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# Sea-Sick: Legal Remedies for Cruise Ship Passengers Affected by the COVID-19 Pandemic

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## Abstract

Since December 2019, over 3,600 people have been infected with coronavirus or coronavirus-like illnesses aboard cruise ships. Whether infected or not, many passengers assert that cruise lines negligently handled COVID-19 outbreaks on board ships, posing a significant risk to their health, safety, and emotional wellbeing. Various laws, including the Death on the High Seas Act, offer limited legal recovery for impacted passengers. However, the effectiveness of such laws depends heavily on the language of cruise carriage contracts, the country in which a cruise line is registered, and the maritime zone in which the injury occurred. This Comment argues that despite existing roadblocks to legal recovery across various international jurisdictions, the unprecedented COVID-19 pandemic calls for the development of a modernised form of legal recourse for cruise ship passengers.

**Keywords:** COVID-19, cruise ships, legal remedies, negligence, forum selection

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## 1. Introduction

Taking a cruise ship vacation is usually a relaxing, happy, and exciting experience. Every year, more than 28.5 million people embark on cruises worldwide,<sup>1</sup> spending their time on board sipping drinks, lounging by the pool, and frequenting the spa. However, the usually pleasant cruise experience quickly turned into a nightmare for thousands of cruise ship passengers early in 2020 as the novel coronavirus began its rapid spread across the globe.<sup>2</sup> Unfortunately, this nightmare is still ongoing and has no clear end in sight.

In December 2019, researchers in China identified a new, SARS-like virus.<sup>3</sup> Initially, the researchers were optimistic about the impact of the virus — claiming that there was no evidence that it could

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1 Karina Melikjanyan, ‘Cruise Tourism in a Pandemic Reality: The End of the Industry or Not?’ (2021) *Georgian Maritime Scientific Journal* 1, 65–73.

2 Thiago Carvalho, *et al* ‘The First 12 Months of COVID-19: A Timeline of Immunological Insights’ (2021) *Nature Reviews Immunology* 21, 245–256.

3 *ibid.*



spread from human to human.<sup>4</sup> However, such optimism was short-lived.<sup>5</sup> SARS-CoV-2, later labelled COVID-19,<sup>6</sup> began to spread quickly across China through human to human transmission.<sup>7</sup> On 11 January 2020, the Chinese state media reported the first death from the virus.<sup>8</sup> Within the same month, the World Health Organisation declared a global health emergency,<sup>9</sup> which, in turn, led to government-mandated lockdowns and travel restrictions around the world.<sup>10</sup> Presently, the disease has spread to over 220 countries and territories,<sup>11</sup> with over 172 million infections and over 3.7 million deaths.<sup>12</sup>

One place in particular has been a hotbed for infection and spread of the virus: cruise ships. Historically, cruise ships have frequently facilitated the transmission of noroviruses because of the high number of people on board in close proximity to one another.<sup>13</sup> However, the current coronavirus pandemic has resulted in extraordinary levels of infection on these ships.<sup>14</sup> Since December 2019, over 3,600 people have been infected with coronavirus or coronavirus-like illnesses aboard cruise ships.<sup>15</sup> Active outbreaks occurred on two Princess cruise ships, resulting in the company indefinitely cancelling all future cruises.<sup>16</sup> Following suit, the Centers for Disease Control and Prevention halted all future cruise ship voyages,<sup>17</sup> only allowing highly limited 'conditional sailing' starting on 30 October 2020.<sup>18</sup>

However, significant damage has already occurred. One elderly couple who was required to quarantine aboard a coronavirus-stricken Princess cruise ship filed suit on 9 March 2020,<sup>19</sup> alleging that the company was negligent in its response to the outbreak<sup>20</sup>—though the suit was thrown out

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4 *ibid.*

5 *ibid.*

6 World Health Organization, 'Naming the Coronavirus Disease (COVID-19) and the Virus That Causes It' *World Health Organization* <[https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it)> accessed 20 March 2021.

7 *ibid.*

8 *ibid.*

9 *ibid.*

10 *ibid.*

11 Center for Systems Science and Engineering, 'Coronavirus COVID-19 Global Cases' *Johns Hopkins University* <<https://www.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>> accessed 1 June 2021.

