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NO. 79529-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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JACK OLTMAN, BERNICE OLTMAN, and SUSAN OLTMAN,

Appellants/ Petitioners,

v.

HOLLAND AMERICA LINE USA, INC., a Delaware Corporation and
HOLLAND AMERICA LINE, INC., a Washington Corporation,

Respondents.

**AMICUS CURIAE BRIEF OF CRUISE LINE INTERNATIONAL
ASSOCIATION IN SUPPORT OF RESPONDENTS**

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

Cruise Line International Association (“CLIA”), founded in 1975, is the world’s largest cruise association. It is dedicated to the promotion and growth of the cruise industry and composed of twenty-four of the major cruise lines serving North America, along with thousands of affiliated travel agencies and more than 100 business partners. CLIA’s members represent ninety-seven percent of the cruise capacity marketed in North America. In 2006, CLIA merged with the International Council of Cruise Lines (“ICCL”), a sister entity created in 1990 that participated in the regulatory and policy development process in the cruise industry. CLIA exists to promote measures that foster a safe and healthy cruise environment; to educate and train travel agent members; and to promote the value, desirability, and affordability of the cruise experience.

II. INTRODUCTION

This Court has been called upon to determine the enforceability of a cruise passenger ticket contract in situations where the passenger books the cruise at the last minute, receives his contract prior to embarkation but fails to read its provisions, and embarks on the cruise. It is undisputed that Petitioners had the opportunity to examine their contract but failed to do so. Petitioners, residents of North Dakota and California, accepted and received all of the benefits accruing under the cruise contract, yet now

seek to avoid their obligations under the same contract. Specifically, they ask this Court to decline to enforce the forum selection clause in Holland America Lines (“HAL”) Cruise and Cruisetour Contract. HAL should not be penalized for Petitioners’ failure to read that contract – either before boarding or during the nearly one-year period following the cruise’s completion.

As recited by the court of appeals, Petitioners Bernice and Jack Oltman booked their cruise through their travel agent, Vacations to Go Travel Agency,¹ on March 18, 2004, thirteen days before departure from Valparaiso, Chile. The tickets were addressed to their travel agency by HAL, CP 148, 150, and the Oltmans received their tickets and cruise contract approximately six days before boarding the vessel.² Petitioner Jack Oltman admits that he failed to read the ticket. CP 232 ¶ 10. The cruise ticket contract contained a forum selection clause requiring all suits arising from or related to the cruise to be brought in federal court in Washington if such court had subject matter jurisdiction, or, if not, in Washington state court. The contract also contained a provision requiring

¹ The record does not indicate whether Petitioners purchased travel insurance for their voyage.

² Petitioners assert that they received their tickets only upon boarding. However, the record reflects that Petitioners received their tickets either six days before boarding or on the day of the cruise in Valparaiso. CP 232 ¶ 9. The tickets were delivered to Petitioners’ travel agent, CP 148, 150, and it is difficult to believe that they would depart the United States without them. Moreover, it is rare for passengers to pick up tickets at a foreign terminal upon embarkation. In any event, the timing does not change the result here.

suits for personal injury to be brought within one year of the date of injury. Despite the contract's forum provision, Petitioners brought suit in state court on March 30, 2005, the eve of the one-year time bar. Based on the forum selection clause that required suit in federal court, the trial court granted HAL's motion to dismiss for improper forum, and the court of appeals affirmed.

Millions of cruise ship passenger ticket contracts issued by CLIA member cruise lines contain prominent forum selection and time limitation provisions like those at issue here. These contractual limitations are published in countless cruise lines' brochures and websites, and each line makes its contract terms available upon request. HAL complied with this industry practice. CP 88 ¶¶ 12, 13. Literature furnished to travel agents also contain these contractual provisions. CP 88. No passenger may board the vessel without first presenting a valid Cruise and Cruisetour Contract. CP 89 ¶ 14.

