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PANDEMIC ON THE CRUISE INDUSTRY**

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In March 2020, the cruise industry painfully anchored, leaving fleets of cruise ships docked.¹ The impact of the Coronavirus (“COVID-19”) Pandemic has been worse in tourism-driven places, like Florida, the top cruising center in the world, where the economy began to sink.² In 2019, the cruising industry was booming, with 8.3 million passengers boarding cruises from one of the five cruise ports in Florida.³ Florida accounted for sixty percent of all embarkations in United States ports.⁴ Florida also houses headquarters for some of the major cruise lines, such as Royal Caribbean Cruises, Ltd. (“Royal Caribbean”), Carnival Corporation & plc. (“Carnival”), and Norwegian Cruise Line (“NCL” or “Norwegian Cruises”).⁵

Over time, Florida has enjoyed an annual revenue of around \$8.49 billion from the cruise industry.⁶ However, the COVID-19 Pandemic has caused major losses for Florida. In 2020, Florida’s ports suffered losses estimated to be about \$22.2 billion.⁷ The Centers for Disease Control and Prevention (“CDC”) has been an important figure during these trying times, as it heavily regulates the cruise industry.⁸ At the beginning of the pandemic, the CDC strongly recommended not to travel by ship, therefore causing passenger cancellations⁹ and lawsuits. The world shut down for months, and the idea of travelling or going on a vacation was a very distant thought. Tourism ceased to exist during this time, with cruise ships stored and forgotten, causing crew members to lose their jobs.¹⁰

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¹ Victor Jorges & Christian Benavides, *Cruise Ships Continue Docking with Positive COVID-19 Cases in South Florida*, NBC6, <https://www.nbcmiami.com/news/local/cruise-ships-continue-docking-with-positive-covid-19-cases-in-south-florida/2657669/> (last updated Jan. 10, 2022).

² Greg Allen, *Another Coronavirus Casualty: Florida Tourism*, NPR (Aug. 18, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/08/18/903585215/another-coronavirus-casualty-florida-tourism>; *The Economic Contribution of the International Cruise Industry in the United States in 2019*, CLIA (2020), <https://cruising.org/-/media/research-updates/research/2019-usa-cruise-eis.ashx>.

³ CLIA, *supra* note 2 at 42-44.

⁴ *Id.*

⁵ *Id.* at 43.

⁶ Ana Lucia Rodrigues da Silva, *An overview of the impact of COVID-19 on the cruise industry with considerations for Florida*, NAT’L CTR. FOR BIOTECHNOLOGY INFO.: ELSEVIER PUB. HEALTH EMERGENCY COLLECTION (2021).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See Jim Turner, *Cruise Industry Recovery In Florida Likely To Be A Long Haul*, WUSF PUBLIC MEDIA (Feb. 7, 2021), <https://wusfnews.wusf.usf.edu/economy-business/2021-02-07/cruise-industry-recovery-in-florida-likely-to-be-a-long-haul>.

Upon the first quarter of 2022, the cruise industry had reopened, however, with some setbacks due to different strains of COVID-19.¹¹ This note will discuss the following: (1) a brief definition of COVID-19; (2) a timeline of the pandemic's effects on the cruising industry; (3) the economic impact of the pandemic on the cruising industry; (4) a background of the cases concerning COVID-19 and cruises; (5) finally, this note will conclude by providing recommendations on how courts and cruise lines should approach the issues of the COVID-19 Pandemic in the cruise industry.

I. What Is COVID-19 in the Cruise Industry?

COVID-19 is a respiratory disease caused by SARS-CoV-2.¹² COVID-19 is spread from person to person when an infected person talks, coughs, or sneezes and releases droplets of virus particles into the air.¹³ Symptoms will appear within two to fourteen days after being exposed to the virus.¹⁴ Some of the symptoms associated with COVID-19 include coughs, fever or chills, new loss of smell or taste, body aches, fatigue, and shortness of breath.¹⁵ Some people infected with the virus can experience all these symptoms, while others may experience mild or no symptoms at all.¹⁶ In the most severe cases, COVID-19 can result in death.

