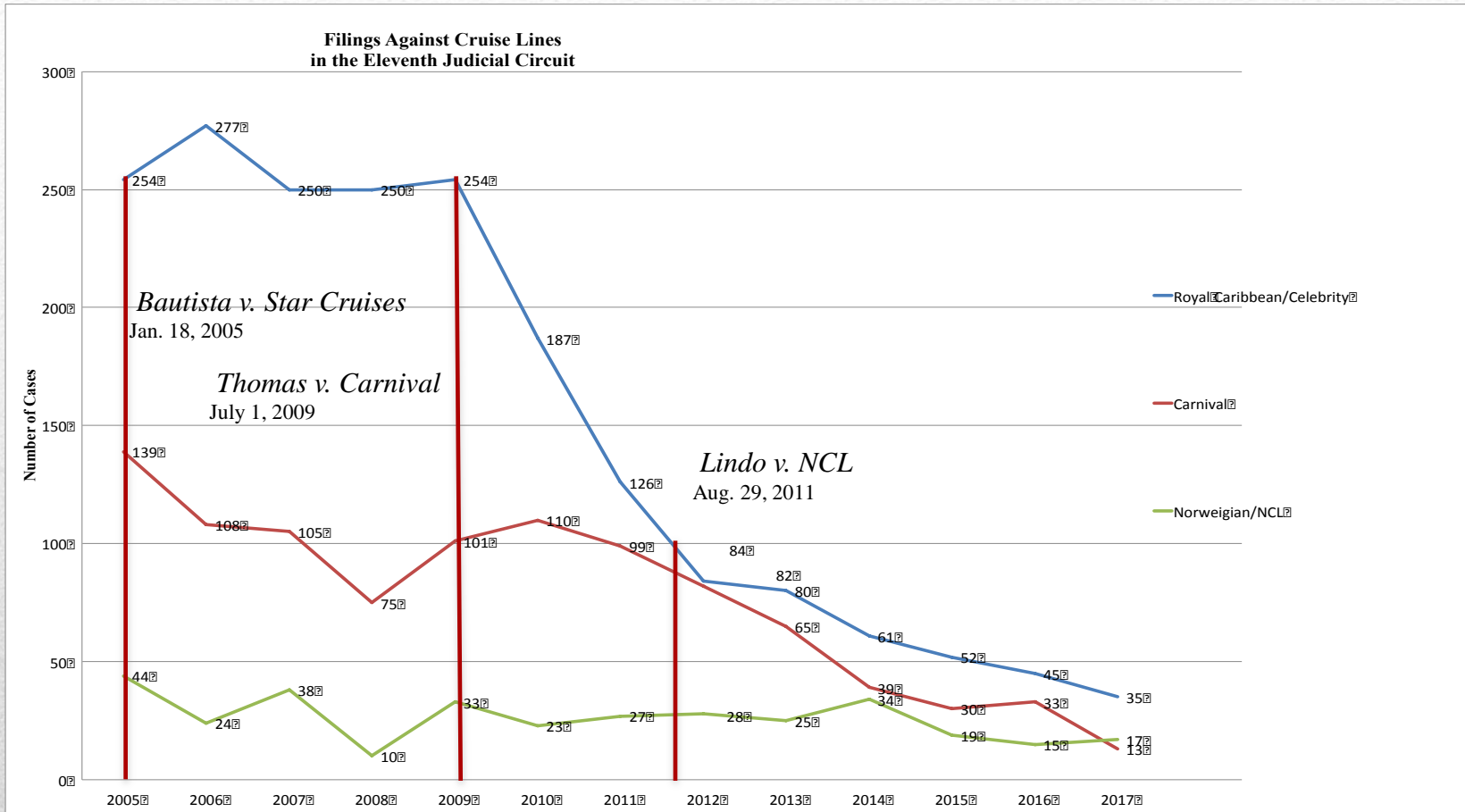




Maritime and Cruiseship Arbitrations: Making Waves



The Impact -- Filings Against Cruise Lines in the Eleventh Judicial Circuit

The Bahamas Maritime Authority “BMA”

- Created in 1995
- Semi-autonomous government – owned corporation
- Dedicated to maintaining the highest standards for Bahaman flagged vessels in its fleet
- Function:
 - Register vessels – assistance
 - Enforce safety – inspections
 - Monitor and improve standards (on board and the environment)
- Offices in Nassau, Bahamas, New York, London, Hong Kong and Greece (to assist Bahamian flagged shipowners and their seafarers)
- Education – providing lists of training centers
- Works with the International Maritime Organization (IMO) which is the UN’s agency dedicated to technical and operational matters.

Benefits to Flagging a Vessel in the Bahamas

The Bahamas Maritime Authority “BMA”

It has important responsibilities include:

- 5(f) “to assist in the development of the maritime industry of The Bahamas;” and
- 5(g) “to expand and create maritime employment opportunities for Bahamians.”

