THE *COSTA CONCORDIA* TRAGEDY: A LEGAL LIFE JACKET TO AVOID DROWNING IN INTERNATIONAL WATER

Alberto Polimeni and Joseph Harbaugh

Introduction

A giant submarine able to turn into a surface ship sounds like something out of a Jules Verne novel. Actually, it is a method that may be employed to tow the sunken cruise ship, *Costa Concordia*. Dockwise's "Vanguard," the world's largest semi-submersible vessel, can be immersed under the partially raised vessel, re-emerging on the surface after securing the ship to its deck. With the capsized vessel in position, the Vanguard can transport the wreck to a port where it will be dismantled. Although Italian officials have secured an expensive option to use the Vanguard to move the *Concordia* from Isola del Giglio,[1] the debate over the how, when and where of the removal continues.[2]

Removing the *Concordia* from its current resting place on the Giglio Island's coast has occupied the attention of Italian authorities for the two and one-half years since the disaster. For the same lengthy period, Italian and US courts have been busy sorting out the legal issues arising from the *Concordia* tragedy. Both of these challenges are expected to continue for quite some time.

The *Costa Concordia* had 3,206 passengers[3] and 1,023 crew members from more than two dozen nationalities. The great majority of the passengers were saved; however, many were injured and, tragically, thirty-two lost their lives[4]. The international diversity of passengers and crew as well as the range of harm they suffered guarantees a long drawn out legal process.

The civil lawsuits[5] spawned in the aftermath of a tragedy like the *Costa Concordia* present a plethora of legal questions. Where should plaintiffs bring suit against the company? What

1. Tom Stieghorst "Semi-submersible vessel to give Concordia a lift" [2014]. http://www.travelweekly.com/Cruise-Travel/Insights/Semi-submersible-vessel-to-give-Concordia-a-lift/?a=cruise&tcid=eltrcruise Dockwise is a Dutch company that specialises in semi-submersible vessels. (Last visited on 21/5/2014).

2. Matthew Guidilli, "Concordia: Stop the work on Giglio," [2014] http://www.ansa.it/mare/notizie/rubriche/crociereetraghetti/2014/05/01/concordia-si-fermano-i-lavori-al-giglio_5c75778e-ddb5-4c5c-95f4-e081739ef863.html (Last visited on 21/5/2014). Italian Minister of the Environment, Gian Luca Galletti, reports the vessel will be moved to either the port of Genoa or one inTurkey. The Vanguard likely will be employed if the choice is Turkey.

3. 989 Italians, 568 Germans, 462 French, 177 Spanish, 129 Americans, 127 Croatians, 108 Russians and 586 of other nationalities. Italian Maritime investigative body on marine accidents. "Marine accident investigation c/s Costa Concordia, 13th January 2012" http://www.ifsma.org/tempannounce/CostaConcordia.pdf p. 37. (Last visited February 25th 2013).

4. Id..

5. This article will focus on the civil lawsuits, leaving aside issues of criminal liability of the Concordia officers and crew.

law will prevail? What principles of liability will apply to the actions of the crew? What damages can be expected by those whose lives were threatened, who were injured, or suffered death? This article will address these questions, taking into consideration US, Italian, and EU law as well as relevant international treaties.

Part I of the article will focus on the forum selection by analysing the validity of forum selection clauses of the contract cruise passengers signed. It also will address the efforts to pursue the litigation in the US.[6] Parts II and III of the article, to be published in a subsequent issue of the *Travel Law Quarterly*, will concentrate on the law that will apply to any lawsuits and the possible damages plaintiffs may recover.

Part I: Forum choice

The Costa forum selection clause of the *Concordia* passenger contract states: "*All claims, controversies, disputes, suits and matters of any kind whatsoever arising out of, concerned with or incident to any voyage that does not depart from, return to, or visit a US port, or to this Contract if issued in connection with such a voyage, shall be instituted only in the courts of Genoa, Italy, to the exclusion of the courts of any other county, state or nation. Italian law shall apply to any such proceedings.*"[7] Moreover, Costa Crociere, SpA, the company that operated the *Concordia*, is an Italian corporation that conducts its business mainly in Italy, the cruise ship was sailing under the Italian flag, and the accident occurred in Italian waters.

