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MARYLAND ASSOCIATION FOR JUSTICE

Cruise Ship Injury Claims:
The Basics
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This is a brief summary of some of the more common issues in the claims of passengers against cruise lines. The purpose of this paper is to alert lawyers who do not specialize in this area to these issues and to instruct them on how to screen these claims.

In order to handle claims by passengers against cruise lines the attorney for the passenger should be knowledgeable and experienced in three areas. The first area is maritime law. The second is Federal Court practice as most of these claims will be there. Third, the attorney should know the processes and procedures for the operation of a cruise ship.

What Law Applies

Almost everything which happens on a cruise ship is governed by maritime law. Most of the maritime law which governs these claims is the common law known as the General Maritime Law (GML) of the United States and the Federal Shipping Act, 46 USC Subtitle III – Maritime Liability and especially 46 USC Sec. 30101 et seq.[i]

The GML holds that under most circumstances the terms and conditions of the Cruise Passenger Ticket Contract (the Ticket) are enforceable.[ii] As a threshold matter, the relevant terms and conditions of the Ticket for every cruise line are the venue selection clause, the notice of claim requirements, and the statute of limitations.

Venue, Notice, And Statute Of Limitations

Every Ticket specifies the venue for filing suit. Those provisions have been held to be enforceable if they are reasonably communicated and if the cruise line has a reasonable connection to that venue.[iii] The venue for the big three cruise lines, Royal Caribbean, Carnival, and NCL, is in Federal Court in the Southern District of Florida. Other cruise lines also designate the Southern District of Florida.[iv] And others designate the Central District of California,[v] the Western District of Washington,[vi] either the Middle District of Florida or state court in Brevard County, Florida,[vii] the Southern District of Indiana,[viii] and various countries around the world depending on the cruise line and whether the itinerary for the cruise included a U.S. port.[ix]

The terms of the Ticket also require that the passenger give notice of a claim within a certain period of time, not less than 6 months after the incident. Title 46 of the U.S. Code provides that the Ticket cannot require notice of "a claim for personal injury or death to less than 6 months after the date of the injury or death".[x]

Usually, the Ticket requires notice within 180 or 185 days of the incident. That notice must be in writing and it must provide the "full particulars" of the claim. The "full particulars" are the who, what, when, where, how, and why of the incident, details which would allow the cruise line to investigate the claim. For these reasons, a letter of representation from an attorney, without more, may not fulfill these requirements.

If for some reason you do not provide the notice of a claim within 6 months, the most important section of Title 46 is as follows[xi]:

> **(c) Effect of failure to give notice.** When notice of a claim for personal injury or death is required by a contract, the failure to give the notice is not a bar to recovery if:
>
> **(1)** the court finds that the owner, master, or agent of the vessel had knowledge of the injury or death and the owner has not been prejudiced by the failure;
>
> **(2)** the court finds there was a satisfactory reason why the notice could not have been given; or
>
> **(3)** the owner of the vessel fails to object to the failure to give the notice.

In the typical injury onboard, for example a slip and fall or trip and fall, the cruise line cannot complain that it is prejudiced by the lack of formal, written notice. Typically, the passenger or someone else calls for medical attention immediately after the injury. The medical personnel in the ship's infirmary take a history including a brief description of what happened and record the history in the chart. The ship's physician or nurse then calls the Safety Officer who responds to the infirmary, interviews the injured passenger, has the injured passenger or his/her companion complete a statement, and sometimes accompanies the passenger back to the scene. Therefore, the cruise line is put on notice and investigates the claim right after the incident occurs. There is no prejudice to the cruise line for the lack of formal, written notice.[xii]

However, where the claims are for the negligent medical care provided onboard, the reporting onboard to the medical center will not supplant the notice requirement. For example, if the claim is for medical negligence of the ship's medical staff, the medical treatment is recorded but the negligence of the treatment may not be.[xiii] And where the cruise line held the passenger onboard the ship before allowing her to disembark because the passenger had not paid her bill for medical treatment, the failure to provide pre-suit notice was also fatal to the claim.[xiv]

The Shipping Act also provides that where the cruise itinerary touches a U.S. port, the cruise line cannot limit "bringing a civil action for personal injury or death, in the case of seagoing vessels, to less than one year after the date of the injury or death".[xv] Because of that, most if not all of the Tickets utilized by cruise lines provide for a 1-year statute of limitations. And that contractual shortening of the time to file suit also has been held to be enforceable.[xvi]

There is a tolling period for the notice of the claim in the case of minors, incapacitated persons and in the case of the death of a passenger. 46 USC Sec. 30526 (d) provides:

> **(d) Tolling of Period to Give Notice.** If a claimant is a minor or mental incompetent, or if a claim is for wrongful death, any period provided by a contract for giving notice of the claim is tolled until the earlier of:
>
> (1) the date a legal representative is appointed for the minor, incompetent, or decedent's estate; or
>
> (2) 3 years after the injury or death.

Most Common Claims

The most common claims of passengers against cruise lines are for slip and falls, trip and falls, medical negligence, assaults including rapes and other sexual assaults, and injuries on excursions.

