

Love Boat meets Law and Order

Update on Liability for Cruise Passenger Injuries

Wednesday, September 3, 2014

Presented By the IADC Transportation Committee

Welcome! The Webinar will begin promptly at 12:00 pm CDT. Please read and follow the below instructions:

- For you information, this Webinar presentation is being recorded.
- If you have not already done so, please join the conference call.
- Mute your phone line. If you do not have a mute button or are on a cell phone, press *1 to mute your phone.
- If you are on a conference phone, please move all cellular or wireless devices away from the conference phone to avoid audio interference.
- If you have questions during the presentation, you may utilize the Q&A pod on the upper-right-hand side of your screen. You may type questions here and it will be sent to the presenter for response. If your question is not answered during the presentation, our presenter will answer questions at the end of the webinar.
- Visit the “Files” pod in the lower-right-hand corner of the screen if you would like to download a copy of this PowerPoint presentation.

The image shows a screenshot of an Adobe Connect meeting interface. The browser address bar at the top displays the URL: https://iadc.adobeconnect.com/_a1101933513/r13152pj8pi/?launcher=false. The interface includes a top navigation bar with 'Meeting' and 'Help' buttons, and a main content area divided into a 'Share' section and a 'Q & A' section. A 'Files' panel is visible at the bottom right, containing a table with columns for 'Name' and 'Size'. Two blue callout boxes with arrows provide instructions: one points to the 'Q & A' section, and the other points to the 'Files' panel.

Warning! Slippery Experts x

← → ↻ https://iadc.adobeconnect.com/_a1101933513/r13152pj8pi/?launcher=false [Icons]

Google Maps Time Zone Converte... Microsoft Office Liv... IADC - International ... Campaigner Email ... iadclaw | Home Anywhere Conferen... Adobe Connect Cen... CB435A | Staples®

Adobe Meeting [Icons] Help

Share [Menu]

Q & A [Menu]

Type your questions for presenters here in the Q&A Pod

Click on the file name to download this Power Point or any referenced documents

Files [Menu]

Name	Size

Download File(s)



The Foundation
of the
International Association
of Defense Counsel

IADC Webinars are made possible by a grant from The Foundation of the IADC.

The Foundation of the IADC is dedicated to supporting the advancement of the civil justice system through educational opportunities like these Webinars. For more information on The Foundation, visit www.iadcfoundation.org.

Moderator



Donna Burden

Burden, Gulisano & Hickey, LLC

Buffalo, NY

dlb@bghattorneys.com

Presenter



Will Moreira

Stewart McKelvey

Halifax, Nova Scotia

wmoreira@stewartmckelvey.com

Cruise Industry Snapshot

- 410 ships in service in 2014
 - (223 ships in 2002)
- 21.7 million embarkations in 2014
 - 55.1% in North America
 - 30.1% in Europe
- 11.9 million North America embarkations in 2014
 - (7.4 million in 2002)

Much More Industry Information at www.cruising.org

•Pre-2013 International Liability Regime

- Athens Convention 1974 (amended 1976)
 - Fault-based liability
 - Reverse onus on carrier to disprove fault if injury caused by shipwreck, collision, stranding, explosion or fire, or defect in the ship
 - For all other causes of injury burden of proof of fault is on the plaintiff
 - Carrier's liability limited to 46,666 SDR's per passenger per carriage
 - Ratified by most major flag states
 - Incorporated by reference in most carriers' standard contracts

•Pre-2013 Passenger Contract Terms

- No Stipulation of Governing Law
- Mandatory Choice of US Forum:

All disputes ... shall be litigated, if at all, before the United States District Court for the Southern District of Florida or, as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County ...

•Pre-2013 Passenger Contracts (Cont'd)

- Provision for Limitation of Carrier's Liability
 - On cruises which neither embark, disembark nor call at any US port, [Carrier] shall be entitled to any and all liability limitations provided under the Athens Convention ... which limits [Carrier's] liability for death or personal injury ... to no more than 46,666 Special Drawing Rights ...
 - In addition [Carrier] shall have the benefit of all Statutes of the United States of America providing for limitation ... as well as all restrictions or exemptions from liability, when applicable, under the laws of any foreign nation ...

