

# RESORT DISCLAIMERS AND FORUM SELECTION CLAUSES

*When You Travel this Winter to the Caribbean in Search of Fun and Sun, Be Wary of Signing Resort Disclaimers and Forum Selection Clauses: Don't Sign Away Your Rights to Sue if the Resort is Negligent and You Get Hurt*



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**T**ragic accidents can happen when traveling out of the country. Tourism is up in the Caribbean, just as it has been for the last decade or so, because travelers find it an easy extension of Florida. Plus, it's warm and it's easy to get to.

Problem is many of these resorts are now implying either guest waivers, or forum selection clauses, or both. The first means that if you choose to use the pool, or a golf cart, or a hotel raft, each guest waives the right to sue based on the resort's negligence, should any accident result. For example, a child could drown in a hotel pool, a fall from a parasail could lead to paralysis, or a shore excursion accident could cause serious injuries to cruise ship passengers.

The second example is when a resort asks guest to sign "forum selection clauses." These are often buried in the guest registration packet that visitors sign as they check into a hotel. The forum selection clause essentially says, should a guest wish to sue for negligence, it must be in the country of the resort, such as The Bahamas, the French Indies or Jamaica. Many of the countries Americans are traveling to reject traditional tort claims. In many instances contingency fee arrangements are not legal, so only travelers who are wealthy enough to retain and maintain an hourly fee attorney are even able to bring lawsuits. It is also fairly

common to see a filing fee that equates to a percentage of the expected recovery. This often translates to a traveler having to shell out hundreds of thousands of dollars just to file a lawsuit in a foreign country that the defendant hand-selected and which requires the injured traveler to return in order to fully litigate the claim.

Unfortunately, U.S. travelers fail to understand the risks involved with vacation travel, and focus only on the enjoyable aspects. That puts them at a legal disadvantage if a death or serious injury were to occur.

It is far better for travelers to understand the potential risks involved in signing legal disclaimers and protect their rights before leaving the country.

Clearly, the first step is to read and understand everything in the documentation provided by the travel agency, resort, cruise line or other provider. Because of recent court decisions, these disclaimers are typically emailed well in advance of the actual travel date. If the travel agent does not send this information, the agency itself could face a liability issue if a problem occurs.

Upon arrival at the hotel, resort or cruise ship, a traveler should read the check-in documents closely. If there is a choice of forum clause, simply draw a line through that clause and initial the document. It is highly unlikely that the hotel will turn anyone away at the last minute – especially in today's economy.

That simple step makes it very tough for the travel operator to argue that you have agreed to initiate any legal action in a foreign country. It allows you to protect your rights and gives you a wider range of legal options if a tragedy happens while out of the country. <sup>1</sup>