12 *ibid.*

13 Vivek Kak, 'Infections on Cruise Ships' (2015) 3 *Microbiology Spectrum* 1, 1-2.

14 Center for Systems Science and Engineering (n 11).

15 Tsuyoshi Sekizuka, *et al.* 'Halotype Networks of SARS-CoV-2 Infections in the Diamond Princess Cruise Ship Outbreak' (2020) 117 *Proceedings of the National Academy of Sciences* 33.

16 *ibid.*

17 Centers for Disease Control and Prevention, 'Cruise Ship Guidelines' *Centers for Disease Control and Prevention* (3 November 2020) <<https://www.cdc.gov/quarantine/cruise/>> accessed 3 November 2020.

18 *ibid.*

19 *Weissberger et al. v. Princess Cruise Lines, Ltd.*, [2020] C.D. Cal para 1.

20 *ibid.*



in July of the same year as a judge ruled that the couple was not in the legal ‘zone of danger’<sup>21</sup> to recover.<sup>22</sup> In the coming months and years, many more people infected with coronavirus aboard cruise ships will likely attempt to bring suit against cruise lines, though these suits are unlikely to be successful under existing legal frameworks.<sup>23</sup>

This Comment argues that despite roadblocks to legal recovery across various international jurisdictions, the unprecedented coronavirus outbreak calls for some form of legal recourse for cruise ship passengers. Part One of this Comment examines the ongoing coronavirus pandemic and how the cruise ship industry has responded to the rapidly spreading disease. Part Two explains existing maritime and admiralty laws, including the contractual relationship that exists between cruise ship companies and their passengers. Part Three explores the ways in which cruise ship passengers of all nationalities may seek—or be precluded from—recovery for the negligence of carriers through the protections afforded by the Death on the High Seas Act (DOHSA). Initially enacted in 1920, the Death on the High Seas Act assigned legal liability to carriers whose negligent actions resulted in the death of passengers on board a vessel further than three nautical miles from the United States coast. Over the years, the Death on the High Seas Act has been amended to include provisions for non-pecuniary damages, thus expanding the reach of the law—though not without criticism from various commentators. Such commentators challenge the effectiveness of the Death on the High Seas Act, highlighting the inconsistencies between the Act and maritime common law. Further, the Act was first adopted a century ago—long before the existence of additional maritime zones: the territorial sea, exclusive economic zone, and contiguous zone. Ultimately, Part Three argues that while the Death on the High Seas Act may be the most accessible means for cruise ship passengers to seek recovery, the United States Congress should amend the Act to allow for greater and more streamlined recovery for those individuals, while carefully limiting suits for concurrent foreign causes of action that might result in unjust enrichment for a plaintiff at the expense of a cruise line.

### 1.1 The Coronavirus Outbreak on Cruise Ships

While the coronavirus outbreak has disrupted many industries, the cruise ship industry is one of the most heavily affected.<sup>24</sup> Many passengers who expected a relaxing vacation have instead experienced illness, stress, and emotional distress due to coronavirus outbreaks. Outbreaks have resulted in weeks-long quarantines aboard ships—effectively stranding those passengers at sea, often with cruise ship officials offering little to no information about the ongoing situation—and sometimes even making the situation worse.<sup>25</sup> For example, some passengers assert that the failure of cruise companies to alert passengers of risks, adequately sanitise ships, or halt voyages entirely have contributed to the spread of coronavirus on board ships.<sup>26</sup>

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<sup>21</sup> *ibid* paras 2-3.

<sup>22</sup> *ibid*.

<sup>23</sup> *ibid*.

<sup>24</sup> Centers for Disease Control and Prevention (n 17).

<sup>25</sup> *Weissberger* (n 19) para 2.

<sup>26</sup> *ibid*.



Approximately 30 cruise ships remained at sea in the first few months of the pandemic.<sup>27</sup> On 28 February 2020, Jay and Carmen Martinez boarded one of those ships.<sup>28</sup> The couple intended to enjoy a 23-day honeymoon voyage, but instead found themselves quarantined aboard the ship for more than 30 days while they searched for an open port in which to dock during a rapidly-evolving global health crisis.<sup>29</sup> As the coronavirus spread, increasing numbers of cruise ships continued to report outbreaks of infectious disease. On 22 March 2020, cruise company Holland America Line reported that 13 passengers and 29 crewmembers aboard one of its ships had experienced ‘influenza-like symptoms’ while sailing around South America.<sup>30</sup> Accordingly, the company enacted a ship-wide quarantine, and started making plans to dock in Fort Lauderdale, Florida by 31 March 2020—though the ship did not dock until 2 April 2020.<sup>31</sup>

