

**The 1920 DEATH ON HIGH SEAS ACT: AN OUTDATED AND AMBIGUOUS
ADMIRALTY LAW SHIELDING CRUISE LINE COMPANIES FROM CIVIL
LIABILITIES**

Madeline Burke
University of Arkansas at Little Rock

The 1920 DEATH ON HIGH SEAS ACT: AN OUTDATED AND AMBIGUOUS ADMIRALTY LAW SHIELDING CRUISE LINE COMPANIES FROM CIVIL LIABILITIES

Introduction

I. The Recent Growth of the Cruise Line Industry and the Standards of Safety

The cruise line business has been an extensively growing sector in the travel and tourism industry. Between 2005 and 2015, the demand for cruising increased by 62%.¹ In 2015, the cruise industry had an \$117 billion economic impact. Last year, approximately twenty-four million people cruised globally—half were from North America. Carnival Corporation is “the world’s largest leisure travel company” and the parent company to cruise lines like Carnival, Princess, and Holland America.²

As the industry continues to grow, some say that safety regulations are not proportionate to the modern cruise ships. On January 13, 2012, 32 people died out of 4,252 passengers after the Costa Concordia cruise ship, “a state-of-the art vessel owned by Carnival Corporation,”³ hit a rock off the coast of Italy, damaging its hull.⁴ In response to this disaster among others, the corporation announced in 2013 a \$700 million investment plan to upgrade safety and operating procedures on ships.⁵ Although most accidents on cruises are not fatal, it happens occasionally. The sinking of Costa Concordia was a high-profile mishap; however, most wrongful deaths rarely get the same attention from the media or the cruise line company. On April 10, 2016, Christy and Larry Hammer died from a cabin fire that could have been prevented with proper training and equipment on the *La Estrella Amazonica*. The Hammer’s two daughters believe cruise lines keep “prioritizing profits over safety until there is some kind of consequence.”⁶

¹ Cruise Lines International Association, *2017 State of the Cruise Industry Outlook*, <https://www.cruising.org/docs/default-source/research/clia-2017-state-of-the-industry.pdf?sfvrsn=0> (last visited May 8, 2017).

² Carnival Corporation & PLC, *Corporate Information*, <http://www.carnivalcorp.com/phoenix.zhtml?c=200767&p=irol-prlanding> (last visited May 8, 2017). (“The company’s portfolio of global cruise line brands includes Carnival Cruise Line, Fathom, Holland America Line, Princess Cruises and Seabourn in North America; P&O Cruises (UK) and Cunard in Southampton, England; AIDA Cruises in Rostock, Germany; Costa Cruises in Genoa, Italy; and P&O Cruises (Australia) in Sydney.”)

³ Adam Piore, *Special Report: How Safe is Your Cruise Ship?*, CONDÉ NAST Traveler (May 15, 2012), <http://www.cntraveler.com/stories/2012-05-15/special-report-cruise-safety-regulations-costa-concordia>. (“‘I don’t think regulations have kept up with the increase in capacity,’ says Antonio Simoes Re, who heads a research group focused on marine evacuations and rescue at Canada’s National Research Council”); *See also* Jad Mouawad, *Too Big to Sail? Cruise Ships Face Scrutiny*, *The New York Times* (October 27, 2013), http://www.nytimes.com/2013/10/28/business/too-big-to-sail-cruise-ships-face-scrutiny.html?pagewanted=1&_r=0&ref=general&src=me.

⁴ *Costa Concordia: What Happened*, BBC News Europe (February 10, 2013, 16:55), <http://www.bbc.com/news/world-europe-16563562>.

⁵ *Carnival to Spend \$700 Million to Improve Cruise Line’s Dependability*, Fox News (April 17, 2013), <http://www.foxnews.com/travel/2013/04/17/carnival-to-spend-millions-to-make-ships-safer-more-reliable.html>; *see also* Thomas A. Dickerson, *The Cruise Passenger’s Rights and Remedies 2014: The Costa Concordia Disaster: One Year Later, Many More Incidents Both on Board Megaships and During Risky Shore Excursions*, 38 *Tul. Mar. L.J.* 515, 526 (2014). (discussing the following disasters: Costa Concordia, Costa Allegra, Carnival Triumph, Carnival Dream, Carnival Legend, and Royal Caribbean’s Grandeur of the Seas).

⁶ Joe Palazzolo, *When People Die at Sea, Cruise Operators Often Get a Pass*, *The Wall Street Journal* (April 5, 2017), <https://www.wsj.com/articles/when-people-die-at-sea-cruise-operators-often-sail-1491404548>

Cruise line companies have been shielding themselves from liability in wrongful death lawsuits with the 1920 Death on the High Seas Act, an outdated statute that provides families little compensation.⁷ Instead of helping the deceases' loved ones, "...[cruise lines] go out of their way to protect themselves."⁸

II. The Death on the High Seas Act (DOHSA)

A. Background

Before 1920, the English common law and admiralty law did not allow a wrongful death action "...for an injury which results in death"⁹ due to the felony-merger doctrine—a principle that held if an act was considered both a tort and a felony, the felony took precedence over the tort. "...Since the punishment for felony was the death of the felon and the forfeiture of his property[,] nothing remained of the felon or his property on which to base a civil action..."¹⁰ Until DOHSA was enacted, there were various wrongful death state statutes which led to inconsistencies in wrongful death recoveries. Shortly after the ruling of *The Harrisburg*,¹¹ the Maritime Law Association was founded in 1899. The purpose of this association was to draft a bill "...that would create a wrongful death right of action in admiralty." The primary issue that arose was to whether or not include all navigable waters, which would then take precedence over state statutes and their boundaries.¹² The bill was unsuccessfully introduced to Congress three times between 1900 and 1915.¹³ It did not gain much attention until after the sinking of the *Titanic* in 1912 and a report finding a sharp increase in the number of deaths at sea. On March 30, 1920, Congress enacted DOHSA.¹⁴ The act provides pecuniary damages¹⁵ for the following:

When the death of an individual is caused by wrongful act, neglect, or fault occurring on the high seas beyond three nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel

⁷ Eileen Ogintz, *Tragedy at Sea: Cruise Ship Responsible for Couple's Death, Report Finds*, Fox News (April 13, 2017), <http://www.foxnews.com/travel/2017/04/13/cruise-ship-responsible-for-couples-death-report-finds.html>.

⁸ Blane Bachelor, *How Safe is Your Cruise Ship?*, Fox News Travel (June 27, 2012),

<http://www.foxnews.com/travel/2012/06/27/how-safe-is-your-cruise-ship.html>. (Statement from Charles Lipcon, the author of *Unsafe on the High Seas: Your Guide to a Safer Cruise*)

⁹ *Mobile Life Insurance Company v. Brame*, 95 U.S. 754 (1877).

