

The Need to provide more protection to Cruise Passengers



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In the two years since the loss of the Costa Concordia we have not seen any tangible improvement in the overall safety of passengers of large cruise ships. The Cruise industry has certainly stepped up their marketing” of a safer service, but there have been no substantial improvements in the Safety of Souls at Sea.

Last year, 2013, we witnessed the serious loss of power, caused by fire, to the MV Carnival Triumph, in the Gulf of Mexico, when passengers and crew were left at the Mercy of the Sea for several days without electrical power, sanitation of adequate food service.

This year, 2014 in January alone we have witnessed several serious outbreaks of the gastrointestinal NOROVIRUS disease. One ship, MV Explorer of the Seas, had over six-hundred and eighty nine (689)ⁱ cases, depending upon reporting source, and was forced to abort their cruise.

The seemingly increasing numbers of incidents, is more probably more a case of somewhat better reporting of incidents which have been on going, but grossly “under reported” prior to the loss of Costa Concordia and the resultant increase in scrutiny from Committee such as Commerce, as well as more press coverage.

These events, since January of 2012 which are too numerous to list, clearly indicate the events are more a part of **systemic failure** in the Cruise Industry to adequately provide minimum safety and health standards for the souls embarking on these “Holiday excursions”. These incidents point out the need for further investigation and most likely legislation, to insure adequate protection of passengers embarking on the very large cruise vessels.

Since the Costa Concordia disaster, there has been an increase, not only in the number of new building cruise ships, but more freighting, the size and passenger capacity of cruise ships.

I applaud Senator Rockefeller for his proposed “**Cruise Passenger Protection Act of 2013**”, and the passage of the “**Cruise Vessel Security and Safety Act of 2010.**” earlier. These are significant steps forward in protecting the cruising public and our environment

To date, all legislation and regulatory activity has been more “reactive” to events which occurred that painfully identified our inadequacy to fully protect human life and our environment in the large cruise ship arena.

My proposal is to take a more “Pro Active” approach to Cruise Ship Safety, fashioned after the framework of the Oil Pollution Act of 1990 (OPA90). The key elements of that act or multi-faceted and have adequate protections to ensure prevention, and enforcement.

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My recommendation would be to amend the “**Cruise Vessel Security and Safety Act of 2010**” to mandate the establishment of “**Worst Case Scenarios**” for each and every conceivable casualty of disaster based upon the maximum numbers of passengers, the “entire” cruise route and ports of call, and the development of “**Contingency Planning**” and resource staging to be able to respond in a timely manner, to any conceivable casualty, at any time and any point in the voyage of a large cruise ship.

Current worldwide **Search and Rescue (SAR)** resources are not adequate, and have never been deployed in an actual drill (exercise) environment to be able to determine if in fact there are adequate resources available at any time to respond and protect the cruising public.

Without first determining the various “**Worst Case Scenarios**” we are unable to define the requirements for Rescue personnel and resources, and again, there should be no geographic, or political “gaps” in the rescue capability.

I would also recommend that the significant costs for providing and maintaining this **Passenger Vessel Response Capability** be borne for “user fees” drawn entirely from the Cruise ship operators, rather than from general funds, due to the disproportionate number of non-cruising public vs. cruising population.

To fund this enhanced **Response Capability** I would recommend establishing a “**Cruise Vessel Emergency Response Trust Fund**” The proposed amendment would provide funding for responses to **Cruise Vessel Security and Safety Act of 2010** events provided certain criteria are met. The responsible party is liable for federal emergency rescue, response, salvage and cleanup costs and damages as detailed in the amended **Cruise Vessel Security and Safety Act of 2010**. Federal agencies assisting in a response action may be reimbursed. Several other federal agencies may provide financial support for removal actions.

Present **Search and Rescue Capabilities** provided by our own United States Coast Guard and similar agencies around the world are intended to protect those seafarers who ply the Seas to promote World Commerce.

