

STATEMENT OF

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ON

**INTERNATIONAL MARITIME SECURITY II,  
LAW ENFORCEMENT,  
PASSENGER SECURITY AND  
INCIDENT INVESTIGATION ON CRUISE SHIPS**

BEFORE THE

**U.S. HOUSE OF REPRESENTATIVES**

**COMMITTEE ON GOVERNMENT REFORM**

**SUBCOMMITTEE ON NATIONAL SECURITY, EMERGENCY THREATS AND  
INTERNATIONAL RELATIONS**

ON

**MARCH 7, 2006**

Good afternoon Chairman and Committee Members. My name is Brett Rivkind; I am a maritime attorney in Miami, Florida for the past twenty-three (23) years. My experience with maritime cases has been mostly with the cruise ship industry.

I am honored to have been asked to testify today before the Committee. I understand the purpose of this particular hearing is to examine the effectiveness of the current regimens governing international maritime security, including law enforcement, passenger security and incident investigation. I have been requested to focus my testimony on the following five questions:

1. What United States and international laws govern passenger security onboard cruise lines?
2. Who is the official responsible for enforcing such laws onboard a cruise ship?
3. What type of security measures, both trained personnel and equipment, are onboard cruise lines to ensure passenger safety?
4. If a crime occurs onboard a cruise ship, who investigates the crime and what are their training and qualifications?
5. How are jurisdictional issues handled onboard foreign flagged vessels?

Before I begin my testimony with respect to the five questions that have been posed to me, I would like to briefly provide you with my background in the area of maritime matters. I have attached to my testimony a more complete Curriculum Vitae.

I have focused my practice of law from the beginning on the field of maritime law. I have been handling maritime cases for twenty-three (23) years. At the beginning of my career, for approximately the first four (4) years of my career, I handled cases exclusively on the defense side, handling cases brought against cruise ship companies. Most of my maritime cases have involved the cruise ship industry, although some aspect of my practice has also dealt with incidents involving cargo and other types of watercraft.

Florida is the cruise ship capital of the world. Statistics from 2004 stated that Florida accounted for approximately five (5) million of the passengers embarking from United States ports, approximately fifty-eight (58) percent of all of the U.S. embarkations.

With cruise ships now holding in excess of 2000 passengers, and crews of 800 to 1,000, and with new ships being built that will hold in excess of 5,000 passengers, the trend is there will be a significant increase in these numbers.

My observation over the past twenty-three (23) years practicing maritime law has been that with this tremendous growth in the cruise ship industry, there has been increasing

numbers of criminal activity aboard cruise ships, and an increasing need to address issues, such as security aboard cruise ships. I have always felt this concern for such a huge industry which, although operates out of the United States, and carries millions of United States passengers each year, has the advantages of being able to incorporate in foreign countries and fly "flags of convenience", enabling cruise ship operators to avoid many United States laws and regulations.

As has been discussed in prior hearings, the shipping industry has emerged to a point where American flag vessels are almost non-existent. The foreign nature of the cruise ship industry has also resulted in a situation where the employment of the crew is almost exclusively from countries outside of the United States, including many poor, undeveloped third world countries.

It is necessary to discuss the foreign nature of the cruise line industry, because it is the nature of the beast which leads us to the questions you have asked me to address today. It is apparent, after consideration of these issues, not only today, but in the prior hearing that was held on December 13, 2005, there is a big void when it comes to laws or regulations governing the cruise ship industry that impact upon the safety of a passenger who decides to embark on a cruise with one of these foreign incorporated, foreign flag cruise ships. The jurisdictional questions alone discussed at the last hearing raise serious concerns to a United States passenger about what will happen to her or him in the event she or he is a victim of a crime during a cruise. It is time we look closely at this growing industry. United States citizens should not have to rely upon the cruise ship industry itself for protection against criminal activity aboard a cruise ship. A United States citizen should not have to rely on the industry to adopt and implement their own internal standards governing crime onboard cruise ships, especially when the bottom line of the industry is profits, billions of dollars in profits.