Given the variety of jurisdictional contacts involved in each potential dispute, cruise lines rely heavily upon the enforceability of these provisions in order to resolve questions of jurisdiction, venue, time limits for suit, and other matters. Having a designated forum for disputes provides necessary uniformity and certainty, which, in turn, enables cruise lines to reduce litigation costs that otherwise would be passed to its

passengers in the form of increased prices. The U.S. Supreme Court has embraced this very reasoning in declaring cruise line forum selection clauses *prima facie* enforceable. *Carnival Cruise Lines v. Shute*, 499 U.S. 585, 594 (1991).

This case presents a frequently occurring legal issue involving passengers who purchase tickets shortly before embarkation, board the vessel, take the cruise, and then – because of their own failure to examine the ticket’s terms, either before booking the cruise or boarding the ship – claim not to be bound to any obligations imposed by the ticket contract. This issue is of vital importance to the cruise industry. There should be no exception for last minute purchasers based upon a failure to read or even consult the applicable and available terms.

III. REASONS FOR AFFIRMING THE JUDGMENT

A. **Because Petitioners Received, but Failed to Read, Their Tickets’ Provisions, the Reasonable Communicative Standard is Satisfied and the Forum Selection Clause Applies.**

The test for enforcing limitations in a passenger ticket contract is whether the contract “reasonably communicate[s]” the limitation. This test was first announced in *Shankles v. Costa Armatori, S.P.A.*, 722 F.2d 861, 864 (1st Cir. 1983), and has been adopted by the Ninth Circuit. *Dempsey v. Norwegian Cruise Line*, 972 F.2d 998, 999 (9th Cir. 1992); *Deiro v. American Airlines, Inc.*, 816 F.2d 1360, 1364 (9th Cir. 1987).

The first prong of the analysis, the physical characteristics of the limitation provision and the ticket, is not at issue here. The second – and relevant – prong deals with the circumstances surrounding the purchase and retention of the contract, including the passenger’s ability to become meaningfully informed. *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 836 (9th Cir. 2002). Brochures, website notices, and other travel documents may be considered part of the totality of notice to read the ticket contract. *See Gomez v. Royal Caribbean Cruise Lines*, 964 F. Supp. 47, 50-51 (D.P.R. 1997). Petitioners assert, despite receiving the ticket contract prior to embarkation, that they failed to read its provisions. As a result, they contend that none of the provisions are binding. Their argument lacks legal or logical support.

1. Receiving the ticket contract prior to embarkation, coupled with ready access to the contract terms prior to purchase, satisfies the “reasonable communicative test.”

It is well established under maritime law that a passenger ticket contract must “reasonably communicate” its provisions. *See, e.g., Dempsey*, 972 F.2d at 999; *Deiro*, 816 F.2d at 1364. Courts examine whether the passenger received the communication before *boarding* the vessel, *not* whether he received it before entering the contract. *E.g., Tone v. Carnival Cruise Lines, Inc.*, 1993 U.S. Dist. LEXIS 15758, at *6-7

(E.D. Pa. 1993). Whether the passenger actually reads the contract is irrelevant. Rather, the question is whether he or she *had the opportunity* to review the contract's terms. *E.g., Paredes v. Princess Cruises, Inc.*, 1 F. Supp. 2d 87, 90 (D. Mass. 1998); *Kendall v. American Hawaii Cruises*, 704 F. Supp. 1010, 1016 (D. Haw. 1989); *Barkin v. Norwegian Caribbean Lines*, 1987 WL 766923, 1988 A.M.C. 645, 650 (D. Mass. 1987); *see also Norwegian Cruise Line v. Clark*, 841 So. 2d 547, 553 (Fla. Dist. Ct. App. 2003) (“the ability to become informed [of the contract’s terms] – and not the timing of its purchase or receipt – controls the issue of whether the forum selection clause . . . was reasonably communicated”).