The Plaintiff in these claims must show either that an employee of the cruise line caused or created the dangerous condition or that the cruise line had actual or constructive knowledge of the dangerous condition.[xvii] The dangerous condition of which the Plaintiff is required to show notice includes a wet spot on a dance floor,[xviii] a raised threshold,[xix] and the perils of going to a beach known for its gang violence to which cruise line employees directed cruise passengers to go.[xx]

Slip And Falls

In slip and fall and trip and fall cases, notice is the issue on which the trial courts grant Defendants' motions to dismiss and motions for summary judgment most often. For that reason, we grill closely the prospective client and key witnesses as part of the initial intake.

Notice to the cruise line can be actual or constructive.[xxi] Constructive notice is shown by the fact that the dangerous condition was there for such a period of time such that the cruise line should have known about it and had an opportunity to clean it, warn about it, or cordon off the area.

There are numerous ways to show that the cruise line had notice of a transitory substance on the deck/floor. We usually ask three sets of questions of prospects. First, where did the water or moisture on the floor come from? In other words, was there a bucket and an employee in the area mopping? Did the moisture look like condensation on the floor right inside the door which separates the cold air conditioned inside from the warm, humid air outside? Was the wetness from rain which had stopped hours before but which the cruise line had not cleaned or warned about? Or was the wetness a spill from someone?

The second question is how large was the area of wetness. The size of the wet area can be an indication as to how long it took to get there.[xxii] This is where the caller will often say at first blush that they don't know the size of the area of wetness. The person who fell often does not recall the wetness or other conditions as he or she is in shock and in pain, so we interview people who responded to the scene after the fall. If the prospect or the person who accompanied the prospect knows where on the body of the fallen person was wet after the fall, the dimensions of the wet area can be determined.

The third question to ask of any slip and fall passenger is how long the wetness had been on the floor. This question is related to the others. The length of time something had been on the floor usually is shown by circumstantial evidence. The 11th Circuit Court of Appeals recently discussed circumstantial evidence which shows the length of time a substance is on the floor for constructive notice. In *Sutton v. Walmart Stores East, LP* the Federal appellate court reversed a summary judgement for the defendant.[xxiii] In *Sutton*, the plaintiff testified that there had been a grape on the floor and there were skid marks and step marks nearby. The marks were not made by the plaintiff. And the video of the area, which ran for an hour, does not show anyone spilling or putting a grape on the floor. So, it appears that the grape was there for at least an hour. The Court in *Sutton* said:

> "[C]ourts have found constructive notice" when the "offending liquid was dirty, scuffed, or had grocery cart track marks running through it," or if there was "[o]ther evidence such as 'footprints, prior track marks, changes in consistency, [or] drying of the liquid.'" *Norman v. DCI Biologicals Dunedin, LLC*, 301 So. 3d 425, 429 –30 (Fla. 2d DCA 2020) (second alteration in original) (quoting *Palavicini v. Wal-Mart Stores E., LP*, 787 F. App'x 1007, 1012 (11th Cir. 2019) (per curiam)); see also *Welch v. CHLN, Inc.*, --- So. 3d ----, No. 5D22-357, 2023 WL 2542275, at *2-3 (Fla. 5th DCA Mar. 17, 2023); *Mashni v. Lasalle Partners Mgmt. Ltd.*, 842 So. 2d 1035, 1037 – 38 (Fla. 4th DCA 2003); *Cisneros v. Costco Wholesale Corp.*, 754 So. 2d 819, 821 (Fla. 3d DCA 2000); *Colon v. Outback Steak-house of Fla., Inc.*, 721 So. 2d 769, 771 (Fla. 3d DCA 1998); *Woods v. Winn Dixie Stores, Inc.*, 621 So. 2d 710, 711 – 12 (Fla. 3d DCA 1993) (per curiam); *Zayre Corp. v. Bryant*, 528 So. 2d 516, 516 (Fla. 3d DCA 1988) (per curiam); *Camina v. Parliament Ins. Co.*, 417 So. 2d 1093, 1094 (Fla. 3d DCA 1982) (per curiam); *Winn-Dixie Stores, Inc. v. Guenther*, 395 So. 2d 244, 246 (Fla. 3d DCA 1981).

Also, the Court said that **evidence of track marks or footprints alone** probably is enough to show that the dangerous condition was in existence for a sufficient period of time. The Court said in a footnote:

> Wal-Mart also relies on *Berbridge v. Sam's East, Inc.*, 728 F. App'x 929 (11th Cir. 2018) (per curiam), and a slew of federal district court cases, claiming that in addition to evidence of a track mark or footprints a plaintiff must offer something more to create a genuine dispute of material fact. Unlike the

large body of Florida case law we have cited, these cases are not binding on this Court. Rather, we are obliged to follow Florida's appellate courts in discerning Florida Law. But in any event, Wal-Mart misapprehends some of their holdings – which actually support reversal here. In *Berbridge*, for instance, "the fact of a 'dirty' liquid substance" without additional evidence was not enough to survive summary judgment, but a panel of this Court observed that additional circumstances... could support an inference of constructive knowledge." Id. At 933. Likewise, in one district court case, *Ayers v. Wal-Mart Stores, East, L.P.*, "[i]t [was] undisputed that the water was clean with no footprints, track marks, or smudges," so there were no additional facts establishing constructive notice. No. 15-24663-CIV, 2017 WL 747541, at *1–3 (S.D. Fla. Feb. 27, 2017).

