

TRAVEL LAW: BIG BUSINESS & RISKY SHORE

EXCURSIONS

January 14, 2014

[This article may not be reproduced without the permission of
Thomas A. Dickerson]

By Thomas A. Dickerson

I have been writing about travel law for 38 years including my annually updated law books, *Travel Law*, Law Journal Press and *Litigating International Torts in U.S. Courts*, Thomson Reuters Westlaw, and over 300 legal articles many of which are available at www.nycourts.gov/courts/9jd/taxcertatd.shtml. This article on risky cruiseline shore excursions is more extensively covered in my online treatise *The Cruise Passengers' Rights & Remedies: 2013* soon to be published in the *Tulane Maritime Law Journal*.

Big Business & Risky Shore Excursions

Modern cruise ships are best viewed as floating deluxe hotels that transport their guests from exotic port to exotic

port where they stay a few hours for shopping, snorkeling, scuba diving, jet skiing, parasailing and touring. Although there are problems onboard the cruise ship, generally, it is safer to be onboard than on shore excursions which are highly promoted by the cruiselines, generate substantial revenues [See e.g., Perrin, *What I Learned Moonlighting as a Cruise Ship Trainee*, Conde Nast Traveler ("Cardozo works year-round, planning, scheduling and executing shore excursions for demanding passengers...These day trips are big business for the cruise lines: Royal Caribbean expects Navigator of the Seas to earn between \$600,000 and \$1,100,000 per week in onboard revenue, including tour sales")] and cause an increasing number of reported deaths and serious injuries to cruise passengers involving, for example, quadriplegia after an unforgettable swim at Lover's Beach in Cabo San Lucas, Mexico [*Samuels v. Holland America Line-USA, Inc.*], tetraplegia after taking a dive at ½ Senor Frogs Restaurant in Cozumel, Mexico [*Belik v. Carlson Travel Group*], being shot to death near Coki Beach in St. Thomas [*Chaparro v. Carnival Corp.*], injured while riding an ATV in Acapulco, Mexico [*Carnival Corp. v. Operadora Aviomar S.A.*], struck by lightning during a catamaran ride in Montego Bay, Jamaica [*Bridgewater v. Carnival Corp.*], injured during a zip-line excursion in Jamaica [*Smolnikar v. Royal Caribbean Cruises Ltd*], assaulted and robbed during an excursion to Earth Village in Nassau [*Koens v. Royal Caribbean*

Cruises, Ltd.], slip and fall during a Laughton Glacier Hike Tour [*Young v. Carnival Corp.*], asphyxiated in a diving bell in Bermuda [*Zapata v. Royal Caribbean Cruises, Ltd.*], dying while parasailing in Cozumel, Mexico [*Joseph v. Carnival Corp.*], and dying after being run over by a tour bus after returning from the Rain Forest Aerial Tram in Dominica [*Perry v. Hal Antillen NV*].

Shore Excursion Questions To Ask

Before purchasing a shore excursion passengers are well advised to ask the following questions. (1) Is the local ground operator insured or underinsured [See e.g., *Perry v. Hal Antillen NV* (instead of \$2 million in insurance coverage per accident the tour van operator had only \$85,000)], licensed and trained? (2) Has the cruise line evaluated the reliability of the local ground operator? The Answer: Maybe Yes [See e.g., *Smolnikar v. Royal Caribbean Cruises, Ltd.*], Maybe No [See e.g., *Reming v. Holland America Line, Inc.*]. (3) Has the cruise line disclaimed all liability for any injuries which passengers might sustain during the shore excursion? The Answer: Read your cruise ticket. The cruiseline typically disclaims liability for shore excursion accidents [See e.g., *Young v. Carnival Corp.* (disclaimer enforced); *Smolnikar v. Royal Caribbean Cruises, Ltd.*, (cruiseline disclaimer limiting ship's liability for accidents during shore

excursions does not apply to claims of negligent failure to warn and negligent selection of tour operators and ground service providers)].

Recent Liability Theories

Recently some courts have recognized a variety of legal theories by which to hold the cruise line and the shore excursion operator liable for such accidents.

