

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 8, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-0621-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

JO ANN SCHULZ AND VERNON SCHULZ,

PLAINTIFFS-APPELLANTS,

MEDICARE - PART B AND AARP,

INVOLUNTARY-PLAINTIFFS,

V.

HOLLAND AMERICA-LINE WESTOURS, INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Outagamie County: JAMES T. BAYORGEON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Gordon Myse, Reserve Judge.

PER CURIAM. Jo Ann and Vernon Schulz appeal a summary judgment dismissing their personal injury action against Holland America-Line

Westours, Inc. (HALW).¹ The trial court dismissed the action because it was filed more than one year after Jo Ann's injury, violating the limitation clause contained in the cruise ticket. The Schulzes argue that the trial court applied the wrong test to determine whether the limitation clause was enforceable and that it should have applied a fundamental fairness test comparable to the test for determining the enforceability of a forum selection clause. We conclude that the trial court applied the correct test and that enforcing the limitation clause is not unfair. We therefore affirm the order dismissing the Schulzes' action.

A passenger ticket for an ocean voyage is a maritime contract governed by maritime law. *Johnson v. Holland America Line-Westours, Inc.*, 206 Wis.2d 562, 569, 557 N.W.2d 475, 478 (Ct. App. 1996). Analogous federal cases are persuasive authority. *Id.* at 569-70 n.7, 557 N.W.2d at 478 n.7. The one-year limitation period is authorized by 46 U.S. Code § 183b which preempts State law providing for longer limitation periods. *Vavoules v. Kloster Cruise Ltd.*, 822 F. Supp. 979, 982 (E.D.N.Y. 1993).

The trial court correctly applied a two-prong test to determine the enforceability of the one-year limitation noted on the Schulzes' ticket. *See Thompson v. Ulysses Cruise Inc.*, 812 F. Supp. 900, 902-03 (S.D. Ind. 1993). First, the ticket must reasonably communicate to the passenger the importance of this provision. Here, the limitation is conspicuous and clear. The second prong requires the court to examine extrinsic factors surrounding the ticket purchase, including the passenger's familiarity with the ticket and his or her time and incentive under the circumstances to study its provisions. Opportunity to review

¹ This is an expedited appeal under RULE 809.17, STATS.

the provisions includes the time after the accident when the injured passenger has an incentive to examine the provisions relating to claims for injuries. *Id.* Here, the Schulzes received their tickets at least two weeks before departure and possessed the tickets for an entire year following the injury. Because the ticket clearly called attention to the limitation provision and the circumstances provided the Schulzes with adequate opportunity to familiarize themselves with the limitation provision both before and after the accident, the limitation clause was valid and enforceable.

The Schulzes have not established that enforcing the time limitation clause is unfair. The Schulzes' argument is premised on the false assertion that they could not cancel their tickets without incurring financial penalty. Had they checked with their travel agent, they would have found that the entire purchase price, including the travel agent's fee, would have been refunded.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