The cruise ship industry attracted much more public attention in the mid-late 1990's due to an outbreak of Legionaire's Disease, reports of sexual assaults and how they were being handled by the cruise lines, as well as the violation of United States environmental laws. The violation of environmental laws lead to numerous felony convictions, and millions of dollars in fines being imposed. Some of the felonies that the cruise lines pled guilty to involved falsifying official ship's log books, providing false testimony to a Grand Jury, and tampering with and/or destroying evidence. The United States government and public were lied to about the environmental matters. This is the same industry United States citizens currently rely upon to voluntarily report crimes, as well as to voluntarily implement adequate security onboard the ships, and to adequately conduct investigations of any allegations of crimes aboard their cruise ships.

The jurisdictional questions involving foreign cruise ships are complex, and sometimes without a definite answer, as we learned from testimony at the last hearing.

As an example, I would like to discuss a few cases which have had to deal with the authority of the United States to exercise jurisdiction over a crime which involves an American Citizen. An individual would assume that there would be no question the

United States would have authority over a crime committed against a United States citizen that occurs aboard a cruise ship. However, a United States citizen must rely on specific jurisdictional statutes applying to maritime jurisdiction over such crimes. The courts have then had to interpret what the term "Special Maritime Territorial Jurisdiction of the United States" means within the meaning of the jurisdictional statute contained in 18 U.S.C. Section 7.

The exact meaning of "Special Maritime Territorial Jurisdiction of the United States" has become the subject of several court opinions where jurisdiction over the crime has been debated, which shows the fact that there is not necessarily a clear cut definition of Special Maritime Territorial Jurisdiction of the United States in every case. In the case of United States v. Roberts, 1 F.Supp. 2d., 601(E.D. Louisiana 1998), the District Court was faced with a case involving sexual abuse of a minor which occurred onboard a Carnival Cruise Line's ship, the M/V CELEBRATION. The alleged assailant was a national of St. Vincent and the Grenadines, the victim a United States citizen. The incident occurred while the cruise ship was in "international waters". The M/V CELEBRATION is registered in Liberia and flies a Liberian flag. The Defendant in the case debated the applicability of 18 U.S.C. Section 7, which is the enabling jurisdictional statute for Special Maritime Territorial Jurisdiction of the United States.

Another case dealing with Section 7 interpretation is the decision of the United States v. Neil, 312 F.3b 419 (9<sup>th</sup> Cir. 2002). This case involved an alleged sexual assault upon a twelve (12) year-old girl, who was a United States citizen, by a citizen of St. Vincent and the Grenadines, which took place in Mexican territorial waters. The Court held the Special Maritime Territorial Jurisdiction of the United States extended to the particular crime in question. The issue of jurisdiction was raised because the crime occurred in the territorial waters of another country. However, the issue of jurisdiction had to be litigated in the court system.

I have briefly alluded to these two (2) cases just to demonstrate that an American citizen cannot feel comfortable on a foreign cruise ship that is sailing to ports outside of the United States, including foreign countries, and cannot be assured that the FBI will have jurisdiction, or in fact exercise jurisdiction.

This leads me to the five (5) questions that have been posed to me:

**WHAT UNITED STATES AND INTERNATIONAL LAWS GOVERN  
PASSENGER SECURITY ONBOARD CRUISE LINES?**

Without getting into a very detailed discussion of various treaties or conventions that apply in some manner to cruise ship security, I am assuming the Committee is most concerned with onboard security designed for protection of the passengers from crimes onboard ships, such as sexual assaults, assault and battery, thefts, as well as the more severe incidents involving a disappearance of a passenger (whether an accident or involving foul play). As to security in general, the International Maritime Organization (IMO), which is a maritime arm of the United Nations, has addressed international

security, especially following the September 11 terrorist attacks. World wide regulations were enacted known as the International Ship and Port Facilities Security (ISPS) Code, implemented as amendments to the International Convention for the Safety of Life at Sea (SOLAS). These regulations are geared primarily for developing security regulations and security plans, and security measures to protect the ship and port from acts of terrorism.

Therefore, with respect to the first question, the main security laws that are applicable to security of cruise ships involve the International Ship and Port Facilities Security Code, as well as legislation implemented by the United States, the Maritime Transportation Security Act (MTSA).

As to passenger security onboard the ship, including crime prevention measures, and law enforcement, I am aware of no United States or international laws which govern such. It is my experience that any measures taken onboard the vessel, which we would compare to law enforcement in a city, since the cruise lines like to use statistics and compare themselves to cities, are left to the discretion of the cruise ship industry, and is currently unregulated. Of course, there are civil liability laws that may hold a cruise line accountable depending on the circumstances. Although necessary, the threat of civil liability is not enough. If this remains the sole means to police the security onboard the ships, the cruise lines will continue not to have an incentive to thoroughly investigate a crime onboard its vessel in fear of establishing civil liability on its part.