Benefits to Flagging a Vessel in the Bahamas

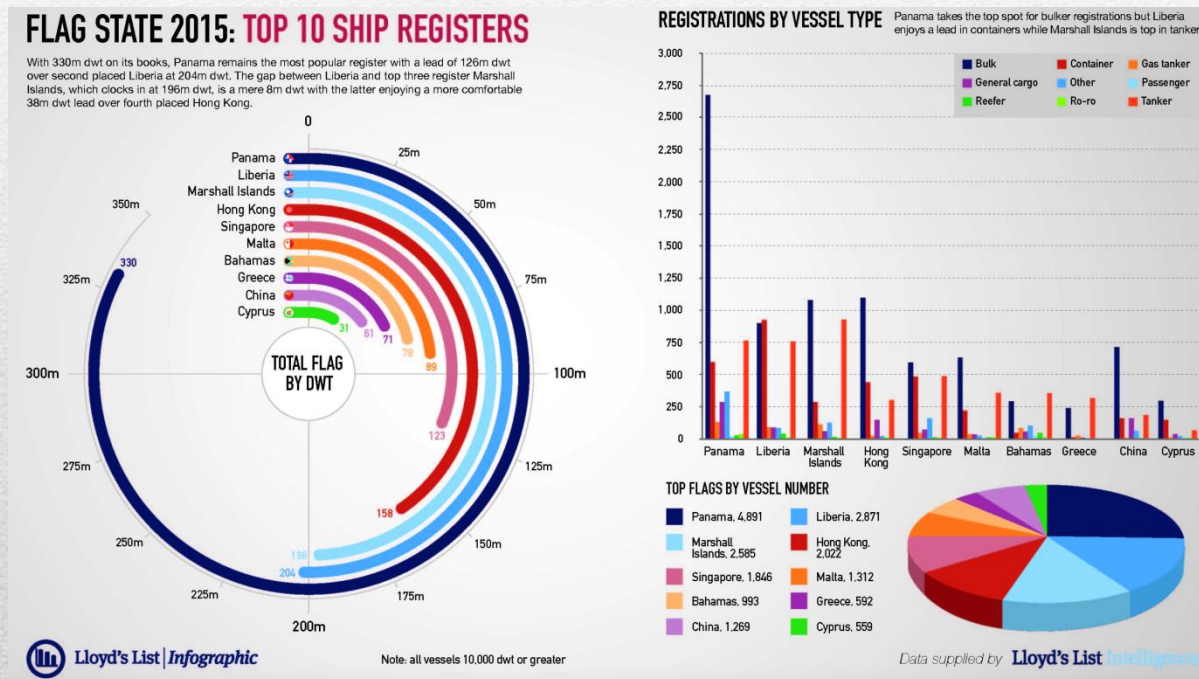
The Bahamas Shipowners Association “BSA”

- Created in 1997
- Purpose:
 - Promote the interest of the shipowners of Bahamian registered vessels
 - Facilitate dialogue between shipowners and the BMA.

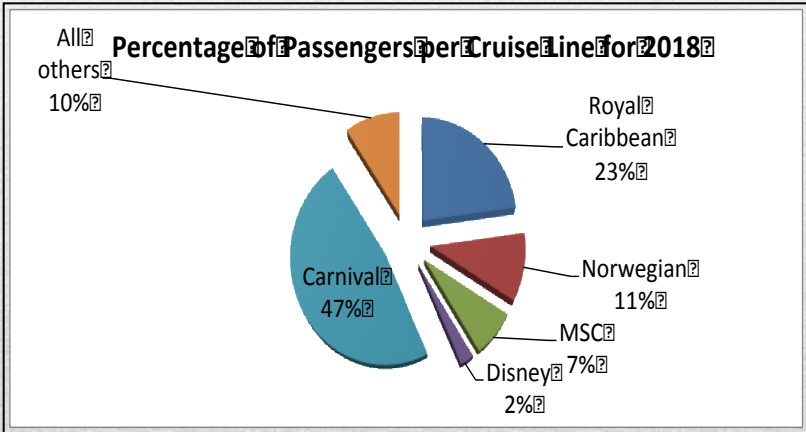
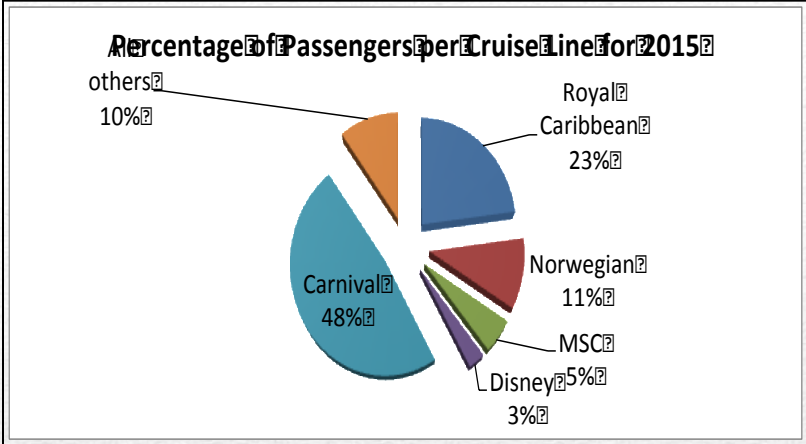
Benefits to Flagging a Vessel in the Bahamas

Have the BMA and BSA been Successful?

