

# THE ADA'S APPLICATION TO FOREIGN- FLAGGED CRUISE SHIPS: THE SUPREME COURT'S PRECEDENT IN *SPECTOR V. NORWEGIAN CRUISE LINE* TRANSCENDS THE UNITED STATES' BORDERS

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## I. INTRODUCTION

Last year 10.6 million people flipped through the brochures of cruise line vacations<sup>1</sup> while dreaming of navigating the Caribbean aboard a luxury cruise ship and enjoying the white sandy beaches of exotic islands. Not only do these cruise line brochures boast the lure of exotic locations, but

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1. Cruise Line International Association, *Profile of the U.S. Cruise Industry*, [http://www.cruising.org/press/sourcebook2004/profile\\_cruise\\_industry.cfm](http://www.cruising.org/press/sourcebook2004/profile_cruise_industry.cfm) (last visited Mar. 24, 2006) [hereinafter *Cruise Line Profile*].

also a variety of attractions aboard the ship.<sup>2</sup> Cruise ships, during their skirt at sea, offer amenities such as: spa facilities, golf driving and putting greens, wedding services, swimming pools, casinos, and twenty-four hour room service.<sup>3</sup> Cyber-cafes, themed restaurants, and state-of-the-art convention facilities have become popular as the cruise industry attempts to capture the eighty-four percent of American adults who have never cruised.<sup>4</sup> The cruise industry has become an exciting way for many to spend their vacations by achieving 1,800 percent growth since 1970 in the number of passengers who cruise every year.<sup>5</sup> Despite the growth of this industry and an array of facilities to appeal to just about anyone, there remains a large group of individuals who are unable or have difficulty cruising as a result of inadequate facilities.<sup>6</sup> Within the eighty-four percent of American adults who have never cruised<sup>7</sup> lies virtually an untapped market of about 37.5 million disabled Americans.<sup>8</sup> Cruise lines advertise disabled and wheelchair facilities and services,<sup>9</sup> but the reality is that many cruise ships are nothing short of an inconvenience for the disabled community as a result of poorly designed ships.<sup>10</sup>

On July 26, 2005 the United States celebrated the 15<sup>th</sup> Anniversary of the signing of the Americans with Disabilities Act (hereinafter "ADA"), which guarantees equality for individuals with disabilities in public accommodations, commercial facilities, employment, transportation, state and local government services, and telecommunications.<sup>11</sup> Despite the

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2. *Id.*

3. *See, e.g.*, Cruise Line International Association, Norwegian Cruise Line Information, available at <http://www.cruising.org/CruiseLines/clprofile.cfm~recordID~7.0.cfm> (last visited Mar. 25, 2006) [hereinafter Norwegian Cruise Line Information]; Cruise Line International Association, Norwegian Sea, available at <http://www.cruising.org/CruiseLines/displayship.cfm~recordID~28.0.cfm> (last visited March 24, 2006); Cruise Line International Association, Norwegian Star, available at <http://www.cruising.org/CruiseLines/displayship.cfm~recordID~20.0.cfm> (last visited Mar. 24, 2006).

4. Cruise Line Profile, *supra* note 1.

5. *Id.*

6. *Spector v. Norwegian Cruise Line*, 125 S. Ct. 2169, 2179 (2005) (Petitioners, on behalf of disabled individuals in similar situation as themselves, sued Norwegian Cruise Line as a result of areas on the cruise ship which are inaccessible by individuals with disabilities.).

7. Cruise Line Profile, *supra* note 1.

8. *U.S. Census Bureau: 15th Anniversary of Americans with Disabilities Act, July 26, 2005*, M2 Presswire, May 26, 2005 [hereinafter U.S. Census Bureau], U.S. Census Bureau, <http://www.census.gov/hhes/www/disability/2003acs.html> (last visited Mar. 24, 2006) (providing additional survey data). Included in the 37.5 million Americans who are disabled are those who are ages 5 and older in the civilian non-institutionalized population who have one or more disabilities. *Id.* These individuals account for fourteen percent of the United States population. *Id.*

9. *See, e.g.*, Cruise Line Information, *supra* note 3.

10. *Spector*, 125 S. Ct. at 2179–80.

11. *U.S. Census Bureau*, *supra* note 8.

existence of the ADA for the past fifteen years and the many facilities and services offered by cruise ships to attract millions,<sup>12</sup> it was not until recently that foreign-flagged cruise ships were required to tap into the disabled community by complying with the ADA.<sup>13</sup> In *Spector v. Norwegian Cruise Line*, the Supreme Court ruled that foreign-flagged cruise ships in U.S. waters must comply with ADA regulations.<sup>14</sup> This decision has been a step forward for individuals with disabilities.<sup>15</sup> However, as simple as this decision may sound in theory, the reality of providing a brochure vacation for disabled individuals may be anything but straightforward because the impact of compliance with Title III of the ADA reaches far beyond the doors of the Supreme Court.<sup>16</sup>

The following recent development explores this Supreme Court decision and issues surrounding the cruise industry, as well as the future implications of this decision on an international scale. Part I explores the background of *Spector v. Norwegian Cruise Line*. Part II explains when the United States can impose a domestic law extraterritorially. Part III explains what barriers must be removed in order for cruise ships to comply with Title III of the ADA. Part IV discusses whether compliance with Title III of the ADA is economically feasible. Part V explores international laws and the likely impact of *Spector* on nations who fly their flags above cruise ships serving United States ports. Part VI briefly explores what would have happened had the Court ruled that Title III of the ADA does not apply to foreign-flagged cruise ships.

### A. Background: The Pursuit for Equality

“One day this nation will rise up and live out the true meaning of its creed: ‘we hold these truths to be self-evident, that all men are created equal.’”<sup>17</sup> Like several million other Americans,<sup>18</sup> Douglas and Ana Spector purchased tickets for a round trip vacation aboard Norwegian Cruise Line (hereinafter “NCL”) in anticipation of visiting different ports of

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12. Cruise Line Profile, *supra* note 1; Cruise Line Information, *supra* note 3.

