

Note

**Determining the Potential Liability of a Cruise Line
for the Injuries Or Death of Their Passengers as a
Result of a Pirate Attack**

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ABSTRACT

This Article examines Royal Caribbean Cruise Ltd.’s, the owner of the Royal Caribbean International brand, and Royal Caribbean Interna-

tional's potential liability to passengers who are injured or die during a pirate attack upon the *Brilliance of the Seas* while on a 14-night Middle East cruise. The Article is primarily concerned with the risks of the Royal Caribbean cruise that is currently scheduled to depart from Barcelona, Spain on January 10, 2011, and terminate at Dubai, United Arab Emirates, on January 24, 2011. The itinerary for this particular cruise indicates that there will be four ports of call offered along the voyage. These ports of call include: Alexandria, Egypt; Suez Canal, Egypt; Al'Aqabah, Jordan; and Safaga, Egypt. This cruise is attractive because of the exotic ports of call and because there will be a total of nine days of at sea travel.

The Article provides a framework and analysis for understanding the risks that the *Brilliance of the Seas*, its crew, and passengers will likely face along their voyage. The Article also discusses the legal challenges Royal Caribbean Cruise Ltd. and Royal Caribbean International could face if a cause of action is brought against them. The Background section surveys piracy in the Middle East waterways and its effect on the transportation industry and on tourism. This section also explains how the *Brilliance of the Seas'* Cruise/CruiseTour Ticket Contract (the Passenger Ticket) outlines the relationship among Royal Caribbean Cruise Ltd., its Royal Caribbean International brand, and passengers of the *Brilliance of the Seas*. The Analysis section examines reasons why Royal Caribbean Cruise Ltd. and Royal Caribbean International could be held liable for passenger injuries or death. This section also suggests ways in which Royal Caribbean Cruise Ltd. and Royal Caribbean International could protect passengers on the *Brilliance of the Seas* from potential serious injury or death due to a pirate attack while preserving the quality of their product and name.

INTRODUCTION: PASSENGERS CAN BE MISLED TO BELIEVE IT IS SAFE TO CRUISE IN THE MIDDLE EAST

You and your loved one have coordinated your schedules and are looking forward to spending two weeks far, far away from work and the daily grind of everyday life. The two of you have decided to take a cruise that will afford you the opportunity to rekindle your relationship as well as the opportunity to catch up on some much needed rest and relaxation. Your travel agent suggested a variety of cruise companies and itineraries. There was much to consider, including: the ports of call, food, entertainment, accommodations, and quality of service each had to offer. The decision was made to book a cruise on one of the Royal Caribbean International¹ ("RCI") cruise ships. This Line recently launched an ad

1. *Our Company, Investor Relations*, ROYAL CARIBBEAN INT'L, <http://www.royalcarib->

campaign to promote how its ships and environment are designed to allow guests to feel like citizens on a “Nation of Why Not.”² Advertisements explain that the choice is totally up to passengers whether they want to “go out and see, do and be more than they had ever thought possible,” or to do nothing at all.³

You have booked a 14-night Middle East Cruise that is scheduled to depart from Barcelona, Spain on January 10, 2011, and terminate at Dubai, United Arab Emirates, on January 24, 2011.⁴ The itinerary for the ship, *Brilliance of the Seas*, indicates that there will be four ports of call offered along the voyage.⁵ These ports of call include: Alexandria, Egypt; Suez Canal, Egypt; Al’Aqabah, Jordan; and Safaga, Egypt.⁶ This cruise was the most attractive option because of the exotic ports of call and because there will be a total of nine days of at sea travel.⁷

Similar to probably many of the other individuals that booked this particular cruise, you have given little to no consideration to the likelihood that this cruise ship could be attacked by pirates. Besides, the thought of pirates conjures up images from childhood tales of a man with a wooden leg, hook, and parrot named Polly. You vaguely remember hearing about an incident with an Italian cruise ship a year ago off the coast of Africa.⁸ However, you easily reason that was an anomalous situation as no other attacks have made the top headlines recently. In addition, as an American passenger, you perceive a sense of safety by choosing a global cruise line like RCI and expect that if it were not safe to

bean.com/ourCompany/investorRelations.do (last visited Jun. 25, 2010) (“Royal Caribbean Cruises Ltd. is a global cruise vacation company that operates Royal Caribbean International . . . has a . . . total of 38 ships in service.”).

2. *Royal Caribbean Launches New Brand Campaign Empowering Vacationers to ask “Why Not?”*, ROYAL CARIBBEAN INT’L (Nov. 10, 2008), <http://www.royalcaribbean.com/ourCompany/pressCenter/pressReleases/info.do?prDate=11-10-2008&prCode=A> (discussing press release announcing new “Why Not?” advertising campaign).

3. Adam Goldstein, *A Message from Our President*, ROYAL CARIBBEAN INT’L, <http://www.royalcaribbean.com/aboutus/home.do?jsessionid=0000ZWY8o3nxps-QuEH-L0HNKL:12hdhuaq2> (last visited Jun. 25, 2010); see also *Royal Caribbean’s Mariner Of The Seas Arrives In Los Angeles*, ROYAL CARIBBEAN INT’L (Feb. 19, 2009), <http://www.royalcaribbean.com/ourCompany/pressCenter/pressReleases/info.do?prDate=02-19-2009&prCode=A> (discussing launch of new, innovative cruise ship in relation to marketing campaign of “Why Not?”).

4. *Itinerary & Availability of Brilliance of the Seas*, EXPEDIA, INC., <http://cruise.expedia.com/Itinerary.aspx?item=240371&eapid=13172-1> (last visited Jun. 25, 2010).

5. *Id.*

6. *Id.*

7. *Id.*

8. ASSOCIATED PRESS, *Italian Cruise Ship Fires on Somali Pirates*, FOX NEWS NETWORK, LLC (Apr. 26, 2009), available at <http://www.foxnews.com/story/0,2933,517955,00.html> (“An Italian cruise ship with 1,500 people on board fended off a pirate attack far off the coast of Somalia when its Israeli private security forces exchanged fire with the bandits and drove them away. None of the roughly 1,000 passengers and 500 crew members were hurt.”).

travel to the Middle East, RCI would discontinue offering cruises to this destination. But what if things do not go as expected and the ship is attacked while sailing in the Gulf of Aden? Would it be possible to recover if you or your loved one were injured or died during a pirate attack?

This paper examines Royal Caribbean Cruise Ltd.'s ("RCC"),⁹ the owner of the RCI brand, and RCI's potential liability to passengers who are injured or die during a pirate attack upon the *Brilliance of the Seas* while on the 14-night Middle East cruise. The Background section surveys piracy in the Middle East waterways and its effect on the transportation industry and on tourism. This section also explains how the *Brilliance of the Seas*' Cruise/CruiseTour Ticket Contract (the "Passenger Ticket") outlines the relationship among RCC, its RCI brand, and passengers of the *Brilliance of the Seas*. The Analysis section examines reasons why RCC and RCI could be held liable for passenger injuries or death. This section also suggests ways in which RCC and RCI could protect passengers on the *Brilliance of the Seas* from potential serious injury or death due to a pirate attack while preserving the quality of their product and name. The concluding section sets forth some final thoughts.

BACKGROUND: PIRACY IS A RISK CARGO AND PASSENGER VESSELS MUST CONSIDER

This section introduces how piracy poses a real threat to cruise ships and passengers traveling through the Gulf of Aden¹⁰ today. Part I presents an overview of how rampant pirate attacks and attempted attacks have become over the last couple of years off the coast of Somalia. While many nations have deployed naval resources to patrol the Gulf of Aden and surrounding waters, this area continues to be deemed hazardous for vessels and to travel throughout. Part II details the Bureau of Consular Affairs' travel advisors, which warns American citizens about the risks of traveling through the Gulf of Aden and to Middle Eastern countries, such as the *Brilliance of the Seas* destination point, the United Arab Emirates. Part III describes how the Passenger Ticket establishes the duty and level of responsibility owed by RCC and RCI to passengers of *Brilliance of the Seas*.

I. PIRACY CONTINUES TO PLAGUE THE GULF OF ADEN

Vessels that travel through the Gulf of Aden are at risk of being

9. ROYAL CARIBBEAN INT'L, *supra* note 2.

10. *Gulf of Aden*, WORLDATLAS.COM, <http://www.worldatlas.com/aatlas/infopage/gulfofaden.htm> (last visited Jul. 10, 2010) ("The Gulf of Aden is an extension of the Indian Ocean. Located between Africa and Asia, it forms the natural separation between the countries of Somalia and Yemen.").

attacked by pirates. Over the last couple of years, the waters off Somalia have been a hotbed for pirate activity.¹¹ Despite international efforts to guard vessels from being hijacked and held for ransom along with their passengers, an alarming number of actual and attempted attacks continue to occur.¹²

The ICC Commercial Crime Services, which is an organization based in the United Kingdom and affiliated with the International Chamber of Commerce, strives to combat “all forms of commercial crime.”¹³ As a part of its mission, this organization has undertaken to collect and track incidents of piracy around the world.¹⁴ From the information it has obtained, the ICC Commercial Crime Services developed interactive piracy maps of the world for the years 2005 through 2009 and a live interactive piracy map of the world for 2010 on its website.¹⁵ Anyone with access to the internet, can view, zoom in/out, and click on red, yellow, and blue markers to read abbreviated summaries or connect to full length reports of actual pirate attacks, attempted pirate attacks, and identified suspicious looking vessels.¹⁶

In 2008, when RCC and RCI were contemplating and negotiating arrangements for the *Brilliance of the Seas* to offer cruises to the Middle East, there was great concern among many businesses and cargo carriers

11. *Worldwide hijackings rise as pirates expand area of operation*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERVS. (Apr. 21, 2010), http://www.icc-ccs.org/index.php?option=com_content&view=article&id=406:worldwide-hijackings-rise-as-pirates-expand-area-of-operation&catid=60:news&Itemid=51 (discussing how Somali pirates were responsible for the majority of worldwide pirate attacks in the first quarter of 2010); *see also 2009 Worldwide piracy figures surpass 400*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERVS. (Jan. 14, 2010), http://www.icc-ccs.org/index.php?option=com_content&view=article&id=385:2009-worldwide-piracy-figures-surpass-400&catid=60:news&Itemid=51 (discussing how Somali pirate attacks accounted for more than half of the worldwide pirate attacks in 2009).

