111 S.Ct. 1522
Supreme Court of the United States

CARNIVAL CRUISE LINES, INC., Petitioner
v.
Eulala SHUTE, et vir.

No. 89–1647.
|
Argued Jan. 15, 1991.
|
Decided April 17, 1991.

Synopsis

Cruise ship passengers brought action against cruise line seeking damages for injuries sustained in slip and fall. The United States District Court for the Western District of Washington, Carolyn R. Dimmick, J., granted cruise line's motion for summary judgment. Passengers appealed. The Court of Appeals for the Ninth Circuit, 863 F.2d 1437,reversed and remanded. Subsequently, the Court of Appeals, 872 F.2d 930, withdrew opinion and certified question to the Washington Supreme Court. The Washington Supreme Court, 113 Wash.2d 763, 783 P.2d 78, answered question. The Court of Appeals, 897 F.2d 377,reversed and remanded. Certiorari was granted. The Supreme Court, Justice Blackmun, held that: (1) forum selection clause in cruise line's passage contract ticket, requiring litigation of all disputes in Florida, was reasonable and enforceable, and (2) forum selection clause did not violate statute which prohibits vessel owner from inserting in any contract a provision depriving claimant of trial by a court of competent jurisdiction for loss of life or personal injury resulting from negligence.

Reversed.

Justice Stevens filed a dissenting opinion in which Justice Marshall joined.

Order on remand, 934 F.2d 1091.

****1522** *Syllabus* [*]

After the respondents Shute, a Washington State couple, purchased passage on a ship owned by petitioner, a Florida-based cruise line, petitioner sent them tickets containing a clause designating courts in Florida as the agreed-upon fora for the resolution of disputes. The Shutes boarded the ship in ****1523** Los Angeles, and, while in international waters off the Mexican coast, Mrs. Shute suffered injuries when she slipped on a deck mat. The Shutes filed suit in a Washington Federal District Court, which granted summary judgment for petitioner. The Court of Appeals reversed, holding, *inter alia,* that the forum-selection clause should not be enforced under *The Bremen v. Zapata Off–Shore Co.,* 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 because it was not "freely bargained for," and because its enforcement would operate to deprive the Shutes of their day in court in light of evidence indicating that they were physically and financially incapable of pursuing the litigation in Florida.

Held: The Court of Appeals erred in refusing to enforce the forum-selection clause. Pp. 1525–1529.

(a) *The Bremen* Court's statement that a freely negotiated forum-selection clause, such as the one there at issue, should be given full effect, 407 U.S., at 12–13, 92 S.Ct., at 1914–1915, does not support the Court of Appeals' determination that a nonnegotiated forum clause in a passage contract is never enforceable simply because it is not the subject of bargaining. Whereas it was entirely reasonable for *The Bremen* Court to have expected the parties to have negotiated with care in selecting a forum for the

resolution of disputes arising from their complicated international agreement, it would be entirely unreasonable to assume that a cruise passenger would or could negotiate the terms of a forum clause in a routine commercial cruise ticket form. Nevertheless, including a reasonable forum clause in such a form contract well may be permissible for several reasons. Because it is not unlikely that a mishap in a cruise could subject a cruise line to litigation in several different fora, the line has a special interest in limiting such fora. Moreover, a clause establishing *ex ante* the dispute resolution forum has the salutary effect of dispelling confusion as to where suits may be brought and defended, thereby sparing litigants time and expense and conserving judicial resources. Furthermore, it is likely that passengers purchasing tickets ***586** containing a forum clause like the one here at issue benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the fora in which it may be sued. Pp. 1526–1528.

(b) The Court of Appeals' conclusion that the clause here at issue should not be enforced because the Shutes are incapable of pursuing this litigation in Florida is not justified by *The Bremen* Court's statement that "the serious inconvenience of the contractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." 407 U.S., at 17, 92 S.Ct., at 1917. That statement was made in the context of a hypothetical "agreement between two Americans to resolve their essentially local disputes in a remote alien forum." *Ibid.* Here, in contrast, Florida is not such a forum, nor—given the location of Mrs. Shute's accident—is this dispute an essentially local one inherently more suited to resolution in Washington than in Florida. In light of these distinctions, and because the Shutes do not claim lack of notice of the forum clause, they have not satisfied the "heavy burden of proof," *ibid.,* required to set aside the clause on grounds of inconvenience. Pp. 1527–1528.

(c) Although forum-selection clauses contained in form passage contracts are subject to judicial scrutiny for fundamental fairness, there is no indication that petitioner selected Florida to discourage cruise passengers from pursuing legitimate claims or obtained the Shutes' accession to the forum clause by fraud or overreaching. P. 1528.

(d) By its plain language, the forum-selection clause at issue does not violate 46 U.S.C.App. § 183c, which, *inter alia,* prohibits a vessel owner from inserting in any contract a provision depriving a claimant of a trial "by court of competent jurisdiction" for loss of life or personal injury resulting from negligence. Pp. 1528–1529.

****1524** 897 F.2d 377 (CA9 1990), reversed.

BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, O'CONNOR, SCALIA, KENNEDY, and SOUTER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post,* p. 1529.

Attorneys and Law Firms

Richard K. Willard argued the cause for petitioner. With him on the briefs were *David L. Roll* and *Lawrence D. Winson.*

Gregory J. Wall argued the cause and filed a brief for respondents.*

*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States by *Herbert L. Fenster, Stanley W. Landfair,* and *Robin S. Conrad;* and for the International Committee of Passenger Lines by *John A. Flynn* and *James B. Nebel.*

Opinion

***587** Justice BLACKMUN delivered the opinion of the Court.

In this admiralty case we primarily consider whether the United States Court of Appeals for the Ninth Circuit correctly refused to enforce a forum-selection clause contained in tickets issued by petitioner Carnival Cruise Lines, Inc., to respondents Eulala and Russel Shute.

I

The Shutes, through an Arlington, Wash., travel agent, purchased passage for a 7–day cruise on petitioner's ship, the *Tropicale.* Respondents paid the fare to the agent who forwarded the payment to petitioner's headquarters in Miami, Fla. Petitioner then prepared the tickets and sent them to respondents in the State of Washington. The face of each ticket, at its left-hand lower corner, contained this admonition:

"SUBJECT TO CONDITIONS OF CONTRACT ON LAST PAGES **IMPORTANT!**
PLEASE READ CONTRACT—ON LAST PAGES 1, 2, 3" App. 15.

The following appeared on "contract page 1" of each ticket:

"TERMS AND CONDITIONS OF PASSAGE CONTRACT TICKET

. . . . .