Petitioners’ assertion they had no “meeting of the minds” because they chose not to familiarize themselves with the terms should be rejected. A cruise ticket contract reasonably communicated to the passenger prior to the cruise is enforceable regardless whether the passenger has read or even retained the ticket. *Carpenter v. Klosters Rederi A/S*, 604 F.2d 11, 13 (5th Cir. 1979).³

³ *See also Lousararian v. Royal Caribbean Corp.*, 951 F.2d 7, 8-9 (1st Cir. 1991) (failed to read ticket before discarding); *Marek v. Marpan Two, Inc.*, 817 F.2d 242, 247 (3d Cir. 1987) (received ticket moments before boarding and failed to read within six months of injury); *DeCarlo v. Italian Line*, 416 F. Supp. 1136, 1137 (S.D.N.Y. 1976) (passenger who never read ticket charged with notice where ticket purchased by travel agent); *Cross v. Kloster Cruise Lines*, 897 F. Supp. 1304 (D. Or. 1995) (failed to read ticket); *Kendall*, 704 F. Supp. at 1017 (page with limitation missing from ticket); *Hicks v. Carnival Cruise Lines*, 1994 U.S. Dist. LEXIS 10194, at *15, 1995 A.M.C. 281 (E.D. Pa. 1994) (received ticket five days prior to cruise); *Roberson v. Norwegian Cruise Line*, 897 F. Supp. 1285, 1285 (C.D. Cal. 1995) (received ticket three days before cruise).

Petitioners admit receiving their ticket contract prior to boarding the vessel and taking the cruise. More importantly, they indisputably had the opportunity to learn about the contract's provisions. Petitioners booked their cruise thirteen days before embarkation in Valparaiso, received their ticket contract from their travel agent prior to embarkation, and had ample opportunity to review all of the contract's terms before deciding to purchase the cruise. Under any analysis, the contract's provisions were reasonably communicated. *See Geller v. Holland America Line*, 298 F.2d 618, 619 (2d Cir. 1962) (owner of vessel entitled to summary judgment where passenger never opened envelope containing ticket); *Horvath v. Cunard Steamship Co.*, 103 F. Supp. 356, 359 (E.D.N.Y. 1952) (passenger could not read English). Here, HAL in no way impeded Petitioners' ability to become meaningfully informed. Petitioners' unilateral "lack of understanding" therefore rings hollow.

2. When a passenger books a cruise through a travel agent, he has constructive notice of the ticket's provisions upon receipt by the agent.

Petitioners admit that they booked the cruise through their travel agent. They had constructive notice of the provisions in the ticket contracts once they were delivered to their travel agent, Vacations to Go. *See Catalana v. Carnival Cruise Lines, Inc.*, 618 F. Supp. 18 (D. Md.

1984), *aff'd*, 806 F.2d 257 (4th Cir. 1986).⁴ A travel agent is an agent of the passenger, not the cruise line. *Id.* Thus, when Vacations to Go received the ticket contracts, knowledge of their terms was imputed to Petitioners as a matter of law.⁵ *Id.*

3. Petitioners' inability to account for their failure to read or comply with the contract provisions warrants affirmance.

This Court should expect parties contemplating legal action to review closely the terms and conditions of their contract. *See Boyles v. Cunard Lines, Ltd.*, 1994 U.S. Dist. LEXIS 21449, 1994 A.M.C. 1631 (S.D.N.Y. 1994). Particularly where, as here, Petitioners were sophisticated enough to take their claim to an attorney, HAL should not bear responsibility for Petitioners' unexplained failure to comply with the contractual forum selection requirements. *See Barkin*, 1988 A.M.C. at 650.

There is "powerful incentive" to study the passage contract after an injury has occurred. *Sullivan v. Home Lines, Inc.*, 1986 A.M.C. 1617,

⁴ *See also Mulhern v. Holland America Cruises*, 393 F. Supp. 1298 (D.N.H. 1975); *Boyles v. Cunard Line*, 1994 U.S. Dist. LEXIS 21449, 1994 A.M.C. 1631, 1637 (S.D.N.Y. 1994); *Hodes v. S.N.C. Achille Lauro*, 858 F.2d 905, 911-12 (3d Cir. 1988), *overruled on other grounds by Lauro Lines S.R.L. v. Chasser*, 490 U.S. 495 (1989); *Ames v. Celebrity Cruises*, 1998 U.S. Dist. LEXIS 11559, at *16 (S.D.N.Y. 1998).