Finally, the Court reviewed the cases which dealt with the amount of time that the puddle or spill or dangerous thing was on the floor. Four minutes and 13 minutes, respectively, in some cases is not enough. "At least 15 to 20 minutes" has been held to be sufficient time to show that the business should have picked it up or cleaned it up and posted a warning sign.[xxiv]

Prior similar incidents of course also show notice. "A single prior incident [5 years before the subject incident] is sufficient to place the cruise line on notice of a dangerous condition."[xxv] Notice by a cruise line can be derived from other ATV incidents on excursions involving other operators but still within the cruise line's shore excursion portfolio.[xxvi] The cruise ship operator can have notice of a dangerous condition created by zip line from prior reports of substantially similar incidents.[xxvii] And the fact that there have been falling bunks reported by other passengers in other cabins were sufficient to meet the notice requirement for purposes of denying a defense summary judgment motion.[xxviii]

Other questions of cruise passengers should be about the role which cruise ship employees played in creating the dangerous condition. The 11th Circuit in 2021 held that where the negligence of the cruise line is vicarious, the scope of the duty and the notice to the cruise line of the dangerous condition is irrelevant. In *Yusko v. NCL (Bahamas) Ltd*, a cruise employee was dancing with cruise passengers onboard the ship. The employee dropped or let go of one passenger who was injured as a result of her fall. The trial court in *Yusko* granted the cruise line's Motion for Summary Judgment on the basis that the cruise line was not on notice that its employee would drop the passenger. The 11th Circuit reversed and said that "when the tortfeasor is an employee, the principle of vicarious liability allows an otherwise non-faulty employer to be held liable for the negligent acts of that employee acting within the scope of employment."[xxix]

Trip And Falls

Trips and falls on a fixture or architectural detail of the ship are common. The allegations will be that the cruise line negligently designed or constructed that aspect of the ship. The allegations also have to include that the cruise line "actually created, participated in, or approved" the design of that aspect of the ship.[xxx] There is little or no substitute for taking discovery on the cruise line's participation in the design and construction process. The fact is that all cruise ships are custom made to order. All of the major cruise lines have design departments and station employees and representatives for years at the shipyards during construction of their ships. And the cruise line has the right to inspect and the right to reject any aspect of the construction. But this adds another layer of litigation and proof to the case.

Open And Obvious Defense

This is a favorite defense in all premises liability actions. And the question you need to ask any client or prospective client is "Why didn't you see it?" This goes to comparative negligence.[xxxi] In a failure-to-warn claim, if the hazard is open and obvious the cruise line does not have a duty to warn and the defendant should win on that particular count.[xxxii]

Rainwater

The defendant has the burden to prove not only that the condition itself was open and obvious but that the dangerousness of the condition was open and obvious. Just because a deck is wet does not mean that the risk of walking on it is open and obvious. Courts have held that condensation on an interior floor is not necessarily open and obvious. In *Meredith v. Carnival Corp.* the Court held that "an anomalous condition in otherwise safe areas, such as a slippery substance on a walkway, generally are not open and obvious."[xxxiii] In *Frasca v. NCL (Bahamas) Ltd.*, the 11th Circuit reversed a summary judgement for the Defendant cruise line where the Plaintiff passenger slipped and fell because of rain water on an open deck.[xxxiv] The rainwater was deemed to be open and obvious. But the slipperiness of the deck was not open and obvious. And there the slipperiness was unexpected.[xxxv]

Raised Threshold

In *Bonilla v. Seven Seas Cruises*, a passenger tripped on a 3-inch raised metal threshold and fell. On summary judgment, the defendant argued that the plaintiff could not prove that the cruise line had notice of a dangerous condition because no prior accidents occurred at that location. The defendant also argued that the fixture was open and obvious and that the plaintiff did not produce an expert who could testify that the threshold was unreasonably dangerous.

The court held that the metal threshold was small enough not to be open and obvious, but it was large enough to be dangerous.[xxxvi] The fact that the cruise line operated the ship for about four years before the plaintiff was injured with that same raised metal threshold was evidence in and of itself that a jury could find that the defendant had actual or constructive knowledge of the dangerous condition.[xxxvii]

Medical Negligence

All major cruise lines provide medical care to passengers onboard their ships. Providing medical care is a selling point for cruise lines. They want to appeal to older Americans, among others, and want to sail to areas which are beautiful, but which may not have first world medical care.[xxxviii]

Further, maritime and international law require that a ship divert its course to rescue or to provide essential or urgent medical care to its passengers (or to anyone otherwise stranded at sea). Consequently, providing medical care onboard its ships actually is a time and money saver. As the 11th Circuit said in *Franza v. Royal Caribbean Cruises, Ltd*[xxxix]:

> Carriers owe their ailing passengers "a duty to exercise reasonable care to furnish such aid and assistance as ordinarily prudent persons would render under similar circumstances." *Barbetta*, 848 F.2d at 1371 (internal quotation marks omitted). By investing in medical infrastructure and hiring skilled medical employees, cruise ships avoid the potentially high cost of providing reasonable care in more expensive ways. *See, e.g., The Iroquois*, 194 U.S. 240, 243, 24 S.Ct. 640, 48 L.Ed. 955 (1904) (explaining that reasonable care depends on, *inter alia*, "the proximity of an intermediate port"). The shipowner, by providing onboard medical resources, will often "avoid[] [its] sometimes inconvenient and costly duty to change course for the benefit of an ailing passenger." *Nietes*, 188 F.Supp. at 221.

