



The Costa Concordia incident in Italy on 13.01.2012

Outline of Passenger limitations and claim process

Let us brief our Clients and Colleagues about some Italian legal implications affecting passengers right to compensation in the terrible incident which led to the shipwreck of Costa Concordia off our coasts on Friday 13th last.

The compensation due from the Organizer will in no circumstances be greater than the indemnities which apply and the limitations to these as laid down in the Italian and international regulations in force on the service whose failure to supply has brought about the damage, where applicable.

If no specific regulations apply to the service in question or the regulations which do apply do not lay down any limits on the indemnities payable by way of compensation, the limitations set out in article 13.2 of the Convention of Brussels of 23rd April 1970 (CCV) will apply.

If the Organizer is also the owner, operator or charterer of the vessel used in the cruise, this will have no effect on the application of the regulations on the limitation of debts as set out in articles 275 and following of the code of shipping, or, to the extent that it applies, the Convention of Brussels of 10th October 1957 or the Convention of London of 19th November 1976 and subsequent modifications.

The 1974 Athens Convention is not yet in force in Italy, nor its Addendum signed at London in 2002. So in our opinion, save for what we shall say below about the new 2011 Consumer Protection Code, the only applicable uniform rule left is art. 13.4 of the Brussels CCV 1970. This EU legislation has been enacted in Italy by Law 27/12/1977 n. 1084. This rule states:

Art. 13.2 – Without prejudice for the determination of the title to sue and respective rights of each passenger, the indemnity due is limited per each passenger to: 50.000 gold francs germinal (GFG) for personal injury; 2.000 GFG for damages to goods; 5.000 GFG for any other damage. Each Contracting State however can fix a higher limit in connection with contracts stipulated through a travel agency located in its territory.

The quotation of the GFG is presently around Euro 8,46 per 1 GFG but fluctuating.

Italy has recently enacted a EU Directive by a Bill passed in June last year (D. LGS. 79/2011 – Consumers and Tourism Protection Code). The Bill confirms the above limits and add an additional limit of 10,000 GFG per each passenger in respect of damages for loss of holiday (ruined vacation) and other indirect damages. The relevant articles are 44, 45 and 47 of the Code.

The Claim process

1) First of all the claimant passenger shall have to show a valid cruise contract or ticket. This is usually executed either through a Tour Organizer (in Italy or abroad) or via web directly with Costa Cruises. In the first case the claim must be brought against the Organizer, in the second case against Costa Cruises which in fact acts as an Organizer on behalf of Costa Crociere.

2) The claim must be always presented to the Organizer within 10 days from the date the passenger returns home. However it is understood that this limit does not apply to claim for damage to person or to goods but only to claims for ruined holiday and other underperformances of the Organizer. Our advice is anyway to try to respect it if possible.

3) The passenger has 12 months time bar (from date of incident) to introduce a formal lawsuit if the claim is not settled before.

4) Claims allowed are in respect of personal injury (or death), loss of goods (baggage, car, personal belongings, etc.), loss of holiday, other damages (pain and suffering, stress and fear, etc.). Obviously claim must be proved in its existence and quantum by any means.

5) Limitation of liability is 423,000.00= Euro for life or personal injury, 23,000.00= Euro for goods, 42,300.00= Euro for other losses/damages, 84,600.00= Euro for loss of holiday. These amounts are the conversion of the Gold Franc Germinal (GFG) at today's exchange rate.

6) The competent court will be indicated in the cruise contract. Otherwise it will be Genoa.

7) Any supporting document will do, like a copy of the relevant contract documents, receipts/vouchers of goods purchased at home and contained in the baggage, vouchers of goods purchased during the holiday, medical report confirming illness and/or injury, witness statements regarding list of goods/items carried along by the passenger, vouchers regarding expenses sustained after the incident for repatriation purposes (unless dealt with directly by Costa).