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For  
The United States House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Coast Guard and Maritime Transportation  
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by The Florida Bar and by the National Board of Trial Advocacy

Thank you Congressman Cummings for inviting me to speak before the Subcommittee on Coast Guard and Maritime Transportation. I am honored.

For 27 years, I have practiced maritime law in the cruise ship capital of the world, Miami, Florida. For the first 17 years of my career, I represented the major cruise lines, as well as railroads, insurance companies, and big corporations. For the last 10 years, I have been on the other side. I now represent passengers and crew members in their claims for personal injuries and sexual assaults against cruise lines.

I am Board Certified as a Civil Trial Lawyer by both The Florida Bar and the National Board of Trial Advocacy. I have been honored to serve as the President of the Dade County Bar Association (the largest voluntary bar association in the state of Florida) and am an active lecturer in fields related to personal injury and maritime law. I have been recognized in the fields of personal injury and maritime law by Florida Trend Magazine, Super Lawyers, and The South Florida Legal Guide. A copy of my C.V. is attached hereto as **Exhibit 1**.

The passengers I represent are people from all across our country. My clients are young and old, rich and poor. They all have one thing in common. They were severely injured either by the negligence of the cruise lines or by a sexual act of one of the cruise lines' unsupervised, under trained, and overworked personnel.

This paper will briefly discuss some of the issues regarding the safety and security of passengers on board cruise ships the overwhelming percentage of whom are your constituents. (The cruise lines rely on and market to Americans. According to the cruise line supported trade association, Cruise Lines International Association, in 2005 11,180,000 people took cruises, almost 90% of whom (9,671,000) were from North America). These issues arise when these passengers, your constituents, seek justice in our courts.

## **THE ISSUES**

Most claims brought by a passenger or crewmember against a cruise line are governed by **maritime law**. **The passenger or crew member seeking justice against the cruise lines is met with more obstacles than in any other area of the law.** This is true because of the power wielded by the cruise lines over the accident or crime scene, over the evidence, and over the witnesses. This is also true because of strange twists of some federal legislation (namely the Death on the High Seas Act) (DOHSA) and some recent court opinions some of which run counter to maritime concepts which have been established for hundreds of years.

## **THE HYPOTHETICAL**

The obstacles meeting the passengers and crew members can be best illustrated in a **hypothetical**. My comments and descriptions of real life cases are in brackets. Let us imagine this:

**RoyalCarn** Cruise Line schedules a cruise of one of its ships to sail from a port right outside of Rome, Italy, to Ft. Lauderdale, Florida. [This would be a typical trans-Atlantic cruise which occurs when the ships are repositioned between Europe and the U.S. depending upon the season]. The ship, the Fantasy of the Seas, is a typical late model cruise ship carrying approximately 3500 passengers and 1400 crewmembers. [This is a typical size of the later model ships. The earlier models have capacities of approximately 2000 passengers and 800 crewmembers. Those crewmembers can be divided into two departments or areas: marine department which encompasses the navigational crew, engineers, and deck personnel. The second is the hotel department. This includes the waiters, assistant waiters, maitre d's, housekeeping staff, front desk staff (pursers) and everyone associated with the restaurant, bar, and club business. **All of these crewmembers are responsible for the safety and security of the 3500 passengers**].

**Lisa Smith** is a passenger onboard the Fantasy of the Seas. Lisa is a 35 year old school teacher from Des Moines, Iowa. She is on the cruise with her husband of 10 years, Bill, a computer programmer. Lisa is petite and pretty. This is the first time this

couple has been outside the United States. They wanted to go on a cruise because they wanted to see Europe and feel safe and secure.

RoyalCarn markets this concept of safety and security through its advertising and on-line literature. [When Carnival advertises itself as “the fun ships” in its literature it says, for example, “There’s nothing as carefree and fun-filled as a cruise vacation”. Carnival also says **“A Carnival cruise is more than just a vacation. It’s an attitude. It’s a spirit to be yourself fun that no other cruise line can offer. From the inviting décor to the friendly staff, you will feel the difference right away”**]

[Royal Caribbean advertises on-line and in its literature about its “Gold Anchor service”. In their literature they say:

Amazing ports of call, exciting adventures and spectacular ships are certainly great reasons to cruise, but the one thing that keeps people coming back again and again to Royal Caribbean is our friendly and personal service. In fact, the feedback we hear all the time is **“It just feels like family”**. **A server who remembers your daughter’s teddy bears’s name. The bartender who remembers the extra olive. The housekeeper who reminds you of your dinner reservation time. The Adventure Ocean youth staff member who becomes a pen pal with your kids. The Royal Caribbean family – there’s nothing like it.**

(Emphasis added). Attached hereto as composite **Exhibit 2** is a copy of a sample of the Carnival and Royal Caribbean literature].