⁵ Similarly, because Petitioner Jack Oltman booked the cruise and received the ticket contract on behalf of himself and his mother, his opportunity to review the applicable terms is binding upon her. *See, e.g., Foster v. Cunard White Star, Ltd.*, 121 F.2d 12, 13 (2d Cir. 1941) (brother); *Rogers v. Furness, Withy & Co.*, 103 F. Supp. 314, 316-17 (W.D.N.Y. 1951) (friend).

1619 (D. Conn. 1985).⁶ “When a passenger is involved in an accident, it is reasonable to expect the passenger to consult his or her ticket or an attorney to determine his or her rights.” *Dempsey*, 972 F.2d at 1000. Moreover, when plaintiffs retain counsel within the limitations period, as in the instant case, the assumption is even stronger that they are on notice of the contractual terms. *Vavoules v. Kloster Cruise, Ltd.*, 822 F. Supp. 979, 981 (E.D.N.Y. 1993); *Angello v. M/S Queen Elizabeth 2*, 1987 AMC 1150, 1154 n.5 (D.N.J. 1986); *De Nicola v. Cunard Line, Ltd.*, 642 F.2d 5, 11 (1st Cir. 1981).

Petitioners made a timely filing demonstrating that they (and their counsel) read the time-limitation provision of the ticket contract, which comes after the forum selection provision, but they offer no explanation for their failure to file in the correct forum.

B. Receiving a Cruise Contract Within the Cancellation Penalty Period Does Not Invalidate Otherwise Reasonably Communicated Contractual Provisions.

Petitioners attempt to bolster their position by citing *Casavant v. Norwegian Cruise Line, Ltd.*, 829 N.E.2d 1171 (Mass. App. Ct. 2005), for the broad proposition that a cruise contract is unenforceable against a passenger who receives the contract shortly before sailing (after

⁶ See also *Shankles v. Costa Armatori, S.P.A.*, 722 F.2d at 865; *Morak v. Costa Armatori S.P.A. Genova*, 1982 A.M.C. 1859, 1863 (E.D.N.Y. 1981).

cancellation fees apply). *Casavant* is readily distinguishable on several grounds, and, in any event, Petitioners' interpretation of it is wrong. The timing of the receipt of the ticket contract is not controlling in determining the enforceability of the contract's terms.

As the court of appeals here correctly noted, the passengers in *Casavant* bought their cruise tickets a year before departure, but received the contract terms only thirteen days before sailing. The delay in communicating the contract terms was caused by the cruise line's *own* actions, rather than the plaintiffs' late booking of the cruise.

In addition, the plaintiffs in *Casavant* cancelled their cruise under extraordinary circumstances: they were scheduled to cruise days after the September 11 terrorist attacks, reasonably feared engaging in any travel, and – significantly – they cancelled their cruise. The court in *Casavant* found this last fact significant, holding that no contract was formed because plaintiffs had “expressly rejected the services offered in the contract due to legitimate safety concerns stemming from the catastrophic events of September 11, 2001.” *Id.* at 799. Petitioners, in the instant case, however, took their cruise and only now seek to set aside the contract.

CLIA member lines have a legitimate and necessary interest in applying their cancellation policies to all passengers, including those who book their cruise at the last minute, take their cruise as scheduled, and

thereafter attempt to escape any contractual obligations by arguing that “had they” wished to cancel their cruise upon receipt of their contracts they would have had to forfeit a portion of their fare.⁷

Petitioners offered no evidence that they read the contracts after receiving them. They never objected to the forum selection clause or any other terms in the contract, or attempted to cancel their cruise. They offered no objective evidence that if they had read their contract, they would have decided against accepting the cruise, or that any of the provisions in question were material to them. Their hypothesis that they “would have” forfeited their deposit “had they” cancelled the cruise cannot serve as a basis to invalidate the contract after performance has been tendered and accepted.

