

2014

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Recommended Citation

Leticia M. Diaz , Barry H. Dubner & Nicole McKee *Crimes and Medical Care on Board Cruise Ships: Do the Statistics Fit the Crimes?*, 27 Loy. Consumer L. Rev. 40 (2014).

Available at: <http://lawcommons.luc.edu/lclr/vol27/iss1/3>

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CRIMES AND MEDICAL CARE ON BOARD CRUISE SHIPS: DO THE STATISTICS FIT THE CRIMES?

Leticia M. Diaz, Barry Hart Dubner, and Nicole McKee±

Abstract

In 2009, your authors published an article entitled *An Examination of the Evolution of Crimes at Sea and the Emergence of the Many Legal Regimes in Their Wake*.¹ The article discussed various international problems that can occur on cruise ships at sea.² The cruise ship industry was, and still is, largely self-regulated—which in turn leads to serious problems arising from the neglect of passenger concerns.³ At that time, we disclosed that there were many international regulations addressing some areas, but not all.⁴

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¹ Leticia M. Diaz & Barry Hart Dubner, *An Examination of the Evolution of Crimes at Sea and the Emergence of the Many Legal Regimes in Their Wake*, 34 N.C. J. INT'L L. & COM. REG. 521 (2009) [hereinafter *An Examination of the Evolution of Crimes*].

² *Id.* at 526. Topics discussed included: inadequate medical care, piracy attacks, human trafficking, and refugee problems.

³ *See generally id.*

⁴ *See generally id.* For example, Coast Guard regulations and the International Convention for the Safety of the Life at Sea (SOLAS) ensure that ships docked in the United States ports meet the standard set for safe navigation and the design of the vessel. However, neither the Coast Guard nor SOLAS cover the regulation of medical care services on the ships. *Id.* at 556–60.

The present day poses different problems than in the past. The intention of this article is to explore crimes that affect passengers on cruise ships from outside the ship; crimes committed on board the ship; the lack of universal medical standards; worrisome medical malpractice concerns; as well as, to offer suggestions for the benefit of both the passengers and the cruise lines. As this article will show, the cruise ship industry has not been forthcoming when making all available statistics public.⁵ Specifically, there has been a lack of reporting from the industry of certain criminal activity and illness outbreaks on board the ships. By failing to make this information available to the public, consumers cannot make informed decisions about whether or not to set sail on a particular cruise line.⁶

I. INTRODUCTION

Passengers planning for their cruise usually have a plethora of concerns including roaming charges, the quality of Broadway-style entertainment onboard, foreign currency exchanges, wardrobe choices for the Captain's Ball, as well as the best bars and establishments to visit when in port—but, notably absent is the concern of crimes and their personal safety while on board. Crimes committed on board cruise ships are generally the same as crimes committed on land, with the exception of different actors.⁷ On board, sexual assaults occur

⁵ *Cruise Industry Oversight: Recent Incidents Show Need for Stronger Focus on Consumer Protection: Hearing Before the S. Comm. on Commerce, Science, and Transportation*, 113th Cong. 4 (2013) (testimony of Ross A. Klein, Ph.D.), available at <http://www.cruisejunkie.com/Senate2013.pdf> [hereinafter Testimony of Klein].

⁶ Jim Walker, *Cruise Industry Launches False Crime Statistics Campaign*, CRUISELAWNEWS (Feb. 25, 2014), <http://www.cruiselawnews.com/tags/statistics/>. On the positive side, one of the authors just spent sixteen days on board a top-end cruise ship (Oceania Lines, Regatta) and did not have any problems at all. There was not a hint of safety issues and the ship was very well managed. Of course, the ship had a guest to staff ratio of 1.56 to 1 with a guest capacity of (double occupancy) being 684 persons and the staff size equaling 400 persons. The country of registry for the ship was the Marshall Islands. The length of the ship was only 593.7 feet with a beam of 83.5 feet and the cruising speed was 18 knots. This will become important when discussing piracy toward cruise ships. See *infra* notes 41–47.

⁷ *Cruise Ship Crime, Consumers Have Incomplete Access to Cruise Crime Data*, Staff Rep. Prepared For: Sen. John D. Rockefeller IV Chairman, S. Comm. on Commerce, Sci., and Transp., July 24, 2013, 1–2 available at

between passengers themselves, as well as between passengers and crewmembers.⁸ In addition, crewmembers steal from passengers; people go overboard (intentionally or not); and there are outbreaks of illnesses due to contamination.⁹ The inherent nature of crimes committed on a ship make it more difficult for trained security officials to gather and preserve evidence than it would be for a crime committed on land.¹⁰

A concerning issue is the cruise line industry's production of larger ships every year, the result of which is a larger area in need of protection.¹¹ As a result, there should be adequate security and preventive measures put into place, such as: security cameras on each deck; ample security personnel on board to answer calls for help; security personnel to gather and preserve evidence; and security personnel who will make the safety of the passengers priority over the reputation of their employer, the cruise line.¹²

One of the questions this article seeks to answer is: why are the cruise lines not providing all incident reports of crimes allegedly committed on board cruise ships? The obvious answer is that the industry wishes to protect its image of being a fun place to vacation. In some cases, reporting accurate statistics would damage the cruise line's reputation. In other cases, the statistics may give potential passengers the lack of confidence that the cruise ship industry is doing all that they can to protect passengers rather than themselves. As for the remaining cases, for example, upscale cruise ships may not have much to report, considering their ships may be safer due to being well managed and having clientele that are probably less prone to breaking the law. Various studies have been conducted and will be presented in this article, so the reader can judge whether the cruise industry seriously considers various areas of concern. The reader will observe

<http://www.lipcon.com/files/cruise-ship-crime-consumers-have-incomplete-access-to-cruise-crime-data.pdf>. [hereinafter *Cruise Ship Crime*].

⁸ Gerson & Schwartz, *Disney Cruise Line Crew Member Arrested on Charges of Molestation, Civil Law Suit Likely Next*, GERSON & SCHWARTZ (Apr. 29, 2014), <http://news.injuryattorneyfla.com/category/sexual-crimesassault>.

⁹ See generally *The Cruise Ship Bruising Report*, CRUISE BRUISE, <http://www.cruisebrui.se.com/> (last visited June 3, 2014).

¹⁰ *Cruise Ship Crime*, *supra* note 7, at 1–2. See RAINN, *infra* note 136.

¹¹ Jad Mouawad, *Too Big To Sail?*, N.Y. TIMES, Oct. 28, 2013, B1, http://www.nytimes.com/2013/10/28/business/too-big-to-sail-cruise-ships-face-scrutiny.html?_r=0 [hereinafter *Too Big to Sail*].

¹² See generally Testimony of Klein, *supra* note 5.

that some of the studies show the disclosure of this type of information has not occurred with the frequency that would allow passengers to decide whether to cruise or not. The reader will observe that some cruise lines use “flags of convenience” in order to avoid: paying higher taxes, safety regulations, labor laws, or having a State(s) inquire too deeply into their operations.¹³ The article will look at the jurisdictional problems regarding which State has jurisdiction over a particular criminal act.¹⁴ If a cruise line uses “flags of convenience,” criminal jurisdiction can still be worked out by bilateral agreements where the government of passengers’ origin has leverage to compel such jurisdiction.¹⁵

A brief history of the cruise industry is needed as background in order to see the problems now occurring due to the vast size of the cruise ships, as well as, the lack of proper security on board.¹⁶ The modern day cruise industry’s tremendous growth started taking off forty years ago.¹⁷ In 1965, Princess Cruises was the first modern day cruise line to center its attention on the leisure travel market.¹⁸ As these cruise companies grew, so too did the number of North

¹³ “Flag of convenience” is a term coined to describe when a cruise ship company registers their ship with a country that has an open registry. H. Edwin Anderson, III, *The Nationality of Ships and Flags of Convenience: Economics, Politics, and Alternatives*, 21 TUL. MAR. L.J. 139, 156 (1996). The purpose of this type of registry is for the company to take advantage of relaxed health/liability laws and the flagged country’s inability to neither enforce their own governmental regulations nor punish violations due to their lack of power and administrative means. *Id.* at 158.

¹⁴ To have jurisdiction means the flag state’s legislature, enforcement agencies/officials, or courts may exercise exclusive power over the ship and the issues arising from the ship. SONN, *infra* note 183, at 157.

¹⁵ Article 92 and 110 of the Law of the Sea Convention acknowledge an exception to the flag state’s exclusive jurisdiction over the vessel—a bilateral treaty. *Id.* A bilateral treaty will allow another state to exert jurisdiction over a flag state’s vessel. *Id.* For instance, if the United States joined in a bilateral treaty with another country, any foreign flag ship “calling at deepwater port facilities outside U.S. territorial waters are subject to U.S. jurisdiction.” *Id.*

¹⁶ Ross A. Klein, Ph.D., *Getting a Grip on Cruise Ship Pollution*, FRIENDS OF THE EARTH, 2 (Dec. 1, 2009), <http://libcloud.s3.amazonaws.com/93/69/c/499/Getting-a-grip-on-cruise-ship-pollution.pdf> [hereinafter Friends of the Earth]. Dr. Klein has written excellent studies on the cruise ship industry that your authors have referenced throughout this article.

¹⁷ *Id.* at 12.

¹⁸ *Id.*

American passengers.¹⁹ Between 1970 and 1980, passenger numbers grew from 600,000 to 1.4 million.²⁰ This number “increased five-fold in the twenty-year period from 1980 to 2000: from 1.4 million close to seven million.”²¹ Passenger numbers flourished another 79 percent to 13.2 million between 2000 and 2008.²²

More than 26,000 berths were added by 10 new ships built in 2008—on an annual basis this adds more than one million passengers. Nine new ships will be delivered in 2009, contributing more than 23,000 berths; 12 more ships with 33,000 berths will be delivered in 2010; and in 2011 at least 7 new ships with 16,000 berths are planned. Taken together, new construction over four years (2008 through 2011) will add 38 new ships with more than 100,000 berths (on an annual basis, approximately five million additional passengers).²³

This staggering statistic gives some perspective on the rate at which ships were increasing in size.²⁴ In fact, originally, cruise ships could only hold 750–1000 passengers; however, by the 1990s, companies such as Carnival, Royal Caribbean, and Cunard were building larger ships that could carry more than 3,300 passengers.²⁵ In 2006, these ships were soon overshadowed by Royal Caribbean’s 160,000-ton *Freedom of the Seas*, which held over 5,700 passengers and crewmembers.²⁶ According to a New York Times article, in 2012, the North American Cruise Line members of the Cruise Line International Association (CLIA) sailed with a combined total of approximately 17 million passengers, compared to the 7 million passengers in 2000.²⁷ This is troubling because the increasing size of

¹⁹ Examples of the growing cruise companies include Norwegian Caribbean Line and Caribbean Cruise Lines, which was launched in 1972. *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Friends of the Earth, *supra* note 16, at 12.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Too Big To Sail*, *supra* note 11. The nonprofit CLIA is the largest cruise industry trade association in the world. *About CLIA*, CLIA, <http://www.cruising.org/regulatory/about-clia> (last visited June 15, 2014). CLIA North America membership includes twenty-six cruise lines. *Id.* The CLIA advocates for its cruise line members’ interests before policy makers. *Id.* CLIA also

the ships will make it impossible to have proper safety standards for passengers or provide adequate policing.²⁸ Increasing ship size without solving concomitant safety problems, ahead of time, is a formula for disaster. The cruise ship industry operates without much enforcement or oversight by outside agencies.²⁹ Thus, safety procedures and consumer protections are needed for the protections of both the consumer and the industry.³⁰

For example, today's largest ship is the Royal Caribbean's *Allure of the Seas*.³¹ It has "2,706 rooms, 16 decks, 22 restaurants, 20 bars, and 10 hot tubs, as well as a shopping mall, a casino, a water park, half-mile track, a zip line, mini golf and Broadway-style live shows."³² It can carry almost 6,300 passengers, along with 2,394 crewmembers.³³ It is to reason therefore, that the larger ships have larger problems and fewer options in case of emergencies.³⁴ Such problems include evacuation regulations, which are needed in the age of megaships.³⁵ According to the regulations provided in Safety of Life at Sea (SOLAS), all passengers must report to their assigned muster station and must have the ability to evacuate via lifeboats within thirty minutes of the initial alarm.³⁶ Furthermore, the lifeboats will not be able to accommodate the amount of people who will need to be evacuated in case of an emergency.³⁷ For instance, the two

"participates in the regulatory and policy development process while supporting measures that foster a safe, secure and healthy cruise ship environment." *Welcome, CLIA*, <http://www.cruising.org/regulatory/industry-welcome> (last visited June 15, 2014).

²⁸ *Too Big to Sail*, *supra* note 11. As it is now, criminal problems on board ship are not reported in a manner that provides full disclosure so that the public can decide whether to cruise or not. *See Cruise Ship Crime*, *supra* note 7, at 6–7.

²⁹ *Too Big to Sail*, *supra* note 11.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 2.

³³ *Id.*

³⁴ *Id.*

³⁵ *Too Big to Sail*, *supra* note 11, at 2.

³⁶ *Id.*

³⁷ *Id.* The main purpose of the International Convention for the Safety of Life at Sea of 1974 (SOLAS) is to set a minimum standard for the "construction, equipment and operation of ships, compatible with their safety." *Id.* The flag State is responsible for making sure their ship is in compliance with the SOLAS requirements. *International Convention for the Safety of Life at Sea (SOLAS), 1974*, IMO.ORG,

<http://www.imo.org/About/Conventions/ListOfConventions/Pages/International->

larger ships, the *Allure of the Seas* and the *Oasis of the Seas*, have bigger lifeboats that hold 370 people.³⁸ However, according to the 2010 rule provisions, ships like these are exempt from the evacuation policy set forth in SOLAS, as long as the cruise line can demonstrate an “equivalent level of safety.”³⁹

In addition to these concerns, it is alarming that these mammoth vessels can quickly become crippled by small fires that disable their complex systems.⁴⁰ However, the main purpose of this portion of the article is to show that the largely self-regulated cruise industry is not making full disclosure of crimes committed on board their ships. First, this article will address the scope of the problem regarding the types of crimes committed on board cruise ships. Next, it will discuss the medical concerns involved with cruising. Finally, this article will conclude with recommendations for both the cruise lines and passengers.

II. CRIMES COMMITTED AGAINST CRUISE SHIPS FROM OUTSIDE OF THE SHIP

Your authors Diaz and Dubner were two of twenty-two persons invited to speak and attend a think tank discussion at the Harvard Kennedy Foundation. The primary focus was the piracy situation. As related to this article, one of the topics of discussion was “making ships harder to capture.”⁴¹

Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx (last visited June 10, 2014) [hereinafter SOLAS].

³⁸ *Too Big to Sail*, *supra* note 11, at 2.

³⁹ *Id.*

⁴⁰ *Id.* On February 10, 2013, Carnival’s Triumph ship was stranded at sea for two days due to a small fire in the engine room. While no one was injured, the fire knocked out the power to this enormous ship which left only a few toilets working, sewage running down the hallways, no air conditioning, no hot water, and cold food. Erik Ortiz, *Foul Conditions Aboard Stranded Carnival Cruise Ship Triumph Passengers Describe ‘Sewage Running Down the Walls’ and People Acting Like ‘Savages’*, DAILY NEWS (Feb. 12, 2013), <http://www.nydailynews.com/news/national/fire-carnival-cruise-ship-strands-4-200-article-1.1261258>.

⁴¹ Robert I. Rotberg, *Combating Maritime Piracy: A Policy Brief with Recommendations for Action*, WORLD PEACE FOUNDATION, 1, 8 (Jan. 26, 2010), available at <http://somalilandpress.com/wp-content/uploads/2010/02/Combating-Maritime-Piracy.pdf>.