#### **WHO IS THE OFFICIAL RESPONSIBLE FOR ENFORCING SUCH LAWS ONBOARD A CRUISESHIP?**

The Master is currently the official on any cruise ship responsible for enforcement of any matters pertaining to safety or security aboard his or her vessel. This is a description of some of the Master's responsibilities, which is taken from a manual of a major cruise lines:

- The Master's primary responsibility is the safety of passenger and crew, safety of the vessel and the protection of the environment. Should the vessel become endangered, the Master must use all available recourses to minimize the impact on person's property and the environment.
- The Master is also responsible for ensuring that the crew receives proper training and demonstrates proficiency in the operation of a life saving, fire fighting, security, navigation environmental systems.
- The Master is responsible for the implementation of the accidents/incident reporting system and the Master shall support the shipboard management team and any investigation monitoring the progress through the Staff Captain, particularly as to serious matters.
- The Master is the owner's representative and the ultimate authority onboard. The Master is charged to carry out the company's policies, and

to comply with all applicable national and international laws and regulations. This authority vested to the Master by the government of the flag State.

Historically, under maritime law, it has always been the responsibility of a Master to enforce any rules or regulations onboard the ship, and to maintain security aboard his or her vessel. A Master is not necessarily qualified in law enforcement, or criminal investigation procedures. His main responsibility should be the navigation of the ship. A Master of the ship typically does not want to admit that anything criminal or wrong happens on his ship. Currently, there are no uniform laws or regulations as to the specific requirements for law enforcement personnel to be onboard a vessel to enforce any particular laws, at least which would address issues such as the number of law enforcement type personnel required, requirements for background checks, requirements for training and supervision, as well as the specific manner in which any type of law should be enforced onboard a cruise ship. There is also a Chief Security Officer who is also responsible for security. However, the Master has the ultimate responsibility for any rules or regulations aboard the vessel.

**WHAT TYPE OF SECURITY MEASURES, BOTH TRAINED PERSONNEL AND EQUIPMENT, ARE ONBOARD CRUISE LINES TO ENSURE PASSENGER SAFETY?**

Again, as to this particular question, I will need to answer it in the context of what I believe is the Committee's concern at this time, which is security measures, addressed toward protecting passengers onboard the ship from criminal activities that I have mentioned before, as opposed to outside terrorist acts, high-jackings of the vessel, or piracy acts. My experience is there is a security department onboard the vessel, which may be typically manned by a staff of eight (8) to maybe twelve (12) crewmembers, designated as security. There is usually a Chief of Security, and an Assistant Chief of Security among the eight (8) or twelve (12) crew deemed "security". Therefore, the actual number of active security patrols aboard the ship would be less. In addition, the security personnel maintain rotating shifts, which would leave even a lesser number of security actually patrolling the ship at a given time. It is important to know that the cruise ships are as high as thirteen (13) to fourteen (14) decks, with over 2000 passengers and 800-1000 crewmembers. The current system leaves only a few security personnel patrolling a thirteen deck cruise ship. Often times, one (1) or more of the security crew is assigned specifically to the casino, leaving even less security to patrol the ship. One of the major cruise lines employs security staff typically made up of crewmembers hired from the Philippines, who may have some military background or training, but do not have background in law enforcement as we know it, including investigative procedures or crime prevention measures. The security onboard the ship typically are not armed, and do not wear badges. There is not a clear presence of a strong police force onboard a cruise ship. A strong presence of security would act as a deterrence to criminal activity.

As to their training, my experience has been that the cruise line companies provide them with a training program involving security onboard the ship, but this training is minimal

and not similar to law enforcement training as we know it within a particular municipality. Again, the cruise line industry would like to compare itself to a municipality when it discusses criminal statistics about crimes. However, they do not have law enforcement personnel aboard the vessel as a municipality would. A typical law enforcement agency has standards that they adopt for hiring, training, as well as an agency or commission in charge of enforcement of any requirements. The cruise line has no similar laws that apply to their security personnel, nor any independent agency to oversee the security onboard a cruise ship.