All these factors seem to lead to a conclusion the appropriate litigation forum is the tribunal of Genoa, Italy. However, Italian law may support an alternative forum. Article 33 of the Italian Consumer Code identifies and defines "Vexatious Clauses" as "Contract clauses that entail significant unbalance between consumer rights and obligations deriving from any agreement".[8] Once a clause is considered vexatious it is automatically considered void as to effects harmful to consumer interests. Article 33 provides a list of clauses that are presumed vexatious, including any clause "establishing as forum in case of dispute, a jurisdiction other than the place where the consumer is resident or has his domicile of choice". Given this provision, the forum selection clause contained in the Costa contract should be considered vexatious and void if plaintiff consumers are domiciled in a jurisdiction different from Italy. Therefore, for example, it can be argued, forcing US citizens to bring their lawsuits in Italy would constitute a "significant unbalance" between their rights and the "boilerplate" contract of carriage clause. Under this approach, at least non-Italian citizens should be able to sue in the US or other appropriate jurisdictions.

Although the forum selection clause in the Costa contract may be challenged, there are other obstacles standing in the way of plaintiffs who wish to file suit in the United States. As

6. This article will address the legal issues presented in two countries, Italy and US. A discussion of all the possible international lawsuits would be an impossible task. As the US 11th Circuit Court of Appeals noted, "In the wake of the accident, many of the Costa Concordia's passengers sued [Carnival]..., filing dozens of actions in forums both in the United States and around the world." *Giglio Sub S.N.C. v. Carnival Corp*., 523 Fed. Appx. 651 (11th Cir. Fla. 2013). Thus, this article will focus on possible causes of action only in Italy and the US

7. (Emphasis added). http://www.costacruise.com/B2C/USA/Support/contract/contract.htm (Last visited April 16th 2013).

8. http://www.chamberofcommerce.it/inglese/clausole-.asp (Last visited 15/5/2013).

mentioned earlier, the operating company, the ship itself, the cruise itinerary, and the location of the accident are all tied directly to Italy.[9]

On the other hand, plaintiffs seeking to sue in the US will point to other factors that support siting the litigation outside of Italy. Costa Crociere, the Italian corporation, is owned by Costa Cruise Lines, a Florida corporation, with its principal place of business in Miami.[10] Carnival Cruise Lines acquired controlling ownership of Costa Cruise Lines in 1997.[11] Carnival has exercised a high degree of control over the Costa operations and the two entities share a community of interests and commercial practices.[12] The core argument of those who want to join Carnival as the "deep pocket" defendant is its alleged failure to control Costa's activities from its Miami base. More specifically, the claim will be that Carnival failed to implement policies to ensure Costa avoided dangerous maritime activities (such as getting too close to the shore to allow passengers and crew a special view of the Giglio Island coast[13]) or to insist Costa implement common safety procedures, such as "safety drills."[14]

A significant number of potential plaintiffs decided to site their lawsuits in the United States. Indeed, Carnival has reported lawsuits have been filed against Costa Crociere and Carnival in several US jurisdictions.[15] This article, however, will follow the course of litigation initiated by plaintiffs in the federal and state courts of Florida where most of the legal "action" has and continues to take place.

Although jurisdiction over the dispute may be established, under the doctrine of "*forum non conveniens*,"[16] litigation brought in Florida by non-US citizens is likely to be removed to

9. http://www.costacrociere.it (Last visited 5/23/2013).

10. *Abeid-Saba, et al. v. Carnival Corp., et al.*, "Order Granting Defendants' Motion to Dismiss Based on the Doctrine of *Forum non conveniens*," Finding No. 8, Florida Circuit Court, Miami-Dade County (No. 12-26076, July 19, 2013).

11. "1997 Carnival acquires 50 percent of Costa Cruises, Europe's leading cruise company and takes 100 percent ownership of the Italian cruise operator three years later." http://phx.corporate-ir.net/phoenix.zhtml?c=200767&tp=irol-corporatetimeline (Last visited 23/5/14).

12. http://phx.corporate-ir.net/phoenix.zhtml?c=200767&tp=irol-factsheet. (Last visited 23/5/14). As further example of the links between Costa and Carnival, the US Securities and Exchange Commission Form 10-K (1/29/13 at 42) for Carnival Corporation lists the following under the Business Experience of Executive Officers: "Pier Luigi Foschi has been Chairman and Chief Executive Officer of Carnival Asia since September 2012. He has been a director since 2003. He has been Chairman of the Board of Costa Crociere S.p.A since 2000. He was Chief Executive Officer of Costa Crociere, S.p.A from 1997 to July 2012;" and "Michael Thamm has been Chief Executive Officer of Costa Crociere S.p.A. since July 2012."

