

## FORUM SELECTION ISSUES IN CAPSIZED COSTA CROCIER ITALIAN CRUISE SHIP CASE



By Wesley D. Few

The U.S. Supreme Court in *Shute v. Carnival Cruise Lines*, 499 U.S. 585 (1991) held the Shutes, who were injured on a Carnival Cruise ship in waters off Mexico, must file suit in Florida pursuant to the forum selection provision printed on the back of their ticket. The Shutes filed suit in their home state of Washington. The cruise ship departed from California. *Shute* is still one of the most far reaching holdings enforcing adhesion-like forum selection provisions. The Shutes also had a strong argument that they lacked notice of the forum selection/choice of law provisions.

In the recent running aground of the Italian Costa Concordia operated by Costa Crocier, which is controlled by Carnival, the ship departed near Rome. Approximately 120 United States citizens were on board and two may still be missing. With respect to notice of the forum selection and choice of law provisions, information is much easier to obtain now than it was when *Shute* was decided. For example, Carnival now posts its [ticket contract online](#). Carnival's contract includes a mandatory arbitration provision as well as a forum selection clause, limits on liability, and restricted statute of limitations periods. Costa Crocier also posts their [ticket contract online](#). The Costa contract includes forum selection, arbitration and choice of law provisions at Section 2.

For claims involving personal injury or death, the Costa contract includes a forum selection clause for

Broward County, Florida for cruises that depart from, visit, or return to, a U.S. port. In contrast, U.S. port related economic loss claims are subject to an arbitration provision. Under the Costa contract, any cruise that does not depart from, visit or return to a U.S. port, all claims must be filed in Genoa, Italy, and Italian law applies. The Costa contract also includes a jury waiver provision.

When a district court applies a forum selection provision, it usually does so via 28 U.S.C. § 1404, whereas a state court would dismiss the case. Italy is not a district to which a federal case can be transferred, so dismissal is likely remedy if court enforces forum selection provisions for U.S. citizen cases filed in their home state, or even in Florida. *See e.g., Albemarle Corp. v. Astrazeneca U.K, Ltd.*, 628 F.3d 643, 651 (4th Cir. 2010) (applying English law / federal common law to enforce forum selection clause via dismissal). *Albemarle* also suggests that Costa Concordia related claims filed in the U.S. would still be analyzed under the four factor "unreasonableness" test set forth in *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972) (holding forum selection clause may be found unreasonable if "(1) [its] formation was induced by fraud or over-reaching; (2) the complaining party 'will for all practical purposes be deprived of his day in court' because of the grave inconvenience or un-fairness of the selected forum; (3) the fundamental unfairness of the chosen law may deprive the plaintiff of a remedy; or (4) [its] enforcement would contravene a strong public policy of the forum state.").

Here, proponents of avoiding Costa Crocier's forum selection clause and choice of Italian law may argue factors two, three and four. *An analysis of Italian law related to factor three is beyond the scope of this post!*

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