

In the wake of the Concordia tragedy, much has been discussed regarding the impact of the Athens Convention upon the rights of some 4,200 passengers and crew to recover damages from the cruise line. The Athens Convention is an international treaty that applies to passenger ships. However, ships calling on US ports have been exempted by Congress. In the relevant provision of the Convention, a carrier's liability for injuries and deaths of passengers can be limited unless proven that the actions of the cruise line were intentional and/or reckless. Thus, whether the conduct of the Concordia captain or the cruise line was intentional or reckless will certainly be a disputed issue of fact in any litigation arising from the event.

A group of Concordia passengers filed litigation in state court in Miami-Dade County, Florida against Costa Cruise Lines and its parent company, Carnival Corp. (The filing in state court suggests an intentional deviation from any provision contained in the passengers' ticket, because had the Concordia called upon a US port, claims could be filed in the United States District Court for the Southern District of Florida).

Allegations in the action center upon the plaintiffs' attempts to circumvent the application of the Convention's limitation clauses by characterising the captain's actions in *intentionally deviating* from the ship's charted course, and later abandoning the ship during the evacuation as reckless and intentional wrongful acts. (*Geoffrey Scimone, et. al. v. Carnival Cruise Lines, Inc.*, Circuit Court Miami Dade County, Florida, Case No. 12-3496 CA 4).

However, it is unlikely the merits of a dispute over the meaning of whether the cruise lines' actions were intentional and/or reckless will ever be fully adjudicated in any US court. Indeed, the cruise lines will likely defeat plaintiffs' choice of forum given the binding forum selection and choice of law provisions contained in the passenger ticket.

Since Concordia's planned itinerary did not call on any US ports, the provision in the Costa passenger tickets requires *all claims* for personal injury and wrongful death to be adjudicated in the courts of Genoa, Italy, under Italian law. This forum selection and choice of law provision in the ticket are routinely enforced when litigation has been brought in US courts. Indeed, forum selection clauses are presumed valid unless the passenger can show fraud or that enforcement of the clauses would be unreasonable and unjust. (*Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S. Ct. 1522 (1991)). This remains true even

Concordia sparked congressional hearings



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A US legal view

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when the underlying merits of the claim suggest the plaintiff is financially unable to maintain an action in a foreign court or deprives plaintiff of a right to trial by jury. (*Horberg v. Kerzner Intern. Hotels, Ltd.*, 744 F. Supp. 1284, 1294 (S.D. Fla. 2007)). The gravity and high profile of the Concordia disaster may give pause to a court in the US deciding whether to retain jurisdiction over the plaintiffs' claims, but the law is well settled on this issue and we consider it unlikely a judge will deviate from established precedent. The only real inquest of merits into the events that occurred on Concordia taking place on US soil is likely to be limited to the congressional review and hearings.

Prompted by a push from Congressman Mica, the House Transportation and Infrastructure Committee held the first of several hearings to examine safety issues highlighted by the tragedy. The hearings focused on whether cruise lines were fulfilling the requirements of the SOLAS Convention and on reports concerning the Concordia captain's early departure from the ship in the midst of the evacuation that prompted additional questions concerning the overall training, qualifications and certifications of all seafaring employees.

Suffice it to say that amidst a horrible tragedy that claimed the lives of 17 people and presumes the death of at least 15 others, the complexities of the legal disputes coupled with the inquisition by governmental entities, including those abroad, will extend the memory of the Concordia event for many years to come. ●

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