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Accessibility of foreign-flagged cruise ships: Does the Americans with Disabilities Act stop at U. S. shores?

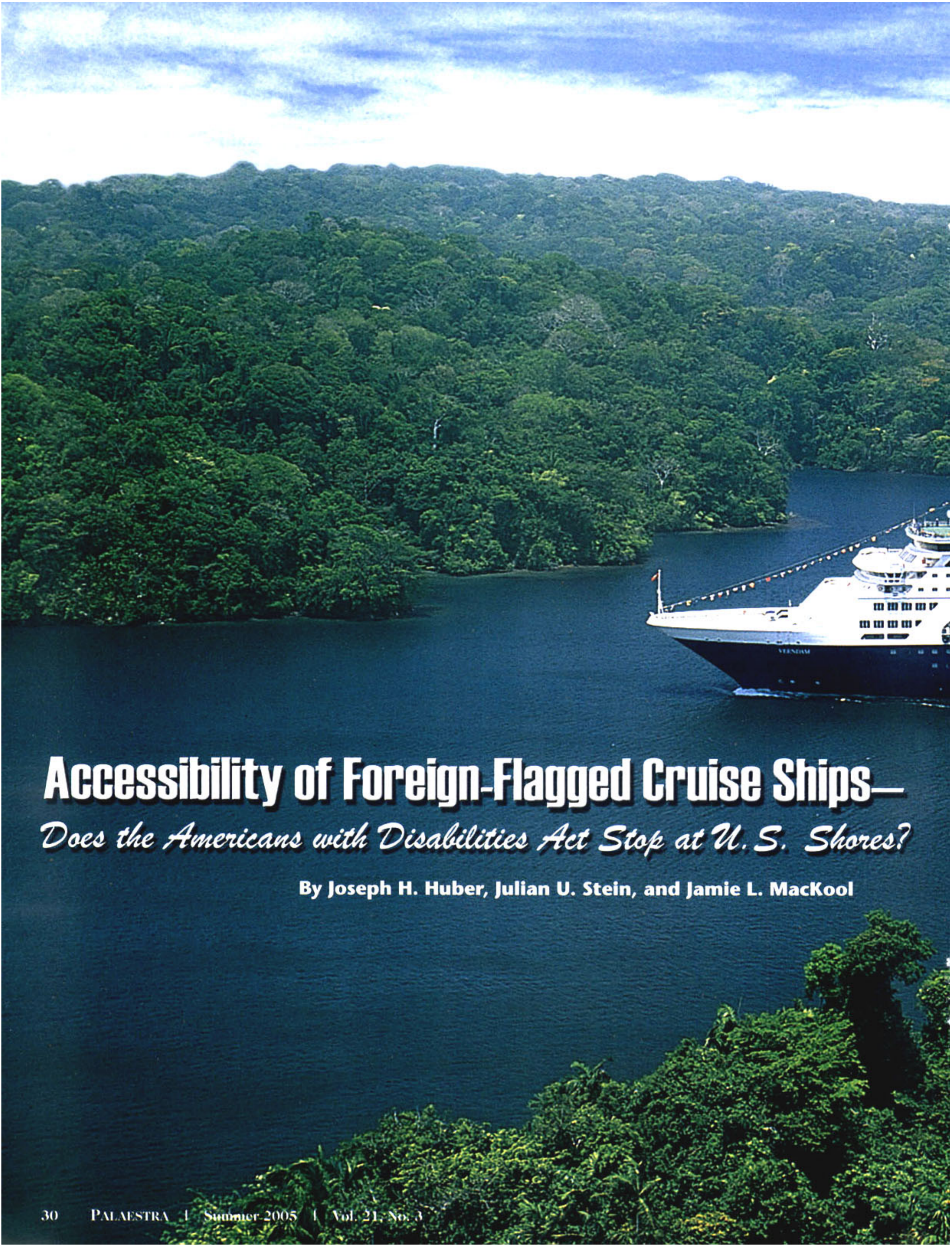
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Accessibility of Foreign-Flagged Cruise Ships— *Does the Americans with Disabilities Act Stop at U.S. Shores?*

By Joseph H. Huber, Julian U. Stein, and Jamie L. MacKool





Wheelchair-accessible tender-transfer system

Cruise ship vacations have become the fastest-growing segment of the travel industry. According to Cruise Line International Association, the cruise ship industry reports deploying 158 ships to North America annually, with an economic impact of \$15.5 billion. More than 10 million individuals embarked on ocean voyages last year, with U.S. residents accounting for three out of every four passengers (*The Christian Science Monitor*, February 28, 2005).

Individuals with disabilities select cruise vacations at higher rates than the general population—12% versus 5% of the general U.S. population within the past 5 years (*The New York Times*, March 20, 2005). For many travelers with disabilities, a cruise is an ideal vacation. Everything is on board these floating resort hotels—rooms, restaurants, theaters, and one-stop shopping—coupled with travel to exotic lands.