•Athens Convention 2002 Protocol

- In Force Internationally April 23, 2014
- Of the major flag states, EU members and Panama have ratified to date
- Substantially alters liability regime
- Substantially increases limits of liability
- Imposes mandatory insurance with limits of 250,000 SDR's times ship's passenger capacity, and with right of direct action
- Expressly excludes punitive or exemplary damages

•Athens Convention 2002 (Cont'd)

- Liability regime differentiates between injury or death caused by “shipping incident” and all other causes.
- “Shipping Incident” is shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship.
- “Defect” limited to “any part of the ship or its equipment when used for ... escape, evacuation, embarkation, disembarkation ... propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances”

•Athens Convention 2002 (Cont'd)

- If cause is a “shipping incident”:
 - Carrier is strictly liable
 - Carrier’s liability is limited to 400,000 SDR’s per passenger per occurrence UNLESS
 - Carrier proves the shipping incident occurred without “fault or neglect” of itself or its employees, in which case liability is limited to 250,000 SDR’s per passenger per occurrence

•Athens Convention 2002 (Cont'd)

- If cause is not a “shipping incident”
 - Carrier is liable only if incident was “due to fault or neglect” of carrier or its employees
 - Burden of proof of fault or neglect is on the plaintiff
 - Carrier’s liability is limited to 400,000 SDR’s per passenger per occurrence

•EU Regulation 392/2009

- Made April 23, 2009, in force within EU December 31, 2012
- Adopts Athens Convention 2002 as “Community regime relating to liability ... for the carriage of passengers by sea ...”
- Mandatory application where ship is flagged or contract of carriage is made in an EU member State, or where place of departure or destination is in a member State.

• Industry Response – Spring 2014

- Substantial paradigm shift in standard passenger contract terms
- Contract governed by “general federal maritime law of the United States”
- Generally, still mandatory US choice of forum
- No references at all to Athens Convention 1976

• Industry Response – Limitation of Liability

On international cruises which neither embark, disembark nor call at any US port and where Guest commences the cruise ... or disembarks ... in a port of a European Member State, [Carrier] shall be entitled to any and all liability limitations ... as provided under EU Regulation 392/2009 ...

In addition ... on all cruises [Carrier] shall also have the benefit of all statutes of the United States of America providing for limitation and exoneration from liability ... Nothing in this Contract is intended to nor shall it operate to limit or deprive [Carrier] of any such statutory limitation of or exoneration from liability under any applicable laws.

•US Law on Limitation of Liability

- Limitation generally inapplicable to cruises with US ports of call (46 USC § 30509):
 - (1)... a vessel transporting passengers between ports in the United States, or between a port in the United States and a port in a foreign country, may not include in a regulation or contract a provision limiting ... liability ... for personal injury or death ...
 - (2) A provision described in paragraph (1) is void
- Otherwise, US law generally allows limitation of liability based on value of the ship (46 USC § 30505) subject to modest increase of limit in cases of injury or death (46 USC § 30506)

- Are the industry's new contract terms an interim measure only, until degree of flag state implementation of Athens 2002 becomes clear?
- Why is presumed governance of relationship by US substantive law in carriers' interest?
 - Limitation of liability rarely arises
 - Maintenance of plaintiff's burden of proof of fault?
 - Avoidance of present "patchwork" of national substantive laws?
- Is there still, in appropriate facts, scope to argue substantive application of some other law?