12. *Combined Task Force 150 Thwarts Criminal Activities*, U.S. AFRICA COMMAND (Sep. 29, 2008), <http://www.africom.mil/getArticle.asp?art=2137> (explaining that Combined Task Force 150 (CTF 15) “is a multinational task force” conducting security operations in the Gulf of Aden to discourage pirate attacks on commercial vessels, successfully deterring more than “a dozen attacks in the Gulf of Aden,” but criminals are still targeting commercial vessels in the region).

13. *ICC Commercial Crime Services (CCS)*, INT'L CHAMBER OF COMMERCE, http://www.icc-ccs.org/index.php?option=com_content&view=article&id=38&Itemid=15 (last visited Jul. 10, 2010).

14. *Int'l Maritime Bureau*, INT'L CHAMBER OF COMMERCE, http://www.icc-ccs.org/index.php?option=com_content&view=article&id=27:welcome-to-the-international-maritime-bureau&catid=25:home&Itemid=16 (last visited Oct. 3, 2010) (stating that the International Maritime Bureau (IMB), a division of the International Chamber of Commerce specializing in “the suppression of piracy,” “maintains a round-the-clock watch on the world’s shipping lanes, reporting pirate attacks to local law enforcement and issuing warnings about piracy hotspots to shipping”).

15. *IMB Live Piracy Map 2010*, INT'L MAR. BUREAU, http://www.icc-ccs.org/index.php?option=com_fabrik&view=visualization&controller=visualization.googlemap&Itemid=219 (last visited Jun. 28, 2010).

16. *Id.*

about the risk of pirate attacks in that area.¹⁷ It is evident from the ICC Commercial Crime Services 2008 live piracy map¹⁸ that their apprehension of voyaging through the Gulf of Aden was well-founded. Publicized statistics also revealed that “111 ships were attacked by pirates in the Gulf of Aden in 2008, a 200 percent increase over 2007.”¹⁹ Out of the 111 ships, “forty-two of those ships were held for ransom, and 889 crew members were taken hostage.”²⁰ “Most ransom demands were between \$1 million and \$4 million per ship.”²¹

For economic reasons, many businesses and carriers have accepted the risk of a pirate attack and continue to ship goods through this dangerous zone.²² From a logistic standpoint, the Gulf of Aden remains “one of the world’s busiest shipping lanes”²³ because it is a substantial advantage for vessels to travel through the Suez Canal instead of around Africa.²⁴ The continued escalation of pirate attacks, however, has had a real impact on the transportation industry.²⁵

“After a rash of pirate attacks in 2008, the international community rushed a flotilla of naval ships into the waters off the Horn of Africa in an effort to protect international shipping passing through the Gulf of

17. Gitanjali Bakshi, *Blue Gold: Somali Pirates in the Gulf of Aden*, STRATEGIC FORESIGHT GRP. (Oct. 2008), http://www.strategicforesight.com/blue_gold.htm (discussing the drastic increase in pirate activity off the coasts of Somalia, with a reported 76 pirate attacks in 2008, causing many shipping companies to use different shipping routes, such as sailing around the Cape of Good Hope).

18. *IMB Piracy Map 2008*, INT’L MAR. BUREAU, http://www.icc-ccs.org/index.php?option=com_fabrik&view=visualization&controller=visualization.googlemap&Itemid=89 (last visited Jul. 10, 2010).

19. Eric V. Gilkey, *When Pirates Attack*, CLAIMS MAGAZINE (May 5, 2009), available at <http://www.claimsmag.com/Issues/2009/May-2009/pages/When-Pirates-Attack.aspx>.

20. *Id.*

21. *Id.*

22. Maritime Admin., United States Dep’t of Transp., *Economic Impact of Piracy in the Gulf of Aden on Global Trade*, MAR. ADMIN., http://www.marad.dot.gov/documents/HOA_Economic%20Impact%20of%20Piracy.pdf (last visited Oct. 10, 2010) (discussing the economic impact on shipping companies due to pirate attacks in the Gulf of Aden; for “high value consumer goods or items needed for just-in-time manufacturing, the added delay [of sailing around the Cape of Good Hope] is unacceptable to the shipper . . . ,” despite increases in costs such as security, insurance premiums and fuel).

23. WORLDATLAS.COM, *supra* note 11.

24. Peter Sands, *Need for Rethinking about When to Sail around the Cape of Good Hope*, BIMCO (Apr. 23, 2010), https://www.bimco.org/Members/Reports/Shipping_Market_Analysis/2010/04/23_Need_for_rethinking.aspx (discussing the drastic increase in costs from increased fuel consumption, extra capacity requirements and increased insurance premiums resulting from sailing around the Cape of Good Hope as opposed to traveling through the Suez Canal).

25. Press Release, *World vote to end piracy will be presented tomorrow*, INT’L TRANSP. WORKERS’ FED’N, (Sep. 22, 2010), available at <http://www.itfglobal.org/press-area/index.cfm/presdetail/5128> (discussing petition and proposed vote to end Somalia-based piracy by members of the International Transport Workers’ Federation before the International Maritime Organization).

Aden.”²⁶ Lt. Cmdr. Corey Baker, a spokesman for the U.S. 5th Fleet, headquartered in Bahrain, told USA TODAY in an interview in May of 2010 that “[t]he pirates are becoming more brazen.”²⁷ Somalia “remains chaotic and even a large naval flotilla has struggled to provide security over the 1.1 million square miles of ocean they patrol.”²⁸

Many carriers find that traveling through the Gulf of Aden is becoming cost prohibitive despite the savings in overall voyage distance.²⁹ “Shipping insurance rate increases – with premiums rising by at least ten-fold, by some accounts – are primarily due to the increase in risk as the number of piracy incidents has spiked considerably since 2008.”³⁰ In 2010, concerns over increased insurance expenses, ransom payments, risk to the lives of crew, and destruction of cargo continue to have a substantial impact on the transportation industry.³¹

The ICC Commercial Crime 2010 live piracy map illustrates that piracy remains rampant in and near the Gulf of Aden.³² Red and yellow markers on the 2010 live piracy map indicate that in each of the first six months of 2010 there have been actual³³ and attempted³⁴ attacks on ves-

26. Jim Michaels, *Despite Int'l Efforts, Somalia Pirate Attacks Grow*, USA TODAY (May 26, 2010), available at http://www.usatoday.com/news/world/2010-05-25-pirates_N.htm.

27. *Id.*

28. *Id.*

29. Jack Bunker, *Piracy and Disclosures: The Dangers and Costs of Globalization*, Westlaw-Reuters, (Jul. 22, 2010), available at <http://currents.westlawbusiness.com/Article.aspx?id=69bd5020-6649-4031-9b0e-6ccd495ae82a&cid=&=src=WBSignon&sp=>.

30. Eric V. Gilkey, *When Pirates Attack*, Claims Magazine, (May 5, 2009), <http://www.claimsmag.com/Issues/2009/May-2009/pages/When-Pirates-Attack.aspx>.

31. See Gitanjali Bakshi, *Blue Gold: Somalian Pirates in the Gulf of Aden*, Strategic Foresight Group (Oct. 2008), http://www.strategicforesight.com/blue_gold.htm (discussing potential costs associated with lost cargo, ransom payment, and refusal of firms to ship through the Gulf of Aden); See also, Stephanie Nall, *The Costs of Piracy Are Passed Along*, America.gov, (Jun. 1, 2009), <http://www.america.gov/st/peacesec-english/2009/May/20090529160944berehel-lek0.8213159.html> (explaining that shipping carrier Maersk has added surcharges for voyages through the Gulf of Aden); See also Peter Sand, *Need for Rethinking about When to Sail around the Cape of Good Hope*, BIMCO, (Apr. 23, 2010), https://www.bimco.org/Members/Reports/Shipping_Market_Analysis/2010/04/23_Need_for_rethinking.aspx (reasserting that travel through the Gulf of Aden is cost effective; acknowledges ransom payments contribute to increased travel expenses; discussing dangers to crew safety).

32. *IMB Live Piracy Map 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&view=visualization&controller=visualization.googlemap&Itemid=219 (last visited Oct. 11, 2010).

33. *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.micc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=194&tableid=530&fabrik_cursor=192&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a Chemical Tanker was hijacked in the Gulf of Aden on Jun. 28, 2010); *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=139&tableid=530&fabrik_cursor=137&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a Chemical Tanker was hijacked in the Gulf of Aden on Oct. 11, 2010);

sels traveling through this waterway. For many carriers, these risks and rising costs have become too great and they are opting to sail around Africa instead of through the Suez Canal and the Gulf of Aden.³⁵ Depending on the success of the *Xuelong*, in the near future, carriers may even have the option to consider transporting goods through the Arctic.³⁶

IMB Piracy Incident Report 2010, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=105&tableid=530&fabrik_cursor=104&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a Bulk Carrier was hijacked 170 nm SE of Khuriya Muriya Islands, Oman, off Somalia, on Apr. 21, 2010); *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=74&tableid=530&fabrik_cursor=73&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a Reefer was hijacked 20nm East of Khuriya Muriya Islands, Oman on Mar. 23, 2010); *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=18&tableid=530&fabrik_cursor=17&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a General Cargo vessel was hijacked in the Gulf of Aden on Feb. 3, 2010); *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=1&tableid=530&fabrik_cursor=0&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a Crude Tanker was hijacked in the Gulf of Aden on Jan. 1, 2010).

34. *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=184&tableid=530&fabrik_cursor=182&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a Bulk Carrier was fired upon on Jun. 21, 2010); *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=138&tableid=530&fabrik_cursor=136&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a NULL was fired upon in the Gulf of Aden on May 1, 2010); *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=68&tableid=530&fabrik_cursor=67&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a Chemical Tanker was fired upon in the Gulf of Aden on Apr. 3, 2010); *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=44&tableid=530&fabrik_cursor=43&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a Crude Tanker was fired upon in the Gulf of Aden on Mar. 22, 2010); *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=27&tableid=530&fabrik_cursor=26&fabrik_total=0 (last visited Oct. 11, 2010) (reporting an attempted attack on a Product Tanker on Feb. 28, 2010); *IMB Piracy Incident Report 2010*, INT'L CHAMBER OF COMMERCE COMMERCIAL CRIME SERV., http://www.icc-ccs.org/index.php?option=com_fabrik&c=form&view=details&Itemid=219&fabrik=50&rowid=10&tableid=530&fabrik_cursor=9&fabrik_total=0 (last visited Oct. 11, 2010) (reporting that a Bulk Carrier was fired upon in the Gulf of Aden on Jan. 17, 2010).

35. Richard Lough, *Somali Pirates Hijack China-Bound Oil Tanker*, REUTERS, May 5, 2010, available at <http://www.reuters.com/article/idUSTRE6441NF20100505>.