The main security equipment onboard the vessel, putting aside security equipment that may be onboard a vessel to deal with terrorism type acts, would be the video surveillance systems onboard a particular ship. Over the years the video surveillance systems have not shown to be state of the art, and there has been a need for changes to the video surveillance systems to provide for better quality of their surveillance. It also does not appear that there is 24 hour monitoring of surveillance videos. There are no requirements to implement security cameras onboard a cruise ship, nor any requirements as to preserving any recordings that are made with the surveillance cameras. Often times, the recordings get destroyed before any investigation or claim is made, leaving any evidence that was obtained by the surveillance camera useless. The records may be kept for only a period of thirty (30) days, sometimes shorter.

There also appears to be a lack of surveillance cameras onboard the vessels, as there are no surveillance cameras in the hallways walking to a cabin. Passengers often walk back to their cabin very late at night or early in the morning. In addition, the representative of the cruise line industry from the ICCL stated that it is too expensive to install cameras on the railings around the ship, which currently do not exist.

As to the security measures that we are discussing, as well as the personnel involved in enforcing security aboard the cruise ships, I am again not aware of any specific United States laws or international laws that would govern these matters. There does need to be uniform laws to govern the selection, employment, training and supervision of crew, especially security personnel.

**IF A CRIME OCCURS ONBOARD A CRUISE SHIP, WHO INVESTIGATES THE CRIME AND WHAT ARE THEIR TRAINING AND QUALIFICATIONS?**

Again, the answer will depend on the particular policies and procedures of a particular cruise line. Since we do not have uniform laws addressing the investigation of a crime onboard a cruise ship, nor uniform standards regarding classification of crimes, and we do not have any standards or laws requiring reporting of these crimes, there are currently no uniform laws or standards regarding the investigation of an alleged crime. There are procedures for investigating accidents which have been implemented by each cruise, which would include investigation of a crime. Generally, there is a specific individual onboard, possibly the Chief Security Officer, or the Staff Captain, who will be in charge of investigating a particular crime or accident onboard a vessel. Ultimately, of course the Captain is the one in charge. As to the qualifications, they will vary from cruise line to

cruise line. I do not believe there are any requirements that the training and qualifications meet certain standards concerning law enforcement procedures, including proper investigative procedures, as well as proper crime scene preservation practices. In my experience, the individuals in charge of the investigation are not trained in investigating crimes, including properly investigating a crime scene, which would include preservation of the crime scene, collection of relevant evidence, as well as taking the appropriate statements of potential witnesses. My experience is that all investigations on the part of the cruise line will start by the cruise line staff, acting through the Risk Management Department of the cruise line, as part of the procedures to defend any potential civil liability it may have. In fact, the investigation of any crime or accident onboard a ship by the cruise line is often asserted by the cruise line to be privileged materials prepared in "anticipation of litigation", indicating that the investigations onboard the cruise ships are not geared toward a true investigation of the crime, but instead are geared toward protecting itself from liability. The cruise line does not have an appropriate incentive to thoroughly investigate a crime onboard a ship. The majority of crimes reported are alleged crimes committed by a crewmember. The crew itself is then entrusted with the investigation. The atmosphere then becomes one of "protect the company", which then pervades the entire investigation process. Neither Risk Management, nor the crew in charge, want to admit to an event, which could either lead to civil liability on their part, or lead to bad publicity. Crewmembers are also worried that they will lose their job if they do not help the company. Those in charge of security obviously have an incentive to keep crime figures low, either by not classifying an incident as a crime, or by not reporting it all. There is also an incentive not to conduct a complete, honest and accurate investigation. Therefore, consideration should be given to requiring the presence of an outside, independent security force.

#### **HOW ARE JURISDICTIONAL ISSUES HANDLED ONBOARD FOREIGN FLAGGED VESSELS?**

Returning to the discussion of the complexity of jurisdictional issues aboard a foreign cruise vessel, my experience has been that there is not necessarily uniformity on how the jurisdictional issues are handled. Pursuant to international maritime law, a cruise ship is an extension of the country where it is registered. Therefore, a crime onboard a foreign flag ship would be a crime occurring in the country where the ship is registered. At one point, the cruise line industry did not report crimes, such as sexual assaults, to United States authorities, even when a United States passenger was the victim. There are no requirements that a cruise line report such a crime to any United States authorities. In the recent past, the cruise line left it to the particular individual whether to report the crime to a United States authority. As was stated at a prior hearing, the cruise line industry, through the International Council of Cruise Lines, adopted a policy to voluntarily report any crimes involving a United States citizen to the United States authorities. There is no law requiring them to do so currently. It is also important to note that regardless of who the crime is reported to, under international maritime laws, the permission of the Master must be granted before any authorities can board the vessel, since the vessel is considered part of the country where it is registered. There may be some exceptions to this under