Some of the most disastrous impacts of the pandemic were felt aboard the *Grand Princess* ship. On 9 March 2020, an attorney on behalf of Ronald and Eva Weissberger filed suit against Princess Cruises in a Los Angeles district court while the couple was still aboard the cruise ship.<sup>32</sup> In their complaint, the couple alleged that the company’s ‘lackadaisical approach’<sup>33</sup> to passenger and crew safety resulted in ‘actual risk of immediate physical injury.’<sup>34</sup> Ship officials initially failed to announce the coronavirus outbreak on board—and only gave an explanation after passengers were confined to their rooms for quarantine.<sup>35</sup> As such, the Weissbergers continued to participate in typical cruise activities—such as playing bridge—until a family member who was following the news contacted them and alerted them of spread of coronavirus on board their ship.<sup>36</sup>

In July 2020, Central District of California Judge R. Gary Klausner dismissed the Weissbergers’ case<sup>37</sup>—along with the cases of several other *Grand Princess* passengers.<sup>38</sup> The court held that the passengers aboard the *Grand Princess* were not in the legal ‘zone of danger’ necessary for recovery.<sup>39</sup> While the plaintiffs argued that they suffered emotional distress because of the negligent actions of the cruise line, the fact that those plaintiffs had not actually contracted COVID-19 while aboard the ship prevented their cases from moving

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27 Francesca Street, ‘At Least 30 Cruise Ships Are at Sea Right Now. Here’s What it’s Like on Board’ *CNN Travel* (21 March 2020) <<https://www.cnn.com/travel/article/cruise-ship-passengers-stranded-coronavirus/index.html>> accessed 27 June 2020.

28 *ibid.*

29 *ibid.*

30 ‘Statement Regarding Zaandam’ *Holland America Line* (22 March 2020) <<https://www.hollandamerica.com/blog/ships/ms-zaandam/statement-regarding-zaandam/?linkId=84817743>> accessed 24 April 2020.

31 *ibid.*

32 *Weissberger* (n 19) paras 1-2.

33 *ibid.*

34 *ibid.*

35 *ibid.*

36 *ibid.*

37 *ibid* paras 4-5.

38 *ibid.*

39 *ibid.*



forward.<sup>40</sup> However, lawsuits brought by several passengers who had contracted COVID-19, as well as the survivors of deceased passengers, are still pending against Princess Cruises.<sup>41</sup>

As the impacted passengers grapple with such unforeseen circumstances, many consider the legal remedies available to them. Whether infected or not, many passengers assert that cruise lines negligently handled the coronavirus outbreak on board ships, posing a significant risk to their health and safety, as well as causing emotional distress.<sup>42</sup> Some passengers believe that cruise lines were aware of sick individuals aboard their ships, yet decided to continue voyages and allow more passengers on board despite the considerable health risk it would pose.<sup>43</sup> However, the dismissal of the Weissbergers' case shows the court's reluctance to offer remedies in negligence without proof of an actual COVID-19 infection.<sup>44</sup> Even for those who have been infected with COVID-19 aboard a cruise ship, the path to recovery may be similarly narrow given the intricacies of the international cruise industry,<sup>45</sup> coupled with outdated negligence laws.<sup>46</sup>

## 2. Existing Maritime and Admiralty Law

### 2.1. Contractual Relationship Between Passengers and Cruise Lines

When a passenger buys a ticket to embark on a cruise, that passenger effectively enters into a contract with the cruise line.<sup>47</sup> The fine print of a cruise contract contains various provisions regarding financial and legal matters pertaining to the voyage.<sup>48</sup> Some of these provisions may shock cruise ship passengers—for example, a cruise line may assess new fees even after a passenger has paid for the trip in full.<sup>49</sup> Additionally, passengers may be charged a fee for disembarking at the wrong port.<sup>50</sup> However, some of the most alarming contractual provisions limit the legal remedies available to passengers for harms that befall them while aboard the ship.<sup>51</sup> The terms and conditions of cruise contracts often bar passengers from filing certain claims, and set strict time limits for filing any remaining claims that are allowed by the contract.<sup>52</sup> Also, contractual terms often prescribe specific jurisdictions in which lawsuits must be filed.<sup>53</sup>

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40 *ibid.*

41 *ibid.*

42 Gary E. Davidson & Lourdes Naranjo 'Don't Fall Asleep at the Helm: Cruise Line Passenger Ticket Contracts and the Pitfalls of Personal Injury Litigation in US Courts' (1999) *International Travel Law Journal* 76.