Bill and Lisa are onboard the Fantasy of the Seas to celebrate their 10<sup>th</sup> wedding anniversary. Even though RoyalCarn serves wine, beer and liquor in its many restaurants, at the pool bars, in the discos and nightclubs, and just about anywhere on the ship, Bill and Lisa are not much for drinking. However, they celebrate their anniversary with a bottle of champagne in the restaurant. Lisa drinks too much. She gets up from the table and is extremely tipsy. In fact, she is slurring her words. She says she is not feeling well, excuses herself and goes back to the room leaving Bill at the table.

The head waiter, Soliman, observes this. He is from India and is about 26 years old. He is married but has been away from his wife and family for over four months. Royalcarn used a hiring agent in India- not a cruise line employee- to find this head

waiter and to “verify” his background. While onboard, Soliman has been working 7 days a week, morning, noon, and night for a total of about 14 hours a day.

When Soliman sees Lisa go back to her room, he meets up with her in a hallway. He realizes that she is not able to walk steadily and that she is drunk. Soliman escorts Lisa back to her room. When she opens the door to the cabin, Soliman pulls off Lisa’s clothes and rapes her. He leaves the cabin shortly after that. Lisa later wakes up but does not remember exactly what happened. There are no witnesses, but she knows she was raped. [This scenario with different names actually happened onboard a cruise ship. **The head waiter still works for the cruise line we are advised**].

**Maria Casa** is 43 years old and is a single mother of two children, 5 and 7. She is recently divorced. **Maria’s mother, Beatriz**, feels sorry for Maria and in order to get her out of her blues from the divorce pays for the two of them to go on this cruise. Beatriz knows that Maria is very attractive and has her whole life ahead of her.

On the third night out, when the ship is at sea, Maria goes by herself to the casino. There, she attracts the attention of an officer onboard the ship. The officer tries to chat with Maria who is not interested. The officer pushes forward with his advances.

Finally the officer invites Maria out onto a landing outside the casino to look at the ocean. Maria agrees. She goes out to the landing. The officer again makes advances on Maria, this time trying to kiss her. Maria strikes back by slapping him in the face. The officer is from Italy and does not take kindly to American women asserting themselves. He strikes her back, but harder. This draws blood from Maria’s lip and nose, blood which drips onto the floor of the landing. Maria tries to strike back and again blows are exchanged and in the heat of the fight the officer manages to stand his ground but pushes Maria off the landing and into the ocean. Maria can swim but not well. She is no match for four foot seas in the middle of the Atlantic. After being beaten a couple of times in the head and bleeding and struggling in four foot seas, she lives only a few minutes before she collapses from exhaustion and drowns. [This is loosely based on the case of Annette Mizener of Waukesha, Wisconsin. She went missing off of the Carnival Pride on December 4, 2004. Her purse and a glass of champagne were found on the landing; the security video camera for the landing was mysteriously disabled or somehow

not working on that night. This and numerous other disappearances are described at [www.cruisebruisse.com](http://www.cruisebruisse.com) and at [www.cruisejunkie.com](http://www.cruisejunkie.com)].

There is a security camera trained on the landing. This camera, as all cameras onboard, is “monitored” in a central security room. In that room, there are numerous monitors with different views of the ship.

A security officer, **Tony Calderon from the Philippines**, is supposed to monitor those cameras. Unfortunately, Mr. Calderon was sleeping at the time. Mr. Calderon has been on board the ship for more than 5 months. A month before, Mr. Calderon had broken up a scuffle between crewmembers and broke his hand. The ships’ doctor diagnosed this as a sprain and told him to live with it. Mr. Calderon has chronic pain in his hand. He wanted to live with it because he knew that if he complained and demanded to be sent off the ship, even if the cruise line got him a doctor, they would fire him and send him home. Mr. Calderon cannot have this because he sends home money from his salary for his wife, 5 children, mother and uncle who live with his family back home.