The International Maritime Bureau (IMB) reports that between January 1, 2013 and December 31, 2013, there were no acts of piracy attempted against any cruise line.⁴² In fact, there have been no reports of piracy attacks against cruise ships since 2010.⁴³ One reason for the lack of piratical success is that the cruise ship's speed is used as a deterrent to avoid boarding.⁴⁴ With the use of speed and cost in fuel, "pirates only with great difficulty and at a great danger can attack and board a merchant vessel steaming at more than 15 knots." Similarly, "loitering" at sea should be kept to a minimum considering it attracts pirates.⁴⁵ In addition, basic maneuvers continuously generate changing conditions for pirates which make their approach challenging and hazardous, as well as, rejecting their opportunity to take refuge.⁴⁶ However, there were 264 reported attacks on vessels other than cruise ships, in the 2013 annual report.⁴⁷

III. TYPES OF CRIMES COMMITTED ON CRUISE SHIPS

The crimes committed on board cruise ships are what could be classified as crimes of opportunity.⁴⁸ While cruise ships are quite large and have even been compared to small cities, they are still located at sea.⁴⁹ People on board feel a sense of awareness, one of

⁴² Piracy and Armed Robbery Against Ships, Report for the Period 1 January–31 December 2013, KVNR.NL 1, 6 (Jan. 2014), available at www.kvnr.nl/stream/2013-annual-imb-piracy-report [hereinafter IMB Report]. Article 101 of the UNCLOS defines piracy. SONN, *infra* note 183, at 168–69. The International Maritime Organization defines piracy and armed robbery as "an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act." See, e.g., *An Examination of the Evolution of Crimes*, *supra* note 1, at 526.

⁴³ IMB Report, *supra* note 42, at 13.

⁴⁴ *Id.* at 6.

⁴⁵ Rotberg, *supra* note 41, at 9.

⁴⁶ *Id.*

⁴⁷ IMB Report, *supra* note 42, at 2, 6.

⁴⁸ Crimes of opportunity can be generally thought as to occur when the perpetrator sees the opportunity to commit a crime and follows through with it, without planning.

⁴⁹ *Are Cruise Ships Safe?*, CRUISECRITIC.COM, <http://www.cruise critic.com/articles.cfm?ID=241> (last visited May 29, 2014).

which your authors call a “confined” awareness.⁵⁰ There are many welcoming and comforting amenities on board cruise ships, such as great food; cozy rooms; pools; and relaxing spas; however, when passengers leave their cabins, they walk into an area known as the corridor.⁵¹ The corridors may lead to stairs, laundry rooms, washrooms, and elevators, which gives access to the rest of the ship; however, the corridors are also known to be a prime location to be victimized.⁵² Against this background of serenity and possible motion from the ship, the types of crimes committed on board cruise ships vary and are caused by a variety of people on board, both passengers and crew.⁵³

According to compilations of crime statistics that are reported, the crimes include: homicide, suspicious death, missing United States nationals, kidnapping, assault with serious bodily injury, firing or tampering with the vessel, theft over \$10,000 and, sexual assault.⁵⁴ As stated earlier, these crimes go largely unreported by the cruise lines so as not to alarm potential and repeat customers.⁵⁵

Who commits these crimes? According to a report concerning sexual harassment and sexual assault on the Royal Caribbean International Line between 1998 and 2005, named perpetrators included: room stewards, waiters, bartenders, ship officers, musicians/entertainers, custodians, youth staff members, security officers, casino workers, and galley workers.⁵⁶ The most common

⁵⁰ Confined awareness is meant to describe the passenger’s limited knowledge of the crimes being committed on board, while being confined to the parameters of the ship.

⁵¹ Corridors are walkways that lead to other rooms or parts of the ship.

⁵² See generally *Cruise Ship Injury—Miami/South Florida*, LEESFIELD & PARTNERS, P.A., <http://www.leesfield.com/lawyer-attorney-1822735.html> (last visited Apr. 30, 2014).

⁵³ See generally *Are Cruise Ships Safe?*, *supra* note 49.

⁵⁴ Cruise Vessel Safety and Security Act of 2010, 46 U.S.C. § 3507 (2011). See also *Crimes Against Americans*, *infra* note 77, at 186.

⁵⁵ CHARLES R. LIPCON, UNSAFE ON THE HIGH SEAS: YOUR GUIDE TO A SAFER CRUISE, 40 (1st ed. 2008), available at http://books.google.com/books?id=ZJ16b16gr1IC&pg=PT27&lpg=PT27&dq=crimes+go+unreported+cruise+passengers&source=bl&ots=XPfkUCrJE4&sig=AvkQI31VM0jLv_ta5INCf2CSW6Y&hl=en&sa=X&ei=4YqrU6-fBfSysQSXnoHwDw&ved=0CFwQ6AEwBQ#v=onepage&q=crimes%20go%20unreported%20cruise%20passengers&f=false.

⁵⁶ Testimony of Klein, *supra* note 5, at 22. The CVSSA, 46 U.S.C. § 3507(g)(4)(A), requires the Secretary to keep a record of all incidents, whether it

locations included crew cabin/crew area, bars, dining rooms, spas, corridors, decks, public areas, the disco, public bathrooms, the youth program, elevators, pools, ashore, and most often, in passenger cabins.⁵⁷

These statistics have been collected from both public websites and various articles; however, the authors acknowledge and stress that the statistics provided by cruise lines are less than forthcoming. The main problems, aside from the lack of accurate statistics, involve the lack of standards regarding the gathering and preserving of evidence; the lack of video cameras in the corridors and elsewhere; the fact that a cruise line employee is in charge of protecting passengers and gathering appropriate evidence; as well as, the lack of investigative experience by security guards on board the ship.⁵⁸ Now couple these problems with the antiquated admiralty laws available to passengers regarding negligence and wrongful death, and the real question becomes—just how safe is it to take a cruise?

According to the Federal Bureau of Investigation's (FBI) statistics retrieved by the International Cruise Victims Association (ICVA), through the use of a Freedom of Information (FOIA) request—"[b]etween October 1, 2007 and September 30, 2008 . . . there were 115 simple assaults, 16 assaults with serious bodily injury, 89 thefts less than \$10,000, 12 thefts more than \$10,000, 154 sex related incidents, 7 people overboard, and 3 drug arrests."⁵⁹

involves passengers, crewmembers, or anyone else. Testimony of Klein, *supra* note 5, at 23.

⁵⁷ Ashore can include including a private island. Testimony of Klein, *supra* note 5, at 48. Crewmembers account for 50–77% of sexual assaults committed against passengers. *Id.* at 22. It is reported that room stewards commit 34.8% of the sexual assaults. *Id.* Other crewmember perpetrators include dining room waiters who committed 25% of sexual assaults, while bar workers committed 13.2%. *Id.* at 22–23. Passenger cabins were the most frequent location for sexual assaults, occurring 36.4% of the time. *Id.* at 23. In regards to the sexual assault of minors, alcohol was considered a factor in 36% of cases. Testimony of Klein, *supra* note 5, at 23.

⁵⁸ See generally *id.* at 29–30.

⁵⁹ *Id.* at 17. In 1966, the Freedom of Information Act was enacted to grant individuals the right to access information from the federal government. *What is FOIA?*, FOIA.GOV, <http://www.foia.gov/about.html> (last visited June 1, 2014). The International Cruise Victims Association (ICVA) was formed to represent the crime victims on board cruise ships, as well as, their family and friends who take interest in cruise ship crimes. *International Cruise Victims Association*, INTERNATIONAL CRUISE VICTIMS, <http://www.internationalcruisevictims.org/> (last visited Oct. 15, 2014).

However, different outlets provide more information.⁶⁰ With regard to persons going overboard, sources show that there have been 201 people who have gone overboard from passenger ships, since 1995.⁶¹ Within these overboard cases, males constituted 73.8%, while females made up the other 26.2%.⁶² Also, the males were slightly younger in age than the females.⁶³ Approximately 91% of overboard accidents occur on cruise ships, while only 9% occur on ferries.⁶⁴ Although overboard statistics are incomplete and scarce, data shows that in approximately 17% of cases, the overboard was rescued, 11% were classified as suicide, while 3% involved murder.⁶⁵ Dr. Klein testified that, “alcohol was a factor in at least 16.2% of cases, a fight with a significant other is 7.1% of cases, 2.4% followed a significant loss in the casino, and 9.5% were witnessed and confirmed to be a fall.”⁶⁶

As far as drug arrests are concerned, there were fifty-three drug arrests on cruise ships reported by the media between January 2009 and June 2013.⁶⁷ Based on available published cases, statistics show the majority of drug arrests transpired in Bermuda; this is where government officials regularly use drug-sniffing canines to search cruise ships.⁶⁸ The United States only had eight drug arrests which involved twenty-seven people.⁶⁹ Of these arrests, the most common involved small quantities of marijuana ranging from several grams to no more than an ounce.⁷⁰

⁶⁰ Testimony of Klein, *supra* note 5, at 17; see also Ross A. Klein, *Cruise and Ferry Passengers and Crew Overboard 1995–2014*, CRUISEJUNKIE.COM, www.cruisejunkie.com/Overboard.html (last visited June 20, 2014).

⁶¹ Testimony of Klein, *supra* note 5, at 17.

⁶² *Id.*

⁶³ *Id.* Overboard victims consisted of 38.85% male versus 42.11% female.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Testimony of Klein, *supra* note 5, at 17.

⁶⁷ *Id.* at 18. These drugs arrests involved eighty-seven people.

⁶⁸ *Id.*

⁶⁹ *Id.* It was reported that Bermuda had twenty-seven drug arrests during the dates stated.

⁷⁰ *Id.*

A. Sexual Assaults On Board Cruise Ships⁷¹

There was a recent media report concerning two cruise ship employees who sexually assaulted a woman while on board the ship.⁷² Considering that cruise ship crime statistics are difficult to come by, it is surprising the incident was reported at all.

According to Ross A. Klein and Joe Poulston, crimes and other matters pertaining to passenger safety are so numerous that complete websites have been entirely dedicated to rape;⁷³ environmental issues;⁷⁴ annoyances like food poisoning; bedbug infestations; deaths and abuse.⁷⁵ Even with these websites, lack of disclosure makes statistics hard to find. However, this article will disclose relevant portions of data that is available from the aforementioned websites.⁷⁶

Turning ones attention to sexual assault—it has been said the occurrence of sexual assault on board a cruise ship is nearly double

⁷¹ While on a sixteen-day cruise, December 2013, Professor Dubner observed the somewhat formal interplay between the crew and the passengers. This ship had a capacity of 648 guests as mentioned before, which is much smaller than most other cruise ships. The average age of the people on board was deceased (only kidding), but there were no children on board except two teenage girls from France who were with their parents. There was a security officer on board ship who could be reached by calling 911. This is not the type of cruise that one would have to worry about being assaulted; however, on the larger ships, there is a lack of security as there are not enough security guards to handle the various problems that may arise.

⁷² A twenty-eight year old woman passenger on board a Carnival Cruise ship reported that she was violently raped by two crewmembers in her stateroom. *Inside Edition Investigates Alleged Sexual Assault on Cruise Ship*, INSIDEEDITION.COM (Feb. 20, 2014), <http://www.insideedition.com/investigative/7834-inside-edition-investigates-alleged-sexual-assault-on-cruise-ship>.

⁷³ Websites dedicated to the topic of rape on cruise ships include Cruiserape.com and Internationalcruisevictims.org.

⁷⁴ Friends of the Earth is a website created for providing information of environmental issues caused by cruise ship. See Testimony of Klein, *supra* note 5, at 68; see also *Cruise Ships*, FRIENDS OF THE EARTH, <http://www.foe.org/projects/oceans-and-forests/cruise-ships> (last visited Mar. 30, 2014).

⁷⁵ Cruisebruse.com is a website that focuses on the illnesses, infestations, death and assaults occurring on cruise ships. See also Testimony of Klein, *supra* note 5, at 66 (Appendix 5: Klein, R.A. & J. Poulston, 2011, “Sex at Sea: Sexual Crimes Abroad Cruise Ships,” *Journal of Tourism in Marine Environments*, 7:2, pp. 67–80, 68).

⁷⁶ See generally *supra* notes 72–74.

that of forcible rape within the United States.⁷⁷ As noted by Klein and Poulston, men almost entirely make up the sex-related perpetrator population on board cruise ships.⁷⁸ There was only one recorded incident where the perpetrator was a woman.⁷⁹ Looking at the table provided below, “crewmembers were perpetrators in 85.6% of the incidents on the RCI [Royal Caribbean International] between 1998 and 2005 and 10% of the incidents on Celebrity Cruises between 1998 and 2002.”⁸⁰ The discrepancy in data is shown by FBI data for 2007 to 2008 which revealed “that assaults perpetrated by crew decreased to 49.1% . . .”⁸¹ From 2007 to 2008, passenger initiated assaults, which mostly occurred against another passenger, more than doubled from reports in 2003 to 2005, thus, showing an increase from 22.2% to 51%.⁸²

Work Role of Perpetrator

| Work Role | RCI, 1998–2005 (n = 136) ^a | Celebrity, 1998–2002 (n = 33) ^a |
|----------------------------|---|--|
| Room steward ^b | 34.8% | 18.2% |
| Waiter ^b | 25.0% | 21.2% |
| Bar worker ^b | 13.2% | 24.2% |
| Officer | 8.1% | 18.2% |
| Musician/entertainer | 5.1% | 6.1% |
| Cleaner | 2.9% | 3.0% |
| Youth staff | 2.9% | — |
| Security officer | 2.2% | 3.0% |
| Casino worker ^b | 2.2% | — |
| Galley worker | 1.5% | — |
| Other | 2.9% | 6.1% |
| | 100.8% | 100.0% |

83

⁷⁷ Sexual assaults occurring on board cruise ships have been calculated as 48.065 per 100,000. Testimony of Klein, *supra* note 5, at 68; *see also Crimes Against Americans on Cruise Ships: Hearing Before the Subcomm. on Coast Guard and Maritime Transp. of the H. Comm. on Transp. and Infrastructure*, 110th Cong. 2 (2007) (statement of Ross A. Klein, Ph.D.) [hereinafter *Crimes Against Americans*].

⁷⁸ Testimony of Klein, *supra* note 5, at 74.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Testimony of Klein, *supra* note 5, at 75 (“Note: Totals do not add to 100 due to rounding. Source: Cruise Ship Safety. ^aAs the identity of the perpetrator is not

*B. Cruise Lines' Crime Statistics and the Emperor's New Clothes*⁸⁴

Any discussion about crime on board a cruise ship should require accurate record keeping. However, accurate statistics do not exist due to the strong self-regulation by the cruise line industry, along with the watered down legislation titled, the Cruise Vessel Security and Safety Act of 2010 (CVSSA).⁸⁵ Prior to the passage of this Act, there were newspaper articles and congressional hearings showing the problem with crimes committed on board vessels.⁸⁶ For example, the Los Angeles Times published an article on January 20, 2007, which was allegedly based on internal documents from Royal Caribbean.⁸⁷ The article explained that sex-related incidents on board were a much more prevalent problem than the cruise line indicated back in March 2006.⁸⁸ Royal Caribbean's internal documents "revealed that 273 reported incidents within a period of thirty-two months, including 99 cases of sexual harassment, 81 cases of sexual assaults, 52 of inappropriate touching, 28 of sexual battery, and 13 cases that fit into other categories."⁸⁹ "When the company-specific numbers were subjected to the same statistical analysis as done with industry-wide data in James Fox's testimony before Congress, the rate of sexual assault was 50 percent greater than U.S. rate."⁹⁰ The purpose of the 2007 reconvened hearings was to look at the current security procedures and practices on board cruise ships to ensure they were suitable to guarantee the safety of all passengers.⁹¹ As would be expected, the cruise line industry stated they take the public's

known in all cases, the count is less than that of the total dataset. ^bRoles with particularly high customer contact.").

⁸⁴ The term "emperor's new clothes" is used to show that people are aware of increased amount of crime, but nobody makes the reports public.

⁸⁵ See, e.g., Testimony of Klein, *supra* note 5, at 18.

⁸⁶ *Id.* at 18–19.

⁸⁷ *Id.* at 19.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* Dr. Fox is a criminologist that the cruise industry hires to combat Congress when the legislators start looking for answers as to why there are misleading and incomplete statistics being reported.