•Queen Mary – 1936

- 81,235 grt
- 2,139 passengers



•Queen Elizabeth - 1940

- 84,000 grt
- 2,253 passengers



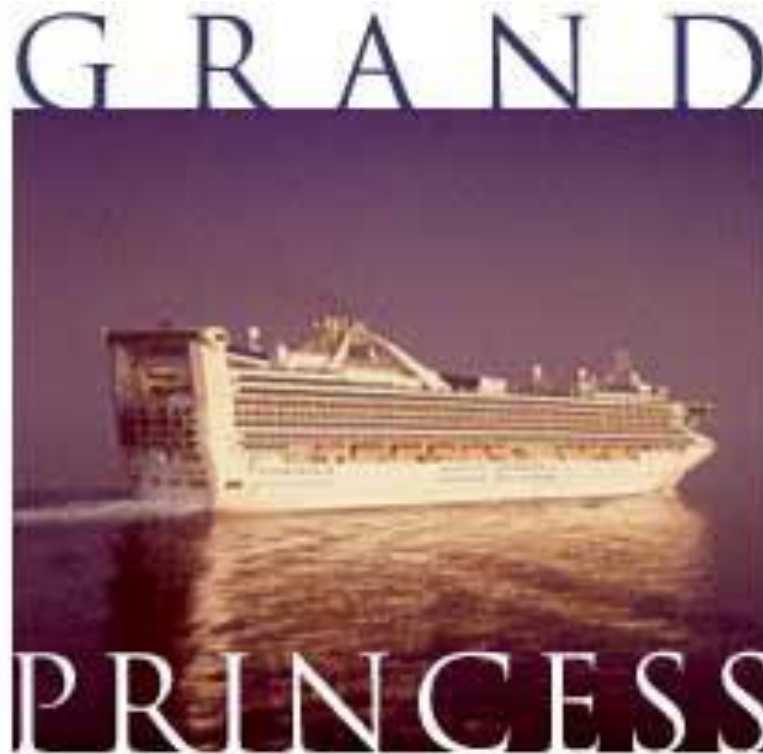
•Carnival Destiny - 1997

- 101,000 grt
- 2,642 passengers



•Grand Princess - 1998

- 109,000 grt
- 2,600 passengers



•Navigator of the Seas - 2002

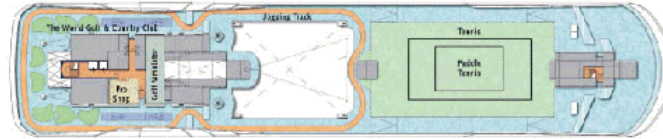
- 139,000 grt
- 3,114 passengers



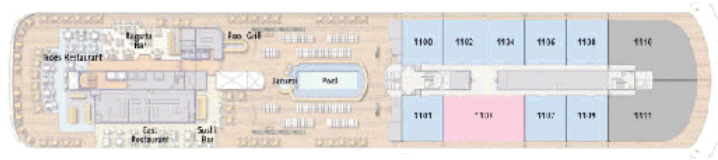
•“The World” – 2002 – 650 “residents”



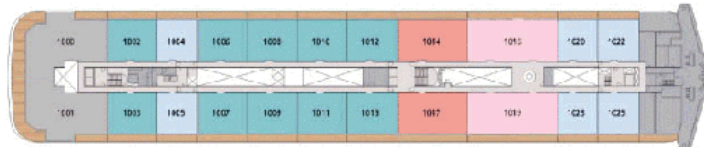
Sports Deck



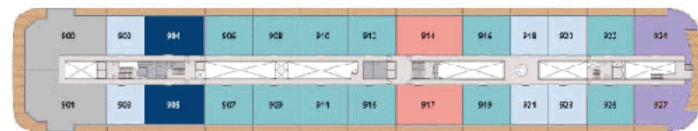
Pool Deck



Deck 10



Deck 9



•Queen Mary 2 - 2003

- 150,000 grt
- 2,620 passengers



•Allure of the Seas - 2010

- 225,282 grt
- 5,400 passengers



Questions for Presenter?



Will Moreira

Stewart McKelvey

Halifax, Nova Scotia

wmoreira@stewartmckelvey.com

Love Boat meets Law and Order
**Update on Liability for Cruise Passenger
Injuries**

Wednesday, September 3, 2014

Thank you for Participating!

To access the PowerPoint presentation from this or any other IADC Webinar, visit our website under the Members Only Tab (you must be signed in) and click on “Resources” → “Past Webinar Materials,” or contact Melisa Maisel at mmaisel@iadclaw.org.