Because of the chronic pain in his hand, Mr. Calderon does not sleep through the night. He takes pain medication. Because of the lack of sleep and the pain medication, he finds himself napping at various times during his shift. Unfortunately, he was napping when this incident took place and was unable to break up the scuffle on the landing.

The next day, Maria’s mother, Beatriz, reports that Maria is missing. Scratches are found on the officer who escorted Maria out to the landing. Blood is found on the landing. The blood, however, is cleaned up by cleaners at 6:30 a.m. the next day. In fact, the entire landing is cleaned up. There had been a wine glass and purse on the landing. That was cleaned and taken away. [The cleansing of the crime scene is taken from the George Smith honeymooner disappearance case which happened on a Royal Caribbean ship off the coast of Turkey on July 5, 2005].

Before any outside authorities are notified, the cruise line notifies its claims department in Miami of these two incidents. The claims department in turn notifies its P&I Club (maritime insurance company) in London. London and Miami authorize a maritime defense lawyer out of Miami to fly to the next port to interview witnesses. [This is standard procedure now for the cruise lines and did occur in the George smith case as well].

Beatriz, Maria Casa's 58 year old mother, is beside herself when Maria is not found the next day. No one is telling her any details. This ship's security officer, in charge of investigations, has told her nothing. The security officer tells her he has law enforcement experience. In fact, the officer, Charles Cheshire, is a retired police officer from a small town in northern England. [This is now typical of the head of security on ships; All of the other security personnel typically are from the Philippines].

After a day of worrying and not being given details, Beatriz starts to have pains in her chest and suffers from indigestion. This goes on for approximately 2 days. Maria goes to the ship's doctor as the ship is still out at sea. Beatriz feels comfortable with this doctor because the cruise lines calls these people "the ship's doctor" and requires that they wear the white officer's uniform. Beatriz felt comfortable also because the cruise line literature mentioned that they have a doctor onboard for medical care; and the cruise line did not say anywhere that the cruise experience is reserved only for the young and athletic. [In fact, most cruise line passengers are American and are middle aged or older. Shipboard medical personnel are rarely U.S. trained. They have limited experience and resources. The cruise lines maintain that they are not responsible for the medical errors of the doctors].

Beatriz complains of the symptoms. The doctor says that she has an upset stomach and gives her Prilosec. Beatriz goes back to her cabin. The very next day, Beatriz suffers from a massive heart attack and suffers oxygen deprivation to her brain. As a result of this, Beatriz ends up in a wheelchair for the rest of her life.

The Fantasy of the Seas on its way to Ft. Lauderdale makes a stop in Nassau, the Bahamas. The excursions to destinations on these ports of call, according to Royalcarn, are a part of the cruise experience. It markets these excursions in all of its literature, on-line and in television and radio advertising.

Also, Royalcarn represents in its literature that it "monitors" and "continuously reviews" its excursions. [This is actually the wording used by Norwegian Cruise Line in some of its literature. This is meant as a reason why the passenger should sign up for the excursion on the ship as opposed to getting off the ship in a port and getting an excursion there. The excursions are sold on board at an excursion desk. The passenger pays for the excursion through his or her onboard account. He settles the onboard account at the end

of the cruise with his credit card. In fact, though, the cruise line typically takes 35% of the price of the excursion and lets some local company with little or no supervision or “monitoring”—and no training from the cruise line-- run the excursion].

**Fred and Ethel Mertz**, two 72 year old retirees from New York City, take the beach excursion. The cruise line hires a boat to take passengers off the ship to the island. A driver of the excursion takes the couple to a remote beach where they are robbed at gunpoint and beaten. Both Fred and Ethel suffer severe injuries. [This is based on numerous cases. What the lines do not tell Fred and Ethel is that the line does not supervise these excursions and hardly screens the operators].

While leaving Nassau, the ship develops a fire in the stern. The fire rages through one deck of the ship. The ship calls for a life boat drill. The life boats are manned by crew members.

Life boat Number 3 on the port side is manned by the Croatian **First Officer onboard, Frederick Baklava**. [Fire is the worst kind of shipboard disaster; they have occurred on cruise ships in the past].

The only problem is that Baklava is nowhere to be found. A year before, Baklava was climbing down a ladder which his superior officer said was to be utilized to enter fast rescue boats for security exercises around the port. Unbeknownst to Baklava, however, the ladder was broken. While climbing down this fixed vertical ladder, Baklava fell backward into the boat he was entering. He severely hurt his back. Baklava had problems ever since. The cruise line sent him to doctors. Some doctors said that Baklava had a herniated disc. Others said that he did not. The cruise line chose to believe the doctors who said there was no herniated disc. Even if the disc was only bulging, all agreed that Baklava did not meet the physical requirements of a crewmember, the ability to lift up to 50 pounds. However, the cruise line sent him back onboard the ship. [This paragraph is based on a real life case].