¹⁰ Rowland L. Young, *Review of Recent Supreme Court Decisions*, American Bar Association Journal, vol. 56, pp. 1095 (November 1970).

¹¹ *The Harrisburg*, 119 U.S. 199, 7 S. Ct. 140, 30 L. Ed. 358 (1886); *see generally* Note 11

In May 1877, the Philadelphian steamer *Harrisburg* and the schooner *Marietta Tilton* collided in Massachusetts state waters. Six members of the schooner's crew, including the first mate, perished in the collision. Five years later, the widow and child of the deceased first mate filed suit "to recover damages for his death, caused by the negligence of the steamer."

(The Court ruled that damages could not be recovered for a wrongful death, basing its decision off of *Brame*.)

¹² Andrew S. Levy, *A Territorial Sea Change: The Death on High Seas Act and the Extension of the Territorial Sea*, *Fordham L. Rev.*, 80 (2012).

¹³ Andrew J. Burke, *Admiralty & Maritime Law-Ninth Circuit Relocates "High Seas" Under Death on the High Seas Act-Helman v. Alcoa Global Fasteners, Inc.*, 637 F.3d 986 (9th Cir. 2011), *Suffolk University Law Review* (May 15, 2013), http://suffolklawreview.org/wp-content/uploads/2013/05/Burke_Comment_Web.pdf.

¹⁴ *See Supra* Note 8

¹⁵ Death on the High Seas Act, 46 U.S.C §§30303 (2011)

responsible. The action shall be for the exclusive benefit of the decedent's spouse, parent, child, or dependent relative.¹⁶

The majority of state territorial boundaries generally reached three miles into the sea, thus Congress ensured DOHSA did not interfere with existing state death statutes.¹⁷ Moreover, the act clearly expresses that it “does not apply to the Great Lakes or waters within the territorial limits of a State.”¹⁸

In 2000, Congress amended DOHSA to include commercial aviation accidents that occur “on the high seas beyond twelve nautical miles.” In addition to pecuniary damages, nonpecuniary damages, which includes “loss of care, comfort, and companionship,” are available for recovery.¹⁹ This amendment was made in response to the Trans World Airlines Flight 800 that crashed into the Atlantic Ocean, approximately eight nautical miles off the coast of Long Island, New York, killing all of the passengers and crew members, on July 17, 1996.²⁰

Although DOHSA's original purpose was to offer a remedy for a wrongful death under maritime law, there have been countless lawsuits to determine the meaning of the term “high seas,” if the act applies to commercial aviation accidents (2000 amendment), what is covered under pecuniary and nonpecuniary damages, and if cruise ships' safety standards are up to par with the megaships. Additionally, there is considerable inequity in DOHSA between maritime and commercial aviation accidents. Providing pecuniary damages costs far less than nonpecuniary damages; therefore, cruise line companies are not being penalized as much as commercial airline companies.²¹ A representative from the Cruise Line International Association stated that the difference between cruises and airlines is the maritime industry's “superior safety record.”²²

The purpose of this review is to analyze the ambiguity of DOHSA. It will evaluate the meaning of the term “high seas” and compare the Ninth and Second Circuit Courts of Appeals' interpretation of the phrase. Next, the review will discuss the Commercial Aviation Exception and then the disparity between pecuniary and nonpecuniary damages. These two sections will highlight the significant differences in recovery between maritime and commercial airline accidents. The following section will examine how cruise lines protect themselves from liability not only by DOHSA, but also by their ticket contract. Finally, the safety standards for cruise ships as well as commercial airlines will be reviewed.

¹⁶ Death on the High Seas Act, 46 U.S.C §§30301 (2011)

¹⁷ See *Supra Note 8*

¹⁸ Death on the High Seas Act, 46 U.S.C §§30308 (2011)

¹⁹ Death on the High Seas Act, 46 U.S.C §§30307 (2011)

²⁰ Thomas C. Galligan, Jr., *Death at Sea: A Sad Tale of Disaster, Injustice, and Unnecessary Risk*, *La. L. Rev.*, 71, p. 787 (2010).

²¹ See *Supra Note 6*; (“While Congress and states have made it easier for families to recover damages for fatal accidents that happen in the air and on land, the Death on the High Seas Act treats boat passengers the same as it did nearly a century ago”)

²² See *Supra Note 6*; (“Ms. [Christina] Perez, of the Cruise Line International Association, said Congress ‘chose not to pass a similar reform for the maritime industry, partly because the maritime industry has a superior safety record.’”)

B. What Constitutes as High Seas?

The original DOHSA provided pecuniary damages for:

That whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States...²³

In 2006, “beyond a marine league” was amended to “beyond three nautical miles” for clarification; however, the term “high seas” is still not officially defined, leaving it open for interpretation. The Supreme Court has identified “high seas” to be territory that does not belong to any sovereign and is common to all nations.²⁴ On April 29, 1958, the Convention on the High Seas interpreted the term as “all parts of the sea that are not included in the territorial sea or in the internal waters of a state.”²⁵ To further explain where the “high seas” begin, the Supreme Court established the following:

Nearest to the nation’s shores are its inland or internal waters. These are subject to the complete sovereignty of the nation, as much as if they were a part of its land territory, and the coastal nation has the privilege even to exclude foreign vessels altogether. Beyond the inland waters, and measured from their seaward edge, is a belt known as the marginal or territorial sea. Within it the coastal nation may exercise extensive control but cannot deny the right of innocent passage to foreign nations. Outside the territorial sea are the high seas, which are in international waters not subject to the dominion of any single nation.²⁶

Former President Ronald Reagan extended the United States’ territorial boundary line from three miles to twelve miles in Proclamation No. 5928²⁷ to “advance the national security and other significant interests of the [country].”²⁸ By issuing this Proclamation, nine miles were now federal territory; however, there was a disclaimer stating that it did not augment or modify “existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom...”²⁹ This clause would later be essential in the dissension between the Second and Ninth Circuit Courts of Appeals on the boundaries of DOHSA. The issue originated from the Trans World Airlines Flight 800 crash, which subsequently influenced Congress to amend DOHSA to include commercial aviation accidents.³⁰

²³ Death on the High Seas Act, Pub. L. No. 66-165, § 1, 41 Stat. 537 (1920).