⁹¹ Testimony of Klein, *supra* note 5, at 19–20. Jim Walker, Cruise Industry Article "Safe at Sea" Misses the Boat, CRUISE LAW NEWS (Aug. 9, 2013), <http://www.cruiselawnews.com/2013/08/articles/crime/cruise-industry-article-safe-at-sea-misses-the-boat/>. The CLIA has hired Dr. Fox once again to battle Senator Rockefeller's bill, which would make it mandatory to report all crimes. *Id.*

concerns seriously, they were working to improve conditions, and reassured the public that cruises were still safe.⁹² Attempts were made to enact legislation that would give the Department of Homeland Security Secretary jurisdiction over security-related incidents.⁹³ Such incidents included: “death, seriously bodily injury, sexual assault, a missing person, or that poses a significant threat to the cruise ship, any cruise ship passenger, any port facility, or any person in or near the port.”⁹⁴ Around the same time, Senator John Kerry and Representatives Matsui, Shays, and Maloney drafted a bill that would force the cruise ships to inform the FBI about incidents involving crimes, suicides, and missing persons.⁹⁵ This legislation also included a mandatory protocol for collecting evidence from the crime scene.⁹⁶

Public disclosure is essential to any productive legislation regarding public safety.⁹⁷ Passengers should be able to access the cruise ship’s “report card” regarding the ship’s crime history much like passengers are able to access the cruise ship’s sanitation inspection reports conducted by the Centers of Disease Control (CDC).⁹⁸ Due to the increasing incident rates on cruise ships and the hearings before the committees, additional legislation was enacted—subsequently leading to S. 3204 being reintroduced in 2009 as HR 3360 and S. 588.⁹⁹ In 2010, the legislation was passed and is now known as Public Law 111–207, Cruise Vessel Security and Safety Act 2010 (CVSSA).¹⁰⁰

With the advent of the CVSSA, one would think the issue regarding the lack of crime and safety issues would be solved; however, nothing could have been further from the truth. One

⁹² Testimony of Klein, *supra* note 5, at 20.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*; S. 3204, 110th Cong. (2007). Senator Kerry’s bill was introduced to the Senate June 26, 2008, read twice and referred to the Committee on Commerce, Science, and Transportation. However, it lingered in the Senate and nothing else came of it. S. 3204, 110th Cong. (2007).

⁹⁶ Testimony of Klein, *supra* note 5, at 20. What has occurred in the past is that a security officer, paid by the cruise line, is in charge of establishing the integrity of a crime scene. *Oversight of the Cruise Industry: Before the S. Comm. on Commerce, Sci., and Transp.*, 113th Cong. (2012) (testimony of Ross A. Klein, PhD) available at <http://www.cruisejunkie.com/Senate2012.pdf> [hereinafter 2012 Hearing].

⁹⁷ See Testimony of Klein, *supra* note 5, at 20.

⁹⁸ *Id.* at 15.

⁹⁹ *Id.* at 21.

¹⁰⁰ 46 U.S.C. § 3507 (2010).

example includes the problem of persons falling overboard; the CVSSA originally stated that the rails along the deck of the ship could be no shorter than 4½ feet.¹⁰¹ However, due to Congress watering down the legislation, the final Act only required the rails to be 3½ feet tall.¹⁰² It is apparent that the original provision requiring 4½ feet rails would be more useful as a guard to prevent passengers from falling overboard, whether due to being thrown off, jumping, or intoxication.¹⁰³ The FBI classified persons overboard as a victimless crime, thus not warranting investigation.¹⁰⁴ Ideally there should be a proper investigation of each incident, regardless of the reason for the person going overboard.¹⁰⁵

Regarding sexual assault, one may believe that the discussion of prevention will fix the problem; however, it has been suggested that the most effective method to prevent sexual assault is to have knowledge of the risk involved.¹⁰⁶ Thus, under the CVSSA, all sexual assaults are to be reported to the FBI.¹⁰⁷ According to the CVSSA, “[t]he Secretary shall maintain, on an Internet site of the department in which the Coast Guard is operating, a numerical accounting of the missing persons and alleged crimes”¹⁰⁸ Notwithstanding the attempt for full disclosure to potential passengers, the final adopted version of the CVSSA was watered down. So instead, section 3505, paragraph (3)(A)(i) reads that the Secretary only had to list incidents that were “no longer under investigation” by the FBI on the internet website.¹⁰⁹ The sad reality of the situation is that under the CVSSA, the FBI may open a case and subsequently close a case.¹¹⁰

Unfortunately, this means that cases deemed unworthy due to lack of evidence, never get opened and therefore do not have to be disclosed.¹¹¹ Consequently, this manipulates the numbers of actual

¹⁰¹ *Id.*; § 3507(a)(1)(A).

¹⁰² Testimony of Klein, *supra* note 5, at 21.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 22. The current version of the CVSSA does not include persons overboard, and does not consider it a crime.

¹⁰⁵ *Id.* at 22. “Even if CCTV videotapes show a person falling overboard, an investigation may be warranted to determine the conditions surrounding the incidents. . . .”

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 23.

¹⁰⁸ Testimony of Klein, *supra* note 5, at 23; 46 U.S.C. § 3507(c)(4)(A).

¹⁰⁹ Testimony of Klein, *supra* note 5, at 23; 46 U.S.C. § 3507(e)(4)(A).

¹¹⁰ Testimony of Klein, *supra* note 5, at 23.

¹¹¹ *Id.*

incidents and leaves the publicly reported number of sexual assaults severely under-reported.¹¹² Statistics for 2007 to 2008 reveal a total of 154 sex-related cases.¹¹³ Interestingly enough, the FBI reports available on the United States Coast Guard website only show eleven cases in 2012.¹¹⁴

To illustrate an example of the misleading nature of cruise ships' crime reporting, the FBI stated that Norwegian Cruise Line only experienced one sexual assault case in fifteen months; however, upon discovery, records revealed that twenty-three complaints were filed.¹¹⁵ In order to have helpful prevention-type statistics for potential passengers, it was recommended by Dr. Klein that the CVSSA should require all reported sexual assault cases committed on a cruise ship to be disclosed, not just those which are opened.¹¹⁶ Dr. Klein also recommended that the CVSSA should require the cruise ships to inform the passengers about the specific hours during which the crew members can access cabin rooms without the passenger's knowledge or permission.¹¹⁷

Perhaps placing both real and dummy cameras around the cruise ship would help prevent or deter crime; not to mention provide helpful evidence for investigative purposes.¹¹⁸ The placement of real cameras is important, considering they should be positioned to face the direction of high-risk areas.¹¹⁹ Dr. Klein has suggested that Congress should have mapped out both the requirements for CCTV

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* Dr. Klein states that statistics were not accessible for 2010 and 2011.

¹¹⁵ *Id.* Dr. Klein is internationally referred to as an expert in cruise ship industry. Klein has many published articles and books in the field, as well as giving lectures and giving expert testimony. Dr. Klein earned his M.A. in 1979 from University of Maryland, and in 1982, he received his Ph.D. from Syracuse University. *Dr. Ross A Klein, MSW, PhD, MEMORIAL UNIV.*, <http://www.mun.ca/socwrk/faculty/rklein.php> (last visited June 1, 2014).

¹¹⁶ Testimony of Klein, *supra* note 5, at 23. It should "be displayed online and broken down by cruise line . . . the raw data of cases should be made available upon request for statistical/sociological analysis in order to permit a social epidemiology of the problem."

¹¹⁷ *Id.* at 24.

¹¹⁸ *Id.*

¹¹⁹ *Id.* These areas include hallways to passengers' cabins and public washrooms. Statistics show that a high number of sexual assaults occur in washrooms, however, surprisingly real cameras do not cover these areas.

surveillance cameras and their recording quality more clearly in the CVSSA.¹²⁰

It is of utmost importance that evidence of sexual assaults need to be preserved.¹²¹ Proper procedures need to be put into place and followed in order to ensure the chain of evidence is not contaminated, thereby rendering it useless for prosecution purposes.¹²² The problem is that a cruise line employee usually conducts the investigation—a relationship that becomes particularly incestuous if the perpetrator is a fellow cruise line employee.¹²³ To make matters worse, another independent contractor usually provides the necessary medical care.¹²⁴ This combination could lead to possible collusion.¹²⁵

As far as prosecution for sexual assaults and other crimes are concerned, there is no place or method to restrain a “civilian” offender.¹²⁶ On the other hand, restraining a crewmember offender should be simple considering the laws of most “flags of convenience” States flown by cruise ships do not have requirements concerning the preservation of any personal civil rights of crewmembers.¹²⁷ However, history has shown that as soon as a crewmember offender arrives at a port, he can be flown out of the country in order to avoid prosecution.¹²⁸

¹²⁰ *Id.* It has been noted that the video footage of the crimes on board tend to be of such poor quality that they have no probative value for evidentiary purposes. *Id.*

¹²¹ *Id.* at 28.

¹²² Testimony of Klein, *supra* note 5, at 28.

¹²³ *Id.* at 29. This is a problem considering that sexual assault statistics indicate that the perpetrator is most frequently cruise ship employees.

¹²⁴ *Id.* With the medical staff being considered independent contractors, contamination of the evidence and/or mistreatment of the victim will not impute liability on the cruise line owner. *See, e.g., infra* note 231 and accompanying text.

¹²⁵ *Id.*

¹²⁶ *Id.* at 30.

¹²⁷ *Id.*

¹²⁸ *See, e.g.,* Testimony of Klein, *supra* note 5, at 30. In August 2012, a crew member of the *Disney Dream* was caught on video molesting an eleven year old girl in the elevator while in docked in Port Canaveral, Florida. The grandmother reported the incident to security immediately, but the ship authorities waited a full day before reporting the incident to the FBI. By this time the ship was conveniently on its way to the Bahamas. Once the cruise ship reached the Bahamas, the crewmember admitted to molesting the child. However, Disney flew the crewmember home to India, at the cruise line’s expense, allowing the employee to escape the reach of United States jurisdiction rather than arrange for his return to Florida to be prosecuted. Furthermore, the *Disney Dream* ship is registered in the Bahamas, so the Bahamian officials took the case and Disney was able to avoid the

C. Other Crimes On Board Cruise Ships

There are two crimes that do not require reporting under the CVSSA; however the FBI collected data for these crimes during 2007 to 2008.¹²⁹ The two crimes are: theft under \$10,000 and simple assault.¹³⁰ Dr. Klein indicates there were eighty-nine incidents of theft under \$10,000 and 115 incidents of simple assault during 2007 to 2008.¹³¹ Since the CVSSA does not require these crimes to be recorded, victims are left without recourse or rights.¹³² In theory, if I were a crewmember and wanted to rob a passenger's cabin, I would certainly steal less than \$10,000.¹³³ More importantly, by not collecting data on these crimes, there is no way to analyze the data so as to discern patterns or trends that could be utilized to help prevent future crimes.¹³⁴

Under the CVSSA, the cruise line owners are required to report specific named crimes to the FBI and make statistics involving crimes on board ships available to the public.¹³⁵ For the CVSSA to apply, these crimes had to either occur on a vessel owned by a United States person; be a crime that involved a United States national that occurred in United States waters; or occur on a ship that departed

United States investigation into the incident. *See, e.g.*, Jim Walker, *Cruise Nightmare: Disney Crew Member Arrested on Charges of Molesting Child on Disney Dream*, CRUISELAWNEWS.COM (Apr. 10, 2014), <http://www.cruiselawnews.com/2014/04/articles/sexual-assault-of-minors/cruise-nightmare-disney-crew-member-arrested-on-charges-of-molesting-child-on-disney-dream/>.

¹²⁹ Testimony of Klein, *supra* note 5, at 30.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

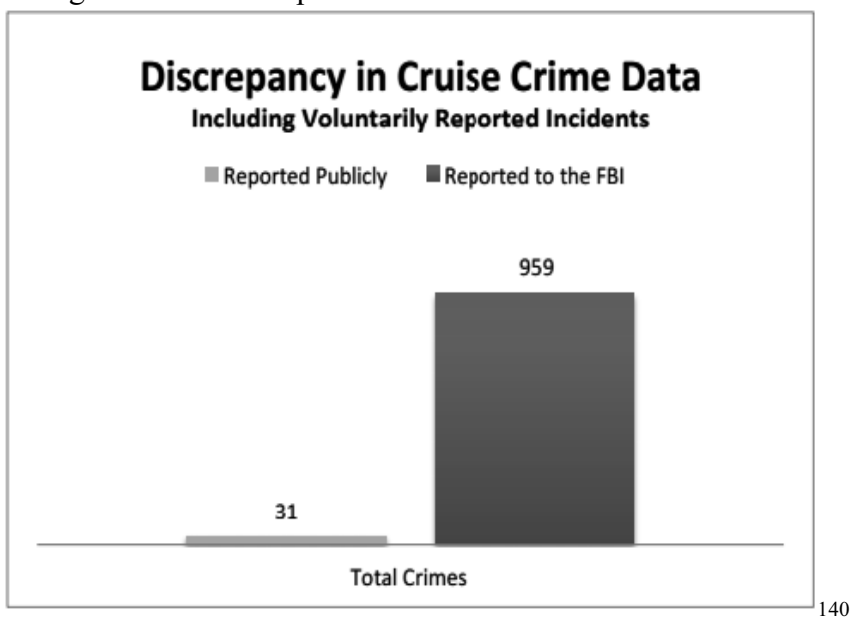
¹³³ Assuming that someone is foolish enough to carry that much cash around on a cruise ship.

¹³⁴ Testimony of Klein, *supra* note 5, at 30.

¹³⁵ *Cruise Ship Crime*, *supra* note 7, at i. It is mandatory for a cruise ship owner to keep record of all crimes reported, but they are only required to disclose specific types of crimes to the FBI. *Id.* at i n.6. The cruise ship owner is encouraged to voluntarily report crimes that are not required under CVSSA. *Id.* Thus, only crimes that are required to be reported to the FBI must be available to the public. *Id.* In addition, the FBI keeps a log of all crimes reported, but the FBI is not required to list those crimes on the Coast Guard website. *Id.*

from or arrived at a United States port.¹³⁶ However, the problem then became the lack of transparency. This is because the FBI decided to interpret the CVSSA to require public reporting of only those incidents that were no longer under investigation by the FBI.¹³⁷ In addition, the CVSSA only requires a subset of types of crimes reported to the FBI to be disclosed to the public.¹³⁸

Senator J. Rockefeller of West Virginia and his staff found that since the passing of the CVSSA, the total number of incidents voluntarily and required to be reported to the FBI by cruise lines are thirty times higher than the number of alleged crimes reported publicly—for example, since 2011, 959 alleged crimes were reported to the FBI by cruise lines owners, but the Coast Guard only reported 31 alleged crimes to the public.¹³⁹



¹³⁶ *Crimes on Cruise Ships*, RAINN.ORG, <https://www.rainn.org/public-policy/sexual-assault-issues/cruise-ship-safety> (last visited June 1, 2014) [hereinafter RAINN].

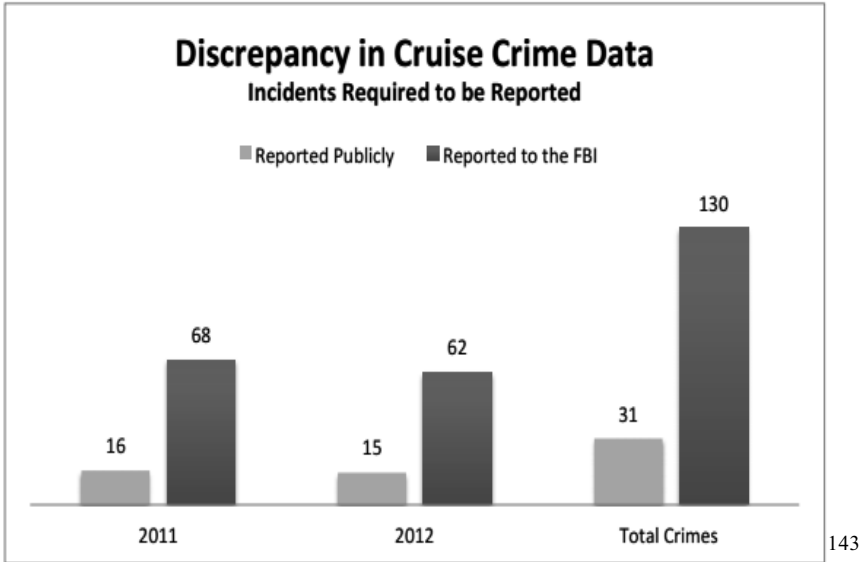
¹³⁷ *Cruise Ship Crime*, *supra* note 7, at 7 n.52–53. Some examples of crimes required to be reported to the FBI include: all homicides, a missing United State National, assault with serious bodily injury, firing or tampering with the vessel, and theft over ten thousand dollars.