"3. (a) The acceptance of this ticket by the person or persons named hereon as passengers shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.

. . . . .

"8. It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract ***588** shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A., to the exclusion of the Courts of any other state or country." *Id.,* at 16.

The last quoted paragraph is the forum-selection clause at issue.

II

Respondents boarded the *Tropicale* in Los Angeles, Cal. The ship sailed to Puerto Vallarta, Mexico, and then returned to Los Angeles. While the ship was in international waters off the Mexican coast, respondent Eulala Shute was injured when she slipped on a deck mat during a guided tour of the ship's galley. Respondents filed suit against petitioner in the United States District Court for the Western District of Washington, claiming that Mrs. Shute's injuries had been caused by the negligence of Carnival Cruise Lines and its employees. *Id.,* at 4.

Petitioner moved for summary judgment, contending that the forum clause in respondents' tickets required the Shutes to bring their suit against petitioner in a court in the State of Florida. Petitioner contended, alternatively, that the District Court lacked personal jurisdiction over petitioner because petitioner's contacts with the State of Washington were insubstantial. The District Court granted the motion, holding that petitioner's contacts with Washington were constitutionally insufficient to support the exercise of personal jurisdiction. See App. to Pet. for Cert. 60a.

The Court of Appeals reversed. Reasoning that "but for" petitioner's solicitation of business in Washington, respondents ****1525** would not have taken the cruise and Mrs. Shute would not have been injured, the court concluded that petitioner had sufficient contacts with Washington to justify the District Court's exercise of personal jurisdiction. 897 F.2d 377, 385–386 (CA9 1990).[*]

***589** Turning to the forum-selection clause, the Court of Appeals acknowledged that a court concerned with the enforceability of such a clause must begin its analysis with *The Bremen v. Zapata Off–Shore Co.,* 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972), where this Court held that forum-selection clauses, although not "historically ... favored," are "prima facie valid." *Id.,* at 9–10, 92 S.Ct., at 1913. See 897 F.2d, at 388. The appellate court concluded that the forum clause should not be enforced because it "was not freely bargained for." *Id.,* at 389. As an "independent justification" for refusing to enforce the clause, the Court of Appeals noted that there was evidence in the record to indicate that "the Shutes are physically and financially incapable of pursuing this litigation in Florida" and that the enforcement of the clause would operate to deprive them of their day in court and thereby contravene this Court's holding in *The Bremen.* 897 F.2d, at 389.

We granted certiorari to address the question whether the Court of Appeals was correct in holding that the District Court should hear respondents' tort claim against petitioner. 498 U.S. 807–808, 111 S.Ct. 39, 112 L.Ed.2d 16 (1990). Because we find the forum-selection clause to be dispositive of this question, we need not consider petitioner's constitutional argument as to personal jurisdiction. See *Ashwander v. TVA,* 297 U.S. 288, 347, 56 S.Ct. 466, 483, 80 L.Ed. 688 (1936) (Brandeis, J., concurring) (" 'It is not the habit of the Court to decide questions of a constitutional nature unless ***590** absolutely necessary to a decision of the case,' " quoting *Burton v. United States,* 196 U.S. 283, 295, 25 S.Ct. 243, 245, 49 L.Ed. 482 (1905)).

III

We begin by noting the boundaries of our inquiry. First, this is a case in admiralty, and federal law governs the enforceability of the forum-selection clause we scrutinize. See *Archawski v. Hanioti,* 350 U.S. 532, 533, 76 S.Ct. 617, 619, 100 L.Ed. 676 (1956); *The Moses Taylor,* 4 Wall. 411, 427, 18 L.Ed. 397 (1867); Tr. of Oral Arg. 36–37, 12, 47–48. Cf. *Stewart Organization, Inc. v. Ricoh Corp.,* 487 U.S. 22, 28–29, 108 S.Ct. 2239, 2243–2244, 101 L.Ed.2d 22 (1988). Second, we do not address the question whether respondents had sufficient notice of the forum clause before entering the contract for passage. Respondents essentially have conceded that they had notice of the forum-selection provision. Brief for Respondents 26 ("The respondents do not contest the incorporation of the provisions nor [*sic*] that the forum selection clause was reasonably communicated to the respondents, as much as three pages of fine print can be communicated"). Additionally, the Court of Appeals evaluated the enforceability of the forum clause under the assumption, although "doubtful," that respondents could be deemed to have had knowledge of the clause. See 897 F.2d, at 389, and n. 11.

****1526** Within this context, respondents urge that the forum clause should not be enforced because, contrary to this Court's teachings in *The Bremen,* the clause was not the product of negotiation, and enforcement effectively would deprive respondents of their day in court. Additionally, respondents contend that the clause violates the Limitation of Vessel Owner's Liability Act, 46 U.S.C.App. § 183c. We consider these arguments in turn.

IV

A

Both petitioner and respondents argue vigorously that the Court's opinion in *The Bremen* governs this case, and each side purports to find ample support for its position in that ***591** opinion's broad-ranging language. This seeming paradox derives in large part from key factual differences between this case and *The Bremen,* differences that preclude an automatic and simple application of *The Bremen*'s general principles to the facts here.

In *The Bremen,* this Court addressed the enforceability of a forum-selection clause in a contract between two business corporations. An American corporation, Zapata, made a contract with Unterweser, a German corporation, for the towage of

Zapata's oceangoing drilling rig from Louisiana to a point in the Adriatic Sea off the coast of Italy. The agreement provided that any dispute arising under the contract was to be resolved in the London Court of Justice. After a storm in the Gulf of Mexico seriously damaged the rig, Zapata ordered Unterweser's ship to tow the rig to Tampa, Fla., the nearest point of refuge. Thereafter, Zapata sued Unterweser in admiralty in federal court at Tampa. Citing the forum clause, Unterweser moved to dismiss. The District Court denied Unterweser's motion, and the Court of Appeals for the Fifth Circuit, sitting en banc on rehearing, and by a sharply divided vote, affirmed. *In re Complaint of Unterweser Reederei GmbH,* 446 F.2d 907 (1971).

This Court vacated and remanded, stating that, in general, "a freely negotiated private international agreement, unaffected by fraud, undue influence, or overweening bargaining power, such as that involved here, should be given full effect." 407 U.S., at 12–13, 92 S.Ct. at 1914–1915 (footnote omitted). The Court further generalized that "in the light of present-day commercial realities and expanding international trade we conclude that the forum clause should control absent a strong showing that it should be set aside." *Id.,* at 15, 92 S.Ct., at 1916. The Court did not define precisely the circumstances that would make it unreasonable for a court to enforce a forum clause. Instead, the Court discussed a number of factors that made it reasonable to enforce the clause at issue in *The Bremen* and ***592** that, presumably, would be pertinent in any determination whether to enforce a similar clause.