13. "The ship's captain apparently decided to execute a maneuver known as a "bow" or "sail-by-salute," which would bring the ship close to a nearby island." *Scimone v Carnival Corp.*, 720 F. 3d 876, 879 (11th Cir. 2013). (July 1st, 2013).

14. It is interesting to note the Cruise Lines International Association (CLIA) made safety drill procedures mandatory for its members after the *Costa Concordia* accident occurred. Tanya Mohn "High-seas safety in spotlight a year after deadly *Costa Concordia* crash" [2013] NBC News Travel. http://www.nbcnews.com/travel/high-seas-safety-spotlight-year-after-deadly-costa-concordia-crash-1B7937378 (Last visited March 22nd 2013).

15. Lawsuits have been filed in the following US federal courts: ND IL (1/26/12); CD CA (6/25/12); and ED CA (1/11/13). Canival Corporation, US Securities and Exchange Commission, Form 10-K (1/29/13 at 39-40).

16. "The common law doctrine of *forum non conveniens*, which translates to mean "inconvenient forum," is an equitable, judicially crafted rule designed to allow a court to dismiss, in certain limited circumstances, a lawsuit with little connection to Florida that would be better suited and fairly litigated elsewhere ... This doctrine comes into play only if the plaintiff has first obtained personal jurisdiction over each of the defendants in Florida by effecting service of process, which occurs where the defendant is present in, resides in, or has its principal place of business in Florida, or through application of the state's long-arm statute because, oftentimes, the defendant has committed a tortious act in Florida." *Cortez v. Palace Resorts, Inc.*, 123 So.3d 1085 (FL SC 2013).

another forum when the latter is better suited to hear the case. Indeed, in *Giglio Sub s.n.c. v Carnival Corp.*,[17] the US District Court for the Southern District of Florida decided, although a jurisdictional nexus was established, Italy represented the appropriate jurisdiction in a case brought by Italian individual and corporate citizens.[18] In addition to the likely applicability of Italian law,[19] the court weighed several factors in dismissing the plaintiffs' lawsuit:

> *"Finally, although administrative burdens of a case involving 1,000 Plaintiffs and complex issues of tort law will impose burdens on whichever forum hears the case, two specific issues tip the balance slightly in favor of dismissal. For one, having established the significant number of witnesses in Italy and elsewhere in Europe, this Court would need to rely on the lengthy process of letters rogatory to obtain testimony and evidence from foreign witnesses, whereas any such process would be minimized with trial in Italy because Defendants have offered to make witnesses and documents under their control available to Italian courts. Second, trial of this case would impose significant financial and other burdens on American courts, taxpayers, and jurors who are only "remotely related" to the accident ... [and] administrative costs should be placed on the jurisdiction most significantly related to the dispute. Accordingly, the public-interest factors all point markedly towards dismissing this action in favor of an Italian forum."*[20]

The court, however, did condition its dismissal of the action brought by Italian plaintiffs on a series of conditions:

1. Defendants must consent to jurisdiction and service of process for any action refiled by Plaintiffs in an Italian court for a period of 270 days from the date of this Order;
2. Defendants must waive raising any jurisdictional or statute-of-limitations objections to these actions;
3. Defendants must make witnesses and documents in their possession, custody, or control that are relevant to these actions available upon the request of an Italian court;
4. Defendants must respect any post-appeal final judgment entered by an Italian court; and,
5. Defendants must agree to the reinstatement of the suit in this Court if the Italian court refuses to recognise Defendants' consent to jurisdiction.[21]

While Italian citizens were losing their jurisdictional battle in the United States federal court, other passengers on the Costa Concordia initiated action in the state courts of Florida. Less

17. *Giglio Sub s.n.c. v. Carnival Corp.*, 2012 U.S. Dist. LEXIS 144140, 2012 AMC 2705 (D. Fla. 2012).

18. Plaintiffs Giglio Sub, an Italian corporation, and Francesco Onida, an Italian citizen, ("representative Plaintiffs") are residents of Giglio Island. They filed the complaint on May 3, 2012, as a class action on behalf of a putative class of more than 1,000 "fishermen, property owners, business owners, and wage earners on Giglio Island, as well as those working in and around the island" who claimed damages to their businesses stemming from the wreck of the Costa Concordia. Id.