To recognize this argument as a basis to invalidate the contract would render every contract unenforceable where the passenger chose to book a cruise after the penalty period commenced. Such a rule would eviscerate the well-established “reasonably communicative test” and ignore the fact that passengers have additional opportunities to review the

⁷ All CLIA member lines have cancellation policies that assess a certain cancellation fee (either a set amount or a percentage of the cruise fare paid) based on the timing of the cancellation. The closer the cancellation is to the sailing date, the greater the fee. Such policies are common in the hotel and travel industry, but are particularly vital in the cruise industry as most bookings are made months in advance, and last minute cancellations of reserved cabin spaces mean that those cabins likely cannot be resold, and costs incurred in provisioning the ship may not be avoidable.

contract's terms prior to purchasing the cruise, by either consulting the cruise line's brochure, website, or requesting a sample contract.

Petitioners offered no evidence that they attempted to do any of these things but were prevented from doing so.

Courts have rejected similar "forfeiture" arguments, holding that passengers waive the right to challenge the contract terms after taking the cruise and enjoying the benefits of their bargain. For example, in *Boyles v. Cunard Line, Ltd.*, 1994 U.S. Dist. LEXIS 21449, at *12, 1994 A.M.C. 1631 (S.D.N.Y. 1994), the court rejected the argument Petitioners make here, holding that contract terms are enforceable when the reasonable communicativeness standard is met.

Similarly, in *Hicks v. Carnival Cruise Lines, Inc.*, 1994 U.S. Dist. LEXIS 10194, 1995 A.M.C. 281 (E.D. Pa. 1994), the court enforced a forum selection clause even where cancellation would result in a penalty, holding:

[t]he crux of the reasonable communication standard is whether the passenger has sufficient notice of the clause before boarding the ship. As such, *courts in this circuit have consistently rejected arguments premised upon the timing of the receipt of the tickets*. Provided the passenger received the ticket prior to boarding, the issue is not the timing but rather the communication of the forum selection clause in the ticket.

Id. at *12 (citations omitted; emphasis added). The *Hicks* court further stated, plaintiff "does not, nor can she, claim that she was prevented from

obtaining her tickets or information concerning its terms at an earlier date.” *Id.* at *16.

Likewise, as the court of appeals recognized here, Petitioners had the opportunity to review the contract terms on HAL’s website and request a sample contract from their travel agent. Indeed, all CLIA member cruise lines publish their contract terms and conditions on their websites and/or in their brochures, and they make the terms and conditions available to any prospective passenger upon request. Travel agents are aware of cruise contract terms and conditions and are able to communicate those terms, as well as make available brochures and sample contracts to passengers.

Given this availability, the terms of the HAL ticket contract were immaterial to Petitioners’ decision to take the cruise. *See Natale v. Regency Maritime Corp.*, 1995 U.S. Dist. LEXIS 3413 (S.D.N.Y. 1995) (enforcing passenger ticket contract against plaintiff who failed to cancel cruise despite existence of 90 percent cancellation fee).

Numerous federal maritime cases have rejected the forfeiture argument and enforced ticket contract provisions as written. *Cross v. Kloster Cruise Lines, Ltd.*, 897 F. Supp. 1304 (D. Or. 1995) (ticket contract enforced despite \$400 penalty); *Walker v. Carnival Cruise Lines, Inc.*, 681 F. Supp. 470, 1988 A.M.C. 216 (N.D. Ill. 1987) (ticket contract enforced despite cancellation fees); *Lauri v. Cunard Line Ltd.*, 2000 U.S.