international law, such as a response to acts of piracy, but generally, even the FBI, must receive permission to board a foreign flag vessel to investigate. Also, a crime committed aboard a vessel which is in the territorial waters of a nation other than the nation of registry, will not provide the port where the crime occurs jurisdiction unless the crime involves the "peace and dignity of the port country". In one case when a United States passenger claimed she was sexually assaulted, the cruise line delayed the FBI for several hours before permitting boarding of the vessel. This passenger, who was allegedly sexual assaulted, stated that her room had been cleaned during this period of time, making it difficult for the FBI to gather evidence.

It should also be noted that investigating a crime at sea is inherently problematic because the authorities will have to routinely wait until the ship returns to a port, and address jurisdictional issues. In the meantime, the cruise lines have begun their internal investigation procedure, through the Risk Management Departments, which are designed to protect the cruise lines from any civil liability. Therefore, you have individuals with self interested motivations, who are not qualified in law enforcement investigation, conducting an investigation before the authorities. Most of the time the attorneys for the cruise lines will board the vessel prior to the authorities, and start investigating and taking statements before the authorities do.

In sum, how would I characterize how jurisdictional issues are handled aboard a foreign flag vessel? I would have to say not uniformly. There is too much discretion left to the cruise line. Many times, the port country, such as Turkey in the George A. Smith IV's case, is not necessarily set up to react to situations such as the Smith situation, nor do they have the appropriate incentive to conduct a complete and adequate investigation. There is no indication the flag country, such as Liberia, has any interest in conducting an investigation either. This leaves the United States passenger with great uncertainty as to protection by the United States authorities. At the present time, there does not seem to be uniformity in how a crime against a United States citizen is handled. Case law dealing with the interpretation of the Special Maritime Territorial Jurisdiction of the United States over crimes aboard vessels has raised issues, but has not resolved all of them.

#### CHANGE IS NEEDED

Although I understand I am not here to discuss any particular cases, I would like to add how the case involving George A. Smith IV demonstrates the need for change. George A. Smith IV was an American citizen. Why was a potential murder against a United States passenger investigated by Turkish police authorities, who did not have an interest in the possible crime, as it did not affect the "peace and dignity of the country"? In fact, the Turkish police authorities needed to go to a Turkish court to receive authority to conduct an investigation. This is an important matter to consider in response to the question about how jurisdictional issues are handled onboard foreign flag vessels. Currently, too much discretion is given to the cruise line. The cruise line in the George A. Smith IV matter deliberately turned over the investigation to the Turkish police authorities. While the cruise line did notify the FBI, it was after its Risk Management Department was notified first. Based on my discussions with the FBI, there appears to be many, unanswered

questions regarding legal jurisdictional issues, and procedures and protocol that should be followed in such a situation. There obviously needs to be much clearer guidelines and standards that are applicable in situations involving criminal activity onboard a cruise ship in the form of laws and regulations.

There is a need for uniform standards to apply to particular crimes, to accurately classify them according to some uniform definition. We need laws requiring crimes to be reported, even if it may only appear to be a likely crime. There needs to be uniform standards as to exactly what constitutes a crime, which will trigger a reporting requirement. We need a centralized agency to collect the data and make this data available to the United States public. Cruise ships do not warn the public about crimes onboard their ships, leaving our citizens in the dark about the existence of crimes onboard cruise ships. A citizen should be able to obtain accurate statistics of crimes, listed by cruise lines, maybe even by a particular ship. A security manager from Royal Caribbean Cruise Line previously stated that there is a sexual assault reported by one of their passengers occurring one (1) out of every fifty (50) thousand passengers. If this particular cruise line carries 3.5 million passengers per year, as has been reported, that would be a minimum of seventy (70) sexual assaults. This is a very significant number. It is important to note that these numbers do not include crimes committed by crewmember against another crewmember, which would be highly relevant if we are trying to obtain an accurate assessment of the amount of crime occurring aboard cruise ships.