The cruise lines market to the U.S. population. The brochures and websites of every major cruise line tout the fact that the ship has an infirmary and doctors and nurses. The brochures and websites all say that the ship is capable of handling medical emergencies. Yet the cruise line's medical staff repeatedly demonstrate that they are not capable of handling medical emergencies. These physicians typically are not licensed in the U.S. and are not trained to take charge; They are trained to take orders. Consequently, these physicians rarely communicate that there is a medical emergency onboard.

Medical treatment errors occur onboard cruise ships commonly where (a) the ship's physician underdiagnoses the injury and encourages the passengers to stay onboard the ship until the next port or the end of the cruise; (b) the physician onboard correctly diagnoses the problem but fails to take charge and insist that the ship speed up or that the captain call for an emergency evacuation by helicopter or that the ship's port agent marshal a private or public ambulance in a port on an emergency basis; (c) The ship's physician misdiagnoses the condition and administers the wrong medication or treatment.

In the cases where the ship's physician does not take action, several experts may be needed in addition to the standard medical negligence experts. The Plaintiff will need standard of care and causation experts, as in every medical negligence case. But in the failure to timely evacuate case where the ship is at sea at the time of the emergency, the plaintiff needs to consult and retain experts on the capabilities of the USCG or whatever other assets are available in that area of the world. For example, in acute ischemic stroke (AIS), time is of the essence. The passenger who is suffering a stroke has only 3 hours to get a CT scan (to determine what kind of stroke it is) and to get the injection of the clot-buster tPA in order to get the optimum results from tPA. The question is does the ship have options when this occurs given the location of the ship at sea or at port.

Medical malpractice onboard a cruise ship can give rise to an action for assumption of duty.[xl] In *Disler*, the plaintiff suffered a stroke, failed to receive adequate care or evacuation for over 24 hours, and suffered resulting brain injury and paralysis.[xli] In ruling in the plaintiff's favor on assumption of a duty, the trial court cited the Second Restatement of Torts, Section 323, which holds that when one undertakes an action which he should recognize as implicating the safety or protection of another, one can be held responsible for any physical harm which arises from the failure to exercise reasonable care in that undertaking.[xlii]

The questions for the prospective medical negligence case onboard a cruise ship include:

(a) Who did what wrong? Which doctor or nurse or procedure is at fault? What did they do wrong exactly?

(b) If they had not delayed, not administered the wrong medication, or not done what it is they did, would the result now have been significantly different? And has any subsequent treater commented on that?

(c) Where was the ship at the time that the medical emergency first arose? How far from the closest port is that? How far from the closest medical center capable of treating the condition at least on an urgent basis is that? What are the logistics of getting the passenger to that medical center in time to make a significant difference in the outcome?

(d) Now that the damage has been done, is the damage caused by the error both significant and permanent? Will a further procedure make the condition better or correct the problem?

(e) Questions to establish general and specific health condition and issues of the prospective client like: age, height, and weight; underlying systemic issues like diabetes, lupus, hypertension, hyperlipidemia, Parkinson's disease, and the like; history of heart disease (heart attack), TIA or stroke; whether a smoker of tobacco; and why is it that he/she went to the infirmary in the first place.

Assaults

Assaults including sexual assaults happen on cruise ships. There are two common scenarios, one where a passenger assaults a passenger and another where a crew member assaults a passenger.

Liability for the passenger-on-passenger scenario is under negligence. That is, did the cruise line act unreasonably under the circumstances.[xliii]

One common scenario is where the cruise line overserves the assailant passenger. "[A] cause of action for over service of alcohol sounds in negligence."[xliv] And thus state dramshop statutes do not apply.

The questions for any prospective client who is the victim of an assault by another passenger include whether the cruise line waiters overserved the assailant passenger. And did the assailant passenger display aggressive behavior that should have alerted the cruise line security to the likelihood of an assault? How was the cruise line on notice that he the assailant passenger was going to rape or otherwise assault the other passenger? And was the assailant an older kid that they allowed into the teen or child program because they did not screen the children?

Liability for the crewmember on passenger scenario can involve many causes of action. A cruise line is strictly liable for assaults on passengers by its crew members. That is true even where the crime occurs on shore at a port of call.[xlv] Maritime law still applies to such acts. That is because ports of call are part and parcel of the cruise. The cruise line is liable for the safety of its passengers not only onboard the ship but also for incidents where they are expected to go.[xlvi]

Other causes of action for the sexual assaults by crewmembers of passengers include negligent hiring of the assailant crewmember.[xlvii] Negligent hiring occurs when the employer knew or *should have known* of the employee's unfitness before the employee was hired. *Id.* The issue of liability "primarily focuses upon the adequacy of the employer's pre-employment investigation into the employee's background."[xlviii][xlix]

The attorney in these cases should accomplish as much investigation as possible before the complaint is filed. However, the cruise lines choose to hire young men from developing countries which do not have the record keeping and infrastructure of the United States' law enforcement. So the investigation will be as useful usually as the investigation which the cruise lines elect to conduct before the crewmember is hired.