Currently, there are safe vaccines available to prevent COVID-19 or serious illness if the virus is contracted.¹⁷ Vaccines teach the immune system to recognize the virus and fight it off; presently, the United States has authorized and approved three primary types of COVID-19 vaccines: Pfizer, Moderna, and Johnson & Johnson.¹⁸ In addition, a booster shot is available after the second shot of Moderna or Pfizer and after the Johnson & Johnson shot.¹⁹ The CDC website states that COVID-19 spreads easily onboard cruise ships because of the close quarters, and warns that COVID-19 outbreaks on cruise ships have been reported.²⁰ Moreover, new variants have made it more difficult to travel by cruise ship.²¹ The CDC has indicated that the variant, *Omicron*, can spread more easily than the *Delta* variant and the original virus.²² According to the CDC, an increasing number of cases have been reported since the *Omicron* variant was identified.²³

¹¹ See Jason Hanna, *Cruises are once again facing disruption because of Covid-19*, CNN, <https://www.cnn.com/travel/article/cruise-ships-covid-19-disruption/index.html> (last updated Dec. 27, 2021).

¹² *What is Coronavirus*, JOHN HOPKINS MEDICINE, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus> (last updated Feb. 24, 2022).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*; Lisa Lockerd Maragakis, *Staying Safe from COVID-19*, JOHNS HOPKINS MEDICINE, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/how-can-i-protect-myself-from-coronavirus> (last updated Nov. 18, 2021).

¹⁷ *Understanding How COVID-19 Vaccines Work*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/how-they-work.html> (last updated Feb. 24, 2022).

¹⁸ *Id.*

¹⁹ *COVID-19 Vaccine Booster Shots*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html> (last updated Feb. 2, 2022).

²⁰ *COVID-19 and Cruise Ship Travel*, CDC, <https://wwwnc.cdc.gov/travel/notices/covid-3/coronavirus-cruise-ship> (last updated Mar. 14, 2022).

²¹ Hanna, *supra* note 11.

²² *Omicron Variant: What You Need to Know*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (last updated Feb. 2, 2022).

²³ See *id.*

The White House declared a vaccine requirement for “noncitizens who are nonimmigrants” entering the United States through ports, effective January 22, 2022.²⁴ The CDC is responsible for deciding the severity levels of COVID-19 in cruise ship travel.²⁵ As of March 14, 2022, out of the four COVID-19 levels of travel recommendations, the CDC categorized travel at a level 2 for cruise ships, after a recent change from level 3.²⁶ Level 2 means a “moderate level of COVID-19,” and states that one should make sure to be fully vaccinated before traveling.²⁷ These travel health notices are monitored and change depending on the number of COVID-19 cases.²⁸

II. The Pandemic and the Cruise Industry: A Timeline

In December 2019, the first cases of COVID-19 were reported in Wuhan, China.²⁹ In January 2020, cruise lines began canceling cruises departing from China and halted port calls as well.³⁰ Cruises were considered dangerous at the beginning of the pandemic, with ships seen as a major source of infection traveling between places.³¹

In March 2020, United States citizens were warned to stop cruise ship travel.³² The Princess Cruises were particularly impacted during this time.³³ The *Regal Princess* was issued a “No Sail Order”, the *Diamond Princess* was forced into an extended quarantine in Asia, and the *Grand Princess* was held off in California when passengers and crew members tested positive for COVID-19.³⁴ The *Diamond Princess* made headlines as it was the first to produce shocking images of its quarantined passengers; this was the point when observers commented “[t]he cruise industry became COVID-19 enemy No.1.”³⁵

On March 11, 2020, the World Health Organization (“WHO”) declared a pandemic.³⁶ As a result, Viking Cruises suspended their cruises and became the first cruise line to stop their operations.³⁷ Other cruise lines soon followed and announced a voluntary pause in their operations.³⁸ Also in March 2020, the CDC issued a 30-day “No Sail Order” for those ships

²⁴ *COVID Vaccine and Test Requirements for U.S. Entry*, NAFSA (Feb. 28, 2022), <https://www.nafsa.org/regulatory-information/covid-vaccine-and-test-requirements-us-entry>.

²⁵ CDC, *supra* note 20.

²⁶ CDC, *supra* note 20.

²⁷ *How CDC Determines the Level for COVID-19 Travel Health Notices*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/how-level-is-determined.html> (last updated Dec. 6, 2021).

²⁸ *Id.*

²⁹ Orlando Martinez, *Timeline: 2020-2021 Cruise Industry Shutdown*, CRUISE RADIO (Sept. 2, 2021), <https://cruiseradio.net/timeline-2020-cruise-ship-industry-shutdown/>.

³⁰ *Id.*

³¹ See Hirohito Ito, et al., *The cruise industry and the COVID-19 outbreak*, SCIENCE DIRECT (May 2020), <https://www.sciencedirect.com/science/article/pii/S2590198220300476>.

³² Martinez, *supra* note 29.

