

Testimony of Philip M. Gerson to United States Senate Commerce Committee July 23, 2014.

I am a board certified civil trial lawyer. I have practiced in Miami Florida since 1970. I represent individuals and families harmed by the fault of others in state and federal courts in Florida and occasionally other states. My work is focused on civil remedies for victims of crime. Along with other honorary and voluntary service organization memberships I now sit as current board chair of the National Center for Victims of Crime which is America's best known training, education and advocacy non-profit devoted solely to serve the needs of all crime victims. In addition, I am a member of the board of the International Crime Victims Association a non-profit world wide organization made up of victims harmed on cruise ships. It is this work which brings me to your committee to testify.

The Cruise Passenger Protection Act should be passed to take an important step forward for progress to enhanced safety and security for cruise passengers. These benefits will enable the public to self-protect by providing accurate factual data for travel decisions in the free speech enabled advertising marketplace. In short, does a Disney cruise have more dangers than a Disneyworld visit? Don't passengers have a right to know? If so, shouldn't the data be readily available and understandable?

For many of my clients cruising has hidden dangers only congress can expose. One client gave permission to talk about her experience. It wasn't Disney but her experience was part of the cruise industry vacation fantasy claim that people are safer at sea than on land.

My client wanted a long white dress and a formal ceremony on board a Christmas – New Year's Caribbean cruise. She researched the cruise line web site and spoke in detail with sales representatives to make the plans. It was not her first cruise on this line. But it was the first time she brought her Asperger's syndrome, autistic spectrum teenage daughter along. Of course, they were the most conspicuous passengers onboard when the ceremony was performed on the first night at sea. Dressed in her gown she went to the teen nightclub where "mocktails" are served to underage youths in a disco environment. She explained her daughter's poor social skills and immature judgment but boasted about the fifteen year old's superior intellectual functioning. Re-assured all activities would be supervised just as the web site advertised for an "award winning" youth program my client let her daughter return nightly from the teen club after closing to meet family members never suspecting sexual crimes on cruises were a risk. Just under 9,000 people including crew were onboard. The population in numbers mirrored a typical American small town with no law enforcement personnel and poorly trained security officers whose jobs depend on pleasing their employer not upon an oath to uphold laws, rules, or even good moral judgment. The routine of meeting her mother, aunt or older sister after nightclub closing fit the behavior model which helped the teen achieve integrated social participation in school in her midwestern home state. Following the rules was the structure she needed to minimize risk of judgmental errors. On the last night of the cruise the family followed the routine. But unlike the other nights the teen nightclub closed early and the gullible young girl was enticed to willingly

go to a stateroom for a continuation of the “party”. The other teens would be going too or so she thought. And other youngsters did just after 2 a.m. but when they arrived and knocked it was too late. My client had already been attacked and raped by two foreign national passengers—one a juvenile and the other a young adult. After multiple oral and vaginal rapes she fought her attackers when she heard the other teens at the stateroom door. After a struggle the door handle unlocked allowing a group of others to push their way in. Rescued by her peers they found their way to cruise line security officers who brought her to the ship's medical center. With mother present a rape kit was used. The security officers claimed they securely locked the crime scene stateroom door but could not explain why housekeepers were able to override the security lockout and the next morning routinely clean the room destroying all physical evidence of the crimes. My client was shocked when I showed her evidence of prior sexual crimes on board cruise ships. She was angry when I showed her the crime scene preservation statute passed on 2010 but not followed on January 3, 2012. Her research before planning the cruise did not reveal any criminal history at sea. Like others, she believed when she crossed the gangway and surrendered her legal rights to the will of the master of the ship her family would be safe. Unlike the land based environment the cruise line is in complete control of all persons and property on board. No one has the right or power to do any more to protect or defend themselves than my innocent client did by trying to fight off her attackers. Every other potential measure for safety and security from crime is exclusively possessed and can only be exercised by the cruise line. She wasn't safe. There was danger. She could not let her child out of sight without risk. Nobody told her that. She did not know that until she was educated by the brutality of the attackers. Fortunately, Florida lawmakers have exercised jurisdiction to criminalize sexual assault and other offenses on board vessels stopping at Florida ports. But passengers on tax haven and regulatory vacuum foreign flagged vessels are victimized with no deterrent threat for criminal actors if Florida is not part of the cruise. Florida police were at the pier to take the offenders into custody and punish them under state law. But almost every offender escapes with impunity in the jurisdictional abyss which exists on the high seas. Flag states care not about the security of cruise ship passengers. International maritime organizations are guided by nautical and commercial considerations not security from criminal victimization. This recurring problem calls out the need for the United States to take action. The Cruise Passenger Protection Act is a first step. After these preliminary measures to understand the scope of the problem preventative undertakings can be adopted.