¹³⁸ *Id.* at i.

¹³⁹ *Id.* at i–ii.

¹⁴⁰ *Id.* at 9.

In fact, the number of alleged crimes that cruise lines reported to the FBI are more than four times the amount of alleged crimes disclosed to the public.¹⁴¹ While 130 crimes were reported to the FBI by cruise lines since 2011, the FBI only publicly reported thirty-one of these crimes.¹⁴²



The Committee's review revealed that crimes committed against minors were not included in the cruise crime statistics available to the public.¹⁴⁴ In regard to sexual assault, the cruise crimes reports that were not disclosed to the public, showed that the bulk of the sexual assaults were committed against minors.¹⁴⁵ In fact, "all useful information was redacted."¹⁴⁶ If the investigation file was not opened and later closed, the FBI stated that they were not required to keep any record of the crime, nor required to make those reports public.¹⁴⁷ The implication is that the "allegations of crime are no longer available for analysis"¹⁴⁸ This lack of information is

¹⁴¹ *Id.*

¹⁴² *Cruise Ship Crime*, *supra* note 7, at 10.

¹⁴³ *Id.* at 10.

¹⁴⁴ *Id.* at iii.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 1; *see also* 2012 Hearing, *supra* note 96, at 11.

¹⁴⁷ *Cruise Ship Crime*, *supra* note 7, at iii.

¹⁴⁸ *Id.*

certainly not in the interest of consumers; rather, it flies in the face of *the spirit* of the CVSSA.¹⁴⁹

In response to the continued lack of disclosure and other safety/security issues on cruise ships, Senator Rockefeller introduced the Cruise Passenger Protection Act of 2013 (CPPA) on July 23, 2013.¹⁵⁰ According to the senator's newsletter, the CPPA would compel the industry to provide critical consumer protections for passengers.¹⁵¹

IV. THE CRUISE SHIP PASSENGER PROTECTION ACT OF 2013-WILL THIS SOLVE THE PROBLEM OF NONDISCLOSURE?

A hearing entitled Cruise Industry Oversight: Recent Incidents Show Need For Stronger Focus on Consumer Protection was held in connection with the introduction of the CPPA.¹⁵² This legislation was introduced in order to help dream-vacation-gazed passengers—who subsequently found that their dreams went up in smoke as they became victims of fires onboard the ship, crimes, and being stranded at sea.¹⁵³ In addition, it was pointed out that the “cruise companies continue to impose significant limits by requiring passengers to waive their legal rights when buying their ticket, which further restricts passengers’ abilities to hold cruise lines accountable when things go

¹⁴⁹ *Id.*

¹⁵⁰ *Rockefeller Seeks Passenger Safety Reforms in Cruise Ship Industry*, ROCKEFELLER.SENATE.GOV (July 23, 2013), available at <http://www.rockefeller.senate.gov/public/index.cfm/2013/7/rockefeller-seeks-passenger-safety-reforms-in-cruise-ship-industry> [hereinafter *Rockefeller Seeks*]. “Senator Rockefeller is the chairman of the Senate Committee on Commerce, Science, and Transportation.” *Reps. Matsui and Poe Introduce Bipartisan Legislation to Strengthen Passenger Safety on Cruise Ships*, MATSUI.HOUSE.GOV (July 23, 2013), <http://matsui.house.gov/press-releases/rep-matsui-and-poe-introduce-bipartisan-legislation-to-strengthen-passenger-safety-on-cruise-ships/>. The CPPA “would build on the security measures implemented by the Cruise Vessel Security and Safety Act (CVSSA) by toughening the crime reporting and video surveillance requirements.” *Id.* Similar legislation, authored by Representatives Matsui and Poe, has been introduced in the House today. *Id.*

¹⁵¹ *Rockefeller Seeks*, *supra* note 150.

¹⁵² *Id.*

¹⁵³ *Id.*

wrong.”¹⁵⁴ The CPPA would give consumers and perspective passengers on cruise ships the right to receive a short summary of the key terms in their cruise contract.¹⁵⁵ The prospective passengers would then be able to read a plain language summary of the rights and limitations they will have during their cruise.¹⁵⁶ With the sailing summary and conditions being easier to understand, it is hoped that prospective passengers will become fully aware before booking their tickets.¹⁵⁷ The CPPA would allow the federal government to be more involved.¹⁵⁸ Similar to its role in aviation consumer protection, the Department of Transportation (DOT) would be the chief federal agency for cruise ship protection.¹⁵⁹ The DOT would have the authority and jurisdiction to investigate all consumer complaints, as well as establish a toll-free hotline for those complaints.¹⁶⁰ The CPPA would create an Advisory Committee for Passenger Vessel Consumer Protection, in order to make recommendations and suggestions to improve current consumer protection programs and services.¹⁶¹

The key to consumer protection is full disclosure—to require that all crimes be reported.¹⁶² As stated earlier, the FBI only reports crimes that are closed and no longer under investigation—which leads to severe underreporting and an inaccurate portrayal of statistics for informed decision making.¹⁶³ In regard to preventing and properly recording crimes on board, the CPPA would also require cruise lines to place video cameras in public areas and to preserve video footage, rather than erasing it.¹⁶⁴ Under the CPPA, the DOT would institute a victim advocate who could give assistance to victims while on the cruise ship.¹⁶⁵ This victim advocate would be responsible for making sure the victim is aware of their rights while on international waters,

¹⁵⁴ *Id.* The cruise line ticket purchased by the passenger is considered a maritime contract and is governed by maritime law. THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW 134 (5th ed. 2012).

¹⁵⁵ *Rockefeller Seeks, supra* note 150.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Rockefeller Seeks, supra* note 150.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

and would assist in contacting the appropriate law enforcement officers.¹⁶⁶

In addition to the victim advocates, it would be wise to employ a ship “mediator” or “ombudsman”—paid from independent funds, by the industry—to handle disputes arising on the cruise ship.¹⁶⁷ Congress stated the need for an independent mediator is necessary because “[p]assengers on cruise vessels have an inadequate appreciation of their potential vulnerability to crime while on ocean voyages, and those who may be victimized lack the information they need to understand their legal rights or to know whom to contact for help in the immediate aftermath of the crime.”¹⁶⁸

A. Calling For Help While On Board the Ship

What if a passenger needs help? How do they obtain it? Normally people in distress would call 911 if they were in danger; however, emergency 911 does not exist on some cruise ships.¹⁶⁹ In case of an incident, responding cruise line security guards will conduct the initial investigation—however, they do not have the impartial relationship with the cruise line that a local or federal law enforcement officer would possess.¹⁷⁰ The fear of building a case against one’s employer could lead to a biased investigation.¹⁷¹ A victim of rape or abuse may be shocked to find that reporting the crime to the security guard employed by the cruise line, may be of little help, or that the security guard may even interfere with the investigation to help protect a fellow employee or their cruise line employer.¹⁷²

You won’t have any rape crisis personnel onboard to support you, let alone law enforcement officials to come to your aid. You might turn to cruise ship employees for help, only to later find that the cruise line has a vested interest in shielding themselves against negative publicity or legal jeopardy. And you

¹⁶⁶ *Id.*

¹⁶⁷ *See, e.g., Rockefeller Seeks, supra* note 150.

¹⁶⁸ *Cruise Ship Crime, supra* note 7, at i, i n.2; *see* 46 U.S.C. § 3507 (2010).

¹⁶⁹ *See Cruise Ship Crime, supra* note 7, at 2.

¹⁷⁰ *Id.* at 1–2. However, Ocean Lines’ *Regalta* cruise ship did have a 911 number.

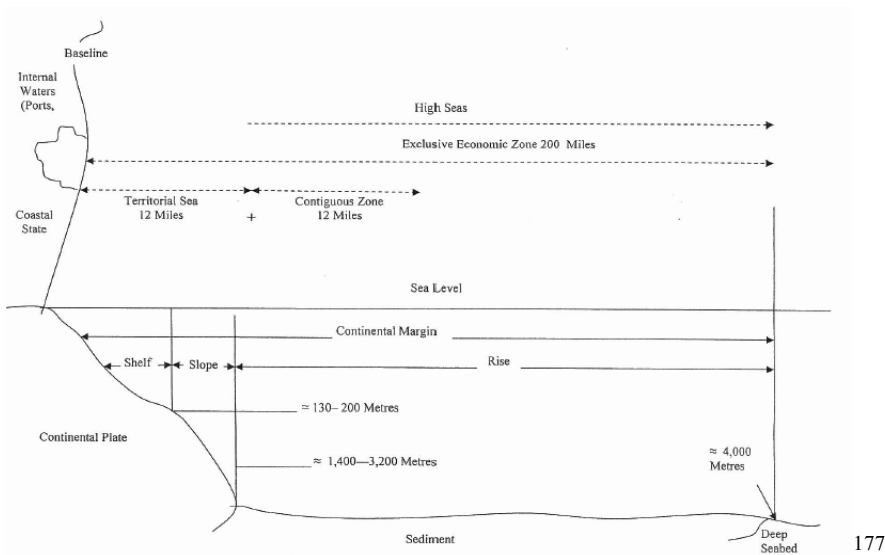
¹⁷¹ *Id.*

¹⁷² *Id.*

might wonder how any security personnel hired by the cruise line will react if presented with any situation that might give rise to a potential conflict of interest between their employer and yourself.¹⁷³

To add insult to injury, in some cases, the victims themselves are responsible for preserving and collecting evidence from the crime scene.¹⁷⁴ “According to Congressional testimony, cruise lines have taken the position that they have no duty to investigate crimes.”¹⁷⁵ However, International Maritime Organization (IMO) is currently drafting guidelines to direct cruise lines to follow proper preservation techniques.¹⁷⁶

V. JURISDICTIONAL ISSUES AND BASIC UNDERSTANDING OF LAW OF THE SEA CONCEPTS



For purposes of this article, a brief understanding of conventional law is necessary.¹⁷⁸ Each coastal state has the utmost

¹⁷³ *Cruise Ship Safety: Examining Potential Steps for Keeping Americans Safe at Sea: Hearing Before the S. Subcomm. on Surface Transp. and Merchant Marine Infrastructure, Safety, and Sec. of the Comm. on Commerce, Sci., and Transp.*, 110th Cong. 13 (2008) (statement of Evelyn Fortier, Vice President, Policy, the Rape, Abuse, and Incest National Network).

¹⁷⁴ *Cruise Ship Crime*, *supra* note 7, at 3.

¹⁷⁵ *Id.*; *see id.* at 3 n.22.

¹⁷⁶ *Id.* at 3; *id.* at 3 n.25.

¹⁷⁷ Schematic diagram originally created by Professor Dubner.

jurisdiction over its geographical boundaries including, its “internal waters.”¹⁷⁹ As one goes seaward from the “baseline,” “territorial waters” go out to a maximum of twelve miles under conventional law.¹⁸⁰ A cruise ship has the right of “innocent passage,” but the coastal state has complete sovereign rights over its territorial sea except for the doctrine of innocent passage.¹⁸¹ The “high seas” start at

¹⁷⁸ The 1982 Law of the Sea Convention, which became effective November 1994, guarantees international maritime law. *On the Interplay of International Law of the Sea*, *infra* note 180, at 140; *see also* United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 561 [hereinafter Convention].

¹⁷⁹ “Internal waters” is defined by the Convention at Article 8 as follows: 1. Except as provided in Part IV, waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State. 2. Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters. Convention, *supra* note 178, at art. 8.

¹⁸⁰ *See An Examination of the Evolution of Crimes*, *supra* note 1, at 544. All coastal states have a baseline, which measures the “state’s diminishing jurisdiction” as the vessel moves out to sea; *see also* Barry Hart Dubner, *On the Interplay of International Law of the Sea and the Prevention of Maritime Pollution—How Far Can a State Proceed in Protecting Itself From Conflicting Norms in International Law*, 11 GEO. INT’L ENVTL. L. REV. 137, 141 (1998) [hereinafter *On the Interplay of International Law of the Sea*] (Every coastal state has a baseline which is used to measure the state’s diminishing jurisdiction as one moves seaward. The coastal state exercises exclusive jurisdiction over its internal waters (e.g., ports and harbors.) As one moves seaward from the baseline, the state exercises almost total jurisdiction over its territorial sea, with the on exception of the doctrine of innocent passage.)

The scope of the “territorial sea” is defined by Articles 3 and 4 of the Convention. Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention . . . the outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Id. at 141 n.15.

¹⁸¹ *Id.* at 141–42. “Innocent passage” is defined by the Convention at Article 19 as:

Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this convention and with other rules of international law. 2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities: . . . (h) any act of willful and serious pollution contrary to this Convention; (i) any fishing activities; (j) the carrying out of

a distance of twelve miles from the baseline to a maximum jurisdiction of twenty miles from the baseline.¹⁸²

Against this background, there is a legal fiction that the flag of a vessel represents the sovereignty of a nation of the flag state.¹⁸³ Therefore, on the high seas, the flag state has exclusive jurisdiction over the ship.¹⁸⁴ The aforesaid terms are basic law of the sea terms contained within the UNCLOS (Convention).¹⁸⁵ They will assist one to understand matters concerning jurisdiction as used in this article.

How then does a coastal state obtain concurrent jurisdiction over injuries, deaths or certain crimes if they are committed on the high seas? Eventually, the cruise ship has to dock to pick up and discharge passengers. The coastal state, using its only leverage, will permit the cruise ship to dock and pick up its citizens only if it can be assured that the flagship protects the rights of those citizens.¹⁸⁶ Therefore, a bilateral agreement(s) is reached to grant jurisdiction to the FBI and other agencies at times.¹⁸⁷ Thus, the courts of the United States can become involved and assert jurisdiction of civil and criminal acts committed abroad cruise ships on the high seas.¹⁸⁸

research or survey activities . . . (l) any other activity not having a direct bearing on passage.

Convention, *supra* note 178, at art. 19. State's sovereign rights include having jurisdiction to prescribe and enforce its legislation. *Id.*

¹⁸² There is also a contiguous zone which extends from the baseline out to twenty-four miles and an exclusive economic zone that stretches out 200 miles. *See On the Interplay of the International Law of the Sea, supra* note 180, at 141 n.18. However, these zones are not relevant to this article. The UNCLOS (Convention) defines "high seas" as all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. *Id.* at 141 n.19; *see also* Convention, *supra* note 178, at art. 86.

¹⁸³ LOUIS B. SONN & JOHN E. NOYES, CASES AND MATERIALS ON THE LAW OF THE SEA 147 (2004). Under the UNCLOS, as well as other international treaties, provides mandatory obligations of the flag state in regards to the vessel's administrative, technical, social, and safety concerns. *Id.*; *see also* Convention, *supra* note 178, at art. 94.

¹⁸⁴ SONN, *supra* note 183, at 147. Article 94 of the UNCLOS states that all flag states will "adopt national laws and regulations in order to ensure its jurisdiction and control over ships navigating under its flag." *Id.* at 148; *see also* Convention, *supra* note 178, at art. 94.

¹⁸⁵ *On the Interplay of International Law of the Sea, supra* note 180, at 141.

¹⁸⁶ SCHOENBAUM, *supra* note 154, at 80–82.

¹⁸⁷ *See* SONN, *supra* note 183 and accompanying text.