36. Joelle Garrus, *China Sets Sail for the Arctic*, PHYSORG.COM, Jun. 30, 2010, available at <http://www.physorg.com/news197093970.html>.

II. THE BUREAU OF CONSULAR AFFAIRS WARNS U.S. TRAVELERS
ABOUT THE RISKS OF TRAVELING THROUGH THE GULF OF
ADEN AND TO MIDDLE EAST COUNTRIES

Savvy travelers, and those interested in booking RCI's 14-night Middle East cruise, can access the Travel.State.Gov website to obtain relevant information. The website is a service of The Bureau of Consular Affairs.³⁷ The mission of this Bureau "is to protect the lives and interests of American citizens abroad."³⁸ This service provides essential information for any American citizen considering domestic or international travel. There are links to Country Specific Information, Travel Alerts, and Travel Warnings³⁹ as well as a link to a page dedicated to International Maritime Piracy.⁴⁰

The Bureau of Consular Affairs recommends starting with the Country Specific Information as "[t]his is a good place to start learning about where you are going."⁴¹ Noteworthy information such as "the location of the U.S. embassy and any consular offices; whether you need a visa; crime and security information; health and medical conditions; drug penalties; and localized hotspots" are available for every country of the world.⁴² The Country Specific Information for the United Arab Emirates, which is the destination point for the *Brilliance of the Seas* 14-night Middle East cruise, for example, was last updated on December 17, 2009.⁴³ At the present time, it is communicated under the Safety and Security heading that "U.S. citizens in the United Arab Emirates should exercise a high level of security awareness."⁴⁴ This warning was made because the "Department of State remains concerned about the global threat of terrorism, including the possibility of terrorist attacks against U.S. citizens and interests in the Persian Gulf and Arabian Peninsula."⁴⁵

As of July 2010, the Bureau of Consular Affairs has neither issued an

37. U.S. DEP'T. OF STATE, BUREAU OF CONSULAR AFFAIRS, INT'L TRAVEL INFO., http://travel.state.gov/travel/cis_pa_tw/cis_pa_tw_1168.html (last visited Jul. 10, 2010).

38. U.S. DEP'T. OF STATE, BUREAU OF CONSULAR AFFAIRS, ABOUT US, http://travel.state.gov/about/about_304.html (last visited Jul. 22, 2010).

39. U.S. DEP'T. OF STATE, BUREAU OF CONSULAR AFFAIRS, INT'L TRAVEL INFO., *supra* note 38.

40. U.S. DEP'T. OF STATE, BUREAU OF CONSULAR AFFAIRS, FACT SHEET: INT'L MARITIME PIRACY, http://travel.state.gov/travel/cis_pa_tw/piracy/piracy_4420.html (last visited Jun. 28, 2010).

41. U.S. DEP'T. OF STATE, BUREAU OF CONSULAR AFFAIRS, INT'L TRAVEL INFO., *supra* note 38.

42. *Id.*

43. U.S. DEP'T. OF STATE, BUREAU OF CONSULAR AFFAIRS, UNITED ARAB EMIRATES COUNTRY SPECIFIC INFO., (Sept. 15, 2010), http://travel.state.gov/travel/cis_pa_tw/cis/cis_1050.html.

44. *Id.*

45. *Id.*

official Travel Alert⁴⁶ nor an official Travel Warning⁴⁷ specifically for the United Arab Emirates or for any of the other countries where the *Brilliance of the Seas* is scheduled to stop during the 14-night cruise.⁴⁸ However, the Bureau of Consular Affairs has issued Travel Warnings for countries that the *Brilliance of the Seas* would be traveling near.⁴⁹ These travel warnings and the date they were initially posted includes: Eritrea (9/24/2010), Iran (3/23/2010), Saudi Arabia (2/18/2010), Somalia (12/31/2009), Sudan (10/1/2010), and Yemen (2/25/2010).⁵⁰ World events, economic times, and religious and political unrest are only a sampling of the unstable and changing world that drives the formal travel alerts and warnings officially issued.

According to the International Maritime Piracy website, the “number of pirate attacks in the Gulf of Aden has risen significantly” and “[i]n some instances attacks have occurred as far as 300 nautical miles out in international waters.”⁵¹ This website also reports “[m]ost of the attacks in the Gulf of Aden have been directed against cargo vessels” and “[a]ttacks on cruise ships are rare but do occur.”⁵² The Department of State acknowledged knowing of two actual and one attempted attack made on cruise ships during 2008, but was “unaware of any injuries or fatalities involving American citizens resulting from these attacks.”⁵³ De-

46. U.S. DEP’T. OF STATE, BUREAU OF CONSULAR AFFAIRS, CURRENT TRAVEL ALERTS, http://travel.state.gov/travel/cis_pa_tw/pa/pa_1766.html (last visited Oct. 11, 2010) (“Travel Alerts describe short term conditions affecting a country or region that pose imminent risks to the security of U.S. citizens. Natural disasters, terrorist attacks, coups, election related violence, and major international conferences and sporting events are examples of situations that might generate a Travel Alert.”).

47. U.S. DEP’T. OF STATE, BUREAU OF CONSULAR AFFAIRS, CURRENT TRAVEL WARNINGS, http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html (last visited Oct. 11, 2010) (“Travel Warnings are issued when long-term, protracted conditions that make a country dangerous or unstable lead the State Department to recommend that Americans avoid or consider the risk of travel to that country. A Travel Warning is also issued when the U.S. Government’s ability to assist American citizens is constrained due to the closure of an embassy or consulate or because of a drawdown of its staff.”).

48. U.S. DEP’T. OF STATE, BUREAU OF CONSULAR AFFAIRS, CURRENT TRAVEL ALERTS, *supra* note 47; U.S. DEP’T. OF STATE, BUREAU OF CONSULAR AFFAIRS, CURRENT TRAVEL WARNINGS, *supra* note 48.

49. U.S. DEP’T. OF STATE, BUREAU OF CONSULAR AFFAIRS, CURRENT TRAVEL ALERTS, *supra* note 47; U.S. DEP’T. OF STATE, BUREAU OF CONSULAR AFFAIRS, CURRENT TRAVEL WARNINGS, *supra* note 48.

50. DEP’T. OF STATE, BUREAU OF CONSULAR AFFAIRS, CURRENT TRAVEL WARNINGS, *supra* note 48.

51. U.S. DEP’T. OF STATE, BUREAU OF CONSULAR AFFAIRS, FACT SHEET: INT’L MARITIME PIRACY, *supra* note 41.

52. *Id.*

53. *Id.* (“Recent incidents in the region include an attack on Oceania Cruise’s premium cruise ship, the Nautica, in the Maritime Safety Protection Area in the Gulf of Aden; an attempted attack on Transocean Tour’s cruise ship MS Astor in the Gulf of Oman; the hijacking of

spite this fact, since December 31, 2009, the Bureau of Consular Affairs has urged U.S. citizens in its Somalia Travel Warning “to use extreme caution when sailing near the coast of Somalia.”⁵⁴ The webpage further indicates that “[i]f transit around the Horn of Africa is necessary, it is strongly recommended that vessels travel in convoys, and maintain good communications contact at all times.”⁵⁵

III. THE *BRILLIANCE OF THE SEAS* PASSENGER TICKET DEFINES THE RELATIONSHIP AMONG RCC, RCI, AND PASSENGERS OF THE *BRILLIANCE OF THE SEAS*

The Passenger Ticket is a key document. It is mostly acquainted with the rite of voyage as it enables an individual to embark and disembark a cruise ship. Its purpose, however, extends past this fundamental entitlement. This document also delineates the terms and conditions of a contract made between the passenger⁵⁶ and the carrier.⁵⁷ Courts strictly enforce Passenger Ticket provisions including those that set forth within what time frame a cause of action must be brought against the carrier,⁵⁸

a 50-foot yacht resulting in the kidnapping of the two French citizens aboard; and the seizure of a French luxury yacht and its 30 crew members.”)

54. U.S. DEP'T. OF STATE, BUREAU OF CONSULAR AFFAIRS, TRAVEL WARNING- SOMALIA, DEC. 31, 2009, http://travel.state.gov/travel/cis_pa_tw/tw/tw_933.html (last visited Oct. 11, 2010).

55. *Id.*

56. ROYAL CARIBBEAN INT'L, *Cruise/CruiseTour Ticket Contract – Royal Brilliance of the Seas CTC Effective To Those Who Booked On Or After 4/20/08*, http://www.royalcaribbean.com/content/en_US/pdf/CTC_BR_Only.pdf (last visited Oct. 11, 2010) (Section 2(f) of both contracts states: “‘Passenger’ or ‘Guest’ or ‘Your’ means all persons traveling under this Ticket Contract and persons in their care, together with their respective heirs and representatives. ‘Passenger’ shall include the plural and the use of the masculine shall include the feminine.”).

57. *Id.* (Section 2(b) stating that “‘Carrier’ shall include: (i) Vessel, or any substituted ship; (ii) the Vessel’s Operator; and (iii) with respect to the RCT Land Tour Portion of any CruiseTour, Royal Celebrity Tours Inc. (‘RTC’) together with the owners, managers, characters, affiliates, successors and assigns of the entities identified in subsections (i), (ii), and (iii) of this sentence. Carrier also shall include the officers, directors, employees, agents, crew or pilots of the entities identified in the preceding sentence. The exclusions or limitations of liability of Carrier set forth in provisions of this Ticket Contract, as well as all rights, defenses or immunities set forth herein, shall also apply to and be for the benefit of agents, independent contractors, concessionaries and suppliers of Carrier, as well as owners and operators of all shoreside properties at which the Vessel of the Transport may call, as well as owners, designers, installers, suppliers and manufacturers of the Vessel or Transport, or any component parts of either, together with the employees and servants of each of the foregoing, and/or any launches, craft or facilities of any kind belonging to or provided by any of the parties identified in this paragraph.”).