In this respect, the Court noted that there was "strong evidence that the forum clause was a vital part of the agreement, and [that] it would be unrealistic to think that the parties did not conduct their negotiations, including fixing the monetary terms, with the consequences of the forum clause figuring prominently in their calculations." *Id.,* at 14, 92 S.Ct., 1915 (footnote omitted). Further, the Court observed that it was not "dealing with an agreement between two Americans to resolve their essentially local disputes in a remote alien forum," and that in such a case, "the serious inconvenience of the contractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." *Id.,* at 17, 92 S.Ct., at 1917. The Court stated that even where the forum clause establishes a remote forum for resolution of conflicts, "the party claiming [unfairness] should bear a heavy burden of proof." *Ibid.*

In applying *The Bremen,* the Court of Appeals in the present litigation took note of the foregoing "reasonableness" factors and rather automatically decided that the forum-selection clause was unenforceable because, ****1527** unlike the parties in *The Bremen,* respondents are not business persons and did not negotiate the terms of the clause with petitioner. Alternatively, the Court of Appeals ruled that the clause should not be enforced because enforcement effectively would deprive respondents of an opportunity to litigate their claim against petitioner.

The Bremen concerned a "far from routine transaction between companies of two different nations contemplating the tow of an extremely costly piece of equipment from Louisiana across the Gulf of Mexico and the Atlantic Ocean, through the Mediterranean Sea to its final destination in the Adriatic Sea." *Id.,* at 13, 92 S.Ct., at 1915. These facts suggest that, even apart from the evidence of negotiation regarding the forum clause, it was entirely reasonable for the Court in *The* ***593** *Bremen* to have expected Unterweser and Zapata to have negotiated with care in selecting a forum for the resolution of disputes arising from their special towing contract.

In contrast, respondents' passage contract was purely routine and doubtless nearly identical to every commercial passage contract issued by petitioner and most other cruise lines. See, *e.g., Hodes v. S.N.C. Achille Lauro ed Altri–Gestione,* 858 F.2d 905, 910 (CA3 1988), cert. dism'd, 490 U.S. 1001, 109 S.Ct. 1633, 104 L.Ed.2d 149 (1989). In this context, it would be entirely unreasonable for us to assume that respondents—or any other cruise passenger—would negotiate with petitioner the terms of a forum-selection clause in an ordinary commercial cruise ticket. Common sense dictates that a ticket of this kind will be a form contract the terms of which are not subject to negotiation, and that an individual purchasing the ticket will not have bargaining parity with the cruise line. But by ignoring the crucial differences in the business contexts in which the respective contracts were executed, the Court of Appeals' analysis seems to us to have distorted somewhat this Court's holding in *The Bremen.*

In evaluating the reasonableness of the forum clause at issue in this case, we must refine the analysis of *The Bremen* to account for the realities of form passage contracts. As an initial matter, we do not adopt the Court of Appeals' determination that a

nonnegotiated forum-selection clause in a form ticket contract is never enforceable simply because it is not the subject of bargaining. Including a reasonable forum clause in a form contract of this kind well may be permissible for several reasons: First, a cruise line has a special interest in limiting the fora in which it potentially could be subject to suit. Because a cruise ship typically carries passengers from many locales, it is not unlikely that a mishap on a cruise could subject the cruise line to litigation in several different fora. See *The Bremen,* 407 U.S., at 13, and n. 15, 92 S.Ct., at 1915, and n. 15; *Hodes,* 858 F.2d, at 913. Additionally, a clause establishing *ex ante* the forum for dispute resolution has the salutary ***594** effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions. See *Stewart Organization,* 487 U.S., at 33, 108 S.Ct., at 2246 (concurring opinion). Finally, it stands to reason that passengers who purchase tickets containing a forum clause like that at issue in this case benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the fora in which it may be sued. Cf. *Northwestern Nat. Ins. Co. v. Donovan,* 916 F.2d 372, 378 (CA7 1990).

We also do not accept the Court of Appeals' "independent justification" for its conclusion that *The Bremen* dictates that the clause should not be enforced because "[t]here is evidence in the record to indicate that the Shutes are physically and financially incapable of pursuing this litigation in Florida." 897 F.2d, at 389. We do not defer to the Court of Appeals' findings of fact. In ****1528** dismissing the case for lack of personal jurisdiction over petitioner, the District Court made no finding regarding the physical and financial impediments to the Shutes' pursuing their case in Florida. The Court of Appeals' conclusory reference to the record provides no basis for this Court to validate the finding of inconvenience. Furthermore, the Court of Appeals did not place in proper context this Court's statement in *The Bremen* that "the serious inconvenience of the contractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." 407 U.S., at 17, 92 S.Ct., at 1917. The Court made this statement in evaluating a hypothetical "agreement between two Americans to resolve their essentially local disputes in a remote alien forum." *Ibid.* In the present case, Florida is not a "remote alien forum," nor—given the fact that Mrs. Shute's accident occurred off the coast of Mexico—is this dispute an essentially local one inherently more suited to resolution in the State of Washington than in Florida. In ***595** light of these distinctions, and because respondents do not claim lack of notice of the forum clause, we conclude that they have not satisfied the "heavy burden of proof," *ibid.,* required to set aside the clause on grounds of inconvenience.

It bears emphasis that forum-selection clauses contained in form passage contracts are subject to judicial scrutiny for fundamental fairness. In this case, there is no indication that petitioner set Florida as the forum in which disputes were to be resolved as a means of discouraging cruise passengers from pursuing legitimate claims. Any suggestion of such a bad-faith motive is belied by two facts: Petitioner has its principal place of business in Florida, and many of its cruises depart from and return to Florida ports. Similarly, there is no evidence that petitioner obtained respondents' accession to the forum clause by fraud or overreaching. Finally, respondents have conceded that they were given notice of the forum provision and, therefore, presumably retained the option of rejecting the contract with impunity. In the case before us, therefore, we conclude that the Court of Appeals erred in refusing to enforce the forum-selection clause.