¹⁸⁸ Admiralty law governs civil acts. The United States has signed and is a member of certain multinational treaties that allow the United States to have civil

However, precedent and dated statutes that were never meant to cover cruise passengers, handicap the courts that invoke our admiralty laws.¹⁸⁹

A. Jurisdiction Over Crimes

For example, imagine that a ship is flying a flag of convenience on the high seas, and an assault occurs on board. Who can assert jurisdiction over the perpetrator? Understandably, the country whose flag the ship flies may assert jurisdiction.¹⁹⁰ Due to a legal fiction, the flag is equated to that State's sovereignty.¹⁹¹ However, assume that the Flag State has no interest in participating in an investigation or prosecution. Then what? If there were no bilateral treaty with the victim's State, the crime would go uninvestigated unless the cruise line insisted that the Flag State handle the matter. But why would the cruise line do that? The cruise line would probably not wish to proceed any further.¹⁹² In fact, there have been a few instances where the cruise line sent the perpetrator away from the ship in order to avoid any investigation by the State where the passenger was a citizen.¹⁹³ Or perhaps the crime is one where the FBI does not meet the requirement of minimum jurisdiction for the FBI to investigate.¹⁹⁴ Then what? The victim would be out of luck. However in 2007, the FBI, Coast Guard, and the cruise line industry agreed that

and criminal jurisdiction on the high seas. Examples of these multinational treaties include the United Nations Convention on the High Sea and the 1998 and 2005 Convention for the Suppression of unlawful Acts Against the Safety of Maritime Navigation. Aaron D. Buzawa, *Cruising With Terrorism: Jurisdictional Challenges to the Control of Terrorism in the Cruising Industry*, 32 TUL. MAR. L.J. 181, 189 (2007).

¹⁸⁹ SCHOENBAUM, *supra* note 154, at 12, 93.

¹⁹⁰ Article 92 of the Convention states that "ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas." Convention, *supra* note 178, at art. 92.

¹⁹¹ SONN, *supra* note 183, at 147.

¹⁹² It would be in the cruise line's best interest to not pursue the investigation because it could expose their company to litigation.

¹⁹³ See, e.g., *supra* notes 8 and 128. Assuming the FBI or other appropriate agency of the U.S. would even be able to investigate because of an agreement between the U.S. and the cruise line owners.

¹⁹⁴ Examples of when the FBI would lack jurisdiction are due to the lack of evidence or a theft of items under \$10,000.

the cruise line would voluntarily report incidents involving serious violations of United States law to the FBI.¹⁹⁵

B. Civil Jurisdictional and Liability Issues For Purposes of this Article

Admiralty is a private branch of law that deals with injuries to seamen, crew, passengers, maintenance and cure, maritime liens and ship mortgages, salvage, and treasure salvage.¹⁹⁶ This body of law contrasts with the international law of the sea, a public branch of international law dealing with jurisdictional problems regarding inter alia: territorial seas, contiguous zones, exclusive economic zones, as well as with freedom of the high seas, fishing, oil and mineral development.¹⁹⁷ In some admiralty law firms, the attorneys may only handle plaintiffs' work concerning injuries or longshoreman.¹⁹⁸ Other admiralty firms may only practice defense work for insurance companies who insure shipping interests.¹⁹⁹ One would think that admiralty practice is conducted in the same fashion as firms that handle other forms of liability, such as automobile accidents/negligence; however, cruise ship jurisdiction is vastly different.

Under admiralty law, as related to this article, there is a duty to maintain a seaworthy ship and cure for its crew.²⁰⁰ Although there is a special duty of reasonable care owing to passengers, the law regarding liability for cruise lines is largely extrapolated from admiralty—a branch of the law that is not really suited for cruise ship liability toward passengers.²⁰¹ For example, the statute of limitations for filing

¹⁹⁵ *Cruise Ship Crime*, *supra* note 7, at 6 n.43.

¹⁹⁶ Gaurangi Patil, *Reeling Bank in History to Understanding Marine Insurance/Protection & Indemnity Clubs (P&I)*, BRUS CHAMBERS (Jan. 2012), <http://www.brus.in/publications/shipping/MI.pdf>.

¹⁹⁷ *Maritime Zones and Boundaries*, NOAA.GOV, http://www.gc.noaa.gov/gcil_maritime.html (last visited June 3, 2014).

¹⁹⁸ *See, e.g., Admiralty and Maritime*, CHAMBERLAIN LAW, <https://www.chamberlainlaw.com/practices-35.html> (last visited June 12, 2014).

¹⁹⁹ *Id.*

²⁰⁰ “Under the general maritime law, a seaman who is injured ‘in the service of the ship’ has a claim for ‘maintenance and cure,’ consisting generally of lost wages, medical care, and subsistence.” SCHOENBAUM, *supra* note 154, at 45.

²⁰¹ *See* SCHOENBAUM, *supra* note 154, at 133. Admiralty is a branch of law that has had historic value toward the crew. *See generally* Thomas A. Dickerson, *The*

an action under admiralty law for negligence by the owner, the company that chartered the ship, the company that operated it, or the company that sold the ticket—is generally three years.²⁰² However, as will be seen by the limitation clause in Dubner’s cruise ship contract, it can and is limited to much shorter periods.²⁰³ The cruise ship contracts usually also limit the venue where a passenger can sue.²⁰⁴ There is usually a blanket waiver which is part of the contract even though cruise ships are common carriers.²⁰⁵ In short, the civil liability aspect for passengers is a non-plus to start with before an incident even occurs!

For the purpose of the article, a brief excerpt of jurisdictional civil legal problems is now set forth. One will see that cruise lines attempt to limit liability for wrongful death, negligence, and practically any other possible liability. The passenger is faced with a body of law that was never intended to protect passengers on cruise ships.

Cruise Passenger’s Dilemma: Twenty-First-Century Ships, Nineteenth Century Rights, 28 TUL. MAR. L.J. 447 (2004).

²⁰² 46 U.S.C. § 30106 (2006).

²⁰³ See Dubner’s Contract, *infra* note 216 (The typical statute of limitations contained in cruise contracts bar claims after one year). In Kornberg v. Carnival Cruise Lines, Inc., the court held that “[a]s a general rule, conditions or limitations in a contract for passage are valid if the ticket provides adequate notice of them.” The Carpenter v. Klosters Rederi A/S case, cited for this proposition, enforced a ticket provision imposing a one year time limit to the institution of suits for loss of life or bodily injury.” JO DESHA LUCAS, ADMIRALTY CASES AND MATERIALS 608 (6th ed. 2012); see also Kornberg, 741 F.2d 1332 (11th Cir. 1984); see also Carpenter, 604 F.2d 11, 13 (5th Cir. 1979).

²⁰⁴ See SCHOENBAUM, *supra* note 154, at 134. Litigation involving cruise lines are normally settled in Miami, Florida or Seattle, Washington due to the location of company headquarters.

²⁰⁵ Cruise ships leaving United States ports are considered common carriers under the Shipping Act of 1984, 46 U.S.C. § 1702(6) (1984). A common carrier is required to render its passengers a heightened duty of care to make sure they arrive safely to their destination. This heightened duty of care that the cruise lines must provide to its passengers includes protection from rape, sexual assault and other assaults committed by the cruise line’s employees. *Cruise Ship Law*, JUSTIA.COM, <http://www.justia.com/admiralty/cruise-ships/> (last visited June 29, 2014); see, e.g., Dubner’s Contract, *infra* note 216.

*C. Maritime Jurisdiction Legal Handicaps Facing the
Consumer/Cruise Line Passenger: the Jurisprudence is Too Limited
For the Problems*

The most important problem concerning civil jurisdiction and liability is the fact that courts are operating under nineteenth century maritime legal precedent, rather than having fresh concepts applicable to cruise ships.²⁰⁶ As will be shown later, this is also due to lobbying by the cruise ship lines and partly due to some courts believing that “uniformity” of decisions is more important in this general area than is the safety of the consumer.²⁰⁷

“A passenger is a person who travels in a public conveyance (e.g., cruise ship) by virtue of a contract that is either expressed or implied which involves paying a fare or some other consideration to the carrier.”²⁰⁸ Under current law, courts have consistently held that “reasonable care under the circumstances” is the only degree of care owed to persons lawfully on the cruise ship.²⁰⁹ Negligence of the employees and/or agents of an independent contractor do not impose liability to a ship owner.²¹⁰

Thus a passenger must prove the traditional elements of a negligence claim in admiralty: (1) the existence of a duty owed by the shipowner or operator; (2) breach

²⁰⁶ See SCHOENBAUM, *supra* note 154, at 134, n.6 (citing *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827 (9th Cir. 2002); *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318 (11th Cir. 1989), on remand 715 F. Supp. 1069 (M.D. Fla. 1989); *Beard v. Norwegian Caribbean Lines*, 900 F.2d 71 (6th Cir. 1990). See *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 628, 79 S. Ct. 406, 408, 3 L.Ed.2d 550 (1959); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 410–11, 74 S. Ct. 202, 205–06 (1953).

²⁰⁷ [W]e find merit in the plaintiff’s argument and the reasoning of the district court. However, because this is a maritime case, this Court and the Florida district courts of appeal must adhere to the federal principles of harmony and uniformity when applying federal maritime law. At the time the instant case was decided by the Third District, with the exception of *Nietes*, the federal maritime law uniformly held that a ship owner is not vicariously liable for the medical negligence of the shipboard physician. Testimony of Klein, *supra* note 5, at 47 n.27 (quoting the *Carlisle* court); see also *Carnival Corp. v. Carlisle*, 953 So. 2d 461, 470 (Fla. 2007). For greater discussion see *infra* note 295. SCHOENBAUM, *supra* note 154, at 135; see also *id.* at 12, 93.

²⁰⁸ SCHOENBAUM, *supra* note 154, at 135.

²⁰⁹ *Id.* at 136–37.

²¹⁰ *Id.* at 137.

of the duty; (3) proximate causation; and (4) injury and damages. An excellent statement of the applicable standard of care for passengers is as follows: [T]he benchmark against which a shipowner's behaviour must be measured is ordinary reasonable care under the circumstances, a standard which required, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition, at least where, as here, the menace is one commonly encountered on land and not clearly linked to the nautical adventure.²¹¹

All one has to do is look at the disclaimer/limitation clause in order to see the types of actions that consumers/passengers may be entitled to bring against the cruise line owners, among others. For example, as to liability for crimes committed on board ship, *inter alia*: (a) intentional misconduct of its crew;²¹² (b) negligence; (c) fraud/misrepresentation;²¹³ (d) harm from other passengers/terrorists.²¹⁴ The courts have generally upheld disclaimers concerning the operator of a cruise ship being free from negligence of an independent contractor.²¹⁵

The terms and condition located in the cruise contract that Professor Dubner signed contains a "responsibility" clause. However, due to the immense amount of disclaimers, it should have been labeled a "lack of responsibility" clause.

RESPONSIBILITY: Oceania Cruises, Inc. accepts no liability or responsibility, whether occasioned by railroad, motor coach, private car, boat, aircraft or any other conveyance, for any injury, damages, loss, accident, delay or irregularity which may be occasioned either by reason or defect, through the acts or defaults of any company or person, or in carrying out the arrangements of the cruise or cruise tour, as a result of any cause beyond the control of Oceania

²¹¹ *Id.*

²¹² *Id.* at 138 n.30.

²¹³ *Id.* at 138 (citing *Stires v. Carnival Corp.*, 243 F. Supp.2d 1313 (M.D. Fla. 2002)); *id.* at 138 n.32.

²¹⁴ SCHOENBAUM, *supra* note 32. *Colavito v. Gonzales Carnival Cruise Lines, Inc.*, 1983 AMC 1378 (S.D. Tex. 1981). *Id.* at n.33. *Ray v. Fifth Transoceanic Shipping Co., Ltd.*, 529 So. 2d 1181 (Fla. Dist. Ct. App. 1988). *Id.* at n.34.

²¹⁵ SCHOENBAUM, *supra* note 154, at 139.

Cruises, Inc. Guests specifically release Oceania Cruises, Inc. from any and all claims for loss or damage to baggage or property, or from personal injuries or death, or from loss from delay, arising out of the acts, omissions or negligence of any other party, such as air carriers, hotels, short excursion operators, restaurateurs, transportation providers, medical personnel, ship owners, ship operators or other providers of services or facilities. All arrangements made for guests with independent contractors, including medical services, are made solely for the convenience of guests and are done at the guest's own risk and cost. Oceania Cruises, Inc. shall not be liable for delay or inability to perform any portion of the cruise or cruise tour caused by or arising out of strikes, lockout or labor difficulties or shortages whether or not the carrier is a party thereto, or explosion, fire, collision, standing or foundering of the vessel or breakdown or failure of or damage to the vessel or its hull or machinery or fittings howsoever and whosoever any or the same may arise or be caused, or civil commotion, riot, insurrection, war, government restraint, requisitioning of the vessel, political disturbance, acts or threats of terrorism, inability to secure or failure of supplies including furl, Acts of God, or other circumstances beyond its control. Due to government regulations, if You are delayed or unable to board at embarkation, You May not be able to board at a later time. In such event, Carrier shall have no liability to refund any Cruise or Course Tour Fares.²¹⁶

One can easily see that passengers release the cruise line from any and all claims for loss or damage to property, as well as from personal injuries/death, loss or delay arising out of the acts of omissions, or negligence of any party. It could be assumed this blanket clause is intended to deter affected passengers from suing, if they suffered from

²¹⁶ This provision in the Oceania Cruises packet, listed under Terms and Conditions was given to Professor Dubner before his cruise. *See also Terms and Conditions*, OCEANIACRUISES, <http://www.oceaniacruises.com/corporate/legal/termsconditions.aspx> (last visited June 17, 2014) [hereinafter Dubner's Contract].

problems listed in the clause itself. The language of the contract disclaimer/limitation is inconsistent with the language of the express and implied promises of a safe cruise ship made in the contract between the passenger and the cruise ship.²¹⁷ We believe this is a situation where contract law should be used to knock out disclaimers and limitations of remedies.

The first problem is the lack of “conspicuousness” of the contract in general; and, second, the lack of labeling and conspicuousness of the disclaimer/limitation portion of the contract. The Uniform Commercial Code definition of “conspicuous” can be analogized.²¹⁸ The “lack of responsibility” clause in Dubner’s contract does not meet the criteria.²¹⁹ Even if it were considered “conspicuous,” would any consumer/passenger understand what it actually means in order to make a value judgment as to whether he/she wishes to go on a cruise—knowing that there will not be any legal recourse in most situations? It is doubtful. The cruise lines should not be able to disclaim liability to an express warranty of passenger safety by offering the warranty of a fantastic voyage by way of advertising a wonderful cruise experience—then disclaim or limit the warranty to deprive the passenger of all causes of action for failing to live up to its advertisements and contract/consumer obligations. Couple this disclaimer/limitation of liability with the fact that most of the operations relating to, and used by, the passenger/consumer on board are conducted by independent contractors with whom the cruise line has offered space on board in exchange for fees. It seems unconscionable to allow the cruise lines to circumvent their responsibilities to passengers.

²¹⁷ See SCHOENBAUM, *supra* note 154, at 135.

²¹⁸ “Conspicuous,” with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following: (A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and (B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

See U.C.C. § 1-201(b)(10) (2001).

²¹⁹ See Dubner’s Contract, *supra* note 216. See also *supra* note 203.

To show the influence of lobbying as far as attempting to achieve some type of fairness for the passengers who experienced sexual assault, a tort reform measure was attached to the Coast Guard Reauthorization bill passed on May 9, 1995.²²⁰ The final version prohibited the cruise ship owners from limiting their liability in incidents involving “sexual harassment, sexual misbehavior, assault or rape in cases where the victim is physically injured.”²²¹ However, the cruise ship owners were permitted to limit their liability in regard to all other situations.²²² Therefore, a victim of sexual assault committed by a cruise line employee or another passenger, will not have a claim for emotional distress, mental suffering/anguish, or psychological injury, absent evidence that the cruise line was negligent.²²³

The subsequent outcome of the bill seems a bit insensitive, particularly when an employee of the cruise ship victimizes a child.²²⁴ In addition, the cruise line will not be liable for the intentional or negligent acts of any non-employed persons of the cruise line, nor for any intentional or negligent acts of crew ship employees committed while off the clock or not within the course and scope of their employment.²²⁵ This creates a loophole for a crewmember who sexually assaults someone while off duty.²²⁶ However, saying cruise lines are not liable when the sexual assault is not within their scope of employment does not make sense considering an assault will always be outside the scope of one’s employment.²²⁷ Most of the suits filed against the cruise lines for sexual assault are settled out of court, as an effort by the cruise lines to stay out of the news and avoid negative publicity.²²⁸

Under Title 46 U.S.C.A. section 30509, the cruise ship owner may not limit its liability for negligence to passengers:

²²⁰ Testimony of Klein, *supra* note 5, at 49.