³³ Doug Parker, “No-Sail Order” Issued For Florida Cruise Ship, Voyage Cancelled, CRUISE RADIO (Mar. 8, 2020), <https://cruiseradio.net/no-sail-order-issued-for-florida-cruise-ship-voyage-cancelled/>.

³⁴ *Id.*

³⁵ Philip Levine, *Cruise industry tanks: DeSantis’ mixed messaging leaves business grounded*, USA TODAY (June 15, 2021), <https://www.usatoday.com/story/opinion/2021/06/15/covid-florida-cruise-industry-devastated-pandemic/7643544002/>.

³⁶ Martinez, *supra* note 29.

³⁷ *Id.*

³⁸ *Id.*; see Reuters Staff, *BRIEF-Carnival Announces Pause In Cruise Operations Out Of An Abundance Of Caution To Contain COVID-19 Spread*, REUTERS (Mar. 13, 2020), <https://www.reuters.com/article/brief-carnival-announces->

traveling to or from the United States carrying more than 250 passengers.³⁹ Effective on March 30, 2020, Norwegian Cruise Line made an announcement concerning salaried workers; they would be dealing with a twenty percent pay decrease and a four-day workweek.⁴⁰

March 2020 was a very challenging month for cruise ships, specifically for those that needed to dock with sick passengers on board. For example, on March 30, 2020, two Holland America Line cruise ships, the *Zaandam* and the *Rotterdam*, were left stranded after four passengers died on the *Zaandam* and 138 passengers were ill.⁴¹ Passengers who tested negative for COVID-19 were transferred from the *Zaandam* to the *Rotterdam* to ensure limited exposure to the novel virus.⁴² As the ships neared Florida, Governor Ron DeSantis was hesitant in allowing the ships to dock, but ultimately allowed them to do so in Port Everglades.⁴³ DeSantis' decision was in part influenced by meeting with Broward County officials, receiving a letter from the cruise line's president pleading Florida to allow the ships to dock, and President Trump's urgency for a solution.⁴⁴

Two days before finally docking, nine people tested positive for COVID-19 and 233 were sick.⁴⁵ The "No Sail Order" was then extended through October 31, 2020.⁴⁶ The CDC later implemented a Conditional Sailing Order after October 2020 that was to last until November 1, 2021.⁴⁷ Then, on October 25, 2021, the CDC temporarily extended the Conditional Sailing Order to January 15, 2022.⁴⁸ The Conditional Sailing Order expired; the CDC still encouraged cruise ships to follow the CDC's "COVID-19 Program for Cruise Ships Operating in U.S. Waters."⁴⁹ The voluntary instructions allow foreign-flagged ships to choose to adhere to these instructions and U.S.-flagged ships to choose to adhere at the ship operator's discretion.⁵⁰ The CDC provided a February 18, 2022 deadline for cruise lines to inform the CDC if they would be following the CDC's program.⁵¹ As of February 19, 2022, the CDC reports 110 cruise ships have opted into the CDC's COVID-19 Program for Cruise Ships.⁵²

pause-in-cruise/brief-carnival-announces-pause-in-cruise-operations-out-of-an-abundance-of-caution-to-contain-covid-19-spread-idUSFWN2B61JS.

³⁹ *CDC COVID-19 Orders for Cruise Ships*, CDC, <https://www.cdc.gov/quarantine/cruise/covid19-cruiseships.html> (last updated Feb. 9, 2022); Martinez, *supra* note 29.

⁴⁰ Martinez, *supra* note 29.

⁴¹ *Id.*; see Michael Smith, et al., *The Pariah Ship*, BLOOMBERG (June 11, 2020), <https://www.bloomberg.com/features/2020-zaandam-pariah-ship/>.

⁴² See Smith, et al., *supra* note 41; see also Martinez, *supra* note 29.

⁴³ See Smith, et al., *supra* note 41.

⁴⁴ Martinez, *supra* note 29.

⁴⁵ *Id.*

⁴⁶ *Cruise Ship No Sail Order Extended Through October 31, 2020*, CDC (Sept. 30, 2020), <https://www.cdc.gov/media/releases/2020/s0930-no-sail-order.html>.

⁴⁷ CDC, *supra* note 39.