58. *Hughes v. Carnival Cruise Lines, Inc.*, No. 01 Civ. 9681(TPG), 2003 WL 1740460, at * 1 (S.D.N.Y. Mar. 31, 2003) (dismissing a lawsuit brought by passengers to recover for an injury “because it was not commenced within one year after the accident and has not been brought in the jurisdiction required under the forum selection clause”); *Stone v. Norwegian Cruise Line*, No. CIV. A. 01-1343, 2001 WL 877580 (E.D. Pa. May 15, 2001) (enforcing the time limitation to commence a lawsuit); *Angel v. Royal Caribbean Cruises, Ltd.*, No. 02-2049 CV, 2002 WL 31553524, at * 3 (S.D. Fla. Oct. 22, 2002) (enforcing the one year time limitation).

where litigation must be commenced,⁵⁹ and under what conditions the carrier might be held liable for passenger injuries. Courts are not persuaded by claims that the terms are in a language not understood by a passenger⁶⁰ or are too microscopic to be read.⁶¹

From RCC and RCI's perspective, the Passenger Ticket is an essential document. A constant and common travel problem experienced by cruise passengers is having been injured while aboard a cruise ship. Physical injuries often occur when passengers slip, trip, and fall⁶² as a result of unsure footing due to the movement of the ship or because of slippery surfaces.⁶³ Other events that have lead to litigation include injuries sustained from flying coconuts,⁶⁴ stray golf balls,⁶⁵ and discharging shotgun shells.⁶⁶ Pirates have fired upon cruise ships traveling through the Gulf of Aden.⁶⁷ At this time no passengers have been injured, or died, as a result of pirate attacks, so there have been no causes of action for recovery.

59. *Hughes*, 2003 WL 1740460, at * 1; *Chapman v. Norwegian Cruise Line Ltd.*, No. 01 C 50004, 2001 WL 910102 at *2 (N.D.Ill. Jul. 6, 2001) (stating that “[a] forum selection clause is enforceable unless (1) the incorporation of the clause was the result of fraud, undue influence, or overweening bargaining power; (2) the selected forum is so gravely difficult and inconvenient that [the complaining party] will for all practical purposes be deprived of its day in court; or (3) enforcement . . . would contravene a strong public policy of the forum in which the suit is brought, declared by statute or judicial decision.”).

60. *Paredes v. Princess Cruises, Inc.*, 1 F. Supp. 2d 87, 90 (D. Mass. 1998) (enforcing the time limitations written in the English language in a cruise passenger ticket despite the fact the passenger was unable to read English).

61. *Lerner v. Karageorgis Lines, Inc.*, 66 N.Y.2d 479, 485-86, 497 N.Y.S.2d 894, 488 N.E.2d 824 (1985) (enforcing the time limitation in a cruise passenger ticket despite the fact the provision was in four-point type).

62. *Pratt v. Silversae Cruises, Ltd.*, No. C 05-0693, 2005 WL 1656891, at * 1 (N.D.Cal. Mar. 31, 2003) (An 83-year old woman alleged that she “suffered a broken hip, a torn ACL in her right knee, and severe ankle injuries when she fell on a cruise ship enroute from San Diego to San Francisco.”); *Carnival Corp. v. Amato*, 840 So.2d 1088, 1088 (Fla.App. 3 Dist. 2003) (“Injured vacationer brought action against cruise line for injuries sustained when he fell down a flight of stairs on cruise ship.”).

63. *Carnival Corp. v. Stowers*, 834 So.2d 386, 386 (Fla.App. 3 Dist. 2003) (maritime personal injury action following slip and fall on a granite step against cruise line); *Lee v. Regal Cruises*, 116 F.3d 465, 465 (C.A.2 (N.Y.) 1997) (maritime personal injury action resulting from passenger slipping on melting ice cubes and falling on a stairway); *Norwegian Cruise Line, Ltd. v. Clark*, 841 So.2d 547, 548-49 (Fla.App. 2 Dist., 2003) (maritime personal injury action following a passenger fall on a wet deck).

64. *McDonough v. Celebrity Cruises, Inc.*, 64 F.Supp.2d 259, 261 (S.D.N.Y. 1999) (cruise passenger was struck on the head by rum-filled coconut).

65. *Catalan v. Carnival Cruise Lines, Inc.*, 1985 AMC 1941, 1941-42 (D. Md. 2004) (cruise passenger was struck in the head by a golf ball).

66. *Fay v. Oceanic Sun Line*, 1985 AMC 1132, 1132 (N.Y. Sup. Ct. 1984) (cruise passenger discharged a shotgun shell onto another passenger).

67. Carolyn Spencer Brown, *Pirates Attack Cruise Ship Carrying Britons*, TIMES ONLINE, (Dec. 1, 2008), available at <http://www.timesonline.co.uk/tol/travel/news/article5268375.ece> (reporting pirates firing shots at a cruise ship sailing through the Gulf of Aden).

The terms and conditions of the Passenger Ticket governing RCI's 14-night Middle East cruise on the *Brilliance of the Seas* is available on RCI's website.⁶⁸ The currently available PDF includes the Passenger Ticket that is applicable to both those who booked a cruise on the *Brilliance of the Seas* prior to, on, and after April 20, 2008.⁶⁹ For the purposes of this comment it will be assumed that the terms and conditions of the Passenger Ticket for those who booked on or after April 20, 2008 are relevant for determining the responsibilities and liabilities RCC and RCI have to passengers of the *Brilliance of the Seas*.

In the event that the *Brilliance of the Seas* is attacked and passengers are injured or die, passengers seeking recovery must refer to the Passenger Ticket and take note of the sections pertaining to the commencement of claims, forum selection, and limitations of liability. In accordance with Section 10(a), *Notice of Claims and Commencement of Suite or Arbitration; Security*, notice must be given to the carrier and an action for personal injury or death must be commenced within six months of the date of the injury or death.⁷⁰ Irrespective of where the passengers' native state or country might be, passengers are also obligated under Section 9(a), *Forum Selection Clause For All Lawsuits; Class Action Waiver*, to bring a cause of action "before the United States District Court for the Southern District of Florida Located in Miami-Dade County."⁷¹ In order for passengers to proceed and prevail, they must establish that RCC and/or RCI may be held liable for their injury or death.

Section 11(a), *Limitations of Liability*, describes the duties and responsibilities RCC and RCI owe to passengers of the *Brilliance of the Seas*:

"CARRIER SHALL NOT BE LIABLE FOR INJURY, DEATH, ILLNESS, DAMAGE, DELAY OR OTHER LOSS TO PERSON OR PROPERTY, OR ANY OTHER CLAIM BY ANY PASSENGER CAUSED BY ACT OF GOD, WAR, *TERRORISM*, CIVIL COMMOTION, LABOR TROUBLE, GOVERNMENT INTERFERENCE, PERILS OF THE SEA, FIRE, THEFTS OR ANY OTHER CAUSE *BEYOND CARRIER'S REASONABLE CONTROL, OR ANY ACT NOT SHOWN TO BE CAUSED BY CARRIER'S NEGLIGENCE.*"⁷²

The author highlighted and italicized three key portions of this section which will be analyzed in greater detail in the following section.

68. Ticket Contract for Brilliance of the Seas, ROYAL CARIBBEAN INT'L, http://www.royal-caribbean.com/content/en_US/pdf/CTC_BR_Only.pdf (last visited Oct. 1, 2010).

69. *Id.*

70. *Id.* § 10a.

71. *Id.* § 9a.

72. *Id.* § 11a.

ANALYSIS: RCC AND RCI MAY BE HELD LIABLE FOR PASSENGER
INJURIES RESULTING FROM A PIRATE ATTACK ON THE
BRILLIANCE OF THE SEAS WHILE IT TRAVELS
THROUGH PIRATE PRONE AREAS

“This is your Captain speaking. I am instructing all passengers to return to their cabins immediately. This is not a test – the ship is under attack by pirates!”

This is one announcement that cruise passengers do not normally expect to hear over their ship’s intercom system. Passengers on a *Brilliance of the Seas* cruise, however, may hear such an announcement. Pirates have become more aggressive in their attempts to seize vessels and passengers for the hefty ransoms they are paid. Despite the danger to the *Brilliance of the Seas*, its crew, and its passengers, RCC and RCI have persisted in their endeavors to expand international operations and offer cruises to the Middle East.

RCC and RCI may be held liable for passenger injuries or death in the event that the *Brilliance of the Seas* is attacked by pirates during the 14-night Middle East cruise. RCC and RCI do not include the necessary wording in the *Brilliance of the Seas*’ Passenger Ticket to limit their liability for such an incident. RCC and RCI, whom have control over the *Brilliance of the Seas*, have also disregarded travel warnings and alerts concerning voyaging through the Gulf of Aden and continue to offer cruises through these waters. RCC and RCI should consider whether it is prudent to continue to offer cruises through pirate prone areas. If RCC and RCI remain unpersuaded to alter the schedule of the *Brilliance of the Seas*, they should at least consider safety measures that can be utilized to safeguard the *Brilliance of the Seas* and its passengers from harm.

I. UNDER THE TERMS OF SECTION 11(A) RCC AND RCI MAY BE
HELD LIABLE FOR PASSENGER INJURIES OR DEATH
SUSTAINED DURING A PIRATE ATTACK UPON THE
BRILLIANCE OF THE SEAS

RCC and its RCI brand are not confined to only offering cruises in the Middle East. These cruise lines function at a global level and are well positioned to provide cruises to exotic destinations around the world, which are much less risky than the Middle East. RCC and RCI chose to expand and to continue to offer cruises to the Middle East despite numerous warnings and alerts against such action. In the event that those risks materialize and a passenger is injured or killed in a pirate attack on the *Brilliance of the Seas*, it is likely that RCC and RCI will be held accountable.

A. THE BRILLIANCE OF THE SEAS PASSENGER TICKET DOES NOT
LIMIT RCC AND RCI'S LIABILITY DUE TO A PIRATE ATTACK

In order for RCC and RCI to limit their liability for passenger injuries or death during an actual, or attempted, pirate attack upon the *Brilliance of the Seas*, the term "pirate attack" or "piracy" has to be included within the text of the Passenger Ticket. It would be appropriate to include one or both of these terms within Section 11(a), *Limitations of Liability*. However, RCC and RCI have failed to include either term anywhere within the text of the Passenger Ticket.⁷³

The only term that has any real potential of being confused with and perhaps argued by RCC and RCI as encompassing piracy is the term "terrorism."⁷⁴ While the term "terrorism" is included in Section 11(a), its inclusion should still be insufficient and ineffective in protecting RCC and RCI from liability. Piracy and terrorism have material characteristic differences as well as separate legal definitions and punishments.

1. *An Attack Upon the Brilliance of the Seas by Somalian Pirates in the Gulf of Aden Should Not Be Classified as an Act of Terrorism*

Terrorism is a separate and distinct concept from piracy. The United States Congress has promulgated laws regarding Terrorism under Title 18, *Crimes and Criminal Procedure*, of the United States Code and more specifically within Chapter 113B, *Terrorism*.⁷⁵ Congress has distinguished international terrorism from domestic terrorism as well. According to 18 U.S.C. §2331, these terms are defined as follows:

- (1) the term "international terrorism" means activities that—
 - (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
 - (B) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and . . .
- (5) the term "domestic terrorism" means activities that—
 - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

73. See Ticket Contract for Brilliance of the Seas, *supra* note 69, § 11a.

74. Douglas R. Burgess, Jr., *Hostis Humani Generi: Piracy, Terrorism and a New Int'l Law*, 13 U. MIAMI INT'L & COMP. L. REV. 293 (2006) (arguing a nexus between piracy and terrorism, and that new terrorism laws should be derived from piracy laws).