43 *Weissberger* (n 19) para 1.

44 *ibid* para 5.

45 'Liability of Cruise Ship Operator for Injury to or Death of Passengers' 82 *American Law Reports* 6th 175.

46 *Death on the High Seas Act 2006*.

47 *Davidson & Naranjo* (n 42).

48 *ibid.*

49 *ibid.*

50 *ibid.*

51 *ibid.*

52 *ibid.*

53 *Carnival Cruise Lines, Inc. v. Shute* [1991] 499 US 585, 596.



Furthermore, cruise ships do not necessarily have an explicit legal duty to protect the health and safety of passengers.<sup>54</sup> Under the ‘contract of carriage’ doctrine, which applies when a contractual relationship exists between a carrier and a passenger,<sup>55</sup> a carrier only has a duty to exercise reasonable care under the circumstances.<sup>56</sup> As such, a carrier does not have an affirmative obligation to prevent illness, injury, or death aboard its ship.<sup>57</sup> Ship owners must furnish aid and assistance only as an ‘ordinarily prudent person would render under similar circumstances.’<sup>58</sup> The required degree of reasonable care is dependent upon the circumstances—sometimes, a high degree of care may be necessary,<sup>59</sup> and other times, the duty of care may be less rigorous.<sup>60</sup> The COVID-19 pandemic presents a dilemma as far as degree of care—it is unclear whether carriers owe a higher degree of care because of the severity of the pandemic, or a lower degree of care because of its unprecedented nature. The contract of carriage also requires that a carrier offer reasonable warnings at the outset of passage for any restrictive provisions contained in a passenger’s ticket—for example, provisions limiting legal recovery.<sup>61</sup>

## 2.2. Complications Arising from Ship Registration

The cruise industry is international.<sup>62</sup> Cruise ships plot their courses through international waters, and may be registered in any country, regardless of the ports from which the ships actually embark passengers.<sup>63</sup> The availability of legal recovery for passengers is often limited by the rules of the country in which the cruise ship is registered.<sup>64</sup> Typically, cruise ships that embark from one country are registered in another country specifically for the reason that more lenient legal requirements are available in certain international jurisdictions.<sup>65</sup> For example, a large number of cruise ships are registered in countries like Bermuda, Panama, and the Bahamas.<sup>66</sup> Such countries are appealing to cruise ship companies because of the ‘convenience’ they offer to cruise companies based in countries with more stringent legal requirements. For example, American cruise ship companies can often subvert U.S. tax and labour laws by registering somewhere else.<sup>67</sup>

However, while a foreign registration may offer significant perks to cruise ship companies, such practice

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54 *Frango v. Royal Caribbean Cruises Ltd.* [2005] 891 So. Fla. Dist. Ct. App. 2d 1208, 1210-11.

55 *ibid.*

56 *ibid.*

57 *ibid.*

58 ‘Liability of Cruise Ship Operator for Injury to or Death of Passengers’ (n 45).

59 *ibid.*

60 *ibid.*

61 *Holland v. Norwegian Cruise Lines* [1990] 765 F. Supp. 1000, 1002.