²⁴ Jeffrey Robert Kuhns, *The Application of the Death on the High Seas Act (DOHSA) to Commercial Space Flight Accidents*, 37 J. Space L. 279, 298 (2011). (“In *The Hamilton*, Justice Holmes of the United States Supreme Court characterized the “high seas” as ‘outside territory in a place belonging to no other sovereign.’ The Supreme Court also defined the “high seas” as ‘where the law of no particular State has exclusive force, but all are equal.’ Phrased another way, “[t]he high sea is common to all nations and foreign to none.”); see *The Hamilton*, 207 U.S. 398, 403 (1907); see *The Scotland*, 105 U.S. 24, 29 (1882); see *Maul v. United States*, 274 U.S. 501, 511 (1927).

²⁵ 1958 Convention on the High Seas, art. I, Apr. 29, 1958, 13 U.S.T 2312.

²⁶ *United States v. Louisiana*, 394 U.S. 11, 89 S. Ct. 773, 22 L. Ed. 2d 44 (1969).

²⁷ See *Supra Note 8*

²⁸ Proclamation No. 5928, 54 Fed. Reg. 777 (Dec. 27, 1988).

²⁹ *Id.*

³⁰ See *Supra Note 8*

1. The United States Court of Appeals for the Second Circuit's Definition of High Seas

The defendants Trans World Airlines, Inc., the Boeing Company, and Hydro-Aire, Inc., filed an appeal for the decision of the United States District Court for the Southern District of New York. Judge Robert Sweet denied the defendants' motion to dismiss the plaintiffs' claims for nonpecuniary damages since they cannot be recovered under DOHSA. The plaintiffs were relatives of the deceased passengers and crew members who died in the TWA Flight 800 crash. Judge Sweet denied the motion to dismiss on the basis that DOHSA only applies if death occurred both on the high seas and beyond a marine league. He defined the term "high seas" as international waters. Because the flight crashed eight nautical miles from the shore, Judge Sweet determined that it occurred in territorial waters and not on the high seas.

The appeal concerned the interpretation of DOHSA, primarily the meaning of the term "high seas." Both the plaintiffs and defendants agreed that the crash occurred beyond a marine league; however, the plaintiffs argued that the high seas were waters beyond the United States territorial waters, whereas the defendants claimed that the high seas were waters beyond the low-water mark. The primary issue between the definition of each party was whether or not Ronald Reagan's Presidential Proclamation also extended the boundaries of DOHSA when it extended the United States territorial waters from three miles to twelve miles. If the crash occurred within DOHSA's boundaries, then the plaintiffs would only be entitled to pecuniary damages, thus the defendants would not have to pay as much compared to if the crash occurred outside of DOHSA's boundaries. In the latter case, the plaintiffs would be allowed to recover nonpecuniary damages.

The Court of Appeals reviewed the Supreme Court's interpretation of "high seas" at the time DOHSA was enacted, finding that the Supreme Court defined the high seas as international waters where no state had exclusive force. The defendants' definition of high seas was beyond the low-water mark, but the Supreme Court did not use this definition. Because of this reason, the Court of Appeals rejected it and affirmed the district court's decision.³¹

It held that DOHSA did not apply to the TWA Flight crash³² because it occurred within the United States territorial waters due to the extension from the Proclamation No. 5928. Since the boundaries of the United States were altered to beyond twelve miles from the shore, DOHSA's boundaries also changed. In other words,

... death must occur both on the high seas and beyond a marine league from the shore for DOHSA to apply. If a death occurred (1) neither on the high seas nor beyond a marine league; (2) on the high seas but not beyond a marine league; or (3) beyond a marine league, but not on the high seas, then DOHSA does not apply.³³

³¹ *In re Air Crash Off Long Island, New York*, 209 F.3d 200 (2d Cir. 2000).

³² The Associated Press, *Court Rules High Seas Law Doesn't Apply to Flight 800*, *The New York Times* (March 30, 2000); <http://www.nytimes.com/2000/03/30/nyregion/court-rules-high-seas-law-doesn-t-apply-to-flight-800.html>.

³³ Michael D. Eriksen, *The 1920 Death on the High Seas Act: A Remedy Whose Time Has Gone*, *Florida Bar Journal*, vol. 87, no. 3, pp. 22-30 (March 2013).

2. The United States Court of Appeals for the Ninth Circuit's Definition of High Seas

Judge Sonya Sotomayor disagreed with the Second Circuit Court of Appeals, stating that the purpose of the Proclamation was to extend the United States territorial waters for international law purposes, not domestic. "Judge Sotomayor reasoned that, because the disavowal clause repudiated any alterations of federal law, an expansion of the territorial sea for international purposes should not apply for domestic law purposes."³⁴

In her dissent, Judge Sotomayor expressed the following:

The majority's focus on Congress' understanding of the term "high seas" in 1920 is misplaced. The majority ignores that the DOHSA Congress, by using the phrase "high seas beyond one marine league from the shore of any State," intended both to define and to indicate the geographical boundary line at which the high seas began—three nautical miles from the U.S. coast—because that boundary line coincided with the outer border of the states' territorial seas. Congress wished to preserve state remedies in state waters, and to provide a separate remedy, i.e. DOHSA, to waters subject only to federal jurisdiction, i.e., "the high seas beyond a marine league." Simply stated, it is irrelevant whether Congress shared the international legal understanding of "high seas" as "non-sovereign waters," because its only concern at the time of DOHSA's passage was state, and not federal, boundaries. Nothing in DOHSA's language or legislative history supports the majority's conclusion that Congress intended "high seas" to be a variable term "subject to change" because of evolving international concepts.³⁵

In 2007, a Navy helicopter crashed approximately 9.5 miles from the coast of California into the Pacific Ocean. The plaintiffs were spouses and surviving heirs of the deceased and alleged that defects in the helicopter caused the crash. They originally sued the defendants for strict product liability, negligence, failure to warn, breach of warranty, wrongful death, and survival action. The defendants' filed a motion to dismiss because DOHSA preempted the state laws since the crash occurred beyond three miles from the shore. The district court granted the defendants' motion to dismiss and held that DOHSA also applies to noncommercial aircraft accidents beyond three miles off the shore. Furthermore, the court explained that the Presidential Proclamation No. 5928 did not alter DOHSA's applicability.