19. Id. *But see* Part 2 of this article.

20. Id.

21. Id. The 11th Circuit Court of Appeals affirmed the decision below in a brief *per curiam* opinion. *Giglio Sub S.N.C. v. Carnival Corp.*, 523 Fed. Appx. 651, 2013 U.S. App. LEXIS 14297, 2013 AMC 2403, 2013 WL 3595708 (11th Cir. Fla. 2013).

than two weeks after the accident,[22] six plaintiffs filed a complaint ("*Scimone I*") against Carnival and related corporate entities in the Eleventh Judicial Circuit Court of Florida in Miami, claiming negligence on the part of the ship's architect, and intentional torts. Additional passengers on the *Costa Concordia* asked to join the suit, and the *Scimone I* plaintiffs amended their complaint to name thirty-nine plaintiffs. In the ensuing weeks, another sixty-five *Costa Concordia* passengers expressed a desire to join the *Scimone I* action. Rather than adding these potential plaintiffs to the complaint, which would have brought the number of persons whose claims would be tried jointly to over 100, the *Scimone I* plaintiffs voluntarily dismissed the complaint filed in the state court.

The original thirty-nine plaintiffs from *Scimone I* divided themselves into two groups and distributed the additional sixty-five *Costa Concordia* passengers between those two sets of plaintiffs. In July 2012, the two groups filed separate lawsuits in state court, each of which named less than 100 plaintiffs. One complaint (*Scimone II*) ended up consisting of forty-eight plaintiffs, while the other lawsuit (*Abeid-Saba*) contained the remaining fifty-six plaintiffs. The two complaints contained essentially the same allegations against Carnival, and there is no question all 104 plaintiffs' claims involved common questions of law and fact. After initiating the independent actions in state court, however, neither group of plaintiffs moved for consolidation of the two cases.

In response, Carnival had both *Scimone II* and *Abeid-Saba* removed to the United States District Court for the Southern District of Florida, arguing the mass-action provision of the Class Action Fairness Act ("CAFA")[23] provided federal courts' with exclusive jurisdiction over cases presenting "substantial issues of federal common law relating to foreign relations." Carnival followed its removal action with motions to dismiss each case based on the forum selection clause of plaintiffs' passenger contracts and *forum non conveniens*. In turn, the plaintiffs filed motions to remand their actions to the state court, asserting "federal jurisdiction does not exist under the 'mass action' provision of CAFA, where the action was brought on behalf of ... less than ... the number [100 or more plaintiffs] required for removal under CAFA's definition of a 'mass action,'" and where "plaintiffs have not and do not propose that this case be tried jointly with any other separate court action." The plaintiffs also contended the case did not implicate foreign relations, rendering removal on that ground improvident as well.

The District Court for the Southern District of Florida granted plaintiffs' motions in *Scimone II* and *Abeid-Saba* and remanded both cases to state court. The federal court concluded defendants could not remove pursuant to the mass-action provision of CAFA: "The problem for removal jurisdiction under the CAFA is that neither suit has 100 plaintiffs alone ... [and] the Plaintiffs have not proposed for the cases to be tried jointly. Therefore, the CAFA does not

22. The following summary of how the state actions evolved is a modification of the description provided by the court in the 11th Circuit opinion. *Scimone v. Carnival Corp*., 720 F. 3d 876, 878-80 (11th Cir. 2013). (July 1st, 2013).

23. Pub. L. No. 109-2, 119 Stat. 4 (2005) (codified in scattered sections of 28 U.S.C.). When Congress enacted CAFA, it acknowledged the importance of class actions but made formal findings the class action process had been exploited in the past. The abuses Congress needed to address included harm to "the interests of class members and defendants who had acted responsibly", to "interstate commerce", and to "the public's respect of the judicial system." According to Congress, CAFA will "assure fair and prompt recoveries for class members with legitimate claims," permit federal courts to "consider interstate cases of national importance under diversity jurisdiction," and "benefit society by encouraging innovation and lowering consumer prices." 28 USC 1711: Note.

supply a basis for removing these two identical lawsuits." The district court also rejected Carnival's claim the case implicated federal common law regarding foreign policy.

