

On a Motion for Summary Judgment by the Plaintiffs on liability, the Court said:

Plaintiffs move for partial summary judgment as to liability, or in the alternative, for a presumption of liability against Defendant Carnival based upon the doctrine of *res ipsa loquitur*. Specifically, Plaintiffs argue that they are entitled to summary judgment as a matter of law because the engine room fire started for no reason other than Carnival's sheer negligence and utter failure to perform necessary and required maintenance on the Vessel's diesel generators and flexible fuel lines; the engine room, including the diesel generators and flexible fuel lines were under the exclusive control of Carnival at all relevant times; and there is no evidence to suggest the fire was caused by any action or contribution by Plaintiffs.

A finding of negligence based on the doctrine of *res ipsa loquitur* in the admiralty context is not totally unique but neither is it routine. *United States v. Baycon Indus., Inc.*, 804 F.2d 630, 633 (11th Cir. 1986). The doctrine of *res ipsa loquitur* applies if: the injured party was without fault, (2) the instrumentality causing the injury was under the exclusive control of the defendant, and (3) the mishap is of a type that ordinarily does not occur in the absence of negligence. *United States v. Baycon Indus. Inc.*, 804 F.2d 630, 633 (11th Cir. 1986) No act need be explicable only in terms of negligence in order for the rule of *res ipsa loquitur* to be invoked. The rule deals only with permissible inferences from unexplained events. *Johnson v. United States*, 333 U.S. 46, 49, 68 Sup. Ct. 391, 92 Ed. 468 (1948).

It is undisputed that the plaintiffs were without fault. Carnival argues that there are disputed issues of fact whether the Triumph's engine room, diesel generators, and specifically the flexible fuel hose were in the exclusive control of Carnival at relevant times and whether the cause of the fire could only be caused by negligence.

With regard to the second prong of the test, the Court finds that the instrumentalities involved were under the exclusive management and control of the defendant. *Ribovich v. Anheuser Busch, Inc.* Supp. 589, 594 (M.D. Fla. 1997) affd sub nom. *Ribovich v. Anheuser-Busch Cos.*, 180 F.3d 273 (11th Cir. 1999). Again looking to Restatement of Torts, regarding Defendant's exclusive control comment g states that: [t]he plaintiff may sustain this burden of proof with the aid of a second inference, based on a showing that the cause for the event was within the defendant's responsibility or a showing that the defendant is responsible for all reasonably probable causes to which the event can be attributed. Usually this is done by showing that a specific instrumentality which has caused the event, or all reasonably probable causes, were under the exclusive control of the defendant.

Thus the responsibility of the defendant is proved by eliminating that of any other person.

Restatement (Second) of Torts Sec. 328D (1965).

Additionally, comment g states that the defendant may be responsible where he is under a duty to the plaintiff which he cannot delegate to another or he is under a duty to control the conduct of a third person. The essential question in determining "exclusive control" becomes one of whether the probable cause is one which the defendant was under a duty to the plaintiff to anticipate or guard against.

Restatement (Second) of Torts Sec. 328D (1965).

It is undisputed that the vessel, the flexible fuel lines and diesel generator six (DG 6) were under the exclusive control and management of Defendant's agents during the subject cruise. Although the record evidence shows, and Carnival argues, that: 1) the Triumph and its engine room are regularly boarded by third party vendors who never expressed any concerns about the delay of the overhaul of DG6; 2) the Triumph was regularly inspected by classification society, Lloyd's Register, and the United States Coast Guard, who never called the vessel's fitness to sail or safety into question as a result of the maintenance of its engines; and 3) as recent as February 4, 2013, three days before the commencement of the subject voyage, the Triumph underwent maintenance on DG6 from a third-party vendor, there is no record evidence to suggest that any party, other than Carnival, operated, managed or had any control over the vessel, engine room or the machinery therein during the subject cruise. The Court thus finds a sufficient showing of exclusive control in that the defendant is responsible for reasonably probable causes to which the event can be attributed, and the probable cause is one which the defendant was under a duty to the plaintiffs to anticipate or guard against.

As to the third prong, the Court finds that the record evidence demonstrates that the fire and resulting conditions experienced by Plaintiffs aboard the Triumph is a mishap that ordinarily does not occur in the absence of negligence. *Id.* at 634. It is undisputed that a fire broke out in the vessel's engine room as a result of a leak in a flexible fuel hose for D.G. 6. It is also undisputed that as a result of the fire, the vessel became disabled. In this case, the events that occurred were sufficiently unusual to support an inference that, the absence of negligence by those in charge, the fire and resulting conditions would not have occurred. See *Olsen v. State Line*, 378 F.2d 217 (9th Cir. 1967). It is highly likely that Carnival was responsible for all reasonably probable causes to which the accident could have been attributed. See *Olsen* at 220. Here, the facts of the occurrence warrant the inference of

negligence. *Johnson v. United States*, 333 U.S. 46, 48, 68 S.Ct. 391, 92 L.Ed.468 (1948).

Once the inference of negligence is established, the defendant has the burden of rebutting the inference. *Baycon* at 634. Carnival argues that the Triumph's power plant and engines were inspected by the relevant authorities prior to the incident and that engines and equipment were in compliance with the relevant regulatory requirements. Carnival also contends that the subject fuel hose that leaked was replaced six months prior to the incident, well within the manufacturer's requirement and that this case was just an accident. However, the prior inspections, compliance and repairs do not show that Carnival was not in exclusive control at the time of the cruise. The Court finds Carnival's arguments and the record evidence insufficient to rebut the inference of negligence. Specifically, Carnival offers no feasible explanation for the fire absent lack of due care. As such, Plaintiffs' motion for partial summary judgment is granted.

Terry v. Carnival Corporation, ____ F. Supp. 3d ____, Case No. 13-20571-CIV-GRAHAM/GOODMAN, Order on Motions for Summary Judgment, January 16, 2014 [DE 199].