13. *Spector*, 125 S. Ct at 2184.

14. *Id.*

15. *United Cerebral Palsy Statement on Spector vs. Norwegian CruiseLine*, U.S. NEWSWIRE (June 6, 2005), available at <http://releases.usnewswire.com/GetRelease.asp?id=48415> (last visited Mar. 24, 2006).

16. *Spector*, 125 S. Ct. at 2169 (The Court analyzed several issues surrounding the decision addressed in Part I.).

17. Martin L. King, Jr., Speech delivered at Lincoln Memorial, Washington, D.C. (Aug. 28, 1963) (Transcript of the speech is available from *I Have a Dream*, United Press International, Aug. 26, 1983, at Washington News — BC cycle.).

18. Cruise Line Profile, *supra* note 1.

call and enjoying the cabins, food, and entertainment.<sup>19</sup> NCL represented that its services and activities were open to individuals with mobility impairments.<sup>20</sup> Douglas Spector required the use of a wheelchair or electric scooter.<sup>21</sup> Inaccessible public restrooms, swimming pools, restaurants, elevators, cabins with balconies, emergency evacuation programs, and emergency equipment made it impossible for the Spectors and other mobility impaired individuals to enjoy many of the activities, services and programs aboard the ship.<sup>22</sup>

The Spectors and three other individuals who were either disabled or the companion of a disabled individual filed suit on behalf of themselves and all other individuals who had similar situations on August 1, 2000 against NCL.<sup>23</sup> Their claims assert that NCL failed to comply with Title III of the ADA.<sup>24</sup> Petitioners stated in their brief to the United States Supreme Court that NCL required them to pay higher fares and surcharges for assistance and for cabins that were accessible to those with mobility impairments.<sup>25</sup> They also asserted that NCL used "standards or criteria that had the effect of discriminating based upon disability," failed "to make reasonable modifications to policies practices and procedures, and failed "to remove barriers to access that deprived petitioners of the full and equal enjoyment of the services, facilities, privileges, advantages and accommodations of the ship, where doing so was readily achievable."<sup>26</sup> Further, due to inaccessibility, the companion petitioners stated that they were required to either miss activities that were inaccessible to their companion or leave their companions alone while they attended.<sup>27</sup> Petitioners requested modifications to cruise ships which would bring them into compliance with ADA regulations.<sup>28</sup> NCL countered that compliance with Title III of the ADA did not extend to their foreign-flagged cruise ships, registered under the law of the Bahamas, because these cruise ships were not mentioned within the ADA statute as a place of public accommodation, nor were guidelines set out for compliance by the

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19. *Spector*, 125 S. Ct. at 2175.

20. Brief for the United States as Amicus Curiae Supporting Petitioners at 6-7, *Spector v. Norwegian Cruise Line Ltd.*, 125 S. Ct. 2169 (2005) (No. 03-1388) [hereinafter Brief].

21. *Id.* at 5.

22. *Spector v. Norwegian Cruise Line, Ltd.*, 356 F.3d 641, 643 (5th Cir. 2004).

23. Brief, *supra* note 20, at 6.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 7.

28. *Spector*, 125 S. Ct. at 2175.

Department of Justice and the Department of Transportation.<sup>29</sup> Therefore, absent clear Congressional intent for the statute to apply to foreign-flagged cruise ships, United States' law cannot be applied extraterritorially.<sup>30</sup>

The District Court held that foreign-flagged cruise ships in United States' waters must comply with Title III of the ADA as a "public accommodation" and as a form of public transportation.<sup>31</sup> NCL did not dispute that cruise ships are classified as such and that the ADA is applicable to United States-flagged cruise ships.<sup>32</sup> Despite the court's determination that the ADA is applicable to foreign-flagged cruise ships, they granted NCL its Motion to Dismiss the petitioner's claim that NCL should modify their ship to comply with the ADA, because the Department of Transportation and the Department of Justice did not set forth guidelines for ADA compliance on cruise ships which bars enforcement of the ADA.<sup>33</sup>

On appeal, the Fifth Circuit upheld in part and reversed in part the lower courts decision that Title III does apply to foreign-flagged cruise ships.<sup>34</sup> The court determined that a general statute, such as the ADA, can apply to ships entering United States' waters so long as there is clear Congressional intent for it to apply.<sup>35</sup> There the court concluded that Title III of the ADA does not expressly provide for foreign-flagged cruise ships to comply with a particular law nor are there guidelines set forth for cruise ship compliance.<sup>36</sup> Thus, the court did not extend the reach of the ADA to apply in this case. As a result of conflicting authority between the Fifth Circuit *Spector* decision and a prior Eleventh Circuit decision,<sup>37</sup> the Supreme Court of the United States granted certiorari to resolve the inconsistency.<sup>38</sup>

The United States Supreme Court announced their decision in *Spector v. Norwegian Cruise Line* on June 6, 2005, in a 6-3 decision that foreign-flagged cruise ships in United States' waters must comply with the ADA.<sup>39</sup> Justice Kennedy wrote for the majority and was joined by Justices Stevens,

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29. Brief, *supra* note 20, at 7.

30. *Id.*

31. *Spector*, 356 F.3d at 644.

32. *Id.*

33. *Spector*, 125 S. Ct. at 2175-76.

34. *Spector*, 256 F.3d at 650-651.

35. *Id.* at 650.

36. *Id.*

37. *Stevens v. Premier Cruises, Inc.*, 215 F. 3d 1237 (2000) (The Court of Appeals for the Eleventh Circuit held that foreign-flagged cruise ships must comply with ADA regulations.).

38. *Spector*, 125 S. Ct. at 2174.

39. *Spector*, 125 S. Ct. 2169.