Negligent supervision is another cause of action for these assaults. Negligent supervision "occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further actions such as investigating, discharge, or reassignment."[l] The notice requirement is fulfilled where there is evidence that the problem is ongoing, recurring, continuous, or repetitive.[li][lii][liii]

Usually, the assailant crewmembers have socialized with the victim before the rape or assault. The questions to ask the prospective client and others on the cruise with the client are about whether they observed this crewmember before this happened. How many times did they see him? Was he in the passenger cabin area, an area where a server in a restaurant would not be allowed?

Injuries On Excursions

Excursions are also part and parcel of the cruise. The cruise line promotes and gives information about the excursions it offers on its cruises. And the passenger can pay for the excursion onboard. For these reasons, maritime law applies to incidents on excursions and the cruise line has "a duty to warn of known dangers beyond the point of debarkation in places where passengers are invited or reasonably expected to visit."[liv] But that alone will not trigger liability of the cruise line for the negligence of the excursion operator.[lv]

The plaintiff passenger is required to show that the cruise line had notice that this excursion was dangerous.[lvi] The question is what constitutes notice. The standard for admissibility of prior similar incidents to show notice of a dangerous condition is broad and general. Contrast that with the standard for admissibility of prior similar incidents to show that a product is defective. For the latter, the standard should be "substantial similarity". For notice to the cruise lines that a zip line or an ATV excursion is dangerous, however, should be more broad. Incidents from other vendors of the same cruise line but for the same type of activity on the subject excursion can suffice for notice.[lvii][lviii][lix]

Accordingly, search the internet using Google, Trip Advisor, and any other site where cruisers complain about cruises or excursions on cruises for a preliminary search. Were there problems on excursions of a similar activity which excursions were sold and promoted by the subject cruise line? This search may lead you to the foundation for notice and a viable cause of action against the cruise line.

The cruise lines, however, may have a non-delegable duty to vet or screen the independent contractor which operates the excursion. In *Lienemann v. Cruise Ship Excursions, Inc.*, the trial court held that a plaintiff successfully stated a claim at the motion to dismiss stage for breach of a non-delegable duty where the plaintiff entered into a shore excursion contract. In addition to the shore excursion contract, the plaintiff alleged that Carnival promised that "its contracted-for excursions utilized 'the best local providers at every port of call' and vouched for the excursion operator's safety and insurance record.[lxi] In so doing, the plaintiff alleged that Carnival orally modified the shore excursion contract and that the cruise line assumed additional duties beyond the duty to warn of dangers where passengers were reasonably expected to visit. Judge Lenard agreed with the plaintiff and let the count for breach of a non-delegable duty stand at the motion to dismiss stage.

In *Lienemann*, the trial court relied on *Ferretti v. NCL (Bahamas) Ltd.*[lxii] In Ferretti, a different judge decided whether the duty of reasonable care under the circumstances in a shore excursion case included additional duties beyond the "duty to warn of known dangers in places where passengers are invited or reasonably expected to visit." The court ruled that the cruise could owe additional duties under the reasonable care standard. The Court reasoned that *Wolf v. Celebrity Cruises, Inc.*, **did not limit** the duty of reasonable care under the circumstances to **only a** duty to warn about dangers where passengers are invited or expected to visit.[lxiv] Accordingly, the trial Court in that case

refused to dismiss allegations in line-item fashion, which stated claims beyond the duty to warn of known dangers.[lxv]

In another recent ruling, the District Court judge held in favor of the plaintiff and declined to dismiss a cause of action for breach of a non-delegable duty.[lxvi] In *Bailey v. Carnival Corp*, the plaintiff contended that Carnival "promoted, vouched for, and recommended a zip-line tour excursion" at a port of call in Mexico. While riding the zip-line, the plaintiff crashed into a barrier and fractured her left ankle.[lxvii] In denying the motion to dismiss regarding plaintiff's contract-based breach of non-delegable duty, the trial Court noted that other courts did not require that there be an express contractual provision guaranteeing safe passage.[lxviii] Rather, the Court found that the plaintiff could rely on oral representations and representations on Carnival's website to survive the motion to dismiss, including that Carnival assured plaintiff of a "safe, insured, reputable, and reliable" tour and that Carnival described the zip-line tour as one of "Carnival's Excursions."[lxix] Separately, the same judge dismissed a tort-based breach of non- delegable duty claim, which the plaintiff did not contest.

In excursion cases, there may be personal jurisdiction – usually in Florida – over the operator of the excursion with whom the cruise line contracts. Because of that, the attorney for the plaintiff should give the 6 month notice of a claim not only to the cruise line but also to the excursion operator.[lxx]

Biography

John H. (Jack) Hickey represented cruise lines and other self-insured corporations and insurance companies for the first 17 years of his practice. He is Board Certified by both The Florida Bar and the National Board of Trial Advocacy (NBTA) as a trial lawyer and is Board Certified by The Florida Bar in Admiralty & Maritime Law. Hickey serves on the Board of Governors of AAJ and on the Board of Directors of FJA. He is a Past President of the Dade County Bar Association. Hickey is a graduate of Florida State University (*magna cum laude, Phi Beta Kappa*) and Duke Law School. Hickey specializes in personal injury, wrongful death, admiralty and maritime, medical malpractice, premises liability, and product liability. www.hickeylawfirm.com.