Dist. LEXIS 8627, at *7 (E.D. Mich. 2000) (enforcing ticket contract subject to 100 percent cancellation fee, noting “ample authority rejecting the argument that the refundability of the tickets is dispositive”); *Rawlins v. Clipper Cruise Lines*, 1995 U.S. Dist. LEXIS 21786, 1998 A.M.C. 1254 (N.D. Cal. 1995) (enforcing passenger contract despite ticket cancellation fees); *Miller v. Regency Maritime Corp.*, 824 F. Supp. 200 (N.D. Fla. 1992) (enforcing contract where plaintiff would have forfeited 40 percent of cruise fare had she cancelled); *Ferketich v. Carnival Cruise Lines*, 2002 U.S. Dist. LEXIS 20052, at *16 (E.D. Pa. 2002) (“Although [plaintiff] would be subject to a \$350 cancellation fee, in light of the fact that the majority of courts have rejected the argument [plaintiff] presents, we believe [plaintiff] had adequate and reasonable notice to support enforcing the forum selection clause despite the cancellation fee.”); *Ames v. Celebrity Cruises, Inc.*, 1998 U.S. Dist. LEXIS 11559, at *19 (S.D.N.Y. 1998) (rejecting argument that forfeiture of a portion of fare should invalidate one-year contractual limitations period because “passengers who are given time to review their tickets are typically prevented from later escaping their obligations because of a cancellation policy that they failed to challenge at the time”); *Norwegian Cruise Line, Ltd. v. Clark*, 841 So. 2d 547, 550 n.2 (Fla. Dist. Ct. App. 2003) (“the forfeiture amount is not controlling” – “[t]he majority view is that forum selection clauses

. . . are enforceable because the passenger had adequate and reasonable notice of them, despite the cancellation fee”); *Valenti v. Norwegian Cruise Line*, 2005 U.S. Dist. LEXIS 6811, at *12-13 (S.D.N.Y. 2005) (enforcing forum selection provision where plaintiffs would have forfeited 50 percent of fare because “the majority rule . . . is that once the plaintiffs (a) received the tickets in time to read them, and (b) accepted the terms of those tickets by going on the cruise, they are bound by the terms contained therein”) (citation omitted); *Viney v. Kloster Cruise, Ltd.*, 1996 WL 904762, 1997 A.M.C. 544 (N. D. Cal. 1996) (passenger bound by forum selection clause where she received ticket only a few days before cruise and where she could not have cancelled her trip without penalty); *Thomas v. Costa Cruise Lines*, 892 S.W.2d 837 (Tenn. Ct. App. 1994) (despite 25 percent penalty, subsequent passage on cruise ratified contract).

In *Schlessinger v. Holland America, N.V.*, 2003 WL 21371851, 2003 A.M.C. 892 (Cal. App. Dep’t Super. Ct. 2003), *aff’d*, 120 Cal. App. 4th 552, 16 Cal. Rptr. 3d 5 (2004), the court found *Hicks, supra*, and *Roberson v. Norwegian Cruise Line*, 897 F. Supp. 1285 (C.D. Cal. 1995),⁸

⁸ In *Roberson*, the court enforced a cruise ticket contract forum selection provision received by plaintiff only three days before departure. The Court made clear that it did not wish to “[i]mply that the opportunity to read a ticket *before* departure is a condition precedent to enforcing a forum selection clause contained therein. However, that plaintiff has the opportunity to do so here establishes, *a fortiori*, that she was on notice of that contractual provision.” 897 F. Supp. at 1289 n.3 (emphasis in original).