62 William C. Terry ‘Flags of Convenience and the Global Cruise Labour Market’ (2017) 2 *Cruise Ship Tourism* 72-85.

63 *ibid.*

64 *ibid.*

65 *ibid.*

66 *ibid.*

67 *ibid.*



often makes it difficult for an injured passenger to seek legal recovery. For example, foreign registration status has complicated the process of legal recovery for the parents of an infant who passed away on board a Royal Caribbean ship.<sup>68</sup> In July 2019, 18-month-old Chloe Wiegand died after falling from an eleventh floor window of a Royal Caribbean cruise ship, *Freedom of the Seas*.<sup>69</sup> The ship, which embarked on its voyage from Miami, was registered in the Bahamas.<sup>70</sup> While aboard the ship at a port in Puerto Rico, Wiegand's grandfather lifted her over a railing to look out a window that he claims he believed was closed at the time, causing the infant to fall to her death.<sup>71</sup> The company and grandfather have disputed over which party is actually to blame for the infant's death.<sup>72</sup> The Wiegand family asserts that Royal Caribbean negligently maintained its vessel—which may have stemmed from lax Bahamian safety regulations.<sup>73</sup> More lenient safety regulations—as in the Wiegand case—often allow ships to avoid liability for negligence in cases of wrongful death or injury. Despite the incident taking place in Puerto Rico, and the ship being registered in the Bahamas, the Wiegand family brought suit in the Southern District of Florida against Royal Caribbean, as the jurisdiction was prescribed by the forum selection clause of the cruise contract.<sup>74</sup> While the case is still pending, it may serve as a framework for the types of issues which will arise in light of coronavirus infections caused by the negligent behaviour of cruise lines registered in foreign countries.

### 3. Existing Negligence Law

Cruise line companies typically specify the jurisdiction in which passengers may bring suit against them.<sup>75</sup> Although frequently registered in foreign countries such as the Bahamas, Panama, and Bermuda, most cruise line companies require suits to be brought in American jurisdictions.<sup>76</sup> While these ships are typically registered in foreign countries due to more lenient safety restrictions, bringing suit in an American jurisdiction may actually afford passengers a greater chance of recovery for negligence on the part of a cruise line, often through the Death on the High Seas Act ('DOHSA').<sup>77</sup> Notably, DOHSA offers a cause of action to individuals of all nationalities, even if another cause of action exists in a foreign jurisdiction.<sup>78</sup> However, DOHSA is outdated and limited in nature, which may preclude recovery in many instances, including in cases regarding the coronavirus pandemic.<sup>79</sup>

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68 *Wiegand v. Royal Caribbean Cruises Ltd.* [2020] 473 F. Supp. 3d 1348, 1350.

69 *ibid.*

70 *ibid.*

71 *ibid.*

72 *ibid.*

73 *ibid.*

74 *ibid.*

75 *Carnival Cruise Lines* (n 53) 596.

76 *ibid.*

77 *Death on the High Seas Act 2006* (n 46).

78 *ibid.*

79 *ibid.*





### 3.1 Negligence Recovery through the Death on the High Seas Act

Since the onset of the pandemic, the United States has experienced the highest number of cases of COVID-19 globally.<sup>80</sup> Coupled with forum selection clauses that necessitate lawsuits be brought in certain American jurisdictions, most passengers impacted by COVID-19 aboard cruise ships may seek recovery in American courts through DOHSA.<sup>81</sup>

Over time, the United States has increasingly developed laws to address injury, illness, and death caused by the negligence of ship owners.<sup>82</sup> Prior to 1920, there was no wrongful death cause of action 'for an injury that result[ed] in death' at sea.<sup>83</sup> Such a cause of action was prevented by the felony-merger doctrine,<sup>84</sup> which barred civil actions for acts that were deemed both felonies and torts.<sup>85</sup> The deficiencies of then-existing law prompted the formation of the Maritime Law Association in 1899.<sup>86</sup> The primary purpose of the Association was to draft a bill 'that would create a wrongful death right of action in admiralty.'<sup>87</sup> Starting in 1900, the Association introduced several drafts of such a bill—all of which were unsuccessful.<sup>88</sup> However, after the sinking of the *Titanic* in 1912,<sup>89</sup> which resulted in over 1,500 deaths at sea, the Association's efforts to pass a bill garnered significant attention.<sup>90</sup> Accordingly, on 30 March 1920, Congress enacted the Death on the High Seas Act ('DOHSA').<sup>91</sup> DOHSA provides a framework for individuals to seek legal remedies from carriers whose negligence resulted in the death of a passenger on board a vessel.<sup>92</sup> Originally designed to only cover pecuniary damages, amendments to the Act in 2000 allowed plaintiffs to seek pecuniary damages as well, expanding the reach of the Act beyond pure economic recovery.<sup>93</sup>

Under DOHSA, if an individual's death is 'caused by wrongful act, neglect, or default occurring on the high seas beyond three nautical miles from the shore of the United States,'<sup>94</sup> an heir of the decedent

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80 Center for Systems Science and Engineering (n 11).

81 Death on the High Seas Act 2006 (n 46).

82 Madeline Burke 'The 1920 Death on the High Seas Act: An Outdated and Ambiguous Admiralty Law Shielding Cruise Line Companies from Civil Liabilities' (2018) 49 *Journal of Maritime Law and Commerce* 1, 3.

