

No. 03-1388

IN THE
Supreme Court of the United States

Douglas Spector, *et al.*,
Petitioners,

v.

Norwegian Cruise Line Ltd.

On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED APRIL 1, 2004
PETITION FOR CERTIORARI GRANTED SEPTEMBER 28, 2004

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U.S. Court of Appeals for the Fifth Circuit

CIVIL DOCKET FOR
02-21154 Spector, et al v. Norwegian Cruise

DOUGLAS SPECTOR; ANA SPECTOR; JULIA
HOLLENBECK, Individually, and on behalf of all similarly
situated persons; DAVID T KILLOUGH, Individually and on
behalf of all similarly situated persons; RODGER PETERS,
Individually and on behalf of all similarly situated persons
Plaintiffs - Appellants

v.

NORWEGIAN CRUISE LINE LIMITED, doing business as
Norwegian Cruise Line

Defendant - Appellee

Case No. 03-20056

DOUGLAS SPECTOR; ANA SPECTOR; JULIA
HOLLENBECK, individually, and on behalf of all similarly
situated persons; DAVID T KILLOUGH, Individually and on
Behalf of All Similarly Situated Persons; RODGER PETERS,
Individually and on Behalf of All Similarly Situated Persons
Plaintiffs - Appellees

v.

NORWEGIAN CRUISE LINE LTD, doing business as
Norwegian Cruise Line

Defendant - Appellant

10/22/02 Civil rights case docketed. NOA filed by
Appellant Douglas Spector, Appellant Ana
Spector, Appellant Julia Hollenbeck, Appellant
David T Killough, Appellant Rodger Peters.
[02-21154] (cmb) [02-21154]

- 2/3/03 CLERK Order filed granting joint motion to consolidate case [4095742-1] in 02-21154, granting joint motion to consolidate case [4095764-1] in 03-20056 Copies to all counsel. [02-21154, 03-20056] (jtr) [02-21154 03-20056]
- 6/2/03 Amicus curiae brief filed by Amicus Curiae USA in 02-21154, Amicus Curiae USA in 03-20056, Amicus Curiae USA in 03-20056. Consent included in brief? [Y/NA] NA Copies of Brief: 6 # of pages: 27 Word count: 6,909 Date of COS: 4/3/03 Disk Provided [Y/N]: y Sufficient [Y/N]: n NEEDS 1 ADDITIONAL COPY. [4209879-1] [02-21154, 03-20056] Sufficient Brief due on 6/16/03 for USA in 02-21154, for USA in 03-20056. (ddv) [02-21154 03-20056]
- 1/12/04 Opinion filed. Issd in T form? Y Mandate pull date is 2/2/04 in 02-21154, in 03-20056. [02-21154, 03-20056] (rmf) [02-21154 03-20056]
- 1/12/04 Judgment entered and filed. [02-21154] (rmf) [02-21154]
- 1/12/04 Judgment entered and filed. [03-20056] (rmf)
- 1/26/04 Petition filed by Appellant Doug Spector in 02-21154, Appellant Ana Spector in 02-21154, Appellant Julia Hollenbeck in 02-21154, Appellant David T Killough in 02-21154, Appellant Rodger Peters in 02-21154, Appellee Douglas Spector in 03-20056, Appellee Ana Spector in 03-20056, Appellee

Julia Hollenbeck in 03-20056, Appellee David T Killough in 03-20056, Appellee Rodger Peters in 03-20056 for rehearing en banc. # of copies filed: 20 [4731185-1] Mandate pull date canceled. Date of COS: 1/23/04 Sufficient [Y/N]: Y [02-21154, 03-20056] (jtr) [02-21154 03-20056]

