

# The Reasonable Man On Tour

by Laurence D. Gore

*The "reasonable man" standard is one to which all rational persons should subscribe. The author relates the standard to the travel industry and the fate of travelers.*

The "reasonable man" has long been a common law standard on which to base potential negligence. Courts ask the question: "Would a man of reasonable knowledge and common sense commit to a particular course of action?" If the answer is "yes," then negligence and liability for following that course of action should not exist.

For instance, would a reasonable man take extra care or avoid an area where a cautionary sign said, "Slippery when wet"? If not, then liability may exist on behalf of the owner of the area, who was responsible for hanging the sign. If so, then no liability should exist.

However, today when one looks at most contracts of passage, disclaimers, waivers, and tour and airline tickets it is difficult to believe

that such a standard exists. On television, or in the movies, are there reasonable men or women? Do they exist, or are they superheroes, villains, and sex-crazed deviates. Do reasonable men/women travel to deserted isles to outperform each other while subsisting on rat skin? Each participant is required to sign a 15-page contract, which has this year been amended to 30.<sup>1</sup> The real question, then, is "Do reasonable men/women travel?"

## Standard is applied

It would seem the reasonable man standard, defined as knowing what a reasonable person would do under the circumstances presented, is still applied in court. Reasonable men would expect to find a shower stall on a ship and step, not trip, over it.<sup>2</sup> Existence of a warning sign indicates the defendant knew of a dangerous condition and had the duty to avoid it.<sup>3</sup> Therefore, why cannot the reasonable man standard be applied in the first instance

of travel as an addition to the almost unintelligible legalese of the contract, waiver, etc.; most reasonable men/women would say in replacement of the contract?

First, one must assume that the majority of travelers are reasonable people. Given the proliferation of reported events such as passenger defecation on stewardess' food carts and on-board drunkenness and fighting, this might appear difficult. However, considering the current condition of delays, overcrowding, overbooking, food (or lack thereof) being served, perhaps the question should be, "Would a reasonable person choose to travel?" If one would assume that most reasonable people listen to advertising and, reasonable or not, tend to believe what they hear, see, or read, then the glories of shipboard romances, the excitement of air travel in which one is cosseted by comely stewardesses, or the constantly changing and intellectually stimulating landscapes presented during hours of train travel would cause the reasonable man/woman to leave his or her armchair for adventures abroad.

#### **'Reasonable' is key**

Secondly, we must assume that the reasonable person travels with reasonable intelligence and has not left that portion of their humanity at home. That "deck slippery when wet" sign is to be taken as a warning and not an invitation for a lawsuit' unless the condition is persistent. Further, those individuals in charge of operating the

transportation device or services must be presumed to operate with reasonable intelligence, which is the imposed standard of reasonable care. A non-certified scuba instructor should not take passengers on a scuba instruction course.<sup>5</sup> Those sending the passenger on or to their destination, typically travel agents, must also be presumed to be operating with reasonable intelligence for their profession. They are not to be medical experts on all foreign diseases, but should have a better than average knowledge of the hotel, ship, or airline schedule which may be pertinent to the travel client or a means and willingness to obtain such information.

What, then, is reasonable intelligence? The common standard is the ability to read and write at an eighth grade level. However, since many are apparently graduating high school and some individuals supposedly entering college with a third grade level of reading and writing comprehension, this standard may have to be revisited. It may also be a stretch of the imagination to assume that all cruise lines are hiring cabin and crew staff that meet this reasonable ability and intelligence standard. The assumption here is that passengers and crew have met the reasonable test.

#### **Contracts are confusing**

Being reasonable men/women of reasonable intelligence, they cannot be presumed to understand most passage of contract terminology unless they have brought

along their lawyers, and then they could not be presumed to be reasonable. Therefore, it is incumbent upon the carriers of transportation to provide some "reasonable" language, which could "reasonably" be considered to provide notice in a timely fashion concerning the risks inherent in the adventure upon which they are to soon embark. The language (or potentially multitude of languages if boarding took place in South Florida or other appropriate multilingual region) should, in simple, eighth grade terms, explain the risk so that a reasonable person can appropriately understand it.

Language in most waivers and assumption of risk paragraphs, which ostensibly serve to absolve the risk to the common carrier, fails to meet this standard. The passenger or guest is led to believe that anything untoward which occurs during his/her sojourn is totally due to his own fault or behavior, or lack thereof. In other words, if a boiler on the ship blows up, this is not the fault of the cruise line and thus must just be the bad luck of the passenger who accompanied him/her upon boarding.

#### **Common sense needed**

What then is needed is common sense language describing why the ship differs from a hotel and the hotel from one's house and the aircraft from one's living room, despite advertisements to the contrary. Further, the language should explain the potential difficulties that may be encountered,

and that through the use of reasonable common care by the passenger or guest how many of these difficulties might be favorably resolved. That certain circumstance cannot be foreseen or that although they are not common (for example, rerouting to avoid a hurricane), they are not under the control of the cruise line and hence the cruise line will not accept liability beyond what is required as common sense behavior in the circumstances.

Some give and take by the travel entity should also be accepted. For instance, language should be included which admits that the entity is run by humans and, as such, occasionally a mistake will occur and that the travel entity will do its best to assist in correcting the error and will be liable within certain limits so that the traveler is again made whole whenever possible. Additionally, the passenger is liable for his or her own behavior and is expected to act in a "reasonable" fashion at all times. The passenger is expected to seek assistance when necessary, and also when the passenger does not understand either verbal or written communication concerning any aspect of the trip or transportation vehicle in question. The traveler should also foresee the consequences of his/her action or lack of same and be liable for such consequences. A reasonable test of common sense is also applicable to travel away from the ship or hotel, and shall apply to all shore excursions.

But, alas, perhaps such change

by travel entities is not reasonable to expect. For it cannot be reasonable that any lawyer working for such a travel entity would voluntarily attempt to reduce his potential for work. And we all know that lawyers are very reasonable people.

### References

<sup>1</sup> Amy Fantini, "Real World, Real Contracts," *Corporate Counsel* (Sept. 2000):15.

<sup>2</sup> *Luby v. Carnival Cruise Lines*, 633 F.Supp 40 (S.D.-1986).

<sup>3</sup> *Mabrey v. Carnival Cruise Lines*, 438 So.2d 937 (3rd DCA).

<sup>4</sup> *Mabrey v. Carnival*.

<sup>5</sup> *Kuntz v. Windjammer Cruises*, 573 F. Supp 1277 (W.D. PA. 1983).

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