Carnival was granted permission to appeal the district court's remand orders by the US 11th Circuit Court of Appeals in order to:

> *"resolve an issue of first impression in this Circuit: whether a defendant has the right ... to remove multiple and separate lawsuits to federal court as mass actions if the lawsuits in the aggregate contain 100 or more plaintiffs whose claims revolve around common questions of law or fact, but neither the plaintiffs nor the state court have proposed that 100 or more persons' claims be tried jointly."*[24]

The 11th Circuit Court of Appeals then went on to conclude "the district court ... got it right" because "under the plain language of CAFA ... the district court lacked subject-matter jurisdiction over the plaintiffs' two separate actions unless they [the plaintiffs] proposed to try 100 or more persons' claims jointly. Consequently, the cases were improvidently removed and should have been remanded, and we affirm the district court's order."[25]

While this legal manoeuvering was ongoing, the Florida Supreme Court issued an opinion in an unrelated travel law matter with significant bearing on the two *Concordia* cases returned to the state trial court in Miami. In *Cortez v Palace Resorts, Inc. et. al.*,[26] the court was confronted with a California plaintiff who claimed, while a guest at a Mexican hotel owned by defendants, she was sexually assaulted by a male masseur during a complimentary massage which she received in exchange for attendance at a timeshare presentation offered by the defendant resort. The lower courts found Mexico to be a more convenient forum than Florida. The Florida Supreme Court concluded the intermediate appellate court ruling was flawed in two aspects.

> *"First, the Third District [Court of Appeal] misstated a rule of law ... by finding that the plaintiff, by virtue of her out-of-state residence, was not entitled to the strong presumption in the* forum non conveniens *analysis against disturbing the plaintiff's initial choice of forum. Second, the Third District also erred ... by failing to focus on the fact that although this lawsuit involves an assault that occurred in Mexico, the allegations of negligence in this case derive from conduct* in Florida *by defendants with their primary place of business* in Florida. *By misapplying the* forum non conveniens *analysis, and particularly by failing to afford a strong presumption in favor of the plaintiff's initial choice of an otherwise proper forum, the Third District's decision results in a situation where a United States citizen is forced to litigate in a foreign country, imposing a substantial burden on her without a showing that it would be burdensome for the Florida-based defendants to defend the lawsuit in Florida.*[27]

24. *Scimone v. Carnival Corp.*, 720 F. 3d 876, 878-79 (11th Cir. 2013). (July 1st, 2013).

25. Id. at 879-80.

26. *Cortez v. Palace Resorts, Inc. et. al.* 123 So. 3d 1085 (SC FL 2013)

27. Id. at 1087 (Emphasis in original).

The *Cortez* Court went on to reiterate the four-part federal court test for dismissing an action on *forum non conveniens* grounds it previously adopted for application by Florida courts.

> *"[1] As a prerequisite, the court must establish whether an adequate alternative forum exists which possesses jurisdiction over the whole case. [2] Next, the trial judge must consider all relevant factors of* private *interest, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice. [3] If the trial judge finds this balance of private interests in equipoise or near equipoise, he must then determine whether or not factors of* public *interest tip the balance in favor of a trial in [another] forum.*[28] *[4] If he decides that the balance favors such a ... forum, the trial judge must finally ensure that plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice."*[29]

When the lawsuits filed by the plaintiffs in *Scimone* and *Abeid-Saba* were returned to the state court in Miami, they were assigned to different trial judges. In both cases, Carnival filed motions to dismiss on *forum non conveniens* grounds. While each trial judge applied the rules and reasoning set forth by the Florida Supreme Court in *Cortez*, they reached very different outcomes on the same day.

In *Scimone*, the court "weighed the four [*forum non conveniens*] factors and finds removal to an Italian forum inappropriate for the seventeen US Plaintiffs, and appropriate for the thirty-five international Plaintiffs."[30] The trial judge decided the first factor favoured Carnival. "Italy is an adequate and available alternative forum because the foreign court can assert jurisdiction over the litigation, the defendant is amenable to process in that jurisdiction, and the forum provides for litigation of the subject matter of the dispute and redress for the plaintiffs injuries...."[31]

Turning to the second prong, the court reasoned the private interest factors do not support the dismissal of the seventeen Florida and US plaintiffs' claims but do weigh in favour of dismissing the claims of the thirty-five international plaintiffs who are not entitled to the rule's "strong presumption."