The plaintiffs filed an appeal, challenging the district court's decision that granted the motion to dismiss. The Ninth Circuit U.S. Court of Appeals had to decide if DOHSA applied to the area between three and twelve nautical miles from the shore. They concluded that the text of DOHSA explicitly places its boundary at three nautical miles from the shore of the United States. Congress amended DOHSA from "beyond a marine league" to "beyond three nautical miles" in 2006, which showed that DOHSA applies to the area between three and twelve nautical miles, even after the extension of territorial

³⁴ See *Supra* Note 12

³⁵ See Note 31

waters. The court agreed with Judge Sotomayor's dissent and ruled that the term "high seas" is defined as "beyond three nautical miles." The term is merely used "...in conjunction with the stated geographic boundary, or three nautical miles from shore." "High seas" does not have an independent geographical significance and is used to emphasize where the boundary of DOHSA begins.³⁶

C. 2000 Amendment to Include Commercial Aviation Accidents (Commercial Aviation Exception)

The TWA Flight 800 and KAL Flight 007 disaster³⁷ prompted Congress to consider "compensation for non-pecuniary damages in cases governed by DOHSA." After the KAL crash, "numerous wrongful death lawsuits were filed across the United States against KAL...[to determine] whether KAL had committed 'willful misconduct' within the meaning of Article 25 of the Warsaw Convention."³⁸ One lawsuit argued that KAL was liable under article 17 of the Warsaw Convention³⁹ and damages for "loss of society, mental anguish and grief, and the decedent's pre-death pain and suffering" should be recovered.⁴⁰ After a prolonged litigation, the Supreme Court determined on January 16, 1996 that nonpecuniary damages were not recoverable in a wrongful death lawsuit caused by a commercial aviation accident in the open ocean.⁴¹

After the TWA Flight incident, families faced similar issues regarding recoverable damages. However, because the TWA Flight and KAL Flight crashes occurred within a relatively short period time of each other, Congress' interest in raising the amount of compensation for families who were affected by the airline accidents on the high seas heightened. Congressman William Shuster of Pennsylvania explained the difference between plane crashes into the ocean and on land. If a plane crashes on the high seas, DOHSA applies

³⁶ *Helman v. Alcoa Global Fasteners, Inc.*, 637 F.3d 986 (9th Cir. 2011).

³⁷ Stephen R. Ginger; Will S. Skinner, *DOHSA's Commercial Aviation Exception: How Mass Airline Disasters Influenced Congress on Compensation for Deaths on the High Seas*, 75 J. Air L. & Com. 137, 160 (2010).

On August 31, 1983, a Boeing 747 aircraft, operated by Korean Air Lines (KAL) and carrying 329 passengers departed New York City...[for] Seoul, Korea, where it would land on September 1, 1983. The pilots, however, inadvertently failed to program the aircraft's inertial navigation system properly. Flying in the dark over the North Pacific at 35,000 feet, the aircraft slowly drift off course, until it entered Soviet airspace near Sakhalin Island. With the belief that a spy plane was approaching, the Soviet air force scrambled three fighter jets to intercept the wayward aircraft. Within minutes, and without warning, the Soviet jets fired heat-seeking missiles at the aircraft. The exploding missiles damaged the aircraft's hydraulic systems, and shrapnel penetrated the cabin, causing a rapid decompression. The crippled aircraft entered a long, spiraling descent before it slammed into the Sea of Japan and was destroyed. All 269 passengers and crew on board the aircraft perished...

³⁸ *See Supra Note 27*

³⁹ International Civil Aviation Organization (ICAO), *Convention for the Unification of certain Rules relating to International Carriage by Air (Warsaw Convention) (as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975)*, (October 12, 1929); <http://www.refworld.org/docid/48abd581d.html>. (Article 1: "This Convention applies to all international carriage of persons, baggage, or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking." Article 17: "The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.")

⁴⁰ *See Supra Note 27*; see *Zicherman v. Korean Air Lines Co.*, 43 F.3d 18, 20 (2d Cir. 1994).

⁴¹ *Id.*

and limits recovery to pecuniary damages only, whereas if a plane crashes into the land or within three miles, state tort law would apply, which typically allows nonpecuniary damages. Shuster also clarified that “given the nature and speed of air travel, it is often a matter of happenstance as to where an aircraft crashes. The result is that a family’s rights under the law depend on pure chance.” If a child were to die in the boundaries of DOHSA, his life would be worthless since he would not have any dependents.⁴²

Three years after Shuster’s House Report, Congress amended DOHSA to include commercial aviation accidents for the sole purpose of providing families of passengers killed in airline crashes fair compensation (nonpecuniary damages). In addition to providing fair compensation, Congress feared that if commercial airline accidents were not included in DOHSA, courts would be at a loss in deciding which law, if any, would apply to these accidents, postponing recovery even longer. The exception began retroactively on “...July 16, 1996, the day before[the] TWA Flight 800 exploded and crashed into the waters off Long Island.”⁴³

1. *Brown v. Eurocopter S.A.*

From the time the Commercial Aviation Accident exception was added to DOHSA until now, there have only been two recorded federal court decisions discussing the definition of the term “commercial aviation.” In *Brown v. Eurocopter S.A.*, the court held that “...any flight by anyone in an airplane that has a trade or commercial purpose” is considered commercial aviation.⁴⁴ David Nathan Brown was a commercial helicopter pilot who transported two platform workers, acting as an air taxi service for Petroleum Helicopters, Inc on November 28, 1996. In the midst of the flight, Brown began to experience violent vibrations and a partial loss of yaw control. He attempted to land two times, the last time colliding with an oil platform approximately 25 miles off the coast of Galveston, Texas. All three died in the accident. Plaintiffs argued that the commercial aviation exception applied to the accident, whereas the defendants contended that the statute did not apply because Brown’s helicopter crash was not in accordance to Congress’ intent for the phrase “commercial aviation accident.” The court ruled in favor of the plaintiffs and supported its decision with definitions of the terms “commercial” and “commercial activity” from Black’s Law Dictionary.⁴⁵ Surprisingly, it did not analyze the exception’s legislative history.

2. *Eberli v. Cirrus Design Corporation*

The second case to address the meaning of “commercial aviation” was *Eberli v. Cirrus Design Corporation*. Fritz Ernest Schoder was a licensed commercial pilot who was transporting a single-engine Cirrus SR20 aircraft for delivery to Royal Airport Services Co., Ltd in Thailand when the oil temperature began fluctuating. He declared an

⁴² H.R. REP. No. 105-201 at 2 (1997).

⁴³ See *Supra* Note 37

⁴⁴ See *Supra* Note 37

⁴⁵ *Brown v. EUROCOPTER SA*, 111 F. Supp. 2d 859 (S.D. Tex. 2000).

The legal dictionary definition of "commercial" is that which "relates to or is connected with trade and traffic or commerce in general; is occupied with business or commerce." BLACK'S LAW DICTIONARY 270 (6th ed.1990). "Commercial activities" is defined as "any type of business or activity which is carried on for a profit." *Id.* The term "aviation" is defined as "the operation of heavier-than-air aircraft" WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 119 (1990).

emergency due to low oil pressure at eighty nautical miles from Simiutaq, Greenland. Shortly after, he reported his position as fifty nautical miles from Simiutaq, Greenland before he successfully abandoned the aircraft; however, his survival suit did not provide adequate insulation and flotation. Because of this, Mr. Schoder died in the Labrador Sea.