Baklava came upon the fire. When he went to lift a fire extinguisher, a pain shot through his back and he had to drop the fire extinguisher. As a result of the fire in that part of the ship, 3 people died.

Baklava then headed to his life boat. He got into the life boat with another crewmember that was assisting him. The other crewmember was not trained on a

lifeboat, however. In fact, just one month before, that same lifeboat was put out of service after the crew complained to the officer in charge of the drill that the handle on the throttle had come off. At that same time, the crew complained that some of the others of the crew were not trained to operate the lifting mechanism for the boat. Nothing changed.

On the day of this fire, the other crewmember hit a lever near the cockpit thinking that it needed to be locked. In fact, the lever was to release the boat and should have been locked if it was operating correctly. In any event, no one should ever touch the lever when the boat is dangling 90 feet in the air by its cables. The lifeboat, with Baklava, the other crewmember, and 4 other passengers, fell 90 feet from the side of the ship into the water below. The fiberglass lifeboat was severely damaged in this high impact crash. All people onboard were severely injured.

[On September 7, 2004, a lifeboat on the Royal Caribbean ship Empress of the Seas during a lifeboat drill fell from the side of the ship, approximately 60 to 90 feet, with 8 crewmembers onboard. The 30 foot fiberglass boat broke apart on impact with the water. At least five of the men were severely injured. A similar incident had happened approximately one year before. The other facts in this paragraph, with the exception of the fire, actually happened].

That was the second time in as many years that that happened. However, no crewmember was willing to blow the whistle on the cruise line for not properly training people and not properly maintaining the equipment for these lifeboats. They knew that if they reported this to anyone, the crewmember would be fired and sent back to his native country, never to be hired again.

### **THE LAW ALLOWS THE CRUISE LINES TO ESCAPE JUSTICE.**

Here are the issues:

#### **A. Lisa Smith – RAPE CASE**

The problem in this type of case, as in all cases against cruise lines, is that cruise lines control the crime scene or the accident scene, the evidence, and the witnesses. Typically, the cruise line has sanitized or covered up the crime scene and shuttled witnesses back to their home countries. Few employees have ever been convicted of

criminal sexual assault. That is because if there is any fear of true prosecution, in other words, if there is any physical evidence, against the individual, the individual is immediately flown home to the third world country over which the FBI has no jurisdiction.

To make sure that the cruise line is covered for any potential civil action, the cruise line flies an attorney to the ship immediately after the rape occurs. These are insurance defense attorneys. They are there not to help the victim and not to assist the FBI, but to protect the cruise line's civil liability. In other words, an adversarial position is taken immediately and the victim of the rape is either on board the ship, controlled by the cruise line, or put off in an unfamiliar, foreign port.

The cruise lines have a long history, continuing to this day, of failing to properly disclose the incidents of sexual assaults, sexual batteries and similar incidents. 1999 was the year in which the light started to shine on the infection. In that year, in a sexual assault case brought by a passenger, a judge in Miami ordered that Carnival Cruise Line reveal statistics about sexual assaults. At first, Carnival disclosed approximately 62 incidents. In a later update, Carnival revealed 103.

Also that year, Royal Caribbean commissioned a report from Kay Krohne of the Krohne Connection, a well known consultant to corporations on sexual harassment and assault issues. In a 16 page report, Krohne found, among other things, that **“improper activity occurs frequently aboard ships but goes unreported and/or unpunished”**.

Specific recommendations were made to the cruise line. The cruise line admits even recently in sworn testimony that only some of those recommendations were implemented. In fact, the current director of Fleet Employee Relations and Performance for Royal Caribbean International testified in a deposition on July 13, 2006 that even though she is the person in charge of all of the sexual harassment and assault training of the personnel on all of the Royal Caribbean ships, she did not know that in the past there were studies about these problems.

