

World News | Mon Jan 16, 2012 | 3:55pm EST

Cruise ship victims can't use U.S. courts: experts



Passengers put on life vests along the corridors of the Costa Concordia cruise ship near Giglio, Italy, January 13, 2012 in this still image taken from an amateur video shot by a German passenger and obtained January 14, 2012. REUTERS/Amateur Video via Reuters TV

NEW YORK Victims of the Italian cruise ship disaster who might seek to sue in the United States, where damages lawsuits are a virtual industry, may be barred from doing so.

The primary reason, legal experts said, is that contracts written into the tickets state that lawsuits must be brought in the courts of Genoa, Italy.

The contracts allow exceptions in the case of voyages to U.S. ports. But the cruise that ended in tragedy on Friday had just left the port of Civitavecchia

near Rome headed for Barcelona and Majorca.

The ship, one of the biggest passenger vessels ever to be wrecked, foundered after striking a rock. Six bodies have been found and 16 are missing among the 4,200 passengers and crew.

U.S. citizens seeking to bring claims against cruise operators have tried to challenge similar contracts in the past, arguing it is too burdensome to litigate in a foreign country. But courts have generally upheld the contracts, according to maritime law experts.

In August 2010, for example, a federal appeals court affirmed the dismissal of a lawsuit against Regent Seven Seas Cruises, whose contract required claims over voyages not involving a U.S. port to be brought in Paris. Nina Janet Seung, who suffered injuries while on board a Regent cruise within French Polynesia, claimed she was financially unable to bring a lawsuit in Paris and that her medical condition prevented her from traveling there.

But the 11th U.S. Circuit Court of Appeals found that her arguments were insufficient to override that part of the contract. The 11th Circuit has appellate jurisdiction over federal courts in Alabama, Florida and Georgia.

Carnival Corp, the Miami-based parent of operator Costa Crociere, is also unlikely to face criminal liability in the United States, since the incident happened in Italian territorial waters, legal experts said. Most U.S. criminal laws are not applied outside the United States.

"In the case of Costa, the litigation in the United States is going to be severely limited," said Jason Margulies of the law firm Lipcon, Margulies, Alsina & Winkelman, which specializes in maritime law.

Nevertheless, some U.S. lawyers said the unique circumstances of this case may merit a challenge, even though past case law is not on their side.

"When the stakes are high, it makes certain legal battles worth going forward with," said Brett Rivkind, an attorney with Rivkind & Margulies, who represents victims in cruise incidents.

LIABILITY CAP

Even if U.S. citizens who suffered injuries aboard the ship were able to bring a lawsuit in U.S. courts, their damages may be limited. Under the Athens Convention, which limits the liability of cruise operators, the cap currently stands about \$80,000 per person, according to legal experts.

One way plaintiffs may be able to overcome this cap would be to prove willfulness or recklessness, which may be possible in this case, said attorney Tonya Meister-Griffith of Meister Law. For example, she said the passengers may be able to show that the captain was reckless in navigating the ship.

The captain, Francesco Schettino, was arrested on Saturday and accused of manslaughter and abandoning the ship before all of the people were evacuated.

"I think there are some good facts in this case to argue that it doesn't apply," said Meister-Griffith.

Crew members who suffered injuries aboard the Costa will not have any easier time getting their cases heard in U.S. courts. Most cruise operators have contracts with their crews that require them to arbitrate any disputes. U.S. courts have routinely upheld those provisions, according to maritime law experts.

The leading case law was established by the 11th Circuit in a case stemming from a steam boiler explosion on the S/S Norway on May 25, 2003, in the port of Miami. The estates of six crew members who were killed in the incident and four members who were injured sought damages under U.S. maritime law against the owner of the ship, Norwegian Cruise Line Ltd and its parent, Star Cruises.

The crew members argued that the part of their employment contracts that required them to arbitrate their cases was unfair. They also said their claims could not be adequately arbitrated in the Philippines, where their contracts were executed. But in a decision issued on January 25, 2005, the 11th Circuit affirmed a lower court's order mandating arbitration.

- [© 2017 Reuters. All Rights Reserved.](#)
- [Site Feedback](#)
- [Corrections](#)
- [Advertising Guidelines](#)