83 *ibid.*

84 *ibid.*

85 *ibid.*

86 *ibid.*

87 *ibid.* 4.

88 *ibid.*

89 *ibid.*

90 *ibid.*

91 Death on the High Seas Act 2006 (n 46).

92 *ibid.*

93 *ibid.*

94 *ibid.*



may 'bring a civil action in admiralty'<sup>95</sup> against the responsible party—either an individual tortfeasor or the owner of the vessel which carried the decedent.<sup>96</sup> DOHSA prescribes that the spouse, parent, or child of the decedent may recover 'fair compensation' for the loss sustained.<sup>97</sup> Notably, contributory negligence of the decedent does not bar recovery under DOHSA.<sup>98</sup> DOHSA also accounts for issues of international law that may exist because of the registration status of a cruise ship.<sup>99</sup> For example, if death or serious injury occurs on a vessel registered in a foreign country, or the law of another country applies to the negligent behaviour of a carrier, the decedent or their representative may be able to sue in the United States under DOHSA, despite such complicating factors.<sup>100</sup> Under the Act, any plaintiff may bring a foreign cause of action in a United States court rather than in the court of the foreign country—essentially amounting to an opportunity for the plaintiff to select their preferred judicial forum.<sup>101</sup> However, the broad language of DOHSA—which initially appears to give plaintiffs greater rights—presents its own problems. DOHSA does not readily provide guidance for instances where there might be concurrent causes of action, in which negligent incidents are simultaneously covered by the laws of multiple countries.<sup>102</sup> Such cases have emerged with countries like Italy, France, and Venezuela, all of which have comparable wrongful death laws that offer similar recovery to that offered by DOHSA.<sup>103</sup> Courts have struggled to address this issue, in some cases allowing plaintiffs to file suit in two countries at once; at other times, barring recovery in certain foreign jurisdictions because of the overlap with the laws of another country.<sup>104</sup> Courts in favour of limiting recovery to one cause of action maintain that recovery under concurrent causes of action would amount to unjust enrichment for the plaintiff to the detriment of the defendant.<sup>105</sup>

These issues emerge primarily because there is no definitive universal law amongst countries for addressing negligence actions for passengers on cruise ships, resulting in dispute about which laws are applicable to whom and under what conditions. Conversely, public international law provides clearer standards for the treatment and protection of seafarers who work aboard vessels.<sup>106</sup> For example, the International Maritime Organization, the United Nations General Assembly, and the International Labour Organization have all adopted resolutions which urge international governments to "designate seafarers as key workers" to aid in the humanitarian and safety conditions for seafarers

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95 *ibid.*

96 *ibid.*

97 *ibid.*

98 *ibid.*

99 *ibid.*

100 *ibid.*

101 *ibid.*

102 Rebecca F. Doherty 'The Death on the High Seas Act: Two Remaining Problems' (1981) 41 *Louisiana Law Review* 4, 1214.

103 *ibid.*

104 *ibid.*

105 *ibid.*

106 International Maritime Organization 'Frequently Asked Questions about how COVID-19 is Impacting Seafarers' <<https://www.imo.org/en/MediaCentre/HotTopics/Pages/FAQ-on-crew-changes-and-repatriation-of-seafarers.aspx>> accessed 24 November 2021.



during the COVID-19 pandemic.<sup>107</sup> Notably, such resolutions do not apply to cruise ship passengers, as cruise ship passengers aboard a vessel are classified as consumers as opposed to workers and thus have different legal rights.<sup>108</sup>

### 3.2 Viability of Legal Recovery and Future Implications

The cruise industry has grown tremendously over time, with greater numbers of passengers embarking on larger cruise ships each year.<sup>109</sup> As the magnitude of the cruise industry increases, the number of potential legal issues correspondingly increases.<sup>110</sup> Commentators argue that as the cruise industry grows and modernises, existing laws will fail to sufficiently protect the health and safety interests of passengers, especially in regard to global health crises.<sup>111</sup> The coronavirus pandemic highlights such a gap in legal remedies available to passengers infected by the disease while aboard a cruise ship. While existing legislation provides compensation for deaths occurring at sea due to the negligence of vessel owners,<sup>112</sup> no similar legislation exists for passengers who have contracted an infectious disease aboard a cruise ship due to such negligence but have since recovered.<sup>113</sup> Further, existing legislation offers no recovery for individuals who were exposed to COVID-19 but did not actually contract the disease.<sup>114</sup> Finally, courts grapple with confusion surrounding concurrent causes of action across foreign countries and how such causes of action would impact both the injured plaintiff and the defendant cruise line.<sup>115</sup>