> *"In weighing the private interest factors, courts must consider adequate access to evidence and relevant sites, adequate access to witnesses, adequate enforcement of judgments, and the practicalities and expenses associated with litigation ... Defendants' argue Italy offers superior access to evidence and relevant sites. However, this evidence has been made available by Italian courts, thereby reducing the burden and expense of discovery requests through the Hague Convention. Secondly, the problem of physical access to the site is elimi-*

28. The *Cortez* court "emphasize[d] that Florida courts also should always consider this third step of the *forum non conveniens* inquiry, even if the private factors weigh more heavily in favor of the alternative forum, and should require that the balance of public interests also be tipped in favor of the alternative forum in order to defeat the presumption favoring the plaintiff's forum choice." Id. at 1093.

29. Id. at 1090 (Emphasis in original).

30. *Scimone, et al. v. Carnival Corp., et al.*, Order Granting in Part and Denying in Part Motion to Dismiss for *Forum non conveniens*, No. 12-26072, Circuit Court for Miami-Dade County at 2 (7/19/13)

31. Id. at 3.

> *nated by the existence of extensive photographic and documentary evidence readily available and translated into English. Defendants point to the difficulty and expense of flying key witnesses from Italy, and the inability of this Court to compel the attendance of non-party witnesses. Nonetheless, Plaintiffs will face the same problem in supporting their claims in an Italian court because Carnival Corporation has its principal place of business in Florida, and share senior executive management and boards with Carnival plc, Costa Crociere's parent company located in England. Also, Costa Cruise Lines, Inc.' s ultimate headquarters is in Florida ..."*[32]

The court went on to decide the third factor, the public interest, favoured the Florida and US plaintiffs but not the international litigants. The court noted the need to protect the local docket from cases that lacked significant connection to Florida, to encourage the litigation of controversies in the localities in which they arose, and in courts where the law of that jurisdiction will be applied. The judge, however, analysed the circumstances as follows:

> *"The Court would not be unduly burdened because, as Plaintiffs' assert, the relevant evidence has been made available by Italian courts and has been translated into English. Further, because Plaintiffs have now been reduced to Florida and US residents, there is a clear relation to the Florida forum that no longer poses an unfair burden on local jurors. Finally, even though Italian law may apply to this case, the fact Italy is a civil law country does not conclusively demonstrate that there is a significant conflict between US and Italian law."*[33]

In sharp contrast to the conclusions of the trial court in *Scimone*, the judge in *Abeid-Saba* granted Carnival's motion to dismiss on *forum non conveniens* grounds as to all of the plaintiffs, Florida, US, and international.[34] In reaching its judgment, the *Abeid-Saba* court made seventy-seven findings of fact based on sworn declarations of several executives from defendant companies, two Italian law professors (one for each side), and a significant number of documents and exhibits.[35]

Addressing the first factor in the *forum non conveniens* test, the court decided "Italy to be both an available and an adequate forum," despite different opinions expressed by the Italian law experts as to the length of time and the cost of litigating the matter in Italy. As to the second element, the court examined the twelve counts in the plaintiffs' complaint and concluded, "considering all of the private interest factors, and even in light of the strong presumption in favor of the United States residents' choice of forum, the Court finds that Defendants have presented positive evidence that litigating in this Court would result in a material, manifest injustice due to the inconvenience, cost and difficulty of presenting

32. Id. at 4 (Citation omitted).

33. Id. at 5 (Citation omitted)

34. *Abeid-Saba, et al. v. Carnival Corp., et al.*, Order Granting Defendants' Motion to Dismiss Based on the Doctrine of *Forum non conveniens*, No. 12-26076, Circuit Court for Miami-Dade County at 2 (7/19/13). The court focused its analysis on the five US plaintiffs, noting the forum choice of the twenty-four Italian plaintiffs and seventeen from other countries "is entitled to less deference." Id. at 13.

35. Id. at 3-11.

relevant evidence here and that this factor strongly favors dismissal to an alternative forum."[36]

Turning to the mandatory third prong in the *forum non conveniens* rule applicable to Florida courts, the trial judge considered the public interest factors, including the administrative difficulties flowing from court congestion, and the interest in having matters decided where the controversy occurred but focused his analysis on Florida's interests in the case. In doing so, the court concluded the plaintiff's claims centre on conduct that occurred almost exclusively in Italy.