⁴⁸ *Id.*

⁴⁹ *Technical Instructions for CDC's COVID-19 Program for Cruise Ships Operating in U.S. Waters*, CDC <https://www.cdc.gov/quarantine/cruise/management/technical-instructions-for-cruise-ships.html> (last updated Mar. 18, 2022).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *18 Brands and 110 Ships Sign Up for New CDC Cruise Program*, CRUISE INDUSTRY NEWS (Feb. 19, 2022), <https://www.cruiseindustrynews.com/cruise-news/26840-18-brands-and-110-ships-sign-up-for-new-cdc-cruise-program.html>.

III. The Economic Impact of the COVID-19 Pandemic on the Cruise Industry

Until the start of the COVID-19 Pandemic, the cruise industry had grown exponentially.⁵³ Between 2012 and 2019, embarkations from United States ports increased by an average of 4.6 percent annually, with an increase of 8.8 percent from 2018 to 2019.⁵⁴ All operations ceased to exist during the COVID-19 Pandemic, negatively impacting the growth of the cruise industry.

Globally, the cruise industry produced over \$150 billion in economic activity and almost 1.2 million jobs in 2019.⁵⁵ In the United States, the cruise industry produced more than \$55 billion in economic activity and 436,000 jobs.⁵⁶ Specifically, a report from 2017 showed that the global cruise industry contributed \$7.97 billion to Florida's economy.⁵⁷ In November 2020, it was estimated that the loss in 2020 would be more than \$32 billion in economic activity and more than 254,000 American jobs.⁵⁸ For every one percent drop of cruisers, it is estimated that the industry loses 2,000 jobs.⁵⁹ Royal Caribbean borrowed \$2.2 billion to survive during the industry's shutdown in March 2020.⁶⁰ By April 2020, Royal Caribbean had laid off 26 percent of its workforce.⁶¹ Royal Caribbean's total loss in 2020 amounted to over \$5.8 billion, with its CEO claiming the pandemic had been the most difficult crisis in the company's history.⁶² In 2021, the cruise industry was expected to earn \$6.6 billion.⁶³

IV. Litigation

The cruise industry has suffered due to the pandemic-induced shutdown. However, the monetary losses were not the only concern during this time; lawsuits began to pour in from passengers onboard the cruises docked at the start of the pandemic. Additionally, some states' economies rely on the cruise industry and have been severely affected by the loss from the COVID-

⁵³ CLIA, *supra* note 2 (discussing that in 2019, before the COVID-19 Pandemic, the United States hit a new record with the number of passengers embarking from United States ports).

⁵⁴ CLIA, *supra* note 2.

⁵⁵ *Cruise Industry COVID-19 Protocols and Information*, CLIA, <https://cruising.org/en/cruise-industry-covid-19-facts-and-resources> (last visited Mar. 23, 2022).

⁵⁶ *Cruise Industry Contribution to U.S. Economy Grew to \$55.5 Billion in 2019, Generating More Than 436,000 American Jobs (USA)*, CLIA (Nov. 19, 2020), <https://cruising.org/en/news-and-research/press-room/2020/november/cruise-industry-contribution-to-us-economy-grew-to-55-billion-in-2019>.

⁵⁷ *Global Cruise Industry Contributes \$7.97 Billion to Florida's Economy*, GLOBENEWSWIRE (Oct. 4, 2017), <https://www.globenewswire.com/news-release/2017/10/04/1140814/0/en/Global-Cruise-Industry-Contributes-7-97-Billion-to-Florida-s-Economy.html>.

⁵⁸ Morgan Hines, *'Devastating impact': Cruise industry says 254,000 American jobs, \$32 billion in economic activity lost*, USA TODAY (Nov. 19, 2020), <https://www.usatoday.com/story/travel/cruises/2020/11/19/cruising-faces-254000-american-jobs-32-billion-lost-pandemic/3776982001/>.

⁵⁹ Olivia Pulsinelli, *Cruise industry's Covid shutdown costs billions of dollars, hundreds of thousands of jobs*, CLIA says, THE BUSINESS JOURNALS (Dec. 14, 2020), <https://www.bizjournals.com/bizwomen/news/latest-news/2020/12/cruise-covid-shutdown-jobs-economic-impact.html?page=all>.

⁶⁰ Martinez, *supra* note 29.

⁶¹ *Id.*

⁶² Matt Hochberg, *Royal Caribbean Group lost over \$5.8 billion in 2020*, ROYAL CARIBBEAN BLOG (Feb. 22, 2021), <https://www.royalcaribbeanblog.com/2021/02/22/royal-caribbean-group-lost-over-58-billion-2020>.