75. 18 U.S.C. § 2332b (2008) (describing terrorism "transcending national boundaries").

- (B) appear to be intended—
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (C) occur primarily within the territorial jurisdiction of the United States.⁷⁶

Sections within this Chapter further specify punishments for specific acts of terrorism such as the use of weapons of mass destruction,⁷⁷ bombing places of public use (including government facilities, public transportation systems, and infrastructure facilities),⁷⁸ using missile systems to destroy aircraft,⁷⁹ and using/dispersing radiological devices.⁸⁰

It is important to note that nowhere within the definition of either international or domestic terrorism is it mentioned that terrorist acts tend to occur on the high seas. In fact, none of the other sections pertaining to terrorism specify the high seas as a location where specific types of terrorist acts tend to occur either. While the high seas have not been made a part of this criminal section, it is a distinguishing and critical component of the United States Code sections pertaining to piracy.

The United Nations Ad Hoc Committee is currently drafting the United Nation's Comprehensive Convention on International Terrorism.⁸¹ The final definition of what constitutes an act of terrorism has not yet been finalized. At present, the working definition of an act of terrorism is:

[A] person's unlawfully and intentionally causing or threatening to cause violence by means of firearms, weapons, explosives, [or] any lethal devices or

76. 18 U.S.C. § 2331 (2001) (“[I]nternational terrorism’ means activities that . . . involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State . . . [that] . . . appear to be intended . . . to intimidate or coerce a civilian population; . . . influence the policy of a government by intimidation or coercion . . . or . . . affect the conduct of a government by mass destruction, assassination, or kidnapping; and . . . occur primarily outside the territorial jurisdiction of the United States.” *Id.* § 1. “[D]omestic terrorism’ means activities . . . [equal to that of “international terrorism,” but] . . . occur primarily within the territorial jurisdiction of the United States.” *Id.* § 5.).

77. 18 U.S.C. § 2332a (2004) (“[Violators] shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.”).

78. *Id.* § 2332f (2002) (referring to 18 U.S.C. § 2332a for penalties).

79. *Id.* § 2332g (2004) (stating violators of this section subject to a maximum \$2,000,000 fine and minimum prison sentence of 25 years, or \$2,000,000 fine and life imprisonment if death results from a violation of this statute).

80. *Id.* § 2332h (stating violators of this section to a maximum \$2,000,000 fine and minimum prison sentence of 25 years; life imprisonment if death results from a violation of this statute).

81. *Comprehensive Convention on Int'l Terrorism*, CTR. FOR NONPROLIFERATION STUDIES (forthcoming), available at <http://cns.miis.edu/inventory/pdfs/intltterr.pdf>.

dangerous substances, which results, or is likely to result, in death or serious bodily injury to a person, a group of persons or serious damage to property – whether for public use, a State or Government facility, a public transportation system or an infrastructure facility.⁸²

Under the current working definition, “[a]cts of terrorism also include such person’s attempt to commit such an offense, participate as an accomplice in the commission of such an offense, or in organizing or directing others to commit such an offense, or in contributing to the commission of such an offense.”⁸³

It should be similarly noted that the United Nation’s current working definition of acts of terrorism does not include the term high seas. While this definition is subject to change, there is no indication in its current state that the performance of this crime on any type of body of water is essential to the definition of what constitutes terrorism. While the term “high seas” has not been included in the current definition of terrorism, it is a central component of the United Nation’s definition of piracy.

Overall, the actions of Somalian pirates do not conform to the definition of terrorism as it is understood in the United States or as currently defined by the United Nations. Despite the real threat of being attacked by pirates, many cargo and passenger vessels remain committed to their plans to continue to sail through the Gulf of Aden. In addition, Somalian pirates’ actions have had little to no political intimidation value on the United States or other nations. To the contrary, the international community has joined in cooperation to eliminate piracy in this area and prevent commercial disruption.⁸⁴ An attack upon a vessel for the purpose of plundering it and/or holding the vessel and its passengers hostage does not constitute as an act of terrorism. Therefore, an attack by Somalian pirates upon the *Brilliance of the Sea* should not be deemed as an act of terrorism.

2. *An Attack By Somalian Pirates Upon the Brilliance of the Seas in the Gulf of Aden Should Be Classified as a Pirate Attack*

Article 1 of the United States Constitution grants Congress the authority “to define and punish piracies and felonies committed on the high seas, and offences against the law of nations.”⁸⁵ Congress has elected to utilize this power and has promulgated laws regarding piracy under Title

82. *Id.*

83. *Id.*

84. J. Ashley Roach, *Countering Piracy off Somalia: Int’l Law and Int’l Inst.*, 104 Am. J. Int’l L. 397, 411-13 (2010) (outlining efforts by the International Maritime Organization, U.N. Office on Drugs and Crime, European Union, and the U.N. Security Council to stop piracy).

85. *In re Charge to Grand Jury-Treason & Piracy*, 30 F. Cas. 1049, 1049 (C.C.D. Mass. 1861) (No. 18.277).

18, *Crimes and Criminal Procedure*, of the United States Code, and more specifically within Chapter 81, *Piracy and Privaterring*. According to 18 U.S.C. §1651, “[w]hoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.”⁸⁶ Sections within this chapter further specify punishments for specific piracy acts such as conversion of a vessel,⁸⁷ plundering a vessel,⁸⁸ acts of alien pirates,⁸⁹ and robbery by pirates on shore.⁹⁰

Courts within the United States understand piracy as “a forcible depredation upon property on the high seas without lawful authority, done *animo furandi*; that is, as defined in this connection, in a spirit and intention of universal hostility.”⁹¹ Consequently, “[p]irates are generally described as sea-robbers”⁹² and “are deemed ‘*hostes humani generis*,’ enemies of mankind, warring against the human race.”⁹³ “A pirate is said to be one who roves the sea in an armed vessel, without any commission from any sovereign state, on his own authority, and for the purpose of seizing by force and appropriating to himself, without discrimination, every vessel he may meet.”⁹⁴ Judge Sprague eloquently wrote how “[t]he ocean is the common highway of nations, over which every government has criminal jurisdiction.”⁹⁵ He further stated that “pirates are highway-men of the sea, and all civilized [sic] nations have a common interest, and are under a moral obligation, to arrest and suppress them; and the constitution . . . enables the United States to perform this duty, as one of the family of nations.”⁹⁶

The international community has come to a similar agreement as to what constitutes piracy and the actions that all nations should take to suppress such crime. The 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention of the Law of the Seas defined piracy as consisting of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

86. 18 U.S.C. § 1651 (West 1948).

87. 18 U.S.C. § 1656 (West 1994).

88. 18 U.S.C. § 1659 (West 1994).

89. 18 U.S.C. § 1653 (West 1948).

90. 18 U.S.C. § 1661 (West 1948).

91. *United States v. Baker*, 24 F. Cas. 962, 965 (C.C.S.D.N.Y. 1861) (No. 14,501).

92. *In re Charge to Grand Jury-Treason*, 30 F. Cas. at 1049.

93. *Id.*

94. *Baker*, 24 F. Cas. at 965.

95. *In re Charge to Grand Jury-Treason & Piracy*, 30 F. Cas. at 1049.

96. *Id.* at 1049.

- (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).⁹⁷

This definition is broad enough to cover both actual and attempted pirate attacks. It was also the consensus of both of these Conventions that all nations should “cooperate to the fullest possible extent in the repression of piracy on the high seas.”⁹⁸ Consequently, both Conventions included Articles that addressed repossession of seized property, apprehension of pirates, and the adjudication of piracy.⁹⁹

The actions of Somalian pirates constitute acts of piracy within the understanding of the laws of the United States and the international community. Somalian pirates are private non-state actors that utilize their own private boats to commit illegal acts on the high seas. They have become known for their aggressive tactics to seize vessels, its passengers, and its cargo in order to hold them hostage for large ransoms. Even though the international community has worked, and continues to work, jointly to detect and prevent pirate attacks, such criminal activity has not been eradicated. Vessels that voyage through the Gulf of Aden and the surrounding waters must remain vigilant and take precautions to protect themselves against being attacked and taken hostage by pirates. Should Somalian pirates seize, or attempt to attack the *Brilliance of the Seas* during its voyage through the Gulf of Aden, their actions should be held as acts of piracy. As piracy is separate and distinct from “terrorism,” RCC and RCI may be held liable for all passenger injuries or deaths occurring as a result of such an incident.

B. RCC AND RCI HAVE REASONABLE CONTROL OVER THE BRILLIANCE OF THE SEA AND ITS DESTINATIONS

In accordance with the *Brilliance of the Seas*’ Passenger Ticket, RCC and RCI may be “liable for injury, death, illness, damage, delay or other loss to person or property” for causes that are within the carriers reasona-

97. Convention on the High Seas Done at Geneva art. 15, Apr. 29, 1958, 450 U.N.T.S. 82 [hereinafter *High Seas Convention*], available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_high_seas.pdf; United Nations Convention on the Law of the Sea art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter *LOS Convention*], available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

98. *LOS Convention*, supra note 98, art. 101; *High Seas Convention*, supra note 98, art. 14.