Mr. Schoder's wife filed a wrongful death action against the aircraft manufacturer, Cirrus Design Corporation, and the engine manufacturer, Teledyne Continental Motors in the U.S. District Court for the Southern District of Florida on the basis of product liability. The court held that the plaintiff's action was governed by DOHSA because of the location of the accident. In response, the plaintiff argued that the accident qualified as a commercial aviation accident under DOHSA since Mr. Schoder was transporting "...an aircraft as part of a commercial activity carried out for profit and related to commerce..." The defendants claimed that the exception did not apply to an accident involving the transport of a general aviation aircraft. The court acknowledged that the phrase "commercial aviation accident" was ambiguous and could be interpreted both ways. Even though the court accepted both interpretations, it ultimately disagreed with the plaintiff's argument and held that Mr. Schoder's death did not fall under the commercial aviation accident exception based on the Operating Limitations of the Certificate of Airworthiness. The aircraft Mr. Schoder was flying received a certificate of airworthiness; therefore, he could not operate the aircraft for carrying passengers or property for compensation or hire.⁴⁶ The court also looked at legislative history, in contrast to *Brown*, and believed that

...[the commercial aviation accident exception] was enacted in the aftermath of a number of international air disasters and the lawsuits arising out of such air disasters, in which the families of the victims were denied loss of society damages under DOHSA. Recognizing the unfairness of allowing or denying the families of airline passengers nonpecuniary damages solely on the basis of where the crash occurred, Congress acted to "ensure that all families would be treated the same regardless of where a plane happened to crash."

The plaintiff argued that the exception was established to provide a fair remedy for the families of all air crash victims; however, the court dismissed this argument and declared that

... were it true that this concern—that the families of all air crash victims should be treated the same—was the driving force behind section 30307, the statute would have made nonpecuniary damages recoverable under DOHSA for all aviation-related accidents. The fact that Congress limited the scope of section 30307 to "commercial aviation accidents" leads this Court to believe that Congress wanted the statute to apply only in cases involving the types of aviation disasters, such as the crash of TWA Flight 800, that motivated Congress to enact section 30307.⁴⁷

⁴⁶ *Eberli v. Cirrus Design Corp.*, 615 F. Supp. 2d 1369 (S.D. Fla. 2009).

⁴⁷ *Id.* At 1374; see H.R. REP. No. 105-201, at 2.

D. The Difference Between Pecuniary and Nonpecuniary Damages

Although fair compensation should be available for both maritime and commercial aviation accidents, the amount of recovery is substantially different between the two. Essentially, families are able to collect more compensation from a plane crash than from a shipwreck.⁴⁸ Maritime wrongful death actions are limited to only pecuniary damages, which is defined as “all the financial contributions that the decedent would have made to his dependents had he lived.” The Supreme Court held that nonpecuniary damages could not be recovered in maritime wrongful death actions.⁴⁹ Pecuniary damages include the following:

- (1) loss of support: financial contributions made from the decedent had he lived
- (2) loss of services: “monetary value of household services the decedent provided and would have continued to provide at home”
- (3) loss of parental nurture: “compensate for the loss of guidance, training, care and instruction the deceased parent would have provided his/her child”
- (4) loss of inheritance: “the beneficiary must prove that the decedent would probably have accumulated property and that the beneficiary would have inherited that property”
- (5) funeral or burial expenses: courts have occasionally held that these expenses can be recoverable under DOHSA⁵⁰

⁴⁸ Deborah L. Jacobs, *When Disaster Strikes, Legal System Leaves Cruisers at Sea*, Forbes.com (January 20, 2012); <https://www.forbes.com/sites/deborahljacobs/2012/01/20/when-disaster-strikes-legal-system-leaves-cruisers-at-sea/#5f2fb6217a30>.

⁴⁹ Howard Hall, *Mobil Oil Corp. v. Higginbotham—Confusion Returns to Maritime Wrongful Death Actions*, 2 SEATTLE U. L. REV. 398 (1979).

⁵⁰ Brian J. Alexander, Andrew J. Karakas, Judith R. Nemsick, *Applying DOHSA to Aviation Accidents: More Unsettled Waters*, American Bar Association (2012); <http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/2012-aviation/2012-aviation-applying-dohsa-aviation-accidents.authcheckdam.pdf>; see *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 94 S. Ct. 806, 39 L. Ed. 2d 9 (1974); see Rett Guerry, *Maritime Wrongful Death: A Primer Symposium Papers*, *South Carolina Journal of International Law and Business*, Vol.5: Iss. 2, Article 3 (2009).

Section V-VII: The Death on the High Seas Act provides recovery for the value of the financial contributions that a decedent would have made to his or her dependents had he or she survived the injury. Recovery for loss of support necessitates a showing of dependence or expectation of support. In some cases, loss of support has extended to coverage of a child’s college education.

Loss of general household services, including housework, maintenance, and other assistance around the home constitute compensable pecuniary losses under DOHSA. To recover for this pecuniary loss, a claimant must present testimony assigning a value to the services performed by the decedent. Such damages require proof that such services were expected and likely to be provided but for the wrongful death.

Children of the decedent may be able to recover for the loss of nurture, loss of instruction, and loss of physical, intellectual, and moral training that they would have received from the decedent but for the deceased parent’s death. Under DOHSA, such losses are compensable. The Ninth Circuit has specifically recognized loss of nurture to children as being a recoverable damage. Relying on Solomon, the Court stated: “[w]ithout serious dispute, children may suffer a pecuniary deprivation, apart from the loss of support and financial contribution, from the death of their parents in the loss of parental guidance and training, commonly identified as the loss of nurture.” Although this item of damage cannot be computed with any degree of mathematical certainty, the courts in applying the structured pecuniary loss test of DOHSA have held that the loss to children of the nurture, instruction, and physical, intellectual, and moral

DOHSA only requires compensation to be made if the deceased were employed and had dependents. If the deceased were children, unemployed, or retirees,⁵¹ relatives would not recover anything since they were not financially dependent upon them.⁵² The significance of this is that “if you’re on a boat in international waters, if you’re a kid or a retiree, the value of your life is zero.”⁵³ James P. Kreindler, an aviation and personal injury lawyer in New York, says that if the deceased was not a wage earner, the family would rarely be able to recover more than \$500,000.⁵⁴ Courts generally use a four step method to calculate the deceased’s future earnings.⁵⁵

