Liability of Cruise Ship Operator for Injury to or Death of..., 82 A.L.R.6th 175...

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Liability of Cruise Ship Operator for Injury to or Death of Passengers

George L. Blum, J.D.

The "doctrine of unseaworthiness," a species of liability without fault, imposes upon a shipowner an absolute duty to provide a safe and seaworthy vessel, but extends only to seamen and other workers exposed to the same perils as seamen. All others on board a ship for purposes not inimical to the shipowner's legitimate interests are owed only a duty of reasonable care under the circumstances of each case. In general, the carrier is liable for injuries caused by the misconduct of its servants acting within the scope of their general employment or in the discharge of special duties imposed on them. The liability for acts of employees extends to all members of the crew. A passenger on a vessel must exercise reasonable care and prudence for his or her own safety. The issue arises as to the liability of a cruise ship operator for an injury to, or the death of, passengers. In Samuels v. Holland American Line-USA Inc., 656 F.3d 948, 2011 A.M.C. 2441, 86 Fed. R. Evid. Serv. 564, 82 A.L.R.6th 625 (9th Cir. 2011), for example, the court held that because the defendant cruise line had neither actual nor constructive notice of a dangerous condition on the Pacific Ocean side of the beach where a passenger was swimming while the cruise ship was anchored, the cruise line had no duty to warn the passenger about the dangers of swimming there and therefore was not liable for the passenger's injury caused by turbulent wave action. This annotation collects and discusses all of the cases which have addressed the liability of a cruise ship operator for injury to or death of passengers.

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Wyoming

1. Preliminary Matters

§ 1. Scope

This annotation collects and discusses all of the cases which have addressed the liability of a cruise ship operator for injury to or death of passengers.¹

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

§ 2. Summary and Comment

The contract of carriage imposes a duty on a carrier to transport passengers safely and to exercise reasonable care under the circumstances of each case, regardless of whether the carrier is also the shipowner. A shipowner ordinarily has no duty to insure the health or safety of its passengers but rather is required only to use reasonable care to furnish such aid and assistance as an ordinarily prudent person would render under similar circumstances. The owner of a ship in navigable waters owes to passengers the duty of exercising reasonable care under the circumstances. In some circumstances, reasonable care under the circumstances may be a very high degree of care, and in other instances, it may be something less. The application of "reasonable" will change with the circumstances of each particular case.²

A vessel owner or carrier is in no different position than a landowner with respect to the duty owed to licensees and invitees to exercise reasonable care under the circumstances. The benchmark against which a shipowner's behavior must be measured, in a negligence action brought by a passenger, is ordinary reasonable care under the circumstances, a standard which requires, as a prerequisite to imposing liability, that the owner have had actual or constructive notice of the risk-creating condition, at least where the menace is one commonly encountered on land and not clearly linked to nautical adventure. The extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more dangers to a passenger will determine how high a degree of care is reasonable in each case. When a shipowner owes a higher duty than a land owner, it is merely an application of the rule that reasonable care includes the carrier's duty to warn passengers of dangers which are not apparent and obvious.³

In general, a shipowner is responsible for all defective conditions aboard a ship of which the shipowner has actual or constructive notice. Liability cannot be predicated on a cruise line's mere creation or maintenance of a defect.⁴

The passenger must rely on the theory of negligence to recover, for the shipowner does not owe a duty to passengers, as the shipowner does to seamen, to provide a seaworthy vessel. The "doctrine of unseaworthiness," a species of liability without fault, imposes upon a shipowner an absolute duty to provide a safe and seaworthy vessel but extends only to seamen and other workers exposed to the same perils as seamen. All others on board a ship for purposes not inimical to the shipowner's legitimate interests are owed only a duty of reasonable care under circumstances of each case.⁵
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In general, the carrier is liable for injuries caused by the misconduct of its servants acting within the scope of their general employment or in the discharge of special duties imposed on them. The liability for acts of employees extends to all members of the crew. 6

A passenger on a vessel must exercise reasonable care and prudence for his or her own safety. Even without evidence regarding a cruise passenger's health condition, a passenger is comparatively negligent in failing to follow instructions, and in failing properly to protect against risks of which the passenger has been warned. 7

Vessels and owners may be held answerable for injuries caused to passengers by their falling into concealed hatchways in the cabin floor negligently left open and unguarded by the crew. Where there is an open doorway leading to a place of danger on a passenger boat, it may be the duty of the carrier to keep it lighted so as to warn a passenger of danger should the passenger attempt to pass through, and by the slipping of a mat placed at the head of a stairway, where the mat was too small to fit properly into its place. With respect to slippery decks, the measure of a ship company's duty to its passengers is the exercise of reasonable care to avoid injury, and it cannot be held to the standard of the greatest possible care in this particular instance. The more fact that the form of construction of the deck of a passenger-carrying vessel presents a measure of peril does not necessarily import negligence, if it is unavoidable or reasonably necessary. A carrier may be negligent, however, in placing the passengers' seats on a platform several inches above the aisle by which they are reached, without warning signs or caution to passengers from attendants. 8

A carrier by water owes a duty to a passenger entering or leaving its means of conveyance to see that the passenger may do so in safety, without being subjected to the hazards of unsafe means of entering or leaving, or to the negligent acts of employees. If it fails in that duty, and a passenger is injured as a result thereof, the carrier is liable in damages for its negligence. A passenger who temporarily disembarks from a ship for a rightful purpose is entitled to the same degree of protection and care while doing so as at any time during the journey, and a carrier by water is liable for an injury to a passenger while the passenger is so disembarking which is a result of a failure to afford him such degree of care and protection. A carrier that contracts to take a passenger on a cruise stopping at a designated foreign port has a duty if the vessel anchors in that harbor to provide the passenger with safe transportation, under adequate supervision, to and from the dock. 9

The obligation on the part of a carrier by water to exercise the strictest diligence in conveying and setting down passengers in safety requires due precaution to prevent the injury or death of a passenger by falling overboard. Vessel owners have accordingly been liable for the death of a passenger by falling from the vessel's deck due to negligent failure to have a rail or other protection at dangerous places open to passengers. However, the duty to protect the passengers from falling overboard is not absolute, and where there is no proof of negligence on the part of the carrier, or there is contributory negligence on the part of the passenger, there can be no recovery. 10

The issue arises as to the liability of a cruise ship operator for an injury to, or the death of, passengers.

In a number of cases, for example, the courts, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, generally held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented (§ 4), though other courts, given the particular circumstances presented, ruled to the contrary in similar factual scenarios (§ 5). In other such cases, the courts held that the action against the defendant cruise line was barred by the applicable statute of limitations or other limitations period (§ 6), though other courts have ruled to the contrary (§ 7).
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In a number of cases, the courts, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented, with respect to incidents occurring within the plaintiff passenger's cabin (§ 8); incidents involving the nonsexual assault or battery of the plaintiff passenger (§ 11); slip or fall incidents occurring, or apparently occurring, outside of the plaintiff passenger's personal cabin (§ 13); incidents occurring at, or near, the ship's pool area (§ 15); and alcohol- or intoxication-related incidents (§ 19). Other courts, however, given the particular circumstances presented, have ruled to the contrary in similar factual scenarios (§§ 9, 12, 14, 16, 20). In other such on-board cases, the courts determined whether a defendant cruise line was liable with respect to incidents involving the rape or sexual assault of the plaintiff (§ 10), incidents occurring during a class or other organized recreational activity (§ 17), and incidents occurring on, or near, a ship's elevator (§ 18).

In a number of cases, the courts, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, generally determined whether the defendant cruise line was liable (§ 21). In other such cases, the courts held that the action against the defendant cruise line was barred by the applicable statute of limitations or other limitations period (§ 22), though other courts have ruled to the contrary (§ 23).

In other cases, the courts, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented, with respect to incidents occurring during an excursion from the ship (§ 25), and the nonsexual assault or battery of the plaintiff passenger (§ 29). Other courts, however, given the particular circumstances presented, have ruled to the contrary in similar factual scenarios (§§ 26, 30). In other such off-ship cases, the courts determined whether a defendant cruise line was liable with respect to incidents occurring while the plaintiff passenger was engaged in a swimming activity (§ 24), incidents occurring during the plaintiff passenger's embarking or disembarking actions (§ 27), and the rape or sexual assault of the plaintiff (§ 28).

§ 3. Practice pointers

[Cumulative Supplement]

Under general maritime law, a cruise line owes cruise ship passengers the duty of exercising reasonable care under the circumstances. 11

The degree of care demanded of a vessel owner or operator is dependent upon whether or not the circumstances of maritime travel differ from those of ordinary activities conducted on terra firma. The extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more danger to the passenger will determine how high a degree of care is reasonable in each case. 12

In a wrongful death action brought by a passenger's widow, the Death on the High Seas Act (DOHSA) applied with respect to a cruise ship operator and cruise ship physician's alleged torts committed during the ship's port of call, not just to their alleged torts occurring on the high seas, where those allegedly negligent acts or omissions that occurred on land consummated in actual injury on the high seas. 13

A subsidiary corporation was an improper defendant in a cruise boat passenger's action seeking to recover for personal injuries allegedly sustained when aboard a cruise ship where the subsidiary's parent was solely responsible for the ownership,
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maintenance, and other aspects of operation of the ship and where the subsidiary was merely the ticketing agent for ships owned by the parent, a disclosed principal.\textsuperscript{14}

Federal maritime law would not recognize a claim of loss of consortium to a nonseaman, and thus, a husband could not maintain a state law loss of consortium claim based on injuries the wife received while she was a passenger on the cruise ship.\textsuperscript{15}

CUMULATIVE SUPPLEMENT

Cases:

Waiver signed by cruise ship passenger prior to taking part in personal watercraft tour provided by ship operator, in which she agreed to release operator and employees from actions "arising from any accident [or] injury in any way connected with [her] rental, participation, use, or operation of [the watercraft]," was rendered void by maritime statute prohibiting owner of a vessel transporting passengers from contractually limiting its liability for personal injury or death caused by its negligence or fault; operator owned vessel transporting passenger between domestic and foreign ports. 46 U.S.C.A. § 30509. In re Royal Caribbean Cruises Ltd., 991 F. Supp. 2d 1171, 2013 A.M.C. 708 (S.D. Fla. 2013).

Law of forum weighed in favor of applying United States law, rather than Mexican law, in action brought by cruise ship passenger against ship operator, the ship's agent, who sold passenger a port-of-call excursion at restaurant in Cozumel, Mexico, and owners/operators of restaurant, for claims arising when, during excursion, he dove from seawall into ocean and hit his head on ocean floor, resulting in tetraplegia; passenger, a resident of New York, brought action in Southern District of Florida pursuant to his cruise ship ticket contract, which required actions to be filed in District, and had travel limitations due to his injuries. Belik v. Carlson Travel Group, Inc., 26 F. Supp. 3d 1267 (S.D. Fla. 2013).

II. Injury or Death Occurring, or Presumably Occurring, Aboard Ship

A. In General

1. Generally

§ 4. Cruise line held liable, or finding of liability supportable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, generally held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented.

Where a cruise ship passenger brought an action against a bareboat charterer and others to recover for intentional infliction of emotional distress arising from the alleged harassment by photographers, apparently due to photographs taken while the passenger was boarding the vessel, the federal district court entered judgment, the charterer appealed, and the court in Muratore v. M/S Scotia Prince, 845 F.2d 347, 1993 A.M.C. 2933 (1st Cir. 1988) (applying, in part, Maine law), on review, held that the conduct of photographers constituted intentional infliction of emotional distress under Maine law, and that the passenger was entitled to recover $5,000 in compensatory damages, though punitive damages would not be allowed. In ruling that the conduct of the conduct of cruise ship photographers constituted intentional infliction of emotional distress under Maine law, the court
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pointed out that the photographers acted deliberately and maliciously and repeatedly took the passenger's picture without her consent, and then doctored her picture with a gorilla's face and had it displayed at a concession stand, resulting in the passenger having to remain in her cabin for hours in order to avoid harassing behavior and the offensive comments of the photographers. the bareboat charterer was liable, under the doctrine of respondent superior, for intentional infliction of emotional distress imposed by cruise ship photographers on the passenger, for although the charterer did not have contract with the company which provided the ship with photographers, the charterer continued to be responsible for the vessel, crew, and members, and the photographers were listed as crew members, the court observed. the carrier owes a duty of exercising reasonable care towards its passengers under the circumstances, and the degree of care required must be in proportion to the apparent risk, the court pointed out. here, the court concluded, the passenger, who suffered emotional distress as a result of harassment by the photographers, was entitled to $5,000 in compensatory damages.

in McDonough v. Celebrity Cruises, Inc., 64 F. Supp. 2d 259, 2000 A.M.C. 257 (S.D. N.Y. 1999), a case in which an injured passenger sued a passenger cruise ship and the ship's operator, alleging negligence in connection with an incident in which the passenger was struck on the head by a rum-filled coconut served to passengers, and where the passenger's husband sued for loss of consortium, the court, on review of the defendant's motion for summary judgment, held that fact questions existed as to whether the defendants exercised reasonable care under the circumstances, thus precluding summary judgment, but that loss of consortium damages were not recoverable under general maritime law (§ 5). Ordinary negligence principles applied in the passenger's suit against the cruise ship and ship's operator, and the defendants' conduct thus would be measured against the standard of ordinary, reasonable care since the nature of the plaintiff passenger's injury was in no manner peculiar to maritime travel, the court noted at the outset. Fact questions existed as to whether the defendant cruise ship and its operator exercised reasonable care under the circumstances, including as to whether the accident was not reasonably foreseeable because the defendants lacked prior notice of any danger to passengers from serving alcoholic drinks in coconuts, thus precluding summary judgment in the passenger's negligence suit alleging that the passenger was struck on head by rum-filled coconut falling from a deck above, the court explained. that the specific injuries suffered by the passenger were, in part, caused by the intervening acts of another passenger did not automatically extinguish liability on the part of the ship's operator, the court continued, provided that the intervenor's actions were a normal or foreseeable consequence of the situation created by the defendant's negligence. the court pointed out, as well, that "res ipsa loquitur" is a doctrine that enables a fact-finder presented only with circumstantial evidence to infer negligence simply from the fact that an event happened. to submit a case on the theory of res ipsa loquitur, the court instructed, the three basic requirements that must be met include: the event must be of a type that does not ordinarily occur in the absence of someone's negligence; the event must be caused by an agency or instrumentality within the exclusive control of the defendant; and the event must not be caused by any voluntary action or contribution by the plaintiff. in the instant case, the court declared, the doctrine of res ipsa loquitur did not apply in the passenger's negligence suit against the defendants, for the passenger was unable to satisfy the exclusive control requirement for application of the doctrine, given the central role that an unknown third party played in the events leading to her injury.

a genuine issue of material fact existed as to whether automatic sliding doors on a cruise ship's observation deck had ever struck other passengers or crew members, and whether the defendant shipowner had constructive notice of the danger posed by automatic sliding doors, precluding summary judgment for the owner in the passenger's personal injury action, in which he alleged that he had been injured when the door shut on him as a result of the owner's negligence, the court held in Galentine v. Holland America Line-Westours, Inc., 333 F. Supp. 2d 991, 2004 A.M.C. 711 (W.D. Wash. 2004). A cruise ship passenger brought a personal injury action against the shipowner, the defendant moved for summary judgment and to strike the certification of the plaintiff's expert, the plaintiff moved to strike the declarations of the defendant's employee, and the court, on review, denied the motions to strike and the motion for summary judgment, the court holding, inter alia, that maritime law applied to the plaintiff's negligence suit, that the defendant owed to the plaintiff a reasonable duty of care, but not a heightened duty of care, and that a genuine issue of material fact existed as to whether the automatic sliding doors operated according to industry standards when the plaintiff was allegedly injured when the doors shut on him. when an allegedly dangerous condition is one that is not particular to maritime travel, a defendant is liable for negligence under the "reasonable care under the circumstances"
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standard only if it had actual or constructive notice of the condition that created the danger, the court instructed. A defendant is deemed to have constructive notice if, in the exercise of reasonable care, the defendant ought to have known about or discovered the alleged dangerous condition, the court pointed out. This, the court observed, implies a duty of reasonable inspection, the court adding that constructive notice "requires that a defective condition exist for a sufficient interval of time to invite corrective measures."

In a case in which a passenger brought suit against cruise ship entities to recover in negligence for injuries she suffered when she was thrown from her chair while a ship was maneuvering a turn in high seas, the cruise ship entities moved for summary judgment, the passenger moved for partial summary judgment, and the court in Wyler v. Holland America Line-USA, Inc., 348 F. Supp. 2d 1206, 2004 A.M.C. 1792 (W.D. Wash. 2003), on review, denied the motions, the court holding, inter alia, that a genuine issue of fact precluded a determination of foreseeability on the summary judgment motion and that the "rogue wave" defense was subsumed within the fact issue of foreseeability, the court adding that a vessel operator owes passengers and visitors aboard its vessel a duty of reasonable care under the circumstances to warn them of any dangers of which he or she knows or should know and that the duty to warn requires a warning only of harm that is reasonably foreseeable. Determinations of foreseeable risk are questions of fact for the jury, the court instructed, and a genuine issue of fact as to whether harm to cruise ship passengers during the execution of a turn during inclement weather was reasonably foreseeable, so as to give rise to a duty to warn, or resulted from an unforeseeable rogue wave, precluded summary judgment on the negligence claim of the subject passenger. Genuine issues of fact, as to whether the ship's command reasonably turned the vessel without giving a warning during high seas, and if so, whether the failure to warn proximately caused injuries suffered by cruise ship passenger when she was thrown from chair during ship's maneuver, such that the lack of warning was a cause of the injuries, precluded summary judgment on a negligence claim, the court declared.

In a case in which the passenger of a cruise ship brought a negligence action against the cruise line for injuries the passenger received when automatic sliding doors on the ship closed on the passenger's face, and in which the passenger's husband brought a claim for loss of consortium, the lower tribunal granted summary judgment for the cruise line, the passenger and husband appealed, and the court in Frango v. Royal Caribbean Cruises, Ltd., 891 So. 2d 1208, 2005 A.M.C. 804 (Fla. 3d DCA 2005), on review, affirmed in part and reversed and remanded in part, the court holding, inter alia, that a disputed issue of material fact as to the extent of the passenger's responsibility for injuries she received precluded entry of summary judgment for the cruise line in the passenger's negligence action, and the husband could not maintain state law loss of consortium claim. A disputed issue of material fact as to the extent of the passenger's responsibility for injuries she received when the automatic sliding doors on the cruise ship closed on the passenger's face precluded entry of summary judgment for cruise line in the passenger's negligence action, the court elaborated, where the passenger briefly stopped in the doorway to look back at her husband, but where there was evidence that the sensor that operated the automatic doors could "lose" the person if the person remained stationary for a moment just prior to the entryway of the doors, the court explained.

§ 5. Cruise line held not liable

[Cumulative Supplement]

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, generally held, given the particular circumstances presented, that the defendant cruise line was not liable.

See McDonough v. Celebrity Cruises, Inc., 64 F. Supp. 2d 259, 2000 A.M.C. 257 (S.D. N.Y. 1999), the facts of which are discussed more fully at § 4, a case in which an injured passenger sued a passenger cruise ship and the ship's operator, alleging negligence in connection with an incident in which the passenger was struck on the head by a rum-filled coconut served to
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passengers, and in which the passenger's husband sued for loss of consortium, where the court, on review of the defendant's motion for summary judgment, held that while fact questions existed as to whether the defendants exercised reasonable care under the circumstances, thus precluding summary judgment, loss of consortium damages were not recoverable under general maritime law.

In a case in which the plaintiff brought an action against the defendant cruise line for personal injuries sustained while she was a passenger on board one of the defendant's cruise ships, the court in Jacques-Boyle v. Celebrity Cruise Lines, Inc., 1997 WL 683338 (S.D. N.Y. 1997) (an unpublished decision), following a bifurcated bench trial on the issue of liability, found for the defendant and ordered the action dismissed, the court commenting that the defendant had argued that it was not negligent because it could not have reasonably foreseen that one of its passengers would forcibly knock down another passenger during a picture-taking session. In the alternative, the court pointed out, the defendant argued that even if the cruise line should or could have foreseen the event in question, it did not owe the plaintiff a higher duty of care because there were no dangers peculiar to maritime travel, and the offending passenger was the independent, intervening cause of the plaintiff's injury.

In Lawrence v. IMAGINE... 1, 333 F. Supp. 2d 379 (D. Md. 2004), a case in which a passenger filed an admiralty suit against the owner and operator of a vessel and the owner's cruise charter broker for hearing loss the passenger sustained when the crew fired a small cannon, the defendants filed a third party complaint against the passenger's employer which chartered the vessel, the broker and employer moved for summary judgment, the owner moved for partial summary judgment, and the court, on review, held that the duty of reasonable care owed to the passengers by the shipowner did not extend to impose a duty on the charter broker, that the charter broker did not have a duty under the charter agreement to keep the passenger areas safe, and that the passenger did not have an implied right of action under a Maryland noise level statute. Under admiralty law, a shipowner or operator of a ship owes the ship's passengers a duty of reasonable care under the circumstances of the voyage, the court noted at the outset, though the duty owed passengers by the shipowner or operator does not extend to brokers, ticketing agents, and other such agents of the boat owner. The duty owed to passengers by the shipowner or operator does not generally extend to charterers unless the charterer assumes control or operation of the vessel, the court elaborated. Here, the court indicated, the duty of reasonable care owed to the passengers by the shipowner did not extend to the shipowner's cruise charter broker, which acted as a mere booking agent in the managing ship's calendar and brokering charters, and had no role in the overall operations of the vessel or specific activities related to a particular chartered cruise on which the passenger was injured. The broker in chartering the vessel for cruise breached no duty owed to passenger who suffered hearing loss, where it knew the vessel to be a seaworthy ship with a reputable captain and crew, had received no complaints with respect to previous charters, and had no knowledge of the vessel's use of cannon prior to the date of injury, the court concluded.

Where a passenger sued a cruise line for injuries she received when an automatic sliding glass door ran over her toes, the federal district court entered judgment on a jury verdict in favor of the passenger, the cruise line appealed, and the court in Wilkinson v. Carnival Cruise Lines, Inc., 920 F.2d 1560, 32 Fed. R. Evid. Serv. 25 (11th Cir. 1991), on review, reversed and remanded, the court holding, inter alia, that hearsay statements of a cabin steward, suggesting that the cruise line had prior knowledge of problems with the sliding glass door, was improperly admitted over a hearsay objection, that evidence of a subsequent remedial measure, which occurred when the cruise line kept the sliding glass door locked in the open position for the remainder of the cruise, was improperly admitted to impeach the testimony of the ship's officer, and the refusal to give the cruise line's requested jury instruction on the passenger's susceptibility to psychiatric injury was proper and not an abuse of discretion.

In a case in which a husband and wife brought action against a cruise line in state court, seeking to recover for injuries sustained by the wife when she tripped over the metal threshold cover for a fire door on a cruise ship, the federal district court, after removal and transfer of the case, entered judgment on a jury verdict in favor of the plaintiffs, but granted the cruise line's motion for remittitur, the cruise line appealed a denial of motions for a new trial, the plaintiffs cross-appealed the grant of remittitur, and the court in Everett v. Carnival Cruise Lines, 912 F.2d 1355, 1991 A.M.C. 700 (11th Cir. 1990), on review, reversed and remanded, the court holding, inter alia, that federal admiralty law, rather than Florida law, controlled the substantive issue in the
case, that the cruise line could not be held liable for the passenger's injury, in the absence of actual or constructive notice, and that error in instructing the jury that liability could be predicated solely on the cruise line's negligent creation or maintenance of its premises, without actual or constructive notice, was not harmless, despite the possibility that the jury predicated liability on the evidence of notice.

In Williams v. Carnival Cruise Lines, Inc., 907 F. Supp. 403, 1996 A.M.C. 729 (S.D. Fla. 1995), a case in which cruise ship passengers brought an action against a cruise ship operator asserting claims for negligence and breach of contract under general maritime law, the cruise ship operator moved for summary judgment as to those passengers who asserted only fear or fear and seasickness claims, and the federal district court, on review, granted the motion, inter alia, that the zone of danger test applied to the cruise passengers' claims for negligent infliction of emotional distress, and that under that test, the passengers could not recover absent any physical manifestation of that distress. The court pointed out that while the instant plaintiffs were not seamen and while the Jones Act did not directly apply to the proceedings, it would nonetheless look to these maritime statutes for guidance in determining what remedies should be available in an admiralty case, such as the subject litigation. The court recognized the importance of uniformity within maritime law and commented that the Jones Act fully incorporated by reference the Federal Employers' Liability Act (FELA). Within the common law, there are three tests for evaluating claims for negligent infliction of emotional distress, the court instructed, the first being the "physical impact" test, which requires that before a plaintiff can recover damages for emotional distress caused by the negligence of another, the emotional distress suffered must flow from physical injuries that the plaintiff sustains in an impact, the second being the "zone of danger" test which limits recovery for emotional injury to those plaintiffs who sustain a physical impact as a result of a defendant's negligent conduct, or who are placed in immediate risk of physical harm by that conduct, and the third being the "relative bystander" test in which the plaintiff must have been located near the scene of the accident and have observed the accident while it actually occurred. The "zone of danger" test applies to negligent infliction of emotional distress cases under general maritime law, and objective physical manifestations are required for recovery for negligent infliction of emotional distress, the court explained. Here, the court declared, the plaintiff cruise ship passengers could not recover from the defendant cruise ship operator for negligent infliction of emotional distress without any physical manifestation of that distress (Restatement Second, Torts § 436A).

Where the plaintiffs, passengers on a cruise ship operated by the defendant cruise line, sued the cruise line, claiming that they were injured when the negligently-controlled ship tipped sharply to the side in rough waters, the defendant obtained summary judgment in its favor, the plaintiffs appealed, and the court in Girardi v. Princess Cruises, 2010 WL 3310360 (Cal. App. 2d Dist. 2010), unpublished/noncitable, (Aug. 24, 2010), on review, affirmed the judgment and imposed sanctions against the plaintiffs for filing a frivolous appeal.

A cruise line's undisputed evidence demonstrated that it had no actual knowledge of spiders on its ship or that it should have known of a spider's presence due to the length of time the spider was on the ship, and thus, the cruise line did not breach a duty to the passenger, who claimed injuries from an alleged spider bite, disproving an essential element of the passenger's negligence claim, where the claims manager stated that she could not recall any instance of a spider bite injury in over nine years, where no reports revealed any passenger complaint of a spider bite, where the ship was regularly cleaned and treated for pests, and where the ship passed United States Public Health Service inspections without any mention of spider problems, the court held in Ilan v. Princess Cruises, Inc., 2002 WL 31317342 (Cal. App. 2d Dist. 2002), unpublished/noncitable. The passenger brought negligence and breach of warranty claims against the cruise line, the lower tribunal entered summary judgment in favor of the cruise line, the passenger appealed, and the court, on review, affirmed, the court holding, inter alia, that the cruise line proved it breached no duty to the passenger and that the cruise line proved that the spider bite was not the proximate cause of the passenger's injuries. The court pointed out that the declaration of a toxicologist stated that the passenger was not bitten by a "hobo spider," as claimed by the passenger, and that the passenger's ailments could not have been caused by a spider bite. The court pointed out, as well, that the passenger waived for appellate review the issue of whether the cruise line had breached an implied or express warranty by failing to include any argument in its appellate brief regarding possible warranty and breach.
CUMULATIVE SUPPLEMENT

Cases:

Passengers' allegations that cruise line failed to timely deliver their luggage, resulting in bodily injury, pain and suffering, mental anguish, humiliation, and embarrassment were insufficient to state a claim for strict liability under Florida law against cruise line; passengers did not allege any intentional tort. Alvarez v. Royal Caribbean Cruises, Ltd., 2012 WL 5932452 (S.D. Fla. 2012) (applying Florida law).

2. Limitations Period Considerations

§ 6. Action barred

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, held that the action against the defendant cruise line was barred by the applicable statute of limitations or other limitations period.

The one-year limitations period in a cruise ship passenger ticket was valid under federal maritime law (former 46 App. U.S.C.A. § 183b(a)), which preempted Florida law (Fla. Stat. Ann. §§ 95.03, 95.11) providing for a longer limitations period, where the ticket alerted passengers to restrictions on their rights in unambiguous language, where the passenger retained counsel within the one-year limitations period, and where counsel’s first communication with the cruise ship line took place only five weeks after the passenger’s injury allegedly occurred, the court held in Vavoules v. Kloster Cruise Ltd., 822 F. Supp. 979, 1994 A.M.C. 1202 (E.D. N.Y. 1993). A cruise ship passenger brought a personal injury action against a cruise ship line; on the defendant’s motion for summary judgment on limitations grounds, the court granted the motion. Carriers by sea may impose a contractual limitation period if the passenger is allowed at least one year from date of injury to sue and ticket sufficiently alerts the passenger to the restriction, the court noted at the outset, and the failure to read a cruise ship ticket will not relieve the passenger of the contractual limitation period. A passenger cruise ticket is a maritime contract and the limitations law to be applied in a personal injury action is federal maritime law, the court reiterated, and federal maritime law, rather than state law, applied in the instant case in determining the limitations period for the cruise ship passenger's personal injury action against the cruise ship line. Here, the court declared, the statute of limitations in the ticket was valid under federal maritime law, which preempted Florida law, and the defendant reasonably communicated the limitation to the plaintiff. The ticket in the subject case alerted passengers to the restrictions on their rights in clear language, the court declared, and the plaintiff was not misled, but instead retained counsel well within the one-year period. Counsel’s first communication with the defendant took place only five weeks after the injury allegedly occurred.

Warnings on a cruise ship ticket, that the ticket constituted a contract and directing the ticketholder to read the terms of the contract set forth inside the ticket folder, were reasonably communicative, for purpose of making the time limitation for bringing personal injury actions contained in the fine print of the ticket part of holder's contract, though the warnings did not stress the importance of the contractual time limit or indicate that the holder’s legal rights might be affected by the ticket’s terms and conditions, the court held in Marek v. Marpan Two, Inc., 817 F.2d 242, 1987 A.M.C. 2193 (3d Cir. 1987), the court affirming the lower tribunal's order granting summary judgment for the defendants on the ground that the contractual time limitation had expired. The court noted at the outset that former 46 App. U.S.C.A. § 183b(a) (later recodified at 46 U.S.C.A. § 30508)
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made it unlawful for the manager, agent, master, or owner of any sea-going vessel, other than tugs, barges, fishing vessels and their tenders, transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred. The time limitation for bringing personal injury actions contained in the subject cruise ship ticket was valid and enforceable where the provision was not harder to find or read than any other provisions in the contract and, once located and read, it was easily understood. Here, the court declared, the fact that two cruise ship passengers traveling together shared one ticket folder did not render the contract provisions contained in the ticket inapplicable to the injured passenger absent evidence that the traveling companion denied the passenger access to the ticket. The companion’s possession of the folder was sufficient to charge the passenger with notice of its provisions, the court concluded.