The cruise lines use “hiring partners”, people in third world countries to bring prospective crew members to them for a fee per crewmember to do the hiring and screening. The cruise lines get involved only in the “training and monitoring”. Part of the training is by video and part by a talk given by their supervisor. In the manual which

describes the training which is supposed to be given, it is suggested that the cruise line **review the definitions of sexual assault and battery and other policies for only 10 minutes**. Attached hereto as **Exhibit 3** is a copy of pages of 15-17 of the New Employee Orientation of Royal Caribbean Cruise Line.

The other problem is in determining the incidence of sexual assault, battery, and other incidents. It seems that every time the cruise lines report these incidents, they arrive at a different number. The cruise line has a data base of its sexual assaults, rapes, and batteries. See, e.g., page 34 of the deposition of Pamela Powel (Manager of Guest Claims who has worked for Royal Caribbean for 18 years) taken on February 7, 2007, a copy of which is attached hereto as **Exhibit 4**.

**The cruise lines however never produce their databases. They produce some attorney generated document which is based on some narrow, self-chosen definition of “sexual assault”, “sexual battery”, or other phrase.**

When reporting to the Congressional subcommittee organized by Congressman Shays, Royal Caribbean provided a list of sexual assaults or batteries onboard its ships for a 3 year period of 2003 through 2005. A copy of the list is attached hereto as **Exhibit 5**. The number was 66. However, in sworn answers to interrogatories recently filed in Miami, Florida, Royal Caribbean said for a 3 year period from November 2001 to November 2004, Royal Caribbean reported that the number was 17. A copy of the sworn interrogatory answers is attached hereto as **Exhibit 6**.

## **B. Maria Casa – ASSAULT – WRONGFUL DEATH**

Maria Casa drowned in international waters. The first challenge is to prove liability on the cruise line. The crime scene had been “cleaned up”. Thus, the physical evidence has been all but destroyed. The problem with any cruise ship is that the scene of the crime of the accident (a) moves constantly and (b) is under the complete control of the cruise line.

Why is the ship under their complete control? Because the cruise lines flag, that is, register, their vessels in foreign countries. Virtually all cruise ships are foreign flagged. That is to take advantage of lax regulation and little or no taxation in the flag state. These flag states typically are Panama and the Bahamas. The registration fees of

these cruise lines and ships are a crucial part of the Panamanian and Bahamian economies. Further, the cruise lines add tens of millions of dollars of revenue each year to the economy of the Bahamas by bringing American tourists to their shores. These countries are not about to “crack down” on crime on ships, preserving accident scenes, investigating accidents or any other aspect of the necessities of civil criminal justice.

Maria’s family, however, has an even larger hurdle; the Death on the High Seas Act (DOHSA), 46 USC § 761 *et seq.* **DOHSA allows recovery generally only for economic damages.** That is, neither Maria’s mother, Beatriz, nor any of her children or family will be able to recover for their pain and suffering from the loss of their mother. The only pain and suffering allowed is the pre-death pain and suffering. Here, Maria died within minutes. Further, as in many of these cases, there is no proof that Maria had lived for any period of time. Because Maria did not generate income, her family could not recover anything as a result of her death.

### **C. Tony Calderon- Philippino Seaman – DENIAL OF MEDICAL CARE AND RIGHT TO SUE**

Tony Calderon may also be out of luck. Tony found that he is subject to a collective bargaining agreement, the Philippino version of which is referred to as the POEA. This is an agreement which he had never signed. However, under this agreement this cruise line has chosen to enforce a foreign arbitration clause. That is a clause which erases Tony’s rights to sue for denial of his medical care under the Jones Act and other maritime doctrines. Under this clause, the seaman is forced to arbitrate and to do so in this case in the Philippines.

From the very beginning of American civilization, courts have protected seaman whom the courts have described as “unprotected and in need of counsel; because they are thoughtless and require indulgence; because they are credulous and complying; and are easily overreached. They are emphatically the wards of admiralty.” In the 1920’s, Congress adopted the Jones Act, formerly 46 USC § 688 and codified on October 6, 2006 as 46 USC §3010. The Jones Act codified the right of seaman which had been recognized for centuries. The Jones Act has been described as follows:

The protection of seaman, who, as a class, are poor, friendless and improvident, from the hazards of illness and abandonment while ill in foreign ports; the inducement to masters and owners to protect the safety and health of seaman while in the service; and maintenance of a merchant marine for commercial service in maritime defense of the nation by inducing the men to accept employment in an arduous and perilous service. Admiralty courts have been liberal in interpreting this duty for the benefit and protection of seaman who are its wards.