99. See *LOS Convention*, supra note 98, art. 105; See also *High Seas Convention*, supra note 98, art. 19.

ble control.¹⁰⁰ While neither RCC nor RCI own the *Brilliance of the Seas*, they do have the authority over this vessel.¹⁰¹ Additionally, both RCC and RCI have the power to control where this ship sails and makes port.¹⁰²

In 2002, RCC entered into a 25 year operating lease for the *Brilliance of the Seas*.¹⁰³ RCC wanted to add this ship to its RCI fleet as it is “considered one of the most elegant cruise ships in the world.”¹⁰⁴ The ship’s most stunning features include “an open Centrum with 10-deck high windows and ocean-facing glass elevators.”¹⁰⁵ The adult passengers onboard can enjoy “multiple restaurants, lounges and discos throughout the ship, and world-class gaming in the Casino Royale.”¹⁰⁶ This ship was also designed to be family friendly as it includes a nine-hole mini-golf course, the iconic rock wall, a sports court, the Adventure Beach water-slide, and self-leveling pool tables.¹⁰⁷

Under the terms of the lease agreement, the lessor may “cancel the lease at years 10 and 18.”¹⁰⁸ Based on current circumstances, RCC fully expects that this lease will reach maturity.¹⁰⁹ Therefore, as of December 31, 2009, RCC reported that it planned to continue to operate this vessel along with 21 other ships under the RCI brand name.¹¹⁰

RCI offers cruise packages on the *Brilliance of the Seas* that complement its overall business strategy. RCI has strategically positioned itself to serve both the upper end of the contemporary and premium segments of the cruise vacation industry.¹¹¹ To meet the interests of the premium segment, which tends to be comprised of guests who enjoy traveling and are more affluent, RCI offers cruises that extend from 7 to 14 nights.¹¹² RCI also “offers a variety of itineraries to destinations worldwide, including Alaska, Asia, Australia, Bermuda, Canada, the Caribbean, Europe, Hawaii, Latin America, the Middle East, the Panama Canal, and New

100. Ticket Contract for Brilliance of the Seas, *supra* note 69, § 11a.

101. ROYAL CARIBBEAN INT’L, Annual (Form 10-K), at pages 19, 48 (Feb. 23, 2010).

102. ROYAL CARIBBEAN INT’L, Annual (Form 10-K), at page 12 (Feb. 23, 2010).

103. ROYAL CARIBBEAN INT’L, Annual (Form 10-K), at page F-30 (Dec. 31, 2009).

104. Press Release, ROYAL CARIBBEAN INT’L, DUBAILAND and Royal Caribbean Int’l Sign Strategic Joint Mktg P’ ship, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=103045&p=irol-newsArticle&ID=1283486&highlight=Brilliance%20of%20the%20Seas> (May 4, 2009).

105. *Id.*

106. *Id.*

107. *Id.*

108. ROYAL CARIBBEAN INT’L, Annual (Form 10-K), at page F-30 (Dec. 31, 2009).

109. *Id.*

110. ROYAL CARIBBEAN INT’L, Annual (Form 10-K), at page 12 (Dec. 31, 2009).

111. ROYAL CARIBBEAN INT’L, Annual (Form 10-K), at page 1 (Dec. 31, 2009).

112. *Id.*

Zealand.”¹¹³

In January 2010, as a part of their international expansion efforts, RCI added sailings from Dubai.¹¹⁴ Currently, while the *Brilliance of the Seas* and several other RCI ships operate in Europe, the *Brilliance of the Seas* is the only RCI vessel that operates in the Middle East.¹¹⁵ Due to this unique placement, RCI scheduled the *Brilliance of the Seas* to make several voyages between Barcelona, Spain and Dubai, United Arab Emirates in the future.¹¹⁶ This enables passengers the opportunity to book a 14-night,¹¹⁷ 16-night,¹¹⁸ or 18-night¹¹⁹ cruise that offers a blend of exotic ports of call and restful days of at sea travel.

C. RCC AND RCI NEGLIGENTLY MADE ARRANGEMENTS FOR THE BRILLIANCE OF THE SEAS TO PROVIDE CRUISES THROUGH PIRATE PRONE AREAS

Under the *Brilliance of the Seas*' Passenger Ticket, RCC and RCI may be “liable for injury, death, illness, damage, delay or other loss to person or property” for any act shown to be caused by the carrier’s negligence.¹²⁰ During 2008, 2009, and 2010 both RCC and RCI knew, or should have known, they were placing many passengers in harms way by offering cruises to the Middle East. There were numerous indications that Somali pirates were becoming more brazen in their attacks and that cruise ships, similar to cargo vessels, would be at risk if they sailed through the Gulf of Aden.¹²¹ . RCC and RCI did not waver from their efforts over these three years because of motivation to continuously increase profit and expand operations.¹²² Today, they continue to disregard sailing warnings and travel advisories against traversing on the very course scheduled as part of the 14-night Middle East cruise and several future cruises offered to/from the Middle East.

113. ROYAL CARIBBEAN INT’L, *supra* note 111.

114. ROYAL CARIBBEAN INT’L , Annual (Form 10-K), at page 8 (Dec. 31, 2009).

115. ROYAL CARIBBEAN INT’L, Ltd., Annual (Form 10-K), at page 12 (Dec. 31, 2009).

116. See EXPEDIA, <http://cruise.expedia.com/Search.aspx?cl=Royal+Caribbean+International&ds=Middle+East&eapid=13172-1> (last visited Oct. 6, 2010).

117. *Id.*

118. *Id.*

119. *Id.*

120. *Cruise/CruiseTour Ticket Contract – Royal Brilliance of the Seas CTC Effective To Those Who Booked On Or After 4/20/08*, ROYAL CARIBBEAN INT’L, available at http://www.royalcaribbean.com/content/en_US/pdf/CTC_BR_Only.pdf (last visited Jun. 27, 2010).

121. See *infra* Part I(C)(1)-(3).

122. See *infra* Part I(C)(1).

1. *RCC and RCI Created a Presence in the Middle East During 2008 Despite the Risk of Pirate Attacks*

On October 13, 2008, RCC announced in a press release that RCI was expanding its presence in the Middle East.¹²³ Michael Bayley, Senior Vice President, International, RCC, remarked on how “Dubai is a dynamic and thriving city that shows great growth potential.”¹²⁴ He also explained how deploying the *Brilliance of the Seas* to this region the company would be building on its brand “reputation for introducing revolutionary cruise experiences.”¹²⁵ Rama Rebbapragada, Regional Vice President, International Sales and Marketing, RCC, also commented on how pleased RCC was by this new arrangement and how their 2008 sales exceeded their target for the Middle East region.¹²⁶

On December 1, 2008, there was a flurry of reports by major news agencies around the world that pirates attacked the Oceania Cruises’ *Nautica* when it sailed through the Gulf of Aden.¹²⁷ Tim Rubacky, a spokesman for Oceania, said that at the time of the incident the “*Nautica* was in an area patrolled by international anti-piracy task forces when two small skiffs appeared to try to intercept it.”¹²⁸ “One of the smaller craft[s],” explained Mr. Rubacky, “closed to within 300 yards and fired eight rifle shots at the cruise ship.”¹²⁹ This prompted the *Nautica* to take “evasive measures” and to accelerate “to its full speed of 23 knots or 27 mph.”¹³⁰ Mr. Rubacky further reported that the “*Nautica* escaped without damage or injury to its 684 passengers and 400 crew.”¹³¹

123. Press, Release, Royal Caribbean Cruises, Ltd., Royal Caribbean Int’l Expands Presence in the Middle East with 2010 Deployment in Dubai, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=103045&p=irol-newsArticle&ID=1208746&highlight=Brilliance%20of%20the%20Seas> (Oct. 13, 2008).

124. *Id.*

125. *Id.*

126. *Id.*

127. See Carolyn Spencer Brown, *Pirates Attack Cruise Ship Carrying Britons*, THE TIMES, Dec. 1, 2008, available at <http://www.timesonline.co.uk/tol/travel/news/article5268375.ece>; *Luxury Cruise Ship Outruns Pirates*, CNN.COM/WORLD, Dec. 1, 2008, <http://www.cnn.com/2008/WORLD/africa/12/01/pirates.cruise.ship/index.html>; Oliver Smith, *Pirates Attack Cruise Ship Off Somali Coast*, TELEGRAPH.CO.UK, Dec. 1, 2008, <http://www.telegraph.co.uk/travel/cruises/3538744/Pirates-attack-cruise-ship-off-Somali-coast.html>; *US Cruise Line Confirms Pirate Attack Off Somalia*, ASSOCIATED FOREIGN PRESS, Dec. 1, 2008, http://www.google.com/hostednews/afp/article/ALeqM5h2dBkd4Ztr_fdanxbeNarOpnwYAA; *Cruise Ship Evades Pirate Attack*, BBC NEWS, Dec. 2, 2008, <http://news.bbc.co.uk/2/hi/7760216.stm>; Anya Strzemien, *Cruise Ship Passengers Surprised By Pirate Attack*, THE HUFFINGTON POST, Dec. 2, 2008, available at http://www.huffingtonpost.com/2008/12/02/luxury-cruise-ship-outrun_n_147642.html.

128. *Luxury Cruise Ship Outruns Pirates*, CNN.COM/WORLD, Dec. 1, 2008, <http://www.cnn.com/2008/WORLD/africa/12/01/pirates.cruise.ship/index.html>.

129. *Id.*

130. *Id.*

131. *Id.*

Despite the attack on the *Nautica*, RCC continued to support and endorse RCI's efforts to boost its commercial growth by expanding its array of destinations.¹³² RCC announced in its Form 10-K, for the fiscal year ended December 31, 2008, that the *Brilliance of the Seas* would "remain in Europe year round throughout 2009," and then would "begin offering sailings from Dubai starting in January 2010."¹³³ This Form 10-K also included an acknowledgment by RCC that "[e]vents such as terrorist and pirate attacks, war, and other hostilities and the resulting political instability, [and] travel restrictions" posed a risk to profitability and to its ability to retain qualified crew.¹³⁴ While RCC understood the business risks of pirate attacks, it appears to have misunderstood or have disregarded the risk of passenger injury or death.

2. *RCC and RCI Made Strategic Alliances and Promoted Its Middle East Cruises During 2009 Despite the Continued Threat of Pirate Attacks*

On April 26, 2009, news that pirates attacked an Italian cruise ship was reported around the world.¹³⁵ The *MSC Melody* "came under attack when it was 200 miles north of the Seychelles and 600 miles off the Somali coast."¹³⁶ Cmdr. Ciro Pinto explained how "six men in a small white speed boat approached the *MSC Melody* and opened fire Saturday night, but retreated after the Israeli security officers aboard the cruise ship returned fire."¹³⁷ In order to stop the pirates from climbing up over the sides of the vessel, Cmdr. Pinto said, "pistols were handed out to security staff and they opened fire on the pirates . . . we even sprayed them with water with the firehose [sic]."¹³⁸ During the ordeal, passengers stayed inside their cabins.¹³⁹ MSC Cruises, owner of the *MSC Melody*, an-

132. Press Release, ROYAL CARIBBEAN INT'L, Royal Caribbean Cruises Ltd. Celebrates Growing European Deployments as Brands Gear up for Ongoing Int'l Growth, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=103045&p=irol-newsArticle&ID=1234188&highlight=Brilliance%20of%20the%20Seas> (Dec. 9, 2008).