B

Respondents also contend that the forum-selection clause at issue violates 46 U.S.C.App. § 183c. That statute, enacted in 1936, see ch. 521, 49 Stat. 1480, provides:

> "It shall be unlawful for the ... owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner ... from liability, or from liability beyond any stipulated amount, for such loss or injury, or (2) purporting in such event to lessen, weaken,

> or avoid the right of any claimant to a trial by court of competent ***596** jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such rule, regulation, contract, or agreement are hereby declared to be against public policy and shall be null and void and of no effect."

By its plain language, the forum-selection clause before us does not take away respondents' right to "a trial by [a] court of competent jurisdiction" and thereby contravene the explicit proscription of § 183c. Instead, the clause states specifically that actions arising out of the passage contract shall be brought "if at all," in a court "located in the State of Florida," which, plainly, is a "court of competent jurisdiction" within the meaning of the statute.

Respondents appear to acknowledge this by asserting that although the forum clause does not directly prevent the determination of claims against the cruise line, it causes plaintiffs unreasonable hardship in asserting ****1529** their rights and therefore violates Congress' intended goal in enacting § 183c. Significantly, however, respondents cite no authority for their contention that Congress' intent in enacting § 183c was to avoid having a plaintiff travel to a distant forum in order to litigate. The legislative history of § 183c suggests instead that this provision was enacted in response to passenger-ticket conditions purporting to limit the shipowner's liability for negligence or to remove the issue of liability from the scrutiny of any court by means of a clause providing that "the question of liability and the measure of damages shall be determined by arbitration." See S.Rep. No. 2061, 74th Cong., 2d Sess., 6 (1936); H.R.Rep. No. 2517, 74th Cong., 2d Sess., 6 (1936). See also Safety of Life and Property at Sea: Hearings before the House Committee on Merchant Marine and Fisheries, 74th Cong., 2d Sess., pt. 4, pp. 20, 36–37, 57, 109–110, 119 (1936). There was no prohibition of a forum-selection clause. Because the clause before us allows for judicial resolution of claims against petitioner and does ***597** not purport to limit petitioner's liability for negligence, it does not violate § 183c.

V

The judgment of the Court of Appeals is reversed.

It is so ordered.

Justice STEVENS, with whom Justice MARSHALL joins, dissenting.

The Court prefaces its legal analysis with a factual statement that implies that a purchaser of a Carnival Cruise Lines passenger ticket is fully and fairly notified about the existence of the choice of forum clause in the fine print on the back of the ticket. See *ante,* at 1524. Even if this implication were accurate, I would disagree with the Court's analysis. But, given the Court's preface, I begin my dissent by noting that only the most meticulous passenger is likely to become aware of the forum-selection provision. I have therefore appended to this opinion a facsimile of the relevant text, using the type size that actually appears in the ticket itself. A careful reader will find the forum-selection clause in the 8th of the 25 numbered paragraphs.

Of course, many passengers, like the respondents in this case, see *ante,* at 1524, will not have an opportunity to read paragraph 8 until they have actually purchased their tickets. By this point, the passengers will already have accepted the condition set forth in paragraph 16(a), which provides that "[t]he Carrier shall not be liable to make any refund to passengers in respect of ... tickets wholly or partly not used by a passenger." Not knowing whether or not that provision is legally enforceable, I assume that the average passenger would accept the risk of having to file suit in Florida in the event of an injury, rather than canceling—without a refund—a planned vacation at the last minute. The fact that the cruise line can reduce its litigation costs, and therefore its liability insurance premiums, by forcing this choice on its passengers does not, in my opinion, suffice to render the ***598** provision reasonable. Cf. *Steven v. Fidelity & Casualty Co. of New York,* 58 Cal.2d 862, 883, 27 Cal.Rptr. 172, 186, 377 P.2d

284, 298 (1962) (refusing to enforce limitation on liability in insurance policy because insured "must purchase the policy before he even knows its provisions").

Even if passengers received prominent notice of the forum-selection clause before they committed the cost of the cruise, I would remain persuaded that the clause was unenforceable under traditional principles of federal admiralty law and is "null and void" under the terms of Limitation of Vessel Owners Liability Act, ch. 521, 49 Stat. 1480, 46 U.S.C.App. § 183c, which was enacted in 1936 to invalidate expressly stipulations limiting shipowners' liability for negligence.

Exculpatory clauses in passenger tickets have been around for a long time. These ****1530** clauses are typically the product of disparate bargaining power between the carrier and the passenger, and they undermine the strong public interest in deterring negligent conduct. For these reasons, courts long before the turn of the century consistently held such clauses unenforceable under federal admiralty law. Thus, in a case involving a ticket provision purporting to limit the shipowner's liability for the negligent handling of baggage, this Court wrote:

> "It is settled in the courts of the United States that exemptions limiting carriers from responsibility for the negligence of themselves or their servants are both unjust and unreasonable, and will be deemed as wanting in the element of voluntary assent; and, besides, that such conditions are in conflict with public policy. This doctrine was announced so long ago, and has been so frequently reiterated, that it is elementary. We content ourselves with referring to the cases of the *Baltimore & Ohio &c. Railway v. Voigt,* 176 U.S. 498, 505, 507 [20 S.Ct. 385, 388, 44 L.Ed. 560 (1900)], and *Knott v. Botany Mills,* 179 U.S. 69, 71 [21 S.Ct. 30, 30–31, 45 L.Ed. 90 (1900)], where the previously adjudged cases are referred to and the principles ***599** by them expounded are restated." *The Kensington,* 183 U.S. 263, 268, 22 S.Ct. 102, 104, 46 L.Ed. 190 (1902).

Clauses limiting a carrier's liability or weakening the passenger's right to recover for the negligence of the carrier's employees come in a variety of forms. Complete exemptions from liability for negligence or limitations on the amount of the potential damage recovery,[1] requirements that notice of claims be filed within an unreasonably short period of time,[2] provisions mandating a choice of law that is favorable to the defendant in negligence cases,[3] and forum-selection clauses are all similarly designed to put a thumb on the carrier's side of the scale of justice.[4]

***600** Forum-selection clauses in passenger tickets involve the intersection of two strands of traditional contract law that qualify the general rule that courts will enforce the terms of a contract as written. Pursuant to the first strand, courts traditionally have reviewed with heightened scrutiny the terms of contracts of adhesion, form contracts offered on a take-or-leave basis by a party with ****1531** stronger bargaining power to a party with weaker power. Some commentators have questioned whether contracts of adhesion can justifiably be enforced at all under traditional contract theory because the adhering party generally enters into them without manifesting knowing and voluntary consent to all their terms. See, *e.g.,* Rakoff, Contracts of Adhesion: An Essay in Reconstruction, 96 Harv.L.Rev. 1173, 1179–1180 (1983); Slawson, Mass Contracts: Lawful Fraud in California, 48 S.Cal.L.Rev. 1, 12–13 (1974); K. Llewellyn, The Common Law Tradition 370–371 (1960).