Most commercial vessels carry total crews and passengers less than twenty or thirty person (20-30). “**Mega Cruise Ships**” Royal Caribbean Lines Allure of the Seas and Oasis of the Seas carry total compliments of up to eight thousand-five hundred (8500)ⁱⁱ passengers and crews. This overtaxes and in most cases exponentially exceeds the adequate Search and Rescue capabilities of the areas and Nations these cruise ship regularly ply.

I have mentioned many times that I feel the. “**Cruise Vessel Security and Safety Act of 2010**” Should be restructured and amended, following the content and framework of the Oil Pollution Act of 1990 (OPA90). ([33 U.S.C. 2701-2761](#)) I would like to explain my rationale for this amendment.

The Oil Pollution Act of 1990 (OPA90) was enacted AFTER the terrible **Exxon Valdez** grounding, in 1989, and subsequent massive oil pollution event. Prior to that disaster, America went on believing the shipping companies and oil companies were good at “Self-Policing” themselves when it came to preparedness, prevention and response. That tragedy proved them wrong and our pristine Alaskan Environment and Wildlife paid dearly.

The Oil Pollution Act of 1990 (OPA90) was an “All encompassing” law which set up not only Civil but strict Criminal statutes. The Oil Pollution Act of 1990 (OPA90) included strict enforcement and the establishment of the “The Oil Spill Liability Trust Fund (OSLTF)” which is set aside to be used in Oil Disasters for:

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- Removal costs incurred by the Coast Guard and EPA
- State access for removal activities;
- Payments to federal, state, and Indian tribe trustees to conduct natural resource damage assessments and restorations;
- Payment of claims for uncompensated removal costs and damages;
- Research and development;
- Other specific appropriations

My recommendation would be the establishments of a “**Cruise Vessel Emergency Response Trust Fund**” with funds generated, solely, through Cruise Ship Owners contributions for:

- Emergency Response on Rescue Operations incurred by Coast Guard and other responders
- Payment of claims for uncompensated rescue and removal costs and damages;
- Research and development;
- Other specific appropriations

The Oil Pollution Act of 1990 (OPA90) mandates ship owners carry valid Certificates of Financial Responsibility (COFRs) be issues to all Oil Tankers validating the US Coast Guard has reviewed the Owners financial ability through reserves or bonds to be able to pay for timely and proper emergency response their worst case scenario disasters.

The Oil Pollution Act of 1990 (OPA90) mandates **UNIFIED “Vessel Responses Plans”** and “**Area Response Plans**”. Unified meaning that the vessel plan seamlessly integrates with the Area (Governmental) plan to effect maximum response capability. I would propose **Cruise Vessel Emergency Response Contingency Plan (ship specific)** be mandated for each and every Cruise ship, containing response resources, staged along entire route of ship’s voyage and other necessary financial commitments with NO limitation on any Liability for an emergency.

I would recommend the Federal Government, through the US Coast Guard establish a **National Cruise Vessel Emergency Response Contingency Plan** is the result of our country's efforts to develop a national response capability and promote overall coordination among the hierarchy of responders and contingency plans. All of these actions contribute to providing financial incentives for compliance.

I would recommend the guarantee of “No financial limits on responsibilities (**Unlimited Liability**) to parties involved”

Amid the Costa Concordia tragedy, it seems very likely that cruise passengers will have to file any lawsuits in Genoa, Italy, where the cases will be subject to Italian law. Courts in the United States have consistently upheld the choice of law clauses contained in cruise passenger tickets absent evidence that "enforcement would be unreasonable and unjust," "the clause was invalid for such reasons as fraud or overreaching", or "the enforcement would contravene a strong public policy of the forum in which the suit is brought".