⁶³ *Cruise industry to generate \$6.6B in revenue in 2021, almost five times less than in 2019*, TRAVEL DAILY NEWS (June 8, 2021), <https://www.traveldailynews.com/post/cruise-industry-to-generate-66b-in-revenue-in-2021-almost-five-times-less-than-in-2019> (reporting that revenue is expected to reach \$25.1 billion in 2023).

19 Pandemic.⁶⁴ The following cases discuss lawsuits involving the CDC and state laws, and lawsuits directed at cruise lines.

a. Florida Versus the CDC

The CDC issued “No Sail Orders” from March through October 2020, followed by “Conditional Sailing Orders” to reopen the cruise industry in four phases.⁶⁵ However, under those strict orders, even after a cruise operator completes all four phases, the CDC would still have discretion to condition or issue further guidance.⁶⁶ On April 2, 2021, the CDC released new mandatory guidance; many cruise companies were dissatisfied with the fact that no further guidance was given for reopening the cruise industry.⁶⁷ With the fear of missing out on another sailing summer, some cruise companies threatened to leave the United States if the CDC did not communicate what must be done to reopen the industry.⁶⁸ Florida claimed the CDC’s April 2, 2021 guidance ensured that cruising would not restart in time for summer; with cruising a major contributor to Florida’s economy, Florida took action against the CDC in Tampa, Florida, in the case of *Florida v. Becerra*, moving for a preliminary injunction.⁶⁹

Florida’s first assertion was that the CDC’s Conditional Sailing Order has caused Florida to spend more money than usual on state unemployment benefits.⁷⁰ Florida has already paid close to \$20 million in benefits to “claimants separated from the cruise industry,” since the beginning of the pandemic, however, “Florida typically pays less than \$500,000 annually in state benefits attributable to lost cruise-industry jobs.”⁷¹ Florida’s other claims include loss of tax revenue and loss of millions of dollars from Florida’s ports due to the COVID-19 Pandemic.⁷²

Further, Florida argues the CDC exceeded its statutory and regulatory delegated authority by creating the Conditional Sailing Order and that the order is arbitrary and capricious.⁷³ The Court granted Florida’s motion for a preliminary injunction which was stayed until July 18, 2021; after that, the Conditional Sailing Order would be a non-binding recommendation.⁷⁴ The Court held “that Florida is highly likely to prevail on the merits of the claim that CDC’s conditional sailing order and the implementing orders exceed the authority delegated to CDC under Section 264(a).”⁷⁵ With Florida’s win in this case, the cruise industry opened in the summer of 2021. In an update, the CDC website for cruise ship guidance stated that “[a]s of July 23, 2021, the Conditional Sailing Order and accompanying measures, such as technical instructions, are nonbinding recommendations for cruise ships arriving in, located within, or departing from a port in Florida.”⁷⁶ Florida did not allow the CDC to impose its laws on its cruising industry, but Florida

⁶⁴ CLIA, *supra* note 2 (reporting that the cruise industry has affected every state’s economy).

⁶⁵ *Florida v. Becerra*, 544 F. Supp. 3d 1241, 1246 (2021).

⁶⁶ *Id.* at 1249.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Becerra*, 544 F. Supp. 3d.

⁷⁰ *Id.*

⁷¹ *Id.* at 1252.

⁷² *Id.* at 1253.

⁷³ *See Becerra*, 544 F. Supp. 3d at 1290.

⁷⁴ *Becerra*, 544 F. Supp. 3d.

⁷⁵ *Id.*

⁷⁶ CDC, *supra* note 39.

also restricted cruise lines from imposing rules and regulations concerning vaccine statuses on its passengers, a burden Norwegian Cruise Line could not bear.⁷⁷

b. Norwegian Cruise Line Fights Back

On April 2, 2021, the Governor of Florida, Ron DeSantis, issued an executive order banning vaccine passports.⁷⁸ The order banned the Florida government from issuing vaccine passports, sharing vaccination records, and prohibited businesses in Florida from requiring proof of vaccination.⁷⁹ The CDC, on the other hand, highly recommends being fully vaccinated before traveling, internationally and domestically, and warns passengers to know their destination's requirement regarding travel.⁸⁰

The vaccine passport ban has not helped in bringing the cruise industry back afloat, at least not for NCL. News broke on July 13, 2021, that NCL was suing Florida for an injunction on the passport ban, arguing the state law impeded the cruise line from operating their ships safely, in the case of *Norwegian Cruise Line Holdings, Ltd. v. Rivkees*.⁸¹ NCL already had a plan in place requiring passengers to provide proof of vaccination; however, in Florida, NCL would be fined \$5,000 per passenger for violating their vaccine passport ban.⁸² In court pleadings, NCL indicated that it agreed to meet the CDC's requirements for cruises, with at least ninety-five percent of its employees and passengers vaccinated, but it would be difficult to fulfill because of Florida's vaccine passport ban.⁸³ NCL's lawsuit emerged out of necessity, as stated by CEO Frank Del Rio, "[e]ither I was going to be in violation of federal law — CDC regulations — or state law. That's not a position you want to be in."⁸⁴

