



I'M ON A BOAT: CRUISE OPERATOR LIABILITY IN U.S. AND GERMAN PRIVATE AND PUBLIC LAW

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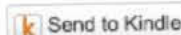

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TRAVEL

Is \$500 Enough for Enduring the Cruise from Hell?

By Brad Tuttle | Feb. 19, 2013 | 0



MARK WALLHEISER / EPA

A young passenger waits to board a bus after disembarking from the crippled Carnival Triumph cruise ship after it was towed to port in Mobile, Alabama on Feb. 14 2013.

So you've survived for five days stranded at sea aboard the *Carnival Triumph*. The ship had no working toilets, sewage dripped from walls, and the whole place smelled "like a hot port-o-potty." Here's \$500 for your troubles.

Last week, after the *Triumph* was finally tugged into Alabama and passengers kissed solid ground in relief, Carnival

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Summary



- Analyze cruise operator liability in the U.S. and Germany in light of contract provisions found in U.S. Terms & Conditions and Ticket Contracts and German Allgemeine Geschäftsbedingungen (AGB)

Contracts (DE & US)



Germany

- Allgemeine Geschäftsbedingungen (AGB)
- Reise-, Zahlungs- and Buchungsbedingungen
- Verhaltensrichtlinien für Kreuzfahrtgäste

Contracts (DE & US)



U.S.

- Terms & Conditions
- Ticket Contract/Cruise Contract
- Ancillary documents (e.g., Conduct)

Laws to Frame the Discussion



- International treaties
(neither Germany nor the U.S. are signatories to the Athens Convention)
- U.S. admiralty/maritime common law
- U.S. statutes (e.g., ADA)
- German statutes (e.g., BGB)
- EU regulations

Cruise Lines



U.S.

Carnival
Celebrity
Disney Cruise
Holland America
MSC Cruises
Norwegian
Princess
Regent Seven Seas
Royal Caribbean
Seabourn

Germany

AIDA
Carnival
Celebrity
Hapag-Lloyds
Holland America
MSC Cruises
Norwegian
Princess
Regent Seven Seas
Royal Caribbean
Seabourn
TUI

T&C/AGB Focus Areas



Additional Fuel Charges	Cancellation / Refunds	General Indemnification	Quasi Police Powers	Schedule Changes & Delays
Ancillary Persons as Independent Contractors	Emotional Distress	Indemnification for Round Trip Clause (US)	Port Authority Fees	Seaworthiness
Arbitration Clause	Forum Selection	Limitations on Liability to Passengers	Privacy (use of likeness)	Severability of the Contract
Baggage Loss	Time Limits & Notice Requirements on Filing Actions	Medical Liability	Quarantine	Specific Indemnification
Binding if not Signed	Limits on Liability to Rescuers	Disability / Fitness	Waiver of right to participate in class action	Waiver of right to jury trial

Two Examples



1. Passenger Disability and/or Passenger Fitness Requirements
2. Route Changes and Delays



1. Disability / Fitness

Germany

- Pregnant Women
 - Celebrity Cruises: pregnant women in the 24th week can be refused carriage. Likewise, Celebrity retains the right to terminate the contracts of these women. (§ 9.2 AGB)
 - if a woman is pregnant up to the 23rd week, the pregnant woman will be provided carriage if she procures a positive doctor's note. (§ 2.7 AGB)



Disability / Fitness (Cont.)

- Pregnant Women
 - Carnival: pregnant women by the 24th week may be refused carriage; alternatively, Carnival may terminate the cruise contract if the woman would reach the 24th week during the cruise (§ 7.2 AGB)



Disability / Fitness (Cont.)

