THE CRUISE PASSENGERS' RIGHTS & REMEDIES 2016

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Introduction

Thank you for inviting me to present on the *Cruise Passengers' Rights And Remedies 2016*. For the last 40 years I have been writing about the travel consumer's rights and remedies

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against airlines, cruise lines, rental car companies, taxis and ride sharing companies, hotels and resorts, tour operators, travel agents, informal travel promoters, and destination ground operators providing tours and excursions.[2]

Litigator

During the last 40 years I spent 15 years as a consumer advocate specializing in prosecuting individual and class action cases on behalf of injured and victimized travelers and other consumers.[3]

[2] My treatise, Travel Law, now 2,000 pages and first published in 1981 has been revised and updated 64 times, now at the rate of every 6 months. I have written over 400 legal articles and my weekly article on Travel Law is available on www.eturbonews.com.

[3] I have sued airlines, cruiselines, railroads, hotel, resorts, tour operators and travel agents. My career as a litigator ended when I became a Judge in 1994.

Travel Consumer Philosophy

My travel consumer philosophy is this. When consumers purchase travel services from suppliers and tour operators such as transportation [as provided by airlines, cruiselines, railroads, bus companies, rental car companies]; accommodations [as provided by hotels and resorts and cruiselines]; food and drink [as provided by the aforesaid and restaurants]; tours of local sights or more strenuous activities at the destination [as provided by destination ground operators often working with or for airlines, cruiselines, hotels and resorts and tour operators], they should receive the purchased travel services as promised and contracted for or which can reasonably be expected. If they don't receive those services, in whole or in part, then the injured or victimized traveler should be properly compensated in a court of law, preferably in the jurisdiction wherein the

services were purchased and/or where the consumer resides and subject to local law.

The Evolution Of Traveler's Rights

When I first started writing about Travel Law in 1976, the rights and remedies available to travelers were few, indeed.

The Independent Contractor Defense

The concept that an airline, cruiseline, hotel, resort or tour operator should be able to insulate itself from liability for the tortuous and contractual misconduct of so called independent contractors was universally accepted by the Courts on land and on the sea, until very recently.

The Barbetta Rule

In the context of maritime law the near universal enforcement of the rule in Barbetta v. S/S Bermuda Star[1], insulating a cruiseship from liability for the medical malpractice of the ship's medical staff is a perfect example of this rule. Indeed, a variation of this rule, that contractual disclaimers of liability for the misdeeds of ground service providers were also universally enforced.

The Franza Case

As noted in my 2004 Tulane Maritime Law Journal article[2], maritime law, as it related to passengers, was best described as 21st Century Cruiseships and 19th Century Passenger Rights. However, to my surprise and satisfaction, the 11th

Circuit Court of Appeals recently, not only agreed with this analysis but decided to dramatically transport passenger rights, at least in part, into the 21st Century.

As noted in Franza v. Royal Caribbean Cruises, Ltd.[3], "We decline to adopt the rule explicated in Barbetta, because we can no longer discern a sound basis in law for ignoring the facts alleged in individual medical malpractice complaints and wholly discarding the same rules of agency that we have applied so often in other maritime tort cases...As Justice Holmes, famously put it, we should not follow a rule of law simply because 'it was laid down in the time of Henry 4th', particularly where 'the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past...Here, the roots of the *Barbetta* rule snake back into a wholly different world. Instead of nineteenth-century steamships...we now confront state-of-the-art cruise ships that house thousands of people and

operate as floating cities...In place of truly independent doctors and nurses, we must now acknowledge that medical professionals routinely work for corporate masters".

A One-Sided Contractually Defined Relationship

Until recently, the relationship between travelers and suppliers, including cruiseships and tour operators, was governed by contracts, often printed in nearly invisible print and loaded with self-serving and unconscionable clauses, both substantive and procedural in nature. These contracts, irregardless of whether the traveler saw or agreed to the terms therein, were routinely enforced. Indeed, there were cases which held that promises made in advertising material would not be enforced because they were disclaimed or limited by contractual clauses. In essence, the suppliers or tour operator's contractual

definition of their relationship to the consumer was nearly universally enforced by the Courts.

The Franza Case

However, in *Franza the* Court noted that it is not the contract that should define the relationship between cruiseship and passenger but the facts of each case. "Royal Caribbean urges us to look beyond the complaint, to (the) passenger ticket contract...which purports to limit the ship's liability for onboard medical services...even if we were to look to the contract at this stage, we would not consider the nurse and doctor to be independent contractors simply because that is what the cruise line calls them". As noted by Michael Drennen in *Captaining The Ship Into Culpability*[4] "This point strikes an ominous chord for cruise ship companies like Royal Caribbean

which-in conjunction with the Barbetta rule-have faithfully relied on contractual limitation of liability clauses like the one in *Franza* to insulate them from imputed liability".