Application of the one-year limitations period for personal injury actions specified in a contract between a passenger and cruise line was not unfair, where the passenger took and retained possession of the contract, thus receiving ample notice of the limitations period, the court held in Marrinan v. Carnival Corp., 324 Fed. Appx. 327 (5th Cir. 2009), and where whatever complaint the passenger had regarding any problem with regaining his deposit before boarding the cruise ship and signing the contract was immaterial to the contractual limitations period for personal injury actions after it was accepted. A passenger who was injured during a cruise brought a personal injury action against a cruise line, the cruise line moved for summary judgment on the ground that the action was time barred, the federal district court granted the motion, the passenger appealed, and the court, on review, affirmed, the court holding, inter alia, that the limitations period applied to the passenger’s personal injury claim. Pursuant to the contract between the passenger and the cruise line, which the passenger was given at the time of boarding and signed, any claim for personal injury had to be filed within one year after the date of the injury, the court declared.

The court in Coleman v. Norwegian Cruise Lines, 753 F. Supp. 1490, 1991 A.M.C. 1904 (W.D. Mo. 1991), held that the one-year limitations clause contained in a cruise line ticket was enforceable because its presence and importance was reasonably communicated to the passenger (former 46 App. U.S.C.A. § 183b(a)), where conspicuous notice directed the passenger’s attention to the limitation clause contained within the ticket, and where the terms and conditions were set out in small but legible type, the court adding that the ticket was in the passenger’s possession or her spouse’s possession throughout the one-year limitations period after the passenger was injured, and that, given the serious nature of her injuries, she had strong a incentive to promptly determine the proper course of action. A cruise ship passenger who slipped and fell as she attempted to climb a flight of stairs between the upper and lower deck of the defendant’s vessel brought a personal injury suit against the cruise line; on the defendant’s motion for summary judgment, the federal district court granted the motion, the court holding, inter alia, that the one-year limitations clause contained in the ticket was enforceable because its presence and importance was reasonably communicated to the plaintiff passenger. A passenger on a sea-going vessel will be bound by the statute of limitations provision in a contract of carriage if the provision is incorporated into the body of the contract, and the carrier has made a reasonable effort to warn passengers of notice and filing requirements, the court noted at the outset. The "reasonable communicativeness" test applicable to the statute of limitations provision in a cruise line contract of carriage does not require the shipowner to design the "best" ticket or "ideal" warning, but instead, the test requires only that the shipowner employ a "reasonable" means to communicate the importance of the ticket provisions to the passenger, the court indicated. The burden of proof is on the carrier to show that it made a reasonable effort to warn its passengers of its liability limitations, the court declared. Under the first prong of the two-prong test to determine whether a shipowner has given reasonable notice of the time limitation clause contained in a passenger ticket, the court continued, the focus is on the manner in which the crucial language is presented in the ticket, and consideration should be given to the presence, placement, conspicuousness, and clarity of any notice directing the passenger’s attention to the limitations clause, where the clause is placed in relation to the remainder of the ticket, the size of the type used in the notice and limitations clause, and the ease with which the passenger can read the limitations clause. A passenger’s lack of actual knowledge of a limitations clause in a cruise line ticket does not render limitations clause unenforceable, the court concluded.
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In Holland v. Norwegian Cruise Lines, 765 F. Supp. 1000, 1991 A.M.C. 877 (N.D. Cal. 1990), a case in which a cruise line passenger brought a personal injury action against a cruise line, the cruise line moved for summary judgment, and the court, on review, granted the motion, the court holding, inter alia, that the one-year limitation period for personal injury suits as contained in the ticket was valid and barred the action. Courts incorporate a one-year limitation on passenger suits for personal injuries into a passenger ticket contract only if the sea carrier reasonably communicates to its passengers that a contractual term affects their legal rights (former 46 App. U.S.C.A. § 183b(a)), the court related, and whether notice to passengers of the one-year limit on passenger suits for personal injuries was reasonably adequate, for purposes of determining whether limitation can be incorporated into passenger ticket contract, is a question of law. Here, the court declared, the one-year limitation period for personal injury suits contained in the cruise ship passenger's ticket was valid as to the passenger, although she had surrendered her copy of the ticket to her attorney, who did not return it to her, and the passenger subsequently hired a new attorney and filed suit 16 months after the injury where the passenger had the ticket in her possession after boarding the ship and for at least six months after the end of the cruise.

See Afflerbach v. Cunard Line, Ltd., 14 F. Supp. 2d 1260, 1999 A.M.C. 283 (D. Wyo. 1998), where the court held that a fact issue existed as to whether a cruise passenger ever received a shipowner's passage contract setting forth a statute of limitations and a forum selection clause, precluding summary judgment in favor of either party on the forum selection clause and time-bar issues in the passenger's suit arising out of an injury sustained on a cruise. The cruise passenger brought suit against the shipowner, alleging that she was injured during a cruise as a result of the shipowner's negligence, and the court, on review of the shipowner's motions to dismiss and for summary judgment, and the passenger's motion for partial summary judgment, granted the defendant's motion to dismiss and denied the summary judgment motions, the court holding, inter alia, that personal jurisdiction over the shipowner under Wyoming's long-arm statute was lacking. A travel agent acts as an agent or "special agent" for the traveler for the purposes of that one transaction, the court noted at the outset. Here, the court related, the passenger failed to meet her burden of establishing that a travel agent acted as the shipowner's agent for purposes of establishing specific jurisdiction under Wyoming's long-arm statute for a suit arising out of an injury sustained by the passenger on the cruise, where the evidence showed that the travel agent acted as an independent broker or contractor in selling the cruise (Wyo. Stat. Ann. § 5-1-107). By nationally advertising its tours and selling those tours to Wyoming residents, the shipowner did not purposefully avail itself of the privilege of acting within Wyoming or of causing important consequences there so as to subject it to personal jurisdiction under Wyoming's long-arm statute, the court indicated. Although the court dismissed the case on the basis of lack of personal jurisdiction, in the interest of a complete record in the event of an appeal, the court ruled on the pending motions for summary judgment on the issues of forum selection and the time-bar. The court reiterated that there was a genuine issue of fact on whether the plaintiff ever received the defendant's Passage Contract setting forth a statute of limitations and a forum selection clause, as a result of which the forum selection clause and time-bar issues could not be decided on summary judgment.

A one-year time limitation provision for bringing suits against a cruise shipowner, as found in the ticket issued to an injured passenger, was reasonable as a matter of law, and thus binding, where the face of the ticket contained conspicuous language directing the passenger's attention to the contractual terms found on later pages of the contract, and where the paragraph containing the limitation clause, unlike the others, was in bold face, and all capital print, the court held in King v. Eastern Cruise Lines, 722 F. Supp. 709, 1989 A.M.C. 1744 (S.D. Ala. 1989). An allegedly injured passenger brought a negligence action against a cruise shipowner, and the court, on the owner's motion for summary judgment, granted the motion, the court holding, inter alia, that the one-year time limitation provision for bringing suits against the owner was reasonable as a matter of law. The subject provision, completely capitalized, the court instructed, read as follows: "No suit shall be maintainable against the carrier upon any claim in connection with this transportation or contract relating to baggage or any property unless written notice of the claim, with full particulars, shall be delivered to the carrier or its agent at its office at the port of sailing or at the port of termination within thirty (30) days after termination of the voyage to which this contract relates: and in no event shall any suit for any cause against the carrier with respect to baggage or property be maintainable unless suit shall be commenced within one (1) year after the termination of the voyage. No suit shall be maintainable against the carrier for delay, detention, personal injury, illness or death of the passenger unless written notice of the claim with full particulars be delivered to the carrier or its agent..."
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at its office at the port of sailing or at the port of termination within six (6) months from the day when such delay, detention, personal injury, illness or death of the passenger occurred; and in no event shall any suit for any cause against the carrier with respect to delay, detention, personal injury, illness or death be maintainable, unless suit shall be commenced within one (1) year from the day when the delay, detention, personal injury, illness or death of the passenger occurred, not withstanding any provision of law of any state or country to the contrary."

See Arute v. Carnival Corp., 2008 WL 4415796 (Conn. Super. Ct. 2008) (an unpublished decision), where the court held that a motion to dismiss could not be used to advance a claim that the statute of limitations had not been complied with in a passenger's negligence action against a cruise company (46 U.S.C.A. § 30508(b)).

A cruise ship passenger's filing of a personal injury action against a cruise line in an improper forum, in violation of the ticket contract's forum selection clause, did not equitably toll the ticket's one-year limitations period, the court held in Wilkin v. Carnival Cruise Lines, Inc., 661 So. 2d 1308 (Fla. 3d DCA 1995), where the passenger disregarded the terms of the passage contract which were communicated to her both through the ticket and otherwise, and where the cruise line had sent the passenger a letter which outlined the contract conditions, including the forum selection clause, prior to the passenger's institution of the suit in the improper forum. The plaintiff claimed that she suffered injuries while a passenger on the defendant cruise line's cruise ship, the Mardi Gras, operated during the week of November 21, 1991. On November 11, 1992, the plaintiff filed a complaint in a Michigan court against the defendant, and on July 6, 1993, the Michigan court dismissed the complaint for lack of jurisdiction based on the ticket contract's forum selection clause. Several days prior to this dismissal, on June 29, 1993, the plaintiff reflected her complaint in a Florida trial court. The Florida trial judge subsequently granted the cruise line's motion for summary judgment, and the plaintiff appealed, the judge's order relying on the ticket contract which clearly indicated as follows: "Suit to recover any claims shall not be maintainable in any event unless commenced within one year after the date of the loss, injury or death." Rejecting the plaintiff's assertion that the judge should have applied the doctrine of equitable tolling since the plaintiff timely asserted her rights, mistakenly, in the wrong forum, the court pointed out that the tolling doctrine is used in the interest of justice to accommodate both a defendant's right not to be called upon to defend a stale claim and a plaintiff's right to assert a meritorious claim when equitable circumstances have prevented a timely filing. Equitable tolling is a type of equitable modification which focuses on the plaintiff's excusable ignorance of the limitations period and on the lack of prejudice to the defendant, the court explained. The trial judge properly determined that because it was clear from the affidavit of a ship employee that a passenger must present a complete passage ticket at the time of boarding, and that the ticket is returned to the passenger at boarding, the plaintiff should be held to the terms of the ticket, the court related. In sum, the trial judge under these circumstances concluded that filing suit in the improper forum did not toll the ticket's one-year time limitation, and there was no error in that decision, the court concluded.

See the following additional cases, where the courts, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, held that the action against the defendant cruise line was barred by the applicable statute of limitations or other limitations period, where:

—in a case in which a cruise ship passenger brought a personal injury action against a ship operator, arising from a slip and fall aboard ship, the operator moved for summary judgment, and the court, on review, allowed the motion, the court holding, inter alia, that the action was untimely pursuant to the one-year limitations provision of the passenger contract, despite the passenger's contention that she never received the major portion of a contract including the limitations provision, and that the operator reasonably communicated to the passenger the shortened limitations period contained in the passenger contract. Sasso v. Travel Dynamics, Inc., 844 F. Supp. 68 (D. Mass. 1994).

—in a case in which passengers brought a personal injury action against a cruise line, the federal district court granted summary judgment for the cruise line on the ground of contractual limitations, the passengers appealed, and the court, on review, affirmed, the court holding, inter alia, that the ticket gave passengers reasonable notice of the contractual limitations period (former 46
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App. U.S.C.A. § 183b(a)); in so ruling, the court pointed out that there was a notice in boxed-off red print on the fifth page of the ticket, which was the same page as the fare and the date of departure, directing the passengers' attention to the terms and conditions on the following pages, and that the limitations language was clear and unambiguous, even though it was one of 28 paragraphs of terms and conditions and even though neither the limitations provision nor the preceding notice was in lettering as bold or as large as the warning pertaining to the marking of luggage and completion of embarkation cards. Spataro v. Kloster Cruise, Ltd., 894 F.2d 44, 1990 A.M.C. 936 (2d Cir. 1990).

—in a case in which a cruise ship passenger brought action against a cruise line, arising out of personal injuries allegedly sustained as a result of an accident that occurred on ship, more specifically, in the plaintiff's cabin while the plaintiff was sleeping, the passenger and cruise line moved for summary judgment, and the federal district court, on review, denied the passenger's motion and granted the cruise line's motion, the court holding, inter alia, that the passenger's cruise ticket became a valid contract when she embarked pursuant to the ticket, that the one-year limitations period was reasonable and fundamentally fair, that the physical characteristics of the ticket contract reasonably communicated the existence of the limitations period, and that the circumstances surrounding purchase of the ticket gave the passenger a sufficient opportunity to become aware of the limitations period (46 U.S.C.A. § 30508); the purchase and retention of the cruise line passenger's ticket contract by the family of another passenger for whom she was to work as a health aide during the cruise gave the passenger sufficient opportunity to become aware of the ticket's one-year limitations period on suits alleging on-board injury, as required for a determination that the shortened limitations period was reasonably communicated and thus enforceable, the court remarked, and whether she was traveling for work or not, the passenger should have known that a cruise line required a ticket, and the passenger could have easily inquired as to who made her travel arrangements and could have asked to see her ticket booklet, the court adding that there was no evidence that the passenger was not permitted to see her ticket, and that the passenger met with an attorney and discussed a lawsuit against the cruise line within the limitations period. Palmer v. Norwegian Cruise Line & Norwegian Spirit, 741 F. Supp. 2d 405, 2011 A.M.C. 887 (E.D. N.Y. 2010).

—in a case in which an injured cruise ship passenger brought a negligence action against the defendant cruise line operator, the court, on review of the defendant's motion to dismiss, granted the motion, the court holding, inter alia, that the suit was time-barred, the court commenting that the one-year limitations period on claims against the cruise line operator, contained in the contract accompanying the passenger's ticket, was applicable to the passenger's personal injury claim, as the contract provision was unambiguous, and the ticket jacket clearly alerted the passenger to the fact that provisions in the accompanying contract limited her rights to sue the operator; the contractual one-year limitations period on the injured cruise ship passenger's negligence claim against the cruise line operator was not expressly or equitably tolled due to the parties' settlement negotiations, the court explained, and the operator terminated negotiations once the limitations period expired, but the passenger delayed an additional three months after that before filing the suit. Simmons v. Carnival Cruise Lines, 2003 A.M.C. 454, 2003 WL 21204631 (E.D. N.Y. 2003).

—in a case in which a passenger who was injured when the rung of ladder collapsed as he was climbing down from the bunk bed in a passenger cabin brought action in state court against the cruise shipowner, alleging negligence, the federal district court, on review, granted the motion, the court holding, inter alia, that the carrier reasonably communicated the terms and conditions of the cruise ship ticket to the passengers, and that the passenger was chargeable with knowledge of the ticket's conditions, notwithstanding that his wife had possession of the ticket, where his wife acted as his agent in acquiring and holding the ticket; given the particular circumstances presented, the court ruled, the action was time barred under the contractual period of limitation contained in the ticket. Marchewka v. Bermuda Star Lines, Inc., 937 F. Supp. 328, 1998 A.M.C. 599 (S.D. N.Y. 1996).

—in a case in which a cruise line and agent removed a passenger's state court personal injury suit and then moved for summary judgment, the federal district court, on review, granted the motion, the court holding, inter alia, that the one-year time limit on suits was reasonably communicated to the passenger in a ticket booklet and accordingly barred a suit brought 16 months after the accident. Cygiedman v. Cunard Line Ltd., 890 F. Supp. 305 (S.D. N.Y. 1995).
— in a case in which a cruise ship passenger brought a personal injury action against a shipowner and travel agency, the defendants moved for summary judgment, and the court, on review, granted the motion, the court holding, inter alia, that the passenger was charged with knowledge of the contents of the passenger ticket contract issued in her name, even if her coemployee handled her ticket exclusively, and thus, the passenger was charged with knowledge of the contract's contents, including a one-year limitations period for any claim (former 46 App. U.S.C.A. § 183b(a)), the court adding that the contractual limitation provision contained in the contract of passage is binding and enforceable if the existence and importance of the limitation is reasonably communicated to the passenger and it is incorporated by reference into the contract of passage. Kientzler v. Sun Line Greece Special Shipping Co., Inc., 779 F. Supp. 342, 1992 A.M.C. 1466 (S.D. N.Y. 1991).

— in a case in which a cruise ship passenger brought action against a carrier to recover damages for injuries sustained when she broke her arm while on the vessel, and where her husband brought a claim for loss of consortium, the carrier moved for summary judgment, and the court, on review, granted the motion, the court holding, inter alia, that the cruise ship ticket's contractual clause limiting claims against the carrier and vessel to those filed within one year and one day after the passenger's landing barred both the passenger's claim and her husband's claim; that is, the court related, the contractual clause limiting claims against the carrier was binding upon the passenger, who had fallen and broken her arm aboard the vessel, even though the passenger was a deaf-mute, where the ticket on its face specifically referred the passenger to the terms of the contract, where the passenger had ample opportunity to acquaint herself with terms of the contract or retain counsel to do so after injury, and where she offered no satisfactory explanation for not filing suit until almost two years later. Lieb v. Royal Caribbean Cruise Line, Inc., 645 F. Supp. 232, 1987 A.M.C. 380 (S.D. N.Y. 1986).

— the court, in a case in which the plaintiff sued for injuries suffered while aboard the defendant cruise line's vessel, agreed with the defendant that the claims of the plaintiff were subject to the limitation period, and, as the action was not timely filed, it would be barred, the court adding that even if derivative claims were permissible under maritime law, they would also be barred by the one year statute of limitations in the contract under inquiry; given the particular circumstances presented, the court ruled that the defendant was entitled to summary judgment. Siegel v. Norwegian Cruise Line, 2001 WL 1905983 (D.N.J. 2001) (an unpublished decision).

— in a case in which a cruise ship passenger brought action against the shipowner to recover from personal injuries suffered in a fall, the court, on review, granted the motion, the court holding, inter alia, that the claim was time barred, the court commenting that the one-year limitation period on personal injury actions, contained in a cruise ship passenger ticket, was enforceable, where the notice directing the passenger's attention to the relevant contractual provisions was in large type and set off in color from the rest of first page of contract, and where the referenced contractual provision containing the limitations period was clear, noticeable, and readily understandable by the average reader; a cruise ship passenger was bound by the terms of the contract of passage regardless of whether she failed to read them, the court explained, and the cruise shipowner was not stopped from enforcing the one-year limitation period in the passenger's personal injury action by the fact that its insurer had engaged in correspondence with the passenger's counsel during the relevant period, as the insurer explicitly stated that all correspondence between the parties was subject to the terms and defenses contained in the contract. Schenck v. Kloster Cruise Ltd., 800 F. Supp. 120, 1992 A.M.C. 2940 (D.N.J. 1992), judgment aff'd without opinion, 993 F.2d 225 (3d Cir. 1993).

— in a case in which a plaintiff cruise ship passenger sued after she fell aboard the defendant's vessel, suffering injuries, the court, on review, granted the defendant's motion for summary judgment and dismissed the plaintiff's complaint with prejudice, the court holding, inter alia, that as her friend acted as the plaintiff's agent in acquiring the ticket, the plaintiff was legally chargeable with notice of the limitations contained in the contract of passage, as a result of which the plaintiff's failure to institute suit within the one-year limitation period specified in the contract barred the action. Ur v. Premier Cruise Line, 1991 A.M.C. 797, 1990 WL 293888 (D.N.J. 1990).
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—-the court, granting a defendant cruise line's motion for summary judgment in an action brought by a plaintiff passenger injured on the defendant's ship, pointed out that a pleading can only be amended to relate back if the entity received notice of the action "within the period provided by law for commencing the action"; here, the court stated, it was beyond dispute that the plaintiffs' complaint against the defendant cruise line was not filed within the applicable time period. Williams v. Royal Caribbean Cruise Line, Inc., 1991 A.M.C. 237, 1990 WL 284517 (D.N.J. 1990).

—in a case in which passengers filed a negligence and loss of consortium action alleging personal injuries suffered by one passenger when he was struck by a stray golf ball while on board a cruise ship owned by the defendant, the federal district court, upon the defendant's motion to dismiss for lack of personal jurisdiction, failure to state a claim, and improper venue, or in the alternative, for summary judgment, denied the motion to dismiss for lack of personal jurisdiction, but granted the motion to dismiss for failure to state a claim, the court holding, inter alia, that references in passenger tickets to contract conditions were adequate to incorporate the limitation and venue provisions into the contract of passage, where the cruise line called attention to the contract conditions by inserting legends on the front of the ticket and in the brochure given to passengers on embarkation; given the particular circumstances presented, the court ruled that the action was barred by contractual limitations. Catalana v. Carnival Cruise Lines, Inc., 806 F.2d 257 (4th Cir. 1986) (unpublished table disposition; see 1986 WL 18205). 16

—in a case in which a passenger on a cruise ship brought suit against the defendant cruise line, alleging that she was injured by a fall aboard ship, the court, on the defendant's motion for summary judgment, granted the motion, the court holding, inter alia, that the claim was barred by the one-year suit limitation provision contained in the passage ticket governing terms of the cruise; the "reasonably communicative" test, whereby a one-year suit limitation provision in a cruise ship ticket will be binding if such limitation was reasonably communicated to the passenger, does not impose on a shipowner the duty to design the best ticket or an ideal warning, the court ruled, but only requires that the shipowner employ reasonable means to communicate the importance of the ticket provisions to the passenger, the court adding that here, the cruise line ticket reasonably communicated to passengers that personal injury suit had to be brought within one year, and thus, the provision was binding on a passenger who allegedly sustained injuries in a fall aboard ship. Euland v. M/V Dolphin IV, 685 F. Supp. 942, 1988 A.M.C. 2756 (D.S.C. 1988).

—in a case in which a cruise ship passenger who sustained serious injuries when she slipped on a swimming pool deck, and her husband, filed suit against the cruise line, which moved for summary judgment, the federal district court, on review, granted the motion, the court holding, inter alia, that the notice provisions of a ticket and extrinsic factors surrounding its subsequent retention established that the cruise line reasonably communicated to the passengers the presence and significance of a six-month notice provision and one-year limitation of action provision set forth in the passage contract ticket, and, that the passengers' claims were precluded by their failure to comply with the six-month notice provision and by expiration of the one year limitation of action provision. Thompson v. Ulysses Cruises, Inc., 812 F. Supp. 900 (S.D. Ind. 1993).

—in a case in which a cruise passenger brought action for personal injuries suffered while on board a vessel against the owner of the vessel, the federal district court granted summary judgment in favor of the vessel, the passenger appealed, and the court, on review, affirmed, the court holding, inter alia, that the passenger's personal injury claim was subject to the one-year limitations period found in her printed form ticket, the court adding that the physical characteristics of the ticket clearly informed the passenger that her rights were being limited, that the cruise line went to great lengths to inform passengers of various terms and conditions that could affect their rights, and that there was no evidence that the one-year limitation period in the ticket was unreasonable or fundamentally unfair (former 46 App. U.S.C.A. § 183b(a)); the one-year limitations period found in the cruise passenger's printed form ticket would not be found unenforceable on the basis that the passengers did not bargain over that term, but, rather, the provision would be examined to determine if it was unreasonable or fundamentally unfair, the court explained. Dempsey v. Norwegian Cruise Line, 972 F.2d 998 (9th Cir. 1992).
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—in a case in which passengers brought a negligence action against a carrier for injuries sustained on a cruise ship by one passenger, the carrier moved for summary judgment, and the federal district court, on review, granted the motion, the court holding, inter alia, that the contractual time limitation clause contained in cruise ship tickets barred the action, the court adding that under the reasonable communicativeness test for determining whether a notice of time limitation provision in a cruise ship ticket was reasonable, the district court must analyze the physical characteristics of the ticket contract, that being, features such as the size of type, the conspicuousness and clarity of notice on the face of the ticket, and the ease with which a passenger can read the provisions in question, and extrinsic factors surrounding the purchase and subsequent retention of the ticket, including the passenger’s familiarity with the ticket, the time and incentive under the circumstances to study the provisions of the ticket, and any other notice that the passenger received outside of the ticket; here, the passengers had reasonable notice of the contractual time limitation clause contained in the cruise ship tickets, and thus, their negligence action was time barred, where the tickets’ physical characteristics, such as the size of type used to spell out the contract’s terms, were reasonably communicative in light of the type’s clarity and a previous federal court decision which upheld the validity of an identical ticket, where the carriers were in possession of the tickets from the time of the accident to approximately 13 months later when they submitted the ticket to their attorney, and where the passengers were experienced sea cruisers. Kendall v. American Hawaii Cruises, 704 F. Supp. 1010, 1989 A.M.C. 2478 (D. Haw. 1989).

—a cruise ship ticket, stating that suits could not be maintained against the ship’s operator unless they were filed within one year of injury, and that the operator was entitled with respect to certain cruises to liability limitations under the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea (1974), did not entitle a passenger to application of the Convention’s two-year statute of limitations with respect to her suit for personal injuries allegedly suffered on board the ship; the ticket provided that the operator, not the passenger, was entitled to rights under the Convention, and the ticket did not incorporate the Convention’s two-year limitations period, but instead established a one-year period “notwithstanding any provision of law of any state or country to the contrary.” Farris v. Celebrity Cruises, Inc., 2012 WL 3590727 (11th Cir. 2012).

—in a case in which a passenger brought action against a cruise line, alleging personal injuries arising from a fall in a hallway on a cruise ship, the cruise line moved to dismiss, the federal district court granted the motion, the passenger appealed, and the court, on review, affirmed, the court holding, inter alia, that the passenger received adequate notice of the limitations provision in the parties’ contract, which set forth a one-year limitations period on the right to file a personal injury lawsuit where, although the cruise line’s brochure contained some 100 pages, the face of the brochure directed the passenger to a three-page contract contained therein, and where it was not unreasonable to expect the passenger to read the contract, either after his injury or after one of his surgeries. Racca v. Celebrity Cruises, Inc., 376 Fed. Appx. 929 (11th Cir. 2010).

—in a case in which a passenger allegedly injured in a slip and fall in the spa area of a cruise ship sued the cruise line and a contractor allegedly responsible for maintenance of the spa area, seeking damages, the defendants moved for summary judgment, and the court, on review, granted the motion, the court holding, inter alia, that the substantive law applicable to the action was general maritime law, and that the action was time-barred; that is, the court explained, the substantive law applicable to an action involving an alleged tort committed aboard a ship sailing in navigable waters was general maritime law, the rules of which were developed by the federal courts, thus defeating the plaintiff’s claim that Louisiana’s state statute of limitations and state law regarding limitations tolling provisions applied. Sorgenfrei v. Carnival Corp., 727 F. Supp. 2d 1354, 2011 A.M.C. 552 (S.D. Fla. 2010).

—in a case in which a passenger brought action against the provider of spa services aboard a cruise ship to recover for injuries sustained in a slip-and-fall accident, the provider moved for summary judgment, and the court, on review, granted the motion, the court holding, inter alia, that the passenger had reasonable and adequate notice of the one-year limitation period in the cruise ship ticket contract, that the shortened limitations period applied to the passenger’s personal injury claim against the provider, and that equitable tolling of the limitations period was not warranted. Levick v. Steiner Transocean Ltd., 377 F. Supp. 2d 1251, 2005 A.M.C. 2492 (S.D. Fla. 2005).
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—in a case in which a passenger sued a cruise line for negligence, the federal district court, on the cruise line's motion for summary judgment, granted the motion, the court holding, inter alia, that the injured passenger was bound by the one-year limitations period established by the cruise line, as printed on the ticket, even though the passenger had not paid for his ticket, even though the passenger had possessed the ticket for only a few minutes while boarding the ship, and even though neither the passenger nor his uncle, who won the ticket from his employer, paid for the ticket, where the cruise line received consideration from the passenger's uncle's employer, which paid for the passenger's ticket; the court, in so ruling, pointed out that even if the passenger did not have the opportunity to read the ticket contract before accepting its terms upon boarding the ship, he had one year after his accident to apprise himself of its conditions. Angel v. Royal Caribbean Cruises, Ltd., 2002 WL 31553524 (S.D. Fla. 2002) (an unpublished decision).

—in a case in which a passenger sued a cruise line for personal injury, the lower tribunal entered judgment for the cruise line, the passenger appealed, and the court, on review, affirmed, the court holding, inter alia, that the passenger's ticket reasonably communicated the terms and conditions of passage, including the one-year limitations period, the court adding that the ticket's printed warning of a short limitations period reasonably communicated the terms and conditions of passage, where both cover pages of the passenger ticket provided passengers with a conspicuous warning flagged with the phrase "Important notice" and clearly directed the passenger to the limitations clause on the interior page; moreover, the court remarked, the fact that the cruise line issued one ticket for the injured passenger and her travelling companion did not excuse the passenger's failure to familiarize herself with the terms and conditions of passage, the court noting that the companion's possession of the cruise line ticket was sufficient to charge the passenger with notice of the ticket's provisions, and that a passenger who omits to read takes the risk of omission. Collins v. Dolphin Cruise Line, Inc., 625 So. 2d 1308 (Fla. 3d DCA 1993).

—in a case in which spouses brought a negligence action against the defendant cruise line for injuries arising from a husband's slip and fall on the deck of a ship, the lower tribunal granted summary judgment for the cruise line, the passengers appealed, and the court, on review, affirmed, the court holding, inter alia, that a conspicuous and clear notice on the face of a cruise line ticket that contract conditions were stated therein adequately notified passengers of the contractual provision that they must commence an action within one year after date of an injury, and, having brought suit more than one year after the date of the slip and fall, the passengers were barred from maintaining their action. Hallman v. Carnival Cruise Lines, Inc., 459 So. 2d 378, 1985 A.M.C. 2019 (Fla. 3d DCA 1984).

—in a case in which a passenger and her husband brought action against a cruise line for injuries sustained from the cruise ship's running aground, the lower tribunal denied the cruise line's motion for summary judgment, the cruise line appealed, the appellate division held that the action was barred by the contractual statute of limitations, the passenger and husband appealed, and the court, on review, affirmed the decision of the appellate division, the court commenting that the action was barred by the contractual statute of limitations; in so ruling, the court pointed out that the ticket was contained in a booklet setting out general conditions in bold type on the first page and terms and conditions on the following pages, including the time-bar provision, in small but legible type, and that the passenger and her husband possessed the tickets for four months prior to the cruise and did not allege that they were required to surrender the tickets when they boarded the vessel. Lerner v. Karageorgis Lines, Inc., 66 N.Y.2d 479, 497 N.Y.S.2d 894, 488 N.E.2d 824, 1986 A.M.C. 1041 (1985).