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[i] See, e.g., Carroll v. Carnival Corporation, 955 F.3d 1260, 1267 (11th Cir. 2020); Franza v. Royal Caribbean Cruises, Ltd., 772 F.3d 1225. 1231 (11th Cir. 2014).
[ii] See, e.g., Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991).
[iii] Carnival Cruise Lines v. Shute, 499 U.S. 585 (1991)
[iv] For example, Costa Cruise Line if the cruise included a U.S. port, Celebration Cruises, and MSC Cruises
[v] Princess Cruises
[vi] Holland America Cruise Line
[vii] Disney Cruise Line
[viii] American Queen Steamboat Operating Company which has recently changed its venue to a District Court in Mississippi
[ix] For example, Costa Cruises and Viking Ocean Cruises and Viking River Cruises
[x] 46 USC Sec. 30508 (b)(1)
[xi] 46 U.S.C. Sec. 30508 (c)
[xii] Rutledge v. NCL (Bahamas) Ltd., 2010 WL 4116473 (S.D. Fla. 2010).
[xiii] Owen v. Carnival Corporation, 2022 WL 18023309 November 21, 2022 (Summary Judgment for the Defendant granted on insufficient pre-suit notice provided)
[xiv] Cigainero v. Carnival Corp., 426 F. Supp. 3d 1299, 1305 (S. D. Fla. 2019)
[xv] 46 USC Sec. 30526 (b)(2)
[xvi] Keefe v. Bahama Cruise Line Inc., 867 F. 2d 1318 (11th Cir. 1989) (which also recognized the concept of equitable estoppel of enforcement of the statute of limitations based on the misleading conduct of the cruise line)
[xvii] Yusko v. NCL (Bahamas) Ltd, 4 F 4th 1164 (11th Cir. 2021)
[xviii] Keefe v. Bahama Cruise Line Inc., 867 F. 2d 1318 (11th Cir. 1989)
[xix] Everett v. Carnival Cruise Lines, 912 F.2d 1355 (11th Cir. 1990)
[xx] Chaparro v. Carnival Corp., 693 F.3d 1333, 1336 (11th Cir. 2012)
[xxi] Brady v. Carnival Corporation, 33 F.4th 1278 (11th Cir. 2022)
[xxii] Grayson v. Carnival Cruise Lines, Inc., 576 So.2d 417 (Fla. 3d DCA 1991)
[xxiii] Sutton v. Wal-Mart Stores E., LP, 64 F.4th 1166 (11th Cir. 2023)
[xxiv] The Court said: When considering whether there is an issue of fact for submission to a jury in transitory foreign substance cases, courts look to the length of time the condition existed before the accident occurred." Wilson-Greene v. City of Miami, 208 So. 3d 1271, 1275 (Fla. 3d DCA 2017). Florida's courts have found "at least fifteen to twenty minutes... to be sufficient for defendants to be charged with knowledge of the condition and a reasonable time in which to correct it." Winn Dixie Stores, Inc. v. Williams, 264 So. 2d 862, 864 (Fla. 3d DCA 1972); 1 accord Lynch v. Target Stores, Div. of Dayton Hudson Corp., 790 So. 2d 1193, 119 4 (Fla. 4th DCA 2001) (per curiam). Other decisions in Florida have determined that thirteen minutes or less is not enough time. See Oliver v. Winn-Dixie Stores, Inc., 291 So. 3d 126, 127-30 (Fla. 4th DCA 2020); see also Walker v. Winn-Dixie Stores, Inc., 160 So. 3d 909, 912 (Fla. 1st DCA 2014) (holding "less than four minutes" to be sufficient).
[xxv] Medeiros v. NCL (Bahamas) Ltd., 2020 WL 1308728 * 8 (S.D. Fla. Mar. 5, 2020); Caron v. NCL (Bahamas), Ltd., 910 F.3d 1359, 1370 (11th Cir. 2018) (accepting that that prior reports of similar incidents are sufficient to provide a cruise ship operator with notice of a dangerous condition)
[xxvi] Doria v. Royal Caribbean Cruise Line, 393 F. Supp. 3d 1141 (S.D. Fla. 2019)
[xxvii] Chimene v. Royal Caribbean Cruises, Ltd., 2017 WL 8794706, at *4 (S.D. Fla. Nov. 14, 2017)
[xxviii] Jaber v. NCL Ltd., 2016 U.S. Dist. LEXIS 25873, *6, n. 2 (S.D. Fla. Mar. 2, 2016)