Souter, Ginsburg, and Breyer.<sup>40</sup> Justice Thomas filed a separate opinion concurring and dissenting in part and concurring in the judgment in part. Justice Scalia filed a dissenting opinion with which Justices Rehnquist and O'Connor joined.<sup>41</sup>

The Court looked to Title III of the ADA to determine whether a cruise ship of another nation falls under the statute, even though cruise ships are not expressly included in the statute.<sup>42</sup> The Court found that Congress intended for them to be included as a "public accommodation" or "public transportation."<sup>43</sup> Since there is no express Congressional intent, the ADA can only apply to foreign-flagged cruise ships so long as the requirements by the ADA do not interfere with the internal operations of the ship.<sup>44</sup> The Court differentiated two recent cases where a United States statute was held inapplicable to a foreign vessel because these cases concerned labor relation issues, affecting only the internal operations of the ship.<sup>45</sup> The Court further explained that provisions of the ADA that do not interfere with the internal operations of the vessel are applicable to the foreign-flagged cruise ship.<sup>46</sup> Those which do interfere with the internal operations, however, require the express intent of Congress.<sup>47</sup>

Justice Kennedy explained that Title III of the ADA does not expressly mention cruise ships.<sup>48</sup> Consequently, absent Congressional intent in the statute, ADA compliance on cruise ships cannot interfere with the internal operations of the ship.<sup>49</sup> Further, an evaluation of Congressional intent may not be necessary because compliance with Title III of the ADA and its limitations within the statute may rule out many modifications that could interfere with the internal operations of the ship.<sup>50</sup>

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40. *Id.* at 2174.

41. *Id.*

42. *Id.* at 2177.

43. *Id.*

44. *Spector*, 125 S. Ct. at 2177.

45. *Id.* at 2178 (citing *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21 (1963)) (holding that the National Labor Relations Act did not apply to the duties and rights of a foreign ships crew because imposing such application would interfere with the internal affairs of the ship); *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138, 146-47 (1957) (held that the general rule that the law of the foreign vessel usually controls is not why the National Labor Relations Act is inapplicable but rather because the Act would interfere with the internal affairs of the ship).

46. *Id.* at 2178.

47. *Id.* at 2178-79.

48. *Id.* at 2177.

49. *Spector*, 125 S. Ct. at 2178.

50. *Id.* at 2184.

Title III of the ADA states that only those modifications that are “readily achievable” can be applicable to public accommodations.<sup>51</sup> “Readily achievable” means “easily accomplishable and able to be carried out without much difficulty or expense.”<sup>52</sup> An evaluation of “readily achievable” would also take into account shipboard safety and international law, and interference with these would likely deem a modification inapplicable.<sup>53</sup> In light of the limitations imposed by Title III of the ADA, there may be “no permanent and significant structural modifications” required for foreign vessels although the Supreme Court held that the ADA applies to United States-flagged cruise ships and foreign-flagged cruise ships uniformly.<sup>54</sup> While, the Court remanded this case to determine the extent of modifications required under Title III of the ADA and possible clarification of the clear statement rule, the Court is certain that the cruise industry operating in United States’ waters must abide by the ADA.<sup>55</sup>

## II. HOW DOES ONE UNITED STATES LAW APPLY TO DOMESTIC AND FOREIGN CRUISE SHIPS ALIKE?

In *Spector*, the Supreme Court Justices addressed their concern that a decision to apply the ADA extraterritorially could effect the international obligations of foreign-flagged cruise ships.<sup>56</sup> Thus, which laws governs cruise ships, when domestic laws can interfere with the affairs of a foreign ship, and the concern over applying the ADA to foreign-flagged cruise ships, are all new, pressing issues that must be addressed.

### A. *What Law Governs Cruise Ships?*

Generally speaking, a ship is governed by the law of the nation whose flag it flies.<sup>57</sup> General practice in the United States cruise industry is to register ships in a nation whose laws are less stringent.<sup>58</sup> The ship flies

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51. *Id.* at 2180 (citing 42 U.S.C. §12182(b)(2)(A)(iv) (2000)).

52. *Id.* at 2181 (citing 42 U.S.C. §12181(9) (2000)).

53. *Id.* at 2180.

54. *Spector*, 125 S. Ct. at 2181.

55. *Id.* at 2184.

56. *Id.* at 2180.

57. LEX FRIEDEN, NATIONAL COUNCIL ON DISABILITY, ABSTRACT: SPECTOR V. NORWEGIAN CRUISE LINE LTD. — BACKGROUND, LEGAL ISSUES, AND IMPLICATIONS FOR PERSONS WITH DISABILITIES (2005), available at [http://www.ncd.gov/newsroom/publications/2005/spector\\_norwegian.htm](http://www.ncd.gov/newsroom/publications/2005/spector_norwegian.htm) (last visited Mar. 24, 2006).

58. *Id.*

what some call "flags of convenience" because by registering the ship in another nation that ship need not comply with most United States laws.<sup>59</sup>

The United States law has been recognized as the most severe of any other maritime nation.<sup>60</sup> For a ship to be registered in the United States, the registrant must meet citizenship requirements as an individual, partnership, or corporation or be the United States federal government, or United States' state government.<sup>61</sup> In addition, the ship's crew must be comprised of three-quarters United States citizens, and the master, chief engineer, radio operator, and deck and engineering watch officers are required to be citizens of the United States.<sup>62</sup> Then, the ship is afforded the protection of the United States law and must abide by labor, environmental, and safety laws of the United States.<sup>63</sup>

The practice of eluding United States law became popular in the years prior to World War II when the United States' government directed ships delivering war material to the United Kingdom to register their ships under Panama, thereby avoiding United States neutrality laws.<sup>64</sup> The ships soon recognized that nations like Panama had much less severe laws than the United States.<sup>65</sup> Panama, as an open registry, allowed ships of other nations to register under their flag.<sup>66</sup> Today as a result of the popularity of open registries not only limited to Panama, most cruise ships serving the United States are foreign-flagged.<sup>67</sup>

#### B. When do Laws Apply Extraterritorially?

The Court held that the ADA applies to both foreign-flagged cruise ships (in United States waters) and United States-flagged cruise ships uniformly.<sup>68</sup> On the surface this ruling is clear. Beneath this decision, however, lies the complexity in determining to what extent a domestic statute can apply extraterritorially aboard cruise ships.