§ 7. Action not barred

[Cumulative Supplement]
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The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, held, given the particular circumstances presented, that the action against the defendant cruise line was not barred by the applicable statute of limitations or other limitations period.

In a case in which a cruise ship passenger brought an action against a bareboat charterer and others to recover for intentional infliction of emotional distress arising from the alleged harassment by photographers after the plaintiff had boarded the ship, the federal district court entered judgment, the charterer appealed, and the court in Muratore v. M/S Scotia Prince, 845 F.2d 347, 1993 A.M.C. 2933 (1st Cir. 1988), on review, held that the one-year limitations period contained in the ticket did not bar the passenger's action.

Where plaintiffs commenced an action to recover damages of $1.1 million for personal injuries incurred nearly three years earlier by the plaintiff when she fell aboard the defendant's ship, and where the defendant sought summary judgment, arguing that the plaintiffs' cause of action was time-barred under former 46 App. U.S.C.A. § 183b(a), the court in Zinicola v. S.S. GALILEO, 1992 WL 175610 (E.D.N.Y. 1992) (an unpublished decision), on review, denied the defendant's motion, the court commenting that the passenger ticket under inquiry singularly failed to impress on the passenger the legal importance of its terms and conditions. The ticket's facial warning, the court explained, alerted passengers only to the "terms and conditions of their transportation," not of any contract, and the inside page directed passengers simply "to read in their own interest" its "terms, conditions and regulations," the court adding that, in fact, the ticket only expressly referred to "contract," "limitations," "liability," or "rights" in the nearly illegible provisions contained in the 24 numbered paragraphs entitled "Conditions of Transportation" and that, buried among prohibitions of liquor and livestock, paragraph 23 set out the limitations period. Nowhere on the ticket in a prominent position was there even the suggestion that it limited the liability of the carrier or affected the passenger's rights, the court related, and in fact, the ticket gave no notice that the small print incorporated the contractual terms governing the parties' rights and liabilities. No reasonably prudent purchaser reviewing this ticket could be expected to discover that her legal rights were so restricted, the court stated. The defendant failed to satisfy the established standard of "reasonably communicating[]" the limitations period, and certainly did not comply with the more demanding requirement to do "all it reasonably could" to warn passengers of the ticket's legal restrictions, the court explained. In authorizing a substantial limitation on the carrier's liability, Congress most certainly did not intend or anticipate that this critical term would be camouflaged within the boilerplate of passage, a virtual secret from the contracting passenger, the court declared. Given the particular circumstances presented, the court concluded that the limitations provision of the defendant's ticket was unenforceable, as a result of which the defendant's motion for summary judgment would be denied.

In Dillon v. Admiral Cruises, Inc., 960 F.2d 743, 1992 A.M.C. 2218 (8th Cir. 1992), a case in which a cruise ship passenger brought a personal injury action against the cruise ship line, the federal district court entered summary judgment in favor of the line, the passenger appealed, and the court reversed, the court holding that the evidence raised a triable issue of fact as to whether the cruise line was estopped from asserting the one-year time limitation in the passenger's ticket as a defense, thus precluding summary judgment. The court noted that the plaintiff planned a "pleasant ocean voyage" on the cruise ship Emerald Seas operated by the defendant, and that her plans "went awry" when she fell over an obstruction in the passageway of the ship's lounge and fractured her hip. To "compound her misery," the court remarked, when her lawyer sued the cruise line for damages, the district court summarily dismissed the action on the defendant's motion, the lower court holding that the action came too late, beyond the time limitation of one year as printed in the ticket. The defendant asserted, inter alia, that her facts established an estoppel issue for trial, and the court, on review, agreed with this alternative contention and reversed. A cruise ship ticket, the court pointed out, gave the injured passenger reasonable notice of its one-year time limitation for filing suit, where the passenger's attorney obtained possession of the ticket shortly after the passenger was injured. Evidence that the cruise ship line promised to pay the injured passenger's medical bills and to settle her personal injury claims after she recovered from her injuries, however, raised triable issues of fact as to whether the line was estopped from asserting the one-year time limitation in the passenger's ticket as a defense in the passenger's personal injury action, thus precluding summary judgment, the court related. The court, in so ruling, pointed out that the plaintiff's estoppel argument was governed by general maritime
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common law, the court adding that the courts, for example, have applied estoppel principles to prevent a defendant cruise ship company from asserting a time limitation for filing suit, when the company had misled the plaintiff as to the identity of the proper defendant. Reasonable persons could differ as to whether the cruise line's actions misled the plaintiff, regarding her legal situation, such that the defendant should be estopped from asserting the time limitation to bar the suit, the court declared. In that regard, reasonable persons could differ as to whether the plaintiff should have relied in good faith and delayed her suit because of assurances given her that a settlement would be forthcoming, after completion of her medical treatment, the court elaborated. As triable issues of fact existed on the estoppel issue, the court concluded, summary judgment would be set aside.

Provisions purporting to limit a cruise line's liability printed on a deceased cruise ship passenger's ticket did not meaningfully inform the passenger of liability limitations, for purposes of determining the reasonable communicativeness of the ticket, and thus, the limitation did not apply to the widow's wrongful death action, arising from the passenger's drowning death, where the ticket did not expressly state the monetary amount of the limitation, but referenced provisions of Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, to which the United States was not a signatory, which then required the checking of a financial source to determine conversion rates for Special Drawing Rights as defined by the International Monetary Fund (IMF), the court held in Wallis v. Princess Cruises, Inc., 306 F.3d 827, 2002 A.M.C. 2270 (9th Cir. 2002). The widow of a deceased cruise ship passenger, who drowned after falling from a cruise ship, brought action against the cruise line, alleging wrongful death under the Death on the High Seas Act (DOHSA), intentional infliction of emotional distress, breach of contract, and other claims, the federal district court granted the cruise line's motions for summary judgment, except for the widow's claims under the DOHSA, and granted the cruise line's motion for partial summary judgment, limiting its liability to $60,000 in accordance with a clause printed on the back of the ticket contract, the widow appealed, and the court, on review, affirmed in part, reversed in part, and remanded, the court holding, inter alia, that the limitation of liability provision on the back of the passenger's ticket did not apply.

A cruise shipowner was equitably estopped from asserting a passage contract ticket limitations with respect to a passenger's delay in filing suit for injuries sustained when he slipped and fell on a ship dance floor (§ 13), where the delay was reasonable and was created and prolonged by the shipowner's actions, the court held in Keefe v. Bahama Cruise Line, Inc., 715 F. Supp. 1069 (M.D. Fla. 1989), judgment aff'd without opinion, 902 F.2d 959 (11th Cir. 1990). The plaintiff passenger, who slipped and fell on a ship dance floor, brought a personal injury action against the defendant, the federal district court entered judgment for the passenger, the owner appealed, the court of appeals vacated and remanded, and the court, on remand, granted judgment for the plaintiff, the court holding, inter alia, that the passenger's delay in filing suit was created and prolonged by the shipowner's deceptive actions, as a result of which the owner was equitably estopped from asserting the passage contract ticket limitations.

In Milanovich v. Costa Crociere, S.p.A., 954 F.2d 763, 1993 A.M.C. 1034 (D.C. Cir. 1992), a case in which a cruise ship passenger filed a personal injury action against a cruise line and its general sales agent, the federal district court granted summary judgment to the cruise line and its agent, the passenger appealed, the court initially denied a motion to dismiss the appeal, and the court, on subsequent review, vacated and remanded, the court holding, inter alia, that the choice-of-law provision in the passenger's ticket that purported to adopt Italian law as the law of the contract was enforceable against the cruise line and the agent, and that, under Italian law, the one-year limitations provision in the contract was invalid. The statute prohibiting owners of sea-going passenger vessels from providing a period of less than one year for the institution of personal injury or wrongful death actions does not establish a public policy that would have been violated by the enforcement of a contractual choice-of-law provision that adopted Italian law and invalidated the one-year limitations provision, the court remarked. The statute (former 46 App. U.S.C.A. § 183b(a)) was intended to prevent time limitations of less than one year, not to prevent longer limitations periods, the court concluded.

The contents of a cruise line ticket, which directed the passenger's attention to the terms and conditions of a contract appearing on three pages, were insufficient to alert the passenger to the one-year limitations period contained in the ticket and, therefore, the limitations period did not apply to bar the passenger's personal injury action, the court held in Eick v. Norwegian Caribbean Lines
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A/S, 560 So. 2d 1221 (Fla. 3d DCA 1990). The plaintiff passenger brought a personal injury action against the defendant cruise shipowner, the lower tribunal held that the one-year limitations period contained in the ticket barred the action, the passenger appealed, and the court, on review, reversed, the court holding, inter alia, that the contents of the ticket were insufficient to alert the passenger to the limitations period and, therefore, the period did not bar the plaintiff's action. A limitations period contained in a cruise line ticket, the court noted at the outset, is enforceable only if the ticket which creates it is objectively sufficient under the law and the parties' subjective knowledge or lack of it is totally immaterial. The plaintiff's ticket in the instant case, the court observed, read as follows: "NOTICE: The passenger's attention is specifically directed to the terms and conditions of this contract appearing on pages 6, 7 and 8." It was clear, the court remarked, that this provision failed to alert the passenger to the limitations provision upon which the defendant relied. That is, the court elaborated, the ticket under inquiry could not be deemed to embody all that the steamship line could reasonably do "to warn the passenger that the terms and conditions were important matters of contract affecting his [or her] legal rights." The court noted, as well, that the defendant argued, and that the trial judge apparently agreed, that the limitation was enforceable, notwithstanding the insufficiency of the ticket, on the ground that the plaintiff and his attorney knew or should have known of its existence before the year expired. This contention was completely without merit, the court stressed, for as the pertinent cases have clearly established, the statutory period is enforceable only if the ticket which creates it is objectively sufficient under the law. That is, the court concluded, the parties' subjective knowledge or lack of it is totally immaterial.

See the following additional cases, where the courts, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, held, given the particular circumstances presented, that the action against the defendant cruise line was not barred by the applicable statute of limitations or other limitations period, where—

—in a case in which a defendant cruise line sought an order granting summary judgment where the plaintiff, a cruise ship passenger, was injured at the defendant's pool, the court, on review, denied the defendant's motion, the court holding, inter alia, that it could not say that a rational jury would not find that the cruise line's conduct was a significant or substantial factor or cause of the severe injuries sustained by the plaintiff (§ 15), the court rejecting the defendant's argument that the plaintiff's claim for injuries was time barred because he violated the six-month notice of a claim provision which was contained in the defendant's passenger contract (former 46 App. U.S.C.A. § 183b); the statute makes clear that the injured passenger need not provide the cruise line with a written notice that she intends to hold the ship legally liable for the injury, as long as there is evidence to show that the cruise line or its agent was aware of the passenger's injury, and there was no prejudice as a result thereof, the court explained, and there was no dispute here that the defendant was on notice of the plaintiff's injury shortly after the accident, as the Defendant's Report of Personal Injury, signed by the ship's physician and the ship's master or staff captain, contained a two-page report of the plaintiff's injury, and as the Chief Purser's Daily Report for July 11, 1997, stated that at "1500, [the] Bartender from the pool bar requested the doctor to proceed to the area as a young man had jumped to the pool area from boat deck. At 1510 a code blue was called for the incident. [Plaintiff identified as injured party]. 18 years old." Brown v. New Commodore Cruise Line Ltd., 2000 WL 45443 (S.D. N.Y. 2000) (an unpublished decision).

—in a case in which a personal injury suit was brought on behalf of a minor cruise passenger 14 months after injuries were sustained at the pool area of a vessel, the cruise line moved for summary judgment based on the one-year limitation set forth in the ticket, and the federal district court, on review, denied the motion, the court holding, inter alia, that contrasting print on the ticket limitation was sufficient to be effective, but that the cruise line's conduct in making service of process difficult tolled the limitations period; that is, the court explained, the cruise line conduct which contributed to the injured passenger's difficulty in serving process in the personal injury suit, by permitting its name to be listed in the telephone directory at an address which was apparently a one-person operation, and where diligent efforts to serve process proved unsuccessful, tolled the one-year contractual limitation imposed by the cruise line's ticket and, thus, the cruise line could not assert the time bar to a suit commenced 14 months after the injury was sustained (former 46 App. U.S.C.A. § 183b). Fugaro v. Royal Caribbean Cruises Ltd., 851 F. Supp. 122 (S.D. N.Y. 1994).
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—in a case in which passengers brought an action against a maritime carrier alleging negligence, infliction of emotional distress, and breach of contract, the federal district court dismissed the action, the passengers appealed, and the court, on review, held, inter alia, that the parents' claims against the maritime carrier for product liability, breach of contract, infliction of emotional distress, and negligence, sound red in admiralty, for second degree burns that the minor child suffered on the soles of his feet when he stepped onto the hot surface of the deck of the cruise ship, since the injuries to the minor transpired on the cruise ship, which was traveling in navigable waters, and, as an ocean-going passenger vessel, it was engaged in maritime commerce, and, since the alleged defective design or manufacture of parts of the boat designed for maritime use, such as the deck of a cruise ship, bore a substantial relationship to traditional maritime activity; in so ruling, the court held that the minor, through his parent as guardian ad litem, was not estopped from asserting that the one year limitations period did not begin to run until the parent began to serve as guardian ad litem after the filing of the lawsuit, even though the attorney for the parents represented to the maritime carrier that the guardian ad litem had been appointed for the minor long ago, where there was no detrimental reliance, even though the maritime carrier asserted that it could have taken appropriate steps to protect its interests in not only its investigation of the extent of the minor's injury and overall negotiation of the claim, but also in terms of assertion of the time-bar provisions in the passenger ticket contract. Gibbs ex rel. Gibbs v. Carnival Cruise Lines, 314 F.3d 125, 2003 A.M.C. 179, 54 Fed. R. Serv. 3d 597 (3d Cir. 2002).

—reasoning that the plaintiff did not have an opportunity to consult the limitation language of a passenger ticket since the defendants' agents took the ticket as she boarded the vessel, the court held that the defendants would not be entitled to summary judgment on the ground that the plaintiff's claim was time-barred. Krus v. Harrah's Casino, 2001 WL 1105071 (N.D. Ill. 2001) (an unpublished decision).

—in a case in which a passenger who was injured on a cruise ship brought action against the cruise ship company and later amended the complaint to add the ship operator as a defendant, the federal district court entered summary judgment in favor of the operator on the ground that the suit was time barred, the passenger appealed, and the court, on review, reversed and remanded, the court holding, inter alia, that the injured passenger's amended complaint against the operator did not relate back to the time of filing the claim against the wrong defendant, and whether the operator actually misled the injured passenger as to the identity of the proper defendant and whether the passenger was sufficiently diligent involved questions of fact precluding summary judgment on the issue whether the operator was equitably estopped from relying on the passenger's failure to comply with the contractual requirement to file within one year of the injury; in so ruling, the court pointed out that the injured passenger's failure to timely institute suit against the cruise ship operator was not excused by a statute excusing the failure to give notice if the owner or master of the vessel or agent had knowledge of the injury and the owner has not been prejudiced. Schrader v. Royal Caribbean Cruise Line, Inc., 952 F.2d 1008, 21 Fed. R. Serv. 3d 918 (8th Cir. 1991).

—in a case in which the plaintiff filed a complaint alleging negligence relating to a fall she suffered while she was a passenger on the defendant's cruise line, the plaintiff specifically asserting that she fell due to an improperly positioned carpet, where the defendant asserted that the plaintiff's claim was barred because she did not provide written notice of her claim within 185 days of her accident, as provided for in the ticket contract, and where the plaintiff contended that the notice she provided on the form she filled out in order to receive treatment qualified as written notice under the contract, the court, on review, denied the defendant's motion for final summary judgment. Rutledge v. NCL (Bahamas) Ltd., 2010 WL 4116473 (S.D. Fla. 2010) (an unpublished decision).

—in a case in which an injured passenger, who sustained injuries to her right arm and hand when the elevator in which she was riding stopped abruptly, sued the cruise ship for injuries sustained on board, the lower tribunal entered judgment for the ship, the passenger appealed, and the court, on review, reversed and remanded, the court holding, inter alia, that the limitations provision in the passage contract was unenforceable; that is, the court explained, the clause in the passage contract, which limited the time to begin the personal injury action further than applicable state and federal limitations periods (former 46 App. U.S.C.A.
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—in a case in which a mentally incompetent passenger brought action against a cruise line, alleging breach of contract of carriage and vicarious liability for assault and battery, the lower tribunal dismissed the action as time-barred, the passenger appealed, and the court, on review, reversed and remanded, the court holding, inter alia, that a mentally incompetent person without a legal guardian may bring a maritime injury action up to three years from the date of injury, notwithstanding any lawful contractual limitation of the time for bringing an action (former 46 App. U.S.C.A. § 183b(c)). Boehnen v. Carnival Cruise Lines, Inc., 778 So. 2d 1084, 2001 A.M.C. 1417 (Fla. 3d DCA 2001).

—in a case in which a passenger brought a personal injury action against a cruise line, the cruise line moved for summary judgment claiming that the suit was barred by the one-year limitation contained in the passenger ticket, the lower tribunal entered summary judgment in favor of the cruise line, the passenger appealed, and the court, on review, reversed and remanded, the court holding, inter alia, that the defendant cruise line's summary judgment affidavit was defective, and that a genuine issue of material fact existed as to whether the ticket under inquiry actually contained a one-year limitation period, precluding summary judgment, the court noting that the defendant's affidavit was defective as not being based upon the personal knowledge of the affiant (Fla. R. Civ. P. 1.510(c)); the court pointed out that a comparison of the ticket stock attached to the affidavit and the cover page issued to the plaintiff indicated that they were very similar, but not identical forms, and although the cover sheet issued to the plaintiff had an "IMPORTANT NOTICE" in bold type in the lower right-hand corner which stated that the ticket contained "other limitations" and that the passenger should "read the entire ticket carefully," the court stated that it could not determine as a matter of undisputed fact that the plaintiff received a ticket containing several pages of limitations or, assuming that she did receive a ticket containing several pages of limitations, that the one-year limitation was one of those conditions. Anderson v. SeaEscape Ltd., Inc., 541 So. 2d 1339 (Fla. 2d DCA 1989).

—in a case in which a passenger brought an action against a cruise line for injuries sustained when she slipped and fell while descending a stairway on a cruise ship, the lower tribunal granted the cruise line's motion for summary judgment on the ground that the one-year contractual limitations period in the ticket barred the action, the passenger appealed, and the court, on review, reversed and remanded, the court holding, inter alia, that the cruise line failed to give sufficient notice of the contractual limitations period, given the inconspicuous nature of the language incorporating the provisions which included the limitations period, and the lack of a statement warning the passenger of the incorporated provisions. Hirsch v. Klosters Rederi A/S, 521 So. 2d 316 (Fla. 3d DCA 1988).

CUMULATIVE SUPPLEMENT

Cases:

One-year shortened contractual limitation period to bring an action against a cruise ship operator was tolled until the mother of child, who was allegedly physically and sexually assaulted aboard a cruise ship, was appointed as the child's guardian, regardless of when the mother learned of the event giving rise to the minor child's claim or when the mother retained counsel on the minor's behalf. 46 U.S.C.A. § 30508. Doe v. Carnival Corp., 37 F. Supp. 3d 1254 (S.D. Fla. 2012).

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[END OF SUPPLEMENT]

B. Injury Occurring Within Passenger's Cabin
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§ 8. Cruise line held liable, or finding of liability supportable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically incidents occurring within the plaintiff passenger's cabin, held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented.

In a case in which the plaintiffs brought action against the defendant cruise line company to recover damages for injuries and loss of services resulting from a fall in the plaintiffs' cabin aboard a cruise ship operated by the defendant, the defendant moved for summary judgment, contending there were no genuine issues of material fact for trial, and the court in Palmieri v. Celebrity Cruise Lines, Inc., 1999 WL 494119 (S.D. N.Y. 1999) (an unpublished decision), on review, though granting the defendant's motion to the extent that it sought a dismissal of the plaintiff's loss of consortium claim, denied in all other respects. In order to impose liability on a shipowner or operator, there must be some failure to exercise due care, the court noted at the outset. Here, the court remarked, even if the plaintiff's injuries were foreseeable, the defendant asserted that no reasonable juror could find that its conduct was unreasonable because the ship's "classification society" inspected and approved the layout of the cabins containing the sofa-beds. However, the court continued, certification by a classification society does not, in itself, establish the seaworthiness of a ship or the lack of negligence on the part of the shipowner. That is, the court related, the shipowner, not the classification society, is ultimately responsible for and in control of the activities aboard ship. This ongoing responsibility for the vessel is supplemented by the maritime-law requirement that the shipowner has a nondelegable duty to furnish a seaworthy vessel, the court elaborated. Since the fact that the classification society approved the furniture arrangement and use of the sofa-beds did not itself establish the absence of any genuine issue of material fact concerning the reasonableness of the defendant's conduct, the court declared, summary judgment was inappropriate, and the question of the defendant's negligence would necessarily be resolved at the time of trial.

Finding that the design of a bathroom entrance in the plaintiff cruise line passenger's cabin was negligent and created a risk even to one with the plaintiff's prior exposure to the condition, and further finding no contributory negligence on the plaintiff's part, the court in Beretta v. Home Lines, Inc., 1990 A.M.C. 1857, 1990 WL 91737 (S.D. N.Y. 1990), held that the defendant was liable to the plaintiff for the damages she sustained which were proximately caused by the defendant's negligence. The plaintiff, an 88-year-old widow, and her sister boarded the defendant's vessel for a 10-day cruise. The plaintiff was an "experienced cruise ship passenger," having sailed on the vessel on two or three prior occasions and having sailed on other of the defendant's cruise ships approximately 20 times in the past. She had also made several trans-Atlantic ship crossings on passenger ships not owned by the defendant. The plaintiff testified that on the day of the accident, after breakfast, attendance at a religious service, and walks about the ship, she decided to return to her room to use the bathroom facilities before dinner. She testified that she stepped over a sill with her right foot to go into the bathroom and stated that she lost her balance because of differing floor levels, tried to grab something to keep from falling, and fell towards the shower, breaking her upper arm. The court pointed to evidence of a flyer issued by the defendant, entitled "Suggestion for Accident Prevention," and given to cruise line passengers, which read as follows: "ATTENTION: The steps from bathroom to cabin and outside areas to inside areas are high, of necessity PLEASE WATCH YOUR STEP." This, the court observed, served to establish that the defendant was aware of, and had an opportunity to correct, the dangerous condition under inquiry.

In Huang v. Carnival Corp., 2012 WL 6621173 (S.D. Fla. 2012), the court held that allegations of numerous defects in a cruise ship cabin's shower and bathroom, including slip-and-fall dangers, were more than mere conclusory form allegations and, thus, were sufficient for a vacation cruise passenger to state a negligence claim against the cruise operator arising out of injuries sustained when he slipped and fell in a shower inside the cabin bathroom. Specifically, the passenger claimed to have been injured as a result of the operator's failure to have a "proper shower" in his cabin's bathroom, to utilize adequate flooring in the shower, to adequately design the shower so as to prevent slipping hazards, to provide adequate markings of a slipping hazard, to
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provide adequate hand-holds or grips in the cabin bathroom generally and shower specifically, to provide an adequate shower door to prevent persons from slipping in the shower and then falling out of the same, and other failures in bathroom design and safety protocol.

§ 9. Cruise line held not liable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically incidents occurring within the plaintiff passenger's cabin, held, given the particular circumstances presented, that the defendant cruise line was not liable.

In Hood v. Regency Maritime Corp., 2001 A.M.C. 645, 2000 WL 1761000 (S.D. N.Y. 2000), the court, granting the motion for summary judgment brought by a defendant cruise line, held that without notice of any sort, nor any interval of time within which to remedy a potential defect or danger, the defendants could not be held liable for the injuries sustained by the plaintiff when the plaintiff was allegedly struck by a bathtub panel while using the bathroom in his cabin. The plaintiff alleged that while the vessel sailed upon navigable waters, and while he was in the bathroom of his cabin, a loud noise sounded off, whereupon a panel detached from the tub and flew against the plaintiff's right calf. This contact with the plaintiff's right calf caused the rest of his right leg to move forward, where the right knee then struck the toilet, causing the plaintiff to go downward on his right side. It is true, the court noted, that the purchase of a ticket creates a contractual relationship between the cruise line and the passenger. A showing of negligence on the part of the carrier can constitute a violation of such contract, which inherently imposes some duty of care on the vessel owner, the court instructed. The Second Circuit has held that the duty of care imposed on such carriers is the "reasonable care under the circumstances" standard, the court continued, and the defendant was correct that a vessel owner is not the insurer of the safety of its passengers. Instead, the degree of care demanded of a vessel operator depends upon "whether the circumstances of maritime travel differ from those of ordinary activities conducted on terra firma," the court explained. The extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more danger to the passenger, will determine how high a degree of care is reasonable in each case, the court commented. Precedent in the Second Circuit makes clear that in the absence of evidence to suggest at least constructive notice on the part of the vessel owner, summary judgment for the defendant is appropriate, the court observed. The court rejected the plaintiff's res ipsa loquitur argument, the court reasoning that for a case to be submitted on such a theory, three basic requirements must be met. First, the court noted, the event must be of a type that does not ordinarily occur in the absence of someone's negligence, second, the event must be caused by an agency or instrumentality within the exclusive control of the defendant, and third, the event must not be caused by any voluntary action or contribution by the plaintiff. There was nothing in the record to suggest it was more likely than not that the panel was dislodged of its own force rather than by the force of the plaintiff, the court concluded, and for this reason, in addition to the lack of exclusive control, the plaintiff would be unable to avail himself of the res ipsa loquitur theory.

There were no genuine issues of material fact, as a result of which the defendant would be entitled to judgment as a matter of law, where the plaintiff failed to show that the defendant breached its duty of care to the plaintiff, the court held in Mercer v. Carnival Corp., 2009 A.M.C. 802, 2009 WL 302274 (S.D. Fla. 2009), a case in which the plaintiff, a passenger aboard the defendant's cruise ship, fell in his personal cabin. The evidence presented indicated that, after finishing a shower in the bathroom of his cabin, the plaintiff stepped out of the shower and dried off using a towel. He then placed the same towel on the ground and stepped on it in an attempt to dry off his feet. Next, he stepped out of the bathroom and onto the hardwood floor of the cabin, where he slipped and fell, injuring his back. As he had not slipped on the hardwood floor prior to this time, he assumed that there was some moisture on the bottom of his feet which caused the fall. After the injury, he signed a guest injury statement and the cabin steward placed a rubber floor mat on the hardwood floor of his cabin. The analysis of the defendant's Motion for Summary Judgment would be governed by federal maritime law, as the case arose from alleged torts accruing on navigable waters, the court noted at the outset. In the absence of applicable maritime law, courts are free to apply the reasoning used in
other federal circuits, the court pointed out. To satisfy the burden of proof in a negligence action, the court instructed, a plaintiff must show: (1) that the defendant owed the plaintiff a duty; (2) that the defendant breached the duty; (3) that the breach was the proximate cause of the plaintiff's injury; and (4) that the plaintiff suffered damages. Cruise ship operators such as defendant cruise line owe their passengers the duty to exercise reasonable care under the circumstances, the court continued, but the cruise ship operator is not the insurer of the safety of the passengers and does not become liable merely because an accident occurs. Here, the plaintiff failed to provide sufficient evidence to support his negligence action against the defendant, the court stressed, as he failed to show how the defendant breached its duty of care to the plaintiff. The plaintiff failed to provide any evidence to support his contention that the defendant had notice of the allegedly dangerous condition, the court declared. Instead, the plaintiff merely stated that, due to the close proximity of the hardwood floor to the bathroom, the defendant must have known that moisture might accumulate on the hardwood floors or that passengers might walk around with wet feet, and that it would create a dangerous condition, the court observed.

The fact that a shower curtain was drawn in front of a ledge that surrounded a shower in the cabin of a cruise ship did not render the shower line liable for injuries sustained by a passenger who tripped over the ledge, where the presence of the ledge behind the shower curtain was, or should have been, obvious to the passenger by the ordinary use of her senses, the court held in Luby v. Carnival Cruise Lines, Inc., 633 F. Supp. 40, 1986 A.M.C. 2330 (S.D. Fla. 1986), judgment aff'd without opinion, 808 F.2d 60 (11th Cir. 1986). A passenger and her husband brought a personal injury action against the defendant cruise line, the cruise line moved for summary judgment, and the court, on review, granted the motion and dismissed the case with prejudice. In so ruling, the court noted that a common carrier is not an insurer of the safety of passengers and does not become liable to a passenger merely because the accident occurs. Moreover, the court indicated, the carrier's duty to warn the passenger of dangers extends only to those dangers which are not apparent and obvious to the passenger. Here, the court indicated, Florida tort law applied in the passenger's personal injury action against the cruise line while the cruise ship was docked in Miami. However, the court concluded, the defendant cruise line had no duty to warn the passenger that there was a ledge surrounding the shower behind the drawn shower curtain in the cabin of the cruise ship.

Where a passenger brought an action against a common carrier, which operated a cruise ship, for injuries sustained by the passenger in a fall while descending a ladder from an upper bunk on the ship, on the ground that the carrier negligently failed to inspect the ladder properly and to warn of its allegedly defective condition, the lower tribunal rendered a judgment for the carrier, the carrier appealed, and the court in McCormick Shipping Corp. v. Warner, 129 So. 2d 448, 1961 A.M.C. 2330 (Fla. 3d DCA 1961), on review, reversed the judgment and remanded the cause for entry of a judgment for the carrier. The evidence presented indicated that on the morning of the seventh day of a 10-day cruise, the appellee, while attempting to descend by a ladder from an upper bunk in a cabin occupied by her and her husband, fell and sustained injuries. The ladder had been used by the appellee for several days prior to her fall to gain access to and descend from the upper bunk or bed. The ladder did not collapse, nor was it shown to be defective either by design or otherwise. The appellees' main charge of negligence was failure to properly inspect and to warn of the defective and dangerous condition of the ladder. The appellee testified in part regarding the ladder as follows: "I awakened in the morning when the gong went off for rising, which was about 7 o'clock, I presume, and in order to get up, ... I ... put my hand along the side of the bed to be sure that the ladder was there, that I would know just exactly where the ladder was, and there was no light to turn on. It was one reason I wanted to be sure where the ladder was. Although one could see, it was dim, ... the ladder was right against the top of the bed. And then I got onto the ladder and when I got onto the ladder the ladder moved and I fell." The appellant cruise line contended that the evidence was insufficient to establish actionable negligence or that such negligence was the proximate cause of the injuries sustained. The court noted at the outset that the appellee was a common carrier and under the law was required to exercise the highest degree of care for the safety of its passengers. However, the court stressed, this duty does not extend to the point of making the carrier an insurer of the safety of its passengers. Here, the court declared, there was an absence of any evidence that the ladder was defective or that it was broken or in need of repair. It appeared that for approximately six days the appellees had used the ladder in question without mishap and on the seventh day, when the appellee wife was attempting to descend from the bunk, she placed her foot on the ladder, it moved and she fell to the floor, the court observed. There was an absence of any evidence relating the movement
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...of the ladder to the alleged breach of duty on the part of the appellant and, under such circumstances, to permit the case to go to the jury invited speculation and conjecture on their part as to how the accident occurred, the court concluded.