133. ROYAL CARIBBEAN INT'L, Annual (Form 10-K), at page 9 (Dec. 31, 2008).

134. ROYAL CARIBBEAN INT'L, Annual (Form 10-K), at page 22 (Dec. 31, 2008).

135. *Italian Cruise Ship Thwarts Pirate Attack*, CNN.COM/WORLD, Apr. 26, 2009, <http://www.cnn.com/2009/WORLD/africa/04/26/somalia.pirates/>; Helen Nyambura-Mwaura, *Italian Cruise Ship Beats Off Pirate Attack*, REUTERS, Apr. 26, 2010, available at <http://www.reuters.com/article/idUSTRE53O1BV20090426>; *Italian Cruise Ship Fires on Somali Pirates*, ASSOCIATED PRESS, Apr. 26, 2009, <http://www.foxnews.com/story/0,2933,517955,00.html>; *Somalia: Cruise Ship Repels Pirate Attack*, ALLAFRICA.COM, Apr. 26, 2009, <http://allafrica.com/stories/200904260020.html>; *Italian Cruise Ship Foils Pirates*, BBC NEWS, Apr. 26, 2009, <http://news.bbc.co.uk/2/hi/africa/8019084.stm>; *Cruise Ship Fires on Pirates to Fend Off Attack*, THE ASSOCIATED PRESS, Apr. 26, 2009, <http://wbztv.com/national/Msc.Melody.pirate.2.994779.html>.

136. Nyambura-Mwaura, *supra* note 136.

137. *Italian Cruise Ship Fires on Somali Pirates*, *supra* note 136.

138. Nyambura-Mwaura, *supra* note 136.

139. *Id.*

nounced after the attack that “[n]one of the roughly 1,000 passengers and 500 crew members were hurt.”¹⁴⁰ The *MSC Melody*, however, “was slightly damaged by firing from the pirates.”¹⁴¹

Despite this attack and growing fears over piracy in the Gulf of Aden, RCC continued to promote and support RCI’s international expansion and development of its Middle East cruise offerings. On May 4, 2009, RCC made a press release announcing the formation of an agreement between RCI and DUBAILAND, which is a member of Tatweer.¹⁴² This press release described how RCI “will feature DUBAILAND’s key live attractions in their shore excursion programs, while DUBAILAND will actively promote Royal Caribbean’s Dubai cruises through their global agency network.”¹⁴³

RCC reiterated in its December 31, 2009, Form 10-K, that “[e]vents such as terrorist attacks, war, and other hostilities and the resulting political instability, [and] travel restrictions” pose a risk to profitability and to its ability to retain qualified crew.¹⁴⁴ RCC did not justify or elaborate in their Form 10-K why it or RCI would, despite these risks, proceed with offering cruises that included passage through the Suez Canal and Gulf of Aden. RCC also failed to disclose the danger attributable to the *Brilliance of the Seas*, its crew, and its passengers embarking on a cruise scheduled to sail to/from the United Arab Emirates.

3. *RCC and RCI Continue to Offer Cruises to the Middle East During 2010 and Beyond Despite the Risk of Pirate Attacks*

“Helen Beck, Regional Director, International Representative, Europe, Middle East, Africa, commented, ‘The Gulf region is a very popular destination with visitors from all over the world, and as cruises consistently offer significant value for money, we have seen considerable interest in this exciting way of visiting the Middle East.’”¹⁴⁵ RCI discovered that its Middle East cruises “were particularly popular with British and

140. ASSOCIATED PRESS, *Italian Cruise Ship Fires on Somali Pirates*, FOXNEWS.COM (Apr. 26, 2009), <http://www.foxnews.com/story/0,2933,517955,00.html>.

141. *Id.*

142. Press Release, *DUBAILAND and Royal CaribbeanInt’l Sign Strategic Joint Marketing Partnership*, ROYAL CARIBBEAN CRUISES, LTD. (May 4, 2009), <http://phx.corporate-ir.net/phoenix.zhtml?c=103045&p=irolnewsArticle&ID=1283486&highlight=Brilliance%20of%20the%20Seas>.

143. *Id.*

144. *Form 10-K for the fiscal year ended December 31, 2009*, ROYAL CARIBBEAN INT’L, at 22, available at search engine “Form 10-K for the fiscal year ended December 31, 2009.”

145. Siba Sami Ammari, *Popularity of Royal CaribbeanInt’l Cruises from Dubai Drives Increased Sailings In Region*, AMEINFO.COM (Jun. 30, 2010, 11:54), <http://www.ameinfo.com/236691.html>.

Irish passengers.”¹⁴⁶ It also found that “about 10 percent of the passengers on the sailings are American.”¹⁴⁷

Due to the popularity of the Dubai-based cruises, RCI announced in June 2010, that it planned to expand its presence in the Middle East.¹⁴⁸ RCI “will offer a longer season of cruises and new itineraries in the region out of Dubai on the 2,501-passenger *Brilliance of the Seas* for the winter season of 2011-2012.¹⁴⁹ When the *Brilliance of the Seas* returns to Dubai in November 2011, RCI is planning to offer “an increased range of itineraries including longer cruises up to 12- and even 18-nights.”¹⁵⁰

RCI wants those who have not been to the Middle East, but are interested in booking a cruise to an exotic place like the United Arab Emirates, to know they are sure to be “dazzled” when they arrive.¹⁵¹ RCI created a webpage that presents highlights of the area, describes places that might be of interest, and explains what to pack.¹⁵² RCI anticipated that after reading through this webpage some viewers may be interested in finding out when sailings will be offered. Thus, RCI has placed a button on this webpage that viewers can click to have a quick search run on future RCI sailings to this area.¹⁵³ It should be noted that RCI’s Dubai/Emirate webpage does not provide any travel warnings or discuss the risk that pirates while voyaging in the Middle East could attack the *Brilliance of the Seas*.

II. RCC AND RCI SHOULD TAKE MEASURES TO MITIGATE THE RISK OF HARM TO PASSENGERS

RCC and its RCI brand have attained the status of being reputable global leaders in the cruise industry. These firms have a proven track record of generating profits and expanding operations. In order to retain that position, RCC and RCI should include passenger security among its core business vision objectives.¹⁵⁴ Pirate attacks can pose significant risks

146. Fran Golden, *Royal Caribbean Expands Cruises in Middle East*, AOL TRAVEL (Jun. 29, 2010, 12:11PM), <http://news.travel.aol.com/2010/06/29/royal-caribbean-expands-cruises-in-middle-east/>.

147. *Id.*

148. *Id.*

149. Gene Sloan, *Royal Caribbean Plans to Expand Sailings in the Middle East*, USA TODAY TRAVEL (Jun. 28, 2010), <http://travel.usatoday.com/cruises/post/2010/06/royal-caribbean-plans-to-expand-sailings-in-the-middle-east/98155/1>.

150. Ammari, *supra* note 146.

151. *Dubai/Emirates Prepare to be Dazzled by this Jewel*, ROYAL CARIBBEAN INT’L, <http://www.royalcaribbean.com/findacruise/destinations/home.do?dest=DUBAI> (last visited Oct. 9, 2010).

152. *Id.*

153. *Id.*

154. *Vision and Values*, ROYAL CARIBBEAN INT’L, <http://www.rclinvestor.com/phoenix.zhtml?c=103045&p=irol-missionstatement> (last visited Oct. 9, 2010) (stating the companies mis-

to the integrity of the *Brilliance of the Seas* and the health and safety of its crew and passengers. Costly litigation and claims arising out of pirate attacks can also affect RCC and RCI's bottom line and its investors. Thus, RCC and RCI should strive to strategically limit its exposure to litigation and to not jeopardize the safety of its passengers.

A. RCC AND RCI MAY NOT BE ABLE TO CONTRACT OUT OF LIABILITY FOR HARM ARISING OUT OF A PIRATE ATTACK

On its face it would seem that RCC and RCI could avoid having to compensate passengers for injuries sustained during a pirate attack while aboard the *Brilliance of the Seas* by simply revising the language within the Passenger Ticket. Currently, Passenger Ticket provisions include mitigation of liability for injuries arising out of particular events such as acts of God,¹⁵⁵ perils of the sea,¹⁵⁶ labor trouble, and fire.¹⁵⁷ These events all share a common characteristic: RCC and RCI have absolute no control over their occurrence. As a result, RCC and RCI can prepare for, but are not going to be fully able to predict when they might occur.

It could be argued that even though RCC and RCI do not have direct control over Somalian pirates, RCC and RCI have reasonable control over the likelihood that the *Brilliance of the Seas* is attacked. The *Brilliance of the Seas* is an attractive floating target ripe for attack as soon as it crosses through the Suez Canal. First, RCC and RCI have not contracted for a security escort to travel with the *Brilliance of the Seas* or for security personnel to be aboard the *Brilliance of the Seas*.¹⁵⁸ As such, there is a greater possibility that a pirate attack would be successful. Second, as the *Brilliance of the Seas* is a luxurious vessel, it could surely be held for a hefty ransom. Further, the cruise ship's passengers are probably affluent and thus could also be held until significant payments were made for their release. Consequently, there is great motivation for pirates to attack the *Brilliance of the Seas*.

RCC and RCI's legal team more than likely have not overlooked the possibility of including the term "pirate attack" into Section 11(a) of the *Brilliance of the Seas*' Passenger Ticket. At present, inserting this term in and among the other situations in which RCC and RCI disclaim liability

sion statement and vision, to empower and enable employees to deliver the best vacation experience for guests, thereby generating superior returns for our Shareholders and enhancing the well-being of our communities).

155. USLEGAL.COM, <http://definitions.uslegal.com/a/act-of-god/> (last visited Jul. 15, 2010).

156. USLEGAL.COM, <http://definitions.uslegal.com/p/perils-of-the-sea/> (last visited Oct. 9, 2010).

157. *Cruise/Cruisetour Ticket Contract*, ROYAL CARIBBEAN INT'L, http://www.royalcaribbean.com/content/en_US/pdf/CTC_BR_Only.pdf (last visited Oct. 9, 2010).

158. Ali M.Koknar, *Terror on the High Seas*, 48 SECURITY MANAGEMENT 75, (2004), available at <http://www.southchinesea.org/docs/Terror%20on%20the%20High%20Seas.doc>.

is likely to be ineffective. RCC and RCI would probably have to reposition the *Brilliance of the Seas* so that it would no longer voyage through the Gulf of Aden or heed pirate advisories before they could mitigate their liability.

B. RCC AND RCI CAN CANCEL, DEVIATE, OR SUBSTITUTE THE
BRILLIANCE OF THE SEAS' ITINERARY

The courts have acknowledged that the primary reason travelers select certain cruises is because of their scheduled ports of call.¹⁵⁹ Indeed, RCI's 14-night Middle East cruise offers an exceptional itinerary.¹⁶⁰ There is a perfect blend of opportunity to disembark the cruise ship to explore exotic cities in foreign countries and to relax on board while the ship sails to its next destination.¹⁶¹ Even though RCC and RCI would not want to disappoint travelers who have or are considering booking one of the available Middle East cruises, it would be prudent of RCC and RCI to consider canceling, deviating, or substituting the *Brilliance of the Seas*' itinerary because of the threat of a pirate attack.