- 2/10/04 COURT Order filed denying petition for rehearing en banc [4731185-1] With poll (Y/N)?: N Mandate pull date is 2/17/04 in 02-21154, in 03-20056. Copies to all counsel. [02-21154, 03-20056] (rjd) [02-21154 03-20056]
- 2/18/04 Mandate issued. Approved BOC Issued (Y/N)?: y [02-21154, 03-20056] Mandate pull date satisfied. (jca) [02-21154 03-20056]
- 4/13/04 Supreme Court notice that petition for certiorari was filed on 04/01/04 by Appellant Doug Spector in 02-21154, Appellant Ana Spector in 02-21154, Appellant Julia Hollenbeck in 02-21154, Appellant David T Killough in 02-21154, Appellant Rodger Peters in 02-21154, Appellee Douglas Spector in 03-20056, Appellee Ana Spector in 03-20056, Appellee Julia Hollenbeck in 03-20056, Appellee David T Killough in 03-20056, Appellee Rodger Peters in 03-20056. Supct No.: 03-1388 [02-21154, 03-20056] (lgl) [02-21154 03-20056]

U.S. District Court for the Northern District of Texas
CIVIL ACTION NO. H-00-2649
Spector et al. v. Norwegian Cruise Line Ltd.

08/01/2000	1	COMPLAINT by Douglas Spector, Ana Spector, Julia Hollenbeck filed; FILING FEE \$ 150.00 RECEIPT # 502560 (psmith) (Entered: 08/03/2000)
09/05/2000	4	FIRST AMENDED COMPLAINT by Pltfs Douglas Spector, Ana Spector and Julia Hollenbeck ,(Answer due 9/15/00 for Norwegian Cruise) amending [1-1] complaint; no new ptys added, filed. (fmrem) (Entered: 09/06/2000)
11/06/2000	5	Deft's MOTION to stay Discovery, Initial Disclosures, the Entry of a Scheduling Order, and Consideration of Class Certification Issues by Norwegian Cruise, Motion Docket Date 11/26/00 [5-1] motion , filed. (fmrem) (Entered: 11/07/2000)
11/06/2000	6	MOTION to dismiss by Deft Norwegian Cruise, Motion Docket Date 11/26/00 [6-1] motion , filed. (fmrem) (Entered: 11/07/2000)
11/21/2000	9	INITIAL RESPONSE by Pltfs Douglas Spector, Ana Spector, David T Killough, Rodger Peters and Julia Hollenbeck to [5-1] Motion to Stay, filed (fmrem) (Entered: 11/21/2000)

11/22/2000	11	ORDER granting Deft's [5-1] motion stay Discovery, Initial Disclosures, the Entry of a Scheduling Order, and Consideration of Class Certification Issues terminated deadlines , entered; Parties notified. (signed by Judge John D. Rainey) (fmrem) (Entered: 11/24/2000)
12/04/2000	13	MEMORANDUM OF LAW As Amicus Curiae in Support of Pltf's Opposition to Deft Norwegian Cruise Line's Motion to Dismiss by USA, filed. (fmrem) (Entered: 12/05/2000)
12/04/2000	14	RESPONSE by Douglas Spector, Ana Spector, Julia Hollenbeck, David T Killough, Rodger Peters to [6-1] motion to dismiss filed. (fmrem) (Entered: 12/05/2000)
01/09/2001	19	REPLY by Deft Norwegian Cruise Line's Pltfs' Response to the [6-1] motion to dismiss and to The United States' Memorandum of Law as Amicus Curiae in support of Pltfs' Response, filed (placed in brown expandable folder) (fmrem) (Entered: 01/10/2001)
09/09/2002	32	ORDER denying [29-1] motion for referral to Magistrate Johnson; granting [27-1] motion to extend time to respond to pltfs motion to lift the stay of discovery; granting [26-1] motion to lift stay; the Court VACATES its Order staying discovery; in a Memorandum

and Order signed this date, the Court denied the dft's motion to dismiss , entered; Parties notified. (signed Judge John D. Rainey) (Imunoz) (Entered: 09/10/2002)