First, the loss of work life resulting from the injury or death is determined. Second, the lost income stream is calculated by estimating what the victim would have earned (including fringe benefits). To make this judgment, which is necessarily speculative, proof may be introduced not only regarding the victim’s current wages, but also positive factors: what he might have received for individual merit and gains in productivity, as well as negative factors: that employment and wages are declining in the industry. Third, the total damages should be determined by subtracting the plaintiff’s post-accident earning power from his normal earning power (both figures should be after tax) and multiplying by his work life expectancy. The resulting figure is a question of fact to be determined by the jury (or the court in a bench trial), and a wide range of individual variables can be considered in arriving at a final figure. Fourth, the future income loss must be discounted by a discount rate established by the “market interest rate,” the rate of interest earned on the best and safest investments.⁵⁶

Additional compensation for nonpecuniary damages along with pecuniary damages are available for commercial aviation accidents. Nonpecuniary damages are for the “loss of care, comfort and companionship” of the decedent otherwise known as loss of society. Although DOHSA allows pecuniary and nonpecuniary damages, it does not provide recovery for the decedent’s pre-death pain and suffering. In *Dooley v. KAL*, the court had to determine if relatives were allowed to recover damages for pre-death pain and suffering through a survival action under maritime law. The plaintiffs argued in an appellate court that general maritime law provides a survival action that allows a decedent’s estate to recover for injuries suffered by the decedent, which includes pre-death pain and suffering. The court held that survival action is unavailable when DOHSA is applicable.

For deaths on the high seas, Congress decided who may sue and for what. Judge-made general maritime law may not override such congressional judgments, however ancient those judgments may happen to be. Congress made the law and it is up to Congress to

training that they would have received from their parents, but for the parent’s wrongful death, may constitute a pecuniary loss and, as such may be a recoverable element of damages under DOHSA.

⁵¹ See *Supra Note 7*

⁵² Kristin Dobbs-Claiborne, *Death on the High Seas Act: Dragging an Archaic Law into the Twenty-First Century*, Dodson & Hooks APLC (April 20, 2010), <http://www.dodsonhooks.com/wp-content/uploads/2014/12/Death-on-the-High-Seas-Act-Dragging-an-Archaic-Law-into-the-Twenty-First-Century.pdf>

⁵³ See *Supra Note 6* (This comment is from Jill Mallot, one of the Hammer’s daughters)

⁵⁴ See *Supra Note 47*

⁵⁵ *Culver v. Slater Boat Co.*, 722 F.2d 114 (5th Cir. 1983).

⁵⁶ Thomas J. Schoenbaum, *Admiralty and Maritime Law* (5th ed. 2011).

change it...In sum, Congress has spoken on the availability of a survival action, the losses to be recovered, and the beneficiaries, in cases of death on the high seas. Because Congress has chosen not to authorize a survival action for a decedent's pre-death pain and suffering, there can be no general maritime survival action for such damages⁵⁷

The inequity and inconsistency of DOHSA is mainly due to the cruise line industry's heavy lobbying. It has spent approximately \$30 million on lobbyist since 2006⁵⁸—"The Carnival cruise line company alone has donated more than \$400,000 since 2007..."⁵⁹ If DOHSA was revised to allow nonpecuniary damages for maritime accidents, "...the industry would suddenly become liable for all sorts of incidents that it's currently able to dodge legal responsibility for..."⁶⁰ The Cruise Line International Association is crediting its "superior safety record" for the inequity of DOHSA.

III. Cruise Line Ticket Contracts Provide Additional Protection for Cruise Lines

Because DOHSA is considered an admiralty law, passengers on ships are not covered by the warranty of seaworthiness, a phrase that enforces absolute liability on a vessel for the carriage of cargo and seamen's injuries.⁶¹ Furthermore, in addition to DOHSA shielding cruise lines from liability, the cruise line company's ticket contract contains limited-liability clauses such as forum-selection, choice-of-law, and notice requirement clauses.⁶² Most consumers never read the terms and conditions and blindly accept them with a check in the box when booking a cruise. They are lengthy legal documents that are enforceable even if passengers cannot read or understand the language the tickets are printed in.⁶³

It is [a] well[-]established law that the defense of inability to read the terms of the Passage Contract because of infancy, minority or unfamiliarity with the English language [is] insufficient to excuse the passenger from the terms and conditions of the Passage Contract.⁶⁴

The forum-selection clause defines where a civil lawsuit can be filed, which most likely will be in favor of the cruise line company. Choice-of-law provisions determine if maritime law, state law, or the law of a foreign country applies. The notice-requirement clause states how much time a passenger has to file a claim and give notice to the cruise line.⁶⁵

For example, Carnival Cruise Lines has an approximately 10,000 worded cruise ticket contract that has numerous sections outlining the limitations on passengers' rights and disclaimers of responsibility. Below are excerpts from Carnival's legal notice to passengers under its cruise ticket contract terms.

⁵⁷ *Dooley v. Korean Air Lines Co.*, 524 U.S. 116, 118 S. Ct. 1890, 141 L. Ed. 2d 102 (1998).

⁵⁸ *See Supra Note 6*

⁵⁹ *See Supra Note 41*

⁶⁰ Stephanie Mencimer, *Will the Cruise Ship Industry Do BP's Dirty Work?*, Mother Jones (June 14, 2010); <http://www.motherjones.com/politics/2010/06/cruise-ship-industry-bp-liability>.

⁶¹ *Jackson v. Carnival Cruise Lines, Inc.*, 203 F. Supp. 2d 1367 (S.D. Fla. 2002).

⁶² Sharnelle Samuel Porter, *Passenger Protections Will Not Sink the Cruise-Ship Industry*, 23 T. M. Cooley L. Rev. 597, 632 (2006).

⁶³ Thomas A. Dickerson, *Modern Cruise Passenger's Rights & Remedies - Part II, The*, 79 N.Y. St. B.A. J. 18, 23 (2007)

⁶⁴ *Jose Carloes Becantinos v. Cunard Line Ltd.*, 1991 WL 64187; *see Paredes v. Princess Cruises, Inc.*, 1 F. Supp. 2d 87 (D. Mass. 1998).

