

ADVENTURE TOURISM

IMCC 2017

ROLLING IN THE DEEP:

ADVENTURE TOURISM LIABILITY REGIMES

Australia

Frazer Hunt

Mills Oakley

Canada

Shelley Chapelski

Norton Rose Fulbright

Italy

Angelo Merialdi

Studio Legale Siccardi Bregante

Scotland

Duncan MacLean

Brodies

U.S.

Pamela Schultz

Hinshaw & Culbertson

Jonah and the Whale

Less than one nm off the coast, a zodiac with 12 pax and two crew was on a commercial whale watching trip. (A zodiac is also known as a Rigid Inflatable Boat or a RIB)

Jonah and the Whale

Without warning, a female whale, with poor eyesight, mistook the zodiac for the bull whale which spurned her advances the night before. She became enraged, taking a run at the zodiac.

Jonah and the Whale

The whale hit the zodiac and once it was flung into the air, the whale ran. Tragically, a repeat whale watching customer, Mr. Jonah, perished in the capsized while the remaining passengers and crew suffered mild to serious injuries.



Question 1.

Does your 'bucket list' include going whale watching? (Or if you have already gone whale watching, was it on your bucket list?)

1. Yes
2. No

Does the liability regime for passenger (pax) claims differ based on the location of this marine incident in your country?

Australia

Frazer Hunt

Canada

Shelley Chapelski

Italy

Angelo Merialdi

Scotland

Duncan MacLean

U.S.

Pamela Schultz

Are there reasons to appoint legal counsel early after such a marine incident? Or is it better to wait to see if claims are made by pax?

Canada	Shelley Chapelski
Italy	Angelo Merialdi
Scotland	Duncan MacLean
U.S.	Pamela Schultz
Australia	Frazer Hunt

Can any limit of liability regime be relied upon by the vessel owner with respect to pax claims for this incident?

Italy

Angelo Merialdi

Scotland

Duncan MacLean

U.S.

Pamela Schultz

Australia

Frazer Hunt

Canada

Shelley Chapelski

Question 2.

Many organized sport or tourism activities require participants to sign a waiver releasing the organizers from liability. You are in the risk business. Is it your practice to:

1. Carefully review the circumstances under which the waiver is signed and look at its wording in order to assess the chances of it being enforced?
2. Sign the waiver but deliberately don't read it?
3. Sign whatever is put in front of you so as to be entitled to participate or to not disappoint your kids?

Can waivers of liability (written or implicit) be used to limit liability to pax engaged in such adventure tourism?

Scotland

Duncan MacLean

U.S.

Pamela Schultz

Australia

Frazer Hunt

Canada

Shelley Chapelski

Italy

Angelo Merialdi

Canada: adventure tourism exemption from Athens Convention
– marine activity which requires special safety equipment and signed acknowledgement of risks.

Yves de Cocker (maritime lawyer in Antwerp) & daughters in “survival suits” before going whale watching.

Can the assumption of risk principle be relied upon to limit liability to pax?

U.S.	Pamela Schultz
Australia	Frazer Hunt
Canada	Shelley Chapelski
Italy	Angelo Merialdi
Scotland	Duncan MacLean

Can Act of God be relied upon as a defence to
pax claims?

Australia

Frazer Hunt

Canada

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Italy

Angelo Merialdi

Scotland

Duncan MacLean

U.S.

Pamela Schultz



Which of Mr. Jonah's relatives can seek to make a claim against the vessel and its operators? What about claims by bystanders?

Canada

Shelley Chapelski

Italy

Angelo Merialdi

Scotland

Duncan MacLean

U.S.

Pamela Schultz

Australia

Frazer Hunt

What liability regime will probably apply to claims by the crew?

Italy

Angelo Merialdi

Scotland

Duncan MacLean

U.S.

Pamela Schultz

Australia

Frazer Hunt

Canada

Shelley Chapelski

Might punitive or unusual damages be awarded to claimants, and if yes, are they insurable?

Scotland

Duncan MacLean

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Pamela Schultz

Australia

Frazer Hunt

Canada

Shelley Chapelski

Italy

Angelo Merialdi

Question 3.

When you have helped to arrange a vessel excursion for a group (work, hobby or family) did you ensure that the vessel had liability insurance?

1. Yes
2. No
3. Never, ever, ever will I get involved in organizing an excursion by vessel.

Does the registration status of the vessel, or type of vessel, affect the liability regime?

U.S.	Pamela Schultz
Australia	Frazer Hunt
Canada	Shelley Chapelski
Italy	Angelo Merialdi
Scotland	Duncan MacLean

Are there any noteworthy issues in your jurisdiction which relate to adventure tourism?

Australia

Frazer Hunt

Canada

Shelley Chapelski

Italy

Angelo Merialdi

Scotland

Duncan MacLean

U.S.

Pamela Schultz

Question 4.

In which country would your insured or client be MOST vulnerable to liability claims arising from marine adventure tourism operations?

- 1 Australia
- 2 Canada
- 3 Italy
- 4 Scotland
- 5 U.S.

Was that answer given based on this presentation or based on previous professional experience?

- 1 Presentation
- 2 Previous experience

THANK YOU!