More importantly, as part of this comprehensive system, the Athens Convention allows the carrier to limit its liability for passenger personal injury or death in the absence of its reckless misconduct. The current monetary limitation in U.S. dollars is approximately \$72,000. The operative words are "in the absence of [the carrier's] reckless misconduct." Specifically, Article 13 of the Athens Convention provides that the carrier will lose its right to limit liability where it is proven that the damage resulted from an act or omission done with intent to cause damage or recklessly and with the knowledge that such damage would probably result.ⁱⁱⁱ

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It seems clear that loss of a human life is worth more than \$72,000. In 1990; Congress passed the Oil Pollution Act of 1990 (OPA90) lifting any liability limits for oil spills. *The question then would be, is our environment worth more than human life?* The Athens Convention has to be dissolved and ANY limitations of liability for loss of life or injuries aboard Cruise Ships must be removed in the amended HR 3360 “Cruise Ship Security and Safety Act of 2010.”

I would recommend “**Cruise Vessel Security and Safety Act of 2010**” be amended to remove **Ticketing “Fine Print”**. Cruise lines have made the “fine print” contained in the tickets too one sided^{iv} Passengers are engaging in a “contract” between themselves and the ship operator. They should not be compelled to “waive” any rights to claims under the jurisdiction of this Act, merely to by granted boarding.

Tickets purchased in USA through ANY Agent, or sub agent for any Cruise Ship, whatever her National Registry, working directly or indirectly for Cruise ship operator or owner must include the statement: “All rights and protections under the amended “**Cruise Vessel Security and Safety Act of 2010**” are granted under this contract for passage. These rights should extend to any excursions of activities purchase or engaged while on the ship during this passage.

Ticket fine print must be eliminated. Passengers should not be forced to surrender ANY rights for claims under the intent of this Act (HR3360). Just as we now have warnings on cigarette packages, Cruise Ship tickets should advise passengers of the right to retain all legal and civil rights.

Develop a Passenger Distress and Criminal Activity Signal System (PDCAS)

Passengers need to be empowered with capabilities to alert authorities in event they are concerned that ship personnel are NOT alerting rescue and responding authorities to situations aboard the ship in “real time.”

The **PDCAS** system will be tied to the ship’s **Global Maritime Distress and Safety System (GMDSS)**^v system, with protections to deny interference of distress signal from the ship

- a) Passengers are entitled to let the outside world know if there is something wrong without depending upon people who might have less than honorable motive to delay or interfere with outside response agencies becoming aware of potentially life threatening situations. Can we continue to ask passengers to check their rights in at the dock? We encourage “See Something / Say Something” in all kinds of Emergencies. Anyone can dial “911” on land; shouldn’t passengers have the same rights?

There are no methods for passengers to initiate a distress call external from the ship. There are systems on-ship which allow passengers to contact the officers on watch in the ship’s bridge to inform them of a fire, or a man-overboard or a crime on ship, but these systems are on-ship only.

These proposed **Passenger Distress and Criminal Activity Signal System (PDCAS)** needs to be linked into the ship’s external communication system, in a manner that will not allow any ship personnel to tamper or interfere with transmission, so that when a passenger “sees something” they can “say something.” The initiation of the passenger distress system (PDS) could send a message to company DPA, as well as governmental entities, through systems such as the US Coast Guard’s Automated Mutual-Assistance Vessel Rescue System (AMVERS)^{vi}, poised to respond, much like the GMDSS.

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A five-minute window could be afforded to the ship from the governmental response entity to the ship to allow for assessment of possible false alarm, and if no positive confirmation from the ship that the PDS is false or manageable on ship, governmental entities can initiate their appropriate response systems.

One final issue which needs attention is **Criminal Activity on Cruise** vessels. Hiding behind the cover of lenient Flag State enforcement, crimes go unreported, undocumented or underreported. Passengers are often time left to the prey of predatory activities with crimes including Sexual assault, homicides, and robberies. I recommend Severe **Criminal Penalties for Cruise line officials and crews** found guilty of any person committing crimes or negligent causing **Injury or Death of passengers** and harm to **Environment**.

Passengers are left at the Mercy of Cruise line security personnel, whose main purpose is to protect their employers from liabilities to protect their safety and legal rights. This just doesn't seem to be happening. I recommend that **Deputized Passenger Advocates (Sea Marshalls)**, properly trained and vetted by appropriate Federal law Enforcement Agencies, be placed aboard all Cruise vessels carrying more than two hundred US Citizens, to protect the safety of Passengers, prevent crimes, and when necessary, insure crime scene preservation, and ability to upload data real time.