⁶⁵ *Supra Note 55*

- (1)[It will] not be liable for any claims whatsoever for personal injury, illness or death of the Guest, unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event, illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of the injury, event, illness or death, and unless served on Carnival within 120 days after filing. Guest expressly waives all other potentially applicable state or federal limitations periods.
- (2)[It will] not be liable for any claims whatsoever, other than for personal injury, illness or death of the Guest, unless full particulars in writing are given to Carnival within 30 days after the Guest is landed from the Vessel or in the case the Voyage is abandoned, within 30 days thereafter. Legal proceedings to recover on any claim whatsoever other than for personal injury, illness or death shall not be maintainable unless commenced within six months after the date Guest is landed from the Vessel or in the case the Voyage is abandoned, within six months thereafter, and unless served upon Carnival within 120 days after commencement. Guest expressly waives all other potentially applicable state or federal limitation periods for claims which include, but are not limited to, allegations concerning any and all civil rights, the ADA, trade practices and/or advertising.
- (3)...It is agreed by and between the Guest and Carnival that all disputes and matters whatsoever arising under, in connection with or incident to this Contract or the Guest's cruise, including travel to and from the vessel, shall be litigated, if at all, before the United States District Court for the Southern District of Florida in Miami, or as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida, U.S.A. to the exclusion of the Courts of any other county, state or country.
- (4)Neither party will have the right to a jury trial or to engage in pre-arbitration discovery except as provided in the applicable arbitration rules and herein, or otherwise to litigate the claim in any court (other than small claims court). The arbitrator's decision will be final and binding. Other rights that guest or Carnival would have in court also may not be available in arbitration.
- (5)... Any and all disputes whatsoever arising out of or relating to this Contract or Guest's Cruise as well as the interpretation, applicability and enforcement of this Contract shall be governed exclusively by the general federal maritime law of the United States, without regard to choice of law rules, which replaces, supersedes and preempts any provision of law of any other state or nation, however, the terms of this Contract do not displace non-excludable consumer laws applicable in jurisdictions outside the United States.⁶⁶
- (6)[It will] not be liable to the passenger for damages for emotional distress, mental suffering/anguish or psychological injury of any kind under any circumstances, except when such damages were caused by the negligence of Carnival and resulted from the

⁶⁶ Carnival Cruise Line, *Cruise Ticket Contract Terms*, <https://www.carnival.com/about-carnival/legal-notice.aspx>.

same passenger sustaining actual physical injury, or having been at risk of actual physical injury, or when such damages are held to be intentionally inflicted by Carnival.

IV. Safety Standards for Cruise Ships

After the sinking of the Costa Concordia cruise ship, there were rising concerns regarding the safety and security standards of transport, specifically for cruise ships. The Cruise Lines International Association asserts that safety is its top priority, claiming only sixteen out of one hundred passengers had died in cruise accidents from 2005 to 2011—the chances being one in six million.⁶⁷ The European Cruise Council stated that cruise lines have had the best safety record in the travel industry for the past two decades.⁶⁸ These claims and statistics are questionable, though, since the International Maritime Organization (IMO) does not maintain a public database of cruise ship incidents.⁶⁹ In addition to not having a standard for reporting or recording incidents, “if there is a death...there is no requirement to notify the Coast Ga[u]rd or local police. Most cruise lines are required to notify the flag state, often Panama or the Bahamas, where the ship is registered.”⁷⁰

The United States Coast Guard is responsible for cruise ship inspections; however, major cruise lines like Carnival are incorporated in foreign countries where regulations are weak or poorly enforced to avoid U.S. labor laws and safety regulations. Even though Carnival’s headquarters is in the United States, the majority of their ships are registered in Panama. This is called “flags of convenience.”⁷¹ There are guidelines that are created by the International Maritime Organization, but it is up to the cruise line’s discretion to follow the guidelines since the IMO “...does not have the authority to enforce its own guidelines, nor can it impose fines or criminal sanctions against cruise lines that flout Safety of Life at Sea [SOLAS] recommendations.” The following are the general areas SOLAS covers:

- (1) Construction - Subdivision and stability, machinery and electrical installations
- (2) Fire protection, fire detection and fire extinction
- (3) Life-saving appliances and arrangements
- (4) Radio Communications
- (5) Safety of navigation
- (6) Carriage of Cargoes
- (7) Carriage of dangerous goods
- (8) Nuclear ships
- (9) Management for the Safe Operation of Ship
- (10) Safety measures for high-speed craft
- (11) Special measures to enhance maritime safety
- (12) Special measures to enhance maritime safety

⁶⁷ Suemedha Sood, *What is the Safest Mode of Travel?*, BBC Travel (January 27, 2012), <http://www.bbc.com/travel/story/20120127-travelwise-what-is-the-safest-mode-of-travel>.

⁶⁸ Paul Hoskins and Himanshu Ojha, *How the Cruise Ship Industry Sails Under the Radar*, Reuters (January 25, 2012), <http://www.reuters.com/article/us-italy-ship-regulation-idUSTRE80N1OD20120125>.

⁶⁹ See *Supra Note 47*

⁷⁰ Eileen Ogintz, *How Safe Are Swimming Pools on Mega Cruise Ships?*, Fox News Travel (March 7, 2017), <http://www.foxnews.com/travel/2017/03/07/how-safe-are-swimming-pools-on-mega-cruise-ships.html>. (This was a statement from Jim Walker, a maritime and admiralty attorney in Miami and the creator of cruiselawnews.com)

⁷¹ Diane LaPosta and Tim Lister, *Concordia Disaster Focuses on How Cruise Industry Operates*, CNN (July 8, 2012), <http://www.cnn.com/2012/07/04/world/europe/costa-concordia>.

- (13) Additional safety measures for bulk carriers
- (14) Safety measures for ships operating in polar waters⁷²

Because the IMO guidelines are not mandatory⁷³ and the cruise lines do not have to follow U.S. laws if they are incorporated in a different country, cruises are generally unregulated.⁷⁴ Despite the lenient safety and security guidelines, the cruise industry continues to grow rapidly.

On April 26, 2017, The Cruise Passenger Protection Act was introduced to Congress. The following are a few requirements cruise lines will have to comply with if the legislation passes:

- (1) Make the log book and all entries available to the FBI and other investigators
- (2) Notify the FBI no later than four hours after an alleged incident
- (3) Have a website with a list of alleged crimes on cruise ships and indicate if any reported crimes were against minors
- (4) Families of victims on cruise ships will be able to pursue nonpecuniary damages like those in commercial aviation accidents⁷⁵

The daughters of Larry and Christy Hammer, the couple who died on the *La Estrella Amazonica*, are involved in the efforts to amend DOHSA and said:

We are thrilled that our legislators are trying to do what the cruise companies have not: Protect passengers. Through legislative reform, American travelers would finally be able to hold cruise companies accountable when tragedy strikes, stopping these companies from hiding behind an antiquated law to avoid responsibility for their actions.⁷⁶

⁷² International Maritime Organization (IMO), *International Convention for the Safety of Life at Sea*, (November 1, 1974), [http://www.imo.org/en/about/conventions/listofconventions/pages/international-convention-for-the-safety-of-life-at-sea-\(solas\),-1974.aspx](http://www.imo.org/en/about/conventions/listofconventions/pages/international-convention-for-the-safety-of-life-at-sea-(solas),-1974.aspx).