[xxix] Yusko v. NCL (Bahamas) Ltd, 4 F 4th 1164 (11th Cir. 2021) But the scope of a shipowner's duty has nothing to do with vicarious liability, which is not based on the shipowner's conduct. When the tortfeasor is an employee, the principle of vicarious liability allows "an otherwise non-faulty employer" to be held liable "for the negligent acts of [that] employee acting within the scope of employment." Langfitt v. Fed. Marine Terminals, Inc., 647 F.3d 1116, 1121 (11th Cir. 2011). Unlike a party that is directly liable for a tort, a party that is vicariously liable "has not committed any breach of duty to the plaintiff but is held liable simply as a matter of legal imputation of responsibility for another's tortious acts." Restatement (Third) of Torts: Apportionment Liab. § 13 cmt. b (2000); see also 1 American Law of Torts § 4:1 (2021) ("'Vicarious liability' is a term generally applied to legal liability that arises solely because of a relationship and not because of any act of negligence by the person held vicariously liable for the act of another."). In other words, an employer can be held liable under a vicarious liability theory even if it has not violated any duty at all. See Meyer v. Holley, 537 U.S. 280, 285-86, 123 S.Ct. 824, 154 L.Ed.2d 753 (2003) ("The principal is liable for the acts and negligence of the agent in the course of his employment, although he did not authorize or did not know of the acts complained of[.]" (quoting New Orleans, M., & C.R. Co. v. Hanning, 82 U.S. 649, 15 Wall. 649, 657, 21 L.Ed. 220 (1873)). Accordingly, it makes very little sense to rely on caselaw about the scope of a shipowner's duty where, as here, the shipowner's duty is irrelevant.
[xxx] Groves v. Royal Caribbean Cruises, Ltd., 463 F. App'x 837 (11th Cir. 2012); Mendel v. Royal Caribbean Cruises, Ltd., 2012 WL 2367853, *3 (S.D. Fla. June, 21, 2012)
[xxxi] Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 629 (1959); Caputo v. Holland Am. Line, Inc., 2010 WL 2102820, at *2 (W.D. Wash. 2010) ("At maritime law, a plaintiff's contributory negligence does not bar recovery); Geyer v. NCL (Bahamas) Ltd., 204 F. Supp. 3d 1354, 1358 (S.D. Fla. 2016) ("even if the danger was open and obvious, this is not a total bar to recovery. . . even when a person ... knows of an open and obvious danger, the person may still recover damages under the principles of comparative negligence if the elements of the tort have been proven.").
[xxxii] Carroll v. Carnival Corp., 955 F.3d 1260(11th Cir. 2020)
[xxxiii] Merideth v. Carnival Corp., 49 F. Supp. 3d 1090, 1094 (S.D. Fla. 2014) (citing Magazine v. Royal Caribbean Cruises, Ltd., 2014 WL 1274130, at *6 (S.D. Fla. Mar. 27, 2014)).
[xxxiv] Frasca v. NCL (Bahamas), LTD., 654 Fed.Appx. 949, 952 (11th Cir. 2016)
[xxxv] Luby v. Carnival Cruise Lines, Inc., 633 F. Supp. 40, 41 (S.D. Fla. 1986).
[xxxvi] Harnesk v. Carnival Cruise Lines, Inc., 1992 AMC 1472, 1991 WL 329584, at *4 (S.D. Fla. Dec. 27, 1991) (warning strips placed on a trip hazard were evidence of actual notice of the dangerous condition) (citing Luby v. Carnival Cruise Lines, Inc., 633 F. Supp. 40, 41 (S.D. Fla. 1986).
[xxxvii] Bonilla v. Seven Seas Cruises S. DE R.L., LLC, 38 F. Supp. 3d 1340 (S.D. Fla. 2014).
[xxxviii] See, e.g., the website of every major cruise line including its FAQs about medical care provided onboard.
[xxxix] Franza v. Royal Caribbean Cruises, Ltd., 772 F. 3d 1225, 1246 (11th Cir. 2014).
[xl] Disler v. Royal Caribbean Cruises Ltd, 2018 WL 1916614, at *4 (S.D. Fla. Apr. 23, 2018)
[xli] Id. at *1
[xlii] Id. at *4.
[xliii] Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630 (1959).
[xliv] Doe v. NCL (Bahamas) Ltd., 2012 WL 5512347, at *6 (S.D. Fla. Nov. 14, 2012)
[xlv] Doe v. Celebrity Cruises, Inc., 394 F.3d 891 (11th Cir. 2004).
[xlvi] Chaparro v. Carnival Corp., 693 F.3d 1333, 1336 (11th Cir. 2012).
[xlvii] (Doe v. NCL (Bahamas) Ltd., 2018 WL 3848421, at *2 (S.D. Fla. Aug. 13, 2018); see also Witover v. Celebrity Cruises, Inc., 161 F. Supp. 3d 1139, 1148 (S.D. Fla. 2016).
[xlviii] Stetzenbach v. Royal Caribbean Cruises, Ltd., 2019 U.S. Dist. LEXIS 33951 (S.D. Fla. Mar. 1,

