CRUISE OPERATIONS IN THE UNITED STATES

A Legal and Regulatory Overview

Jonathan Benner

Thompson Coburn LLP

Washington, D.C.

Comité Maritime Internationale

Tokyo 15 May 2025

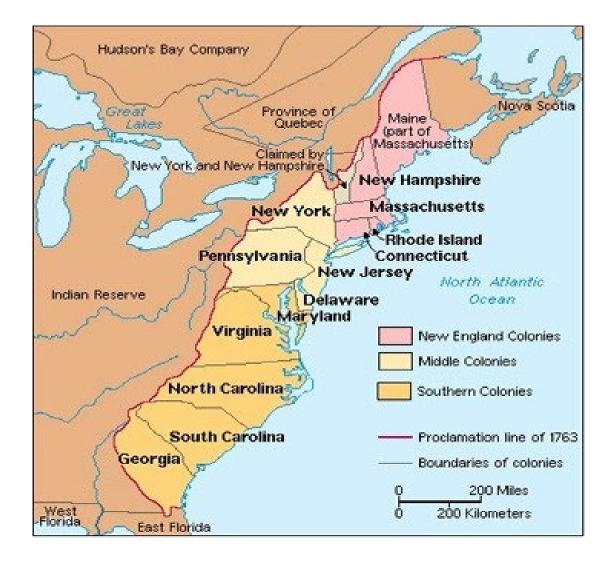
Cruise Line Economic Impact in U.S.

- The United States is the world's single largest national cruise market.
- Cruise operations contributed approximately \$36 billion to U.S. economy in 2023.
- US job creation attributable to the cruise industry is close to 300,000 jobs.
- Regions most heavily trafficked are Alaska/Pacific Northwest, Florida, Gulf Coast, New England, Hawaii.
- Impacts reach far beyond vessel operations to shoreside support operations, connecting air travel, suppliers, excursion operators, hotel facilities.
- Estimates of tax/fee contributions from cruise lines are approximately \$2.5 billion annually. (Source: CLIA).

U.S. Legal/Regulatory Regime Governing Cruise Vessels

- As elsewhere in the world, the legal and regulatory regime is a complex layering of international, national, and local laws and regulations.
- Because of the federal constitutional structure of government in the United States, the lines between these categories is often confused, conflicting, and subject to dispute.
- These disputes are becoming more frequent and more frequently litigated as a result of increased cruise port calls, increased vessel sizes, increased perceived and actual local impacts (positive and negative), increased environmental and safety concerns.

Dueling Sovereignties



U.S. Constitutional Constraints Affecting Cruise Operations

- Commerce Clause (Article I, Section 8, Clause 3): "The Congress shall have Power To ...regulate Commerce with foreign Nations and among the several States"
- Tonnage Clause (Article I, Section 10) "No State shall, without the Consent of Congress, lay any Duty of Tonnage. . . ."
- Supremacy Clause (Article VI) "This Constitution, and the Laws of the United States, which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitutions or Laws of any State to the contrary notwithstanding."
- Right to Travel (?)

Passenger Vessel Services Act

- Cabotage Restriction dating from 1886
 - Prohibits non-US-flag passenger vessels from transporting passengers between U.S. ports.
 - Does not apply to carriage to/from same port if a foreign port of call is part of voyage.
 - There have been exceptions/exemptions granted over time.

States and Localities Retain Powers Not Granted to the National Government

- "Powers of the Police"
 - Responsibility for protecting and regulating public health, order, safety, [morals].
 - Powers not granted the national (federal) government by the Constitution
 - Tenth Amendment: "The Powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the People."

U.S. State and Local Issues Affecting Cruise Operations

- Taxes and Fees:
 - Gross Receipts
 - Per Passenger or Head Taxes
 - Sales Taxes
 - Property Taxes

U.S. State and Local Issues (continued)

- Imposition of State or Local Operating Constraints:
 - Number of Vessel Calls
 - Vessel Size Limitations
 - Passenger Disembarkation Limits
 - Date Restrictions
 - Zoning Restrictions

Bar Harbor, Maine

- Local Ordinance limits disembarkations to 1,000 persons/day
 - Limitation is cumulative, not per vessel
 - Also seasonal limits
 - Local Merchants, Tender Operators, Pier Owners, Pilots brought legal action
 - Decision pending in First Circuit Court of Appeals
 - Possible that legality will ultimately be decided by US Supreme Court



Alaska



Alaska (Continued)

Largest Single US Domestic Cruise Market

Issues have included municipal head taxes, property taxes, calendar restrictions, and sales taxes re on-board sales.

Tax Issues Have Largely Been Resolved in Cruise Lines favor, but are persistently recurring.

Hawaii

- Recently enacted Gross Receipts Tax
 - Denominated as a "Transient Accommodations Tax" and extends an existing landside tax imposed on hotels and rental accommodations to cruise vessels
 - Treats cruise fares as "rents" and assesses 11% tax on cruise line gross receipts, pro-rated to the number of days docked in Hawaiian ports in proportion to number of days of overall voyage.
 - Proceeds earmarked for various environmental programs, with overflow into the State's General Fund.
 - Litigation likely

Other locations

- Key West, Florida
- Charleston, South Carolina
- Monterrey, California.

Thank you

Jonathan Benner

Thompson Coburn LLP

jbenner@thompsoncoburn.com