C. Rape or Sexual Assault

§ 10. Determination as to whether cruise line liable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically the rape or sexual assault of the plaintiff, determined whether the defendant cruise line was liable.

The court in Peterson v. Scotia Prince Cruises Ltd., 328 F. Supp. 2d 119 (D. Me. 2004), a case in which a cruise ship passenger accused a ship crew member of attacking her sexually, held, inter alia, that the cruise ship company could be held liable for the intentional torts of its crew members.

See Johnson v. Commodore Cruise Lines, Ltd., 1997 A.M.C. 1559, 1996 WL 741606 (S.D. N.Y. 1996), a case dealing with claims for the negligent infliction of emotional distress based upon an alleged conspiracy on the part of the defendant's employees to conceal the rape of a woman who was a passenger on board one of the defendant's cruise ships, where the defendant moved for summary judgment against the claims of the woman's mother, sister, and brother-in-law, and where the court, on review, granted the motion. When the defendant's ship was docked in Cozumel, Mexico, the woman paid a visit to the ship's infirmary after having collapsed on the main deck of the ship. She was examined by the ship's doctor, who allegedly opined that she had suffered a heart attack. The doctor then made preparations to have her transported by an ambulance to the hospital in Cozumel. Shortly before the woman disembarked to that hospital, she told the ship's nurse that she had been raped by a crew member in the crew member's cabin. At the hospital, two doctors found that she had been suffering only from a mild kidney infection. The plaintiffs had gone ashore that morning so they were not aboard the ship at the time of the woman's collapse or examination by the ship's doctor. When the plaintiffs returned to the ship, they were allegedly informed by the ship's doctor that the woman had suffered a massive heart attack, that she had only a 50% chance of surviving, and that even if she survived, she would probably be a vegetable. The ship's manager allegedly directed his staff to pack the plaintiffs' bags and instructed the plaintiffs to disembark the ship immediately. After the woman was released from the hospital and informed her family that she was not suffering from a heart attack, all four plaintiffs were allegedly refused reentry onto the ship. The plaintiffs claimed that they suffered severe emotional distress after being told that the woman had a massive heart attack and had only a 50% chance of surviving. The court, adhering to its previously expressed view that the "zone of danger" test was not the proper test to be applied in determining whether, as a threshold matter, a plaintiff has stated a cognizable claim for the negligent infliction of emotional distress under the general maritime law where the plaintiff was not threatened with physical harm, and was not a bystander nor a witness to an accident scene, pointed out that here, the plaintiffs were never threatened with physical harm, nor were they bystanders or witnesses to an accident scene involving a close family member. Although it was not clear why the plaintiffs never saw a doctor for a four-year period following the accident, the court explained, the delay could not have been due to embarrassment or a desire to put the whole incident behind them because they brought suit and retained a lawyer with whom they have shared all the details of the incident.

A shipowner is absolutely liable for its crew members' assaults upon passengers, and a passenger who was allegedly raped by a crew member did not have to show negligence by the owner of the defendant cruise ship in order to recover against the owner, the court held in Morton v. De Oliveira, 984 F.2d 289, 1993 A.M.C. 843 (9th Cir. 1993). A passenger who asserted that she had been raped by a crew member brought an action against the owner of a cruise ship, the federal district court granted summary judgment for the owner, the passenger appealed, and the court, on review, reversed and remanded.
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In Doe v. NCL (Bahamas) Ltd., 2012 WL 5512314 (S.D. Fla. 2012), where a cruise ship passenger alleged that she had been sexually assaulted by a passenger in a public toilet on the ship, the court held that many issues as to material facts remain unresolved, thus precluding judgment as a matter of law as to whether the cruise shipowner breached a duty of care by failing to not "over serve" alcohol to the passenger and failing to warn her that she might be the target of a physical attack or sexual assault on the vessel. The court noted that the parties disagreed as to whether, but for the service of alcohol, the passenger could have avoided the sexual assault, whether the danger of being raped aboard a cruise ship was open and obvious, and whether the passenger was at a heightened risk of a sexual assault aboard the particular ship in question.17

A cruise line could be held strictly liable, under the Child Abuse Victims’ Rights Act (CAVRA), for its employee’s sexual assault of an underage passenger, if the assault was proven, even though the Act was silent as to whether anyone other than a sexual perpetrator himself could be held liable, where the canons of statutory construction required the court to presume that when enacting the legislation, Congress had intended to incorporate the longstanding principles of maritime law holding shipowners strictly liable for crew members’ assaults of passengers (18 U.S.C.A. § 2255), the court held in Jane Doe No. 8 v. Royal Caribbean Cruises, Ltd., 860 F. Supp. 2d 1337 (S.D. Fla. 2012). A female cruise ship passenger, who at age 17 had allegedly been sexually assaulted by a ship’s male employee, filed suit against a cruise line alleging respondent superior—vicarious liability, negligence, and strict liability for violations of the CAVRA, the defendant moved to dismiss federal statutory claims, and the court, on review, denied the motion, the court holding, inter alia, that the passenger could assert a claim against the cruise line for strict liability. It is a principle of federal maritime law, the court instructed, that a cruise line is strictly liable for a crew member’s assault of a passenger. Defendants owe a nondelegable duty to protect their passengers from crew member assaults, the court elaborated, and absent a clear statutory purpose to the contrary, the court must presume that Congress intended to incorporate this long-standing principle of federal maritime law when enacting 18 U.S.C.A. § 2255. In interpreting statutory meaning, courts may not add or subtract words from statute, the court continued, and if traditional canons of construction resolve ambiguity in a statute, a court interpreting the statute may not consider legislative history. Here, the court declared, the cruise line could be held strictly liable for its employee’s sexual assault of the plaintiff underage passenger.

In Doe v. Royal Caribbean Cruises, Ltd., 2012 A.M.C. 761, 2011 WL 6727959 (S.D. Fla. 2011), a case in which a plaintiff alleged that she was raped aboard the defendant cruise line’s ship by a male passenger whom the plaintiff had just met in a lounge on the ship earlier that night, where the defendant brought a motion to dismiss for failure to state a claim upon which relief could be granted, the court, on review, denied the motion as to the negligence count and granted it with respect to the punitive damages count. The court stated that the plaintiff was correct that when the defendant’s liability hinges on the question of foreseeability, such question is ordinarily considered a question of fact that cannot be decided on a motion to dismiss.

Under both maritime and state law, a passenger of a common carrier on navigable waters had a cause of action against a carrier in tort, that is, strict vicarious liability, or contract, that is, breach of contract of carriage based on intentional assault, given that the carrier could be held vicariously liable for the tortious actions of a crew member, even when the passenger suffered no impact or physical manifestation of injury, the court held in Nadeau v. Costley, 634 So. 2d 649, 1994 A.M.C. 2810 (Fla. 4th DCA 1994), a case in which the plaintiff passenger alleged that a crew member, in the middle of the night, sexually assaulted the plaintiff’s traveling companion in their cabin. The passenger brought action against the cruise line and its captain alleging that the defendants were vicariously liable for the tortious actions of a crew member, the trial court granted summary judgment in favor of the defendants, the passenger appealed, and the court affirmed as to the ship captain and reversed as to the cruise line, the court holding that while the passenger could not recover in negligence for purely emotional injuries, under both maritime and state law, the passenger had a cause of action against the cruise line in tort or contract. The plaintiff alleged that she and a friend boarded the defendant cruise line’s vessel and were assigned a small stateroom at a remote location on one of the lower decks. On the first night of the cruise, the plaintiff and friend returned to their stateroom sometime after midnight, locked the door, and went to sleep. Later, the friend awoke when she perceived a crew member kneeling beside her bed and fondling her vagina. The friend screamed, awakening the plaintiff. The crew member ran out of the room and the plaintiff shut the door.
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behind him. The crew member neither touched nor attempted to touch the plaintiff. When the plaintiff and friend attempted to phone for help, they discovered that their stateroom phone was inoperable. The plaintiff further alleged that she and her friend decided to remain in the stateroom for safety until they could join the other passengers leaving their cabins for breakfast. In the interim, the crew member purportedly returned to the stateroom and over the next two or three hours terrorized the two women by repeatedly placing a key into the lock, turning the doorknob, and making verbal sexual advances. Florida law specifically recognizes a breach of contract action against a cruise line where, as here, the cause of action is predicated upon a wrongful intentional act by a member of the ship's crew, the court noted at the outset, and while plaintiffs are free to sue in state courts for damages arising from maritime torts, maritime law is the substantive law to be applied when the wrong complained of occurs in navigable waters. However, the court is free to apply Florida law where it neither conflicts with nor disturbs the uniformity of maritime law, the court explained.

D. Nonsexual Assault or Battery

§ 11. Cruise line held liable, or finding of liability supportable

The following authority, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically the nonsexual assault or battery of the plaintiff, held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented.

In Goldbach v. NCL (Bahamas) Ltd., 2006 WL 3780705 (S.D. Fla. 2006) (an unpublished decision), where a defendant cruise line brought a motion for summary judgment in a case in which a cruise ship passenger asserted claims for battery occurring during a show presented aboard ship, the court, though ruling to the contrary with respect to a claim for vicarious liability (§ 12), held that the question of whether the defendant cruise line knew or should have known of the danger posed by an independent contractor's performance was a genuine issue of material fact precluding summary judgment. The plaintiff claimed that while aboard the defendant's cruise line, she attended a show in the ship's "Stardust Theater," which featured a performer who was an independent contractor employed by a talent agency. During the course of the show, the performer dropped an object from the stage and into the audience. After the plaintiff returned the object to the stage, the performer threw it back, directly toward the plaintiff's face. The performer apparently did so because he "thought it would be funny" and make the audience laugh. The plaintiff successfully blocked the object with her right hand, but was nonetheless injured in the process. The court pointed out that the plaintiff, inter alia, sought to hold the defendant directly liable for negligence, and claimed that the defendant was directly negligent by: failing to use reasonable care under the circumstances; allowing an unsafe and hazardous condition to exist on board the ship; failing to properly and adequately warn her as to the dangerous condition; failing to properly evaluate the independent contractor's performance; and failing to perform a background check on the performer. The defendant argued that it was entitled to summary judgment on the direct liability count because this theory sought to extend the defendant's duty of care beyond what is reasonable under the circumstances, the court noted. While the defendant was correct in asserting that a cruise line is not the insurer of its passengers' safety, the court stated, it still owes a duty to its passengers to exercise reasonable care under all the circumstances. This duty, the court continued, includes a duty to warn passengers of dangers the cruise line knows or reasonably should have known. While the defendant made much of the fact that the plaintiff and the plaintiff's husband acknowledged in their depositions that the performer's action in throwing the object that injured the plaintiff was not a planned part of the show, the plaintiff nevertheless adduced sufficient evidence of the physical and highly audience-interactive nature of the performer's act from which a reasonable fact finder could infer that the defendant cruise line was directly negligent in failing to warn audience members, or to take other measures to protect their safety.

§ 12. Cruise line held not liable
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The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically the nonsexual assault or battery of the plaintiff, held, given the particular circumstances presented, that the defendant cruise line was not liable.

Under Florida law, a passenger could not assert negligence and negligent infliction of emotional distress claims against a cruise line based upon allegations that crew members committed intentional torts against her, including assault and battery, the court in Garcia v. Carnival Corp., 838 F. Supp. 2d 1334 (S.D. Fla. 2012) (applying, in part, Florida law), held as it granted the defendant cruise line's motion to dismiss as to those causes of action, the court noting that intentional torts could not form the basis of negligence claims, that the cruise line, as a common carrier, was strictly liable for the intentional torts of its employees, that Florida courts recognize battery, assault, and false imprisonment as intentional torts, and that the alleged conduct of cruise line employees did not constitute outrageous conduct, the court adding that under Florida law, it is not possible to have a cause of action for negligent use of excessive force because there is no such thing as the negligent commission of an intentional tort. The passenger's allegations that employees of the defendant cruise line restrained her in her cabin against her will and without her consent, that she was aware of the confinement, and that a guard was placed with outside cabin to prevent her from leaving, were insufficient to state a claim for false imprisonment under Florida law, absent allegations that the restraint was unlawful, the court pointed out. Moreover, the court related, under Florida law, the alleged conduct of cruise line employees in physically restraining the passenger, placing her in handcuffs, and dragging her to her cabin, where she was then confined against her will, did not constitute outrageous conduct, as required for claim of intentional infliction of emotional distress.

The court in Goldbach v. NCL (Bahamas) Ltd., 2006 WL 3780705 (S.D. Fla. 2006) (an unpublished decision), where a defendant cruise line brought a motion for summary judgment in a case in which a cruise ship passenger asserted claims for battery occurring during a show presented aboard ship, though ruling to the contrary with respect to a claim for direct liability (§ 11), held that summary judgment in favor of the defendant with respect to a theory of the cruise line's vicarious liability for an independent contractor's alleged battery and negligence during a performance was appropriate. With respect to the plaintiff's attempt to hold the defendant cruise line vicariously liable for the performer's alleged battery and negligence, the court pointed out that it was undisputed that the performer was an independent contractor. Where a performer is on board a vessel pursuant to an agreement between the cruise line and the performer's employer, and there is no evidence that the performer is permanently attached to the ship as a crew member, that the cruise line has the right to control how the performer's act is performed, or that the performer's salary is paid by the cruise line, the performer's negligence cannot be imputed vicariously to the cruise line, the court concluded.

E. Slip or Fall Outside of Cabin

§ 13. Cruise line held liable, or finding of liability supportable

[Cumulative Supplement]

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically slip or fall incidents occurring, or apparently occurring, outside of the plaintiff passenger's personal cabin, held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented.

In Muratore v. M/S Scotia Prince, 663 F. Supp. 484, 1988 A.M.C. 845 (D. Me. 1987), a case in which a cruise ship passenger brought an action against a vessel and others to recover for intentional infliction of emotional distress arising from alleged harassment by photographers on the vessel and for injuries sustained in a fall, the court, on review of postjudgment motions filed after judgment was entered in favor of the passenger on her claim for intentional infliction of severe emotional distress, held, inter alia, that the passenger was not entitled to prejudgment interest, but she was entitled to postjudgment interest; that it
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was appropriate to hold the charterer liable for the emotional distress caused by the photographers; that the award of punitive damages against the charterer did not violate the First Amendment; and that the passenger was entitled to recover some, but not all, of the costs she requested.

In a case in which the defendant cruise line appealed from a judgment entered against it after a bench trial in the plaintiff's action for damages arising from injuries she sustained when she slipped on the stairs on board the defendant's vessel, the court in Spry v. Carnival Cruise Lines, 951 F.2d 362 (9th Cir. 1991), on review, affirmed, the court holding, inter alia, that the excessive height of the handrails and the protruding metal nosing in the area of the plaintiff's accident independently supported a finding of negligence because the nosing created a slippery surface and the handrails failed to provide adequate balance to a person of the plaintiff's height; that the defendant had the duty to take reasonable precautions to prevent passengers from simultaneously ascending and descending the stairs because such use was hazardous due to the width and incline of the stairs; that the defendant breached its duty to prevent such simultaneous use because it failed to take any measure to prevent such use and invited such use by the placement of signs on the steps that could be read by both ascending and descending passengers; and that the breach of the defendant's duty to take reasonable precautions to prevent the simultaneous use of the stairs independently supported a finding of negligence because such use created an unreasonable risk of injury to the plaintiff.

In a case in which a passenger who slipped and fell on a ship dance floor brought a personal injury action against the defendant, the federal district court entered judgment for the passenger, the owner appealed, the court of appeals vacated and remanded, and the court in Keefe v. Bahamas Cruise Line, Inc., 715 F. Supp. 1069 (M.D. Fla. 1989), judgment aff'd without opinion, 902 F.2d 959 (11th Cir. 1990), on remand, granted judgment for the plaintiff, the court holding, inter alia, that the shipowner knew or should have known of conditions which created the risk and resulted in the passenger's injury. The construction of the dance floor on the cruise ship created a dangerous condition that was or should have been apparent to the cruise shipowner, such that the owner was liable for the passenger's injuries caused by existing conditions, the court remarked.

A casino cruise shipowner failed to establish that the report of a janitor that it failed to produce in a premises liability action brought by an injured patron was merely duplicative of a report of the incident by security personnel to justify not giving an instruction to the jury that it may infer that certain evidence would have been adverse to a party where that evidence was not produced by the party and was within the party's control, where the janitor was the only employee present at the time of the patron's fall, and where the janitor did not wholly adopt the incident report by security personnel and testified that the report was not the report he made in response to the incident, the court held in Hawkes v. Casino Queen, Inc., 336 Ill. App. 3d 994, 271 Ill. Dec. 575, 785 N.E.2d 507 (5th Dist. 2003), the court affirming judgment for the plaintiff. The injured patron brought the action against the owner of the casino cruise ship, the lower tribunal entered judgment on the jury's verdict in favor of the patron, the owner appealed, and the court, on review, affirmed. Whether the casino owner was negligent and caused the patron to trip and fall was a question for the jury, where the patron fell on the floor in the restroom, where he was observed on the floor with the vanity door from the sink area that was ripped from its hinges, and where there was testimony that nothing else was on the floor that could have caused the patron to fall, the court observed.

See the following additional cases, where the courts, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically slip or fall incidents occurring, or apparently occurring, outside of the plaintiff passenger's personal cabin, held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented, where—

—in a case in which the plaintiff brought an action against several defendants, including the defendant cruise line, for injuries suffered due to the collapse of his chair during a cruise dinner, the plaintiff moved for summary judgment on the issue of liability, and, having found that genuine disputes of material fact remained to be decided by a fact finder, the court denied the motion. Tillson v. Odyssey Cruises, 2011 WL 309660 (D. Mass. 2011) (an unpublished decision).
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—in a case in which the plaintiff brought an action to recover for personal injuries which occurred when he was a passenger on the defendant cruise ship, said accident taking place when he sat in a chair in the main dining room of the ship, at which point the chair collapsed causing him to fall, the court found that the plaintiff should be awarded the sum of $34,000; the plaintiff claimed that he fell backwards, striking his head and back on the floor, the court pointed out, and while the defendant conceded liability, it contested the extent and causation of the injury and other damages, with the defendant contending that the plaintiff only suffered a mild whiplash soft tissue injury to the neck causing intermittent discomfort for a few days, and with the plaintiff conversely contending that he suffered a chronic and permanent cervical strain. Parker v. Celebrity Cruises, Inc., 1997 WL 795776 (S.D. N.Y. 1997) (an unpublished decision).

—in a case in which the plaintiff brought a negligence suit for personal injuries suffered while he was a passenger aboard a vessel owned and operated by the defendant cruise line and defendant shipping company, the court, noting that it had jurisdiction over the dispute pursuant to, inter alia, 28 U.S.C.A. § 1333(1) (admiralty jurisdiction), noting that the plaintiff slipped on a small puddle of water that had accumulated on the deck by a serving line and further noting that, while the plaintiff did not fall, he twisted his body during the slip, injuring his back, denied in all respects the defendants' motion for judgment as a matter of law, or, in the alternative, a new trial. Deler v. Commodore Cruise Line, 1995 WL 733655 (S.D. N.Y. 1995) (an unpublished decision).

—in a case in which the plaintiff alleged that she was a passenger aboard the defendant's cruise ship when she tripped and "fell on the abrupt change in elevation in the walkway near the entrance to the Park Cafe," causing a severely fractured left hip requiring major surgery, and where the plaintiff asserted that a change in elevation was in a designated, accessible pedestrian walkway but was an uncommon type of design or construction that "violated national and international codes, standards, guidelines, and recommendations applicable to changes in levels of such walkway surfaces," the court granted the defendant's motion in limine concerning the Illuminating Engineering Society of North America's (IES) "Recommended Practice for Marine Lighting," but denied it as to other proffered guidelines and recommendations. Cook v. Royal Caribbean Cruises, Ltd., 2012 WL 1792628 (S.D. Fla. 2012).

—in a case in which a plaintiff filed a complaint alleging negligence on the part of the defendant cruise line arising out of an incident in which the plaintiff, while one of the defendant's vessels, attempted to sit on a bar stool but was "suddenly and violently thrown" due to a "sudden rock in the vessel," as a result of which, according to the complaint, the plaintiff suffered "serious bodily injuries as a direct and proximate result of the negligence" of the defendant, the defendant moved to dismiss the complaint, and the court, on review, denied the motion, the court pointing out that when an injury occurs on navigable waters, federal maritime law governs the substantive legal issues in the case, and that federal maritime law exclusively sets substantive liability standards, superseding state substantive liability standards; with respect to the standard of care for passengers, the Eleventh Circuit has held that the benchmark against which a shipowner's behavior must be measured is ordinary reasonable care under the circumstances, the court instructed, a standard which requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition, and a shipowner must give notice of the dangers which are not apparent and obvious, the court adding that the subject plaintiff properly stated a claim for negligence, for the complaint sufficiently alleged that the defendant owed the plaintiff the duty of reasonable care which the defendant breached, causing the plaintiff injuries. Clay v. Oceans Casino Cruises, Inc., 2008 WL 4571825 (S.D. Fla. 2008) (an unpublished decision).

—in a case in which a cruise ship passenger brought a slip-and-fall negligence action against a cruise line, the lower tribunal granted a new trial, the defendants appealed, and the court, on review, affirmed, the court holding, inter alia, that the trial court did not abuse its discretion in granting a new trial where bifurcation of the issues of liability and damages prejudiced the plaintiff; the trial court's sua sponte bifurcation of issues of liability and damages prejudiced the plaintiff on the issue of liability, the court explained, and evidence that the plaintiff suffered organic brain injury as a result of the accident was necessarily excluded at the liability trial, but such evidence was required to explain the confusing and inconsistent testimony of the plaintiff, including
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a glaring inconsistency as to where the plaintiff slipped and fell on the cruise ship. Scandinavian World Cruises (Bahamas) Ltd. v. Barone, 573 So. 2d 1036 (Fla. 3d DCA 1991).

CUMULATIVE SUPPLEMENT

Cases:

Genuine issues of material fact as to whether condensation or general condition of the floor tiles in the area where cruise ship passenger slipped and fell caused the floor to become slick, whether cruise ship employees had actual or constructive notice of the allegedly slick condition in that area before the passenger fell, and whether the allegedly slick condition was open and obvious precluded summary judgment in favor of cruise line, in passenger's negligence action. Merideth v. Carnival Corp., 2014 WL 4817478 (S.D. Fla. 2014).

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[END OF SUPPLEMENT]

§ 14. Cruise line held not liable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically slip or fall incidents occurring, or apparently occurring, outside of the plaintiff passenger's personal cabin, held, given the particular circumstances presented, that the defendant cruise line was not liable.

In Lee v. Regal Cruises, Ltd., 116 F.3d 465 (2d Cir. 1997), a case in which plaintiffs brought suit against a defendant cruise ship for a slip and fall accident occurring on a staircase aboard ship, the court held that the trial judge properly granted summary judgment on the ground that the plaintiffs had no evidence to show that the defendant cruise line had actual or constructive notice of the presence of ice cubes and liquid on the staircase. The court pointed out that the plaintiff conceded at her deposition that she did not know: (1) how long the ice cubes and liquid were on the staircase, (2) who put them there, and (3) whether any complaints were made to the defendant cruise line about them prior to her accident. Moreover, the plaintiffs stipulated in a pretrial order that no evidence existed as to how long the ice cubes and liquid were on the staircase or who or what caused these substances to be located there, the court elaborated. The defendant, therefore, had neither actual notice nor constructive notice, which "requires that a defective condition exist for a sufficient interval of time to invite corrective measures," the court indicated.

Merely allowing a screw to protrude on a stair could not constitute the breach of a shipowner's duty to a passenger, but rather, the owner's liability properly turned on whether it had notice of the screw's protrusion, the court held in Monteleone v. Bahama Cruise Line, Inc., 838 F.2d 63, 1988 A.M.C. 1146 (2d Cir. 1988), a case in which an injured passenger suffered a fall on the stairway of the defendant cruise line. In an action for damages for injuries suffered by a cruise line passenger, the federal district court held that the cruise line was negligent, that the passenger was entitled to damages for past and future pain and suffering, and that the plaintiff's husband was entitled to $500 on his claim of loss of consortium, services, and society, the shipowner appealed, and the court, on review, reversed and remanded with instructions to dismiss, the court holding, inter alia, that the record did not support finding that the defendant had constructive notice of the protruding screw which allegedly caused the fall of the passenger.

A shipowner is not the insurer of the passengers' safety, and under maritime law, there must be some failure to exercise due care before liability is imposed, in addition to which a shipowner is liable for defective conditions aboard ship only when it has actual or constructive notice of them, the court held in Krus v. Harrah's Casino, 2001 WL 1105071 (N.D. Ill. 2001) (an
unpublished decision), but the subject plaintiffs would be required to produce some evidence to show negligence on the part of the defendants, other than the fact that the plaintiff wife hurt her ankle on some object on board the boat, and thus suffered a fall on the vessel's "weather deck," and the plaintiffs failed to do so.

A passenger failed to establish that a cruise ship operator had actual or constructive notice of a food spill on which he slipped and fell, as would support the passenger's negligence claim against the operator, and even if the "method of operation" standard applied to the passenger's negligence claim against the cruise ship operator, the operator's administration of the self-service food bar was not unreasonably dangerous, the court held in Mansoor v. Zaandam M/V, 274 Fed. Appx. 553 (9th Cir. 2008). The passenger brought a negligence action against the cruise ship operator, seeking to recover damages for an injury he sustained when he slipped and fell on spilled food, the federal district court entered judgment for the operator, the passenger appealed, and the court, on review, affirmed. Under maritime law, which governed the case, a defendant is generally not liable for negligence unless it had actual or constructive notice of the particular hazard that led to the injury, the court noted at the outset. Here, the court observed, the plaintiff passenger failed to establish that the defendant cruise line had actual or constructive notice of the alleged spill, and no evidence was presented that the defendant knew of the spilled food on which the plaintiff allegedly slipped. Moreover, the court declared, the plaintiff did not show that the spill was present long enough to give the defendant constructive notice. The court opined that even if it were to adopt the "method of operation" standard, as the plaintiff urged the court to do, the plaintiff could not prevail on his claim, regardless of which party were to bear the burden of proof. That is, the court explained, not only did the plaintiff fail to present any evidence that the cruise line's administration of the self-service food bar was unreasonably dangerous, but instead, the defendant's unrefuted evidence was to the contrary.

See Bryant v. Cruises, Inc., 6 F. Supp. 2d 1314 (N.D. Ala. 1998), a case in which a cruise ship passenger who was an Alabama resident sued a New York-based travel agency for negligence and breach of warranty, seeking to recover for personal injuries the passenger allegedly suffered when she fell down a stairwell aboard ship, the agency moved for summary judgment, and the court, on review, granted the motion, the court holding, inter alia, that under Alabama's choice-of-law rules, Florida law governed the plaintiff's negligence claims, that the agency owed the passenger no duty under Florida law to inspect the ship and make it safe before her embarkation, and that the agency did not guarantee the passenger a safe trip.

In Weiner v. Carnival Cruise Lines, 2012 WL 5199604 (S.D. Fla. 2012), the court held that the plaintiff passenger had failed to present any evidence creating a genuine issue of material fact as to whether the defendant cruise shipowner knew, or should have known, that the floor on the ship's promenade deck was dangerously wet at the time when the passenger slipped and injured himself, and thus, the owner was entitled to summary judgment on the passenger's negligence claim. The court noted that the passenger had not adduced any evidence that the owner had actual or constructive notice of any alleged "foreign substance," or wet spot, on the promenade deck's tile flooring, and that no water or other liquid substance had been found by the passenger, his wife, or any crew member aboard the ship in the moments immediately after the accident.

See Walsh v. NCL (Bahamas) Ltd., 466 F. Supp. 2d 1271, 2007 A.M.C. 491 (S.D. Fla. 2006), a case in which a passenger brought an action against a cruise ship operator, alleging that its negligence caused her to slip and fall and that her injuries were exacerbated by the operator's refusal to provide her with a wheelchair for the duration of the voyage, where the operator moved to dismiss, and where the court, on review, granted the motion in part and denied it in part, the court holding, inter alia, that the operator had no duty to provide the passenger with a wheelchair, and that the operator was not vicariously liable for the actions of its medical staff. That is, the court explained, the cruise ship operator had no duty to provide a passenger with a wheelchair for the duration of the voyage after she was injured in a slip and fall accident, and even if the decision to refuse the injured cruise ship passenger the use a wheelchair for the duration of the voyage was a medical decision made by a medical professional employed by the cruise ship operator, the operator was not vicariously liable for that decision.

The court in Kloster Cruise Ltd. v. Grubbs, 762 So. 2d 552, 2001 A.M.C. 530 (Fla. 3d DCA 2000), reversing and remanding a judgment entered on a jury verdict for a passenger, held that a cruise line was not entitled to a jury instruction on the open and
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The obvious nature of a doorway in which a cruise passenger slipped and fell, where the passenger's claim was that the threshold was slippery, especially when wet, and that the threshold should have been made of nonskid material, in that the slippery nature of the threshold was not apparent and the cruise line must have anticipated that some passengers would step over the threshold and other passengers would, with some frequency, step onto the threshold or drain cover, the court adding, however, that the cruise line should have been allowed to rebut the implication that the shipping industry did nothing to prevent the injury.

See the following additional cases, where the courts, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically slip or fall incidents occurring, or apparently occurring, outside of the plaintiff passenger's personal cabin, held, given the particular circumstances presented, that the defendant cruise line was not liable, where—

—in an action brought against the owner-operator of a cruise ship to recover damages for personal injuries sustained by the passenger when he tripped over a stool on a dance floor, the federal district court dismissed the complaint, after concluding that the defendant was not negligent, the passenger appealed, and the court, on review, affirmed, the court holding, inter alia, that the owner of a ship in navigable waters owes to passengers the duty of exercising reasonable care under the circumstances, and that in the absence of any proof that the owner-operator of a cruise ship had actual or constructive notice of the presence of the stool on the dance floor, a condition in no way peculiar to maritime travel, the trial court did not err in dismissing the complaint. Rainey v. Paquet Cruises, Inc., 709 F.2d 169, 1983 A.M.C. 2100 (2d Cir. 1983).