RCC and RCI have reserved the right to take this course of action. Section 6 of the *Brilliance of the Seas*' Passenger Ticket describes the circumstances and conditions upon which RCC and RCI may utilize one or more of these options.¹⁶² Occasions have arisen where RCI and Celeb-

159. Doe v. Celebrity Cruises, Inc. 394 F.3d 891, 900-01 (11th Cir. 2004).

160. ROYAL CARIBBEAN INT'L, <http://www.royalcaribbean.com/findacruise/cruiseDetails/itinerary.do?sessionId=0000P2XDduQ6RUyVfPHWsTk0tV5N:12hdhua36?packageCode=BR14U048&date=ANY&selectedCurrencyCode=USD&year=2011> (last visited Oct. 9, 2010).

161. ROYAL CARIBBEAN INT'L, <http://www.royalcaribbean.com/findacruise/cruiseDetails/shoreExcursions.do?sessionId=0000P2XDduQ6RUyVfPHWsTk0tV5N:12hdhua36?packageCode=BR14U048&shipCode=&Day=&Month=&Year=&sailDate=&ActivityTypeId=LocationCode=&Submit222.x=16&Submit222.y=9&Submit222=Submit=&SortBy=Price> (last visited Oct. 9, 2010).

162. ROYAL CARIBBEAN INT'L, *Cruise/CruiseTour Ticket Contract – Royal Brilliance of the Seas CTC Effective To Those Who Booked On Or After 4/20/08*, http://www.royalcaribbean.com/content/en_US/pdf/CTC_BR_Only.pdf (last visited Jun. 27, 2010) (“Carrier may for any reason at any time and without prior notice, cancel, advance, postpone or deviate from any scheduled sailing, port of call, destination, lodging or any activity on or off the Vessel, or substitute another vessel or port of call, destination, lodging or activity. Carrier shall not be liable for any claim whatsoever by Passenger, including but not limited to loss, compensation or refund, by reason of such cancellation, advancement, postponement, substitution or deviation. By way of example, and not limitation, Carrier may, without liability, deviate from any scheduled sailing and may otherwise land Passenger and her property at any port if Carrier believes that the voyage or any Passenger or property may be hindered or adversely affected as a result of hostilities, blockages, prevailing weather conditions, labor conflicts, strikes onboard or ashore, breakdown of Vessel, congestion, docking difficulties, medical or life saving emergencies or any other cause whatsoever. Carrier shall have the right to comply with any orders, recommendations, or directions whatsoever given by any governmental entity or by persons purporting to act with such authority and such compliance shall not be deemed a breach of this Agreement entitling the Passenger to assert any claim for liability, compensation or refund.”).

rity Cruises, which is another brand of RCC, have opted to cancel or adjust the itinerary of certain cruises. For example, in September of 2004, RCI announced that it would modify the itineraries of its ships destined for the Caribbean first due to the threat of, and then due to the destruction caused by Hurricane Frances.¹⁶³ Celebrity Cruises has also canceled cruises because of urgently needed vessel repair and maintenance.¹⁶⁴

Certainly the most effective way to prevent the *Brilliance of the Seas*, its crew, and its passengers from harm due to pirate attacks would be to cancel all cruises scheduled to voyage through the Gulf of Aden. At the very least RCC and RCI should assess current risks and determine the level of risk of passenger injury or death they are willing to accept. When the conditions in the Gulf of Aden exceed that acceptable threshold, RCC and RCI should modify their cruise itineraries. Likewise, the Captain of the *Brilliance of the Seas* should be granted the freedom to exercise such authority if the need should arise.

C. RCC AND RCI CAN CONTRACT FOR SECURITY ESCORT AND/OR SECURITY PRESENCE ON THE BRILLIANCE OF THE SEAS

It would be sensible for RCC and RCI to consider implementing counter-pirate measures in the event they decided to continue to offer cruises that include sailings through the Gulf of Aden. RCC and RCI may, for instance, hire security personnel to ride aboard the *Brilliance of the Seas* from the point the cruise ship passes through the Suez Canal until it reaches its destination point at the United Arab Emirates. Onboard security personnel proved to be invaluable to the *MSC Melody* when it was attacked by Somalian pirates.¹⁶⁵ When pirates opened fire and tried to board the Italian cruise ship, its on-board security forces re-

163. *Royal Caribbean Int'l and Celebrity Cruises Announce Modifications to Friday and Saturday Sailings*, ROYAL CARIBBEAN INT'L INV. REL. (Sept. 2, 2004), <http://www.rclinvestor.com/phoenix.zhtml?c=103045&p=irol-newsArticle&ID=609555&highlight=hurricane>; *Royal Caribbean Int'l Modifies Mariner of the Seas Sailing*, ROYAL CARIBBEAN INT'L INV. RELATIONS (Sept. 6, 2004), <http://www.rclinvestor.com/phoenix.zhtml?c=103045&p=irol-newsArticle&ID=610388&highlight=hurricane>.

164. *Celebrity Cruises Cancels Sailings Due to Propeller Damage*, ROYAL CARIBBEAN INT'L INV. REL., (Jul. 8, 2007), <http://www.rclinvestor.com/phoenix.zhtml?c=103045&p=irol-newsArticle&ID=1023355&highlight=cancel>; *Celebrity Cruises Cancels One Caribbean Sailing*, ROYAL CARIBBEAN INT'L INV. REL. (Nov. 17, 2006), <http://www.rclinvestor.com/phoenix.zhtml?c=103045&p=irol-newsArticle&ID=932589&highlight=cancel>; *Celebrity Cruises Cancels One Alaska Sailing to Replace Propulsion Pod*, ROYAL CARIBBEAN INT'L INV. REL. (Aug. 10, 2006), <http://www.rclinvestor.com/phoenix.zhtml?c=103045&p=irol-newsArticle&ID=894951&highlight=cancel>; *Celebrity Cruises Cancels One Alaska Sailing*, ROYAL CARIBBEAN INT'L INV. REL. (May 5, 2006), <http://www.rclinvestor.com/phoenix.zhtml?c=103045&p=irol-newsArticle&ID=855039&highlight=cancel>.

165. *Italian Cruise Ship Fires on Somali Pirates*, *supra* note 136.

taliated.¹⁶⁶ The head of MSC Cruises stated, after an attack was made on the *MSC Melody*, that “MSC Cruises hired the Israelis because they were the best trained security agents.”¹⁶⁷

Additionally, RCC and RCI may consider contracting with a security escort provider to accompany the *Brilliance of the Seas* when it sails from the Suez Canal to the United Arab Emirates. “Ordinarily, cruise ships travel at the speed of 21 to 24 knots per hour, but a high-speed cruise ship can go as fast as 30 knots or more.”¹⁶⁸ There was an instance where “pirates opened fire on a U.S.-operated ship carrying hundreds of tourists on a month long [sic] cruise from Rome to Singapore, but the cruise liner was able to outrun the pirates.”¹⁶⁹ Cruise ships that are not able to maneuver as easily or reach a high rate of speed could greatly benefit from traveling in a convoy or being escorted by a vessel capable of fending off pirates. There are a number of reputable security firms offering such services.¹⁷⁰

RCC and RCI should not rely solely on the presence of navy flotillas presently patrolling the Gulf of Aden and surrounding waters.¹⁷¹ Piracy remains a significant problem even with the international effort to combat it because it is nearly impossible to provide complete protection “over the 1.1 million square miles of ocean.”¹⁷² As such, RCC and RCI should be proactive in their efforts to manage the threat of a pirate attack against the *Brilliance of the Seas*.

CONCLUSION: RCC AND RCI SHOULD REASSESS THEIR CURRENT CRUISE OFFERINGS

A cruise is an attractive, and often affordable, option for those looking for a hassle-free escape. A cruise ship is literally a floating resort that can offer a variety of services while sailing to various ports of call. Along with the overall experience, cruise lines tailor their vacations to be fam-

166. *Id.*

167. *Id.*

168. Damian, *How Fast Does A Cruise Ship Travel?*, Cruise Travel Insurance, Feb. 3, 2010, <http://www.travelinsurancereview.net/2010/02/03/how-fast-does-a-cruise-ship-travel/>.

169. *Italian Cruise Ship Fires on Somali Pirates*, *supra* note 136.

170. Espada, *Maritime Security*, <http://www.espadaservices.com/maritime.html> (last visited Jul. 15, 2010); Int'l Ships Support Group, *Services: Complete Organized Defense with Well Define Objective*, <http://www.issg-seamarshals.com/Services.html> (last visited Jul. 15, 2010); Simba Kwa Bahari, *Ships Security - Indian Ocean and Gulf of Aden*, http://www.skbmaritimsecurity.com/SKB_Maritime_Security/Maritime_Security.html (last visited Jul. 15, 2010).

171. Camille Hall and Hamsa Omar, *U.S. Navy Plans Patrols in the Gulf of Aden as Somali Piracy Grows*, Bloomberg, Aug. 22, 2010 available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=am0ZHvB_Fz3Q&refer=Africa.

172. Jim Michaels, *Despite Int'l Efforts, Somalia Pirate Attacks Grow*, USA TODAY, May 26, 2010, http://www.usatoday.com/news/world/2010-05-25-pirates_N.htm.

ily-friendly as well as capable of meeting the demands of the most discriminate traveler.

While aboard, passengers place their trust in the cruise line and their staff. It is unlikely that passengers question the safety of their itinerary or suspect the threat of a pirate attack because it is expected that they will be protected from such foreseen dangers. Given the recent events in the Middle East waterways, passengers need to take some responsibility to research the areas they desire to visit and to gain an understanding of the risks they may face.

RCC and RCI are taking a huge gamble by continuing to offer cruises that sail through the Gulf of Aden. As they should be aware of the dangers vessels face when voyaging in the Middle East, RCC and RCI would likely be held accountable and required to compensate passengers for injuries, or death, that occur due to a pirate attack. RCC and RCI should be promoted by the statistics on pirate attacks and the current state of affairs to reassess the *Brilliance of the Seas* itinerary. They, however, have declined to cancel or modify the *Brilliance of the Seas*' current schedule. So perhaps the next time the *Brilliance of the Seas* embarks on a Middle East cruise, instead of shouting "Bon Voyage," there should be shouts of "Bonne Chance!"

