All At Sea - The Americans With Disabilities Act And Cruise Ships

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On 28 February 2005 a landmark case was heard by the United States Supreme Court that will decide whether and to what extent the ADA’s requirements for accessible accommodations should apply to foreign cruise ships that enter the U.S. In Specter v Norwegian Cruise Line, the Fifth Circuit Court of Appeals held, in a case arising in Texas, that the ADA cannot be applied on foreign ships without a clear statement to that effect by Congress. The Eleventh Circuit Court of Appeals ruled just the opposite in an earlier case arising in Florida, Stevens v Premier Cruises, reasoning that when ships enter U.S. waters they automatically become subject to U.S. laws. The ADA itself is silent.

The High Court unanimously agreed to decide the issue because the lack of certainty on what accessibility standards control at sea, not to mention conflicts between land side ADA mandates and international treaties governing ship construction and operation, has left the industry in a quagmire. Requirements in SOLAS governing fire safe zones and doors conflict with ADA standards applied to structures on land. Maintenance of water tight compartments on oceangoing ships under the Convention on Load Lines is equally at odds with U.S. access standards for hotels and other buildings. These problems are exacerbated by the failure of either the U.S. Department of Transportation or Department of Justice to promulgate any ADA standards for cruise ships in the 15 years since the law was first passed.

Meanwhile, other nations, including the U.K., have adopted their own accessibility standards. British guidelines for large passenger ships specify that accommodations for disabled guests should be located on or as near as possible to the embarkation deck to facilitate egress in an emergency. The British guidelines are applicable to British flag vessels and are, in fact, consistent with the IMO Recommendation on the Design and Operation of Passenger Ships to Respond to Elderly and Disabled Passengers’ Needs, promulgated in 1998. ADA standards, typically applied to buildings and facilities on land, such as hotels, call for accommodations for guests with special needs to be dispersed throughout all price point categories on all floors. Segregating all wheelchair passengers onto one deck on a cruise ship might well be viewed as discriminatory in the U.S. Thus, for a ship such as the QE2 to comply with the British/IMO guidelines, it would have to risk violating U.S. standards and in order to adhere to U.S. standards, would have to ignore the British/IMO guidelines. The problem becomes especially clear when one considers that under the Stevens rule, when a vessel enters U.S. waters and/or embarks passengers in the U.S., it become subject to the ADA. A vessel such as the QE2, that sails worldwide and only calls in the U.S. infrequently, would be required to decide, without any statutory guidance, whether to follow British or U.S. law. The only other option would be for the ship’s owner to reconfigure the accessible cabins for the short period of time the ship is in U.S. waters - hardly a workable alternative.

These same issues were apparently troubling to the Justices of the Supreme Court. During the recent hearing, Justice Ruth Bader Ginsburg, generally regarded as one of the most liberal Justices of the Court, remarked to the Spectors’ counsel "Then you are, in effect, saying the U.S. rules the world... [Y]ou are, in effect, saying no matter what the other ports say, that the U.S. is going to govern because practically if you're going to design the ship to meet the U.S. requirements, you’re not going to rip those out when the ship goes elsewhere." On the other hand, the Justices were also concerned whether cruise lines based in the U.S. should be free to discriminate against persons with disabilities simply because their ships are registered abroad.

The Specter case has attracted national and international attention, not only because of the importance to cruise ships worldwide, but also due to the potential ramifications the decision could have on the application of other domestic laws to shipping generally. The plaintiffs were joined by the Solicitor General of the United States, Attorneys General of several states and a wide array of disability rights advocates. Norwegian Cruise Line was joined by the International Council of Cruise Lines, the International Group of P&I Clubs, the Republic of the Bahamas and the U.S. Chamber of Commerce. The Supreme Court is expected to render its decision by this coming summer*.

With thanks to Lawrence W. Kaye of Kaye, Rose & Partners, LLP for preparing this article.

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