—in a case in which a plaintiff instituted an action pursuant to the maritime jurisdiction of the court within the meaning of Fed. R. Civ. P. 9(h) and pursuant to the court's diversity jurisdiction, and where the plaintiff alleged that he suffered personal injury from a fall down a stairway while a passenger aboard the defendant's vessel, the court held that the plaintiff failed to come forth with probative supporting evidence to indicate that there existed a material issue of fact requiring a trial of the action, as a result of which the defendant's motion to dismiss the complaint would be granted. Schwarze v. Ridan Inv. Trust, Inc., 1991 A.M.C. 1728, 1991 WL 35874 (S.D. N.Y. 1991).

—in a case in which a plaintiff brought an action against a cruise ship operator to recover for injuries he sustained when he slipped on a ladder while participating in a ship activity, the lower tribunal entered judgment in the operator's favor, the passenger appealed, and the court, on review, affirmed, the court holding, inter alia, that a release and assumption of risk contract was not unconscionable, that the contract was not unenforceable on the grounds of public policy, and that the passenger assumed the risk of injury. DelPonte v. Coral World Virgin Islands, Inc., 233 Fed. Appx. 178 (3d Cir. 2007).

—in a case in which a plaintiff brought action against the defendant cruise line, alleging negligence and breach of contract and seeking compensatory damages and costs, the defendant brought a motion for summary judgment on all claims, and the court, on review, though denying the defendant's motion for summary judgment with respect to alcohol-related claims (§ 19), granted the defendant's motion for summary judgment on that portion of the plaintiff's negligence cause of action based on allegations of an reasonably dangerous stairway; the evidence presented indicated that the defendant was the owner and operator of the cruise ship on which the plaintiff was a passenger for a one-week cruise to various Mexican ports in August 1992, that the plaintiff was 18 years old at the time and was accompanied by her mother, that on the third night of the cruise, while the ship was at sea off the coast of Mazatlan, the plaintiff sustained serious injuries when she fell over the midship stairway's banister on the vessel's Promenade deck, and that the plaintiff's 70-foot fall occurred while she and another cruise passenger were playing on and sliding down the stairway railing, the court pointed out, and here, the plaintiff failed to produce any evidence that the stairway was unsafe when used as intended, and, while the defendant's ongoing maintenance of the area might have provided it with actual notice that the uninterrupted stairwell existed, the plaintiff offered no evidence that the defendant had notice of the danger that stairwell allegedly created for cruise passengers. Meyer v. Carnival Cruise Lines, Inc., 1995 A.M.C. 1652, 1994 WL 832006 (N.D. Cal. 1994).
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—in a case in which an individual who sustained injuries when he slipped and fell down a flight of stairs while on a cruise ship brought action against the operator of the ship for negligence and improper design and installation of the staircase, the federal district court granted summary judgment on the improper design claim, and entered judgment on a jury verdict in favor of the operator on the negligence claim, the plaintiff appealed, and the court, on review, affirmed, the court holding, inter alia, that the ship operator was not liable for negligent design absent evidence that it designed the stairs or the hand rail, and that the great weight of the evidence supported a finding that the ship operator was not liable for the injuries. Rodgers v. Costa Crociere, S.P.A., 410 Fed. Appx. 210 (11th Cir. 2010).

—the court held that a genuine issue of material fact existed as to whether a passenger's injuries were caused by a collapsed chair on a cruise ship or from pre-existing injuries, as a result of which summary judgment was precluded in the plaintiff's res ipsa loquitur negligence case (Fed. R. Civ. P. 56), the court denying the plaintiff's motion for summary judgment. Walter v. Carnival Corp., 2010 WL 2927962 (S.D. Fla. 2010) (an unpublished decision).

—the court held that a passenger on a cruise vessel failed to establish that a cruise company had actual or constructive notice of a defective condition in a deck chair, as a result of which the passenger was unable to recover damages on a negligence theory for injuries sustained from falling through the chair, the court adding that the record did not contain any evidence that demonstrated that the cruise company knew of a defect in the chair, that the passenger had not experienced problems with any other chairs, and that no other passengers experienced problems with the chairs on the deck; the court pointed out, as well, that a cruise ship employee had certified hours prior to the incident and twice the previous day that the deck chairs were in operating condition. Adams v. Carnival Corp., 2009 A.M.C. 2588, 2009 WL 4907547 (S.D. Fla. 2009).

—in a case in which the plaintiff slipped and fell while aboard one of the defendant's cruise line ships, the trial court applied federal maritime law and granted summary judgment, finding that the cruise line had no prior notice of a dangerous condition, the plaintiff disagreed with the application of maritime law and contended that there existed triable issues of material fact which precluded summary judgment, and the court, on review, affirmed. Fritsch v. Princess Cruise Lines, Ltd., 2010 A.M.C. 1655, 2010 WL 2090315 (Cal. App. 2d Dist. 2010), unpublished/noncitable.

—in a case in which an injured passenger brought a negligence action against the defendant cruise line, the lower tribunal, after a jury verdict for the passengers, set aside the verdict and ordered a new trial, the passengers appealed and the cruise line cross-appealed, and the court, on review, affirmed, the court holding, inter alia, that a jury instruction which indicated that the cruise line had the highest degree of duty of care to passengers as a common carrier was erroneous, that the cruise line's failure to object to testimony regarding the passenger's loss of substantial business opportunities at trial after a motion in limine was denied precluded review, and, testimony by the passenger's expert regarding stairs purportedly similar to those upon which passenger slipped was inappropriate. Rindfleisch v. Carnival Cruise Lines, Inc., 498 So. 2d 488, 1987 A.M.C. 944 (Fla. 3d DCA 1986).

F. Pool

§ 15. Cruise line held liable, or finding of liability supportable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically incidents occurring at, or near, the ship's pool area, held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented.

In Brown v. New Commodore Cruise Line Ltd., 2000 WL 45443 (S.D. N.Y. 2000) (an unpublished decision), where a defendant cruise line sought an order granting summary judgment in a case in which the plaintiff, a cruise ship passenger, was injured at
the defendant's pool, the court denied the defendant's motion, the court holding that it could not say that a rational jury would not find that the cruise line's conduct was a significant or substantial factor or cause of the severe injuries sustained by the plaintiff. The plaintiff, prior to the accident, was relaxing with friends at the ship's pool on the Promenade Deck, and at that time, an older passenger was doing "flips" into the pool from a wooden bench on the Promenade Deck. Soon thereafter, the plaintiff decided to enter the pool by going up to the Boat Deck, one deck above, climbing over a safety railing onto a metal ledge, and leaping out nearly six feet in order to land in the pool approximately 13 feet below. On his first leap, the plaintiff successfully employed a "shallow jump" to avoid injuring his feet on the bottom of the pool, which was six feet deep. Approximately 15 minutes later, the plaintiff decided to jump again, this time with one of his friends, and at least two, and perhaps as many as six, people jumped from the Boat Deck prior to the plaintiff's ultimate failed attempt. A witness testified that the ledge of the Boat Deck "was slippery from what I guessed was the other people who had jumped." When the plaintiff jumped, he "slipped" on the metal ledge and did not get enough distance "to make it into the pool." He suffered a fractured ankle when he landed on the wooden bench "about a foot short" of the pool. The plaintiff set forth testimony by other passengers on the ship that the ship's crew members, officers, waiters, waitresses, bartenders, and the ship's disc jockey were not only present but also actively encouraging passengers to jump into the pool from the Boat Deck by yelling such things as "Jump ... Jump ... Jump," and applauding after a passenger jumped into the pool, the court observed. According to these nonparty witnesses, a general carnival atmosphere existed in the pool area for approximately 45 minutes prior to the occurrence in which the plaintiff sustained his injuries, the court explained. During this time, there were raucous passengers in the pool area, and the defendant's crew members, as well as fellow passengers, were applauding and encouraging a group of men and boys to perform dives and jumps into the pool, the court explained. If a jury were to find the testimony of the passengers credible, it could conclude that the defendant had actual notice of a dangerous condition for a substantial period of time, and, at a minimum, once the cruise line has actual notice of a dangerous activity in progress, it had a duty to the plaintiff and his fellow passengers to warn passengers not to jump, and to bring the jumping and diving to a halt, the court concluded.

See Kruepplerstaecker v. Sonesta Intern. Hotels Corp., 2000 WL 1052005 (N.D. Ill. 2000) (an unpublished decision), a case in which the plaintiffs went on vacation to the Mediterranean Sea; where their travel agent booked them on a tour known as the "Nile Legacy"; where, during the cruise, the plaintiff swam in the pool on the top deck of the cruise ship and, afterwards, walked barefoot on the stairway leading to the deck below, severely burning his feet; where the plaintiffs, Illinois citizens, filed a lawsuit in Illinois state court against, inter alia, the owner of the cruise line, the travel agency, and a tour operator; where the tour operator removed the case to federal court based upon diversity jurisdiction; and where the plaintiffs asked the court to remand back to state court, the court, on review, granted the motion to remand, the court reasoning that the plaintiffs were able to state a cause of action against the travel agency.

In a case in which the plaintiff alleged that she fell while aboard one of the defendant's cruise ships at or near the swimming pool area of the ship, the court in Prokopenko v. Royal Caribbean Cruises Ltd., 2010 WL 1524546 (S.D. Fla. 2010) (an unpublished decision), on review, dismissed the plaintiff's complaint for common carrier liability but, apparently, denied a motion to dismiss as to the plaintiff's negligence claims. The principal factual allegation in the complaint was that the plaintiff "was caused to fall on water on the deck of the ship at or near the swimming pool, causing her serious injury," and the complaint alleged both duty to warn and failure to maintain theories of negligence, the court remarked. The defendant argued that it had no duty to warn because the presence of water near a pool is an open and obvious condition, the court stated. The court found that the allegations in the plaintiff's complaint were sufficient to satisfy notice pleading requirements. That is, the court elaborated, the plaintiff's allegations were sufficient to draw a reasonable inference of negligence by the defendant under a failure to maintain theory. The court noted its agreement with the plaintiff that the "open and obvious" question required a context specific inquiry and necessitated development of the factual record before the court could decide whether, as a matter of law, the danger was open and obvious.
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§ 16. Cruise line held not liable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically incidents occurring at, or near, the ship's pool area, held, given the particular circumstances presented, that the defendant cruise line was not liable.

In a personal injury case, in which the plaintiff alleged that she was injured when she slipped on a step while exiting a pool on the defendant's cruise ship, the defendant moved for summary judgment on the ground that the plaintiff failed to produce any evidence that it breached any duty to her, and the court in Mendel v. Royal Caribbean Cruises, Ltd., 2012 WL 2367853 (S.D. Fla. 2012), on review, held that the plaintiff failed to offer any evidence that the defendant was responsible for the alleged improper design of the area, had notice of the alleged dangerous condition, or had a duty to warn, as a result of which summary judgment for the defendant was appropriate. The court stated that while the plaintiff's injuries were unfortunate, there "is a fallacy, which seems to be widely accepted, that for any personal injury, however caused, some person or instrumentality should be liable in damages." Such is not, and has never been, the law, the court remarked. A cruise line is not liable for any alleged improper design if the plaintiff does not establish that the ship-owner or operator was responsible for the alleged improper design, the court pointed out. In the present case, any danger posed by exiting the swimming pool was open and obvious to the plaintiff, and the plaintiff conceded that there was nothing to prevent her from seeing the step that precipitated her fall, the court observed. Moreover, the plaintiff's husband had exited the subject swimming pool using the same steps just moments before her, the court stated. Having attended an aqua aerobics class three to four times a week in the two years prior to the incident on the cruise ship, the plaintiff had extensive experience with swimming pools, the court concluded, and as an experienced swimmer, the plaintiff should have been aware of the potential hazards associated with exiting a swimming pool.

A cruise ship operator was not negligent and thus could not be held liable to a passenger who slipped and fell on a pool deck where there was no evidence showing that rainwater had been sitting on the pool deck for an unreasonable amount of time or that the operator knew there was rainwater on the deck and acted negligently in failing to remove it, the court held in Wish v. MSC Crociere S.A., 2008 WL 5137149 (S.D. Fla. 2008) (an unpublished decision). The mere fact that one slips and falls on a floor does not constitute evidence of negligence, nor does the fact that a floor was slick make the owner liable, the court pointed out. Before there can be a recovery for an injury, the allegations must show some negligence on the part of the defendant, the court remarked. That is, the court explained, negligence cannot be assumed by proving merely that an accident occurred. Based on the facts presented here, the court determined that while an unfortunate accident occurred, the defendant was not negligent and thus could not be held liable. The court, in so ruling, noted, as well, that the operator posted warning signs on the pool deck and that the passenger testified that she was aware that rain could cause a pool deck to become wet and slippery.

G. Class or Organized Recreational Activity

§ 17. Determination as to whether cruise line liable

The following authority, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically incidents occurring during a class or other organized recreational activity, determined whether the defendant cruise line was liable.

See Friedman v. Cunard Line Ltd., 996 F. Supp. 303, 1998 A.M.C. 1417 (S.D. N.Y. 1998), where the court held that a particular injury-producing activity that occurs on board a cruise ship on the high sea does not have to be uniquely maritime in order to sustain admiralty jurisdiction, that the maritime nexus, if required at all for a tort occurring on the high seas, is established by the vessel's engagement in maritime commerce, and that admiralty jurisdiction extends to injuries resulting from falling down stairs on vessels, tripping over a stool while dancing in a ship's discotheque, falling in a tub, and an injury sustained in...
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participation in an on-board aerobic class, the court, granting the defendant cruise line's motion for partial summary judgment as to the loss of society and loss of consortium claim brought by the plaintiff's husband, adding that tort claims brought by a female cruise ship passenger for injuries sustained while engaged in an aerobic class while on board ship while it was anchored at high sea, and her husband's claims for loss of society and consortium, fell within admiralty jurisdiction and were governed by general maritime law.

A waiver of liability signed by a passenger prior to taking a private lesson on simulated surfing activity aboard a cruise ship was a contract with a provision that "limited liability of owner for personal injury or death caused by the negligence or fault of the owner or the owner's employees or agents" and, as such, was rendered void by the maritime statute prohibiting the owner of a vessel transporting passengers from contractually limiting its liability for personal injury or death (46 U.S.C.A. § 30509), the court held in Johnson v. Royal Caribbean Cruises, Ltd., 449 Fed. Appx. 846 (11th Cir. 2011). A cruise ship passenger brought a personal injury action against the defendant cruise line, arising out of an accident that occurred while the passenger was taking a private lesson on a simulated surfing activity aboard a cruise ship, the lower tribunal granted the cruise line summary judgment, the passenger appealed, and the court reversed and remanded, the court holding that the personal injury waiver was void. The plaintiff was a passenger on the cruise ship owned by the defendant cruise line. One of the attractions of this ship was the "FlowRider," a simulated surfing and body boarding activity. Before purchasing a ticket to participate in the FlowRider attraction, the plaintiff was instructed to sign her name to an electronic "Onboard Activity Waiver." When she signed her name to the waiver, the plaintiff agreed to release the cruise line and its employees from actions "arising from any accident [or] injury ... resulting from ... [her] participation in any or all of the shipboard activities [she] has selected." While receiving instruction for the body boarding portion of FlowRider, the plaintiff received instructions from an instructor employed by the defendant cruise line that deviated from the regular use of the body boards, which are different from the surfboards. The instructor told the plaintiff to stand on the body board while he was holding it. When he released the board, the plaintiff fell off the board and suffered a fractured ankle. The maneuver attempted by the instructor with the plaintiff was in violation of the defendant's safety guidelines for the FlowRider attraction, which specifically stated that the boards for the surfing portion can be stood upon, while the boards used for the body boarding portion should only be used while lying down, the court remarked. While the trial court noted that similar waivers have been upheld when injuries occurred to participants in inherently dangerous, land-based activities, the court related, this argument held no weight, because 46 U.S.C.A. § 30509 clearly applies to owners of vessels transporting passengers between ports, not land based operators. That Congress saw fit to void liability waivers in one situation and not the other was clearly apparent and made any comparison of the two irrelevant, the court concluded.

H. Elevator

§ 18. Determination as to whether cruise line liable

The following authority, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically incidents occurring on, or near, a ship's elevator, determined whether the defendant cruise line was liable.

A passenger's testimony that "he" seemed to be "a little bit out of control" could reasonably be viewed as describing the degree of control being exercised by the defendant cruise ship's steward, with due regard to the close proximity of the passenger, rather than as stating that the dolly was out of control, and such testimony did not defeat the passenger's claim against the cruise line for the steward's failure to keep a proper lookout when the passenger's foot was run over by the dolly in an elevator, the court held in McDonough v. Royal Caribbean Cruises, Ltd., 48 F.3d 256, 1995 A.M.C. 1923, 31 Fed. R. Serv. 3d 472 (7th Cir. 1995). The passenger sued the cruise line for injuries sustained in the ship's elevator when her foot was run over by a dolly being pushed by a steward, the federal district court awarded the passenger $38,000 in damages, the cruise line appealed, and the court, on review, affirmed, the court holding, inter alia, that whether a wheel on the dolly was defective was irrelevant to
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the cruise line's liability based upon the steward's failure to keep a proper lookout, that the evidence supported a finding that the steward failed to keep a proper lookout, and that the damage award was not excessive. Eyewitness testimony as to where the cruise ship steward was looking immediately before the dolly ran over the passenger's foot was not necessary to establish the cruise line's liability, based upon the steward's failure to keep a proper lookout, for injuries sustained when the steward ran over the passenger's foot in an elevator, where the inference that the steward was not looking where he was going was not merely reasonable, it was compelling, the court pointed out. An award of $38,000 for injuries sustained by the passenger was not excessive, though the passenger resumed her normal activities fairly soon after the injury, the court indicated, in light of evidence that the passenger continued to suffer from peroneal tendinitis, attributable to the dolly injury and her abnormal gait used to compensate for pain, and in light of the evidence presented that she would suffer pain for as long as she lived, even when participating in the normal activity she had resumed.

I. Alcohol and Intoxication

§ 19. Cruise line held liable, or finding of liability supportable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically alcohol- or intoxication-related incidents, held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented.

In Guinn v. Commodore Cruise Line, Ltd., 1997 WL 164290 (S.D. N.Y. 1997) (an unpublished decision), a personal injury action by a passenger on a cruise ship against the owner of the ship, the defendant cruise line and its parent company, where the plaintiff asserted three theories of liability, that being, negligent service of alcoholic beverages, negligent failure to assist the plaintiff when intoxicated, and negligent maintenance of a stairwell, the defendants moved for summary judgment, and the court, on review, denied the motion, the court reasoning that the general maritime law applied; and that there did not appear to be any grounds for liability under this law for the selling of alcoholic beverages as such, as distinct from liability for failure to assist a person who appears to some extent incapacitated because of being intoxicated; and that here, while there was a strong argument for summary judgment for the defense on the issue of the plaintiff's condition, there was just enough evidence in the plaintiff's favor to say that there was a triable issue of fact. The law of the forum, New York, might be relevant, and New York has a "dram shop" law, but this applies only to injuries caused by the intoxicated consumer to a third party, the court explained. Under the general maritime law, the operator of a ship may be liable for failing to assist an intoxicated person who evidently poses a danger to himself, the court elaborated. Here, the court stressed, there was no direct evidence that the plaintiff exhibited symptoms of incapacity or danger to himself during the period of time leading up to his accident. However, the court stated, the court could not exclude the possibility that the plaintiff could prove such a thing by circumstantial evidence. He was drinking a great deal on the ship, the court continued, and the previous night, he needed to be escorted to his stateroom by ship personnel. On the night of the accident, he was again drinking, the court pointed out, and he was in the casino, after which he was in the disco, dancing. He left the disco to get fresh air, the court related, but he was not loud or boisterous, and he was not assisted, nor did he request assistance. However, he testified in his deposition that he was intoxicated and that he did not remember what happened to him beginning shortly after he left the disco, the court commented. The accident report stated that the second step of the stairway in question was broken, the court noted, and the plaintiff's brother-in-law, who was also on the trip, testified that he had been on that stairway and that it was very dark and poorly lit. Whether this evidence would lead to a conclusion of negligence remained to be seen, the court concluded, but it provided an additional reason why summary judgment was not appropriate.

Where a plaintiff brought action against the defendant cruise line, alleging negligence and breach of contract and seeking compensatory damages and costs, the defendant brought a motion for summary judgment on all claims, and the court in Meyer v. Carnival Cruise Lines, Inc., 1995 A.M.C. 1652, 1994 WL 832006 (N.D. Cal. 1994), on review, though granting the
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defendant's motion for summary judgment on that portion of the plaintiff's negligence cause of action based on allegations of an unreasonably dangerous stairway (§ 14), denied the defendant's motion for summary judgment with respect to alcohol-related claims. The defendant argued that it was entitled to summary judgment on the portion of the negligence cause of action based on its sale of alcohol to the 19-year-old individual who was with the plaintiff at the time of the injury, because the plaintiff offered no evidence that this individual's alleged intoxication was the proximate cause of her injury, the court related, and the defendant further argued that the plaintiff's unforeseeable and reckless misuse of the stairway was the direct and sole cause of her injury. The court pointed to the testimony of a witness, who stated that she "could see [that the accompanying individual] was drunk" when she warned them about the danger of sliding down the banister, and her further testimony that the individual was "holding both of [the plaintiff's] forearms" as she was sitting on the stairway banister and that the plaintiff fell backwards when the individual "lost hold of her." According to the witness, when the individual arrived at the bottom of the stairway to where the plaintiff had fallen, he stated that he "shouldn't have dropped her," the court observed, and although there was also evidence to the contrary, based on the statements of the witness and other evidence in the record, a reasonable jury could conclude that the individual's alleged intoxication was a causal factor in the plaintiff's injury. That the plaintiff's own conduct on the stairway may have been negligent and a concurrent cause of her injury did not relieve the defendant of all liability, but merely affected the measure of its liability, the court declared, and under general maritime law, a plaintiff's negligence is considered only in mitigation of damages. Furthermore, the question of whether the plaintiff's alleged negligence was a cause of her injury was factual in nature and thus not an appropriate basis for summary judgment, the court concluded.

§ 20. Cruise line held not liable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, aboard ship, specifically alcohol- or intoxication-related incidents, held, given the particular circumstances presented, that the defendant cruise line was not liable.

In Voillat v. Red and White Fleet, 2006 A.M.C. 66, 2004 WL 547146 (N.D. Cal. 2004) (applying, in part, California law), the court granted the defendant cruise ship's motion to dismiss the plaintiff's claim for improper service of alcohol. The evidence presented indicated that the plaintiffs' decedent died after allegedly being thrown overboard from the defendant's cruise ship by an individual defendant during a cruise in the San Francisco Bay. The decedent's parents brought a wrongful death and survival action against the defendant cruise line, a bay cruise corporation, a steamship corporation, and others. In substantial part, the plaintiffs' complaint alleged that the defendants were negligent in failing to adequately inspect, maintain, and repair the vessel, improperly operating the vessel, providing inadequate security on board, knowingly hiring individuals who inadequately performed their job functions and inadequately supervising those individuals, and serving alcohol to an obviously intoxicated passenger. The court pointed out that the Ninth Circuit has not adopted a general maritime dram shop rule, and that it would decline to fashion its own rule, because doing so would require the court to engage in the difficult task of choosing among various competing state regulatory approaches. Such regulatory power is more appropriately left to the states, the court declared. Under California law, the plaintiffs failed to state a claim for relief under their claim for improper service of alcohol, the court concluded.

For purposes of the Dram Shop Act liability of cruise operators who had served a drink to a fellow passenger who caused the plaintiff's injury, a factual determination of intoxication could not be made solely on the basis of how much alcohol a person has consumed (N.Y. Gen. Oblig. Law § 11-101), the court held in Burkhard v. Sunset Cruises, Inc., 191 A.D.2d 669, 595 N.Y.S.2d 355 (2d Dep't 1993), the court affirming the ruling of the lower tribunal denying the passenger's motion for summary judgment. The evidence presented indicated that the plaintiff and a friend were on board an evening cruise ship and the friend sat upon the ship's railing. A crew member told the friend to get off the railing and he jumped off, landing on the plaintiff and injuring her. The plaintiff asserted that her friend was intoxicated at the time of the accident, and that the defendants, that is, the owners, lessors, and lessees of the cruise ship, were liable for her injuries by virtue of the Dram Shop Act and the defendants' negligence.
The plaintiff argued on appeal that her motion for summary judgment should have been granted because, as to the Dram Shop cause of action, by the defendants' admission, the plaintiff's friend was served four to six rounds of drinks during the course of the evening's cruise, and, as a matter of law, he was therefore intoxicated. The court, on review, disagreed, the court stating that evidence that a person has consumed alcohol, and has the odor of alcohol on his or her breath, is not conclusive proof of intoxication since the effect of alcohol may differ greatly from person to person. In other words, a factual determination of intoxication cannot be made solely on the basis of how much alcohol a person has consumed, the court declared.

III. Injury or Death Occurring off Ship

A. In General

1. Generally

§ 21. Determination as to whether cruise line liable

[Cumulative Supplement]

The following authority, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, generally determined whether the defendant cruise line was liable.

In a case in which a cruise ship passenger who was injured while stepping over a chain link fence separating a pier from a street brought action against the defendant cruise shipowners and operators, the court in Braver v. Seabourn Cruise Line, Inc., 808 F. Supp. 1311, 1993 A.M.C. 1603 (E.D. Mich. 1992) (applying Michigan law), on review of the defendants' motion for summary judgment, granted the motion, the court holding, inter alia, that Michigan law applied to the action, and that, under Michigan law, the owners and operators of the cruise ship did not owe a duty to protect passengers from the dangers of stepping over the fence in the course of exiting the pier to which the ship was docked. The court explained that under Michigan law, the defendants did not owe a duty to protect passengers from the dangers of stepping over the chain link fence, where there was a break in the fence where the pedestrian could have crossed safely to the street without having to step over it. A company operating a passenger ship has a duty in landing its passengers to indicate to them the proper way to the street and to see that such way is reasonably safe, the court pointed out, but in the absence of direction from the ship's company as to the proper way to proceed to the street upon leaving the ship, the passenger has the right to use any path or way which reasonably appears to be designed and used as a way to a public street.

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Cases:

Cruise line owed passenger debarking from ship at port of call a duty to warn only of dangers that it knew or should have known to exist beyond the point of debarkation as to places where passenger was invited or reasonably expected to visit. Moseley v. Carnival Corp., 593 Fed. Appx. 890 (11th Cir. 2014).

The exercise of reasonable care owed by cruise line to passengers is defined as the duty to warn of dangers on shore that are not open and obvious, of which the cruise line had actual or construction knowledge, and that exist in places where passengers are invited or reasonably expect to visit. Lapidus v. NCL. America LLC, 924 F. Supp. 2d 1352 (S.D. Fla. 2013).
2. Limitations Period Considerations

§ 22. Action barred

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, held that the action against the defendant cruise line was barred by the applicable statute of limitations or other limitations period.

A cruise ship passenger was reasonably notified of the one-year limitations period contained in a passenger ticket since the passenger received a copy of the contract upon boarding and since the ticket served to adequately warn the passenger to read the terms of the contract carefully, and the statute permitting the equitable tolling of the period for providing notice for claims (former 46 App. U.S.C.A. §§ 183b(a), 183b(b)) did not apply to a maritime contract limitations period in the passenger ticket for the commencement of a tort action, the court held in Jimenez v. Peninsular & Oriental Steam Nav. Co., 974 F.2d 221 (1st Cir. 1992), a case in which a plaintiff cruise line passenger was injured while reboarding the defendant cruise line ship, the court adding that the one-year contractual limitation of actions in the ticket was not equitably tolled, even if injured passenger was incapacitated for six months, since the alleged incapacity did not prevent the passenger from consulting counsel or from timely commencing suit. An injured passenger's tort claims against a cruise line and shipowners were dismissed by entry of summary judgment by the federal district court on the grounds of the one-year limitations period prescribed in a passenger ticket, the passenger appealed, and the court, on review, affirmed, the court holding, inter alia, that the limitations provision of the ticket was unambiguous and that the ticket provided the passenger with reasonable notice of the limitations provisions.

To determine whether the limitations period contained in a passenger ticket is reasonably communicated, the facial clarity of the ticket must be examined to determine whether the limitation was obvious and understandable when the circumstances surrounding the passenger's possession of and familiarity with the ticket are considered, the court remarked. Here, the court declared, at the bottom of the first page of the passenger ticket packet retained by the plaintiff appeared the following language: "Your attention is directed to the conditions of the contract between you and [the defendant cruise line] which are printed on this and the succeeding pages." Although larger type would have provided greater assurance against oversight, the notice was one of only three statements on the first page that was printed in red, rather than black, ink, the court stressed.

An injured passenger "received" a cruise ship ticket, for purposes of determining whether the operator reasonably communicated a shortened limitation period for bringing a negligence action, even if the passenger did not remember receiving the ticket, where the cruise ship company's standard procedure required that the passenger receive the complete ticket packet before being allowed to board the ship uneventfully, and where the passenger acknowledged receiving some type of ticket that she later discarded (former 46 App. U.S.C.A. § 183b(a)), the court held in Loussarian v. Royal Caribbean Corp., 951 F.2d 7, 1992 A.M.C. 1399 (1st Cir. 1991), a case in which the plaintiff was injured while reboarding the cruise ship, the court adding that the steamship company reasonably communicated the one-year limitation period for the passenger to commence the negligence action against it, even though the notice on the signature page of the ticket contract could have been clearer, where the message was clear that the ticketholder should have read all terms contained in the contract and where important reference points were highlighted either by the use of large type or reverse printing. The passenger brought a negligence action against the defendant operator for injuries received while reboarding the ship, the federal district court granted summary judgment for the operator based on the one-year limitation period contained in the passenger's ticket, the passenger appealed, and the court, on review, affirmed, the court holding, inter alia, that the passenger was deemed to have received a copy of the entire ticket booklet, that the ticket contract was reasonably clear, and that the passenger had ample opportunity to learn about the limitations under inquiry. When determining whether a shortened limitations period for claims against a steamship company has been reasonably communicated,
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the court must examine the facial clarity of the ticket contract, determine whether its language and appearance make relevant provisions sufficiently obvious and understandable, and must consider the circumstances of the passenger's possession of and familiarity with the ticket, the court remarked. Whether a particular ticket reasonably communicates a shortened limitations period for claims against the defendant is a question of law, the court indicated, and here, the injured passenger was meaningfully informed of the one-year limitation period in the ticket contract for commencing a negligence action, so as to make the shortened limitations period enforceable, where the passenger originally possessed the ticket booklet containing the limitations provision, where the passenger retained three lawyers who communicated with the cruise line operator within the limitations period, and where the cruise line operator responded by stating that it anticipated reliance on the defenses specified in the ticket.