NCL was hoping to have 100 percent of its passengers vaccinated to avoid outbreaks, especially from the highly contagious variants.⁸⁵ If the injunction was not granted to NCL, the cruise line threatened to stop offering cruises from Florida.⁸⁶ The judge, however, agreed with NCL's arguments stating that the Florida law violated the First Amendment and the Dormant Commerce Clause.⁸⁷ The Court held that the First Amendment was violated because it affected free speech as the statute was a content-based restriction.⁸⁸ Additionally, the Commerce Clause was affected because the Florida law "imposes substantial burdens on interstate commerce that

⁷⁷ *Norwegian Cruise Line Holdings, Ltd. v. Rivkees*, Case No. 21-22492-CIV, 2021 U.S. Dist. LEXIS 148279 (S.D. Fla. Aug. 8, 2021).

⁷⁸ Exec. Order No. 21-81, (Apr. 2, 2021), <https://www.flgov.com/wp-content/uploads/2021/04/EO-21-81.pdf>.

⁷⁹ *Id.*

⁸⁰ *U.S. Citizens, U.S. Nationals, U.S. Lawful Permanent Residents, and Immigrants: Travel to and from the United States*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/international-travel-during-covid19.html> (last updated Jan. 27, 2022).

⁸¹ Matt Hochberg, *NCL sues Florida over vaccine passport ban*, ROYAL CARIBBEAN BLOG (July 13, 2021), <https://www.royalcaribbeanblog.com/2021/07/13/ncl-sues-florida-over-vaccine-passport-ban>.

⁸² *Id.*

⁸³ News Service of Florida, *Judge backs Norwegian Cruise Line in Florida 'vaccine passport' fight*, TAMPA BAY TIMES (Aug. 9, 2021), <https://www.tampabay.com/news/business/2021/08/09/judge-backs-norwegian-cruise-line-in-florida-vaccine-passport-fight/>.

⁸⁴ Tom Hudson, *The cruise line boss who is challenging Florida's vaccine passport ban*, WLRN (Nov. 8, 2021), <https://www.wlrn.org/2021-11-08/the-cruise-line-boss-who-is-challenging-floridas-vaccine-passport-ban>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Rivkees*, 2021 U.S. Dist. LEXIS 148279, at *21.

⁸⁸ *Id.* at *21-*24.

will directly affect their abilities to operate [their] vessels.”⁸⁹ Therefore, the preliminary injunction was granted, allowing Norwegian Cruise Line to require documentation on passenger’s vaccine status.⁹⁰ The injunction was only applicable to NCL.⁹¹

Other cruise lines followed different protocols.⁹² Carnival has a vaccination exemption in place that is “limited to a very small number of children under twelve, and teens and adults with a medical condition who can provide written confirmation from their medical provider that they cannot be vaccinated for medical reasons.”⁹³ Carnival’s COVID-19 Guest Protocols indicate that “[t]he vaccine exemption process is currently open for sailings through December 31, 2022.”⁹⁴ The exemption is available for sailings from Florida and a few other states, however, travel insurance is required for passengers who are not vaccinated.⁹⁵ Therefore, the exempt passengers will not have to show proof of vaccination but will have to show proof of travel insurance,⁹⁶ most likely for cruise lines to mitigate their risk of lawsuits, as depicted in the following cases involving COVID-19.

c. The Fear Cases

Princess Cruise Lines dealt with many lawsuits from passengers claiming emotional distress at the beginning of the pandemic.⁹⁷ The court called these cases “‘fear cases’ because the suits all involved plaintiffs who did not test positive or manifest any COVID-19 symptoms but sought to recover based solely on the fear of contracting the virus while on the cruise.”⁹⁸

The first case, *Weissberger v. Princess Cruise Lines, Ltd.*, was brought by two passengers, the Weissbergers (“Plaintiffs”), who were aboard the *Grand Princess*.⁹⁹ The Weissbergers’ suit alleged negligence and gross negligence; although they did not test positive for COVID-19, they sought to recover damages for emotional distress as a product of fear of contracting COVID-19.¹⁰⁰ The Weissbergers sought over \$1 million alleging their health was at risk, and that they were traumatized.¹⁰¹ However, the Court established that the Weissbergers’ claims were actually for negligent infliction of emotional distress (“NIED”), not negligence and gross negligence.¹⁰² Under federal maritime law, in order to prove NIED, a zone of danger test must be satisfied, “(1) physical impact or (2) risk of immediate physical harm.”¹⁰³ The Court held the plaintiffs could not recover

⁸⁹ Rivkees, 2021 U.S. Dist. LEXIS 148279, at *58.