The Bahamas has the seventh largest ship registry in the world.



Success?



The Cruise line's Share of World Wide Passengers

12. ARBITRATION - Seaman agrees, on his own behalf and on behalf of his heirs, executors, and assigns, that any and all claims, grievances, and disputes of any kind whatsoever relating to or in any way connected with the Seaman's shipboard employment with Company including, but not limited to, claims such as personal injuries, Jones Act claims, actions for maintenance and cure, unseaworthiness, wages, or otherwise, no matter how described, pleaded or styled, and whether asserted against Company, Master, Employer, Ship Owner, Vessel or Vessel Operator, shall be referred to and resolved exclusively by binding arbitration pursuant to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York 1958) ("The Convention"), except as otherwise provided in any government mandated contract, such as the Standard POEA Contract for Seafarers from the Philippines. The arbitration shall be administered by the American Arbitration Association ("AAA") under its International Dispute Resolution Procedures. No dispute may be joined with another lawsuit, or in an arbitration with a dispute of any other person, or resolved on a class-wide basis

A single Arbitrator is to be jointly appointed by the NSU and/or the Seaman, on one side, and Company, on the other side, unless the parties cannot agree to an Arbitrator, in which case the AAA shall select the Arbitrator from among six (6) names, three submitted by the NSU/the Seaman and three submitted by Company. The language of the arbitration shall be English. The place of the arbitration shall be the Seaman's country of citizenship, unless arbitration is unavailable under The Convention in that country, in which case, and only in that case, said arbitration shall take place in Nassau, Bahamas. The substantive law to be applied to the arbitration shall be the law of the flag state of the vessel.

Each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim on which the producing party may rely in support of or in opposition to any claim or defense. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator according to the IBA Rules on the Taking of Evidence in International Commercial Arbitration, which determination shall be conclusive. All discovery shall be completed

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within sixty (60) days following the appointment of the arbitrator. At the request of a party, the arbitrator shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of six (6) per party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator and for good cause shown. Each deposition shall be limited to a maximum of three (3) hours duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information.

The Company and the Seaman acknowledge that they voluntarily and knowingly waive any right they have to a jury trial. The arbitration referred to in this Article is exclusive and mandatory. Lawsuits or other proceedings between the Seaman and the Company may not be brought except to enforce the arbitration provision of this Agreement or to enforce a decision of the Arbitrator. The Seaman shall continue to satisfactorily and in good faith perform his/her duties and the parties shall abide by this Agreement while disputes or grievances are being resolved.

Arbitration Clause 1

1. All grievances and any other dispute whatsoever, whether in contract, regulatory, statutory, common law, tort or otherwise relating to or in any way connected with the Seafarer' s service for the Owners/Company under the present Agreement, including but not limited to claims for personal injury/disability or death, no matter how described, pleaded or styled, and whether asserted against the Owners/Company, Master, Employer, Ship Owner, vessel or vessel operator shall be referred to and resolved exclusively by mandatory binding arbitration pursuant to the United Nations Conventions on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S, (" The Convention"), except as provided by any government mandated contract.

3. Any arbitration shall take place in Miami, Florida, Oslo, Norway, or in any location agreed by the Owners/Company and the Seafarer. The procedural and substantive law of the arbitration shall be the law of Norway without regard to conflict of law principles.

Arbitration Clause 2

3. Any arbitration shall take place in Miami, Florida, Oslo, Norway, or in any location agreed by the Owners/Company and the Union or the representative of the Seafarer.

3. Any arbitration shall take place in Miami, Florida, Oslo, Norway, or in any location agreed by the Owners/Company and the Union or the representative of the Seafarer. The procedural and substantive law of the arbitration shall be the law of Norway without regard to conflict of law principles.

3. Any arbitration shall take place in Miami, Florida, Rome, Italy, or in any location agreed by the Owners/Company and the Union or the representative of the Seafarer.

Arbitration Clauses 3 & 4 & 5

Dispute Resolution Procedures. No dispute may be joined with another lawsuit, or in an arbitration with a dispute of any other person, or resolved on a class-wide basis. A single Arbitrator is to be jointly appointed by the MSU and/or the Seaman, on one side, and Company, on the other side, unless the parties cannot agree to an Arbitrator, in which case the AAA shall select the Arbitrator from among six (6) names, three submitted by the MSU/the Seafarer and three submitted by Company. The language of the arbitration shall be English. The place of the arbitration shall be the Seaman's country of citizenship, unless arbitration is unavailable under The Convention in that country, in which case, and only in that case, said arbitration shall take place in Nassau, Bahamas. The substantive law to be applied to the arbitration shall be the law of the flag state of the vessel.

Arbitration Clause 5

One of the Fundamental Principles of Arbitration is the Freedom to Contract the Means of Dispute Resolution

Currently, for Bahamian Flagged Vessels there is:

- No mandatory requirement that seat of arbitration be in the Bahamas
- No mandatory requirement that disputes be venued in the Bahamas
- No mandatory application of Bahamian substantive law.

What are your thoughts?

Missing?