*Vaughan v. Atkinson*, 369 US 527, 531-532 (1962), citing to *Harden v. Gordon*, 141 F. Cas. 480, 485 (C.C.D. ME 1823).

Yet, contrary to language in the Jones Act and language in the Federal Arbitration Act, 9 USC § 1 *et seq.*, the Eleventh Circuit Court of Appeals recently has held that foreign seaman, specifically Philipinos in regard to their POEA, are prohibited from filing suit in the United States to enforce their rights. *Bautista v. Star Cruises*, 396 F.3d 1289 (11<sup>th</sup> Cir. 2005).

The *Bautista* case arose out of the **Norwegian Cruise Line boiler blow up at the Port of Miami**. In this case the engine room employees were burned to death and others suffered severe and permanent burn injuries.

One of the Jones Act remedies available to the seaman if enforced in the U.S. courts is the employer/cruise line's failure to provide prompt and adequate medical care to the seaman. Without this method of enforcement of these rights, the cruise line is free to fire and send back the seamen to his home country rather than provide this care. The civil justice system in third world countries such as the Philippines affords neither justice nor full compensation to these seaman.

#### **D. Beatriz Casa – MEDICAL MALPRACTICE**

Maria's mother, Beatriz, also may be out of luck. She clearly is the victim of medical malpractice. She was onboard the ship and went to the only available physician, the ship's physician. The ship advertised that it had a physician. The older cruisers liked the sound of that in the literature. The ship's physician misdiagnosed her heart attack as indigestion. If he had promptly diagnosed the heart condition he could have administered aspirin, nitroglycerin, and oxygen. He also would have monitored Beatriz in the

infirmity if he had the instrumentation to do that. If he did not, he could have recommended that Beatriz get off at the nearest port or take an air ambulance to the nearest medical center. Instead, the ship's physician misled Beatriz into a false sense of security, misdiagnosed her ailment and caused her severe and permanent injury. In this area, the cases seem to afford more protection for the cruise lines than for the safety and security of the 11 million people in 2005 who took cruises.

In *Carnival Corp. v. Carlisle*, \_\_\_ So.2d \_\_\_ (Fla. 2007), the Supreme Court of Florida held that the cruise line should not be held vicariously liable for the negligent acts of its physicians because the majority of federal maritime cases held that. In *Carlilse*, the ship's physician assured the parents of 14 year old Elizabeth Carlilse that her abdominal pains were not appendicitis. In fact, the minor child had appendicitis, and because of the delay in treatment, the appendix ruptured and **the minor was rendered sterile**. This decision is in concert with a recent Federal decision, *Barbara Walsh v. NCL (Bahamas) Ltd.*, 2006 US District Court lexis 92996 (S.D. Fla. 2006).

#### **E. Fred and Ethel Mertz- THEIR EXCURSION CASE**

Fred and Ethel if the cruise lines have their way also will be out of luck. The cruise lines market these excursions on TV and radio, in newspapers on their websites. The excursions are a part of the cruise experience. Plus, the cruise lines make various representations in its literature about the excursions, and how you the passenger should choose this excursion marketed by the line as the one which is safe and reliable. Further, the passenger pays for the excursion on the ship.

Yet, when contacted about a claim or even a complaint in regard to an excursion, the cruise lines contend that the excursion company is an independent contractor. Courts have been reluctant to hold that the cruise lines and the excursions are partners although the relationship does appear to be that in some instances. Liability can depend on the representations, expressed or implied, by the line about the excursion and how the line screens it and monitors it.

## **F. Frederick Baklava – DENIAL OF JONES ACT CLAIM AND DENIAL OF MEDICAL CARE**

Baklava, through the new foreign arbitration clause in his contract, has been denied his right to assert a Jones Act claim. He has also been denied medical care.

Even though the life boat fell a year ago in a similar mishap but involving no injuries, Baklava did not report this. He would have been fired and sent back to his country. Also, he dares not to protest his medical care of the doctors. Now that his rights to bring a lawsuit and enforce his Jones Act rights in the United States have been erased, the cruise line is free to deny his medical care and send him back to his home country with impunity.