One option for addressing the coronavirus crisis aboard cruise ships is to amend existing legislation—or propose new legislation entirely—to allow individuals access to greater compensation if they are infected with coronavirus while aboard a ship. DOHSA currently applies only to individuals who die as a result of the negligence of a vessel owner.<sup>116</sup> As such, DOHSA would not currently cover individuals who become ill after contracting coronavirus aboard a ship, but who recover.<sup>117</sup> Even if an infected individual recovers, the ongoing impacts of coronavirus can be severe and long-lasting.<sup>118</sup> For example, those who recover from coronavirus may face significantly decreased lung function,

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107 *ibid.*

108 *ibid.*

109 Leticia M. Diaz, *et al.* ‘Crimes and Medical Care On Board Cruise Ships: Do the Statistics Fit the Crimes?’ (2014) 27 *Loyola Consumer Law Review* 40, 42-43.

110 *ibid.*

111 *ibid.*

112 Death on the High Seas Act 2006 (n 46).

113 *ibid.*

114 *ibid.*

115 Doherty (n 102).

116 *ibid.*

117 *ibid.*

118 Sana Salehi, *et al.* ‘Long-term Pulmonary Consequences of Coronavirus Disease 2019 (COVID-19): What We Know and What to Expect’ (2020) 35 *Journal of Thoracic Imaging* 4, 87-89.



perhaps for the duration of their lives.<sup>119</sup> Emerging studies indicate long-lasting organ damage in coronavirus survivors as evidenced by spots and patterns present in lung scans.<sup>120</sup> These figures still only indicate what is currently known about the disease—the true extent of the disease’s impacts may not yet be realised given the novelty of the viral strain.<sup>121</sup> Further, coronavirus has effectively skyrocketed rates of unemployment as global shutdowns bring certain industries to a halt.<sup>122</sup> DOHSA offers no protection to those who will face lasting physical and financial harm as a result of contracting coronavirus, thus preventing them from returning to work in the long term.<sup>123</sup>

As such, U.S. Congress should amend DOHSA to cover injuries resulting from infectious diseases aboard a cruise ship. DOHSA may be the only viable means for cruise ship passengers to recover for negligent acts caused by cruise lines during the COVID-19 pandemic, given the lax safety laws of foreign countries coupled with the forum selection clauses of cruise contracts. However, the limits of such an amendment should be closely tailored. By nature, cruise ships lend themselves to the spread of disease because of the close proximity of passengers to one another.<sup>124</sup> Therefore, amendments to DOHSA should not be overly aggressive, especially because even minor illnesses can quickly spread aboard a ship.<sup>125</sup> Moreover, proposed changes to DOHSA should be made in consideration of the substantial economic harm that the coronavirus pandemic has had, and will continue to have, on the tourism and hospitality industries.<sup>126</sup> As such, amendments should also be limited in nature, ensuring that cruise lines are not unfairly targeted by concurrent foreign causes of action which might unjustly enrich plaintiffs at the expense of the cruise line. While DOHSA should be improved, legislators should be careful that such amendments do not cause undue financial harms to already-struggling cruise ship companies, which may be required to pay high-valued damages to passengers for extraordinary events that occurred during an unprecedented global crisis. Conversely, the existing language of DOHSA overwhelmingly protects the finances of cruise lines—accordingly, a balance must be struck between the financial interests of the industry and the health and safety interests of passengers.

Some legal implications of the coronavirus pandemic do not yet have a clear solution. For example, DOHSA’s territorial limits are uncertain.<sup>127</sup> DOHSA covers deaths resulting from incidents occurring in the territorial waters of the United States, as well as incidents occurring beyond United States territorial waters.<sup>128</sup> Classifications like the territorial sea, exclusive economic zone, and contiguous zone further

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119 *ibid.*

120 *ibid.*

121 *ibid.*

122 Sangheon Lee, *et al.* ‘The Labour Market Impacts of the COVID-19: A Global Perspective’ (2020) 63 *Indian Journal Of Labour Economics*, 11-15.