A contract provided cruise line passengers with adequate notice of a shortened limitations period for actions against a cruise line, where the multipage pamphlet was identified as a "passage ticket and contract," where notice at the bottom of the first three pages in red lettering stated that the contract was binding on the passenger and that specific sections limited the carrier's liability and the passengers' rights to sue, where the first clause of the contract stated that the carrier accepted the passenger subject to the terms of the contract, and where the section limiting the time to sue was printed in bold type, the court held in Paredes v. Princess Cruises, Inc., 1 F. Supp. 2d 87 (D. Mass. 1993), a case in which the plaintiff's passenger suffered injuries during a ground tour of Egypt, the court adding that the subject passengers had an adequate opportunity to learn of the shortened limitation period for suits against the cruise line, as they were charged with notice of the terms and conditions of the contract even though the contract was in English and the passengers were unable to read English, as the documents were given to an English-speaking relative prior to departure, and the passengers had access to counsel prior to expiration of the limitations period. In determining whether a cruise line has reasonably communicated a shortened limitations period for suits against it, examination of the circumstances surrounding the passengers' purchase and retention of the contract does not depend upon actual knowledge of the terms in the contract of passage, but focuses instead on an opportunity for such knowledge, the court noted at the outset. Here, the court related, the cruise line was not estopped from enforcing the one-year limitations period although within that time period, it was aware that passengers were injured and were attempting to recover compensation, and it was not prejudiced by a delay in commencement of the action, as the passengers did not establish that they were misled by the cruise line or its agent so that they delayed suit.

In a case in which a cruise ship passenger injured while disembarked at one of the ship's ports of call sued the cruise line, the owner of the dock where the injury occurred, and the trucking company that allegedly created a hazardous condition on the dock, the cruise line moved for summary judgment on behalf of all of the defendants, and the federal district court in Sharpe v. West Indian Co., Ltd., 118 F. Supp. 2d 646, 2001 A.M.C. 995 (D.V.I. 2000), on review, noting that maritime contract law governed the issue of the applicability of the ticket contract's limitations clause, held that the cruise ship passenger who had disembarked at a regularly scheduled port of call was still a "passenger" under the ticket contract's definition, that is, "all persons traveling under this ticket," and thus, the contract's limitations period governed the passenger's personal injury action against the carrier arising out of the incident in the port.

A passenger on a cruise ship received adequate notice of the terms and conditions contained in the passenger ticket contract, including the one-year limitations provision, where the passenger received the ticket one week prior to departure, where the first page of the ticket contained a conspicuous notice in capital letters to the existence of limitations on the passengers' rights to sue the cruise line, and where the one-year limitations provision complied with the statute prohibiting periods shorter than six months to bring suit (former 46 App. U.S.C.A. § 183b), the court held in Lunday v. Carnival Corp., 431 F. Supp. 2d 691 (S.D. Tex. 2004), a case in which the court granted the cruise line's motion to dismiss in an action brought by the passenger for personal injuries against the cruise line arising from injuries allegedly incurred during disembarkation from the vessel. Were the court free to act as an organ of social policy, it might well be inclined to abrogate the limitations contained in the defendant cruise line's passenger ticket contract, the court commented. The court stated that while it sympathized with the plaintiff, the law clearly sanctions contractual limitations of the type involved in this suit. As such, the court declared, the contractual limitation
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provision became part of the contract between the parties and obligated the plaintiff to file her claim within one year of the date of injury. Reasoning thusly, the court granted the defendant's motion to dismiss and dismissed the plaintiff's claims with prejudice.

The evidence presented supported a conclusion that the plaintiff cruise line passenger, injured in an incident occurring off the defendant's ship, had reasonable notice of a one-year limitation provision in a passage contract, notwithstanding the contention that because the agreement was sealed within a perforated envelope and stapled together, it was impossible to discover the contract and its limiting terms, the court held in Davis v. Wind Song Ltd., 809 F. Supp. 76 (W.D. Wash. 1992), where the size of type, bold print, and frequent use of upper case letters in conspicuous spots all lent themselves to the clarity of the notice, the court adding that it would have been a simple matter to open the perforated edges, remove the staples, and expose the contract within. The court pointed out, as well, that the cruise line company was not estopped from asserting the one-year limitation provision of the cruise ticket on the ground that the passenger relied on company promises to pay future medical bills and that such promises were designed solely to prevent the passenger from fully exploring her contract rights, where letters from the company to the passenger indicated a willingness to pay only for the passenger's out-of-pocket medical expenses, and contained no mention of a settlement offer or promise to make payments beyond the one-year period.

The placement on the fourth page of a cruise ship ticket packet of a notice to the passenger of the one-year contractual time limit for personal injury suits complied with the reasonable notice requirement, and thus was enforceable, where removal of the first two pages, an agent's copy and a passenger ticket, made the passenger's copy which contained the warning the first page in the packet after the cover page, and where both the agent's copy and the ticket contained instructions directing their removal before the passenger embarked on the cruise (former 46 App. U.S.C.A. § 183b(a)), the court held in Nash v. Kloster Cruise A/S, 901 F.2d 1565, 1990 A.M.C. 2744 (11th Cir. 1990), a case in which a passenger suffered an injury on the cruise line gangplank, the court adding that adequate notice of the one-year contractual limit for bringing a personal injury suit against a cruise line does not require that the notice be contained in a page of the ticket packet that the passenger surrenders on boarding. The evidence presented indicated that two days after embarking on a Caribbean cruise, the plaintiff passenger slipped and fell on a gangplank, sustaining injuries for which she and her husband brought suit approximately 14 months later. Since suit was not brought within the one year of the date of injury, the federal district court found the suit time-barred pursuant to the contractual limitation set forth in the cruise ticket. The court, on review, affirmed, the court holding, inter alia, that the courts will enforce a contractual time limitation for personal injury suits by cruise passengers if the ticket provides the passenger with reasonably adequate notice that the limit existed and formed part of the passenger contract. Whether notice on the cruise ticket of the contractual time limitation on the right to file a personal injury suit provided a cruise passenger with reasonably adequate notice is a question of law, the court concluded.

A passage ticket put a cruise ship passenger on sufficient notice of the terms and conditions of the passage contract, including limitations on the ship operator's liability for personal injury, where the first three pages of the ticket included, in red ink, "important notice" which stated, "ticket includes passage contract terms on the succeeding pages which are binding on you. Please read them carefully," the court held in Rozzak v. Princess Cruises, Inc., 90 Ohio App. 3d 109, 628 N.E.2d 77 (8th Dist. Cuyahoga County 1993), a case in which the plaintiff passenger was injured on a launch while being transported back to the ship from an off-ship excursion, the court adding that the cruise ship passenger could not bring a negligence action against the ship operator more than one year after the passenger was injured on the ship's launch because the passage ticket included a valid limitation on liability which prohibited actions more than one year old and that the passenger's alleged lack of actual knowledge regarding the liability limitation did not bar summary judgment for the operator because the passenger had a sufficient opportunity to read the ticket and gain a familiarity with its terms.

§ 23. Action not barred
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The following authority, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, held, given the particular circumstances presented, that the action against the defendant cruise line was not barred by the applicable statute of limitations or other limitations period.

See Sharpe v. West Indian Co., Ltd., 118 F. Supp. 2d 646, 2001 A.M.C. 995 (D.V.I. 2000), a case in which a cruise ship passenger injured while disembarked at one of the ship's ports of call sued the cruise line, the owner of the dock where the injury occurred, and the trucking company that allegedly created a hazardous condition on the dock, where the cruise line moved for summary judgment on behalf of all of the defendants, and where the federal district court, on review, noting that maritime contract law governed the issue of the applicability of the ticket contract's limitations clause, and while ruling that the limitations clause was enforceable with respect to the passenger's personal injury action as against the carrier for the injury occurring in port (§ 22), held that a clause in the cruise ship ticket contract providing that "exclusions or limitations of liability of carrier set forth [herein] shall also apply to and be for the benefit of ... owners and operators of all shoreside properties at which the vessel may call" was ambiguous and overbroad, and thus, the contract's limitations period was unenforceable in the passenger's personal injury action against the owner of the dock on which the injury occurred and against the trucking company allegedly responsible for creating the hazard where the provision failed to specify which limitations extended to which third parties and with respect to what sorts of incidents.

A contract provision barring all claims for personal injury unless the passenger provided a notice of the claim to the cruise line within six months of the injury and sued within one year after the trip was completed was not enforceable under Alaska law in view of the cruise line's failure to show prejudice if that time limit were not enforced, where the cruise line had immediate notice of the passenger's injury in a fall outside a museum, where her attorney gave formal notice of the claim within 11 months and filed suit well before the usual two-year statute of limitations had expired, and where the cruise line disclosed the contractual time limit at the last minute, the court held in Long v. Holland America Line Westours, Inc., 26 P.3d 430 (Alaska 2001). A passenger sued a cruise line for negligence in connection with the passenger's fall outside of a museum in Alaska during the course of a tour, the passenger appealed, and the state supreme court, on review, reversed, the court holding, inter alia, that Alaska law, rather than Washington law, governed the enforceability of the contractual time limit for the negligence action, though the contract specified that Washington law applied, and that the contract provision barring all claims for personal injury unless the specified prerequisites were met was not enforceable under Alaska law in view of the cruise line's failure to show prejudice if that time limit were not enforced. Statutes of limitations serve dual policies, the court pointed out, that is, to protect against prejudice from stale claims and to ensure an adequate opportunity for the filing of a claim prior to the statutory bar.

B. Swimming

§ 24. Determination as to whether cruise line liable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, specifically incidents occurring while the plaintiff passenger was engaged in a swimming activity, determined whether the defendant cruise line was liable.

According to the court in Samuels v. Holland American Line-USA Inc., 656 F.3d 948, 2011 A.M.C. 2441, 86 Fed. R. Evid. Serv. 564, 82 A.L.R.6th 625 (9th Cir. 2011), because the defendant cruise line had neither actual nor constructive notice of a dangerous condition on the Pacific Ocean side of the beach where a passenger was swimming while the cruise ship was anchored, the cruise line had no duty to warn the passenger about the dangers of swimming there, and therefore was not liable for the passenger's injury caused by turbulent wave action. The evidence presented indicated that the plaintiff and his two teenage children embarked on a seven-day cruise aboard the defendant's vessel. The ship arrived in Cabo San Lucas, Mexico, its first stop, on the morning of November 24, 2008, with a scheduled departure time of 5:00 p.m. As he had never been to Cabo
San Lucas before, the plaintiff made several inquiries of unidentified staff members of the cruise ship regarding possible shore activities. The plaintiff asserted that the staff of the cruise ship assured him that he could visit Cabo San Lucas and take a skiff to "Lover's Beach" before returning to the ship in time for the scheduled departure at 5:00 p.m. The plaintiff ultimately waded in the Sea of Cortez for about five minutes, and then walked over to the Pacific Ocean side of Lover's Beach, where he noticed approximately 20 people swimming in the ocean. After observing that the waves did not seem particularly rough, he entered the ocean for a few minutes before returning to the beach. Shortly thereafter, the plaintiff reentered the ocean in the same place and again waded in chest-deep water. The next thing he remembered was feeling a "tremendous pull up and back and then being upside down." To recover for negligence, the court noted, a plaintiff must establish: (1) duty; (2) breach; (3) causation; and (4) damages. The owner of a ship in navigable waters owes to all who are on board the duty of exercising reasonable care under the circumstances of each case, the court remarked. The degree of care considered reasonable in a particular circumstance depends upon the "extent to which the circumstances surrounding maritime travel are different from those encountered in daily life and involve more danger to the passenger," the court indicated. Here, there was no genuine dispute of material fact that would require that the case be submitted to a jury, the court stated, and the plaintiff's wading on the Pacific Ocean side of Lover's Beach was not uniquely associated with maritime travel. The defendant was not aware of any similar accident, or any accident at all, that had previously occurred while one of its passengers was swimming on the Pacific Ocean side of Lover's Beach, the court declared, and as the cruise line did not have constructive notice of a dangerous condition on the Pacific Ocean side of Lover's Beach, it had no duty to warn the plaintiff about swimming there.

In Balachander v. NCL (Bahamas) Ltd., 800 F. Supp. 2d 1196 (S.D. Fla. 2011), the court held that a cruise ship operator had no duty to warn a passenger of the open and obvious dangers of swimming in the ocean, as would support a negligence claim under the Death on the High Seas Act (DOHSA; 46 U.S.C.A. § 30301) brought against the operator by the passenger's widow. A passenger's widow brought a wrongful death action against a cruise ship operator and cruise ship physician, seeking to recover damages for the passenger's death from complications from submersion in water which occurred at a resort, the defendants moved to dismiss, and the court granted the motion, the court holding that the operator had no duty to warn the passenger of the open and obvious dangers of swimming in the ocean. The plaintiff asserted that 46 U.S.C.A. § 30306 authorized the recovery of damages under a Bahamian law that was similar in scope to Florida's Wrongful Death Act. When a cause of action exists under a law of a foreign country for death by wrongful act on the high seas, a civil action in admiralty may be brought in a court of the United States based on the foreign cause of action, the court held. The purpose of this section of the DOHSA, the court explained, was to prevent "the owners of foreign vessels" from taking "advantage of U.S. statutes limiting their liability." The section was thus enacted to prevent foreign shipowners from avoiding claims they would otherwise be obligated to defend, the court remarked. Here, however, the court related, the plaintiff conceded in her complaint that her causes of action arose under the General Maritime Law of the United States. DOHSA provided the plaintiff's exclusive remedy, and the claim for relief under Bahamian law would necessarily be dismissed, the court declared. The defendant argued that the DOHSA negligence claim against it should be dismissed on the ground that the defendant did not have a duty to warn the decedent of the open and obvious dangers of swimming in the ocean, the court stated, and the plaintiff countered by pointing out that a cruise ship may be held liable if it "had actual or constructive notice of the risk-creating condition." The caveat to that general principle of liability, however, is that a cruise line has no duty to warn of dangers that are of an obvious and apparent nature, the court held. The plaintiff asserted that whether the defendant had a duty to warn passengers of the dangers of swimming in the ocean was an issue of fact not proper for determination on a motion to dismiss, the court continued, but the dangers of drowning in the ocean are open and obvious as a matter of law. Under these facts, there were no issues related to the open and obvious nature of those dangers requiring further discovery, the court concluded as it found that the defendant had no duty to warn the decedent of the dangers of swimming in the ocean as a matter of law.

A cruise passenger's settlement with a diving instructor, in a negligence action against the instructor and the cruise line, had to be set off proportionally, and should not have been treated as a complete setoff, nor totally disregarded, where the action against the cruise line went to the jury under specific instructions that the cruise line's liability could be based only on the negligence of other employees, and where it was apparent that, notwithstanding the legal status as an agent of the cruise line, for whose...
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negligence, the cruise line would ordinarily be liable, the instructor was considered as a regular third-party tortfeasor, for whom the cruise line was not vicariously responsible, the court held in Carnival Cruise Lines, Inc. v. Levalley, 786 So. 2d 18 (Fla. 3d DCA 2001), the court reversing and remanding the judgment below granting the passenger's motion for partial directed verdict that no comparative negligence had been demonstrated as a matter of law. Evidence regarding an asthmatic condition from which the cruise passenger suffered, the fact that the passenger falsely concealed that condition from the scuba diving instructor and the cruise line, the fact that the passenger would not have been permitted to participate in diving had she truthfully revealed the condition, and the fact that she dove notwithstanding knowledge that it was dangerous for asthmatics to do so, were all directly relevant to the issues of legal causation of the accident during the dive, and to the issue of the passenger's comparative negligence, and thus should not have been excluded in the passenger's action against the cruise line, the court indicated. Even without evidence regarding the cruise passenger's asthmatic condition, the jury could properly have found the passenger one-third comparatively negligent in causing damages arising from the scuba diving accident both in failing to follow instructions given before the diving accident, and in failing properly to protect against risks of diving against which she had been warned, the court concluded.

Where a cruise shipowner had no responsibility, control over or authority to control or maintain the beach at the resort hotel where a traveler was injured, there was no duty on the shipowner to maintain the beach or to warn the traveler of a dangerous condition, and thus, there was no liability of the shipowner for negligence causing injury to the traveler, the court held in Wiedemann v. Cunard Line Ltd., 63 Ill. App. 3d 1023, 20 Ill. Dec. 723, 380 N.E.2d 932 (1st Dist. 1978). The court noted, as well, that where employees of the cruise shipowner were not authorized to, and did not, contract with anyone in the state, activities of the shipowner in advertising and having employees promote travel on its ships through contacts with travel agents in the state did not amount to a "transaction of business" for purposes of the shipowner submitting to the jurisdiction of the state courts (Ill. Ann. Stat. ch. 110, § 17(3)).

C. Excursion

§ 25. Cruise line held liable, or finding of liability supportable

[Cumulative Supplement]

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, specifically incidents occurring during an excursion from the ship, held that the defendant cruise line was liable, or that a finding of liability was supportable under the circumstances presented.

A common carrier generally owes a high duty of care to provide its passengers with safe transportation under adequate supervision to and from the dock or pier, and such duty extends at least to the point of embarkation and debarkation, and does not cease at each port of call where the passengers are free to disembark, but is owed for the extent of the voyage, the court held in Sullivan v. Ajax Navigation Corp., 881 F. Supp. 906, 1995 A.M.C. 2407 (S.D. N.Y. 1995), a case in which a cruise ship passenger was injured when the ship's tender's mooring line snapped and struck the passenger as she sat on the dock bollard awaiting transport back to the ship. A carrier may have an obligation to a fare-paying passenger to warn of the reasonably foreseeable risks that exist beyond the gangplank, the court noted at the outset, and such obligation arises where the carrier knew, or should have known, of dangers in the places where the passenger is likely to go. Material fact issues existed as to the cruise ship operator's knowledge of a hazard posed by a fare-paying passenger sitting on a dock bollard to which the ship's tender was moored and the foreseeability of the passenger's injury when the tender's mooring line snapped, precluding summary judgment for the operator in an action based on the duty of a common carrier to insure the safety of fare-paying passengers. The fact that the dock on which the passenger was sitting when the ship's tender's mooring line snapped was owned and controlled
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by a foreign government was of little consequence to the passenger's claim against the operator based on a duty of the common carrier to insure the safety of a fare-paying passenger, and did not foreclose the passenger's claim, the court elaborated.

Where a passenger brought action against a boat cruise line, alleging violations of the Florida Wrongful Death Act (FWDA) and the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and agency and joint venture liability with an excursion operator that sold the passenger's spouse a zip-line excursion, which resulted in the spouse's death, the cruise line moved to dismiss, and the court in Fojtasek v. NCL (Bahamas) Ltd., 613 F. Supp. 2d 1351 (S.D. Fla. 2009) (applying, in part, Florida law), on review, granted the motion in part and denied it in part, the court holding, inter alia, that the Death on the High Seas Act (DOHSA) did not apply to bar the passenger from recovering nonpecuniary damages or seeking recovery under the FWDA, that an exculpatory clause in the ticket contract did not preclude the passenger's negligence claims and that whether the operator was an independent contractor or the cruise line's agent was irrelevant on the motion to dismiss.

In a case in which the plaintiff was a passenger on the defendant cruise line's cruise ship, where the plaintiff went on a "deep sea" fishing excursion, and where, while on the fishing boat, the plaintiff was injured when he fell through an allegedly rotten deck and into the boat's engine room, the defendant moved to dismiss, and the court in Brocker v. Norwegian Cruise Line Ltd., 2007 WL 2155648 (S.D. Fla. 2007) (an unpublished decision), on review, denied the defendant's motion to dismiss the plaintiff's negligence count. The defendant argued that the plaintiff failed to establish that the defendant owed him any duty while the plaintiff was on the deep-sea fishing excursion, the court pointed out, and the defendant further argued that the Guest Ticket Contract entered into by the parties limited the defendant's liability for the actions of a third party. While the defendant cited Isbell v. Carnival Corp., 462 F. Supp. 2d 1232, 2007 A.M.C. 677 (S.D. Fla. 2006), § 26, in support, the court pointed out, that case was resolved on a motion for summary judgment, rather than a motion to dismiss. While the Guest Ticket Contract here precluded liability for the conduct of a third party, the court stressed, the defendant failed to show that there was no legal basis for its own negligence. Discovery would be needed to further investigate the relationship between the defendant and the fishing boat operator, the court concluded, as a result of which the defendant's motion to dismiss the plaintiff's negligence count would be denied.

In Henson v. Seabourn Cruise Line Ltd. Inc., 410 F. Supp. 2d 1246, 2005 A.M.C. 1964 (S.D. Fla. 2005), a case in which a cruise vessel passenger brought a personal injury action against a cruise line and others for injuries occurring to the passenger after disembarking from the vessel, the defendants moved for partial summary judgment and an order limiting damages based on the Athens Convention, and the court, on review, denied the motion, the court holding, inter alia, that the itinerary included in the contract for voyage on the Bahamian-regulated cruise vessel, rather than the vessel's geographic location in a Canadian port at the time that the passenger was injured, was controlling on the issue of the applicability of United States law prohibiting a limitation of liability for carriage upon a vessel, and since that itinerary included planned calls at U.S. ports, a purported Athens Convention limitation in the ticket contract was ineffective (former 46 App. U.S.C.A. § 183c).

A cruise ship passenger's transportation between ship and shore was via a "tender," and thus, the cruise line's duty to provide the passenger with safe transportation, under adequate supervision, to and from the ship to shore was not delegable where the boat ride to shore was not the essence of the excursion but was transportation to shore for purposes of joining a land tour, the court held in Samuellov v. Carnival Cruise Lines, Inc., 870 So. 2d 853 (Fla. 3d DCA 2003). A cruise ship passenger brought action against a cruise line to recover for injuries suffered in a fall on a tender that was taking passengers ashore, the lower tribunal entered partial summary judgment in favor of the passenger on the issue of whether the cruise line had a nondelegable duty to provide safe transportation between ship and shore, and entered a directed verdict at trial in favor of the cruise line on the ground that the condition on the tender causing injury was open and obvious, the parties appealed, and the court, on review, held that the cruise line's duty regarding the passenger's transportation between ship and shore was not delegable and that the question of whether the cruise line was liable for injuries caused by an open and obvious condition was for the jury. A property owner is not absolved of responsibility where the owner has reason to believe that others will encounter the dangerous condition regardless of the open and obvious nature of the condition, and the question of whether cruise line was liable for
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injuries suffered by the passenger in a fall on the tender that was taking passengers ashore was for the jury in the passenger’s negligence action against the cruise line, even though the condition that caused the fall was open and obvious, where the cruise line had reason to believe that passengers would have to cross the wet, slippery exposed upper deck of tender regardless of the open and obvious nature of the condition.

The duty of a defendant cruise shipowner to provide a passenger with safe transportation under adequate supervision to and from the ship to shore was not delegable, and a portion of an exculpatory clause of the contract of passage which attempted to immunize the defendant from any responsibility whatsoever during the passenger's transportation on the tender was void as against public policy, the court held in Johnson v. Home Lines, Inc., 48 Misc. 2d 1090, 266 N.Y.S.2d 582, 1966 A.M.C. 605 (N.Y. City Civ. Ct. 1965). In an action for personal injury sustained by a cruise ship passenger when packages on the tender transporting the passenger between the ship and shore fell upon him during rough seas, the defendant sought to avoid liability by virtue of an exculpatory clause of the contracts of passage, and the court, on review, entered judgment for the plaintiff. The cruise shipowner's duty to passenger in assuring safe transportation from ship to shore was not to exercise the highest care, but to exercise due care, the court noted at the outset. Here, the court indicated, the evidence presented served to sustain a finding that the cruise shipowner breached a duty of due care in failing to provide the plaintiff passenger with safe transportation on the tender between the ship and shore by failing to adequately supervise the transportation or to see that the packages piled on the tender were properly secured.

CUMULATIVE SUPPLEMENT

Cases:

Waiver signed by cruise ship passenger prior to taking part in jet-ski tour provided by ship operator, in which she agreed to release operator and employees from actions "arising from any accident [or] injury in any way connected with [her] rental, participation, use, or operation of [the jet ski]," was rendered void by maritime statute prohibiting owner of a vessel transporting passengers from contractually limiting its liability for personal injury or death caused by its negligence or fault; operator owned vessel transporting passenger between domestic and foreign ports. 46 U.S.C.A. § 30509. In re Royal Caribbean Cruises Ltd., 2013 A.M.C. 708, 2013 WL 425837 (S.D. Fla. 2013).

Cruise ship passenger's complaint against cruise line sufficiently alleged that volcanic gases were not open and obvious, as required for negligence claim against cruise line under Florida law based on cruise line's failure to warn passenger of volcanic gases, including alleged high amounts of sulphur dioxide gas, that passenger encountered in lava tube as part of shore excursion. Lapidus v. NCL America LLC, 924 F. Supp. 2d 1352 (S.D. Fla. 2013).

District Court had admiralty jurisdiction over action brought by cruise ship passenger against ship operator, the ship's agent, who sold passenger a port-of-call excursion at restaurant in Cozumel, Mexico, and owners/operators of restaurant, for claims arising when he dove into ocean and hit his head on ocean floor, resulting in tetraplegia; action concerned ship's obligations to its passengers with regard to shore excursions, passenger's injuries occurred in ocean and had potential to impact number of excursions purchased by other passengers, thereby affecting maritime commerce, and ship operator's alleged negligence was substantially related to excursion. 28 U.S.C.A. § 1333. Belik v. Carlson Travel Group, Inc., 2012 WL 4511236 (S.D. Fla. 2012).

Cruise ship passenger's complaint against cruise line sufficiently alleged that volcanic gases were not open and obvious, as required for negligence claim against cruise line under Florida law based on cruise line's failure to warn passenger of volcanic gases, including alleged high amounts of sulphur dioxide gas, that passenger encountered in lava tube as part of shore excursion. Lapidus v. NCL America LLC, 2013 WL 646172 (S.D. Fla. 2013) (applying Florida law).
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[END OF SUPPLEMENT]

§ 26. Cruise line held not liable

[Cumulative Supplement]

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, specifically incidents occurring during an excursion from the ship, held, given the particular circumstances presented, that the defendant cruise line was not liable.

In a case in which the plaintiff brought a personal injury action based on diversity of citizenship between the parties and an amount in controversy alleged to exceed $50,000, the defendant moved for summary judgment, and the court in Corby v. Kloster Cruise Ltd., 1990 WL 488464 (N.D. Cal. 1990) (unpublished decision), on review, granted the defendant's motion, the court noting that the evidence presented indicated that the plaintiff was a passenger on a cruise ship owned and operated by the defendant cruise line while the ship was in port in Jamaica, that the plaintiff participated in an onshore excursion tour of Dunn's River Falls, and that while climbing the waterfalls with the tour group and guide, the plaintiff slipped on a rock and fell, sustaining bodily injuries. In so ruling, the court pointed out that the passenger ticket contract entered into between the plaintiff and the defendant cruise line did not involve a matter in the public interest as a result of which the exculpatory provisions contained in that contract, exempting the cruise line from liability, were valid, the court adding that since the defendants owed the plaintiff no duty regarding accidents occurring ashore, there could be no breach such that the defendants were not negligent as a matter of law.

Where the defendant cruise line brought a motion to dismiss claims brought by the plaintiff passenger, occurring while the plaintiff was on a zip-lining excursion in Puerto Limon, Costa Rica, the court in Gayou v. Celebrity Cruises, Inc., 2012 WL 2049431 (S.D. Fla. 2012), ruled that among the claims subject to dismissal were negligence, misleading advertising, negligent misrepresentation, actual agency, and breach of a third-party beneficiary contract.

In a case in which a cruise ship passenger brought a personal injury action against a cruise shipowner arising from injuries sustained by the passenger while participating on an offshore "zip line" excursion tour during a cruise, the shipowner moved for summary judgment, and the court in Smolnikar v. Royal Caribbean Cruises Ltd., 787 F. Supp. 2d 1308, 2011 A.M.C. 2941 (S.D. Fla. 2011) (applying, in part, Florida law), on review, granted the motion, the court holding, inter alia, that while disclaimer provisions could not limit the shipowner's liability to the passenger for its own negligence, the shipowner was not liable under Florida law for negligently selecting or retaining an independent contractor; that the shipowner had no duty to warn the passenger of the dangers or safety concerns existing at a zip line tour; and that there was no apparent agency relationship between the cruise shipowner and independent contractor.

In a case in which a cruise line passenger who was bitten by a snake on an inner tubing shore excursion brought a negligence action against a cruise line under the Passenger Vessel Act (46 U.S.C.A. § 3501), the cruise line brought a motion for summary judgment, and the court in Ibeall v. Carnival Corp., 462 F. Supp. 2d 1232, 2007 A.M.C. 677 (S.D. Fla. 2006), on review, granted the motion, the court holding, inter alia, that the cruise line did not breach a duty of care owed to the passenger, that the passenger failed to establish that the cruise line had constructive notice of snakes in the river, that the risk of encountering snakes on the river was apparent and obvious, and that any negligence by the cruise line was not the proximate cause of the passenger's injuries. The court pointed out that alleged assurances by cruise ship employees that "any 90-year-old woman" could safely enjoy an inner-tubing shore excursion down a rain forest river, and that passengers took the excursion all the time and there was no need for concern, did not breach the duty of care to the passenger, who was bitten by a snake on the excursion,
as required to establish a negligence claim against the cruise line under the Passenger Vessel Act, even if such assurances were a guarantee that no harm would befall the passenger.