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59. *Id.*

60. *Id.*

61. *Id.*

62. FRIEDEN, *supra* note 57.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Douglass Hanks III, *Norwegian Cruise Line Sails Ship Under U.S. Flag*, THE MIAMI HERALD, June 16, 2005 at 1C (Norwegian Cruise Line began operation of the first United States flagged cruise ship built in the last 50 years.).

68. *Spector*, 125 S. Ct. at 2184.

The clear statement rule governs when and to what extent a United States statute can and cannot be applied extraterritorially.<sup>69</sup> This rule states that there must be clear congressional intent in order to apply a general domestic statute extraterritorially on a foreign-flagged vessel only where the statute would interfere with the internal affairs and operations of the vessel.<sup>70</sup> Further, where the welfare of the United States citizens or territory is at stake, then there need not be a clear statement of Congressional intent for the statute to apply to a foreign-flagged ship in the United States' waters.<sup>71</sup>

Title III of the ADA prohibits discrimination on the basis of disability in places of "public accommodation" where individuals with disabilities would be denied the full and equal enjoyment of that accommodation.<sup>72</sup> Congress did not state its clear intent for the ADA to apply to cruise ships in the statute.<sup>73</sup> The Supreme Court in *Spector* recognized that public accommodation clearly included cruise ships<sup>74</sup> when Congress defined public accommodation to include inns, hotels, motels, restaurants, bars, parks, zoos, amusement parks, gymnasiums, health spas, bowling alleys, golf courses and public transportation even though cruise ships are not expressly named in the statute.<sup>75</sup>

The Court concluded that clear congressional intent, as applied to cruise ships, need only be present for parts of a statute which affect the internal affairs of a foreign-flagged cruise ship.<sup>76</sup> All other portions of the statute automatically apply absent Congressional intent.<sup>77</sup> The statute, therefore, is not wholly applicable or inapplicable but rather can be dissected to determine which parts do apply and which parts do not apply.<sup>78</sup> The lower court, on remand, is left with the task of dissecting the statute to determine which portions of Title III will not apply for lack of congressional intent and interference with the internal affairs of the foreign-flagged cruise ship.<sup>79</sup>

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69. *Id.* at 2175–76.

70. *Id.*

71. *Id.* at 2177.

72. 42 U.S.C. § 12182(a) (2000).

73. *Spector*, 125 S. Ct. at 2177.

74. *Id.*

75. 42 U.S.C. § 12181(7)(A),(I) (2000); *Spector*, 125 S. Ct. at 2177.

76. *Spector*, 125 S. Ct. at 2178.

77. *Id.*

78. *Id.* at 2179.

79. *Id.*

Congress is silent as to the application of the ADA. On remand, the lower court may have to look to the "clear statement rule."<sup>80</sup> The Court laid out two prongs to determine when the clear statement rule is triggered.<sup>81</sup> The first prong is when there is a "desire for international comity" and the second prong is when there is a "presumed lack of interest by the territorial sovereign in matters that bear no substantial relation to the peace and tranquility of the port."<sup>82</sup>

The United States Supreme Court agreed that several of the assertions by petitioners could impose various modifications that do not concern the internal order of a cruise ship.<sup>83</sup> As a result, no evaluation of the clear statement rule is needed, since these modifications do not interfere with the internal operations of the vessel. Structural modifications pose a much more extensive discussion due to the possibility that they may not only be precluded from applying because they affect the internal order of the ship, but because they may be inapplicable by Title III of the ADA itself.<sup>84</sup> *Spector* is a definitive ruling that the ADA applies extraterritorially and that modifications are in store for the cruise industry.

### C. Concern over Applying the ADA Extraterritorially

The application of the ADA to foreign-flagged cruise ships presents a concern over whether the Supreme Court has gone too far.<sup>85</sup> The Supreme Court's decision opens up the possibility that other nations could enact other laws where compliance with the laws of both ports on cruise ships could be impossible.<sup>86</sup> This could result in the possibility of United States law and Bahamian law conflicting aboard a foreign-flagged cruise ship.<sup>87</sup> This could be problematic for international relations when a resolution must be made and perhaps a determination as to which law controls. As of yet, no such conflict exists but that is not to say that such a conflict could not be

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80. *Id.*

81. *Spector*, 125 S. Ct. at 2179.

82. *Id.*

83. *Id.* at 2179.

84. *Id.* at 2178.

85. Rajesh Joshi, *Court Rules US Laws on Disabled Apply to Foreign Cruiseships*, LLOYD'S LIST INTERNATIONAL at 1, June 8, 2005 (Prior to the Supreme Courts ruling, cruise officials have expressed concern over a ruling that the ADA applies to foreign-flagged cruise ships in U.S. waters as an "extra-territorial overreach.").

86. Ina Paiva Cordle, *Lawsuits Challenge ADA on Foreign Ships Within U.S.*, THE MIAMI HERALD, Mar. 1, 2005 at 3C (Michael Crye, president of the International Council of Cruise Lines, expresses concern over the Supreme Court ruling that foreign-flagged cruise ships in United States waters must comply with the ADA.).

87. *Id.*

on the horizon in light of whatever modifications the lower court imposes on cruise ships.