⁹⁰ Rivkees, 2021 U.S. Dist. LEXIS 148279.

⁹¹ *Id.*

⁹² See Hochberg, *supra* note 81.

⁹³ See *COVID-19 Guest Protocols*, CARNIVAL, <https://www.carnival.com/legal/covid-19-legal-notice/covid-19-guest-protocols> (last updated Mar. 23, 2022).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Hannah Smith, *Court dismisses COVID-19 ‘fear cases’ against Princess Cruises*, PROPERTY CASUALTY 360 (July 21, 2020), <https://www.propertycasualty360.com/2020/07/21/covid-19-fear-cases-against-princess-cruises-dismissed-by-california-federal-court-414-183603/?slreturn=20210605204506>.

⁹⁸ *Id.*

⁹⁹ *Weissberger v. Princess Cruise Lines, Ltd.*, No. 2:20-cv-02267-RGK-SK, 2020 U.S. Dist. LEXIS 123743 (C.D. Cal. July 14, 2020).

¹⁰⁰ *Id.*

¹⁰¹ Smith, *supra* note 97.

¹⁰² *Weissberger*, 2020 U.S. Dist. LEXIS 123743.

¹⁰³ Smith, *supra* note 97.

for NIED based only on the fear that they were near people who had COVID-19 on the ship; being exposed was not enough, a contraction of the virus would be necessary.¹⁰⁴

The Court granted “the motion to dismiss all ‘fear cases’ with prejudice since the plaintiffs are no longer on the ship anymore so there is no longer a risk of contracting the virus on board.”¹⁰⁵ Although the Weissbergers’ case was brought to court at the beginning of the COVID-19 Pandemic, it prepared cruise lines to protect themselves against passenger claims involving COVID-19.

d. The Other Cases

Other cases brought to court involved passengers who suffered an actual injury on cruise ships. One such case was *Landivar v. Celebrity Cruises Inc.*, which was brought to the United States District Court for the Southern District of Florida.¹⁰⁶ In February 2020, Celebrity Cruises warned all its passengers they would not be able to board the ship if they had traveled to China within fifteen days of boarding.¹⁰⁷ Alcides Landivar (“Landivar”) was traveling on a cruise ship that departed two weeks before the CDC issued the first “No Sail Order.”¹⁰⁸ During the voyage, some passengers contracted COVID-19 and the cruise operated normally; however, after being denied port entry in Chile, the ship traveled to San Diego, extending the trip substantially, leaving Landivar, a diabetic, with insufficient insulin during the extended trip.¹⁰⁹ On March 30, 2020, the ship finally docked; Landivar was rushed to the hospital testing positive for COVID-19 and had his leg amputated above the knee as a direct result of insufficient insulin on board the ship.¹¹⁰

Among the claims in the complaint, Landivar and his wife stated negligent misrepresentation and loss of consortium.¹¹¹ On July 12, 2021, the court rejected the loss of consortium claim because loss of consortium claims are not cognizable under federal maritime law, but upheld the misrepresentation claim on the grounds that the captain’s statements were sufficient to state a cognizable claim.¹¹² The captain made statements about everyone on the ship being healthy and happy and that no one aboard the ship had contracted COVID-19; all the passengers were also offered complimentary alcoholic beverages.¹¹³ This led the plaintiffs to reasonably believe they were able to enjoy the regular activities aboard the ship without worrying about contracting COVID-19.¹¹⁴ Additionally, once passengers began testing positive, the cruise line did not offer crew members masks or gloves, and continued normal activities aboard the ship.¹¹⁵ Celebrity Cruises had until July 26, 2021, to answer the rest of the plaintiff’s complaint.¹¹⁶ On December 28, 2021, Celebrity Cruises moved for summary judgment on the plaintiff’s remaining claims, which included negligent failure to warn, negligent management of COVID-19

¹⁰⁴ Smith, *supra* note 97.