“highly persuasive” and rejected plaintiffs’ forfeiture argument. The court correctly recognized the wide-ranging impact of accepting the forfeiture argument:

More importantly, . . . the Court finds there is no indication that plaintiffs in this case had any problem with the forum selection clause until after they brought suit. At the time plaintiffs received their ticket contracts, they never in any form complained about or objected to the forum selection clause. There was no indication from plaintiffs to HAL after the time when they did receive their tickets (and hence had notice of the forum selection provision) that they wanted to cancel their cruise due to the forum selection clause, but were unable to do so as they did not want to forfeit their cruise fare. If plaintiffs’ forfeiture arguments were accepted, any party to a cruise contract could make any clause in the contract unenforceable after taking the benefit of the cruise (*i.e.* the cruise itself) by subsequently claiming they had wished to cancel the cruise, but did not do so, because they did not want to forfeit their money. Plaintiffs’ failure to timely object to the forum selection clause of their cruise ticket contract before the cruise, and their taking the cruise without doing so, is essentially tantamount to waiving their rights, if any, to object to the terms and conditions of their ticket contract.

Schlessinger, 2003 WL 21371851, at *3.

Of the millions of cruise passengers sailing aboard CLIA cruise line members’ ships each year, thousands if not hundreds of thousands of passengers purchase last minute cruises (often at deep discounts) that are booked within the periods subject to cancellation fees. These passengers, including Petitioners, thus necessarily receive their cruise contracts within the so called “penalty period.” Accepting Petitioners’ forfeiture argument would erroneously create a broad exception for a large segment of the

cruising population from any contractual obligations whatsoever, simply because of their own last-minute booking and failure to consult the many available sources to learn the contract's terms beforehand. Such a ruling would effectively eviscerate the holding of *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991), and its progeny, as well as deprive cruise lines of numerous protections included in cruise contracts that are authorized by federal statutes and international conventions.⁹

CLIA thus urges this Court to reject Petitioners' forfeiture argument, which is in this instance, as often is the case, unsupported by any evidence and based on mere speculation. Petitioners have not offered any evidence that they attempted to cancel their cruise, disagreed with the contract's provisions, or even cared about them when they made the decision to take the cruise. Thus, whether Petitioners had time to cancel their contracts with impunity and whether they actually would have cancelled their cruise are issues that are entirely speculative and irrelevant to the enforceability of the provisions in question.

⁹ See, e.g., 46 U.S.C. §§ 30501-30509, 30511, which include various limitations of liability, including the one-year contractual limitations period for filing suit in personal injury or death actions.

C. Petitioners Fail to Raise Any Justiciable Issue Regarding Their Right to a Jury Trial in Federal Court.

Petitioners argue that they filed their suit in state court because they believed that they would not receive a jury trial in federal court. This argument is without merit. Petitioners, in fact, demanded a jury trial in federal court, and HAL did not object. The case was dismissed because of Petitioners' failure to file within the contractual one-year period for suit, and, thus, no jury determination was ever made. Moreover, Petitioners' belief was wrong – they had a right to a jury trial under the federal court's diversity jurisdiction. 28 U.S.C. § 1332. Even assuming diversity jurisdiction was unavailable, the forum selection clause does not deprive Petitioners of their rights under 46 U.S.C. § 30509(a)(1)(b). Petitioners were entitled to a trial by a court of competent jurisdiction. There can be no question that a trial held by a federal court sitting in admiralty or diversity is a trial by a court of competent jurisdiction.

IV. CONCLUSION

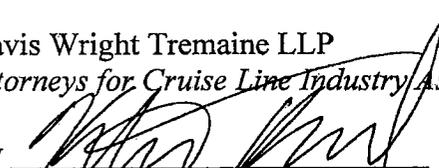
HAL took appropriate steps to enable Petitioners to become meaningfully informed of the relevant contractual terms. The cruise ticket fully satisfies the standards set forth in *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991), and *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972). This Court should not visit upon the cruise line industry the consequences of Petitioners' acts and omissions or excuse their failure to

read the contract and comply with its provisions. As Justice Cardozo stated long ago in *Murray v. Cunard S.S. Co.*, 139 N.E. 226, 228, 1923 A.M.C. 1235 (N.Y. 1923), “the passenger who omits to read takes the risk of the omission.”

For the reasons above and in the briefs filed by HAL, the judgment of the Court of Appeals should be affirmed.

RESPECTFULLY SUBMITTED this 26th day of October, 2007.

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