The doctrine of unseaworthiness did not extend to passengers aboard a cruise ship, as a result of which passengers could not recover under an unseaworthiness theory against the cruise line operator, for injuries suffered during an operator-sponsored personal watercraft tour in navigable waters during a day trip, the court held in In re Complaint of Royal Caribbean Cruises Ltd., 459 F. Supp. 2d 1275 (S.D. Fla. 2006). A cruise line operator sought exoneration from, or a limitation of, liability, under the Limitation of Vessel Owner's Liability Act, as to cruise ship passengers, parent and minor child, who suffered injuries while aboard an operator-owned personal watercraft and participating in an operator-sponsored island tour as part of a day trip, the operator moved for summary judgment, and the court, on review, held that a release signed by a parent was enforceable as to the parent, though the release was not enforceable as to the child, that the doctrine of unseaworthiness did not extend to passengers, and that the passengers' negligence claims could not be founded upon a state statute. The court pointed out that the Eleventh Circuit and the Southern District of Florida have recognized the general rule of admiralty law that a ship's passengers are not covered by the doctrine of unseaworthiness. The warranty of seaworthiness is a term of art in the law of admiralty, the court instructed. The warranty imposes a form of absolute liability on a sea vessel, and it originally applied to the carriage of cargo and was later extended to cover seamen's injuries, the court elaborated. A ship's passengers are not covered by the warranty, the court pointed out, and it has been held that the disclaimer of the warranty of seaworthiness could not reasonably be interpreted as waiving a cruise line's duty to provide adequate accommodations to its passengers when the doctrine of seaworthiness does not apply to passengers. Any claim the passenger plaintiffs have cannot be based on unseaworthiness, so any waiver of unseaworthiness would be irrelevant, the court elaborated.

Comment

In a related proceeding, the court in In re Complaint of Royal Caribbean Cruises Ltd., 459 F. Supp. 2d 1284 (S.D. Fla. 2006), denying the passengers' motion for summary judgment, held that the passengers failed to show that the cruise line operator failed to exercise reasonable care under the circumstances, as would shift the burden to the cruise line operator to prove a lack of knowledge or privity, and that the passengers failed to show that the watercraft were defective and thus unseaworthy because they utilized an off-throttle steering loss system. In an exoneration proceeding under the Limitation of Liability Act, the court stated, the court must conduct a two-step analysis: first, the court must ascertain what acts of negligence or conditions of unseaworthiness caused the accident, and second, the court must determine whether the vessel owner had knowledge or privity of those acts of negligence or conditions of unseaworthiness (former 46 App. U.S.C.A. § 183a). Moreover, the court stated, in a proceeding for exoneration from liability under the Act, the initial burden is on the claimant to put forth some evidence of the owner's negligence or unseaworthiness before the burden of proof shifts to the owner to prove lack of knowledge or privity, and if there is no evidence of the owner's negligence or contributory fault, then the owner is entitled to exoneration from all liability, but if negligence or unseaworthiness is found, the court must then determine if the owner is entitled to a limitation of liability.

In a case in which cruise ship passengers sued the ship's owner, seeking damages for injuries sustained during an excursion in a catamaran, the court in Henderson v. Carnival Corporation, 125 F. Supp. 2d 1375, 2001 A.M.C. 264 (S.D. Fla. 2000), on the owner's motion for summary judgment, granted the motion, the court holding, inter alia, that the owner did not own the catamaran, that the return trip on the catamaran was not tender for which the owner would owe the passengers a duty of care, and that a disclaimer contained in the ticket contract was not rendered unenforceable by an alleged ambiguity.

Where operators of a cruise ship instituted a limitation action pursuant to the Limitation of Vessel Owner's Liability Act, seeking an exoneration for liability for the collision of two personal watercraft, which it leased, the federal district court in In re Royal Caribbean Cruises, Ltd., 55 F. Supp. 2d 1367, 1999 A.M.C. 2475 (S.D. Fla. 1999), aff'd without opinion, 214 F.3d 1356 (11th Cir. 2000), upon the cruise ship's motion for summary judgment, granted the motion, the court holding, inter alia,
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that an injured jet ski passenger failed to establish that the collision was proximately caused by the negligence of the cruise ship or unseaworthiness of the personal watercraft and that even if the cruise ship was not entitled to a complete exoneration of liability for the collision, it would be entitled to limit its liability to the value of the personal watercraft.

A suit by Washington passengers against an Italian shipowner and its foreign agents for injuries sustained in Vietnam while on a shore excursion during a cruise commenced in Singapore was subject to forum non conveniens dismissal although the Florida corporation had acquired controlling ownership of the Italian cruise line, although ship employee who assisted the passengers in arranging an excursion had moved to Florida, and although the passengers' travel agent booked the cruise through a Florida-based subsidiary of the shipowner, as any substantive liability was that of the shipowner, and the connection between the controversy and Florida was minimal at best, the court held in Pearl Cruises v. Cohon, 728 So. 2d 1226 (Fla. 3d DCA 1999).

Cruise passengers did not establish a cruise company's apparent authority over a bus company, as a basis for the cruise company's respondeat superior liability under Washington law to passengers injured when a bus crashed during the onshore portion of the cruise, where the cruise company's brochure and its cruise contract plainly stated that onshore services would be provided by independent contractors and that the cruise company assumed no liability for the negligence of such contractors, the court held in Dubret v. Holland America Line Westours, Inc., 25 F. Supp. 2d 1151, 1999 A.M.C. 859 (W.D. Wash. 1998) (applying Washington law). A finding of apparent agency under Washington law requires some act on the part of the principal acquiescing in the relationship, the court related. Allegations that a cruise company's chaperone accompanied cruise ship passengers on the bus ride during the onshore portion of the cruise, and that one chaperone noticed that the bus driver was driving recklessly, did not overcome the unrebutted assertion that the bus company was retained by the cruise company as an independent contractor, the court stressed, and thus, the cruise company did not have the supervision or control of the bus company required under Washington law for respondeat superior liability to passengers injured when the bus collided with another vehicle.

CUMULATIVE SUPPLEMENT

Cases:

Cruise ship passenger did not identify with sufficient specificity any hazard or danger of which cruise line was obligated to warn him, nor did he adequately plead that cruise line had actual or constructive knowledge of alleged hazards of shore excursion, precluding his maritime law negligence claims, under federal maritime law, arising from his fall from rope bridge while on such excursion in Dominica; cruise line had no duty to warn passenger of general danger posed by narrow, elevated rope bridge, and passenger merely alleged that cruise line failed to warn of dangers posed by shore excursion, without articulating what those dangers were, and he pled only in conclusory manner that cruise line had actual or constructive knowledge any specific hazard related to shore excursion. Aronson v. Celebrity Cruises, Inc., 30 F. Supp. 3d 1379 (S.D. Fla. 2014).

Cruise line did not have duty to warn passenger that shore excursion in national park would have sharp terrain and steep steps, as required for passenger's negligence claim against cruise line alleging that exertion from hike over uneven, jagged, and very sharp terrain and climbing steep steps caused or contributed to his heart attack, where terrain and steep steps were open and obvious conditions. Lapidus v. NCL America LLC, 2013 WL 646172 (S.D. Fla. 2013).

Under either maritime or common law, failure by personal watercraft rider to establish that negligence of cruise ship operator, who also provided watercraft tour, was substantial factor in rider being hit as result of operator's employee releasing too many watercrafts at beginning of tour without properly spacing them precluded finding of proximate cause required for negligence claim; although it was possible employee released watercrafts too soon and caused injury, a more plausible explanation to infer as to why rider was hit was that another watercraft rider piloted her watercraft negligently. In re Royal Caribbean Cruises Ltd., 991 F. Supp. 2d 1171, 2013 A.M.C. 708 (S.D. Fla. 2013).
Cruise line did not have duty to warn passenger that shore excursion in national park would have sharp terrain and steep steps, as required for passenger's negligence claim against cruise line alleging that exertion from hike over uneven, jagged, and very sharp terrain and climbing steep steps caused or contributed to his heart attack, where terrain and steep steps were open and obvious conditions. Lapidus v. NCL America LLC, 924 F. Supp. 2d 1352 (S.D. Fla. 2013).

[D. Embarking or Disembarking]

§ 27. Determination as to whether cruise line liable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, specifically incidents occurring during the plaintiff passenger's embarking or disembarking actions, determined whether the defendant cruise line was liable.

See Stafford v. Intrav, Inc., 841 F. Supp. 284, 1994 A.M.C. 934 (E.D. Mo. 1993), judgment summarily aff'd, 16 F.3d 1228, 1994 A.M.C. 939 (8th Cir. 1994) (applying, in part, Missouri law), where the court held that the tour operator that chartered a cruise vessel as part of a package tour did not have a duty to protect a passenger from a risk of harm presented by a gangway opening, where the tour operator did not own or maintain the vessel and was not responsible for placement of the gang plank. The cruise ship passenger who was injured when she fell through an opening in a gangplank brought action against the tour operator that had chartered the vessel, and the federal district court, on the operator's motion for personal summary judgment, granted the motion, the court holding, inter alia, that the tour operator was not a "demise charterer" of the vessel, and could not be held liable for injuries sustained by the passenger, that the tour operator did not have a duty to protect the passenger from a risk of harm presented by a gangway opening, and that the tour operator did not have a duty to warn the passenger of a dangerous opening near the gangplank by agreeing to be the passenger's agent for certain purposes. Moreover, the court explained, the tour operator did not have a duty to warn the cruise passenger of the dangerous opening near the gangplank, where the opening in the gangplank presented an obvious danger. Under Missouri law, the court continued, a travel agent who arranges vacation plans and therefore acts as more than a ticket agent is a special agent of the traveler for purposes of that one transaction between the parties, and as such, the agent has a duty to disclose reasonably obtainable information that is material to the object of the agency though this duty is not breached by the agent's failure to disclose information that is obvious and apparent to the traveler. In the instant case, the court declared, the tour operator that chartered the cruise vessel as part of a package tour did not breach a duty, as agent of the passenger, to use reasonable care in selecting the vessel in connection with the injuries sustained by the passenger when she fell through the opening in the gangway, where the operator conducted an inspection of the vessel and investigated the vessel's owner prior to the charter, and where nothing suggested that the operator should have been aware of prior similar accidents involving a gangway opening or that such accidents had occurred.

Where a passenger or cruise vessel puts into numerous ports in the course of a cruise, these stopovers are the sine qua non of the cruise, and in such a situation, the shipowner has a duty to exercise a high degree of care in seeing to the safe embarking and disembarking of the passengers, and any vessel which engages in the carriage of passengers for hire has a duty to provide for embarking and disembarking at the beginning and end of the voyage, the court held in Kirk v. Holland America Line, Inc., 616 F. Supp. 2d 1101, 2007 A.M.C. 2213 (W.D. Wash. 2007). Cruise passengers brought action against a cruise operator in law and in admiralty after sustaining serious injuries, which occurred on an escalator while passengers were attempting to disembark
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the cruise vessel at the final port of call, the defendants moved for summary judgment, and the court, on review, denied the motion, the court holding, inter alia, that fact issues precluded summary judgment on the issue of the scope of the operator's duty, and that fact issues precluded summary judgment on the issue of whether the operator had a duty to warn. A carrier owes a duty of reasonable care under the circumstances of each case to those aboard the ship for legitimate purposes, the court noted at the outset, and a carrier's duty of reasonable care applies not only to times when the ship is under way but also requires that a carrier must render such services as are reasonably necessary to get a passenger safely ashore. Disembarking a cruise boat is an activity within the scope of a carrier's duty, and with respect to mid-cruise stopovers, a carrier's duty of reasonable care encompasses disembarkation and embarkation, the court commented. The scope of a carrier's duty depends ultimately on the totality of the circumstances, the court explained, and here, genuine issues of material fact existed as to the risks associated to cruise passengers disembarking at port of call on an escalator owned by a land-based port facility, precluding summary judgment on the issue of the scope of cruise operator's duty of reasonable care as a carrier, and whether that duty was breached.

In a case in which a plaintiff brought suit against the defendant cruise line for injuries apparently occurring during an embarkation-disembarkation process, the court in McLaren v. Celebrity Cruises, Inc., 2012 WL 1792632 (S.D. Fla. 2012), held that the plaintiff alleged sufficient facts to support her allegation that the embarkation and disembarkation process constituted a danger that the defendant cruise line either knew or should have known about, and owed the plaintiff a duty to warn about. The plaintiff's complaint, the court pointed out, articulated the failure to warn claims as follows: "Failing to properly and safely warn Plaintiff of the dangers of and the conditions under which the tour would be conducted, including the fact that there was no safe means of ingress or egress during embarkation and disembarkation, which Defendant knew or should have known about, having selected the tour, but which Plaintiff could not know using reasonable care."

**CUMULATIVE SUPPLEMENT**

**Cases:**

Under Florida law, owner of cruise line had no actual or constructive notice of the alleged risk-creating condition posed by steps at the end of gangplank leading off the ship at a port of call, as required to support personal injury action brought by passenger who was allegedly injured when he tripped and fell down those stairs; there was no showing that owner placed any warning sign or cone on or near gangplank at time of alleged fall, or that other passengers had similar incidents prior to passenger's fall. Cohen v. Carnival Corp., 945 F. Supp. 2d 1351 (S.D. Fla. 2013).

Allegations by cruise ship passenger that she slipped and fell on walkway between ship and port-of-call, that the walkway was the only way to exit and reenter the ship at the port, that the walkway was slippery, that cruise line owner knew or should have known that walkway was slippery, because of numerous prior incidents of passengers slipping and falling there, or, if owner lacked constructive notice of dangerous condition, that an unsafe and foreseeably hazardous condition was created by the owner's design and assembly of the cruise ship's walkway and ship's disembarkation procedures, but that owner failed to warn passengers about the dangerous condition stated claim against owner for negligence, under federal maritime law. Caldwell v. Carnival Corp., 944 F. Supp. 2d 1219 (S.D. Fla. 2013).

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[END OF SUPPLEMENT]

E. Rape or Sexual Assault

§ 28. Determination as to whether cruise line liable
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[Cumulative Supplement]

The following authority, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, specifically the rape or sexual assault of the plaintiff, determined whether the defendant cruise line was liable.

The sexual battery of a cruise ship passenger by a crewman while on shore during a scheduled port of call occurred within the scope of the carrier-passenger relationship, and thus, the cruise line was strictly liable for the passenger's injuries, the court held in Doc v. Celebrity Cruises, Inc., 394 F.3d 891, 2005 A.M.C. 214 (11th Cir. 2004) (applying, in part, Florida law). A female passenger of a cruise ship sued the ship operator, the shipowner, a caterer, and the caterer's service company to recover damages arising from the alleged sexual assault by a male crew member during the cruise; the federal district court granted a postverdict judgment as matter of law for the defendants, cross-appeals were taken, and the court, on review, affirmed in part, reversed in part, and remanded, the court holding, inter alia, that the cruise ship line, as a common carrier, was strictly liable for the crew member's assault on the passenger during transit. The plaintiff, as a passenger on the defendant's cruise ship, embarked on a one-week round-trip cruise from New York City to Bermuda. During the cruise, the plaintiff reported to the cruise line's medical staff that a crew member, the plaintiff's dinner waiter, raped her. The medical staff treated the plaintiff, and the cruise line flew her home from Bermuda. The court ruled that a jury verdict that the cruise ship crew member committed sexual battery, but not sexual assault, on the passenger, was not fatally inconsistent under Florida law, for the jury could have found unconsented sexual penetration, but that either there was no attempted act or that any attempted act was not accompanied by the requisite criminal intent (Fla. Stat. Ann. § 794.011(1)(h)). Under Florida law, the court explained, though sexual battery is a general intent crime, which does not require that the defendant act with specific intent, it is an intentional tort for the purpose of determining vicarious liability.

CUMULATIVE SUPPLEMENT

Cases:

Even if cruise line had a duty to warn passengers of risks likely to arise outside of the recommended shopping district in port where passenger was sexually assaulted, there was no evidence to support an inference that cruise line had actual or constructive notice of heightened risk of sexual assault or rape in port city as a whole, as required for passenger's claim alleging negligent failure to warn of the risk of being sexually assaulted while in port city. Burdeaux v. Royal Caribbean Cruises, Ltd., 562 Fed. Appx. 932 (11th Cir. 2014).

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[END OF SUPPLEMENT]

F. Nonsexual Assault or Battery

§ 29. Cruise line held liable, or finding of liability supportable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, specifically the nonsexual assault or battery of the plaintiff passenger, held that the defendant cruise line was liable or that a finding of liability was supportable under the circumstances presented.
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Genuine issues of material fact, as to whether the pier to which a cruise line crew member directed a passenger searching for a newspaper was a high crime area, whether the cruise line knew or should have known of the pier's unsafe condition, and whether a causal connection existed between the crew member's conduct and the passenger's injuries when he was robbed and stabbed on the pier, precluded summary judgment in the passenger's negligence suit against the cruise line, the court held in Gillmor v. Caribbean Cruise Line, Ltd., 789 F. Supp. 488, 1994 A.M.C. 1329 (D.P.R. 1992). A passenger who was robbed and stabbed on a pier he had been directed to by a crew member sued the defendant cruise line, the cruise line moved to dismiss, and the court granted the motion in part and denied it in part, the court holding that maritime law and its provisions on torts applied, and the law of Puerto Rico, where the pier was located, would be invoked only in those areas where maritime law was silent and that genuine issues of material fact precluded summary judgment as to the cruise line's liability. The court noted that negligence is an actionable wrong under the general maritime law, and there must be a duty owed by the defendant to the plaintiff, a breach of duty, prejudice sustained by the plaintiff, and a causal connection between the defendant's conduct and the plaintiff's prejudice. A duty of care exists when injury is foreseeable or when contractual or other relations of the parties impose it, the court instructed, and in determining the existence of duty, a court must examine and weigh the probability of an accident, the potential extent of the injury, and the cost of adequate precautions. In a negligence action under the general maritime law, the standard of care required of the defendant is that of ordinary diligence under the circumstances, and, according to this formula, negligence is a failure to act reasonably under the particular circumstances in order to avoid loss or injury, the court remarked. To determine whether there was a duty owed by the defendant under the circumstances present, the relationship between the parties from which such duty might have arisen must be ascertained, the court stated. The record indicated only that the plaintiffs bought boarding tickets, but the record did not indicate the particular provisions of that relationship, the court declared, an issue that must be determined by the trier of facts. Secondly, it must determined whether the injury was foreseeable, for a shipowner's liability is based on the standard of reasonable care under the circumstances, which requires that a shipowner have actual or constructive notice of a dangerous condition before liability may be imposed, that is, whether or not the pier was actually a high crime area and, if so, whether or not the shipowner knew, or should have known, of its unsafe condition, questions which were not yet part of the record, the court concluded.

In Chaparro v. Carnival Corp., 693 F.3d 1333 (11th Cir. 2012), the court held that allegations by a passenger's parents stated a cause of action for negligence against a cruise ship operator under federal maritime law where it was alleged that the operator's employee encouraged the parents and the passenger to visit certain area in St. Thomas, Virgin Islands, that the operator generally knew of gang violence and public shootings in St. Thomas, that the operator failed to warn the passenger or the parents of the danger, and that the operator's negligence was the cause of the passenger's death from shots fired at a gang member's funeral. The court said that the facts alleged were plausible and raised a reasonable expectation that discovery could supply additional proof of operator's liability. In addition, the court held that the parents stated a cause of action under federal maritime law for negligent infliction of emotional distress in that they alleged that they and the passenger were trapped in a bus during the shooting at the gang member's funeral, that they feared for their lives, that they witnessed the passenger's shooting and death, and that they had consequently experienced various physical manifestations of their emotional distress.

In a case in which cruise ship passengers who were victims of an attack by three masked gunmen on the island of Nassau brought suit against the cruise line, alleging negligence, breach of warranty, and breach of contract, the lower tribunal dismissed the breach of warranty count and entered summary judgment for the cruise line on the remaining counts, the passengers appealed, and the court in Carlisle v. Ulysses Line Ltd., S.A., 475 So. 2d 248, 1986 A.M.C. 694 (Fla. 3d DCA 1985), on review, reversed and remanded, the court holding, inter alia, that a disclaimer of liability contained in the contract of carriage did not relieve the cruise line of liability for its own negligence, but only for the negligent acts of others, that where a common carrier has a continuing obligation for care of its passengers, its duty is to warn of dangers known to carrier in places where the passenger is invited to, or may reasonably be expected to visit, and that the duty of a cruise ship line to its passengers is not limited to the point of debarkation and embarkation. The court noted that, in extending a cruise ship's duty to its passengers beyond the port, it was also circumscribing its duty. That is, the court declared, its holding applied only to carriers that have a continuing obligation
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of care for their passengers and does not extend to a carrier engaged simply for point-to-point transportation. That duty, which is to warn, encompasses only dangers of which the carrier knows, or reasonably should have known, the court related.

§ 30. Cruise line held not liable

The courts in the following cases, considering the liability of a cruise ship operator for injury to, or the death of, passengers, and addressing incidents occurring, or presumably occurring, off ship, specifically the nonsexual assault or battery of the plaintiff passenger, held, given the particular circumstances presented, that the defendant cruise line was not liable.

A passengers' allegations that there was a rising crime rate at a cruise stop, that the cruise line knew or should have known of the crime rate, especially against tourists, and that they were robbed at gunpoint while on a tour, were insufficient to state a cause of action for negligence under Florida law against the cruise line, absent allegations that the cruise line knew or should have known of the dangerous conditions on the tour, the court held in Koen v. Royal Caribbean Cruises, Ltd., 774 F. Supp. 2d 1215, 2012 A.M.C. 721 (S.D. Fla. 2011) (applying, in part, Florida law), the court adding that the passengers' allegations that the cruise line failed to notify them of the crime rate at the cruise shore excursion, that the omission affected their decision to purchase the excursion, and that they were robbed at gun point while on the tour were insufficient to state a statutory cause of action for misleading advertising under Florida law. Moreover, the court pointed out, the passengers' allegations that the cruise line was required to fully vet and vouch for the safety record of its tour operators were insufficient to state a claim for negligent misrepresentation under Florida law, absent allegations that would have indicated that the excursion itself was unsafe. The allegations of the passenger that the cruise line advertised the availability and safety of shore excursions and did not identify the owner or operator of the excursions were insufficient to state a cause of action for liability under a theory of apparent agency under Florida law, and allegations that it was custom in the cruise industry for cruise line operator to enter into a contract with an excursion operator which provided the cruise line with extensive control over the excursion's day-to-day operations were insufficient to state a claim for liability under theory of actual agency, absent allegations that the cruise line acknowledged that the cruise line had any control over the excursion's actions, the court concluded.

Maritime jurisdiction (former 46 App. U.S.C.A. § 740) did not apply to injuries sustained by a passenger on land after he disembarked from a cruise ship, when he was assaulted by another passenger who had allegedly been involved in an altercation during a dinner cruise where, although alcohol had been served during the cruise, there was no indication that alcohol in any way contributed to the earlier altercation or the assault, the court held in Hayes v. City of New York, 34 A.D.3d 208, 824 N.Y.S.2d 24, 2007 A.M.C. 102 (1st Dep't 2006), the court reasoning that a cruise ship operator's duty of care as a common carrier terminated upon the passenger's safe disembarkation from the vessel. The passenger brought action against the cruise shipowner and city to recover for personal injuries sustained in when he was assaulted by a fellow passenger, the lower tribunal denied the owner's motion for summary judgment, it appealed, and the court, on review, reversed, the court ruling that the owner was not liable for the passenger's injuries. A vessel owner's liability under maritime law for passengers' injuries on land, the court instructed, can be found only if: (1) the tort occurred on navigable water, or the injury suffered on land was caused by the vessel on navigable water, and (2) the general features of the type of incident involved have a potentially disruptive impact on maritime commerce and have a substantial relationship to traditional maritime activity.

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14 See Amo v. Costa Line, Inc., 589 F. Supp. 1576, 1985 A.M.C. 419 (E.D. N.Y. 1984), where the court held that although the New York citizenship of the subsidiary corporation appeared to destroy diversity in an action brought by a cruise ship passenger against the subsidiary and parent for injuries sustained on a cruise ship, where joinder of the subsidiary was improper, as there was no basis for holding the subsidiary liable, the complaint against the subsidiary would be dismissed sua sponte by the court and federal jurisdiction preserved.

15 See Frango v. Royal Caribbean Cruises, Ltd., 891 So. 2d 1208, 2005 A.M.C. 804 (Fla. 3d DCA 2005).


17 For a related proceeding with similar holdings, see Doe v. NCL (Bahamas) Ltd., 2012 WL 5512347 (S.D. Fla. 2012).
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Liability of Cruise Ship Operator for Medical Negligence

Marjorie A. Shields, J.D.

There is authority for the view that an owner and operator of a cruise ship may not be held vicariously liable to a passenger for the alleged negligence of the ship's physician who treated an injury of the passenger. The court in Fluera v. Royal Caribbean Cruises, Ltd., 69 So. 3d 1101, 2011 A.M.C. 2866, 81 A.L.R.6th 717 (Fla. 3d DCA 2011), held that a cruise ship was not unseaworthy based on the allegation that the ship's doctor was negligent in diagnosing and treating a patient's ectopic pregnancy in the absence of any allegation that the doctor was not fit for his ordinary duties or not up to the ordinary standards of his profession. The cruise ship owner did not have an affirmative duty to promulgate policies and procedures to govern medical care and emergency evacuations on board its vessel for ship personnel, and the failure to promulgate such procedures did not render the vessel unseaworthy; however, the court held, because future discovery might yield information supporting the conclusion that the ship's junior doctor or nurses were incompetent or unfit and the vessel therefore was unseaworthy, the entry of summary judgment on the claim by the personal representative of the estate of the deceased ship photographer was premature and would be denied. This annotation collects and discusses the cases that have addressed the liability of a cruise ship operator for medical negligence.

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I. Preliminary Matters

§ 1. Scope

This annotation collects and discusses the cases that have addressed the liability of a cruise ship operator for medical negligence.

Some opinions discussed in this annotation may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this annotation. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed herein.

§ 2. Background and summary

There is authority for the view that an owner and operator of a cruise ship may not be held vicariously liable to a passenger for the alleged negligence of the ship's physician who treated an injury of the passenger. Under this view, it has been reasoned that because, in reality, a carrier cannot exercise control over the ship's physician as the physician practices medicine, the carrier or shipowner cannot be held vicariously liable for the physician's negligence under the theory of respondeat superior. Thus, under this view, any negligence of a cruise ship's physician in failing to obtain medical treatment for a passenger injured during a shore excursion, or in failing to aid a passenger to obtain better medical care than that afforded the passenger at a local facility, could not be imputed to the shipowner. On the other hand, it has also been held, in some jurisdictions, that for purposes of fulfilling a cruise line's duty to exercise reasonable care, a ship's physician is an agent of the cruise line whose negligence should be imputed to the cruise line, regardless of the contractual status ascribed to the doctor. Under this view, a cruise line's
duty to exercise reasonable care under the circumstances extends to the actions of the ship's physicians placed on board by the cruise line, and a cruise line's duty to use due care in hiring does not obviate the duty to exercise reasonable care toward a passenger during a voyage.  

Courts have considered the liability of a cruise ship operator for medical negligence. Courts have determined whether the liability of a cruise ship operator was supportable for negligent hiring, training, or retention of a medical provider (§ 3) or not (§ 4). Courts have also determined whether vicarious liability of a cruise ship operator was supportable for the negligence of a medical provider (§ 5) or not (§ 6). Courts have ruled upon whether the liability of a cruise ship operator was supportable for the negligence of a medical provider under a joint venture theory of liability (§ 7). Courts have also determined whether liability of a cruise ship operator was supportable for negligence resulting in unseaworthiness of the ship (§ 8). In some cases, courts have held that liability of a cruise ship operator for medical negligence was supportable on a theory of apparent agency, or agency by estoppel, where a medical provider was allegedly held out by the operator as its agent (§ 9), but under other circumstances, such liability was held not to be supportable (§ 10).

II. Liability of Cruise Ship Operator for Medical Negligence

§ 3. Negligent hiring, training, or retention of medical provider

[Cumulative Supplement]

The courts in the following cases determined whether the liability of a cruise ship operator for negligent hiring, training, or retention of a medical provider was supportable under the facts and circumstances presented.

The court in Hilliard v. Kloster Cruise, Ltd., 1991 A.M.C. 314, 1990 WL 269897 (E.D. Va. 1990), held, where the plaintiff claimed that the ship's doctor erroneously diagnosed the plaintiff's condition by overlooking the plaintiff's chronic bronchitis condition, and that this exacerbated his condition and caused him to suffer additional injuries, no evidence was presented establishing the defendant's hiring practices or any actions specifically addressed to the hiring of the ship's doctor, and thus, the plaintiff failed to prove that the defendant negligently hired the doctor.

A ship's passenger who was allegedly negligently treated by the ship's doctor while on a cruise failed to show that the ship was negligent in hiring the doctor whose undisputed credentials showed that he practiced medicine in the Philippines for over 20 years, absent any evidence as to the Philippines' system of qualifying doctors suggesting that the doctor's education should have caused the ship's owner to question the doctor's competency, notwithstanding the fact that the doctor apparently had not obtained admission to practice medicine in the United States, the court of appeals held in Barbeta v. S/S Bermuda Star, 848 F.2d 1364, 1988 A.M.C. 2650 (5th Cir. 1988).

In Lobegeiger v. Celebrity Cruises, Inc., 869 F. Supp. 2d 1356 (S.D. Fla. 2012), the court held that a cruise line exercised reasonable care in hiring a shipboard medical doctor, and thus the cruise line was not liable to a passenger for negligent hiring of the doctor in an action arising from the doctor's treatment of the passenger for an injury sustained aboard ship. The court said that even if a reference verification request sent to the physician by the cruise line was returned to and reviewed by a registered nurse rather than the head of the cruise line's medical department, the reference verification request had been only one of several sent and received by the cruise line, and the request had been an inessential portion of the doctor's personnel file. Also, there had been no suggestion that the nurse was not qualified to review the request or the doctor's file, and the cruise line had otherwise conducted its review of the doctor's credentials as usual, the court noted.
A cruise ship did not have a duty to provide a medical staff for its passengers and, thus, a passenger’s allegation that a cruise line was negligent in training the shipboard medical staff failed, since, if a cruise line chooses to carry a medical staff for the convenience for its passengers, it does not exercise control over the medical team, and, further, the passenger’s claim failed to assert that the cruise line failed to select a medical staff that was competent and duly qualified, the district court, in Wainstat v. Oceania Cruises, Inc., 2011 WL 465340 (S.D. Fla. 2011), held.

The district court in Gavigan v. Celebrity Cruises, Inc., 843 F. Supp. 2d 1254 (S.D. Fla. 2011), held that a personal representative of the decedent’s conclusory allegations that the operator of a cruise ship failed to properly investigate, vet, or inquire as to the qualifications of a shipboard physicians treating a passenger who died on the high seas, after allegedly contracting Norovirus aboard the ship, were not sufficient to state a negligent selection claim under the Death on the High Seas Act (DOHSA), 46 U.S.C.A. § 30302, since the complaint alleged no facts naming the physicians or describing the physicians’ training and education. The court held, also, that the personal representative’s allegations that the operator of the cruise ship failed to remove or replace the physicians who treated the passenger, even though the operator purportedly knew that the physicians provided improper medical care to another passenger suffering from Norovirus on a prior voyage, were not sufficient to state a negligent retention claim, under the DOHSA, since the complaint lacked factual allegations about the operator’s knowledge as to what the physicians had done or not done and when the operator possessed that information, and that the physicians performed their duties so poorly that the operator should have immediately relieved them of all responsibility for treating any other patients.

