

## **IFTTA NORTH AMERICA CONFERENCE**

**FEBRUARY 22, 2013**

The second Conference of the North American section of IFTTA was held in Fort Lauderdale, Florida in late February of 2013. Larry Gore hosted the event, as he had the inaugural session in November of 2011.

The Conference itself was preceded by a meeting of the IFTTA Board, and a social evening at the Coral Ridge Country Club.

Two of IFTTA's non-North American Directors (Graciela Guidi and Michi Wukoschitz) stayed in order to participate in the Friday session. All of the other participants were from the US or Canada.

John Thomas, a professor from Florida International University's School of Hospitality and Tourism Management, led off with an exploration of the recent Carnival Triumph problems, both practical and legal. He acknowledged that the cruise line has suffered a significant setback in the court of public opinion while the Triumph drifted powerless in the water, but suggested that it is apt to succeed in the Court of Law, when the myriad lawsuits arising out of that early February power loss reach trial. Or perhaps even before they make it to the Court House door.

Later, Larry Gore led a round-table discussion of the legal ramifications of the Costa Concordia disaster of a year ago. It addressed not only the legal issues that are in play, but also the matter of which country's courts ought to be taking control of the cases, and which ought not to be.

Pamella Seay is a practitioner, a Law School professor, and an elected commissioner of her local airport authority. Her topic was International Legal Ethics. So long as lawyers practiced within the same local area, ethics amongst them would be fairly uniform, and well understood. But when lawyers from various jurisdictions deal with each other --- as happens all the time in an international industry such as travel --- there is a real risk of an honest misunderstanding amongst them. She shared some of the examples of this.

It is not only ethics amongst lawyers that vary, jurisdiction to jurisdiction. So, too, do the substantive rules and laws. In 2012, the Supreme Court of Canada decided a series of four issue-related cases (two of them from the Travel Industry) that clarify the rules that apply when litigation involving parties and events from several jurisdictions come before the Canadian Courts. Tim Law explained the essence of the decisions. Discussion ensued amongst the largely non-Canadian audience.

Europe has a continent-wide Regulation that establishes the rules that govern consumer rights in the face of denied boarding, flight cancellations and delays. Michi Wukoschitz --- who won one of the key cases under that 2004 Regulation --- gave a comprehensive overview of the specific rules, and their applicability. He did a wonderful job of giving to a North American audience an element of structure and context to what had seemed to many to be a series of disjointed decisions.

Relying on Skype, Al Anolik led the group through the recently-enacted US regulations regarding consumer rights in the event of similar problems. Passed as part of the DOT's "Enhancing Air Passenger Protections" initiative, these rules address such events as lost, damaged and delayed baggage; delayed and cancelled flights; overbooking and denied boarding compensation; and tarmac delays.

Consumer rights arising out of misleading advertizing was the topic addressed by Eric Goldring, a New Jersey resident who is both a practicing lawyer and an active travel agent, specializing in cruises. He focused in particular on the promotion of "free" attributes that are clearly not free, and the use of "X% off" promos when it is unclear exactly WHAT the percentage is applied to. He noted that brochure prices are largely fictitious (i.e. no one actually buys at the listed price) and so to use that as the benchmark is itself misleading.

Mark Pestronk drew, and then elaborated on, an interesting distinction that he has noted between travel counsellors who are "fulfillers" (and who have fewer legal obligations to their customers) and those who are truly "counsellors" (who attract a higher duty of care). In an interesting development, he referred extensively to the Travel Industry Act, 2002 (which is a statute from the Canadian province of Ontario) in support of his thesis.

That was followed by an examination by Paul Cronin of the “Sellers of Travel” laws that exist in sixteen American jurisdictions, and three Canadian provinces. There are some commonalities amongst them, but also a number of differences. Paul noted that those differences manifest themselves in both the measures taken to protect consumers, and the extent to which those “paper rules” are in fact enforced.

Earlier in the day, before he had to leave in order to participate in a mediation, Philadelphia litigator Tom Margiotti had extolled the virtues of mediation as an effective vehicle for resolving litigious Travel Industry disputes. Speaking from experience as both advocate and mediator, he suggested that the biggest obstacle to its greater prevalence in North America is the disinclination of lawyers to support it. According to him, litigators litigate, and they are uncomfortable with mediation.

An informal business session took place during the day. Attention was focussed on the twin objectives of

- Attracting new members from amongst the large number of people who ought to share an interest in IFTTA’s issues and objectives, and
- Increasing participation at the annual North American Conferences.

A tentative decision was taken to meet again in Fort Lauderdale, in February or March of 2014, as the weather and airline connections are quite conducive to all in the Region.