



**Foreign-Flag Cruise Ships Calling on U.S. Ports Are Subject to
Requirements of the Americans With Disabilities Act**

In a decision with serious ramifications for the cruise industry, the Supreme Court issued an opinion on June 6, 2005, holding that foreign-flag cruise ships that call on U.S. ports must comply with the public accommodation provisions of the Americans with Disabilities Act (“ADA”). *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. ___ (2005). The Fifth Circuit had previously ruled cruise ships were not subject to these requirements, while the Eleventh Circuit had held the ADA could apply to foreign-flag cruise ships.

Spector was filed by disabled passengers of Norwegian Cruise Lines who alleged that the cruise line violated the ADA, 42 U.S.C. § 12181 *et seq.*, because it allegedly charged certain premiums for disabled passengers requesting accommodations, provided facilities physically unsuitable for disabled passengers, and housed disabled passengers in rooms far from safety equipment and lifeboats. The cruise ships at issue are registered in the Bahamas. Passenger tickets dictated that disputes would be governed by U.S. law.

The plaintiffs alleged that Norwegian Cruise Lines violated Title III of the ADA, which prohibits discrimination in “places of public accommodation” and “specified public transportation services.” 42 U.S.C. §§ 12182(a) and 12184(a). Both provisions require covered entities to make “reasonable modifications in policies, practices, or procedures” to accommodate disabled individuals and to remove “architectural barriers, and communication barriers that are structural in nature” where such removal is “readily achievable.” Specifically, entities that provide public accommodations:

- May not impose “eligibility criteria” that tend to screen out disabled individuals;
- Must make “reasonable modifications in policies, practices, or procedures, when such modifications are necessary” to provide disabled individuals full and equal enjoyment;
- Must provide auxiliary aids and services to disabled individuals; and
- Must remove architectural barriers, or if barrier removal is not readily achievable, must ensure equal access for the disabled through alternative methods.



Making such changes on a cruise ship could be difficult, expensive, impracticable, impossible, and could create safety hazards for disabled or able-bodied passengers and crew, and Title III of the ADA provides for exceptions to these requirements:

- Eligibility criteria that screen out disabled individuals are permitted when “necessary for the provision” of the services or facilities being offered;
- Policies, practices, and procedures need not be modified, and auxiliary aids need not be provided, if doing so would “fundamentally alter” the services or accommodations being offered;
- Auxiliary aids are not required when they would result in an “undue burden”;
- Barrier removal and alternative access requirements do not apply when these requirements are not “readily achievable”; and
- Title III does not impose nondiscrimination or accommodation requirements if, as a result, disabled individuals would pose “a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.”

The District Court for the Southern District of Texas held that Title III of the ADA applies to foreign-flag cruise ships in U.S. territorial waters, but it did not allow the case to go forward on all claims because the government agencies charged with issuing architectural and structural guidelines for ADA compliance had not done so for cruise ships. As such, the court dismissed the plaintiffs’ barrier-removal claims, but allowed them to proceed with their remaining discrimination claims.

On appeal, the Fifth Circuit Court of Appeals disagreed. It relied on two Supreme Court decisions for the proposition that general statutes do not apply to foreign-flag cruise ships in the absence of clear Congressional intent. Since Congress did not express such intent in connection with Title III of the ADA, the Fifth Circuit reasoned, it would be improper to require foreign-flag cruise ships to comply with Title III’s accommodation provisions.

The Supreme Court disagreed, reversing the Fifth Circuit’s decision and sending the case back down for further proceedings and consideration. All of the justices on the Court agreed that foreign-flag cruise ships are “public accommodations” and “specified public transportation” as set forth in Title III of the ADA. However, the justices did not unanimously agree that foreign-flag cruise ships are



required to comply with the ADA's accommodation and nondiscrimination requirements. The lack of consensus on this point will likely result in additional confusion and controversy when interpreted by the lower courts.

Specifically, three of the justices concluded that such vessels must comply with Title III's requirements only if doing so will not interfere with the "internal order and discipline of the vessel," a standard which will require case-by-case analysis of accommodation requests. Two other justices concluded that Title III should govern foreign-flag cruise ships in U.S. waters in all circumstances, regardless of the effect on the internal order and discipline of the vessel, unless compliance with Title III would conflict with international legal obligations. Because these two groups of justices represented a majority of the Court, their conclusions form the judgment of the Court to the extent of their agreement. This means that foreign-flag cruise ships must now comply with Title III of the ADA to the extent doing so will not interfere with the internal order and discipline of the vessel.

Cruise ship operators calling on U.S. ports will now have to navigate and comply with Title III's requirements, and understand its exceptions, going forward.

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