²²¹ *Id.*

²²² *Id.* Professor Dubner’s passenger cruise contract reads that the cruise line shall not be liable to the passenger for damages for emotional distress, mental suffering/anguish of psychological injury of any kind under any circumstances. *See* Dubner’s Contract, *supra* note 216.

²²³ Testimony of Klein, *supra* note 5, at 49.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ Non-employed persons include independent contractors and fellow passengers. *Id.*

²²⁷ Testimony of Klein, *supra* note 5, at 49.

²²⁸ *Id.*

The owner, master, manager, or agent of a vessel transporting passengers between ports in the United States, or between port in the United States and a port in a foreign country, may not include in a regulation or contract a provision limiting—(A) the liability of the owner, master, or agent for personal injury or death caused by the negligence or fault of the owner or the owner’s employees or agents; or (B) the right of a claimant for personal injury or death to a trial by court of competent jurisdiction.²²⁹

Title 46 U.S.C.A. section 30509(b)(2) provides, “the liability of a crew member or the manager, agent, master, owner or operator of a vessel cannot be limited in sexual harassment or sexual assault cases.”²³⁰ Yet, exculpatory provisions including the right to deviate from a published itinerary, as well as a provision discharging the cruise line from liability for the negligence of shore excursion operators have been upheld.²³¹

In summary, it is hoped that the proposed Cruise Passenger Protection Act of 2013 will be enacted because the CPPA would give consumers a clear, upfront summary of the restricted terms and conditions in cruise contracts; the DOT would provide guidelines; a toll-free hotline would be created for victims; and most importantly, all alleged crimes would be made public.²³² However, according to a recent press release, the Commerce Committee postponed the Executive Session scheduled for June 23, 2014, to discuss the CPPA—and plans to schedule another hearing early to mid-July 2014.²³³

²²⁹ SCHOENBAUM, *supra* note 154, at 142–43.

²³⁰ *Id.* at 143; *id.* at 143 n.66 (citing Carie Lopez, Sexual Assault on the High Seas: Untangling the Knots, 14 U.S.F. MAR. L.J. 203 (2002). In *Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891 (11th Cir. 2004), the court imposed strict liability on the cruise line for the assault on a female passenger by a crewmember).

²³¹ SCHOENBAUM, *supra* note 154, at 143. Deaths on shore equal thirty-seven according to the Klein study. *See, e.g.*, Testimony of Klein, *supra* note 5, at 53. These types of deaths include scuba, dive accidents, jet ski, as well as 269 incidents falling in the miscellaneous category. *See, e.g., id.* There were ten accidents on shore, fourteen bomb threats, 189 illness outbreaks and thirteen robberies on shore. *Id.*

²³² *See Rockefeller Seeks*, *supra* note 150.

²³³ *Commerce Committee Postpones Executive Session; Rockefeller Announces Hearing on Cruise Passenger Safety*, COMMERCE.SENATE.GOV (July 23, 2014), available at

Recording alleged crimes without proof of their commission would be a blow to the cruise ship industry. A better alternative would be to require cruise lines to hire an independent law enforcement officer that would be responsible for investigating crimes committed on board.²³⁴ Absent that, any frivolous domestic dispute could inflame the statistics and would be detrimental to the cruise ship industry. Please understand that we do not believe that the cruise ship industry is being forthcoming with anything that happens; however, we can see going from one extreme to the other.

VI. NONDISCLOSURE OF MEDICAL CARE STANDARDS-THE PASSENGER'S RIGHT TO KNOW

A. *Frequency of Outbreaks—Are Passengers Aware?*

Crimes committed on board cruise ships are not a passenger's only absent concern when considering a cruise. Passengers likely do not consider the type of medical care or supplies they may need while on a cruise ship.²³⁵ At most, passengers may have minor concerns over seasickness and the like. In all likelihood, most would-be passengers do not consider what medical woes may await them on their much-anticipated vacation.²³⁶

The latest surge of outbreaks on cruise ships may have served to alert travelers to the various things that could happen to passengers while on board.²³⁷ The media highlights the major catastrophic events such as being stranded or piracy attacks, but passengers might be

http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=d17edf5a-92b7-4f20-b479-b212fef8a33c; see Telephone Interview with Comm. Staff Member, Commerce, Sci., & Transp. Comm. (June 27, 2014). A Commerce Committee staff member reported that the hearing was postponed due to a tremendous amount of opposition to the Coast Guard Reauthorization Bill. He stated that their intention is to get the entire CPPA passed; however, they are looking to select portions of the CPPA and transfer it to the Coast Guard Reauthorization Bill as an effort to get the legislation moving. Upon discussing Senator Rockefeller's retirement, his staff stated that they believe the co-sponsors of the CPPA will continue pushing for its adoption.

²³⁴ Testimony of Klein, *supra* note 5, at 51.

²³⁵ *Cruise Ship Medical Care Spotty*, CONSUMER AFFAIRS (Aug. 16, 2002), <http://www.consumeraffairs.com/cruise-ship-news#cruise-ship-medical-care-spotty>.

²³⁶ *Id.*

²³⁷ *Norovirus—What You Need to Know*, CRUISECRITIC.COM, <http://www.cruise critic.com/articles.cfm?ID=71> (last visited June 27, 2014).

surprised to learn medical issues on cruise ships are much more frequent than one would think.²³⁸ More specifically, the CDC reports that cruise ship medical logs reveal that medical conditions accounted for 69–88% of passenger visits; 19–29% due to respiratory illnesses, and gastrointestinal illnesses accounted for 9% of passenger visits.²³⁹ Cardiovascular-related incidents were the most reported cause of cruise ship deaths.²⁴⁰ While the most common outbreaks on cruise ships “involve respiratory infections (influenza and legionellosis), gastrointestinal infections (norovirus), and vaccine-preventable diseases other than influenza, such as rubella and varicella (chickenpox).”²⁴¹

The norovirus is the cause of more than ninety percent of diarrheal disease outbreaks on cruise ships.²⁴² The prevalence of the norovirus on cruise ships is caused by frequent physical contact due to close living areas and infected passengers spreading the disease to other passengers and crew members.²⁴³ Cruise lines that participate in

²³⁸ See, e.g., *Cruise Ship Disaster News*, ABC NEWS, <http://abcnews.go.com/topics/news/cruise-ship-disaster.htm> (last visited June 20, 2014).

²³⁹ Douglas D. Slaten & Kiren Mituka, *Cruise Ship Travel*, CDC.GOV, <http://wwwnc.cdc.gov/travel/yellowbook/2014/chapter-6-conveyance-and-transportation-issues/cruise-ship-travel> (last visited May 20, 2014) [hereinafter Slaten].

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Surveillance for Norovirus Outbreaks*, CDC.GOV, <http://www.cdc.gov/features/dsNorovirus/> (last visited May 20, 2014) [hereinafter *Norovirus on Cruise Ships*]. Norovirus is an extremely contagious virus that is transferred through contact with an infected person or surface, and/or the consumption of contaminated food and water. *Facts About Noroviruses on Cruise Ships, Vessel Sanitation Program*, CDC.GOV, <http://www.cdc.gov/nceh/vsp/pub/norovirus/norovirus.htm> (last visited May 19, 2014). The symptoms of norovirus are abdominal pain, diarrhea, and vomiting. Norovirus is also known as acute gastroenteritis. *Id.* The norovirus can live in an infected person’s stool up to fourteen days. Jen Christensen & Jacque Wilson, *Norovirus: The Most Common Stomach Bug*, CNN.COM (Jan. 31, 2014 4:29 PM), <http://www.cnn.com/2014/01/31/health/norovirus-facts-info/>.

²⁴³ *Norovirus on Cruise Ships*, *supra* note 242. Majority of the Norovirus outbreaks occur through the months of November and March. Aditi Mukherji, *Cruise Ship Sickness: Can Passengers Sue?*, (Jan. 27, 2014 10:22 AM) FINDLAW.COM, <http://blogs.findlaw.com/injured/2014/01/cruise-ship-sickness-can-passengers-sue.html>. The norovirus has an incubation period of 12–48 hours. *Norovirus in Healthcare Facilities Fact Sheet*, CDC.GOV,

the Vessel Sanitation Program (VSP) must report the number of gastrointestinal illness (GI) cases to the CDC.²⁴⁴ The number of GI illness cases is calculated from the time the ship leaves a foreign port until it reaches a United States port.²⁴⁵ According to the CDC, so far in 2014, eight ships met the reporting requirement of GI illness outbreaks.²⁴⁶ On January 31, 2014, CDC confirmed the GI illness that infected over 600 passengers and crewmembers on board the Royal Caribbean's *Explorer of the Sea* was in fact caused by the norovirus.²⁴⁷ This norovirus outbreak was the largest reported outbreak in over twenty years.²⁴⁸ Even more alarming is that despite all efforts to ensure that cruise ships are safe and free from infection and contamination, passengers themselves could be coming aboard a ship infected with viruses and spread them to other passengers.²⁴⁹ The CDC's Vessel Sanitation Program's Green Sheet Report determined that out of 152 cruise ships that were inspected, only nine ships were found to be unsatisfactory.²⁵⁰ Infected cast and crewmembers, coupled

<http://www.cdc.gov/hai/pdfs/norovirus/229110-ANoroCaseFactSheet508.pdf> (last visited May 21, 2014).

²⁴⁴ *Outbreak Updates for International Cruise Ships*, Vessel Sanitation Program, CDC.GOV, <http://www.cdc.gov/nceh/vsp/surv/gilist.htm#2014> (last updated Apr. 10, 2014). The VSP of the CDC helps the cruise lines to "prevent and control the introduction, transmission, and spread of gastrointestinal (GI) illnesses on cruise ships. VSP operates under the authority of the Public Health Service Act (42 U.S.C. Section 264 Quarantine and Inspection Regulations to Control Communicable Diseases)." *Vessel Sanitation*, CDC.GOV, <http://www.cdc.gov/nceh/vsp/> (last updated Apr. 16, 2014).

²⁴⁵ *Outbreak Updates for International Cruise Ships*, *supra* note 244. A separate report is necessary when the GI illness cases account for more than two percent of the total number of people onboard the ship.

²⁴⁶ *Id.* In 2013, the CDC reported nine ship outbreaks of GI illnesses.

²⁴⁷ *Media Advisory*, CDC.GOV (Jan. 31, 2014), <http://www.cdc.gov/media/releases/2014/a0130-norovirus.html>.

²⁴⁸ *Id.*

²⁴⁹ *Poor Hygiene Possible Cause of Gastro Issues Aboard Ships*, ROAD&TRAVEL MAG., <http://www.roadandtravel.com/health/cruisingwithconfidence.htm> (last visited May 20, 2014); *see Norovirus on Cruise Ships*, *supra* note 242.

²⁵⁰ These inspections occurred between June 10, 2012 and May 8, 2014. *Green Sheet Report*, CDC.GOV, <http://wwwn.cdc.gov/InspectionQueryTool/InspectionGreenSheetRpt.aspx> (last visited May 20, 2014). The VSP inspections on the cruise ships primarily focus on the medical facilities, food preparation, water reserve, filtration of the pools, ventilation systems, crew member hygiene, and the overall cleanliness of the cruise ship. *Health on the High Seas*, *infra* note 269.

with environmental contamination, may be the reason for continuous outbreaks on the same ship.²⁵¹ If safeguards are currently in place to ensure that an outbreak does not happen, how do cruise lines guarantee that viruses and bacteria that lie dormant prior to an outbreak do not cause outbreaks in the future?

While passengers suffering from GI illnesses such as a norovirus outbreak may be displeased with their vacation, current maritime law offers little remedy for their exposure.²⁵² This is also due to signing the initial cruise contract and waiving their right to sue the cruise line even before stepping foot onto the ship.²⁵³ As stated previously, within the contract, the cruise line has effectively removed itself from all liability unless the aggrieved passenger can show that the cruise line was negligent by not taking the necessary precautions.²⁵⁴ According to the *Kermarec* ruling,²⁵⁵ a cruise ship owner has a duty to provide a reasonable level of care to its passengers.²⁵⁶ For instance, in order to meet the requirements of negligence, the passenger must show that the cruise line did or did not do something that led to a GI illness outbreak.²⁵⁷ Only if the GI illness

²⁵¹ *Norovirus on Cruise Ships*, *supra* note 242. The repeated outbreaks are due to the norovirus's resistance to a lot of disinfectants used. *Id.*

²⁵² The CLIA's passenger bill of rights, which will be discussed in more detail later, does not specifically cover incidents involving norovirus. Therefore leaving passenger's remedies in the hands of the cruise line to decide how to reimburse sick passengers. Christopher Elliott, *Norovirus Outbreaks Make Both Cruise Lines and Passengers Leery*, WASHINGTONPOST.COM (Feb. 13, 2014), http://www.washingtonpost.com/lifestyle/travel/norovirus-outbreaks-make-both-cruise-lines-and-passengers-leery/2014/02/13/cabf3000-9340-11e3-b46a-5a3d0d2130da_story.html. See generally *supra* notes 150–57.

²⁵³ See generally *supra* notes 150–57.

²⁵⁴ See Greenberg, *infra* note 257; see also SCHOENBAUM, *supra* note 154, at 137–39.

²⁵⁵ *Kermarec v. Compagnie*, 358 U.S. 625, 632 (1959) (holding that the ship owner owed all persons lawfully on board the vessel “the duty of exercising reasonable care under the circumstances of each case.”). See also *Tilson v. Odyssey Cruises*, 2011 WL 309660 (D. Mass. 2011); *Harnesk v. Carnival Cruise Lines* 1991 WL 329584 (S.D. Fla. 1991) (holding that the cruise line also owes a “duty to exercise reasonable care under the circumstances”).

²⁵⁶ Mukherji, *supra* note 243. *Kermarec* governs in federal maritime and admiralty law cases involving negligence. SCHOENBAUM, *supra* note 154, at 121; see, e.g., Dubner's Contract, *supra* note 216.

²⁵⁷ Peter Greenberg, *Worried About Norovirus? Know Your Legal Rights for Cruise Travel!* PERTERGREENBERG.COM (Feb. 5, 2014, 9:34 AM), <http://petergreenberg.com/2014/02/05/worried-norovirus-know-legal-rights-cruise-travel/>. For instance, if the cruise line operated under a below standard hygiene

outbreak occurred at the fault of the cruise line may a passenger have a right to sue for damages.²⁵⁸ In the event a passenger is able to prove the cruise line was negligent, their damages may be limited to the recovery of medical expenses incurred.²⁵⁹ If a passenger was fortunate enough not to be infected with the outbreak, they too waived their right to sue for expenses incurred due to early docking when they signed the initial cruise contract.²⁶⁰

*B. What Type of Medical Care is Provided On Board Cruise Ships—
Are Passengers Safe?*

The cruise line industry states “health and safety of cruise passengers are its highest priorities.”²⁶¹ The problem, however, is that cruise ships which sail from United States ports are usually exempt from most United States labor standards, environmental regulations, security requirements, and medical safeguards that its American passengers are accustomed to—due to the ship’s flag of convenience.²⁶² The practice of medicine in the United States is one of the most regulated professions and one failed assumption that an American may make prior to boarding a ship is the care they will receive on the high seas is akin to the care they receive in their hometown.²⁶³ This

protocol, such as not disinfecting the restrooms or mishandling food or water. Other examples in which a cruise line could be liable for a GI illness outbreak is when the cruise line fails to respond to the outbreak, such as not properly cleaning the ship or not quarantining the infected passengers. Mukherji, *supra* note 243. Negligence can be classified as conduct that fails to protect persons from unreasonable risks of harm. SCHOENBAUM, *supra* note 154, at 123.