### III. WHAT MODIFICATIONS ARE IMPOSED BY THE APPLICATION OF THE ADA TO CRUISE SHIPS?

The ruling by the Supreme Court in *Spector* stands as a great victory for the disabled community in ending discrimination against them and entitling them to the activities and facilities that all individuals receive aboard a cruise.<sup>88</sup> However, questions remain as to whether there will be structural modifications for foreign-flagged cruise ships to comply with ADA regulations.<sup>89</sup>

In regard to structural compliance with Title III, modification can only comply so much that the internal affairs of the ship are not disrupted based upon the absence of Congressional intent for the ADA to apply to cruise ships.<sup>90</sup> The Court further recognized that Title III precludes itself from imposing requirements that would threaten safety or interfere with international obligations of the ship.<sup>91</sup> The application of Title III of the ADA to cruise ships as a “public accommodation” requires entities to make “reasonable modifications in policies and practices or procedures,” in an effort to provide accommodation for disabled individuals, failure to do so would result in discrimination.<sup>92</sup> Additionally, “architectural barriers, and communication barriers that are structural in nature” must be removed where that removal is “readily achievable.”<sup>93</sup> Cruise ships, and other “public accommodations,” cannot impose criteria that would screen out disabled individuals as a group, nor can they deny auxiliary aids and services from disabled individuals.<sup>94</sup>

There are a number of exceptions to compliance within Title III of the ADA. First, where the failure to meet eligibility requirements would preclude disabled individuals when “necessary for the provision” of the activity or facility compliance is not necessary.<sup>95</sup> Second, removal of structural barriers need not be complied with when the modifications are not “readily achievable.”<sup>96</sup> Third, policies, practices, procedures, and

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88. *Statement From the Petitioners and Legal Counsel in Spector v. Norwegian Cruise Line, Ltd.*, PR NEWSWIRE, June 6, 2005.

89. *Spector*, 125 S. Ct. at 2181.

90. *Id.* at 2184.

91. *Id.*

92. 42 U.S.C. § 12182(b)(2)(A)(ii) (2000).

93. *Id.* § 12182(b)(2)(A)(iv)–(v).

94. *Id.* § 12182(b)(2)(A)(i)(iii).

95. *Id.* § 12182(b)(2)(A)(i).

96. *Id.* § 12182(b)(2)(A)(iv)–(v).

secondary aids are not required to be modified or provided when doing so would “fundamentally alter” the activity or facility.<sup>97</sup> Fourth, secondary aids are not necessary when providing such would “result in an undue burden.”<sup>98</sup> Fifth, where removal of structural and architectural barriers is not “readily achievable” then compliance is not required.<sup>99</sup> Finally, compliance is not necessary when it would result in “a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.”<sup>100</sup>

The ruling by the Court was both favorable to individuals with disabilities and the cruise industry by ensuring that cruise ships will be accessible, but that the industry will not have to retrofit their ships to comply with Title III of the ADA.<sup>101</sup> Rather, temporary ramps and accessible bathrooms could become necessary staples for the industry.<sup>102</sup> The *Spector* decision provides NCL and other cruise lines with guidance for the application of the ADA to cruise ships by specifying how it will apply.<sup>103</sup>

The question of whether NCL must provide access for disabled individuals was not the issue, but rather, to what extent must ships be accessible to individuals with disabilities?<sup>104</sup> Petitioner *Spector* requested that the ships reevaluate minor barriers not make major structural alterations to the ship.<sup>105</sup> His propositions include the removal of steps, inclusion of ramps, and alterations of doors.<sup>106</sup> Both sides may have gotten what they wanted out of the *Spector* decision.

The limitations mentioned above within Title III of the ADA could impose no structural barrier removal if removal would not be “readily

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97. 42 U.S.C. § 12182(b)(2)(A)(ii)–(iii).

98. *Id.* § 12182(b)(2)(A)(iii).

99. *Id.* § 12182(b)(2)(A)(iv)–(v).

100. *Id.* § 12182(b)(3).

101. Charles Lane, *Court Rules Ships Must Obey Laws on Disabled*, WASHINGTON POST, June 7, 2005, at 8 (David C. Fredrick stated that the Supreme Court’s decision was a “very favorable ruling that will ensure it is not going to have to retrofit ships, which is the thing that most concerned the industry.”).

102. *Id.* (Thomas C. Goldstein who is an attorney for the petitioners recognized that large-scale alterations would not be imposed but rather alterations for “accessible bathrooms, temporary ramps and the like.”).

103. Gregg Fields, *Court Extends Disabled Rights*, THE MIAMI HERALD, June 7, 2005, at 1C.

104. *Id.*

105. David Ivanovich, *Cruise Ruling Backs Access for Disabled*, THE HOUSTON CHRONICLE, June 7, 2005, at 1.

106. *Id.*

achievable.”<sup>107</sup> The statute defines “readily achievable” as something that is “easily accomplishable and able to be carried out without much difficulty or expense.”<sup>108</sup> There are a number of factors to consider when determining whether something is “readily achievable” which includes: costs of implementation of the alteration<sup>109</sup> and the impact on the facilities operation.<sup>110</sup>

What is and what is not “readily achievable” will ultimately be determined by the U.S. Access Board,<sup>111</sup> that determines guidelines for ADA compliance for passenger vessels as well as other buildings and facilities.<sup>112</sup> These guidelines are known as the ADA Accessibility Guidelines (hereinafter “ADAAG”), and rulemaking is delegated to the Passenger Vessel Access Advisory Committee (hereinafter “PVAAC”) which consists of disability organizations, industry trade groups, state and local government agencies, and passenger vessel operators.<sup>113</sup> Currently, the board is developing guidelines for ferries, cruise ships, excursion boats and other types of passenger vessels for compliance under the ADA.<sup>114</sup> When developing the guidelines the board considers that for structures to be removed they must be “readily achievable” and those removals which interfere with international safety requirements or international operations of the cruise ship would be barred from removal.<sup>115</sup>

Prior to *Spector*, the cruise industry was involved in a number of lawsuits because of inadequate accommodations for the disabled

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107. *Spector*, 125 S. Ct. at 2178.