It is not in the economic interest of cruise lines to disclose much less publicize crime at sea. CPPA improves the crime reporting usefulness of the CVSSA. A consumer protection website and consumer protection advisory committee are low burdens with substantial benefits for the cruising public. The informed judgment of consumers has long been a hallmark of American government. It is the role of government to enable a neutral forum for public disclosure. Business and industry have proved inadequate as both reporters of and advertising risks inherent in their operations. Virtually every three letter agency of the administrative branch fulfills a public need to funnel information to consumers which they would not otherwise find

readily available. The American public is highly educated, smart, and intuitive. Given the tools administrative agencies provide public understanding leads to improved decision making and gives the public the voice in the marketplace it deserves. Congress should not let us down so more suffer like my clients described above.

Cruise line passenger tickets typify the proverbial “fine print” colloquialism. The type is too small for many people to read. The ticket language is available on line which can overcome this problem for computer literate readers but few people even try to comprehend the complex legal jargon printed on the ticket. As a lawyer, I can and do understand the terminology and its meanings. In broad context the non-negotiable take it or leave it ticket language empowers cruise lines to do practically anything they want to do or not on the ship. No private hospitality operator in the United States could have such expansive rights. Nor does any vacationer on land expressly surrender the legal rights like the all cruise ticket expansively contractually bind passengers to accept. Buried but repeated in every permutation are disclaimers by cruise lines for any responsibility for any vendor or affiliate whom they alone select for passenger services onboard. These empowerment and waiver provisions have been upheld by courts in a wide range of lawsuit challenges over the last 20 years. Moreover, beyond contractual limitations, international, maritime and foreign laws are recited in the tickets obliging passenger consent to requirements and limitations of remedies which only trained readers can comprehend. The sum of these contract features means passengers have dramatically different rights at sea compared to what most Americans expect as basic on land. There is a compelling fairness rationale for legislative of re-writing these contracts to protect the public and provide reasonable remedies for wrongs at sea. CPPA does not take that step.

The CPPA calls out for far less. Only a minimal plain language disclosure is sought. Congress has mandated truth in lending, truth in product labels, securities instrument risks, and countless other examples of simplified disclosures to enhance consumer understanding. It is not surprising the cruise industry objects to an informed traveler. Not all, but many thoughtful travelers may weigh these risks against alternative travel options and decide they would be safer, healthier and have effective remedies for harm if they stayed on land.

No one wants to curtail or even inhibit the unprecedented growth of the cruise ship industry. Disclosure will merely permit the free market forces to foster change so cruising safety and security through competition become comparable with land based travel.

The CPPA contains another important measure worthy of passage. Not all flag states even require cruise ships to have medical professionals onboard. Nevertheless, most all now do as they say in the Cruise Passenger Bill of Rights. Surely, the voluntary acceptance of the minimum medical standards for cruise ships promulgated by the American College of Emergency Physicians was an important step forward taken to address an alarm of a medical crisis at sea according to a study of the American Bar Association. As the tickets contracts referenced above all state, cruise lines benefit financially from sale of services in on board

medical clinics with no burden of legal responsibility so under current practice medical services are a risk free profit center.

More study is needed. Larger ships come into service each year. Floating resort cities must have adequate medical resources available to meet foreseeable needs of passengers and crew. What they have now varies widely. There is no uniformity for physician staffing or training. Criminal victimization, accidental injury, epidemic outbreaks of disease occur with regularity. Operational and navigational errors compound the challenges for foreseeably needed medical preparedness and response. Remarkably, cruise lines sell medical services to passengers in on board clinics but under archaic maritime law principles still applicable have no legal responsibility to provide a minimum standard of care. The ticket language only firms and strengthens this immunity. So this largely unregulated industry benefits from medical care at sea but has no legal duty for its failure. Many options to be studied can remedy this growing problem. Existing agencies having relevant expertise should study this problem before medical disasters claim the health or lives of innocents. Quality medical care is a cornerstone of American life and the public should not be exposed to harm when United States based corporations take United States citizens outside the territorial jurisdiction.