⁷³ Lt. Jodie Knox, *SOLAs Amendments to Container Weight Requirements—New FAQs Published*, Coast Guard Maritime Commons (March 2, 2016), <http://mariners.coastguard.dodlive.mil/2016/03/02/322016-solas-amendments-to-container-weight-requirements-new-faqs-published/>.

The SOLAS regulation is mandatory for vessels to which SOLAS applies. The IMO guidelines are not mandatory...IMO frequently publishes non-mandatory guidelines to assist compliance with mandatory SOLAS requirements. These guidelines are always non-mandatory; they provide recommendations for compliance, and do not preclude other approaches to compliance. All mandatory SOLAS requirements must be in the text of the regulation, not in supplemental guidelines.

⁷⁴ James Walker, *What Cruise Lines Don't Want You to Know*, CNN (February 13, 2013), <http://www.cnn.com/2013/02/13/opinion/walker-cruise-ships/>.

⁷⁵ The Cruise Passenger Protection Act, H.R. 2173, 115th Congress (2017); see Eileen Ogintz, *Congress Introduces Legislation to Protect Cruisers' Safety, Rights*, Fox News Travel (April 28, 2017), <http://www.foxnews.com/travel/2017/04/28/congress-introduces-legislation-to-protect-cruisers-safety-rights.html>.

Representatives Doris Matsui, D-Calif., Ted Poe, R-Texas, and Jim Himes, D-Conn., introduced the Cruise Passenger Protection Act (CPPA) to strengthen passenger safety-- and rights-- on cruise ships. According to a press release issued by Rep. Matsui's office, the bill strengthens crime reporting and video surveillance requirements, improves medical standards, and holds cruise lines responsible for deaths at sea.

⁷⁶ Jim Walker, *Congress Introduces Legislation to Amend DOHSA*, Jim Walker's Cruise Line News (April 26, 2017), <http://www.cruiselawnews.com/2017/04/articles/maritime-death/congress-introduces-legislation-to-amend-dosha/>.

V. Safety Standards for Aircraft

On average, 750 million people fly each year on United States commercial airlines. Unlike cruise line companies, the United States commercial aviation industry is subject to strict regulations under the Federal Aviation Administration (FAA). The FAA not only keeps diligent records on accidents and fatalities, but also releases them to the public.⁷⁷ Flying on United States commercial planes is the safest form of transportation,⁷⁸ most likely because of the safety and security regulations.

If there is an accident, aircraft manufacturers study the accident and learn what went wrong, so that they can improve safety. Moreover, the FAA has a library available to the public to view “Lessons Learned from Transport Airplane Accidents.” The administration strongly believes that learning from previous accidents is essential to improving aviation safety.⁷⁹ Another way manufacturers try to ensure safety is installing multiple backup systems in the aircraft in case something fails to operate.⁸⁰ Tom Bunn, a retired airline captain and founder of SOAR inc., emphasizes that the reason why there has not been a fatality on a United States certified scheduled airline since 2009 is because aircrafts have a primary system, a backup system, and another system behind the backup.⁸¹ In contrast to aircraft, “...nearly all cruise ships lack backup systems to help them return to port should power fail because to install them would have cost operators more money.” In 2013, approximately only ten cruise ships had backup systems installed.⁸²

Conclusion

Cruise line companies have been able to avoid liability in wrongful death actions due to the antiquity and ambiguity of the 1920 Death on the High Seas Act, which only allows recovery for pecuniary damages in maritime accidents. Commercial aviation accident plaintiffs recover substantially more than plaintiffs in maritime cases because of the right to recover nonpecuniary damages. The differences in recovery shows the inequity of the act. So far, cruise line companies have kept DOHSA from being amended to allow nonpecuniary damages in maritime accidents due to millions of dollars spent lobbying

⁷⁷ Jim Walker, *Cruise Ships: The Deadliest Form of Public Transportation?*, Jim Walker’s Cruise Law News (March 25, 2012), <http://www.cruiselawnews.com/2012/03/articles/maritime-death/cruise-ships-the-deadliest-form-of-public-transportation/>.

⁷⁸ Chris Isidore, *What’s the Safest Way to Travel?*, CNN Money (May 13, 2015), <http://money.cnn.com/2015/05/13/news/economy/train-plane-car-deaths/>.

⁷⁹ Federal Aviation Administration, *Lessons Learned from Transport Airplane Accidents*, <http://lessonslearned.faa.gov/index.cfm>.

⁸⁰ Liz Weiss, *Why Air Travel Is Actually Much Safer Than You Think*, U.S. News Travel (August 25, 2016), <http://travel.usnews.com/features/why-air-travel-is-actually-much-safer-than-you-think/>.

⁸¹ *Every Question You’ve Ever Had About Flying, Answered by a Pilot*, Thrillest Travel (May 10, 2017), <https://www.thrillist.com/travel/nation/how-to-fly-commercial-pilot-flying-questions>.

Statement from Tom Bunn: ...everything that you need to fly a plane, the plane has two, three, or *four* of them. The wings can’t break, so you only need two of ‘em. But, for hydraulics, there’s a backup to the main system, and a *backup* for the backup. For navigation, you have the same thing -- the primary system, your backup system, and another system behind that. So, you don’t just run out of what you need. That’s why we don’t have planes crashing in the US. We haven’t had a fatality on a US-certificated scheduled airline since 2009.

⁸² Barry Meier and John Schwartz, *lack of Backup Power Puts Cruise Passengers at the Ocean’s Mercy*, The New York Times (February 24, 2013), <http://www.nytimes.com/2013/02/25/business/many-cruise-ship-lack-backup-power-systems-vexing-regulators.html>.

Congress. They contend the reason why Congress has not amended DOHSA to allow nonpecuniary damages for maritime accidents is because of their safety record. However, there is a significant difference between cruise and aircraft safety standards. Cruises are not under strict regulations compared to aircraft nor do they have backup systems in case of emergencies.

Recently, lawmakers introduced a new bill to Congress to strengthen the basic safety regulations on cruises. Most importantly, it would permit families to recover nonpecuniary damages. Although this is a step towards progress, cruise lines will presumably lobby against the new bill like the previous times. It is clear that the cruise industry's sole focus is expansion and trying to keep up with the demand rather than the safety of passengers; and, unfortunately, because they don't have the same strict safety standards as aircrafts, cruise lines will continue to prioritize profits until there is a change in either DOHSA or until IMO guidelines become mandatory. Cruise lines also limit their liability through their ticket contracts that explains the cruise ship's responsibility for passengers.