The common law, recognizing that standardized form contracts account for a significant portion of all commercial agreements, has taken a less extreme position and instead subjects terms in contracts of adhesion to scrutiny for reasonableness. Judge J. Skelly Wright set out the state of the law succinctly in *Williams v. Walker–Thomas Furniture Co.,* 121 U.S.App.D.C. 315, 319–320, 350 F.2d 445, 449–450 (1965) (footnotes omitted):

> "Ordinarily, one who signs an agreement without full knowledge of its terms might be held to assume the risk that he has entered a one-sided bargain. But when a party of little bargaining power, and hence little real choice, signs a commercially unreasonable contract with little or no knowledge of its terms, it is hardly likely that his consent, or even an objective manifestation of his ***601** consent, was ever given to all of the terms. In such a case the usual rule that the terms of the agreement are not to be questioned

> should be abandoned and the court should consider whether the terms of the contract are so unfair that enforcement should be withheld."

See also *Steven,* 58 Cal.2d, at 879–883, 27 Cal.Rptr. at 183–185, 377 P.2d, at 295–297; *Henningsen v. Bloomfield Motors, Inc.,* 32 N.J. 358, 161 A.2d 69 (1960).

The second doctrinal principle implicated by forum-selection clauses is the traditional rule that "contractual provisions, which seek to limit the place or court in which an action may ... be brought, are invalid as contrary to public policy." See Dougherty, Validity of Contractual Provision Limiting Place or Court in Which Action May Be Brought, 31 A.L.R.4th 404, 409, § 3 (1984). See also *Home Insurance Co. v. Morse,* 20 Wall. 445, 451, 22 L.Ed. 365 (1874). Although adherence to this general rule has declined in recent years, particularly following our decision in *The Bremen v. Zapata Off–Shore Co.,* 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972), the prevailing rule is still that forum-selection clauses are not enforceable if they were not freely bargained for, create additional expense for one party, or deny one party a remedy. See 31 A.L.R.4th, at 409–438 (citing cases). A forum-selection clause in a standardized passenger ticket would clearly have been unenforceable under the common law before our decision in *The Bremen,* see 407 U.S., at 9, and n. 10, 92 S.Ct., at 1912–13, and n. 10, and, in my opinion, remains unenforceable under the prevailing rule today.

The Bremen, which the Court effectively treats as controlling this case, had nothing to say about stipulations printed on the back of passenger tickets. That case involved the enforceability of a forum-selection clause in a freely negotiated international agreement between two large corporations providing for the towage of a vessel from the Gulf of Mexico to the Adriatic Sea. The Court recognized that such towage agreements had generally been held unenforceable in American ***602** courts, [5] but held that the doctrine of ****1532** those cases did not extend to commercial arrangements between parties with equal bargaining power.

The federal statute that should control the disposition of the case before us today was enacted in 1936 when the general rule denying enforcement of forum-selection clauses was indisputably widely accepted. The principal subject of the statute concerned the limitation of shipowner liability, but as the following excerpt from the House Report explains, the section that is relevant to this case was added as a direct response to shipowners' ticketing practices.

> "During the course of the hearings on the bill (H.R. 9969) there was also brought to the attention of the committee a practice of providing on the reverse side of steamship tickets that in the event of damage or injury caused by the negligence or fault of the owner or his servants, the liability of the owner shall be limited to a stipulated amount, in some cases $5,000, and in others substantially lower amounts, or that in such event the question of liability and the measure of damages *shall be determined by arbitration.* The amendment to chapter 6 of title 48 of the Revised Statutes proposed to be made by section 2 of the committee amendment is intended to, and in the opinion of the committee will, *put a stop to all such practices and practices of a like character.*" H.R.Rep. No. 2517, 74th Cong., 2d Sess., 6–7 (1936) (emphasis added); see also S.Rep. No. 2061, 74th Cong., 2d Sess., 6–7 (1936).

***603** The intent to "put a stop to all such practices and practices of a like character" was effectuated in the second clause of the statute. It reads:

> "It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability, or from liability beyond any stipulated amount, for

such loss or injury, or (2) *purporting in such event to lessen, weaken, or avoid the right of any claimant to a trial by court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor.* All such provisions or limitations contained in any such rule, regulation, contract, or agreement are declared to be against public policy and shall be null and void and of no effect." 46 U.S.C.App. § 183c (emphasis added).

The stipulation in the ticket that Carnival Cruise sold to respondents certainly lessens or weakens their ability to recover for the slip and fall incident that occurred off the west coast of Mexico during the cruise that originated and terminated in Los Angeles, California. It is safe to assume that the witnesses—whether other passengers or members of the crew—can be assembled with less expense and inconvenience at a west coast forum than in a Florida court several thousand miles from the scene of the accident.

