quoting *Smith*, 684 F.2d at 1111).

⁵³*Id.* at 570.

⁵⁴*Id.* at 571.

⁵⁵*Motts*, 210 F.3d at 571-72 (footnote omitted).

⁵⁶516 U.S. 199, 206-07, (1996).

⁵⁷Id. at 199.

⁵⁸Id. at 215-216.

⁵⁹In re Horizon Cruises Litigation, 101 F. Supp. 2d 204, 213 (S.D.N.Y. 2000)(quoting Gravatt v. City of New York, 53 F. Supp. 2d 388, 427-29 (S.D.N.Y. 1999)).

⁶⁰In re Plaquemine Towing Corp., 190 F. Supp. 2d 889, 892-94 (M.D. La. 2002).

⁶¹Id. at 893.

⁶²Barbetta v. S/S Bermuda Star, 848 F.2d 1364, 1371 (5th Cir. 1988); The Great Northern, 251 F. 826, 830-32 (9th Cir. 1918); Di Bonaventure v. Home Lines, Inc., 536 F. Supp. 100, 103-04 (E.D. Penn. 1982); Cimini v. Italia Crociere Int'l S.P.A., 1981 AMC 2674, 2677 (S.D.N.Y. 1981); Amdur v. Zim Israel Navigation Co., 310 F.Supp. 1033, 1042-43 (S.D.N.Y. 1969).

⁶³Barbetta v. S/S Bermuda Star, 848 F.2d 1364, 1371 (5th Cir. 1988).

⁶⁴See Barbetta, 848 F.2d at 1372; Cummiskey v. Chandris, 895 F.2d 107, 108 (2d Cir. 1990); Nanz v. Costa Cruises, Inc., (S.D. Fla. 1991), aff'd 932 F.2d 977 (11th Cir. 1992); Jane Doe v. Celebrity Cruises, Inc., 145 F. Supp. 2d 1337, 13454-46 (S.D. Fla. 2001); Gillmor v. Caribbean Cruise Line, Ltd., 789 F. Supp. 488, 491 (D.P.R. 1992); Hilliard v. Kloster Cruise, Ltd., 1991 AMC 314, 316-17 (E.D. Va. 1990); Mascolo v. Costa Crociere, 726 F. Supp. 1285, 1286 (S.D. Fla. 1989).

⁶⁵Id.

⁶⁶Carlisle v. Carnival Corp., 864 So.2d 1 (Fla. DCA 2003).

⁶⁷Mack v. Royal Caribbean Cruises, Ltd., 838 N.E. 2d 80 (Ill. App. 2005).

⁶⁸2005 U.S. Dist. LEXIS 31609.

⁶⁹188 F. Supp. 219, 221 (N.D. Cal. 1959).

⁷⁰See Online Docket, Case No. SC04-393, available at <http://www.floridasupremecourt.org/> (Last visited January 30, 2006).

⁷¹Id. There is a dispute as to the precise nature of Elizabeth's injuries. See Petitioner's Initial Brief at 4 n.3, Carlisle v. Carnival Corp., 864 So.2d 1 (Fla. DCA 2003) (SC04-393).

⁷²Carlisle, 864 So.2d at 7.

⁷³Id. at 8.

⁷⁴Carlisle, 864 So.2d at 5. See *Huntley v. Carnival Corp.*, 307 F. Supp. 2d 1372, 1374 n.5 (S.D. Fla. 2004)(stating the Eleventh Circuit has not addressed this issue).

⁷⁵*Mack v. Royal Caribbean Cruises, Ltd.*, 838 N.E. 2d 80 (Ill. App. 2005).

⁷⁶*Huntley v. Carnival Corp.*, 307 F. Supp. 2d 1372, 1373 (S.D. Fla. 2004).

⁷⁷*Mack v. Royal Caribbean Cruises, Ltd.*, 838 N.E. 2d 80 (Ill. App. 2005).

⁷⁸2005 U.S. Dist. LEXIS 31609

⁷⁹Id.