- | | | |
|------------|----|---|
| 09/09/2002 | 33 | MEMORANDUM AND ORDER granting in part, denying in part dft's [6-1] motion to dismiss; the Court dismisses the plfts' claims seeking removal of physical barriers on NCL's cruise ships; the Court DENIES NCL's motion to dismiss the plfts' remaining claims , entered. Parties notified. (signed Judge John D. Rainey) (Imunoz) (Entered: 09/10/2002) |
| 09/19/2002 | 34 | ANSWER by Norwegian Cruise to plfts' first amended original complaint, filed. (kprice) (Entered: 09/20/2002) |
| 10/08/2002 | 36 | NOTICE OF APPEAL of [33-1] order by Douglas Spector, Ana Spector, Julia Hollenbeck, David T Killough, Rodger Peters , filed. Fee Status: Pd Receipt #: 525072 (bdaniel) (Entered: 10/11/2002) |
| 01/21/2003 | 45 | ORDER OF USCA (certified copy) Jan 15,2003 GRANTING leave to appeal from the interlocutory order of the United States District Court, entered on Nov 26, 2002, Re: [36-1] appeal , filed. CCA No. 02-48 (bdaniel) (Entered: 01/24/2003) |

02/20/2004	48	JUDGMENT OF USCA (certified copy) Feb 12, 2004 issued as mandate on Feb 18, 2004 REMANDING and AFFIRMING in Part and REVERSING in Part, the Judgment of the District Court Re: [36-1] appeal , filed. CCA No. 02-21154 (bdaniel) (Entered: 02/20/2004)
03/19/2004	52	FINAL JUDGMENT: In accordance with the Judgment of the US Court of Appeals for the Fifth Circuit, this Court ORDERS that the Plaintiff's claims causes of action are DISMISSED with Prejudice, entered. Parties ntfed. (signed by Judge John D. Rainey) (kwallace) (Entered: 03/19/2004)

and

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DOUGLAS SPECTOR, ANA	§
SPECTOR, JULIA	§
HOLLENBECK, DAVID T.	§
KILLOUGH and RODGER	§
PETERS, Individually and on	§ CIVIL ACTION
Behalf of All Similarly	§ No. H-00-2649
Situated Persons	§
Plaintiffs,	§
	§
vs.	§
	§
NORWEGIAN CRUISE LINE	§
LIMITED d/b/a NORWEGIAN	§
CRUISE LINE	§
Defendant.	§

PLAINTIFFS' FIRST AMENDED ORIGINAL
COMPLAINT

Plaintiffs file this First Amended Original Complaint and would respectfully show the following:

I. STATEMENT OF THE CLAIM

1. The Plaintiffs, individually and on behalf of all similarly situated persons, file this class action lawsuit against Defendant, Norwegian Cruise Line d/b/a Norwegian Cruise Line ("NCL"), for injunctive and declaratory relief pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12181, *et. seq.* ("ADA").

2. Plaintiffs, individually, and as representatives of all persons who are similarly situated, also seek recovery of

attorneys fees, costs and expenses necessarily expended in this action from the Defendant.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. § 1331 and § 1343 to address Plaintiffs' ADA claims arising under 42 U.S.C. § 12181, *et. seq.* See also, 42 U.S.C. § 12188(a)(1)-(a)(2).

4. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. § 1391(b) and (c).

III. PARTIES

5. Plaintiffs, Douglas Spector, Ana Spector, Julia Hollenbeck, David T. Killough and Rodger Peters are all residents of Houston, Harris County, Texas and are *sui juris*.

6. Plaintiffs, Douglas Spector, Julia Hollenbeck, and Rodger Peters and other individuals who are similarly situated, are individuals with a physical impairments that substantially interfere with one or more of their major life activities, including walking. At all materials times, the Plaintiffs were qualified to participate in and receive the benefits of NCL's programs, services and activities. Thus, they are protected under 42 U.S.C. § 12181, *et. seq.*

7. Douglas Spector has a physical disability that requires him to utilize an electric scooter for mobility.

8. Julia Hollenbeck and Rodger Peters have physical disabilities that require them to utilize wheel chairs for mobility.

9. Ana Spector and David T. Killough are known to associate with persons with disabilities, and upon information and belief, Defendant NCL also discriminated against Ana Spector and David T. Killough due to their known association with persons with disabilities. Ana Spector and David T. Killough are both entitled to protection from discrimination based on their known association with persons with disabilities under 42 U.S.C. § 12182 (b)(1)(E).

