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HEADLINE: Supreme Court Rules That Disabilities Act, in Part, Applies to Foreign Cruise Ships

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BODY:

Federal law protects the rights of passengers with disabilities who sail on cruise ships that call at American ports, even ships that fly under foreign flags, the Supreme Court ruled on Monday.

But under the decision, foreign ships will not be required to make the major structural alterations that would ordinarily be required under the Americans With Disabilities Act to guarantee the "full and equal enjoyment" of access to "places of public accommodation."

In overturning a ruling by a federal appeals court that the disabilities act does not apply to foreign ships, which make up most of the American cruise market, the court offered a splintered rationale for its conclusion that major physical alterations were to be exempted.

Six justices, in three opinions, agreed that the 1990 law applied, at least to some degree, while the other three justices maintained that it did not. The six were Justice Anthony M. Kennedy, who wrote the controlling opinion; Justices John Paul Stevens and David H. Souter, who joined that opinion in its entirety; Justices Ruth Bader Ginsburg and Stephen G. Breyer, who joined it in part while also endorsing a different analysis; and Justice Clarence Thomas, who joined it to a lesser degree. The dissenters were Justices Antonin Scalia and Sandra Day O'Connor and Chief Justice William H. Rehnquist.

Lawyers for passengers who brought the lawsuit against **Norwegian Cruise** Line, complaining about what they said was a failure to accommodate their disabilities on cruises during the late 1990's, said the decision accomplished much of what they had sought.

"It's a significant win that gives us everything except those accommodations that would have been most troubling to the industry," Thomas C. Goldstein, who argued the passengers' case before the Supreme Court, said in an interview. He said the decision would require such "straightforward changes" as grab bars and lower water fountains, as well as the elimination of surcharges and other special rules that

disabled passengers found expensive or burdensome.

But cruise ships would not be required to change their structure by widening doors, installing elevators or moving specially fitted cabins, Mr. Goldstein said.

In the years since the suit was filed, the cruise industry has responded to market forces by offering more special services to passengers with disabilities. One of the Norwegian ships involved in the case has been taken out of service, and the other one soon will be, to be replaced by a more modern vessel.

Norwegian Cruise Line said in a statement that it welcomed the ruling, **Spector v. Norwegian Cruise** Line Ltd., No. 03-1388, and was "committed to providing the most accessible ships in the cruise industry." While the company has its principal place of business in Miami, its corporate registry is in Bermuda and its ships are registered in the Bahamas.

In response to the lawsuit, the cruise line argued that the Americans With Disabilities Act should not apply unless Congress had clearly stated its intent to apply the law to foreign-flag ships. In defining the "public accommodations" to which the law applied, Congress mentioned places like inns, hotels, restaurants, theaters, banks and zoos, but made no reference to ships, domestic or foreign.

The Supreme Court had issued contradictory precedents over the years on the application of federal law to foreign ships, leading to confusion in the lower federal courts. Five years ago, the United States Court of Appeals for the 11th Circuit, in Atlanta, held that the Americans With Disabilities Act applied to foreign cruise ships, while the New Orleans-based court in this case, the United States Court of Appeals for the Fifth Circuit, held that it did not.

That court invoked precedents from the 1950's and 1960's in which the Supreme Court refused to apply federal labor law in a way that would affect the "internal affairs" of a foreign ship unless Congress had clearly specified its intent to do so.

In his opinion on Monday, Justice Kennedy said that while that principle remained valid, the disabilities act itself should be interpreted in a way that would largely, if not completely, avoid the issue. He noted that the statute provided that it was not necessary to remove physical barriers or provide alternative means of access if those requirements were not "readily achievable."

With respect to ships, he continued, substantial alterations would not be "readily achievable" if they meant that the ship would be out of compliance with international treaties like the International Convention for the Safety of Life at Sea, which contains specific requirements not necessarily consistent with the Americans With Disabilities Act.

Justice Kennedy said that because this case was dismissed without a trial, it would now be up to the lower courts to determine how the various statutory and treaty requirements meshed or conflicted. He said that a decision that the law did not apply at all "would be a harsh and unexpected interpretation of a statute designed to provide broad protection for the disabled."

In his dissenting opinion, Justice Scalia said that because the law "plainly affects the internal order of foreign-flag cruise ships, subjecting them to the possibility of

conflicting international obligations," it should not be interpreted to apply in the absence of a "clear statement of coverage" from Congress.