As already stated, the cruise line recently adopted a policy to voluntarily report crimes. Referring to the period of time before the cruise lines voluntarily stated they were going to follow a policy of reporting crimes against United States passengers, the security manager for Royal Caribbean Cruise Line testified to the following, concerning reporting of crimes aboard this particular cruise line:

Q: During the three years prior to the ... incident who, if anyone within the company would make the call as to whether or not a given incident would get reported to law enforcement authorities?

A: That is difficult to say back in those days. We did not have clear policy on reporting such incidents, and largely the end result was if the victim requested us to do so, we would, or if we thought it was a major significant crime, we would do it in those cases too... It was not just sexual incidents. It was all alleged criminal activity in general, we just did not have good policy. Not only in my company, but in the industry in general. We just did not know where the line was to be drawn, what you reported and what you didn't.

\* Transcript can be supplied if requested. However, it is not supplied at this time to maintain any privacy aspects of the particular case in question.

## CONCLUSION

At the present time there is a lack of uniform laws regulating security onboard the cruise ships regarding the type of criminal activity the committee is addressing. We obviously need a concerted effort by the government to institute change. The President of Royal Caribbean Cruise Lines stated on national television that the cruise line industry is a unique industry. He said it is the only industry not required to report a crime. I believe the legal position recently taken by this company, in defense of the lawsuit filed by Kendall Carver involving the disappearance of his daughter, Merriam Carver, illustrates loudly the big problem we are faced with regarding the cruise line industry. The position taken should raise many eyebrows. In a Memorandum of Law filed in court by the cruise line in response to Kendall Carver's claim that the cruise line did not properly investigate the disappearance of his daughter, and intentionally withheld information from him, the cruise line said it has "no duty to investigate", and no duty to provide information to any third party. The Memorandum of Law is attached. This demonstrates the industry currently is not accountable to anyone, at least that is the position they currently stated in legal proceedings involving Mr. Carver.

I hope the information that I have been able to share with the Committee has been helpful. It is obvious from the questions being raised there is an awareness change is needed in the fastest growing travel industry. This is an area that needs rules, laws and regulations to protect our United States citizens, not only from criminal activity occurring in the first place, but also to protect United States citizens once a crime has been committed by assuring them that a complete and adequate investigation will take place, and those responsible will be appropriately brought to justice.

Thank you again for giving me the honor to speak to you.

Brett A. Rivkind

Curriculum Vitae  
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- **Education:**

Graduated law school from the University of Florida, College of Law 1983, received a degree of Juris Doctor, and based on high attainments during the study of law was inducted as a member of the Florida Chapter of **The Order of the Coif**.

- **Memberships and Affiliations:**

American Bar Association  
United States District Court Southern District of Florida  
United States District Court Middle District of Florida  
Eleventh Circuit Court of Appeals  
Supreme Court of the United States of America  
Supreme Court of the State of Florida  
The Florida Bar  
The Florida Bar Admiralty Committee  
Million Dollar Advocates Forum  
National College of Advocacy  
Association of Trial Lawyers of America  
Florida Academy of Trial Lawyers  
Florida Admiralty Trial Lawyers Association  
Southeastern Admiralty Law Institute  
Maritime Law Association  
Association of Trial Lawyers of America Admiralty Committee

- **Positions Held & Publications/Seminars:**

Past President of the Florida Bar Admiralty Committee.  
Past President of the Florida Admiralty Trial Lawyers Association  
Past Member of the Florida Bar Board of Governors  
Instructor of Business Law  
Frequent lecturer at Maritime Seminars, including lecturer to the Florida Judicial College, speaking to all of the Circuit Court Judges of the State of Florida  
Written various Maritime Law publications for seminars;

- **Type of Cases of Handled:**

Brett Rivkind has handled all types of Maritime cases in both the State and Federal Trial and Appellate Courts. His cases have included both passenger and crewmember's claims, from both the Plaintiff and defense side, including Mr. Rivkind currently limits his practice to representing victims of a crime or accident.

Counsel for those loved ones who died when a passenger cruise ship, S/V FANTOME, disappeared during Hurricane Mitch, which is the subject of a novel regarding the ship and the storm.

Was lead counsel in Florida in a case involving the death of over four hundred passengers and crewmembers arising out of a fire aboard the SCANDINAVIAN STAR; Handled cases involving both passengers and crewmembers, including Sexual Assault Claims, Catastrophic Cases, and all types of Maritime Wrongful Death and Personal Injury litigation

Brett A. Rivkind

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>.  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

KENDALL L. CARVER and  
CAROL L. CARVER

GENERAL JURISDICTION DIVISION

CASE NO.: 05-17335 CA 01

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES LIMITED,  
a foreign corporation,

Defendant.