However, every cruise is not a Love Boat experience! For example, in 1999, Douglas Spector booked passage with his wife and other family members on the cruise ship, Norwegian Sea, out of Houston, Texas, to embark on a Caribbean vacation. Spector, who is disabled and needs a scooter for mobility, claimed he paid a premium for his room. There was a two-inch step into the cabin and a foot-high step into the cabin bathroom. The fine dining restaurant, Jacuzzi, and swimming pool areas were also not accessible (*Morning Edition*, National Public Radio, February 28, 2005). Finally, decks used for lifeboat evacuation were not accessible (*ABC News*, March 1, 2005).

Foreign-Flag Cruise Ships

The majority of cruise ships have foreign registrations, thus avoiding payment of U.S. taxes and compliance with American labor regulations. In large part, this is due to the age-old practice that the nation registering the ship also governs internal affairs of

the ship. However, foreign-flag cruise ships are required to comply with U.S. regulations governing mandatory sanitation inspections of food preservation and preparation (Centers for Disease Control, 2004, December 9), as well as emergency operations, including fire alarm systems and lifeboat drills (U.S. Coast Guard, 2005, March 15).

The 1990 Americans with Disabilities Act (ADA) requires public accommodations (e.g., inns, hotels, restaurants, and theaters) be accessible to guarantee *full and equal enjoyment*. However, for passengers with impaired mobility, there have been no official government regulations related to accessibility governing foreign-flagged ships docking in United States ports.

In an attempt to make all cruise ships accessible, Douglas Spector sued Norwegian Cruise Line (NCL). The case (*Spector v. Norwegian Cruise Line Ltd.*, No. 03-1388) never went to trial, because the Fifth Circuit Court of Appeals, which includes the ports of New Orleans and Houston, ruled that the ADA did not apply. In a similar case, the Eleventh Circuit Court of Appeals, which includes Fort Lauderdale and Miami, reached the opposite conclusion (*The New York Times*, March 1, 2005).

On a larger scale, a favorable decision on the Spector case will help to establish accessibility standards for cruise ship lines. However, at the same time, a favorable decision could have an adverse impact on international maritime commerce. Washington, DC attorney Gregory Garre noted in a brief filed with the U.S. Supreme Court that, "If the United States chose to apply its own accessibility standards to foreign-flagged ships entering its waters, many of the other forty countries around the world with anti-discrimination laws might respond by attempting to apply their own...standards to foreign-flagged ships, including U.S. ships."



Holland America Line

Wheelchair-accessible bathroom in stateroom

Both the U.S. Justice Department and the Transportation Department argued before the Court that the ADA applies to foreign-flagged cruise ships entering United States waters. Should cruise ship companies, however, be forced to retrofit their older ships at a time when they are being retired and new ships are being built to accommodate needs of travelers with disabilities? Should United States' law extend to ships flying foreign flags and undermine a 200-year-old tradition of enabling the country of registration as the place governing internal affairs of the ship?

Recent Developments

Norwegian Cruise Line (NCL) officials say complaints apply to only two of their cruise ships—one has been decommissioned, the second is slated to be taken out of service. NCL vessels are now constructed with the ADA in mind. For example, NCL's newer ships have electric hoists that lift someone from a wheelchair and place the individual in a swimming pool or Jacuzzi (*The Christian Science Monitor*, February 28, 2005). Additional NCL amenities include accessible rooms and grab rails in bathrooms and showers. Adjustable clothing racks in closets lowering to a wheelchair user's level, accessible theaters, and casinos are also provided (*ABC News*, March 1, 2005). The dynamics of competitive markets have caused some cruise ship companies to offer services such as supplemental oxygen,

kidney dialysis, and ship-to-shore tenders accommodating wheelchairs. (*The New York Times*, March 20, 2005).

Moreover, in October 2003, Holland American Line and Carnival Cruise Line, along with other cruise line members of the World's Leading Cruise Lines (WLCL), created a partnership with the Society for Accessible Travel and Hospitality (SATH) to expand the potential customer base of WLCL to travelers with disabilities. Additionally, SATH is serving in an advisory role

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regarding accessibility features of vessels among WLCL's seven-member brands.

For someone in a wheelchair or one who uses a walker to assist with mobility, a cruise ship vacation can be idyllic. Moreover, cruise ship companies are offering an ever larger array of accommodations, amenities, and activities to attract increasing numbers of passengers with special needs seeking cruise ship experiences. In the end, though, what minimum standards will all cruise ship lines be held accountable when advertising their ships as accessible to travelers with disabilities?

Epilogue

The U.S. Supreme Court, expanding the scope of the ADA, ruled 5-4 on June 6, 2005, that foreign cruise lines sailing in U.S. waters must provide better access for travelers with disabilities (*The New York Times*, June 7, 2005). Under the decision, foreign-flagged cruise ships will not be compelled to make major structural alterations that would ordinarily be required under the ADA such as widening doors and installing elevators. The decision would mandate such "straight-forward changes" as grab bars and lower water fountains. Additionally, surcharges and other special rules that travelers with disabilities would find expensive and burdensome will be eliminated. Finally, it will now be up to lower courts to determine how various statutory and treaty requirements mesh and conflict.

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