108. 42 U.S.C. § 12181(9) (2000).

109. *Id.* § 12181(9)(A) (considering whether something is “readily achievable,” one factor is “the nature and costs of the action needed under this Act”).

110. *Id.* § 12181(9)(B)–(D) (One factor to be considered when determining “readily achievable” includes “the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility; the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type and location of its facilities; and the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.”).

111. Ivanovich, *supra* note 105.

112. U.S. ACCESS BOARD, DRAFT PASSENGER VESSEL ACCESSIBILITY GUIDELINES AND SUPPLEMENTARY INFORMATION (2004), available at <http://www.access-board.gov/pvaac/guidelines.htm> (last visited Mar. 25, 2006).

113. *Id.*

114. U.S. ACCESS BOARD, ABOUT THIS RULEMAKING (2004), available at <http://www.access-board.gov/pvaac/> (last visited Mar. 25, 2006).

115. *Spector*, 125 S. Ct. at 2180.

community.<sup>116</sup> In 2001, both Carnival and NCL agreed to make changes to accommodate disabled travelers after having suits filed against both.<sup>117</sup> NCL eliminated different terms and conditions between travelers with visual impairments and those without in a suit filed by the U.S. Justice Department.<sup>118</sup> Carnival made considerable changes to fifteen ships to increase accessibility on those ships.<sup>119</sup> In addition, Royal Caribbean provides thirty-two inch-wide doors, five feet of turning radius for individuals who are mobility impaired, and inserted Braille signs throughout their ships.<sup>120</sup> Now, post-*Spector*, the cruise industry will further their progress to accommodate disabled individuals by removing, hopefully the last of the barriers to accommodation for compliance with Title III of the ADA.

#### IV. WHAT EXPENDITURES ARE IMPOSED BY THE APPLICATION OF THE ADA TO THE CRUISE INDUSTRY?

The foreign cruise industry is a 2.5 billion dollar industry.<sup>121</sup> The cost of remodeling cruise ships to be accessible to individuals with disabilities is feared to cost millions for the cruise industry.<sup>122</sup> The actual remodeling costs will not be known until the specific alterations that cruise ships must make are set forth by the Access Board and the likelihood that no structural modifications could be called for eases the fear of compliance for cruise ships.<sup>123</sup>

The ruling has not slowed NCL who launched the first United States-flagged cruise ship in fifty years, the "Pride of America," only nine days after the Supreme Court's decision in *Spector*.<sup>124</sup> In light of the *Spector* decision requiring NCL foreign-flagged cruise ships to comply with ADA standards, could NCL's launch of a ship flying the United States flag be a sign of loyalty and commitment to the United States and its laws? Has NCL had a sudden change of heart and decided that the nation it primarily serves should be the nation whose laws it will uphold? This decision, like all business strategies, has a bottom line which is exactly that, profit.

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116. Fields, *supra* note 104.

117. *Id.*

118. *Id.*

119. Cordle, *supra* note 87.

120. Fields, *supra* note 104.

121. Mark Hamblett, *High Court: Cruise Ships Must Provide Disabled Access*, THE LEGAL INTELLIGENCER, June 8, 2005 at 4.

122. *Id.*

123. *Id.* Ivanovich, *supra* note 105.

124. Douglas Hanks, III, *Norwegian Cruise Line Sails Ship Under U.S. Flag*, THE MIAMI HERALD, June 16, 2005, at 1C.

NCL will incur some higher costs because the *Pride of America* must comply with United States labor and minimum-wage laws.<sup>125</sup> Additionally, there is the requirement that any ship flying under the United States flag must be built in the United States.<sup>126</sup> These costs are not incurred by NCL alone, but rather are passed on to the passengers who pay 20 percent more for their cruise of the Hawaiian Islands than on Caribbean cruises.<sup>127</sup> Airfare is then tacked on to that twenty percent higher cruise price because for the *Pride of America* cruise, most passengers must first fly to Hawaii before embarking on their cruise vacation.<sup>128</sup> NCL also cuts fuel costs on the *Pride of America* as compared to Caribbean cruises because the islands of Hawaii are situated much closer than the islands in the Caribbean and the ship does not have a casino, which “rob[s] them of a key revenue source.”<sup>129</sup> The bottom line is, regardless of NCL’s motives for launching the *Pride of America*, the excitement of sailing the Hawaiian Islands under a United States flag may serve to overshadow any doubt that the *Spector* decision will impede the cruise industry, and rather provide the conclusion that the industry will continue to accommodate the changing needs of the individuals who contribute the revenue for the hospitality and tourism industry.

#### V. AN INTERNATIONAL PERSPECTIVE ON DISABILITY TREATMENT AND LAWS

“When in Rome, do as the . . .” Americans? Has *Spector* set a new precedent that the laws of a nation no longer end at its borders but can extend much further? The familiar phrase, “[w]hen in Rome, do as the Romans do,” stands for the concept that while a visitor is within the boundaries of a foreign nation it is standard to act as the natives do. In contrast to this well-known phrase, could the *Spector* decision be suggesting that while individuals are within the territory of a nation, the laws of a separate and independent foreign nation could apply in a manner that dictate and control the conduct of those individuals without any agreement by that nation?<sup>130</sup>

While the long-term impact of the *Spector* decision remains unknown, it is known that foreign-flagged cruise ships must comply with ADA regulations to the amount “readily achievable” and that the cruise industry

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125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. Hanks, *supra* note 124.

130. *Spector*, 125 S. Ct. 2169 (holding that foreign-flagged cruise ships in United States waters must comply with the ADA).

will incur great costs in an effort to do so.<sup>131</sup> This impact on the cruise industry will, in theory, not only result in equality for disabled citizens of the United States, but also may begin a ripple effect internationally toward more stringent standards against discrimination as a whole. This hope of international equality leaves one final question remaining: how might other nations involved in the U.S. cruise industry be effected by this extraterritorial reach of the Supreme Court into their territory?