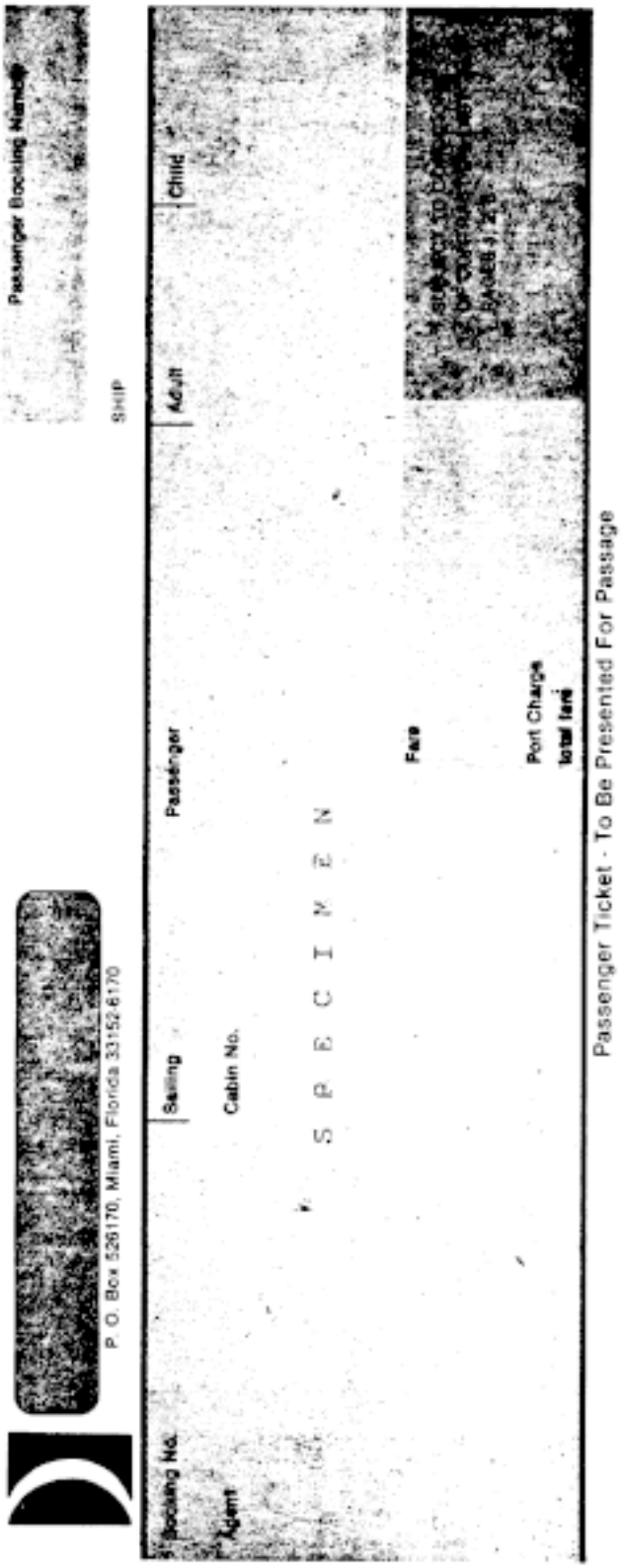
A liberal reading of the 1936 statute is supported by both its remedial purpose and by the legislative history's general condemnation of "all such practices." Although the statute does not specifically mention forum-selection clauses, its language is broad enough to encompass them. The absence of a ***604** specific reference is adequately explained by the fact that such clauses were already unenforceable under common law and would not often have been used by carriers, which were relying on stipulations that purported to exonerate them from liability entirely. Cf. *Moskal v. United States,* 498 U.S. 103, 110–113, 111 S.Ct. 461, 466–468, 112 L.Ed.2d 449 (1990).

The Courts of Appeals, construing an analogous provision of the Carriage of Goods by Sea Act, 46 U.S.C.App. § 1300 *et seq.,* have unanimously held invalid as limitations on ****1533** liability forum-selection clauses requiring suit in foreign jurisdictions. See, *e.g., Hughes Drilling Fluids v. M/V Luo Fu Shan,* 852 F.2d 840 (CA5 1988), cert. denied, 489 U.S. 1033, 109 S.Ct. 1171, 103 L.Ed.2d 229 (1989); *Union Ins. Soc. of Canton, Ltd. v. S.S. Elikon,* 642 F.2d 721, 724–725 (CA4 1981); *Indussa Corp. v. S.S. Ranborg,* 377 F.2d 200, 203–204 (CA2 1967). Commentators have also endorsed this view. See, *e.g.,* G. Gilmore & C. Black, The Law of Admiralty 145, and n. 23 (2d ed. 1975); Mendelsohn, Liberalism, Choice of Forum Clauses and the Hague Rules, 2 J. of Maritime Law & Comm. 661, 663–666 (1971). The forum-selection clause here does not mandate suit in a foreign jurisdiction, and therefore arguably might have less of an impact on a plaintiff's ability to recover. See *Fireman's Fund American Ins. Cos. v. Puerto Rican Forwarding Co.,* 492 F.2d 1294 (CA1 1974). However, the plaintiffs in this case are not large corporations but individuals, and the added burden on them of conducting a trial at the opposite end of the country is likely proportional to the additional cost to a large corporation of conducting a trial overseas. [6]

Under these circumstances, the general prohibition against stipulations purporting "to lessen, weaken, or avoid" the passenger's right to a trial certainly should be construed to apply to the manifestly unreasonable stipulation in these passengers' ***605** tickets. Even without the benefit of the statute, I would continue to apply the general rule that prevailed prior to our decision in *The Bremen* to forum-selection clauses in passenger tickets.

I respectfully dissent.

****1534**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Booking No.
Agent
Sailing
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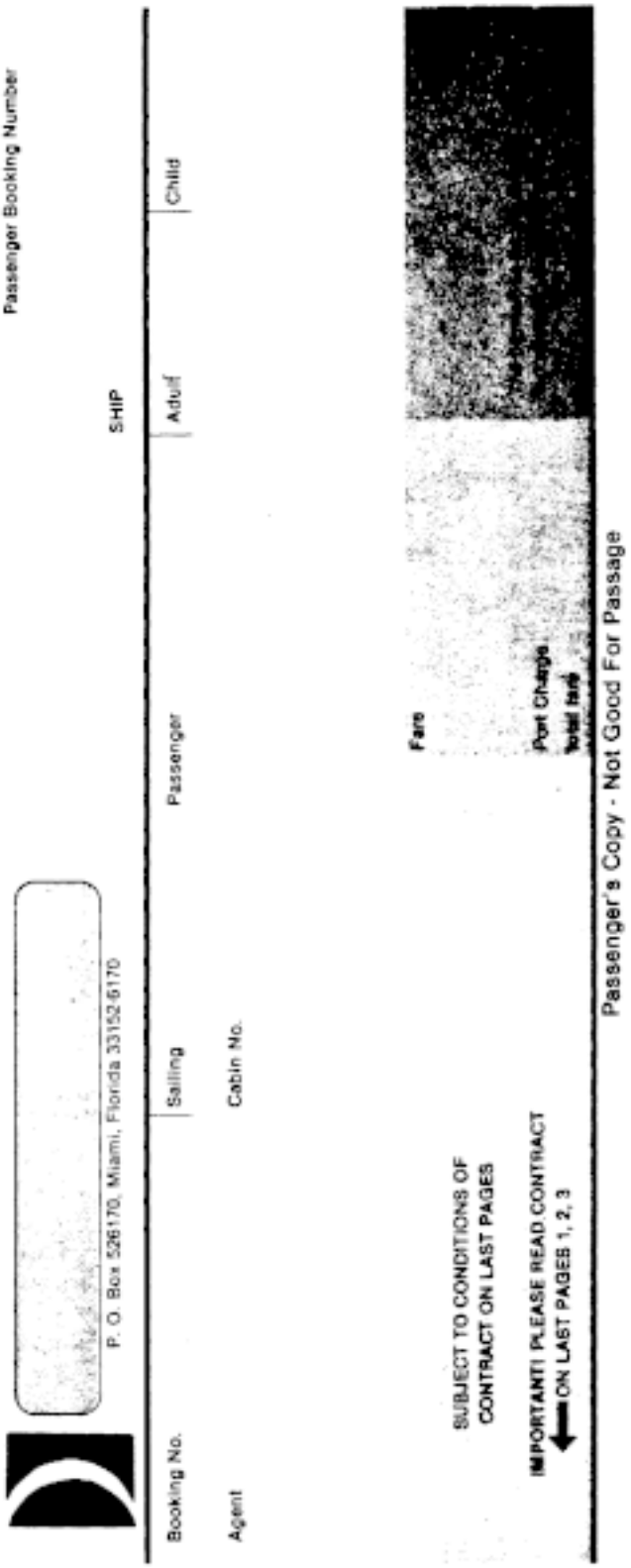
Adult
Child
S P E C I M E N
Fare
Port Charge
Total fare
Passenger Ticket - To Be Presented For Passage