FILED FOR RECORD  
2005 DEC - 5 AM 4: 23  
CLERK  
CIRCUIT & COUNTY COURTS  
MIAMI-DADE COUNTY, FLA.  
CIVIL #5

MOTION TO DISMISS AMENDED COMPLAINT

Defendant, Royal Caribbean Cruises Limited ("RCCL"), by and through undersigned counsel and pursuant to Rule 1.140 of the Florida Rules of Civil Procedure, hereby files this, its Motion to Dismiss, and states as follows:

1. On August 27, 2004, Merrian Lynn Carver ("Carver") boarded the M/V MERCURY, a vessel owned by Celebrity, for what was scheduled to be a weeklong cruise from Seattle to Vancouver.
2. Carver's family and/or their representatives have told RCCL that they believe she committed suicide by jumping from the vessel sometime after the second day of the cruise.
3. Carver's father, Kendall Carver, and her mother, Carol L. Carver, ("Plaintiffs") have brought the instant action against Celebrity asserting causes of action for Fraudulent Concealment and Intentional Infliction of Emotional Distress.
4. While RCCL adamantly denies Plaintiffs' false and exaggerated claims, even assuming them to be true, Plaintiffs' Complaint fails to state a cause of action.
5. Both claims should be dismissed, for the reasons set forth below.

## MEMORANDUM OF LAW

### I. Count I - Fraudulent Concealment

The “fraudulent concealment” claim is premised on RCCL’s alleged failure to timely investigate Merrian Carver’s disappearance and RCCL’s failure to provide certain information to Plaintiffs and other third parties following her disappearance. Plaintiffs allege that RCCL failed “to investigate the disappearance of a passenger and to report the disappearance to the emergency contact listed by said passenger,” or, “to timely notify the passenger’s next of kin and the appropriate law enforcement personnel.” Further, they allege that RCCL had a duty to the family members of Merrian Carver “to provide all relevant, material and wholly truthful information.”

These statements are legally invalid. There is no court of law that has recognized the legal duties contrived by Plaintiffs in this Complaint. In fact, courts have specifically held that no duty to investigate exists. *See Doe v. Celebrity*, 145 F. Supp. 2d 1337 (S.D. Fla. 2001); *York v. Commodore Cruise Line, Ltd.*, 863 F.Supp. 159 (S.D.N.Y. 1994). The only duty owed by a ship owner to a passenger is that of reasonable care under the circumstances. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 79 S.Ct. 406, 410 (1959). Moreover, a cruise ship operator owes no duty, whether to disclose information or otherwise, to third parties such as the Plaintiffs herein. Absent a duty to disclose, there can be no claim for “fraudulent concealment.”

### II. Count II – Intentional Infliction of Emotional Distress

The claim for Intentional Infliction of Emotional Distress simply re-alleges multiple paragraphs from the prior count, for fraudulent concealment. This cannot form the basis of a claim, as the practice of incorporating the allegations of prior counts into succeeding counts is prohibited under Florida law.

See *Frugoli v. Winn-Dixie Stores*, 464 So.2d 1292 (Fla. 1st DCA 1985) and an action for intentional infliction of emotional distress must set forth an "independent tort." *Boyles v. Mid-Florida Television Corp.*, 431 So.2d 627, 636 (Fla. 5th DCA 1983) See also *LaPorte v. Associated Independents, Inc.*, 163 So.2d 267 (Fla. 1964); *Slocum v. Food Fair Stores of Florida*, 100 So.2d 396 (Fla. 1958); *Kirksey v. Jerrigan*, 45 So.2d 188 (Fla. 1950). In the instant case, Plaintiffs have failed to set forth an independent tort for the recovery of damages for intentional infliction of emotional distress; instead, the emotional distress claim is premised on the same alleged conduct by RCCL as the fraudulent concealment. Even if Plaintiffs could plead sufficient independent facts, 46 USC § 183 specifically bars this claim, as it provides that cruise lines are permitted to contract out of claims for emotional distress absent direct physical injury to the plaintiff. As said language is incorporated in RCCL's ticket contract, this claim is facially and legally invalid.

