Supreme Court Rules ADA Applies To Foreign Flagged Cruise Ships - Sometimes

In a 5-4 decision, a highly-divided Supreme Court has now ruled that foreign-flagged cruise ships embarking in U.S. waters are subject to liability to disabled passengers under the ADA for alleged discrimination practices, policies and procedures. Spector v. Norwegian Cruise Line Ltd., 125 S. Ct. 2169 (June 6, 2005). The Court remanded the matter back to the lower court to determine whether plaintiffs were discriminated against as claimed, and whether the structural modifications sought were in conflict with international law or otherwise interfere with the ship's internal affairs. While disability-rights advocates have publicly touted the Supreme Court's decision as a victory, the ruling is viewed by industry insiders as largely favorable.

Although the Court held certain aspects of the ADA could apply, the opinion reasoned that when it comes to the structure of the ship itself, permanent and significant changes cannot be automatically imposed by Title III of the ADA, at least as currently written, because Congress has not clearly stated its intent to apply those provisions to a ship's internal affairs. The Court found that a ship's basic design and construction is deemed to be among its internal affairs. Under longstanding principles of statutory construction, legislation passed by Congress cannot be applied extraterritorially (i.e. outside the boundary the United States) unless Congress expressly provides for such application in the statute itself. When this rule is applied to a foreign flag vessel, it means that no federal legislation can be applied to the "internal affairs" of that ship, even while in U.S. waters, unless Congress first includes in the statute a clear statement of intent to apply the law in that manner.

Historically, the term "internal affairs" had been defined by the High Court to mean that a statute must implicate the foreign ship owner's labor relations with its foreign crew before the required clear statement by Congress is triggered. In Spector, however, the Court expanded the definition of "internal affairs" to encompass a ship's basic design and construction, stating that before legislation could govern such matters, Congress would need to clearly state its intent to apply the law to foreign vessels. There is no such statement contained in the ADA. Alternatively, the Court noted that to the extent any proposed modification of a ship's structure was inconsistent with international law or operational safety, such modifications would not be deemed "readily achievable" anyway, as defined in the Act.

A lingering question left unanswered by the opinion is whether the pending DOT regulations addressing construction, alterations and barrier removal on cruise ships, when finally promulgated, can be applied at all to foreign vessels, and if so, to what extent. Even if the regulations are not inconsistent with international law and pose no threat to safety, they presumably would require permanent structural parameters in the design and construction of vessels, and if applied to foreign ships, would implicate their internal affairs. The Court was clear that such application of the ADA would "likely" require an amendment by Congress to specify application to foreign ships.

Even with regard to practices and policies there is also uncertainty about the reach of the Court's decision. Spector involved ships that were based in the U.S. and alleged discrimination in ticket sales to Americans who boarded in U.S. ports. The decision uses language suggesting application of Title III's prohibition on discrimination, even though applicable in some cases to foreign ships, is limited to U.S. waters, stating: "Except insofar as Title III regulates a vessel's internal affairs... the statute is applicable to foreign ships in United States waters to the same extent that is applicable to American ships in those waters." It seems no coincidence that the Court would twice in one sentence use such limiting words if it did not intend its holding to be limited to ships embarking or at least calling in the U.S. That limitation would mean alleged discrimination aboard ships whose itineraries do not include U.S. ports, even if the tickets are sold in the U.S., may not be covered by the ruling.

Although concern had been expressed that the decision could invite application of other U.S. laws to foreign ships generally, the ruling likely has no such effect. The scope of the decision involves only application of U.S. laws when foreign ships enter U.S. waters, not when they operate abroad. Spector stands for the proposition that federal statutes do not automatically apply to a foreign ship's internal affairs, including its labor relations with foreign crew or basic design and construction, unless Congress first includes in the statute a clear statement requiring such application to foreign ships.

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

Kaye, Rose & Partners represented the International Council of Cruise Lines in filing an amicus curiae brief in support of Norwegian Cruise Line in the Spector case.

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