¹⁰⁵ *Id.*

¹⁰⁶ *Landivar v. Celebrity Cruises Inc.*, No. 21-20815-CIV, 2021 U.S. Dist. LEXIS 129754 (S.D. Fla. Feb. 8, 2022).

¹⁰⁷ *Id.* at *3.

¹⁰⁸ *Landivar*, 2021 U.S. Dist. LEXIS 129754.

¹⁰⁹ *Id.* at *6.

¹¹⁰ *Id.* at *6-*7.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See Landivar*, 2021 U.S. Dist. LEXIS 129754, at *5.

¹¹⁴ *Id.*

¹¹⁵ *Landivar*, 2021 U.S. Dist. LEXIS 129754.

¹¹⁶ *Id.*

on board the cruise ship, and general negligence.¹¹⁷ The motion was granted in part and denied in part.¹¹⁸ As this case is pending before the court, its ruling will provide more answers to the cruise industry.

V. Recommendations

COVID-19-related claims are a nuanced issue given the novelty of the COVID-19 virus. It remains ambiguous whether state law or federal law will govern the cruise industry in pandemic-related issues. As seen in *Florida v. Becerra*, granting the preliminary injunction against the CDC's Conditional Sailing Order and Technical Instructions,¹¹⁹ and the CDC's subsequent exclusion of Florida in following its vaccine mandate,¹²⁰ state law may supersede the CDC. However, this does not mean that state law will always govern since state laws can be found unconstitutional, as seen in *Norwegian Cruise Line Holdings, Ltd. v. Rivkees*.¹²¹ The limited holding applied only to Norwegian Cruise Line, begs the Court to have a more uniform response to the cruising industry as a whole. As noted by Norwegian Cruise Line's CEO, this difference in treatment and resulting ambiguity leaves cruise lines, beyond just Norwegian Cruise Line, in the precarious position of either violating state or federal law.¹²² Therefore, the issue whether state laws can govern the cruising industry with unfettered discretion, whether federal laws should govern, and whether a middle ground between the two should apply, are issues ripe for consideration.¹²³ Ideally, the Supreme Court would establish a much-needed precedent to clear the ambiguity.

Finally, to avoid another shutdown and wave of economic crisis, cruise lines should be permitted to require all passengers be vaccinated. In December 2021, the CDC warned passengers not to travel since cruise ship travel was at a level four.¹²⁴ Now, the CDC highly recommends passengers get vaccinated before boarding.¹²⁵ The CDC's voluntary program is highly suggested for all cruise ships, as Aimee Treffiletti, a lead for the CDC's maritime unit, mentioned in a recent interview: "[t]here are a lot of really good reasons to, instead of using a legal order to enforce compliance . . . work collaboratively with the industry."¹²⁶ Besides making it a safer environment, requiring passengers to be vaccinated before sailing would comply with the uniformity the CDC is attempting to implement through its voluntary program, in addition to clearing up the court room of cases where vaccine requirements are in dispute.¹²⁷

¹¹⁷ *Landivar v. Celebrity Cruises, Inc.*, No. 21-20815-CIV, 2022 U.S. Dist. LEXIS 22579 (S.D. Fla. Feb. 8, 2022).

¹¹⁸ *Id.*

¹¹⁹ *Becerra*, 544 F. Supp. 3d.

¹²⁰ *Id.*

¹²¹ *Rivkees*, 2021 U.S. Dist. LEXIS 148279.

¹²² See News Service of Florida, *supra* note 83.

¹²³ See generally Aaron Saunders, *DeSantis Files Appeal Arguing Norwegian Cruise Line Proof of Vaccination Should Be Tossed Out*, CRUISE CRITIC (Oct. 6, 2021), <https://www.cruise critic.com/news/6520/>.

¹²⁴ Bailey Shulz, *CDC eases travel warning against cruise ships, suggests passengers get vaccines before sailing*, USA TODAY (Feb. 15, 2022), <https://www.usatoday.com/story/travel/cruises/2022/02/15/cdc-travel-guidance-cruise-ship/6803956001/>.

¹²⁵ *Id.* (The CDC states, "[i]f you are not up to date with COVID-19 vaccines, avoid cruise ship travel.")

¹²⁶ Hannah Sampson, *Cruises will no longer be required to follow federal COVID rules starting in January*, THE SEATTLE TIMES (Oct. 26, 2021), <https://www.seattletimes.com/nation-world/cruises-will-no-longer-be-required-to-follow-federal-covid-rules-starting-in-january/>.

¹²⁷ See *Rivkees*, 2021 U.S. Dist. LEXIS 148279.