

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 01-0244-CIV-KING/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff

v.

NORWEGIAN CRUISE LINES, INC.,

and

NORWEGIAN CRUISE LINE LIMITED,

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF UNITED STATES'  
MOTION IN LIMINE TO EXCLUDE EVIDENCE**

Plaintiff United States files this Motion pursuant to Federal Rule of Civil Procedure 7 and Federal Rules of Evidence 401 and 402, requesting an order from the Court prohibiting Defendants, Norwegian Cruise Lines, Inc. and Norwegian Cruise Line Limited (collectively, "NCL"), from introducing any evidence intended to establish that a person with a vision impairment poses a threat of harm to him/herself. In support of this Motion, the Plaintiff states the following.

**I. Background**

On January 19, 2001, the United States filed suit in the above-titled matter and alleged, inter alia, that NCL violates Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12182, by imposing discriminatory terms and conditions of travel on persons with vision

impairments, thus denying such persons equal enjoyment of its cruise ships. See United States' Complaint, ¶¶ 14-62. Specifically, the United States alleges that NCL requires persons with vision impairments to travel with a sighted companion in the same cabin, obtain a doctor's note indicating fitness for travel, obtain travel insurance, and sign a waiver form acknowledging that they present "special risks" to themselves and other passengers. Id. at ¶¶ 18, 32-33, 46-47, 58.

On May 7, 2001, NCL filed its Answer to the United States' Complaint and alleged that its actions were "reasonably necessary to avoid a direct threat of harm to **Plaintiff's** [sic] or others. . ." NCL's Answer, Aff. Def. 16 (emphasis added). However, while harm to "others" is relevant to the "direct threat" defense under Title III, harm to "self" is not. Here, only evidence relating to the safety of other passengers is relevant to NCL's "direct threat" defense. Thus, evidence intended to establish that Stephen Gomes, Robert Stigile, Joy Stigile, or other similarly situated persons with vision impairments posed a "direct threat" to themselves is inadmissible and should be excluded at trial.

## II. Argument

### A. The "Direct Threat" Provision in Title III Does Not Apply to "Self"

Title III of the ADA bars a "place of public accommodation" from "discriminat[ing] against [an individual] on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations" that it provides for the general public. 42 U.S.C. § 12182(a). A public accommodation can, however, deny a person with a disability equal enjoyment of its goods, services, facilities, etc. if the public accommodation demonstrates that providing access to a person with a disability "poses a direct threat to the

health or safety of others.” 42 U.S.C. § 12182(b)(3) (emphasis added). Title III of the ADA defines “direct threat” to mean “a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.” Id. (emphasis added). Thus, as the plain language of the statute indicates, “direct threat” does not include threats to the health or safety of the person with the disability him/herself. Any contrary conclusion would be inconsistent with the plain text of the law. See United States v. Gonzales, 520 U.S. 1, 117 S.Ct. 1032, 1936 (1997) (“The case must be a strong one indeed, which would justify a court in departing from the plain meaning of words ... in search of an intention which the words themselves did not suggest”) (quoting United States v. Wiltberger, 5 Wheat. 76, 95- 96, 5 L.Ed. 37 (1820) (Marshall, C.J.)).

Moreover, applying the “direct threat” defense only with respect to harm to others is consistent with relevant case law. In Bragdon v. Abbott, 524 U.S. 624, 647 (1998), the Supreme Court considered the defense in the context of a Title III action, and, consistent with the plain language of the ADA, looked only to harm posed to others. According to the Supreme Court, “The ADA’s direct threat provision stems from the recognition in School Bd. of Nassau Cty. v. Arline, 480 U.S. 273, 287 (1987), of the importance of prohibiting discrimination against individuals with disabilities while protecting others from significant health and safety risks, resulting, for instance, from a contagious disease.” Bragdon, 524 U.S. at 647 (emphasis added); see also Montalve v. Radcliffe, 167 F.3d 873, 876 (4<sup>th</sup> Cir. 1999) (in a Title III context, applying direct threat only to others); Cathleen S. v. Department of Public Welfare of Com., 10 F. Supp.2d 476, 479 (E.D. Pa. 1998) (same). No authority exists that specifically expands Title III’s

definition of “direct threat” to include harm to the person with a disability him/herself.<sup>1</sup>

Finally, that the “direct threat” provision applies only with respect to harm to others is consistent with public policy. One of the chief purposes of the ADA is to end discrimination that results from overprotective, paternalistic treatment of individuals with disabilities. 42 U.S.C. § 12101(a)(5). By defining “direct threat” only with respect to “others,” Congress clearly expressed its intention that persons with disabilities be afforded the opportunity to decide for themselves what risks to undertake.

**B. Evidence Intended to Establish that Persons With a Vision Impairment Pose a Threat of Harm to Themselves Is Irrelevant to NCL’s “Direct Threat” Defense and Should Be Excluded**

Pursuant to Federal Rules of Evidence 401 and 402, evidence is only admissible at trial if it is intended to establish a fact that is of consequence to the determination of the action. Fed. R. Evid. 401, 402. Here, the fact that Stephen Gomes, Robert Stigile, Joy Stigile, or other similarly situated persons with vision impairments may or may not face safety risks on board a cruise ship is of no consequence to Defendants’ “direct threat” affirmative defense. In assessing whether a passenger or potential passenger with a vision impairment poses a “direct threat,” the only relevant safety concerns are those posed to other passengers. Thus, evidence introduced for the

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<sup>1</sup> In Jairath v. Dyer, 92 F. Supp. 1461, 1469 (N.D. Ga. 1997), a Title III case, the Court erroneously relied on EEOC’s regulatory definition of “direct threat” under Title I of the ADA and analyzed direct threat with respect to both self and others. The Jairath decision was later vacated by the Eleventh Circuit on other grounds. Jairath v. Dyer, 154 F.3d 1280 (11th Cir. 1998).

purpose of establishing that Stephen Gomes, Robert Stigile, Joy Stigile, or other similarly situated persons with vision impairments pose a “direct threat” to themselves is inadmissible and should be excluded.

**CONCLUSION**

For the foregoing reasons the United States respectfully requests that its Motion in Limine to Exclude Evidence be granted.

Respectfully submitted,

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July 27, 2001

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CERTIFICATE OF SERVICE

I, Daniel Werfel, hereby certify that the foregoing Plaintiff United States' Memorandum of Law in Support of its Motion in Limine to Exclude Evidence was served on July 27<sup>th</sup>, 2001, by facsimile and regular mail on the following counsel:

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