> *"[T]he conduct which forms the basis of Plaintiffs' claims is the allegation that Captain Schettino [the master of the ship] steered the* Costa Concordia *too close to the shore of Giglio Island and piloted the ship at a high rate of speed while conducting a sail-by salute. Plaintiffs allege that as a result of the ship sailing too close to the shore at this high rate of speed, it struck a reef, causing injury to Plaintiffs. Plaintiffs' claims further center on the action and/or inaction of the Captain and crew in the hours immediately following the grounding of the* Costa Concordia. *Plaintiffs claim that the Florida Defendants, Carnival Corporation and Costa Cruise Lines, are responsible because they were aware of, and indeed, encouraged such sail-by salutes, citing an instance in 2011 where the* Concordia *had taken 'an almost identical route along the coast of Giglio' which was approved by Carnival Corporation ... However, there is no allegation that Carnival Corporation directed Captain Schettino to sail too close to the shore, to do so at a high rate of speed, or even participated, in any way, in the navigation or routing of the* Costa Concordia *on the night of the Accident. Rather, the Complaint alleges that Captain Schettino took the "*Costa Concordia *four (4) miles off its intended, scheduled course ...' Plaintiffs' allegations here center on conduct by non-Florida Defendants in Italy. Thus, irrespective of the presumption given to Plaintiffs' choice of forum, given the location of the allegedly negligent or wrongful conduct, the location of the Defendants alleged to have committed such conduct, and the evidence relevant thereto, the Court finds that Florida does not have a strong interest in this dispute. Further, to the extent, if any, there is any relevant evidence located outside of Italy, Defendants have stipulated to producing it there ... Therefore, the Court concludes that, for the reasons set forth above ... public interest considerations favor litigating this case in Italy."*[37]

Finally, the *Abeid-Saba* trial court considered the ability of plaintiffs to initiate their lawsuit in Italy without an undue burden. To ensure plaintiffs were able to do so, the court imposed six conditions similar to those set forth by the federal court in *Giglio Sub s.n.c. v Carnival Corp.*[38]

36. Id. at 19.
37. Id. at 20-21.
38. *Supra*, n. 21.

Both the *Scimone* and *Abeid-Saba* decisions were appealed to the Florida intermediate appellate court, the Third District Court of Appeal.[39] Although the two cases have been argued in the appellate court,[40] a decision has not yet been rendered. If the appellate court adopts the lower court *Abeid-Saba* rationale, all US citizens will be forced to litigate in Italy with the disadvantages the trial judge in *Scimone* identified. If the court adopts the reasoning in the *Scimone* decision, allowing US plaintiffs to proceed in the Florida courts, the decision will set an important precedent that could attract litigation to Florida from around the world.

A decision by the Third District Court of Appeal is expected before the next issue of the *Travel Law Quarterly* is published. That result, along with Parts II and III dealing with the applicable law and the damages arising from the Concordia disaster, will be reported at that time.

Alberto Polimeni is a law graduate of Universitá Roma Tre, Rome, Italy and the Shepard Broad Law Center, Nova Southeastern University, Fort Lauderdale.
He is a member of the Florida Bar and counsel for Access Insurance Underwriter, LLC

Joseph Harbaugh is Professor of Law and Dean Emeritus, Shepard Broad Law Center, Nova Southeastern University, Fort Lauderdale

39. The appellate court consolidated the appeals for the purpose of oral argument and directed the parties to address an opinion of the US Court of Appeals for the 11th Circuit, *McLane v Marriott International, Inc.*, 2013 WL 6482012 (11th Cir. Dec. 11, 2013) (*per curiam*, unpublished). *McLane*, another travel law case, involved a boating accident in Costa Rica where the plaintiff, a US citizen, was injured while staying at a Marriott resort. Applying an "abuse of discretion" standard, the 11th Circuit affirmed the district court's dismissal of plaintiff's lawsuit on the basis of *forum non conveniens*. The court's reference to the *McClane* case certainly suggests the "abuse of discretion" standard is likely to be applied when it decides if the US citizens will be allowed to pursue their lawsuits in Florida.

40. For those interested, the oral argument is recorded. Go to Archived Video Oral Arguments page: http://www.3dca.flcourts.org/Archived_Video.shtml and type in 13-2223 or 13-2092.