10. NCL is believed to be incorporated under the law of the Bahamas. NCL's principal place of business at 7665 Corporate Center Drive, Miami, Florida 33126. Although NCL routinely conducts business in Houston, Harris County, Texas, it does not maintain a registered agent for service of process. Therefore, NCL will be served through the Secretary of State's office.

11. NCL is the owner, operator, lessor and/or lessee of the vessels and improvements made the basis for this action, namely the M/S Norwegian Sea ("Norwegian Sea") and the M/S Norwegian Star ("Norwegian Star"), which sailed regularly to and from the Port of Houston at times material to this suit. The Norwegian Sea and the Norwegian Star are places of public accommodation and they also house numerous places of public accommodation. Thus, NCL, the Norwegian Sea, and the Norwegian Star are all public accommodations under the ADA and cannot discriminate on the basis of disability or on the basis of a person's known association with persons with disabilities. See 42 U.S.C. 12182(a); 42 U.S.C. § 12181(7); 28 C.F.R. Pt. 36, App. B at 585; Title III Technical Assistance Manual III-1.2000(D) (1994 Supp.) (Add. 5); and 42 U.S.C. § 12182 (b)(1)(E).

12. The Norwegian Sea and the Norwegian Star are also specified public transportation services provided by a private entity that are engaged in the business of transporting people and whose operations affect commerce as defined under 42 U.S.C. § 12184(a). Thus, NCL is prohibited from discriminating against persons with disabilities such as Plaintiffs, Douglas Spector, Julia Hollenbeck, and Rodger Peters and the class of similarly situated individuals which they represent.

IV. BACKGROUND FACTS

13. At times material to this suit, the Norwegian Star routinely departed from and returned to the Port of Houston depositing and embarking with passengers. Since the Norwegian Star sailed within the waters of the United States

at times material to this suit, it is subject to the requirements of the ADA. See *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237 (11th Cir. 2000).

14. Although the Norwegian Star has approximately 800 cabins, it has approximately 4 cabins that are considered to be accessible to passengers who utilize wheel chairs or scooters for mobility. Passengers who must utilize “accessible cabins” are subjected to illegal surcharges for these accessible accommodations.

15. The Norwegian Sea routinely departs from and returns to the Port of Houston depositing and embarking with passengers on a weekly basis. Thus, the Norwegian Sea sails within the waters of the United States and is subject to the requirements of the ADA. See *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237 (11th Cir. 2000).

16. Although the Norwegian Sea can transport approximately 1500-1800 passengers, it only has approximately 4 cabins that are considered to be accessible to passengers who utilize wheel chairs or scooters for mobility. Passengers who must utilize “accessible cabins” are subjected to illegal surcharges for these accessible accommodations.

17. Upon information and belief, NCL did not and has not taken steps to remove architectural barriers in its existing facilities or to offer goods and services in alternative settings even when it has been readily achievable to do so. Therefore, services, programs or benefits of these public accommodations were not available to the Plaintiffs during their September 1998, August, 1999, and September 1999 cruises and the Plaintiffs were denied full and equal benefit of the Defendant’s programs, services and facilities, unless they paid additional illegal surcharges to get assistance and/or modifications from crew members.

18. Because Ana Spector and David T. Killough were traveling with persons who utilized a scooter and/or wheel chair for mobility, they were also denied access to NCL programs, services and facilities because of this association.

Like other class members who travel with spouses, friends and loved ones with mobility impairments, they were often forced to either miss programs, services and activities or leave their companions alone because they could not access the facilities and programs in motorized scooters or wheelchairs. These difficult and discriminatory choices would not have been necessary if NCL had been willing to modify its policies and procedures to insure equal access and enjoyment of the facilities to all class members in the most integrated setting possible. Upon information and belief, other class members have suffered and continue to suffer discrimination at the hands of NCL on the basis of their known association with persons with disabilities.