²⁵⁸ Greenberg, *supra* note 257.

²⁵⁹ *Id.*

²⁶⁰ Examples include hotel, flight, and food expenses. *Id.* However, some cruise lines give concessions to alleviate outraged customers, such as reimbursement of changing flights, lodging expenses until scheduled flight, or a percentage off a future cruise with the cruise line. *Id.*

²⁶¹ Jim Walker, *The Cruise G.I. Blues: Why We Don’t Handle Gastrointestinal Virus Cases*, CRUISELAWNEWS.COM (May 15, 2013), <http://www.cruiselawnews.com/tags/fda/>.

²⁶² *Cruise Ship Medical Care Spotty*, *supra* note 235. The cruise lines do not pay United States taxes on their \$12 billion industry, and in most cases, the United States lacks jurisdiction over the cruise lines due to the ship’s flag state and non-United States citizen employees. *See also id.*; *see supra* note 13.

²⁶³ The United States medical profession is above standard due to the strict regulations and safeguards demanded by various agencies, such as the United States Department of Health and Human Services, American Medical Association,

assumption is incorrect considering that in the United States, on shore physicians are licensed, regulated by their hospital employer as well as by state licensing boards.²⁶⁴ In addition, it is easy to transport an on shore ill individual to a sophisticated medical facility nearby; however, on board medical transportation will not be as timely or inexpensive.²⁶⁵ Not to mention the nearest medical facility while on board may be located on shore in a foreign country with sub-par medical standards compared to the United States.²⁶⁶ Another distinguishable difference between passengers' hometown doctors and physicians on a cruise is when medical malpractice occurs on shore, the United States will have personal jurisdiction over the doctor. This simply is not the case for on board physicians since cruise lines are infamous for hiring foreign doctors.²⁶⁷ As will be shown later, the aggrieved victim is essentially left without any recourse, due to the fact that both the ship and its on board physician are able to escape the reach of United States courts.

Many aspects of vessel safety, crewmember competency, and emergency drills must comply with Coast Guard regulations and the Internal Convention for the Safety of Life at Sea (SOLAS); however, medical care and services are not covered.²⁶⁸ While most passengers know that cruise ships originate from different countries and travel around the world, they may fail to realize there is no universally uniformed medical standard used to determine minimum credentials for physicians or medical equipment used on board the ship.²⁶⁹ Other things that factor into on board medical facilities include: the size of

licensing boards and other regulating organizations. *Consumer Reports: Ocean Liners' Medical Care May Not Be Shipshape*, CNN.COM (May 13, 1999), <http://www.cnn.com/TRAVEL/NEWS/9905/13/cruise.health/index.html>. *Cruise Ship Medical Care Spotty*, *supra* note 235.

²⁶⁴ *Id.* While on board physicians only have to meet the medical training requirement of their ship's flag state.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.* See, e.g., *Taylor v. Gutierrez*, 129 So. 3d 415 (Fla. Dist. Ct. App. 2013).

²⁶⁸ *U.S. Coast Guard Cruise Ship Consumer Fact Sheet*, CONSUMERAFFAIRS.COM, http://www.consumeraffairs.com/travel/cruise_factsheet.html (last visited May 14, 2014); see also SOLAS, *supra* note 37.

²⁶⁹ *Health On the High Seas: Medical Care on Cruise Ships*, ALLEGIANCEHEALTH.ORG, <http://www.allegiancehealth.org/wellness/article/14608> (last visited May 21, 2014) [hereafter *Health on High Seas*].

the ship, the length of the cruise, the origin of crewmembers, and medical equipment.²⁷⁰

Although there is not an official agency that controls on board medical practice, cruise lines are encouraged to follow published consensus-based guidelines.²⁷¹ In November 2009, the Cruise Lines International Association (CLIA) voluntarily adopted the recommended standards provided by the American College of Emergency Physicians (ACEP); then later adopted the revised standards in November 2013.²⁷² With regard to medical staff on board cruise ships, the guidelines recommend that the cruise ship employ doctors and nurses that “hold current full registration and valid licensure;” have “three years of post-graduate-post registration experience in general or emergency medicine OR board certification in: Emergency Medicine or Family Medicine or Internal Medicine.”²⁷³ The medical staff should be fluent in the common language used on the ship, have training in Emergency Cardiovascular Care, and doctors should have skills in “minor surgical, orthopedic and procedural skills including suturing, and fracture/dislocation management.”²⁷⁴ The targeted purpose of the on board medical staff is to offer “reasonable” emergency medical care.²⁷⁵ In essence, this “reasonable” emergency care means to stabilize the sick or injured passenger until on shore treatment is possible.²⁷⁶ The ACEP recommends that the cruise ships be equipped with oxygen, cardiac defibrillators, external pacemakers, EKGs, x-ray machines, stretchers,

²⁷⁰ *Id.*

²⁷¹ Slaten, *supra* note 239.

²⁷² *Health on the High Seas*, *supra* note 269; *Medical Facilities*, CLIA, <http://www.cruising.org/regulatory/policies/medical-facilities> (last visited June 20, 2014).

²⁷³ In addition, it is recommended that the on board medical staff be certified in advanced life support and have at least one doctor certified in emergency medicine or pediatric schooling (if the ship is carrying children under the age of twelve). The guidelines listed for the purposes of this article are not a complete list of the guidelines provided by the ACEP. *Health Care Guidelines for Cruise Ship Medical Facilities*, ACEP.ORG, <http://www.acep.org/content.aspx?id=29980> (last updated Feb. 2013). ACEP was founded in 1968 and is the leading advocate for emergency doctors and their patients. *About ACEP*, ACEP.ORG, <http://www.acep.org/aboutus/about/> (last visited June 24, 2014).

²⁷⁴ *Health Care Guidelines for Cruise Ship Medical Facilities*, *supra* note 273.

²⁷⁵ *Health on the High Seas*, *supra* note 269.

²⁷⁶ *Id.*

wheelchairs, immobilization equipment, sutures, medications, and bandages.²⁷⁷

C. Who Pays For the Medical Care—Are Passengers Covered in the Event of Illness?

It is suggested that passengers check with their health insurance provider before deciding to cruise since the majority of health plans do not cover medical services provided on board cruise ships.²⁷⁸ As a result, ill passengers are left paying their medical expenses out of pocket.²⁷⁹ The medical bills have generally been known to range into the hundreds to thousands of dollars; itemized and charged for each individual service rendered to the passenger.²⁸⁰ For example, if an ill passenger needs to be transported by air ambulance—costing between \$50,000 and \$100,000.²⁸¹ This payment must be rendered in advance if the patient’s insurance does not cover emergency evacuation services.²⁸² Consumer Reports recommend potential passengers purchase travel health insurance in order to cover the medical expenses that may be incurred during their trip.²⁸³ In addition, if the cruise ship carries the prescription drugs needed, the passengers will be expected to pay full price for each individual pill received on the ship.²⁸⁴ This includes bandages, motion-sickness medications, and over the counter anti-inflammatory medicines such as ibuprofen.²⁸⁵

²⁷⁷ *Id.* Some cruise ships have “telemedicine capabilities” which enables the onboard physician to contact and share video footage with a physician on land. *Id.*

²⁷⁸ *7 Things You Need to Know About Medical Care on Cruise Ships, If You Get Sick at Sea, Here’s What You Can Expect*, CONSUMERREPORTS.ORG (Apr. 24, 2014 6:00 AM), <http://www.consumerreports.org/cro/news/2014/04/7-things-you-need-to-know-about-medical-care-on-cruise-ships/index.htm> [hereinafter *7 Things*].

²⁷⁹ *Id.* The cruise passenger will pay the cruise line for medical services received by the staff. The cruise ship’s physician is paid for his services by the cruise line through a monthly salary. Robert D. Peltz, *Has Time Passed Barbetta*, 24 U.S.F. MAR. L.J. 1, 28 (2012).

²⁸⁰ *7 things, supra* note 278.

²⁸¹ Slaten, *supra* note 239.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

*D. In the Case of Medical Malpractice Committed By Ship Doctors—
What Remedies Are the Aggrieved Passengers Left With?*

Thousands of people die each year from preventable medical errors; however, the American justice system offers redress to those affected in American courts.²⁸⁶ In the event that those same preventable medical errors occur while on a cruise ship originating from a port in the United States, it does not follow that the same guarantees offered to persons on land will be available.²⁸⁷ “The minimum professional requirement for medical staff on board cruise ships is considerably lower than the standards currently required to be an independent medical practitioner on land in the UK and other developed countries.”²⁸⁸ This is largely due to the fact that the medical staff members on board are not considered employees of the cruise line, leaving cruise line owners shielded from liability with no incentive to ensure the best medical care available to its passengers.²⁸⁹ Ultimately, this widely overlooked issue led to the lack of an international uniform standard of medical care regarding on board physicians.²⁹⁰

In *Carnival Corporation v. Carlisle*, a fourteen-year-old girl became ill while she and her family were on a cruise.²⁹¹ The ship’s doctor assured the family that their daughter was suffering from the flu and did not have appendicitis.²⁹² When the family returned home, it was determined their daughter indeed had appendicitis and is consequently now sterile.²⁹³ The family brought a malpractice suit

²⁸⁶ See generally James L. Rigelhaupt, Jr., *Medical Malpractice: Instruction as to Exercise or Use of Injured Member*, 99 A.L.R. 3d 901 (1980).

²⁸⁷ *Medical Care Spotty on Cruise Ships*, *supra* note 235.

²⁸⁸ *Passengers*, BACSM.ORG, bacsm.org/passengers (last visited May 27, 2014).

²⁸⁹ *Id.* Physicians hired by the cruise industries are considered “independent contractors.” *Medical Care Spotty on Cruise Ships*, *supra* note 235.

²⁹⁰ *Passengers*, *supra* note 288. “There is no international oversight of medical care because maritime law does not require cruise ships to provide medical care for passengers, only for the crew.” *Medical Care Spotty on Cruise Ships*, *supra* note 235.

²⁹¹ 953 So. 2d 461 (Fla. 2007).

²⁹² *Id.* at 463.

²⁹³ *Id.*

against both the cruise ship doctor and the cruise ship owner.²⁹⁴ However, the Florida Supreme Court in *Carlisle* reversed the Third District Court of Appeals decision²⁹⁵ and held that federal admiralty had jurisdiction over the malpractice of a physician while on the high seas. Therefore, since it was a maritime case, the Court “must adhere to the federal principles of harmony and uniformity when applying federal maritime law.”²⁹⁶ The *Carlisle* Court reasoned that:

When a carrier undertakes to employ a doctor aboard ship for its passengers' convenience, the carrier has a duty to employ a doctor who is competent and duly qualified. If the carrier breaches 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.²⁹⁷

This reasoning was founded on the ruling of a 1988 Fifth Circuit case,²⁹⁸ at a time when the cruise line industry furnished a

²⁹⁴ *Id.* The Carlisle family claimed that ship physician, Dr. Neri was negligent in his treatment and that Carnival was vicariously liable for the physician's negligence based on the theory of respondeat superior. *Id.*

²⁹⁵ Which held rejected *Barbetta* and followed the minority rule of *Nietes*. *Id.* The *Nietes* Court held that “where a ship's physician is in the regular employment of a ship, as a salaried member of the crew, subject to the ship's discipline and the master's orders, and presumably also under the direction and supervision of the company's chief surgeon through modern means of communication, he is, for the purposes of respondeat superior at least, in the nature of an employee or servant for whose negligent treatment of a passenger a shipowner may be held liable.” *Nietes v. Am. President Lines, Ltd.* 188 F. Supp. 219, 220 (N.D. Cal. 1959).

²⁹⁶ 953 So. 2d at 470. The common law principles of negligence are applied in admiralty law cases. See generally *Lobegeiger v. Celebrity Cruises, Inc.*, 869 F. Supp. 2d 1350 (S.D. Fla. 2012). In this case, a passenger's finger was partly cut off by a lounge chair. Due to the alleged malpractice of the on board physician, her once re-attachable finger was no longer an option. Lobegeiger sued Celebrity Cruise Lines, claiming that Celebrity ‘held out’ their physician as an officer of the cruise ship. She claimed to have trusted the physician's expertise because of his title, his uniform, etc. Summary judgment was awarded to Celebrity Cruise Lines based on the disclaimer printed in the cruise contract that Lobegeiger signed before boarding. See also *Ticket Contract*, CARNIVAL.COM, <http://www.carnival.com/about-carnival/legal-notice/ticket-contract.aspx> (last visited June 12, 2014).

²⁹⁷ *Carlisle*, 953 So. 2d at 466 (Fla. 2007).

²⁹⁸ *Barbetta v. S/S Bermuda Star*, 848 F.2d 1364, 1369 (5th Cir. 1988) (holding cruise lines cannot be held vicariously liable for their doctor's malpractice because the doctors are hired as independent contractors, they have it stated in the ticket, and the cruise lines claim that they provide a doctor for the mere convenience of their passengers).

physician on board as a mere convenience for its passengers.²⁹⁹ However, Congress enacted the CVSSA in 2010 in order to guarantee the “security and safety of passengers and crew on cruise vessels.”³⁰⁰ A specific portion of the CVSSA mandates that the cruise lines hire “medical staff” in order to provide medical treatment to victims of sexual assault, fires, and overboards.³⁰¹ In cases of sexual assault, the CVSSA states that the cruise ship owner is required to:

- (d)(1) maintain on the vessel adequate, in-date supplies of anti-retroviral medications and other medications designed to prevent sexually transmitted diseases after a sexual assault; (2) maintain on the vessel equipment and materials for performing a medical examination in sexual assault cases to evaluate the patient for trauma, provide medical care, and preserve relevant medical evidence; (3) make available on the vessel at all times medical staff who have undergone a credentialing process to verify that he or she— (A) possesses a current physician's or registered nurse's license and— (i) has at least 3 years of post-graduate or post-registration clinical practice in general and emergency medicine; or (ii) holds board certification in

²⁹⁹ Peltz, *supra* note 279, at 3. In addition, in the modern world of the cruise industry, the cruise itself is more seemingly the desired destination, rather than just the means of transportation to get to the actual destination. Hence, the cruise line should be responsible for the safety and care of their passengers, in a larger capacity than just negligent hiring. *Should Cruise Lines Be Held Liable for Their Onboard Doctor's Medical Malpractice Incidents? Part 1*, LIPCON.COM (Dec. 5, 2013), <http://blog.lipcon.com/2013/12/cruise-lines-held-liable-onboard-doctors-medical-malpractice-incidents-part-1.html> [hereinafter Part 1]. In order for federal maritime law to have come into play, two prongs have to be met: the tort must meet both the “locality” and the “maritime connection” prong of the admiralty jurisdiction test. *Carlisle*, 953 So. 2d at n.1. Which for the topic of medical malpractice, they are met. The United States Supreme Court has not ruled on this topic yet, so state courts are allowed to decide for themselves as long as it does not go against federal law. *Id.* at 464.

³⁰⁰ Peltz, *supra* note 279, at 3. As stated previously, the CVSSA applies to every passenger vessel that has sleeping facilities that carries over 250 passengers, not participating in coastwise traveling, and either arrives or departs from a United State port. *See generally* Passenger Vessel Security and Safety Requirements, 46 U.S.C.S. § 3507(k)(1)(A)–(D). Noncompliance with CVSSA requirements will open the cruise ship owner and operator to fines, criminal penalties, and the ship will be barred from United States ports. *Id.* at § (h)(1)–(2).

