

Lines wonder: How far does law sail?

■ Two cruise companies are looking for favorable state Supreme Court rulings in malpractice cases that could have far-reaching implications for the industry.

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Norwegian Cruise Line has settled a wrongful death case involving a 13-year-old boy but is still pressing for a ruling on how far Florida's jurisdiction extends into the sea.

NCL wants the Supreme Court of Florida to reverse an appeals court decision in a case with wide implications for cruise lines, off-shore gaming vessels and other maritime businesses. Carnival Corp. also is asking the court to rule in its favor in a case involving malpractice liability. Both responsibility issues are critical for an industry that operates in a web of national and international laws.

The Third District Court of Appeal, citing the Florida Constitution, said the state's boundary goes to the edge of the Gulf Stream or three miles out — "whichever is the greater distance."

The ruling came last year in the 1999 wrongful death case against NCL that alleged malpractice onboard the Leeward when the ship was 11.7 nautical miles off Florida's coast.

"The ship had not yet reached the edge of the Gulf Stream, which was 14 nautical miles east" on the day in question, the court found. So, the claimed incident of malpractice was within Florida's terri-

Firms, courts talk jurisdiction

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torial waters.

The family and NCL settled in February for an undisclosed amount, said Joe Kalbac, an attorney with the Coral Gables firm of Colson Hicks Eidsen.

"Potentially, the case would go to the Supreme Court of Florida and probably be appealed to the U.S. Supreme Court. So, this litigation could be tied up for many, many years," said Kalbac, who represented the family of 13-year-old Noah Benjamin Benson. "My clients really wanted to get this behind them."

NCL, however, is moving ahead with its arguments, which seek to have standards established.

The appeals court opinion conflicts with numerous other Florida and federal opinions and federal statutes and treaties, NCL said in papers filed last week with the state's Supreme Court.

The issue "not only involves the duties and authorities of state officials in situations which are likely to recur, it involves the exercise of Florida's police power by

public officials over a foreign national who does not even reside in the United States [let alone Florida]," NCL said.

The ship's doctor, Carla Von Benecke, was a contract employee from South Africa. Noah ate shellfish onboard and suffered an allergic reaction, which prevented him from breathing. He died on the ship.

The doctor tried to insert a breathing tube several times but failed to keep him alive, the suit said, claiming she failed to properly diagnose and begin his treatment.

"We are pleased that the case has been resolved to the satisfaction of all parties," said NCL spokeswoman Susan Robison. She declined to comment further on the continuing arguments.

In an earlier appeal to the court, NCL said the lower court's decision will have implications for cruise and gambling vessels that open their casinos three miles off Florida's east coast. "Is that illegal?" the filing asks.

The court will have to come up with "a rational measure that doesn't move around," said Michael T. Moore, maritime attorney

with Moore & Co. in Coral Gables, who is not involved in any of the cases.

Anything on the water is subject to federal admiralty law, he said. But offshore gambling vessels, for example, are handled on a state-by-state basis. What's more, federal law establishes a security zone several miles beyond the traditional three mile limit.

So the court must determine "what is the correct territorial reach of the State of Florida on one hand and the federal government on the other," he said.

Another critical issue for the court to decide involves ultimate responsibility for doctors on cruise ships.

"Although a shipowner may control certain aspects of a doctor's employment, it cannot — because of the nature of the doctor-patient relationship and the shipowner's lack of expertise — have control over the doctor's practice of medicine," Carnival Corp. said in an appeal filed last month.

Carnival wants the court to reinstate a ruling by Miami-Dade Circuit Court Judge Jon Gordon, who agreed with Carnival's argument that the

line wasn't liable in a medical malpractice case stemming from a 1997 incident involving a family aboard the Ecstasy.

Their 14-year-old daughter saw the ship's doctor several times over a few days because of abdominal and lower-back pain and diarrhea. The doctor, identified as Mauro Neri, told the family that she had the flu, gave her antibiotics, and assured them she did not have appendicitis, the ruling noted. The family cut the cruise short and went home, where the girl was diagnosed with a ruptured appendix, which was removed.

Carnival cited its brochure, which said that "infirmaries are equipped to treat minor nonemergency matters. . . . Doctors are independent contractors."

But the Third District Court of Appeal said cruise lines are responsible for the doctors they hire. Regardless of contractual status, the opinion said, "the ship's doctor is an agent of the cruise line."

Carnival will wait for the Florida court's ruling before deciding whether to take the case higher, spokeswoman Jennifer De La Cruz said.