Additionally, the allegations of the Complaint do not meet the elements of the tort itself. The only "facts" alleged are conclusory statements that RCCL supposedly gave inaccurate, incomplete and false information to the Plaintiff's attorneys, representatives, and agents. The complaint never identifies these statements. It is well settled that in order to establish a *prima facie* case for intentional/reckless infliction of emotional distress, Plaintiff must prove existence of: (1) deliberate or reckless infliction of mental suffering, (2) outrageous conduct, (3) a causal connection between the outrageous conduct and the emotional distress, and (4) severe distress. *Dominguez v. Equitable Life Assurance Society of the United States*, 438 So.2d 58, 59-60 (Fla. 3d DCA 1983), *approved*, 467 So.2d 281 (Fla. 1985). The standard for "outrageous conduct" is particularly high in Florida. *Golden v. Complete Holdings, Inc.*, 818 F.Supp. 1495, 1498 (M.D. Fla. 1993). Under Florida law, whether the actor's conduct is atrocious and utterly intolerable enough to be deemed outrageous is a matter of law for the court, not a question of fact.



*Dependable Life Ins. Co. v. Harris*, 510 So.2d 985, 988 (Fla. 5<sup>th</sup> DCA 1987); *Pontone v. Scarfone*, 468 So.2d 1009, 1011 (Fla. 4<sup>th</sup> DCA 1985). To be sufficient, the recitation of facts must arouse resentment in an average member of the community, and cause him to exclaim "outrageous." *Metropolitan Life Insurance Co. v. McCarson*, 467 So.2d 277 (Fla. 1985); *Restatement 2d of Torts*, section 46. It is not enough that the intent is tortious or criminal; it is not enough that the defendant intended to inflict emotional distress; and it is not enough if the conduct was characterized by malice or aggravation which would entitle the plaintiff to punitive damages for another tort. *Restatement 2d*, section 46. The allegations made by the Plaintiffs in this case as to RCCL's conduct do not rise to this level.

Finally, to bring a cause of action for intentional infliction of emotional distress in Florida, the Plaintiff must be the direct recipient of the outrageous conduct. In the case of *M.M. and M.M. v. M.P.S. and B.S.*, 556 So.2d 1140 (Fla. 3<sup>rd</sup> DCA 1990), Plaintiffs claimed emotional distress when told by an assailant that he had sexually abused their daughter and sold her drugs since she was 8 years old. In dismissing their Complaint, the Court held that there was no cause of action for intentional infliction of emotional distress where the Plaintiffs were not physically present when the outrageous conduct occurred. *See also, Habelow v. Traveler's Ins. Co.*, 389 So.2d 218 (Fla. 5<sup>th</sup> DCA 1980) (wife's claim for intentional infliction of emotional distress was dismissed because the abuse was directed at her husband. The court stated: "in all cases we have found in Florida recognizing the tort of intentional infliction of emotional distress, the plaintiff was the recipient of the insult of abuse." *Habelow*, 389 So.2d at 220; *M.P.S.*, 556 So.2d at 1140-1141 (emphasis added). In this case, Plaintiffs' allegations of emotional distress are brought in the name of only two persons, Carver's mother and father, neither of whom was on the subject cruise or was present when the alleged outrageous conduct occurred. This, too, cannot

form the basis of a claim.

**III. The Complaint fails to state a claim upon which relief can be granted.**

Plaintiffs' Complaint merely contains vague and conclusory allegations which do not contain ultimate facts; as such, it is insufficient to state a cause of action. *See, Gerentine v. Coastal Sec. Systems*, 529 So.2d 1191 (Fla. 5th DCA 1988) (Counts that merely re-incorporate previous allegations failed to comply with the requirements of Rule 1.110 of the Florida Rules of Civil Procedure to provide a short and plain statement of ultimate facts.); *Clark v. Boeing Co.*, 395 So.2d 1226 (Fla. 3rd DCA 1981) (Pleadings must contain ultimate facts to support each element of the cause of action, mere conclusions will not suffice).

WHEREFORE, Defendant respectfully requests that this Court enter an Order dismissing the Complaint in its entirety.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via facsimile and U.S. Mail to: Stewart Logan, Esq., LOGAN & HIBNICK, P.A., Museum Tower, Suite 2050, 150 West Flagler Street, Miami, Florida 33130 on this 2nd day of December, 2005.

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