Often times, Cruise vessels have surveillance teams, cameras and other devices placed around cruise vessels to protect the cruise lines from liabilities. This real time information should be readily available to Passenger Advocates and a provision to require all Cruise line **surveillance data** to be uploaded real time to government all agencies (black box technology) should be included in the amended act. In other words, Cruise lines cannot selectively "delete" any surveillance data which might prove detrimental to Cruise line litigation.

My recommendations are aimed at accomplishing that goal. My fervent hope is that the Congress of the United States takes the important step and enacts appropriate legislation to prevent any further Cruise ship disasters.

"There are those who look at things the way they are, and ask why... I dream of things that never were, and ask why not?" Robert Kennedy

Let's not wait for a "Carnival Valdez" to take action, let's prevent it.

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to retirement, his latest position was as Safety Manager for Norwegian Cruise Lines. Captain Doherty now serves as the Director of Maritime Relations for Nexus Consulting, a maritime safety and security firm based in Alexandria, VA.

ⁱ Center for Disease Control (CDC) reported 630 passengers and 54 crewmembers were sickened by Norovirus

ⁱⁱ Oasis and Allure of the Seas list 6300 passengers and 2,394 crew members

ⁱⁱⁱ What are Costa Concordia Cruise Passengers' Rights under the Athens Convention?

^{iv} Reuters) By Tom Hals, Andrew Longstreth and Steve Stecklow Tue Feb 21, 2012 6:14am GMT “The cruise business - led by industry giant Carnival Corp. & PLC, whose Italian subsidiary owned and operated the doomed Costa Concordia - has put in place over the years a legal structure that ring-fences operators from big-money lawsuits.

The rules for seeking redress are spelled out in complex, multi-page ticket contracts that passengers may not receive until right before boarding. Victims are often required to file suits in remote jurisdictions. The wording has been the subject of decades of court battles.

Thomas Dickerson, a New York state judge who has written extensively on travel law, says the legal hurdles resulting from the industry's victories over the years give operators the upper hand in litigation and make the business highly profitable. The industry faces "fewer payouts because of all the roadblocks," he said. Cruise industry officials say their contracts streamline the litigation process, prevent frivolous claims and lower cruise costs for passengers.

In the case of the Costa Concordia wreck, the ticket contract stated that "all claims, controversies, disputes, suits and matters of any kind whatsoever ... shall be instituted only in the courts of Genoa, Italy." Many survivors are now discovering the challenges of the Italian court system. Italian lawyers rarely accept cases on a contingency basis, so clients may have to pay them up front to take a case. And personal-injury cases can drag on for years, especially if there is a parallel criminal investigation. The Costa Concordia's captain is under investigation for allegedly abandoning ship. That probe must be completed before evidence will be made available to plaintiff attorneys in civil cases, said Alexander Gutierrez, a Rome lawyer who has litigated major personal-injury cases.”

^v The Global Maritime Distress and Safety System (GMDSS) is an internationally agreed-upon set of safety procedures, types of equipment, and communication protocols used to increase safety and make it easier to rescue distressed ships, boats and aircraft. GMDSS consists of several systems, some of which are new, but many of which have been in operation for many years. The system is intended to perform the following functions: alerting (including position determination of the unit in distress), search and rescue coordination, locating (homing), maritime safety information broadcasts, general communications, and bridge-to-bridge

^{vi} AMVER or Automated Mutual-Assistance Vessel Rescue System is a worldwide voluntary reporting system sponsored by the United States Coast Guard. It is a computer-based global ship reporting system used worldwide by search and rescue authorities to arrange for assistance to persons in distress at sea. With AMVER, rescue coordinators can identify participating ships in the area of distress and divert the best-suited ship or ships to respond. Participating in AMVER does not put ships under any additional obligation to assist in search and rescue efforts, beyond that which is required under international law.