



Covid-19 Insights

29.09.2020

DAMAGE FOR "EMOTIONAL DISTRESS", CRUISES AND COVID-19

In the last few months the cruise sector has been severely affected by the Covid-19 epidemic.

The increase in infections from Covid-19 on cruise ships has raised several legal issues in terms of contagion liability.

One of the most discussed issues concerns the compensation of the so-called "Damage from emotional distress", i.e. the damage suffered by the passenger who, even without being a victim of contagion, has suffered the situation of tension and fear created on board following the emergence of positive cases.

This is a particular hypothesis of non-pecuniary damage, which can be translated into our legal system as a hypothesis of damage "from a ruined holiday", in the light of the regulations contained in the Tourism Code (Article 46.1 of Legislative Decree no. 79/2011).

According to the aforementioned regulatory discipline and the interpretation that the jurisprudence has given, the damage from "ruined vacation" can be compensated under the condition that the threshold of reasonable

tolerability is exceeded and the damage, in addition to being of a certain entity, is recognizable, as it is connected to material facts.

On this point it attention shall be paid to a recent ruling by the United States District Court - Central District of California - of 14 July 2020 (*Ronald Weissberger et al. v. Princess Cruise Lines, Ltd.*).

The case under consideration it is about a claim brought by a couple of passengers (the Weissbergers) against Princess Cruises for the request for compensation for damages from "emotional distress" resulting from the fear of contagion during the quarantine period on board. The federal judge dismissed the aforementioned claim, setting out the requirements necessary so that the damage caused by "emotional distress" can be compensated.

Specifically, the judge, referring to a well-known jurisprudential precedent,¹ mentions the two fundamental requirements for the

¹ *Consolidated Rail Corp. v. Gottshall*, 512 US 532 (1994).

purposes of compensation for damages from "emotional distress" in compliance with the so-called "Zone of danger test":

- (1) occurrence of material damage ("physical impact");
- (2) immediate risk of physical harm.

In the present case, the Court found that claim brought by the couple didn't meet the "zone of danger test" and the related requirements.

The Court rejected the request made by the couple as the claimed damage is based on the mere proximity to Covid-19 positive individuals and the consequent fear of contracting the virus, without proof of material damage and near risk of such damage.

Finally, the Court specifically rejected the plaintiff's arguments that there should be a "carve out" for the cruise industry for claims relating to Covid-19: the exposure to the virus is not unique to the cruise industry, but also concerns other sectors (such as catering, hospitals, prisons, etc.) in which the risk of contagion can be even higher than what takes place on cruise ships.



Genova

Via XX Settembre, 14/17
16121 Genova
Tel. +39 010 586841

Milano

Via Agnello, 6/1
20121 Milano
Tel. +39 02 36576390

Venezia

San Polo 720
30125 Venezia
Tel. +39 041 2412865

mail@mordiglia.it
www.mordiglia.it