**1535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Child
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Booking No.
Sailing
Passenger
Agent
Cabin No.
Fare
Port Charges
SUBJECT TO CONDITIONS OF CONTRACT ON LAST PAGES
IMPORTANT! PLEASE READ CONTRACT ON LAST PAGES 1, 2, 3
Passenger's Copy - Not Good For Passage

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TERMS AND CONDITIONS OF PASSAGE CONTRACT TICKET

1 (a) Whenever the word "Carrier" is used in this Contract it shall mean and include, jointly and severally, the Vessel, its owners, operators, charterers and lenders. The term "Passenger" shall include the plural where appropriate, and all persons engaging to and/or traveling under this Contract. The masculine includes the feminine.

(b) The Master, Officers and Crew of the Vessel shall have the benefit of all of the terms and conditions of this contract.

2 This ticket is valid only for the person or persons named hereon as the passenger or passengers and cannot be transferred without the Carrier's consent written hereon. Passage money shall be deemed to be earned when paid and not refundable.

3 (a) The acceptance of this ticket by the person or persons named hereon as passengers shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.

(b) The passenger admits a full understanding of the character of the Vessel and assumes all risk incident to travel and transportation and handling of passengers and cargo. The Vessel may or may not carry a ship's physician at the election of the Carrier. The type includes full board, ordinary ship's food during the voyage, but no spirits, wine, beer or mineral waters.

4 The Carrier shall not be liable for any loss of life or personal injury or delay whatsoever whensoever arising and howsoever caused even though the same may have been caused by the negligence or default of the Carrier or its servants or agents. No undertaking or warranty is given or shall be implied respecting the seaworthiness, fitness or condition of the Vessel. This exemption from liability shall extend to the employees, servants and agents of the Carrier and for this purpose this exemption shall be deemed to constitute a Contract entered into between the passenger and the Carrier on behalf of all persons who are or become from time to time its employees, servants or agents, and all such persons shall to this extent be deemed to be parties to this Contract.

5 The Carrier shall not be liable for losses of valuables unless stored in the Vessel's safety deposit and then not exceeding $500 in any event.

6 If the Vessel carries a surgeon, physician, masseuse, barber, hair dresser or manicurist, it is done solely for the convenience of the passenger and any such person in dealing with the passenger is not and shall not be considered in any respect whatsoever as the employee, servant or agent of the Carrier and the Carrier shall not be liable for any act or omission of such person or those under his orders or assisting him with respect to treatment, advice or care of any kind given to any passenger.

The surgeon, physician, masseuse, barber, hair dresser or manicurist shall be entitled to make a proper charge for any service performed with respect to a passenger and the Carrier shall not be concerned in any way whatsoever in any such arrangement.

7 The Carrier shall not be liable for any claims whatsoever of the passenger unless full particulars thereof in writing be given to the Carrier at their agents within 185 days after the passenger shall be landed from the Vessel or in the case the voyage is abandoned within 185 days thereafter. Suit to recover any claim shall not be maintainable in any event unless commenced within one year after the date of the loss, injury or death.

8 It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A., to the exclusion of the Courts of any other state or country.

9 The Carrier, in arranging for the service called for by all shore features, couplers or shore excursion tickets, acts only as agent for the ladies thereof and assumes no responsibility and in no event shall be liable for any loss, damage, injury or delay to all said person and/or baggage property or effects in connection with said services. Nevertheless the performance of any such service

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10 Each fully paid adult passenger will be allowed an unlimited amount of baggage free of charge Baggage means only trunks valises satchels, bags, hangers and bundles with their contents consisting of only such wearing apparel toilet articles and similar personal effects as are necessary and appropriate for the station in life of the passenger and for the purpose of the journey

11 No tools of trade, household goods, presents and/or property of others jewelry money documents valuables of any description including but not limited to such articles as are described in Section 4281 Revised Statute of the U S A (46 USCA § 181) shall be carried except under and subject to the terms of a special written contract or Bill of Lading entered into with the Carrier prior to embarkation upon application of the passenger and the passenger hereby warrants that no such articles are contained in any receptacle or container presented by him as baggage hereunder, and if any such article or articles are shipped and the passenger's baggage in breach of this warranty no liability for negligence, gross or ordinary, shall attach to the Carrier for any loss or damage thereto

12 It is stipulated and agreed that the aggregate value of each passenger's property under the Adult ticket does not exceed $100.00 (half ticket: $50.00) and any liability of the Carrier for any cause whatsoever with respect to said property shall not exceed such*sum, unless the passenger shall in writing, delivered to the Carrier prior to embarkation, declare the true value thereof and pay to the Carrier prior to embarkation a sum (in U S Dollars) equal to 5% of the excess of such value, in which event the Carrier's liability shall be limited to the actual damages sustained to the property but not in excess of the declared value

13 The Vessel shall be entitled to leave and enter ports with or without pilots or tugs, to tow and assist other vessels in any circumstances to return to or enter any port at the Master's discretion and for any purpose and to deviate in any direction or for any purpose from the direct or usual course, all such deviations being considered as forming part of and included in the proposed voyage

14 If the performance of the proposed voyage is hindered or prevented) or in the opinion of the Carrier or the Master is likely to be hindered or prevented) by war, hostilities, blockade, ice, labor conflicts, strikes on board or ashore, Restraint of Rulers or Princes, breakdown of the Vessel, congestion, docking difficulties, or any other cause whatsoever, or if the Carrier or the Master considers that for any reason whatsoever, proceeding to, attempting to enter, or entering or remaining at the port of passenger's destination may expose the Vessel to risk or loss or damage or be likely to delay her, the passenger and his baggage may be landed at the port of embarkation or at any port or place at which the Vessel may call when the responsibility of the Carrier shall cease and this contract shall be deemed to have been fully performed, or if the passenger has not embarked the Carrier may cancel the proposed voyage without liability to refund passage money or fares paid in advance.