19. Furthermore, Douglas Spector, Julia Hollenbeck and Rodger Peters were subjected to different criteria and eligibility requirements that tend to screen out or discriminate against persons with disabilities and deny them equal benefit and enjoyment of Defendant's facilities because they utilize wheel chairs and/or motorized scooters for mobility. For example, NCL maintains evacuation equipment and programs in locations that are not accessible to persons who utilize scooters and/or wheelchairs for mobility or would not be accessible to persons who utilize scooters and wheel chairs in case of an emergency. Upon information and belief, other members of the class continue to suffer due to NCL's discriminatory practices, procedures and eligibility criteria.

20. Contrary to what the Plaintiffs were told prior to boarding the NCL public accommodations, NCL programs, services and activities were not open and equally accessible to persons with mobility impairments who utilize a wheel chair or scooter for mobility. Unbelievably, when high ranking NCL agents were confronted with passenger complaints of discriminatory treatment and proof that the ADA applied to cruise ships, NCL showed no remorse or willingness to change their discriminatory policies and procedures, or to make modifications to policies and procedures, or to remove readily achievable barriers in the future.

21. As a result of NCL's blatantly discriminatory treatment toward the Plaintiffs, and NCL's unwillingness to comply with the ADA, the named Plaintiffs were forced to retain an attorney to insure that no other individuals with disabilities and their loved ones are required to endure the severe embarrassment, emotional distress and discriminatory treatment that they endured.

V. CLASS ACTION ALLEGATIONS

22. Plaintiffs adopt by reference Paragraph 1 through 21 as though fully set forth herein.

21. Douglas Spector, Julia Hollenbeck, and Rodger Peters bring this class action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and all current and former passengers of NCL cruises who are similarly situated, i.e., those current and former passengers with mobility impairments who utilize wheel chairs and/or scooters for mobility. Plaintiffs Ana Spector and David T. Killough also bring this class action pursuant to Federal Rule of Civil Procedure 23 for themselves and on behalf of all similarly situated persons, i.e., current and former NCL passengers who are/were denied full and equal access to all NCL services or who were discriminated against because of their known association with persons who utilize wheel chairs or scooters for mobility. To that end, the named Plaintiffs allege the following:

(a)The named Plaintiffs state that they will fairly and adequately protect the interests of the members of the class that they represent as there is no antagonism of interest between the named Plaintiffs and the conduct that is alleged on behalf of the classes as a whole. Furthermore, the named Plaintiffs have retained counsel competent and experienced in class action and complex litigation.

(b)The named Plaintiffs state that joinder of all class members is impracticable. Proceeding as a class action is a more expeditious method in this matter because the potential members of the class are so numerous.

(c) Moreover, the claims of the named Plaintiffs are typical of the claims of the members of the classes since the named Plaintiffs and class members sustained damages arising out of the same type of discriminatory conduct.

(d) NCL's conduct constitutes a pattern or practice in violation of the ADA, which is common to all members of the classes. Thus, injunctive and declaratory relief is particularly appropriate in this case.

(e) Finally, the named Plaintiffs know of no difficulty that will be encountered in the management of this litigation, which would preclude maintenance of their claims as class actions.

VI. VIOLATIONS TITLE III OF THE ADA

24. Plaintiffs re-allege Paragraphs 1 through 23 as though fully set forth herein.

25. As previously noted, Plaintiffs base their claim on Title III of the Americans with Disabilities Act ("ADA") 42 U.S.C. § 12181, *et. seq.* and its implementing regulations.

26. The Plaintiffs herein are individuals who are keenly interested in and intend to take another NCL cruise. However, in order to obtain full use and enjoyment of NCL public accommodations, Plaintiffs seek to enjoin Defendant's discriminatory conduct to prevent further harm.

27. NCL discriminated against the Plaintiffs on the basis of their disability, depriving them of the full and equal enjoyment of the services, facilities, privileges, advantages, and accommodations in the Defendant's places of public accommodation. Accordingly, Defendant's actions and omissions violated 42 U.S.C. § 12182 (a) and 42 U.S.C. § 12182(b)(1)(A)(I).

