

# INJURY BOARD

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## TRAVELING THIS WINTER

### Be Wary of Signing Resort Disclaimers

By Robert L. Parks

Tragic accidents can happen when traveling out of the country. Tourism is up in the Caribbean, just as it has been for the last decade or so. Travelers find it an easy extension of Florida. It is warm and easy to get to. The problem is that many of these resorts are now implying either guest waivers, or forum selection clauses, or both. The first means that should you choose to use the pool, or a golf cart, or a hotel raft, should any accident result, each guest waives their right to sue based on the resort's negligence. For example, a child could drown in a hotel pool, a fall from a parasail could lead to paralysis, or a shore excursion accident could cause serious injuries to cruise ship passengers. The second example is when a resort asks a guest to sign "forum selection clauses." These are often buried in the guest registration packet that visitors sign as they check into a hotel. The forum selection clause essentially says, should a guest wish to sue for negligence, it must be in the country where they are vacationing such as the Bahamas, French Indies or Jamaica. Many of the countries that Americans are traveling to reject traditional tort claims.

In many instances contingency fee arrangements are not legal, so only travelers who are wealthy enough to retain and maintain an hourly fee attorney are even able to bring lawsuits. It is also fairly common to see a filing fee that equates to a percentage of the expected recovery. This often translates to a traveler having to shell out hundreds of thousands of dollars just to file a lawsuit in a foreign country that the Defendant hand-selected and which obligates that injured traveler to have to travel back to in order to fully litigate their claim.

Unfortunately, U.S. travelers fail to understand the risks involved with vacation travel, and focus only on the enjoyable aspects. That puts them at a legal disadvantage if a death or serious injury were to occur. That is because resort operators, hotel companies and cruise lines do everything possible to reduce potential liability. In practice

that means including "standard" legal disclaimers in fine print at the bottom of a travel agreement where only a few people will take the time to read them.

One of the key disclaimers in a travel contract involves the "choice of forum." This allows the hotel, resort or cruise line to choose the country where any potential personal injury, product liability or wrongful death lawsuit will be filed. That means if a serious accident occurs in The Bahamas, Mexico or Jamaica, the law of that country will apply to the case.

Why do travel providers include such a provision and why would it matter to a U.S. citizen or resident? The answer is simple. It is far more difficult to win such a lawsuit in an overseas court than in the United States. The laws regarding these types of cases can be substantially different from country to country, and engaging a foreign attorney may be necessary, adding substantially to the cost, time and complexity of filing a lawsuit for damages. Depending on the individual circumstances, an injured party may be able to file a lawsuit in the United States, significantly improving the odds of a favorable jury verdict or financial settlement. After all, many leading travel providers are U.S. companies or have substantial U.S. operations or assets.

However, it is far better for travelers to understand the potential risks involved in signing legal disclaimers and to protect their rights before leaving the country. Clearly, the first step is to read and understand everything in the documentation provided by the travel agency, resort, cruise line or other provider. Because of recent court decisions, these disclaimers are typically emailed well in advance of the actual travel date. If the travel agent does not send this information, the agency itself could face a liability issue if a problem occurs. Upon arrival at the hotel, resort or cruise ship, a traveler should read the check-in documents closely. If there is a choice of forum clause, simply draw a line through that clause and initial the document. It is highly unlikely that the hotel will turn anyone away at the last minute – especially in today's economy.

That simple step makes it very tough for the travel operator to argue that you have agreed to initiate any legal action in a foreign country. It allows you to protect your rights and gives you a wider range of legal options if a tragedy happens while out of the country.

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