123 *Death on the High Seas Act 2006* (n 46).

124 *Kak* (n 13).

125 *ibid.*

126 Lee, *et al.* (n 122).

127 *Death on the High Seas Act 2006* (n 46).

128 *ibid.*



complicate matters, as such classifications can determine which laws are applicable to whom and in which jurisdictions. Such territorial limits complicate the process of identifying where the negligent behaviour occurred.<sup>129</sup> Courts have grappled with whether negligent behaviour is covered under the Act depending on if it occurred on the 'high seas,' or while docked at a port.<sup>130</sup> Such an issue is exceedingly relevant considering the number of cruise ships that have been stuck on the 'high sea' because of coronavirus outbreaks, or docked at a foreign port for months at a time under quarantine. Many U.S. and foreign states also have wrongful death statutes, which sometimes have different requirements and provide different remedies than those of DOHSA.<sup>131</sup> Further, the overlap between statutes may create confusion for affected passengers, especially those who reside outside the United States.<sup>132</sup>

Similarly, the registration country of the affected cruise ship might also pose uncertainty for future legal recourse. While DOHSA currently allows for an additional cause of action on top of any other available foreign causes of action, in instances where DOHSA does not presently apply, passengers will have to rely on the law of the foreign jurisdiction in which the cruise ship is registered—if, in fact, they are not precluded by the cruise contract from bringing suit in a foreign jurisdiction.<sup>133</sup> In the Bahamas and Panama, where a significant number of cruise ships are registered, a gray area exists as to legal liability for passenger safety issues.<sup>134</sup> Further, the existence of restrictive contract terms may make navigating foreign legal systems nearly impossible for passengers. As such, counsel seeking to represent such passengers should be prepared to navigate uncharted waters.<sup>135</sup>

#### 4. Conclusion

The cruise ship industry will face substantial legal consequences in the coming months and years as the coronavirus pandemic continues to ravage the globe. As the world attempts to recover from a devastating health crisis, many individuals will seek legal remedies for the alleged negligent acts of cruise lines in which coronavirus outbreaks occurred.<sup>136</sup> Currently, the existing global legal landscape is difficult to navigate for individuals who have experienced injury, illness, or death aboard a cruise ship.<sup>137</sup> Further, the fine print of cruise contracts often delineates stringent requirements as to the types of claims a passenger may bring against a cruise company.<sup>138</sup> The existing legal landscape is also compli-

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129 Andrew S. Levy 'A Territorial Sea Change: The Death on the High Seas Act and the Extension of the Territorial Sea' (2012) 80 Fordham Law Review 1721, 1736.

130 *Balachander v. NCL Ltd.* [2011] 800 F. Supp. 2d 1196, 1200-02.

131 Levy (n 129) 1732.

132 *ibid.*

133 Death on the High Seas Act 2006 (n 46).

134 Thomas R. Panko, *et al.* 'Cruise Crimes: Economic-Legal Issues and Current Debates' (2009) 11 *Amfiteatru Economic Journal* 26, 585-596.

135 Davidson & Naranjo (n 42).

136 *ibid.*

137 *ibid.*

138 *ibid.*



cated by a ship's place of registration.<sup>139</sup> Standards for legal liability vary by country,<sup>140</sup> and some of the countries in which cruise ships are typically registered will often fail to investigate claims of negligent conduct by cruise lines.<sup>141</sup> Ultimately, these legal roadblocks prevent passengers who have been injured aboard a cruise ship from receiving sufficient—if any—recovery for harms they have suffered.

While DOHSA provides a dedicated means for the heirs of a decedent to receive compensation for the negligent conduct of a vessel owner which resulted in the death, the Act is too narrowly constructed and does not sufficiently address modern maritime concerns. While amending DOHSA should not unduly burden cruise lines—which will undoubtedly suffer economically due to the pandemic—such amendments should impart greater accountability on cruise lines for the health and safety of passengers, especially as the coronavirus outbreak continues to grow exponentially. Though providing legal remedies to such groups may be unprecedented, such a pandemic is equally unprecedented. As such, passengers who become 'sea-sick' from coronavirus outbreaks fuelled by cruise ship negligence should have a more accessible route by which they may seek recovery in the coming months and years.

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139 Panko, *et al.* (n 134).

140 *ibid.*

141 *ibid.*