28. NCL also used standards or criteria or methods of administration that had the effect of discriminating on the basis of disability, and perpetuated such discrimination by others subject to common administrative control in violation of 42 U.S.C. § 12182(b)(1)(D).

29. NCL imposed or applied unnecessary eligibility criteria that screened out, or tended to screen out, individuals with disabilities from fully and equally enjoying the Defendant's services, facilities, privileges, advantages, or accommodations. Thus, Defendants violated 42 U.S.C. § 12182 (b)(2)(A)(i).

30. NCL failed to make reasonable modifications in policies, practices, and procedures, when such modifications were necessary to insure Defendant's services, facilities, privileges, advantages, or accommodations were available to the Plaintiffs in the most integrated setting possible. Accordingly, Defendant violated 42 U.S.C. § 12182(B)(2)(A)(ii) and 42 U.S.C. § 12182 (b)(1)(B).

31. NCL also failed to remove architectural barriers in existing facilities or offer services in alternative settings when it was readily achievable to do so. 28 C.F.R. 36.304.

32. NCL further charged the Plaintiffs higher fares than non-disabled passengers and/or allowed or required Plaintiffs to pay other illegal surcharges for accessible features and/or modifications, 42 U.S.C. § 12182(b)(2)(A)(i) and 28 C.F.R. § 36.301 (c).

33. Additionally, NCL excluded or otherwise denied equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to Plaintiffs because of their known association with a person with disability, in violation of 42 U.S.C. § 12182(b)(1)(E).

34. NCL's unlawful conduct and/or failures to act violated, and continue to violate, Plaintiffs' federal statutory rights, under Title III of the ADA, to be free from discrimination on the basis of disability, "in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to) or operates a place of public accommodation." 42 U.S.C. § 12182, *et. seq.*

35. Accordingly, Plaintiffs sustained damages as a direct result of NCL's actions, omissions, practices, policies, and procedures, described above, which violated the ADA.

VII. INJUNCTIVE RELIEF

36. Plaintiffs adopt by Paragraphs 1 through 35 as though fully set forth herein.

37. The Plaintiffs reasonably expect to use NCL's cruise programs, services, activities, facilities, privileges, advantages, and public accommodations in the future, thus there is a real threat of future injury if the Defendant's discriminatory policies, practices, and procedures do not immediately end. This threat is particularly great due to the fact that the NCL has cruise routes and travel programs that are appealing to the Plaintiffs. Accordingly, since the Plaintiffs intend to take another NCL cruise, it is necessary that NCL's discriminatory practices end immediately to prevent further harm to the Plaintiffs.

38. As a result of NCL's barriers, practices, policies, and procedures, Plaintiffs have suffered, and will continue to suffer irreparable injury due to the Defendant's denial of their statutory rights. There are reasonable grounds to believe that Defendants will continue to engage in the acts and practices prohibited by the ADA. Consequently, injunctive relief is necessary to insure that Defendant complies with the law.

39. Unless injunctive relief is granted, Plaintiffs will continue to suffer immediate and irreparable injury for which there is no adequate remedy at law.

40. In order to enforce their rights under the law, Plaintiffs have had to retain counsel and thus they are entitled to recover attorney's fees, costs, and expenses.

VIII. PRAYER FOR RELIEF

41. THEREFORE, Plaintiffs respectfully pray this Court grant the following relief:

1. Assume jurisdiction over the claims of this complaint;

2. Enter a declaratory judgment stating that NCL's practices, policies, and procedures have subjected Plaintiffs to discrimination in violation of Title III of the ADA;

3. Issue an order permanently enjoining NCL from violating Title III of the ADA, 42 U.S.C. § 12181, *et. seq.* by failing and refusing to remove architectural barriers when it is readily achievable to do so; failing to make modifications to policies and procedures to insure equal access to goods and services in the most integrated setting; or failing to remove discriminatory policies, procedures and eligibility criteria;

4. Award Plaintiffs reasonable attorney's fees and cost of suit, and;

5. Grant Plaintiffs such other and further relief as this Court may deem just and proper and equitable.

DATED: _____

Respectfully submitted,

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