Why should you care about Tony Calderon, the security officer from the Philippines or about Frederick Baklava, the first officer from Croatia? Because they affect the safety and security of the passengers onboard their ships. Here are the facts:

- Approximately 90% of the passengers on cruise vessels for the U.S. based cruise lines are U.S. citizens.
- The cruise ship is isolated body out in the ocean where the passengers cannot get off and go back home easily.
- The passengers rely on the cruise line to take care of their food preparation, their health, and their security.
- The passengers have an interest in having crew who are healthy and comfortable with reporting their health problems.
- Recently, there have been a rash of extremely contagious cases of Norovirus and other infectious diseases on cruise ships. Passengers and crew have gotten extremely sick for days, and there have been some deaths and aggravation of health issues as a result of these outbreaks. These outbreaks always involve the crew as well as the passengers.
- Crew members are responsible for the safety and security issues onboard. If the crew are working in a sick or injured condition, then they cannot fulfill their duties. Further outbreaks of disease from the sick crewmember handling food may easily result.

- There have been fires in recent years resulting in injuries and potential disasters on cruise ships. Fire is the most treacherous and potentially disastrous condition on any ship. It is crucial that all crew members be in top shape in order to deal with a fire emergency.
- Crew members are responsible for the lifeboat drills and for supervising passengers getting into lifeboats if there is a fire or other event which requires abandoning ship. Crewmembers are also responsible for fire patrol and for putting out fires. For that reason, in their job description, all of them have to be able to lift up to 50 pounds. Crew have to be physically fit and able to carry people who are injured, to carry and use a fire extinguisher to assist passengers some of whom may need to be carried onto life boats. The crew members subject to this requirement include the hotel staff, that is, waiters, busboys and dishwashers. If a crewmember is sick or injured because they have not reported an illness or injury (out of fear of retaliation) these operations can be compromised and the safety and security of the passengers can be compromised.

### **RECOMMENDED SOLUTIONS**

**Congress should consider amending the Death on the High Seas Act so that victims of a cruise ship's negligence are treated the same as victims of commercial aviation accidents.** Lead by the Pennsylvania delegation during the 106<sup>th</sup> Congress, legislation was enacted to broaden the remedy available under the Death on the High Seas Act (DOHSA) to families who lost a loved one in commercial aviation accidents. Inspired by the families of 16 high school students from Montoursville, PA, who were left without a remedy when TWA 800 crashed into the Atlantic Ocean, Congress amended DOHSA to include compensation for loss of care, comfort, and companionship. Now is the time to establish parity for all victims who die at sea. If you lose a loved one at sea, it shouldn't matter whether that loved one was a passenger on a plane or on a boat, your family should be able to bring a cause of action if the death was due to negligence. For maritime accidents, the DOHSA only permits recovery for pecuniary losses, such as lost wages and

burial costs. The statute fails to recognize real losses, like the death of a child or a stay-at-home mother, even in cases involving gross negligence or willful misconduct.

Senior citizens are particularly vulnerable to a cruise ship's negligence. Cruise lines market to older Americans as a safe way to travel. If a senior citizen is assaulted in her cabin and left to die, the only remedy a spouse has under the DOHSA is burial expenses. Congress should amend the DOHSA so that all victims who die in international waters have an adequate remedy.

**Congress should consider requiring the cruise lines to preserve crime scene evidence.** All too often, cruise line management orders the cleaning crew or maintenance staff to scrub a potential crime scene clean. Before any official report or investigation can occur, blood, clothing and other physical and trace evidence is destroyed. The cruise industry should be required to preserve crime scene and potential crime scene evidence until appropriate authorities can investigate the matter.

**Congress should consider creating a central data base to collect information about crime on cruise ships.** Incredibly, cruise lines are not required to report crimes occurring on board to any authority. While the FBI has jurisdiction over crimes occurring in international waters, they are often not notified. And the public has no way of knowing of a particular cruise line's safety record. Since a cruise ship is a self-contained entity, cruise lines can provide a false sense of security to their passengers. The data collected should be available to the public. A knowledgeable consumer can make better choices about how to spend his or her vacation dollars.

**Congress should consider providing whistleblower protection for cruise line employees who report crimes.** While cruise lines cater primarily to U.S. passengers, their workers are predominately from third world countries. These workers are sent home at a moment's notice if they are even perceived as not following management's orders. They know that if they even question management's practices, they will be on the first plane back to the Philippines or other country of origin. Any cruise ship employee who reports a crime should have protection to ensure his or her job security.

**Congress should consider amending the Federal Arbitration Act to make it even clearer that the Act does not apply to actions brought by seaman under the Jones Act or for other maritime remedies.** This would be in the conformity with the original intent both of the Federal Arbitration Act and the Jones Act.