2019)

[xlvi] Fed. R. Civ. P 9(b)); C.S. v. Wyndham Hotels & Resorts, Inc. ,2021 U.S. Dist. LEXIS 66501 (M.D. Fla. Apr. 6, 2021) Defendant moved to dismiss plaintiff's negligent hiring claim arguing that the plaintiff failed to prove that the defendant had knowledge that the catamaran operator was incompetent or unfit. The Court rejected such argument because knowledge "may be alleged generally" (the court denied the defendants motions to dismiss the negligent hiring, supervision, and retention claims and held that the complaint sufficiently alleged facts suggesting sex trafficking was occurring at the hotel, that the employees knew of it and failed to prevent it, that due to their control over the employees, each defendant knew or should have known of it, and that the defendants had control of the hiring of the employees

[i] Doe v. NCL (Bahamas) Ltd., No. 1:16-cv-23733-UU, 2016 U.S. Dist. LEXIS 150817 at *4 (S.D. Fla. Oct. 27, 2016).

[ii] Heard v. Carnival Corporation, Case No. 1:19-cv-22380-DPG, DE 19 (November 25, 2019). The Court denied Carnival's Motion to Dismiss including Carnival's motion to dismiss Plaintiffs negligent training and negligent supervision claims.

[iii] Baker v. NCL Am., LLC, 2020 U.S. Dist. LEXIS 79323 (S.D. Fla. May 6, 2020) The Court denied NCL's Motion to Dismiss in its entirety including NCL's motion to dismiss Plaintiffs negligent training and negligent supervision claims

[iii] Nielsen v. MSC Crociere S.A., 2011 U.S. Dist. LEXIS 158852 at *18-19 (S.D. Fla. June 24, 2011). The court denied the motion to dismiss for plaintiff's negligent supervision claim because the plaintiff alleged that the defendant had notice from ongoing, recurring, continuous or repetitive problems to remain and from a prior incident.

[liv] Chaparro, 693 F.3d at 1336 (citing Carlisle v. Ulysses Line Ltd., S.A., 475 So. 2d 248, 251 (Fla. 3d DCA 1985)).

[lv] Wolf v. Celebrity Cruises, Inc., 101 F. Supp. 3d 1298 (S.D. Fla. 2015) aff'd by Wolf v. Celebrity Cruises, Inc., 683 F. App'x 786 (11th Cir. 2017); Geitharni v. Celebrity Cruises, Inc., 739 F. App'x 546 (11th Cir. 2018)

[lvi] Wolf v. Celebrity Cruises, Inc., 101 F. Supp. 3d 1298 (S.D. Fla. 2015)

[lvii] See Doria v. Royal Caribbean Cruise Line, 393 F. Supp. 3d 1141 (S.D. Fla. 2019) (the court held that notice against the cruise line can be derived from other ATV incidents on excursions involving other operators but still within the cruise line's shore excursion portfolio); Jaber v. NCL Ltd., No. 14-cv-20158, ECF No. 92, 2016 U.S. Dist. LEXIS 25873, *6, n. 2 (S.D. Fla. Mar. 2, 2016) (denying cruise line's summary judgment motion and noting that the other falling bunks reported by other passengers in other cabins were sufficient to meet the notice requirement for purposes of denying a defense summary judgment motion).

[lviii] In fact, the 11th Circuit addressed "substantially similar" in Bunch v. Carnival Corp., 825 Fed. Appx. 713, 717-718 (11th Cir. Sept. 10, 2020). The 11th Circuit rejected the district Court's holding that the prior incidents were not similar because the thresholds were located in different areas of the ship and were different dimensions. Instead, the Court focused on how the dangerous condition was similar- the fact that there was an optical illusion on the thresholds. The district court focused on the height and location differences between the Deck 10 and Deck 11 thresholds in concluding that they were not substantially similar, but Bunch's negligence claim was not based solely on an allegation that the height of the aerobics room threshold on Deck 11 was dangerous. Instead, her theory was that the "optical illusion" created by the stainless steel baseboard reflected the flooring and made it appear as if there was no threshold at all....The aerobics room threshold on Deck 11 is significantly lower, but if a raised, reflective threshold creates an appearance of a flush walking surface, a reasonable jury could find that would also be true of a raised, reflective threshold that was not as high.Id. "Carnival need not have been on notice that the specific [ATV Tour was dangerous]." Ewing v. Carnival Corp., 2020 U.S. Dist. LEXIS 118849 (S.D. Fla. July 7, 2020).

[lix] See Caron v. NCL (Bahamas), Ltd., 910 F.3d 1359, 1370 (11th Cir. 2018) (accepting that that prior reports of similar incidents are sufficient to provide a cruise ship operator with notice of a dangerous condition); Jones v. Otis Elevator Co., 861 F.2d 655, 661–62 (11th Cir. 1988) (stating that although "evidence of similar accidents might be relevant to the defendant's notice," "conditions substantially similar to the occurrence in question must have caused the prior accident"); Sorrels v. NCL (Bahamas) Ltd., 796 F.3d 1275, 1287 (11th Cir. 2015). ("The 'substantial similarity' doctrine does not require identical circumstances....");Chimene v. Royal Caribbean Cruises, Ltd., 2017 WL 8794706, at *4 (S.D. Fla. Nov. 14, 2017) (concluding that cruise ship operator had notice of dangerous condition created by zip line from prior reports of substantially similar incidents).

[lx] Lienemann v. Cruise Ship Excursions, Inc, and Carnival Corp., 2018 WL 6039993, (S.D. Fla. Nov. 15, 2018)

[lxi] Id. at *8

[lxii] Ferretti v. NCL (Bahamas) Ltd., 2018 WL 1449201 (S.D. Fla. Mar. 22, 2018)

[lxiii] Id. at *2

[lxiv] Wolf v. Celebrity Cruises, Inc., 683 Fed. Appx. 786, 794 at *2 (11th Cir. 2017)

[lxv] Id. at *3.

[lxvi] Bailey v. Carnival Corp., 2019 WL 1323112 at *3-4 (S.D. Fla. Mar. 18, 2019)

[lxvii] Id. at *1

[lxviii] Id. at *3

[lxix] Id. at *4

[lxx] All Tickets have what is called a Himalaya clause which makes all of the defenses, limitations, and requirements in the Ticket applicable to all contactors and agents of the cruise line.