The district court in Rinker v. Carnival Corp., 836 F. Supp. 2d 1309 (S.D. Fla. 2011), held that there was no evidence that a cruise ship's doctor and nurses were not properly qualified, as required for the passenger's claims of negligent hiring, negligent failure to notify, and negligent reliance regarding the passenger's developing and treatment for meningitis. The court explained, the cruise line had no duty to furnish an adequate number of doctors and nurses, for purposes of the passenger's negligence claims. The court continued, although a carrier does not have a duty to furnish a doctor for its passengers' use, if a carrier chooses to provide a doctor, it must provide one that is competent and qualified.

With respect to a cruise ship passenger's personal representative's vicarious liability claims against the ship operator in relation to the passenger's death from bilateral pneumonia, the district court, in Ridley v. NCL (Bahamas) Ltd., 824 F. Supp. 2d 1355 (S.D. Fla. 2010), held that the representative's allegations of negligence based on the operator's failure to hire qualified and competent ship's doctors would not be dismissed because the operator was obligated to ensure that the doctors it hired were both competent and duly qualified, and least one of the representative's allegations pertains to the competence and qualifications of the doctors in question. Specifically, the court noted, there was an allegation that the operator negligently failed to properly investigate the medical training of the doctors on board the ship.

The district court in Doe v. Celebrity Cruises, 145 F. Supp. 2d 1337, 2001 A.M.C. 2672 (S.D. Fla. 2001)—although recognizing that, while a ship owner cannot be responsible for the negligence of its ship doctor, a plaintiff may properly bring a claim against a ship owner for negligence if the owner did not exercise reasonable care in selecting a competent doctor—held that a passenger who alleged that she was sexually assaulted by a crew member while on shore failed to allege negligent hiring or retention of the doctor, and thus the defendant owner's motion to dismiss would be granted on the plaintiff's claim of underlying medical negligence by the doctor. The plaintiff claimed that after the assault, the doctor failed to examine her correctly, preserve evidence of the sexual assault, protect her from a sexually transmitted disease or pregnancy, or administer a rape kit.

See Warren v. Ajax Navigation Corp., 1995 A.M.C. 2609, 1995 WL 688421 (S.D. Fla. 1995), where the court denied summary judgment on the plaintiff cruise ship passenger's claim that the defendant cruise ship owners were negligent in the hiring of the ship's doctor, as a sufficient issue of material fact was held to exist with respect to the claim. The court noted that general maritime law imposes upon a ship owner who elects to provide a physician for the convenience of passengers the duty to use reasonable care in selecting a competent doctor. The court observed that the plaintiff passenger, who had suffered a myocardial infarction aboard the ship, alleged that the owners were negligent because they failed to reasonably inquire into the credentials
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and qualifications of the doctor, while the owners argued that they exercised reasonable care in selecting the doctor and had no reason to believe that the doctor was not competent.

See Mascolo v. Costa Crociere, S.p.A., 726 F. Supp. 1285, 1989 A.M.C. 1534 (S.D. Fla. 1989), where the court recognized that when a carrier undertakes to employ a doctor aboard ship for its passenger's convenience, the carrier has a duty to employ a doctor who is competent and duly qualified, and that if the carrier breaches its duty, it is responsible for its own negligence; but where the court noted that in contesting the defendant Italian ship owner's motion for summary judgment on a medical negligence claim, the plaintiff passengers had never raised the issue of the ship doctor's competence, so the court would assume for purposes of the motion that the doctor was qualified, for he was shown to have been licensed to be a ship doctor under Italian regulations.

**CUMULATIVE SUPPLEMENT**

**Cases:**

If a cruise line undertakes to employ a doctor aboard ship for its passengers' convenience, the carrier has a duty to employ a doctor who is competent and duly qualified. Franza v. Royal Caribbean Cruises, Ltd., 948 F. Supp. 2d 1327 (S.D. Fla. 2013).

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[END OF SUPPLEMENT]

§ 4. Negligence of medical provider

[Cumulative Supplement]

The courts in the following cases determined whether the liability of a cruise ship operator was supportable for negligence of a medical provider under the facts and circumstances presented.

The district court in Balachander v. NCL (Bahamas) Ltd., 800 F. Supp. 2d 1196 (S.D. Fla. 2011), held that a passenger's widow failed to state a negligence claim under the Death on the High Seas Act (DOHSA), 46 U.S.C.A. § 30302 against a cruise ship physician alleging damages for the death of her husband from complications from submersion in water which occurred at a resort, where her allegation that the physician committed a substantial departure from accepted standards of reasonable medical care and a breach of the prevailing professional standard of care for health care providers was conclusory, absent any allegations of facts explaining how the physician breached those standards of care.

The district court in Rinker v. Carnival Corp., 753 F. Supp. 2d 1237, 2011 A.M.C. 1386 (S.D. Fla. 2010), held that a passenger who had developed meningitis, bacteremia, and osteomyelitis while aboard a cruise ship failed to state a claim for negligence against the cruise line and its medical staff since she did not plead causation; nothing in the complaint indicated how the ship's failure to provide reasonably safe conditions on board the ship led to the plaintiff's injuries. Furthermore, the court found that the passenger failed to state a claim for civil conspiracy against the cruise line for encouraging or participating in the assault and battery of the passenger by allowing its medical staff to render medical care without proper licenses since the passenger did not allege the existence of an agreement between the parties to do an unlawful act or any elements to support a claim of assault or battery.
CUMULATIVE SUPPLEMENT

Cases:

Allegations by deceased passenger's estate that cruise line had duty to provide prompt and appropriate medical care following passenger's severe head injury, that cruise line breached that duty by failing to properly assess passenger's condition, allowing nurse to make initial assessment, failing to have doctor assess passenger, failing to timely diagnose and appropriately treat passenger, failing to order appropriate diagnostic scans to further assess degree of injury, failing to obtain consultations with appropriate specialists, failing to properly monitor passenger, failing to evacuate passenger from vessel for further care in timely manner, and deviating from standard of care for patients in passenger's circumstances who had suffered significant blow to head, that passenger died as direct and proximate result of that negligence, and that estate suffered damages as result were sufficient to state plausible medical negligence claim against cruise line. Franz v. Royal Caribbean Cruises, Ltd., 772 F.3d 1225 (11th Cir. 2014).

The fact that a physician hired by a cruise line errs in his treatment of a cruise ship passenger does not prove that he was incompetent or that the cruise line was negligent in hiring him. Franz v. Royal Caribbean Cruises, Ltd., 948 F. Supp. 2d 1327 (S.D. Fla. 2013).

§ 5. Vicarious liability of cruise ship operator— Liability supportable

The courts in the following cases determined that vicarious liability of a cruise ship operator was supportable for the negligence of a medical provider under the facts and circumstances presented.

A passenger's father who alleged that a ship's physician and nurses were employees of a ship owner stated a good cause of action against the owner, under the Death on the High Seas Act (former 46 U.S.C.A. § 761, later recodified at 46 U.S.C.A. § 30302), for medical negligence resulting in the passenger's death, the court held in Nietes v. American President Lines, Limited, 188 F. Supp. 219, 1960 A.M.C. 1603 (N.D. Cal. 1959). The court said that where a ship's physician or nurse is in the regular employment of a ship, as a salaried member of crew, subject to the ship's discipline and master's orders, and presumably under the general direction and supervision of the company's chief surgeon, the physician or nurse is, for the purposes of respondent superior, in the nature of an employee or servant for whose negligent treatment of a passenger a ship owner may be held liable. There was reason for imposing such liability, the court said, because the ship owner, by providing a physician aboard ship, avoids the sometimes inconvenient and costly duty to change course for the benefit of an ailing passenger. Any dereliction of the master in his duty to detour may be negligence for which the ship owner could be liable under the principle of respondent superior.

The complaint of a cruise ship passenger was sufficiently pled to support claims that the cruise line was subject to direct liability for, inter alia, its alleged negligence for failing to use reasonable care in maintaining the ship's common areas and that the cruise line was subject to vicarious liability for the ship doctor's alleged medical malpractice in treating her, where the passenger alleged that she was injured when she slipped and fell in the ship's casino bar, that the doctor who treated her was employed by the ship to render medical assistance to the passengers and crew, and that the cruise line could be vicariously liable for the

Caution

For other cases decided by the same federal district court that adhered to the view that a ship owner cannot be held vicariously liable for a ship doctor's medical negligence, see § 6.

Where a passenger who had cut his foot in the swimming pool area of a cruise ship brought an action against the ship owner, alleging the owner's negligent maintenance of the swimming pool area and the owner's vicarious liability for negligent medical treatment received from the owner's on-board physician, and the passenger's wife brought a claim against the owner for loss of consortium, the district court in Mack v. Royal Caribbean Cruises, Ltd., 361 Ill. App. 3d 856, 297 Ill. Dec. 593, 838 N.E.2d 80, 2006 A.M.C. 121 (1st Dist. 2005), ruled, upon a certified question, inter alia, that under federal admiralty law, a cruise ship owner can be vicariously liable for the medical negligence of shipboard doctors. In so holding, the court stated, while ships do not have a duty under federal maritime law to supply an on-board doctor, they do owe passengers in need a duty to provide reasonable medical attention under the circumstances, and this duty can be discharged by putting into port or summoning air rescue, or by carrying a physician, depending on the seriousness of the malady.

CUMULATIVE SUPPLEMENT

Cases:

Allegations by deceased passenger's estate that cruise line employed medical professionals, that medical facility was created, owned, and operated by cruise line, that ship's physician and nurse were under command of ship's superior officers, that passengers who received medical treatment at ship's medical center were billed by cruise line, that cruise line stocked medical centers with all supplies, various medicines and equipment, and that passenger died as result of negligence medical treatment provided by nurse and physician were sufficient to plead plausible medical malpractice claim against cruise line under doctrine of respondeat superior. Franza v. Royal Caribbean Cruises, Ltd., 2014 WL 5802293 (11th Cir. 2014).

Allegations by deceased passenger's estate that cruise line employed medical professionals, that medical facility was created, owned, and operated by cruise line, that ship's physician and nurse were under command of ship's superior officers, that passengers who received medical treatment at ship's medical center were billed by cruise line, that cruise line stocked medical centers with all supplies, various medicines and equipment, and that passenger died as result of negligence medical treatment provided by nurse and physician were sufficient to plead plausible medical malpractice claim against cruise line under doctrine of respondeat superior. Franza v. Royal Caribbean Cruises, Ltd., 772 F.3d 1225 (11th Cir. 2014).

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[END OF SUPPLEMENT]

§ 6. Vicarious liability of cruise ship operator—Liability not supportable

[Cumulative Supplement]

The courts in the following cases determined that vicarious liability of a cruise ship operator was not supportable for the negligence of a medical provider under the facts and circumstances presented.
The owner and operator of a cruise ship could not be held vicariously liable to a passenger for the alleged negligence of the ship's doctor who treated an injury passenger suffered in a fall in the ship's bar, the court of appeals held in Cummskney v. Chandris, S.A., 895 F.2d 107, 1990 A.M.C. 1452 (2d Cir. 1990). The court noted that the passenger conceded that it was a well established principle in maritime law that the negligence of a shipboard doctor in treating passengers is not to be imputed to the ship's owner or operator. The court said that it would decline the invitation to break with such maritime precedent on the facts presented.

The court in Hilliard v. Kloster Cruise, Ltd., 1991 A.M.C. 314, 1990 WL 269897 (E.D. Va. 1990), recognizing that a cruise ship owner may not be held vicariously liable for a ship doctor's negligence, held that the defendant owner could not be held vicariously liable for the actions of the ship's doctor whom, the plaintiff claimed, the ship's doctor erroneously diagnosed the plaintiff's condition by overlooking the plaintiff's chronic bronchitis condition, that this exacerbated his condition and caused him to suffer additional injuries.

Because a ship owner cannot exercise control over the ship's doctor as the doctor practices medicine, the ship owner cannot be held vicariously liable for the doctor's negligence under the theory of respondeat superior, the court said in Barbetta v. S/S Bermuda Star, 848 F.2d 1364, 1988 A.M.C. 2650 (5th Cir. 1988), and accordingly, the court upheld a grant of summary judgment against plaintiff passengers to the extent that they were attempting to impose respondeat superior liability upon the defendant ship for medical negligence.

In Peavy v. Carnival Corp., 2012 WL 5306353 (S.D. Fla. 2012), the court held that a cruise ship owner could not be held vicariously liable for the alleged medical negligence of the ship's doctor and nurse under a theory of actual agency. The court noted that the settled rule under which a ship owner is not vicariously liable for the medical negligence of the onboard physician is premised on the fact that cruise lines lack control over the highly personalized doctor-patient relationship, as well as the expertise to supervise a doctor in his or her practice of medicine.

Caution

For authority from the same federal district court that expressed the view that a ship owner can be held vicariously liable for a ship doctor's medical negligence, see § 6.

The district court in Balachander v. NCL (Bahamas) Ltd., 800 F. Supp. 2d 1196 (S.D. Fla. 2011), held, in an action by a passenger's widow against a cruise ship operator for the death of her husband, alleging negligence, lacked control over the ship physician's medical activity, and, thus, was not liable on claims for vicarious liability for the alleged negligent actions of a ship physician. In so holding, the court stated, a cruise line cannot be vicariously liable for the negligence of its ship's doctor in the care and treatment of passengers since the cruise lines lack the expertise to have control over a ship doctor's medical activity.

The personal representative for the decedent's estate could not allege that the doctors aboard a cruise ship were actual agents of the defendant cruise ship operator and had authority to act for the operator's benefit, precluding the personal representative's vicarious liability claims against the operator in relation to the decedent's death from bilateral pneumonia, the district court, in Ridley v. NCL (Bahamas) Ltd., 824 F. Supp. 2d 1355 (S.D. Fla. 2010), held. The court explained that a cruise ship line cannot be vicariously liable for the negligence of its ship's doctor in the care and treatment of the passengers, based on the cruise line's lack of control over the doctor's medical activity.

In Suter v. Carnival Corp., 2007 A.M.C. 2564, 2007 WL 4662144 (S.D. Fla. 2007), where a passenger on a cruise ship fell and was injured, and sustained further injury to her neck, resulting in partial paralysis due to the actions of the ship's doctor, the district court ruled that under longstanding maritime law, a ship owner is not vicariously liable for the medical negligence of
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Under federal admiralty law, the owner of a cruise ship could not be vicariously liable for the alleged medical malpractice by doctors on the ship's medical staff, with respect to medical treatment that the doctors provided for passenger's knee injury, the district court in Hesterly v. Royal Caribbean Cruises, Ltd., 515 F. Supp. 2d 1278, 2008 A.M.C. 548 (S.D. Fla. 2007), held. The court found, also, that even if the owner of the cruise ship, which ship had doctors on its medical staff, could be deemed a "health care provider" under the Florida statute, Fla. Stat. Ann. § 766.202(4), the statute could not provide the basis for a cause of action by a passenger against the owner for vicarious liability for medical malpractice, because such a cause of action would run counter to federal maritime law, which provided that a shipowner could not be vicariously liable for the medical malpractice of the ship's doctors. Finally, the court found, Florida statutes governing medical licenses, Fla. Stat. Ann. §§ 458.311(6), 458.320(1), imposed no duty on the owner of the cruise ship, which provided doctors for treatment of passengers, to employ doctors that met Florida licensing requirements, as would support a claim of negligence per se under Florida law, because requiring the owner to employ doctors licensed in Florida would contradict the uniformity of federal maritime law.

Even if the decision to refuse an injured cruise ship passenger the use a wheelchair for the duration of the voyage was a medical decision made by a medical professional employed by a cruise ship operator, the operator was not vicariously liable for that decision, the district court in Walsh v. NCL (Bahamas) Ltd., 466 F. Supp. 2d 1271, 2007 A.M.C. 491 (S.D. Fla. 2006), held.

In Doonan v. Carnival Corp., 404 F. Supp. 2d 1367, 2005 A.M.C. 2971 (S.D. Fla. 2005), the court held that a cruise line could not be held vicariously liable on the basis of actual agency for the alleged negligence of a ship's doctor in treating a passenger for acute respiratory distress, given the line's lack of control over the doctor-patient relationship and lack of expertise in supervising the doctor in the practice of medicine.

See Warren v. Ajax Navigation Corp., 1995 A.M.C. 2609, 1995 WL 688421 (S.D. Fla. 1995), where the court—in denying summary judgment on a plaintiff passenger's claim the defendant cruise ship owners negligently disembarked him to a vessel that took him ashore after he suffered a myocardial infarction—said that if the ship's captain or another ship employee authorized the evacuation, the ship owners could be vicariously liable, but if the ship's doctor authorized the evacuation, the claim for negligent disembarkation would fail, because a ship owner is not liable for a negligent medical decision of the ship's doctor.

In Mascolo v. Costa Crociere, S.p.A., 726 F. Supp. 1285, 1989 A.M.C. 1534 (S.D. Fla. 1989), the court held that because a cruise ship operator lacks the expertise to control professional services rendered by its properly qualified ship's doctor, it is not liable to passengers by imputation for the doctor's allegedly negligent medical treatment, and thus the court granted the defendant ship owner's motion for summary judgment on the plaintiff passenger's negligence claim against the ship's doctor. The court said that the reasoning behind the long-established rule prohibiting the negligence of a ship doctor from being imputed to a ship owner was sound, given the nature of the relationship between the passenger and the physician and the carrier's lack of control over that relationship. The work that the physician or surgeon does is generally considered under the control of the passengers themselves, and generally, the master or owners of the ship cannot interfere in the treatment of the medical officer when he or she attends to a passenger. In addition, the court noted, a shipping company is not in the business of providing medical service to passengers.

Where a minor passenger's parents brought a negligence action against a cruise line in connection with the failure of the shipboard physician to diagnose the passenger's appendicitis, the supreme court of Carnival Corp. v. Carlisle, 953 So. 2d 461, 2007 A.M.C. 305 (Fla. 2007), ruled upon a certified question from the district court of appeal that a ship owner is not vicariously liable under the theory of respondeat superior for the medical negligence of the shipboard physician.
CUMULATIVE SUPPLEMENT

Cases:

Under general maritime law, cruise line was not vicariously liable, under theory of apparent agency, for the alleged negligence of its ship's doctor in the care and treatment of passenger who fell and sustained injuries at port-of-call, absent any allegations that the passenger reasonably relied to his detriment on his belief that the doctor was an employee or agent of the cruise line. Franza v. Royal Caribbean Cruises, Ltd., 948 F. Supp. 2d 1327 (S.D. Fla. 2013).

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[END OF SUPPLEMENT]

§ 7. Joint venture theory of liability

[Cumulative Supplement]

The courts in the following cases determined whether the liability of a cruise ship operator was supportable for the negligence of a medical provider under a joint venture theory of liability under the facts and circumstances presented.

In Hajtman v. NCL (Bahamas) Ltd., 2008 WL 1803630 (S.D. Fla. 2008), an action by a cruise ship passenger due to injury sustained when she was misdiagnosed by a nurse, the court held that the defendant cruise ship operator could not be held liable for the negligence of its medical staff on the asserted theory that the defendant and the medical staff formed a joint venture to operate the ship's medical facility for profit. The court stated that a medical staff existed on the defendant's ships as a convenience to the passengers, not as a joint venture, and thus, the plaintiff's attempt to circumvent the established principle that carriers are not responsible for the negligence of their on-board physicians would not be permitted.

In Hesterly v. Royal Caribbean Cruises, Ltd., 515 F. Supp. 2d 1278, 2008 A.M.C. 548 (S.D. Fla. 2007) (applying Florida law), the court, in holding that the owner of a cruise ship could not be vicariously liable for the alleged medical malpractice by doctors on the ship's medical staff, said that the plaintiff's argument that the ship owner was a medical care provider was without merit, because a cruise line was not a joint venture or other association for professional activity by health care providers within the meaning of Fla. Stat. Ann. § 766.202(4).

CUMULATIVE SUPPLEMENT

Cases:

Cruise ship passenger's failure to state facts to plausibly establish existence of joint venture between cruise ship operator and shipboard medical staff that attended to passenger after he sustained injuries in slip-and-fall accident precluded passenger's claim for joint venture liability between operator and staff. Hung Kang Huang v. Carnival Corp., 909 F. Supp. 2d 1356 (S.D. Fla. 2012).

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[END OF SUPPLEMENT]
§ 8. Negligence resulting in unseaworthiness of ship

The following authority determined whether liability of a cruise ship operator was supportable for negligence resulting in unseaworthiness of the ship under the facts and circumstances presented.

The court in Fuentes v. Royal Caribbean Cruises, Ltd., 69 So. 3d 1101, 2011 A.M.C. 2866, 81 A.L.R.6th 717 (Fla. 3d DCA 2011)—recognizing that the fact that a ship’s physician errs in his treatment does not prove that he was incompetent so as to render the ship unseaworthy but that the error tends to make an inference of incompetence more probable—held that a cruise ship was not unseaworthy based on the allegation that the ship’s doctor was negligent in diagnosing and treating a patient’s ectopic pregnancy in the absence of any allegation that the doctor was not fit for his ordinary duties or not up to the ordinary standards of his profession, that the cruise ship owner did not have an affirmative duty to promulgate policies and procedures to govern medical care and emergency evacuations on board its vessel for ship personnel, and that the failure to promulgate such procedures did not render the vessel unseaworthy. However, the court held that because future discovery might yield information supporting the conclusion that the ship’s junior doctor or nurses were incompetent or unfit and that the vessel therefore was unseaworthy, the entry of summary judgment on the claim by the personal representative of the estate of the deceased ship photographer was premature and would be denied.

§ 9. Apparent agency or agency by estoppel—Liability supportable

[Cumulative Supplement]

The following cases held that liability of a cruise ship operator for medical negligence was supportable on a theory of apparent agency or agency by estoppel under the facts and circumstances presented.

In Doonan v. Carnival Corp., 404 F. Supp. 2d 1367, 2005 A.M.C. 2971 (S.D. Fl. 2005), the court held that allegations that a defendant cruise line held out a ship’s doctor to passengers as serving in capacities in addition to physician were sufficient to state a claim against the cruise line for the doctor’s alleged negligence in treating a passenger, based on his apparent authority to act for cruise line. The court noted that it was alleged that the doctor wore a cruise line uniform, ate with the ship’s crew, was held out to the passengers as an officer of the ship, was addressed by the ship’s crew as an officer of the ship, and was listed in "literature provided by Defendant," presumably some type of informational pamphlet, as a crew member and/or employee.

In Fairley v. Royal Cruise Line Ltd., 1993 A.M.C. 1633 (S.D. Fl. 1993), the court denied a motion to dismiss a passenger’s negligence complaint against a cruise line for the alleged malpractice of its ship doctor on a theory of apparent agency, also called agency-by-estoppel. The complaint alleged that the cruise line had held out its ship’s doctor and medical personnel as agents or employees of itself and had led passengers to believe that such medical personnel acted with the apparent authority and ratification of the cruise line. The court concluded that it could not say that there was no conceivable set of facts under which the plaintiff could prevail on her claim on an agency-by-estoppel theory. Proof of apparent agency would permit recovery on the theory that even where the ship doctor was an independent contractor (and consequently, the majority rule would not permit vicarious liability), the defendant could be liable for the ship doctor's malpractice if the ship actually held the doctor out to be its agent, under circumstances suggesting that the doctor was treating the plaintiff on behalf of the defendant and the plaintiff so relied to her detriment.

CUMULATIVE SUPPLEMENT

Cases:
Liability of Cruise Ship Operator for Medical Negligence, 21 A.L.R.6th 235 (Originally...)

Allegations by deceased passenger's estate that cruise line promoted its medical staff and represented them as being cruise line employees through brochures, internet advertising, and on vessel, publicly described its medical centers in proprietary language, billed passengers directly for onboard medical services, required its doctors and nurses to wear uniforms bearing cruise line's name and logo, held out physician and nurse as members of ship's crew, and introduced physician to ship's passengers as one of ship's officers, that passenger reasonably could believe that physician and nurse were authorized to render medical services for cruise line's benefit, and that passenger relied on their advice to his detriment were sufficient to plead plausible medical malpractice claim against cruise line under apparent agency theory. Franza v. Royal Caribbean Cruises, Ltd., 772 F.3d 1225 (11th Cir. 2014).

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[END OF SUPPLEMENT]

§ 10. Apparent agency or agency by estoppel—Liability not supportable

[Cumulative Supplement]

The following cases held that under the facts and circumstances presented, liability of a cruise ship operator for medical negligence was not supportable on a theory of apparent agency or agency by estoppel.

In Peavy v. Carnival Corp., 2012 WL 5306353 (S.D. Fla. 2012), the court held that the plaintiff passenger failed to state a claim against a cruise ship owner for the alleged medical negligence of the ship's doctor and nurse based on the medical staff's apparent agency. The passenger alleged that the ship owner held the doctor and nurse as its employees because those persons (1) provided their services in the ship's infirmary; (2) wore uniforms as prescribed by the owner, and (3) wore badges or name tags identifying themselves as the owner's employees. However, the court said that the complaint contained no factual allegation to support the conclusion that these manifestations led the passenger to believe that the doctor and nurse were authorized to act for the benefit of the owner or that it was reasonable for him to act on this belief to his detriment.

In Lobegeiger v. Celebrity Cruises, Inc., 869 F. Supp. 2d 1356 (S.D. Fla. 2012), the court held that a cruise ship passenger did not have a reasonable belief that a shipboard medical doctor was an agent of the cruise line, and thus the cruise line was not vicariously liable to the passenger in negligence, under the theory of apparent agency, for the doctor's alleged actions in treating the passenger for an injury she sustained aboard the ship. The court noted that the ticket contract between the passenger and the cruise line had stated that the shipboard doctor was an independent contractor for whose actions the cruise line was not responsible, the medical form completed upon the passenger's presentation to the ship's infirmary stated in a bold font that the physicians were independent contractors, and the passenger had read and acknowledged the ticket contract and the medical form.

The district court in Gavigan v. Celebrity Cruises, Inc., 843 F. Supp. 2d 1254 (S.D. Fla. 2011), held that that the personal representative of a deceased passenger's allegations that the decedent relied upon the ship operator's representations that the shipboard physicians were the operator's agents were not sufficient to state a Death on the High Seas Act (46 U.S.C.A. § 30302) negligence claim, seeking to hold the operator liable for the negligent acts of the shipboard physicians premised on the theory of apparent agency under general maritime law since the complaint lacked sufficient factual allegations that the passenger relied on, or changed his position in reliance on, his alleged belief that the physicians were the agents of the operator.

The district court in Rinker v. Carnival Corp., 836 F. Supp. 2d 1309 (S.D. Fla. 2011), although holding that a genuine issue of material fact existed as to whether the cruise line's failure to timely evacuate a sick passenger resulted in her hearing loss and neurological problems, precluding summary judgment on the issue of causation in her negligence claims, found that the husband passenger did not detrimentally rely on any alleged manifestations made by the cruise line that the doctor and nurses
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had the authority to act for the cruise line in treating his wife, as required for his negligence claims against the cruise line based on the apparent authority of the doctor and nurses to act for the cruise line, where the husband did not claim he would not have sought medical treatment from them had he known they were independent contractors.

In Suter v. Carnival Corp., 2007 A.M.C. 2564, 2007 WL 4662144 (S.D. Fla. 2007), where a passenger on a cruise ship fell and was injured, and sustained further injury to her neck, resulting in partial paralysis due to the actions of the ship's doctor, the district court ruled that although the owner was alleged to be liable for the negligent acts of the doctor on a theory of apparent agency—where it was alleged that the doctor wore a ship's officer's uniform, ate with the ship's crew, was presented as an officer of the ship, was addressed by the ship owner as an officer of the ship and held out to passengers as an officer of the ship—the passenger failed to make any allegation that she changed her position based upon, or otherwise relied upon the ship owner "holding out" the doctor as its agent; accordingly, the passenger failed to allege a cognizable claim of negligence against the ship owner based upon the theory of apparent agency, so that the complaint would be dismissed.

The district court in Hajtman v. NCL (Bahamas) Ltd., 526 F. Supp. 2d 1324, 2008 A.M.C. 1145 (S.D. Fla. 2007), held, even if the owner-operator of a vacation cruise vessel made a manifestation of agency causing a passenger to believe that the vessel's medical staff had authority, as agents, to act for the owner-operator, as principal, in that medical staff members wore ship uniforms, ate with the ship's crew, were under command of ship's officers, were called ship officers, and were paid by the owner-operator, the passenger's belief that the medical staff members were the owner-operator's agents was unreasonable, and therefore, the owner-operator was not liable, under federal maritime law, for the medical staff's alleged acts of negligence and false imprisonment pursuant to a theory of apparent agency, given the long-standing maritime principle that shipowners and carriers were not vicariously liable for the acts of medical staff and the disclaimer on the passenger ticket contract, which gave the passenger further notice of the absence of an agency relationship.

CUMULATIVE SUPPLEMENT

Cases:

Absent an explicit manifestation by a ship owner that medical staff are agents of the owner, it is unreasonable as a matter of law for a passenger to believe the medical staff are the ship owner's agents. Hung Kang Huang v. Carnival Corp., 969 F. Supp. 2d 1356 (S.D. Fla. 2012).

Passenger's allegations that medical staff was negligent in providing treatment when she suffered a stroke on cruise ship failed to state claim against cruise ship company for vicarious liability based on apparent agency; passenger did not allege how, had she known that the doctors and nurse were not company's agents, she would have rejected the medical staff's advice or treatment. Mumford v. Carnival Corp., 7 F. Supp. 3d 1243 (S.D. Fla. 2014).

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[END OF SUPPLEMENT]

§ 11. Failure to provide medical care

[Cumulative Supplement]

The following authority addressed the liability of a cruise ship operator for the failure to provide medical care.
CUMULATIVE SUPPLEMENT

Cases:

Cruise ship operator has no duty to provide doctors or other medical personnel to its passengers, and thus it cannot be held liable for allegedly failing to fulfill a duty to provide medical care, regardless of whether the passengers are on the ship or participating in a shore excursion. Aronson v. Celebrity Cruises, Inc., 30 F. Supp. 3d 1379 (S.D. Fla. 2014).

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[END OF SUPPLEMENT]

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Footnotes
1 Am. Jur. 2d, Shipping § 552.