³⁰¹ Peltz, *supra* note 279, at 3–4.

emergency medicine, family practice medicine, or internal medicine; (B) is able to provide assistance in the event of an alleged sexual assault, has received training in conducting forensic sexual assault examination, and is able to promptly perform such an examination upon request and provide proper medical treatment of a victim, including administration of anti-retroviral medications and other medications that may prevent the transmission of human immunodeficiency virus and other sexually transmitted diseases; and (C) meets guidelines established by the American College of Emergency Physicians relating to the treatment and care of victims of sexual assault. . . .³⁰²

The CVSSA may begin to stir up litigation because it essentially opposes the long standing *Barbetta* rule, which states the ship owner cannot be vicariously liable for the malpractice of the on board physicians because they considered physicians to be independent contractors and not employees of the ship.³⁰³ In addition, under *Barbetta*, the physicians were considered to be hired at the convenience of the passengers and there was not a law that required a cruise ship to carry a physician.³⁰⁴ However, the new CVSSA requires a physician to be on board—meaning he is now an employee and vicarious liability will apply—but for a different said purpose, sexual assaults.³⁰⁵

While the statute's intention was to require medical attention for victims of sexual assault, it appears erroneous to continue claiming the sole purpose of cruise line owners providing medical staff is for the convenience of its passengers.³⁰⁶ It now begs the question—whether Congress intended to impose vicarious liability of the cruise ship owner by distinguishing between passengers in need of medical attention based on how the situation arose.³⁰⁷ Will courts separate

³⁰² 46 U.S.C.S. § 3507(d)(1)–(3).

³⁰³ *Barbetta*, 848 F.2d at 1371–72.

³⁰⁴ *Id.*

³⁰⁵ 46 U.S.C.S. § 3507(d)(1)–(3).

³⁰⁶ See Peltz, *supra* note 276, at 5. Since the cruise line is now required by United States law to carry an onboard physician, the physician is now considered an employee. Therefore, allowing the ship's owner to be vicariously liable for the negligence of its employees. See *id.*

³⁰⁷ *Id.*

these vicarious liability claims even when a physician is now required to be on board for some purpose?

One may ask, why would the cruise line owners not want to provide the best medical care possible for their customers? A major reason the cruise lines hire foreign physicians on their ships is to save money.³⁰⁸ In addition, the foreign physicians make all the decisions in regard to the patient, such as treatment and even emergency evacuation.³⁰⁹ As stated previously, since the majority of the cruise ships employ foreign physicians, it follows that they are not United States citizens, thus making it almost impossible to file a lawsuit against them in the United States courts.³¹⁰

Gutierrez v. Taylor portrays this exact dilemma.³¹¹ On May 29, 2010, Hilda Gutierrez became ill and went to the on board medical center, where she was examined by Dr. Taylor.³¹² Taylor misdiagnosed Gutierrez's severe abdominal pain as gastritis.³¹³ Gutierrez's symptoms grew worse and upon reaching Mexico, she left the ship and admitted herself into a Mexican hospital.³¹⁴ The hospital performed abdominal surgery and she was treated for abdominal sepsis and multiple organ failure.³¹⁵ Gutierrez experienced cerebral hemorrhage.³¹⁶ In May 2011, Gutierrez filed a negligence lawsuit against Taylor and Royal Caribbean Cruises.³¹⁷ Gutierrez produced evidence showing that although Taylor was not a United States citizen, he had been an employee on cruise ships disembarking from Florida for nine years.³¹⁸ In addition, Taylor's employment contract with Royal Caribbean stated that all disputes were to be resolved

³⁰⁸ *Should Cruise Lines Be Held Liable for Their Onboard Doctor's Medical Malpractice Incidents? Part 2*, LIPCON.COM (Dec. 12, 2013), <http://blog.lipcon.com/2013/12/cruise-lines-held-liable-onboard-doctors-medical-malpractice-incidents-part-2.html> [hereinafter Part 2].

³⁰⁹ Part 1, *supra* note 299. While the cruise ship's captain has the final say as to whether the ship will detour or allow emergency helicopter landing, the physician's recommendation is not usually overturned. *Id.*

³¹⁰ Part 2, *supra* note 308; *see, e.g.*, *Gutierrez v. Taylor*, 129 So. 3d 415, 418 (Fla. Dist. Ct. App. 2013).

³¹¹ *See generally Taylor*, 129 So. 3d at 415.

³¹² *Id.* at 417.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Taylor*, 129 So. 3d at 417.

³¹⁸ Part 2, *supra* note 308.

under Florida jurisdiction.³¹⁹ Notwithstanding, the Third District Court of Appeals reversed the lower court's decision, finding that Florida did not have personal jurisdiction over Taylor.³²⁰

E. As Passengers, We Have a Right to Know . . . Right?

Knowing the above, what rights and remedies do passengers really have? Despite the overwhelming lack of remedies, very few passengers consider the type of medical care they will receive should they become ill on board a secluded vessel that they entrust to safely enjoy their vacation.³²¹ On May 22, 2013, the CLIA adopted the Cruise Industry Passenger Bill of Rights, which went into effect immediately.³²² The Passenger Bill of Rights, made available on the cruise line's website, provides the passenger with the following rights: to disembark a ship at the dock if the ship's medical care, water, food or bathrooms are not sufficient, to refunds, to lodging, to an emergency power source, to a crew trained in emergency and to evacuation, timely updates, professional emergency medical attention, and a toll-free hotline.³²³ However, the Passenger Bill of Rights only applies to the twenty-six North America cruise line members of the CLIA.³²⁴ In addition, adherence to the Passenger Bill of Rights is completely voluntary and cruise lines that violate passenger's rights will not be subject to monetary penalties or disciplinary measures.³²⁵ Expert Jim Walker claims the adoption of the Passenger Bill of Rights, which is essentially the bare minimum of civility, is a ploy to keep the public happy and to keep more restrictive bills off the congressional floor which may produce laws that hold the cruise lines

³¹⁹ *Id.*

³²⁰ *Id.* As a result, leaving Gutierrez without a remedy for the medical malpractice of the onboard physician. *Id.*

³²¹ *Health on the High Seas*, *supra* note 269.

³²² *Cruise Industry Adopts Passenger Bill of Rights*, CLIA (May 22, 2013), http://www.cruising.org/news/press_releases/2013/05/cruise-industry-adopts-passenger-bill-rights [hereinafter *Passenger Bill of Rights*].

³²³ *Id.*

³²⁴ *Question and Answers Cruise Industry Passenger Bill of Rights*, TOUSMEPLUS.COM, <http://www.tourismeplus.com/UserFiles/File/CLIA-240513-2.pdf> (last visited June 2, 2014).

³²⁵ Jim Walker, *Cruise Passenger Bill of Rights: A Step in the Wrong Direction?* CRUISELAWNEWS.COM (May 23, 2013), <http://www.cruiselawnews.com/2013/05/articles/passenger-rights/cruise-passenger-bill-of-rights-a-step-in-the-wrong-direction/>.

liable and subjects them to punishment and fines.³²⁶ Cruisecritic.com reports that the CLIA President and CEO Christine Duffy stated cruise line members who fail to adhere to the Cruise Passenger Bill of Rights will be expelled from CLIA.³²⁷ Duffy went on to state “these are minimum standards . . . and cruise lines can go above and beyond. CLIA member lines will be held accountable in case the basic standards are not honored, and cruise line CEOs, who all signed off on the Passenger Bill of Rights, are required to verify adherence to the initiative.”³²⁸

F. With the Cruise Line Lobbyists Hard at Work, Is There Hope of New Legislation or Regulations Proposed to Help Safeguard the Well-Being of Passengers?

The United States Food and Drug Administration (FDA) appears to be reacting to the outcries aboard sea vessels.³²⁹ More specifically, on February 5, 2014, the FDA filed a rule on sanitary transportation “to ensure that transportation practices do not create food safety risks.”³³⁰ The rule, termed the Sanitary Transportation of Human and Animal Food, will regulate food transport practices to reduce the amount of contamination during transport.³³¹

³²⁶ *Id.*

³²⁷ *Cruise Industry Adopts Passenger Bill of Rights*, CRUISECRITIC.COM (May 23, 2013), <http://www.cruisecritic.com/news/news.cfm?ID=5365>. Thus showing the severity of their punishment.

³²⁸ *Passenger Bill of Rights*, *supra* note 322.

³²⁹ *FDA Files Rule on Sanitary Transport of Food*, CIDRAP, <http://www.cidrap.umn.edu/news-perspective/2014/01/food-safety-scan-jan-31-2014> (last visited May 19, 2014). As stated previously in Professor Dubner’s contract, remedies and liability are limited, and subjected to arbitration and choice of law contract. Cruise lines attempt to shield themselves from vicarious liability of their on board doctors by disclosing in their ticket contract with the passenger upfront that they are not liable. *See* Dubner’s Contract, *supra* note 216.

³³⁰ *FDA Files Rule on Sanitary Transport of Food*, *supra* note 329. This rule is an effort to further the protection provided by the Sanitary Good Transportation Act of 2005 and the FDA Food Safety Modernization Act of 2011. *FRMA Proposed Rule on Sanitary Transportation of Human and Animal Food*, FDA.GOV, <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm383763.htm> (last updated May 28, 2014).

³³¹ *Sanitary Transportation of Human and Animal Food*, FED. REGISTER.GOV. (Feb. 5, 2014), <https://www.federalregister.gov/articles/2014/02/05/2014-02188/sanitary-transportation-of-human-and-animal-food>. The proposed rule would establish criteria, requirements, as well as provide definitions that will be applicable

Contamination typically occurs when there is failure to properly refrigerate food, insufficient cleaning of the ship between trips, as well as, inadequate protection of food while being transported.³³² Since the Sanitary Transportation of Human and Animal Foods rule builds on the previous Sanitary Food Transportation Act of 2005 and the FDA Food Safety Modernization Act of 2011, it follows that any failure to comply will fall within the Food Drug and Cosmetic Act's (FDCA) "prohibited acts" under 21 U.S.C. 331.³³³ Specifically, subsection 331 of title 21 authorizes criminal and civil punishments for violations of the code.³³⁴

The FDA is not the first, and certainly will not be the last, entity that seeks to protect passengers sailing the high seas. For example, the British Association of Cruise Ship Medicine (BACSM) has been specifically designed to "develop and maintain the highest possible standards of competence and professional integrity in medical practice in the care of passengers and crewmembers on board cruise ships."³³⁵ The BACSM standards are relevant worldwide, and

to decide whether such food has been contaminated due to the transporter being in noncompliance with the "sanitary food transportation regulations." *Id.*

³³² *Id.*

³³³ 21 U.S.C. § 333 (2010).

³³⁴ *Food & Drug Law*, STRASBURGER.COM, <http://www.strasburger.com/boats-planes-trucks-trains-fda-proposes-new-transportation-sanitary-rule/> (last visited June 2, 2014). 21 U.S.C. § 333 (2010). For example, section 333 is the penalty statute for violations of the prohibited acts set out in section 331 of Title 21 U.S.C.A Food and Drugs Act. It reads as:

(a) Violation of section 331 of this title; second violation; intent to defraud or mislead: (1) Any person who violates a provision of section 331 of this title shall be imprisoned for not more than one year or fined not more than \$1,000, or both. (2) Notwithstanding the provisions of paragraph (1) of this section, if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than \$10,000, or both.

21 U.S.C. § 333.

³³⁵ *The World's First Dedicated Organization for International Standards in Cruise Ship Medicine*, BACSM.ORG, <http://bacsm.org/> (last visited May 20, 2014). The BACSM is a nonprofit organization that supports all medical care workers of Cruise Ship Medicine. *About Us*, BACSM.ORG, bacsm.org/about-us (last visited May 21, 2014).

have been modeled after the United Kingdom standards with “unique relevance to the specialty of Cruise Ship Medicine.”³³⁶

On November 13, 2013, the Cruise Vessel Consumer Confidence Act of 2013 (CVCCA) was introduced into the House.³³⁷ The purpose of this bill is to amend Title 46 of the United States Code, in order to add safeguards for cruise passengers.³³⁸ The CVCCA proposes that the Federal Maritime Commission (FMC) investigate whether the “sale of a ticket to a cruise vessel passenger by a cruise vessel owner is: (1) an unfair or deceptive practice, or (2) an unfair method of competition.”³³⁹ If the CVCCA is enacted in its current form, it will protect passengers from being strong-armed into essentially waiving all of their rights to sue the cruise line in the event of disaster. If the FMC finds that a cruise line has participated in unfair practices or methods of competition, they could be fined up to \$25,000.³⁴⁰

VII. PUSHING FORWARD-WHERE DO WE GO FROM HERE?

Essentially, passengers are at the mercy of the cruise ship personnel while at sea. Why should the owners, charterers, or anyone be permitted to shirk their responsibility? Your authors suggest creating the position of “ship mediator” or “ombudsman.” This person would not be employed by the cruise ship, but would instead be an independent contractor. The special mediator/ombudsman would serve as a victim advocate and could provide assistance to those passengers who are victims whether they are in “territorial waters” or “high seas.”

By disclaiming all liability to the passengers, the cruise ship owners are leaving passenger victims without a remedy. This is unheard of in other areas of jurisprudence. For example, the Uniform Commercial Code 2-719(2) protects consumers from being placed in

³³⁶ *Id.*

³³⁷ Cruise Vessel Consumer Confidence Act of 2013, H.R. 3475, 113th Cong. (2013).

³³⁸ *Id.*

³³⁹ *Id.* An example of an unfair or deceptive practice is when the cruise line owner does not certain written disclosures to the passenger before selling them a ticket.

³⁴⁰ *Id.*

this type of predicament.³⁴¹ Also, it should be obvious to the reader(s) that admiralty law does not work well with cruise ship problems regarding passengers. For the reasons stated previously, admiralty law was never intended to cover the types of situations that passengers are confronted with on cruise ships. Your authors believe Congress should adopt a law requiring all land-based laws to be available to passengers and not allow the cruise lines to shield themselves behind antiquated admiralty jurisprudence. Why not extend the same protection to passengers who are there at the invitation of the cruise lines? It is understandable why the cruise ship owners would want to restrict choice-of-venue clauses to where their headquarters are located, however most of their disclaimer clauses essentially take away the rights of passengers without giving anything in return to assist or protect them. In the case of cruise ship passengers, between signing the cruise contract with the inconspicuous waiver of rights clause and the weak admiralty laws on the subject, the passengers rarely recover.

In regards to the level of medical care, currently no uniform international standard of medical care is mandated on board cruise ships. However, BACSAM anticipates that their standards will soon become the international standard for Cruise Ship Medicine.³⁴² In the meantime, what can potential passengers do to protect themselves and their health while they await change? The CDC suggests that potential passengers visit their doctors prior to sailing, to ensure that they are healthy enough to embark on the voyage.³⁴³ Also, it is recommended that the passenger be up-to-date with their vaccinations, since other passengers and crewmembers travel from countries that have diseases which are not prevalent in the United States.³⁴⁴ In addition, frequently washing hands and minimizing hand to face contact can best resist the nausea and diarrhea causing norovirus.³⁴⁵

³⁴¹ U.C.C. § 2-719(2) (2002) (“Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.”).

³⁴² *Cruise Companies*, BACSM.ORG, bacsm.org/cruise-companies (last visited May 27, 2014).

³⁴³ Slaten, *supra* note 239.

³⁴⁴ *Id.*; *see also* *Cruise Ship Travel*, CDC, <http://wwwnc.cdc.gov/travel/page/cruise-ship> (last visited May 27, 2014). For more information on traveler insurance, vaccinations, and health prevention.

³⁴⁵ Slaten, *supra* note 239.

It is important that American passengers be informed the standard of medical care they receive while on a cruise may be substandard to the level of care they are accustomed to in their hometown. Full disclosure and true transparency by the cruise line industry is the key to changing and adopting a universal standard of care. Obtaining knowledge, educating others, and demanding change is the answer to correcting the issue of crime, as well as, the lack of medical care provided on cruise ships.

It is believed that by putting the public on notice, voicing concerns, and disclosing the dishonorable practices of the cruise lines, it will force the cruise line industry to step up in reporting and preventing crimes, providing adequate medical care, and accepting liability for injuries that occur while on their cruise ships. Many organizations and non-profit groups are proposing new legislation to provide universal standards and regulations for this largely unregulated industry. However, most of their efforts have failed due to the cruise industry's main lobbyist, CLIA, who has done an adequate job of keeping the groups' concerns off the Congressional agenda.³⁴⁶ Until the proposed bills are enacted, passengers must continue to protect themselves by taking precautionary measures with their primary doctors before sailing and continuing the necessary crime research in order to adequately inform themselves of the risks and dangers that may be awaiting them on their vacation cruise.

³⁴⁶ *Medical Care Spotty on Cruise Ships*, *supra* note 235.