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Years of litigation likely in wake of cruise ship flap

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Gregg Fields

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The partial sinking — and accompanying deaths of passengers and crew — of a luxury cruise liner will lead to years of litigation.

But the nature of the cruise business means that, before any plaintiff gets to court, there are a number of questions as to how.

Is the liability likely to be decided by an Italian court? What if the plaintiff is American? Does maritime law apply, or international covenants such as the Athens Convention or Death on the High Seas Act?

Do the captain's actions indicate that some of the cruise industry's traditional means of limiting liability are invalidated by behavior that a judge might consider reckless or careless?

South Florida attorneys, a number of whom have represented passengers involved in other incidents on the high seas, say any trip to a courtroom by a Costa plaintiff is likely to be long and complicated.

For Carnival Corp., Costa's owner and a potential defendant, one thing's for certain: "In-house counsel for Carnival is going to be busy for some time," says one Miami lawyer.

Virtually the entire world has been riveted by photos of a luxury cruise vessel resting sideways in the Mediterranean, horrified by the rising number of deaths and shocked at the actions of a captain who, it appears, was one of the first to abandon ship.

There will be, clearly, years of litigation over the Costa Concordia disaster. But the nature of the cruise business means that there a number of questions to be answered.

Is the liability likely to be decided by an Italian court? What if the plaintiff is American? Does maritime law apply, or international covenants such as the Athens Convention or Death on the High Seas Act? Do the captain's actions indicate that some of the cruise industry's traditional means of limiting liability are invalidated by behavior that a judge might consider reckless or careless?

"In-house counsel for Carnival is going to be busy for some time," James Perry, a Miami attorney specializing in maritime law, said of the corporate parent of Costa Cruises.

Carnival Corp., which is headquartered in Miami, declined comment. "All of our key execs who could comment on this situation are heavily involved in the Costa response," said company spokesman Vance Gulliksen.

Michael Eidson, an attorney with Colson Hicks who has handled a number of cases against cruise lines, said that determining where the litigation will end up is difficult to assess at this point. "The law that will apply to wrongful death claims is very complicated," he said.

Ticket Fine Print

Typically, when one buys a cruise ticket, a passenger must indicate where any legal claim that arises will be adjudicated. Although it's in the fine print — and no one seems to be sure what options Costa passengers were given — presumably the passengers on the doomed ship made a choice.

That doesn't mean things end there, however.

"What complicates this is recklessness," said Eidson. "A lot of rules that determine damages are affected by the degree of carelessness and recklessness."

That's an important consideration, he added, considering that the world by now knows the ship steamed off course, and a recording made shortly after the grounding has the captain vigorously balking at orders to return to the ship.

"This almost killed 4,200 people," Eidson said.

"Obviously, if you can prove fault, that doesn't bode well for the captain," said Perry. On the other hand, a rogue captain isn't likely to get Carnival off the legal hook, either. "It's hard to say, 'My employee did something; well, I'm not responsible,'" he said.

One governing agreement often relating to passenger claims is the so-called Athens Convention. Historically, cruise lines were shielded from individual damages by a pre-set amount, currently in the range of \$70,000.

However, neither Italy nor the United States has ever signed the Athens Convention. Although its guidelines have been used in cases where the ship didn't actually dock in America, Senior U.S. District Judge Lawrence King ruled last summer that Athens Convention limits don't apply when a ship's crew is shown to act recklessly.

One other complicating factor is that, at first blush, the accident didn't happen in international waters. It appears to be in the jurisdiction of Italy.

"Where you are counts," said Eidson. "I don't know what will apply, because it looks like it occurred in the country of Italy. Italy has a wrongful death law."

However, Eidson said he suspects that the proper venue for many of the claims that will arise, particularly for Americans, will be federal court in Miami, where Carnival is headquartered, or in Broward County, where the Costa unit is based.

Stephen F. Rosenthal of Podhurst Orseck in Miami, who has represented passengers in previous suits against cruise lines, said families of Florida passengers on the Costa Concordia would receive deference to pursue lawsuits in the state. "If that family were to bring suit here, there's no question the case would stay here. There would be no legitimate basis in my view for the cruise line to be sued in Italy," he said.

"That argument shouldn't really be made. That would be reverse forum shopping in my view. It'll depend to some extent on how much of the business of Costa is based or run out of Florida."

Although technically the claims might logically be against the much-smaller Costa, litigants may find an opening to sue Carnival if they can demonstrate agency, or that the corporate parent exercised a high degree of control.

But passengers need to be aware that the statute of limitations is one year for wrongful personal injury, Eidson said. They must give notice of a claim within six months.

"The first thing, if I was injured on a cruise ship, is go see a lawyer," he said. "It's a minefield of conflicting laws."

Prevailing maritime law, such as the Jones Act, which dates to 1920, doesn't actually provide damages for wrongful death, for instance. A law known as the Death on the High Seas Act,

meanwhile, doesn't cover pain and suffering provisions.

One thing he's certain of, Eidson said, is that this isn't likely to give rise to class-action suits. "Usually that's a consumer action," he said. In this case, the complaints may be consolidated under one judge, for the purpose of saving time and money on things like discovery.

"But that individual case will still be individually tried," he said.

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