15 The Carrier and the Master shall have liberty to comply with any orders, recommendations or directions whatsoever given by the Government of any nation or by any Department thereof or by any person acting or purporting to act with the authority of such Government or Department or by any Committee or person having under the terms of the War Risks Insuranace on the Vessel the right to give such orders, recommendations or directions, and if by reason of and in compliance with any such orders, recommendations or directions anything is done or is not done the same shall not be deemed a deviation or a breach of this Contract. Disembarkation of any passenger or discharge of his baggage in accordance with such orders, recommendations or directions shall constitute due and proper fulfillment of the obligations of the Carrier under this Contract.

16 (a) The Carrier shall not be liable to make any refund to passengers in respect of lost tickets or in respect of tickets wholly or partly not used by a passenger.

(b) If for any reason whatsoever the passenger is refused permission to land at the port of disembarkation or such other ports as is provided for in Clauses 14 and 15 hereof, the passenger and his baggage may be landed at any port or place at which the Vessel calls or be carried back to the port of embarkation and shall pay the Carrier full fare according to its tariff in use at such time for such further carriage, which shall be upon the terms herein contained

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17 The Carrier and the Vessel shall have a lien upon all baggage, money, motor cars and other property whatsoever accompanying the passenger and the right to sell the same by public auction or otherwise for all sums whatsoever due from the passenger under this contract and for the costs and expenses of enforcing such lien and of such sale.

18 The passenger or if a minor his parent or guardian shall be liable to the Carrier and to the Master for any breach or prejudice imposed on the Carrier by the performance for his failure to observe or comply with local requirements in respect of immigration, Customs and Excise or any other Government regulations whatsoever.

19 No passenger shall be allowed to bring on board the Vessel Weapons, Firearms, Ammunition, Explosives or other dangerous goods without written permission from the Carrier.

20 The Carrier shall have liberty without previous notice to cancel at the port of embarkation or at any port this Contract and shall thereupon return to the passenger, if the Contract is cancelled at the port of embarkation, his passage money, or if the Contract is cancelled later, a proportionate part thereof.

21 The passenger warrants that he and those traveling with him are physically fit at the time of embarkation. The Carrier and Master each reserves the right to refuse passage to anyone whose health or welfare would be considered a risk to his own well-being or that of any other passenger

22 Should the Vessel deviate from its course due to passenger's negligence, said passenger or his estate shall be liable for any related costs incurred.

23. The Carrier reserves the right to increase published fares without prior notice. In the event of an increase, the passenger has the option of accepting the increased fare or canceling reservations without penalty.

24. In addition to all of the restrictions and exemptions from liability provided in this Contract the Carrier shall have the benefit of all limitations of the United States of America providing for limitation and exoneration from liability and the procedures provided thereby, including but not limited to Sections 4282, 4282A, 4283, 4284, 4285 and 4286 of the Revised Statutes of the United States of America (46 USCA Sections 182, 183, 183b, 184, 185 and 186); nothing in this Contract is intended to nor shall it operate to limit or deprive the Carrier of any such statutory limitation of or exoneration from liability.

25. Should any provision of this Contract be contrary to or invalid by virtue of the law of any jurisdiction or be so held by a Court of competent jurisdiction, such provision shall be deemed to be severed from the Contract and of no effect and all remaining provisions herein shall be in full force and effect and constitute the Contract of Carriage.

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All Citations

499 U.S. 585, 111 S.Ct. 1522, 113 L.Ed.2d 622, 1991 A.M.C. 1697, 59 USLW 4323

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

* The Court of Appeals had filed an earlier opinion also reversing the District Court and ruling that the District Court had personal jurisdiction over the cruise line and that the forum-selection clause in the tickets was unreasonable and was not to be enforced. 863 F.2d 1437 (CA9 1988). That opinion, however, was withdrawn when the court certified to the Supreme Court of Washington the question whether the Washington long-arm statute, Wash.Rev.Code § 4.28.185 (1988), conferred personal jurisdiction over Carnival Cruise Lines for the claim asserted by the Shutes. See 872 F.2d 930 (CA9 1989). The Washington Supreme Court answered the certified question in the affirmative on the ground that the Shutes' claim "arose from" petitioner's advertisement in Washington and the promotion of its cruises there. 113 Wash.2d 763, 783 P.2d 78 (1989). The Court of Appeals then "refiled" its opinion "as modified herein." See 897 F.2d, at 380, n. 1.

1 See 46 U.S.C.App. § 183c:

> "It shall be unlawful for the ... owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner ... from liability, or from liability beyond any stipulated amount, for such loss or injury...."

2 See 46 U.S.C.App. § 183b(a):

> "It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred."

See also 49 U.S.C. § 11707(e) ("A carrier or freight forwarder may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section").

3 See, *e.g., The Kensington,* 183 U.S. 263, 269, 22 S.Ct. 102, 104, 46 L.Ed. 190 (1902) (refusing to enforce clause requiring that all disputes under contract for passage be governed by Belgian law because such law would have favored the shipowner in violation of United States public policy).

4 All these clauses will provide passengers who purchase tickets containing them with a "benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting [its exposure to liability]." See *ante,* at 1527. Under

the Court's reasoning, all these clauses, including a complete waiver of liability, would be enforceable, a result at odds with longstanding jurisprudence.

5 "In [*Carbon Black Export, Inc. v. The Monrosa,* 254 F.2d 297 (CA5 1958), cert. dism'd, 359 U.S. 180, 79 S.Ct. 710, 3 L.Ed.2d 723 (1959),] the Court of Appeals had held a forum-selection clause unenforceable, reiterating the traditional view of many American courts that 'agreements in advance of controversy whose object is to oust the jurisdiction of the courts are contrary to public policy and will not be enforced.' 254 F.2d, at 300–301." *The Bremen v. Zapata Off–Shore Co.,* 407 U.S. 1, 6, 92 S.Ct. 1907, 1911, 32 L.Ed.2d 513 (1972).

6 The Court does not make clear whether the result in this case would also apply if the clause required Carnival passengers to sue in Panama, the country in which Carnival is incorporated.

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