Some of the most involved nations in the cruise industry include Panama, Liberia, and the Bahamas.<sup>132</sup> These nations flags are flown above some cruise ships,<sup>133</sup> but beneath these flags are nations with laws governing the vessels, which are very different from the United States.<sup>134</sup> As different as the laws of each nation are, they have many of the same basic constitutional rights,<sup>135</sup> but beyond those rights enumerated in their constitutions are human rights involving the treatment of individuals which should be so innate that they need not be documented. In the realm of human rights in the United States, the *Spector* decision stands for the equal right to enjoyment of public accommodations and life.<sup>136</sup>

#### A. Panama

Panama is a nation with 3.2 million people.<sup>137</sup> The last available census in 2000 estimated 52,197 individuals with disabilities but found that number could be as high as 280,000.<sup>138</sup> The Panamanian Constitution, much like the United States Constitution “prohibits discrimination on the basis of race, birth status, social class, sex, disability, or political views.”<sup>139</sup> In 2002 a Panamanian law was enacted which further specified that discrimination is prohibited in “right to admission” to any public or

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131. 42 U.S.C. § 1282(b)(2)(A)(iv)–(v); see Hamblett, *supra* note 121.

132. Dale K. DuPont, *Cruise Lines Operate Under Layers of Laws*, THE MIAMI HERALD, May 31, 2003, at 1C.

133. *Id.*

134. Frieden, *supra* note 57.

135. U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2004: PANAMA 5 (2005), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41769.htm> (last visited Mar. 25, 2006) [hereinafter PANAMA HUMAN RIGHTS PRACTICES]; CONSTITUTION, Ch. 2 and 8, Art. 1 (1986) (Liber.) [hereinafter CONSTITUTION OF LIBERIA]; CONSTITUTION, Ch. 3, Art. 26 (1)–(3) (1973) (Bah.) [hereinafter CONSTITUTION OF THE BAHAMAS].

136. *United Cerebral Palsy Statement*, *supra* note 15.

137. *Panama Country Profile Report*, BBC NEWS, July 14, 2005, available at [http://news.bbc.co.uk/1/hi/world/americas/country\\_profiles/1229332.stm](http://news.bbc.co.uk/1/hi/world/americas/country_profiles/1229332.stm) (last visited Mar. 25, 2006) [hereinafter *Panama Profile*].

138. PANAMA HUMAN RIGHTS PRACTICES, *supra* note 136.

139. *Id.*

commercial establishment.<sup>140</sup> This law could encompass a cruise ship as a public or commercial establishment.

Application of antidiscrimination laws can often times be very different than the theory of operation on which they were founded. Discrimination on the basis of disability is evident in employment, education, access to health care, and other state services.<sup>141</sup> Many sidewalks and bathrooms are not handicapped accessible although building codes are implemented to require such accommodation.<sup>142</sup> Noncompliance with building codes could result in fines ranging from 100 to 500 Balboa, while noncompliance for "right to admission" to public or commercial establishments ranges from 250 to 1,000 Balboa.<sup>143</sup> Enforcement of fines and accessibility are inconsistent, however, efforts to improve the enforcement of the laws against the discrimination of disabled individuals are currently in place.<sup>144</sup>

Perhaps *Spector* will serve to expedite those efforts within the country by requiring that Panamas' foreign-flagged cruise ships comply with the ADA regulations. This speculation may be optimistic based on the implementation of existing law. Considering that almost nine percent of the population suffers from some type of disability, and that the constitution and disability laws of Panama stand for equal treatment, the *Spector* decision could encourage the Panamanian government to increase enforcement of its laws.<sup>145</sup>

## B. Liberia

Liberia is a republican West African nation with a population of 3.4 million people.<sup>146</sup> The unemployment rate stands at over seventy percent, while eighty percent of Liberia's 3.4 million people live on less than one dollar everyday.<sup>147</sup> The Liberian Constitution, similar to Panama and the United States, bars discrimination on the basis of "ethnic background, race,

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140. *Id.*

141. *Id.*

142. *Id.*

143. PANAMA HUMAN RIGHTS PRACTICES, *supra* note 135 (The current rate of exchange is 1 Balboa = 1 American dollar.).

144. *Id.*

145. *Id.*

146. U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2004: LIBERIA (2005), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41611.htm> (last visited Mar. 25, 2006) [hereinafter LIBERIA HUMAN RIGHTS PRACTICES].

147. *Id.*

sex, creed, place of origin or political opinion.”<sup>148</sup> The Liberian Constitution is considered one of the paramount Constitutions in Africa.<sup>149</sup> Although the Liberian Constitution governs antidiscrimination and a variety of other freedoms, its application in the Liberian nation does not uphold that which is expressed in its Constitution.<sup>150</sup>

Neglect in following laws enumerated in the Constitution does not begin with its people, but rather, with the government officials who abuse rights and liberties provided for in the constitution.<sup>151</sup> The Liberian Constitution provides that equal access be given for educational opportunities and facilities “to the extent of available resources”<sup>152</sup> and that Liberia “shall direct its policy towards ensuring for all citizens, without discrimination, opportunities for employment and livelihood under just and humane conditions, and towards promoting safety, health and welfare facilities in employment.”<sup>153</sup> Although, this constitution expresses a multitude of freedoms and protections that the United States and other nations, such as Panama have enumerated,<sup>154</sup> they are not enforced by law, and disabled individuals are not given access to government services and public buildings.<sup>155</sup>

Liberia is a nation where the Constitution provides for the prevention against discrimination, but the government does not uphold the Constitution by even the slightest degree of enforcement. Contrarily, through its inactions, it appears to promote the neglect of the nation’s laws. The *Spector* decision will hopefully reaffirm the Liberian constitutional values against discrimination, beyond just cruise ships in United States’ waters.