- Pregnant Women
 - Royal Caribbean: the cruise operator retains the right to refuse carriage or terminate the contract of a woman who is at or would reach the 24th week of pregnancy during the cruise (§ 9.2 AGB)



Forum Choice

“The EuGVVO, like the EuGVÜ, stipulates a specific jurisdiction for certain consumer matters in cross-border legal traffic. It creates an independent, fundamentally self-contained jurisdictional system by granting consumers the privilege of the forum of their domicile even in such cases which would otherwise justify a different jurisdiction. By way of such special rules, the regulation wishes to take into account the inferiority of the consumer vis-a-vis individuals acting in a professional and business capacity and thereby provide the weaker and less skilled party the benefits of its own forum and, indirectly, the application of its own laws.” - *LG Feldkirch 20.10.2003*



Disability / Fitness (US)

- Americans with Disabilities Act (ADA) and the Pregnancy Discrimination Act (PDA)
- Although the cruise companies are free to make these limitations on pregnant women, the ADA has been extended to cruise ships—even those that fly a foreign flag



Disability / Fitness (US)

- *Spector v. Norwegian Cruise Line*, 545 U.S. 119 (2005).
- ADA applies to matters that are easily correctable (e.g., charging the same fees) but not much else.
- Eight years later, still waiting for ADA guidance for the passenger vessel industry



Note on Enforceability (US)

- A general note on enforceability of cruise contract terms in the U.S.
- SCT has held that a clause in a form passenger ticket contract is enforceable when (1) the terms withstand judicial scrutiny as to reasonableness and fundamental fairness and (2) the clause is “reasonably communicated” to the passenger by the carrier



Note on Enforceability (US)

“Reasonably communicated”...

a) whether the physical characteristics of the ticket “reasonably communicate to the passenger the existence of important terms and conditions that affect the passenger's legal rights”, **and**



Note on Enforceability (US)

(b) whether the “circumstances surrounding the passenger's purchase and subsequent retention of the ticket/contract permitted the passenger to become meaningfully informed of the contractual terms at stake.”

- *Palmer v. Norwegian Cruise Line & Norwegian Spirit*, 741 F.Supp.2d 405, E.D.N.Y., 2010.



2. Route Changes/Delays

Germany

- Route changes are a defect (§ 651 d BGB)
- Contract provisions allowing changes permissible only if reasons for change occur after contract conclusion.

Pirates!

- Right to rescind?



Germany (Changes) Cont.

- Courts consider changes to the ports of call to be potentially significant.
- A cruise's value was diminished when the advertised visit to the “exotic” Tanzania was cancelled.
- Court discusses that passengers like to brag about where they have been.



Germany (Changes) Cont.

- Failure to visit a specific port meant a reduction of 50% of the total cruise value—but this was mitigated by the cruise operator visiting an alternative replacement port, resulting in a reduction of only 30%.



Germany (Delays)

- EU Reg. 1177/2010 provides for additional rights in the event of a delay (90 minutes or more).
- Even after only 90 minutes, re-routing (i.e., alternative transportation) and reimbursements (money back) are potential remedies.

Germany (Delays)

- If there is a contractually agreed upon arrival time (more often with ferries), then there is a 25% ticket cost reimbursement:

Length of Cruise	Time Delay Trigger
up to 4 hours	Equal/greater than (\geq) 1 hr
4 – 8 hours	\geq 2 hours
8 – 24 hours	\geq 3 hours
24+ hours	\geq 6 hours



Germany (Delays)

- If the delay is 2x the delays mentioned in the chart, the compensation is 50% of the ticket price.
- For delays longer than 90 minutes, free snacks, meals or refreshments must be provided.



U.S. (Delays)

- In the event that the ship may be exposed to likely delay for any cause, the Carrier or the Master of the Ship are able to "land" the passenger and their baggage at any "port or place at which the Ship may call." In this event, the Carrier's "responsibility shall cease" and the contract is deemed performed. - *Regent Seven Seas*



U.S. (Delays)

- Further, all of the U.S. contracts included language limiting carrier liability for delays.
- The U.S. has implemented delay compensation for airfare, but not for cruises.
- Survivors of the *Coast Concordia* were offered \$15,000 + reimbursements and travel expenses; *Carnival Triumph* passengers \$500.



U.S. (Route Changes)

- A very common complaint from passengers who do not read contracts
- From *Celebrity*: Carrier may for any reason at any time and without prior notice, cancel, advance, postpone or deviate from any scheduled sailing, port of call, destination, lodging or any activity on or off the Vessel, or substitute another vessel or port of call, destination, lodging or activity. Carrier shall not be liable for any claim whatsoever by Passenger, including but not limited to loss, compensation or refund, by reason of such cancellation, advancement, postponement, substitution or deviation.



Additional Considerations

- Liability for public and police rescue operations
- Potential “passenger bill of rights” in the U.S.

Questions?

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