Duty To Warn Of Danger

In *Chaparro v. Carnival Corporation* passengers took a cruise aboard Carnival's M/V Victory during which a Carnival employee urged the passengers to visit Coki Beach and Coral World which they did. "On their way back to the ship from Coki Beach (passengers) rode in an open-air bus past a funeral service of a gang member who recently died in a gang-related shooting near Coki Beach...While stuck in traffic, gang-related retaliatory violence erupted at the funeral, shots were fired and (passenger) Liz Marie was killed by gunfire while she was a passenger on the bus". A motion by Carnival to dismiss the complaint was denied. The complaint alleged, *inter alia*, that "Carnival was familiar with Coki Beach because it sold excursions to passengers to Coki Beach; Carnival generally knew of gang violence and public

shootings in St. Thomas; Carnival knew of Coki Beach's reputation for drug sales, theft and gang violence...Carnival failed to warn (passengers) of any of these dangers; Carnival knew or should have known of these dangers because Carnival monitors crime in its ports of call; Carnival's negligence in encouraging its passengers to visit Coki Beach and in failing to warn disembarking passengers of general or specific incidents of crime in St. Thomas and Coki Beach (allegedly) caused Liz Marie's death".

Negligent Selection Of Excursion Operator

In *Zapata v. Royal Caribbean Cruises, Ltd.* a cruise passenger purchased an excursion featuring a "bell diving" during which the passenger became asphyxiated. The passenger was brought to the surface for oxygen but unfortunately the oxygen tank was empty whereupon decedent became unconscious and died. The cruiseline moved to dismiss the complaint. As to the decedent's estate's claims for negligent selection or retention of excursion operators the court them legally sufficient if appropriate facts were repleaded.

In *Perry v. Hal Antillen NV* a cruise passenger returning from a shore excursion was run over by shore excursion tour bus. The court discussed a variety of legal theories including

negligent selection of ground operator.

And in *Reming v. Holland America Line, Inc.* a cruise passenger fell into sink hole during a Mazatlan city tour to Cliff Diver's Plaza. The cruiseline contract clause disclaiming liability for negligent selection of local tour bus company was found to be unenforceable thus expanding the scope 26 U.S.C. § 30509 from accidents onboard to shore excursion accidents. The Court also held that a cause of action for negligent selection of a shore excursion operator was stated. "HAL has failed to provide any evidence or argument regarding HAL's inquiry into Tropical Tour's competence and fitness as an excursion provider. Therefore, Plaintiff's claim regarding HAL's (negligent) selection and retention of Tropical Tours remains for trial".

Third Party Beneficiary Theory

In *Perry v. Hal Antillen NV* a cruise passenger was run over by a tour van hired as a subcontractor by the tour operator Rain Forest Aerial Tram, Ltd. (RFAT) which had entered into a contract with the cruiseline (HAL) and executed a copy of a contract manual entitled 'Tour Operator Procedures and Policies' (TOPPS) which required "a tour operator in the Caribbean to obtain minimum limits of auto and general liability insurance of 'US\$2.0 million/accident or occurrence'... [s]hould the Operator

subcontract for services (such as aircraft, rail, tour buses or watercraft), the Tour Operator must provide a list of its subcontractors and evidence of the subcontractor's insurance". The cruiseline asserted that RFAT "was 'required to assure that any subcontractor it used to provide excursion related services had in place the equivalent USD 2,000,000 in auto and general liability coverage". Here, it was discovered after the accident that the tour van operator only had \$85,000 in insurance coverage and the Court held that the plaintiffs were third party beneficiaries of TOPPS and had a claim against RFAT for failing to disclose to HAL that tour van operator was a subcontractor and was only insured up to \$85,000.

And in *Haese v. Celebrity Cruises, Inc.* a passenger and her mother were parasailing in tandem during a shore excursion when "the guide rope supporting them broke and both women fell into the water" as a result the mother died and daughter sustained "catastrophic injuries". On defendant's motion to dismiss the Court found a cause of action based upon a third party beneficiary theory had been stated.