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148. *Id.*

149. Nat Galarea Gbessagee, *The Constitution vs. Civil Liberties in Liberia*, THE PERSPECTIVE, Aug. 6, 2002, available at <http://www.theperspective.org/civilliberties.html> (last visited Mar. 25, 2006).

150. *Id.*

151. *Id.*

152. CONSTITUTION OF LIBERIA, *supra* note 135, art. 6.

153. *Id.* at art. 8.

154. *Id.* at art. 11(a)–(c). (These provisions of the Liberian Constitution state that “all persons are born equally free and independent and have certain natural, inherent and inalienable rights, among which are the right of enjoying and defending life and liberty,” and “all persons, irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms,” and “all persons are equal before the law and are therefore entitled to the equal protection of the law.”).

155. LIBERIA HUMAN RIGHTS PRACTICES, *supra* note 146.

### C. The Bahamas

The Commonwealth of the Bahamas has a population of about 310,000 citizens.<sup>156</sup> The Bahamian Constitution bars laws which are discriminatory or laws which are facially neutral but result in discrimination.<sup>157</sup> Further the Constitution states that “no person shall be treated in a discriminatory manner in respect of access” where the general public has access including “places of resort.”<sup>158</sup> “Places of resort” could perhaps encompass cruise ships.

Discrimination in employment, education, access to health care, and other state services is not readily present. However, laws governing access compliance for building accommodations are generally not enforced.<sup>159</sup> Individuals with physical and mental disabilities are provided services which include education, training, counseling and job placement through the government and private entities.<sup>160</sup>

The *Spector* decision seems to be consistent with the current Bahamian Constitution and application of the laws for antidiscrimination in the Bahamas. Although the ADA has extensive guidelines, and many alterations could be imposed on the cruising industry, these standards seem to be a means to achieve equal access in “places of resort” as the Bahamian Constitution mandates, which demonstrates the consistency between Bahamian and American practices.

The requirements imposed on remand by the lower court in *Spector* are what Panama, Liberia, the Bahamas, and other nations will be required to comply with. Compliance will not then just be in theory, but in application on each and every foreign-flagged cruise ship.

## VI. WHAT IF THE *SPECTOR* DECISION HAD GONE THE OTHER WAY?

Regardless of how many Justices were in the majority of the *Spector* decision, one question will always remain: what would have happened if the Supreme Court ruled that Title III of the ADA does not apply to foreign-flagged cruise ships in United States’ waters? The answer to this question may bring more clarity to the Supreme Court’s ruling. If the ADA did not apply to foreign-flagged cruise ships, then the Courts could hold

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156. U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2004: THE BAHAMAS (2005) available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41747.htm> (last visited Mar. 25, 2006) [hereinafter BAHAMAS HUMAN RIGHTS PRACTICES].

157. CONSTITUTION OF THE BAHAMAS, *supra* note 135.

158. *Id.* at § 26(7) (The public places where access cannot be denied includes shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort.).

159. BAHAMAS HUMAN RIGHTS PRACTICES, *supra* note 156.

160. *Id.*

that the United States Civil Rights Act does not apply.<sup>161</sup> Cruise ships could begin to bar individuals on the basis of certain religious affiliations, race or even gender from boarding their vessel.<sup>162</sup>

The United States Supreme Court during oral argument, expressed concern over foreign-flagged cruise ships operating in the United States outside of laws against discrimination.<sup>163</sup> Justice Ginsburg questioned council for NCL regarding whether the Civil Rights Act would apply to passengers aboard a foreign-flagged ship even though the statute does not expressly include foreign-flagged cruise ships.<sup>164</sup> Council responded that "Congress has not spoken to that point."<sup>165</sup> This could lead to the conclusion that had the Court in *Spector* found the ADA inapplicable to foreign-flagged cruise ships then the Civil Rights Act could also be held inapplicable for lack of express Congressional intent. Instead of progressing toward ending discrimination, as the present *Spector* decision does, a contrary decision could have pushed the United States back down the path for equality that Americans have fought so hard to overcome for all types of discrimination.

#### VII. CONCLUSION: FULL STEAM AHEAD FOR THE CRUISE INDUSTRY, DISABLED COMMUNITY, AND FOREIGN NATIONS

The Supreme Court had many factors to consider prior to their decision that Title III of the ADA will apply to foreign-flagged cruise ships in United States waters. Although modifications may be required and expenses incurred for the cruise industry, the repercussions of the opposite result would have implications that would undermine basic civil rights that the United States ensures to all its citizens. The international impact of this decision on nations like Panama, Liberia, and the Bahamas may not be as great as the impact on the United States because of the difference in treatment between the nations' laws and application of the laws or because the nations have become accustomed to their own practices regarding discrimination. What is known at this time is that United States law will no longer discriminate against cruise ships within its territory based on the flag flying above the vessel. *Spector* stands for equality for all nations whose ships pass through United States' waters with its citizens on board and that every one of them must comply with the ADA.

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161. Cordle, *supra* note 87.

162. *Id.*

163. *Supreme Court Hears Arguments on Cruise Accessibility Case*, TRAVELAGE WEST, Mar. 7, 2005 at 8, available at <http://travelagewest.com/articles.aspx?article=3593> (last visited Mar. 25, 2006).

164. *Id.*

165. *Id.*

*Spector* affords hope to individuals like Ana and Douglas Spector that they now may enjoy the cruise line vacation they had hoped for over a half decade ago. *Spector* is a step in a positive direction which will serve as a model for other nations who have not had the opportunity to fully appreciate equality for all individuals without regard for age, race, gender, and disability. Change must start somewhere and the United States Supreme Courts decision in *Spector* set a precedent that this change will begin here and will hopefully transcend the borders of the United States.