Shore Excursions Big Business For Cruise Lines

Shore excursions are big business for the cruise lines [Perrin, What I Learned Moonlighting as a Cruise Ship Trainee[5] ("Cardozo works year-round, planning, scheduling and executing shore excursion 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"); Carothers, Cruise Control, Stop Press[6](" Almost half of all cruise passengers-some five million a year-participate in shore excursions ranging from simple bus tours in port cities to more

adventurous activities such as scuba diving trips and hot-air balloon rides. Excursions sold by a cruise line are generally the most convenient to book, and therefore are often more crowded-and more expensive-than those purchased independently... Perhaps, the safest bet is to purchase shore excursions through the cruise lines. Serious accidents on these trips are extremely rare although the lines disclaim any liability for mishaps that occur on these excursions, they say that they make every effort to ensure that the businesses they work with are licensed and reputable..."); Solomon, Voyage to the Great Outdoors[7] (" 250 passengers from a Carnival cruise ship had signed up and paid $93 for the experience of floating in inner tubes through a rain forest cave...Cruise lines now offer a buffet of shore excursions for their guests at every port of call...Passengers can attend a race-car academy in Spain, get their scuba diving certificate in the Virgin Islands and even take a spin in a MIG fighter jet in

Russia ").

Cruise lines actively promote shore excursions [Perry v. Hal Antillen NV[8] (shore excursion accident; discussion of relationships between cruiseline, ground tour operator and subcontractor transportation providers; theories of liability); Gayou v. Celebrity Cruises, Inc.[9] (cruise passengers sustained injuries riding zip-line); McLaren v. Celebrity Cruises, Inc.[10](cruise passenger injured disembarking snorkeling tour boat); Smolnikar v. Royal Caribbean Cruises Ltd.[11] (cruise line passenger injured while participating in a "zip line" excursion tour in Montego Bay, Jamaica operated by independent contractor Chukka Caribbean Adventures); Koens v. Royal Caribbean Cruises Ltd.[12](cruise passengers robbed and assaulted in tour of Earth Village)].

Development Of New Duties

In an effort, perhaps, to circumvent the independent contractor defense, and faced with cases involving foreign ground providers not subject to U.S. long arm jurisdiction, the Courts a few years ago began applying common law principals to the liability of tour operators for tourist accidents abroad and, more recently, in the maritime context, to cruiselines for shore excursion accidents. In so doing these Courts have recognized several new duties to travelers and passengers.

Breach Of Warranty Of Safety

A warranty of safety may arise when a travel purveyor promises in a brochure that some or all of the travel services will be delivered in a safe or careful manner and it can be shown that the tourist relied on such representations. For example, terms such as "highly skilled boatmen" [Chan v. Society

Expeditions, Inc.[13]], "unsinkable boats" [Wolf v. Fico Travel[14]], "safe buses" [Rovinsky v. Hispanidad Holidays, Inc.[15]], "perfectly safe" canoeing conditions [Glenview Park District v. Melhus[16]], "perfectly safe" catamaran ride [Wolff v. Holland America Lines[17]] and describing cliff jumping as "an approved and safe activity" [Gartland v. Douchette[18]], may require the travel purveyor to actually deliver on the warranty.

Negligent Selection Of A Supplier Or Ground Services Provider.

In an early case in 1992, Winter v. I.C. Holidays, Inc.[19] the Court found a tour operator liable for the negligent selection of a foreign bus company which was not only negligent but was also insolvent, uninsured and otherwise unavailable to satisfy the claim of the injured travelers. Recently, the courts have recognized this duty.

The Zapata Case

For example, in Zapata v. Royal Caribbean Cruises, Ltd.[20] the cruise passenger purchased excursion tickets onboard the cruise ship featuring "bell diving" during which decedent was asphyxiated, brought to the surface for oxygen but unfortunately the oxygen tank was empty whereupon decedent became unconscious and died.[claims against cruise line RCCL governed by Death on the High Seas Act (DOHSA) eliminating recovery of non-pecuniary damages; claims for negligent selection or retention of excursion operators and apparent agency or agency by estoppel legally sufficient if appropriate facts repleaded; claims of joint venture and third party beneficiary theory dismissed as expressly disclaimed in Tour Operator Agreement].

The Perry Case

In Perry v. Hal Antillen NV[21] the cruise passenger returning from a cruiseship recommended and promoted shore excursion, was run over by shore excursion tour bus. [extensive discussion of liability issues regarding cruiselines which recommended and promoted shore excursion, local ground operator and tour bus that transported cruise passengers to and from shore excursion; liability theories include agency by estoppel, third party beneficiary, failure to disclose, negligent selection, joint venture, warranty of safety, negligent supervision and damages limitation under Washington's Consumer Protection Statute].

The Gibson Case

In Gibson v. NCL (Bahamas) Ltd.[22] the cruise passenger was

injured attempting to board "'Jungle Bus' to transport her to a zipline tour in the Mexican jungle". [no causes of action for negligent selection to excursion operator or "Jungle Bus", failure to warn and negligent supervision; but causes of action stated for apparent authority and joint venture].

The Reming Case

In Reming v. Holland America Line, Inc.[23] the cruise passenger fell into a sink hole during shore excursion in Mazatlan City. [cruise ship contract clause disclaiming liability for negligent selection of local tour bus company unenforceable thus expanding the scope 26 U.S.C. § 30509 from accidents onboard to shore excursion accidents; cause of action for negligent selection of excursion operator 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].

Duty To Warn Of Dangerous Environments

In Chaparro v. Carnival Corporation[24] the passengers took a cruise aboard Carnival's M/V Victory during which a Carnival employee urged plaintiffs to visit Coki Beach and Coral World which plaintiffs did. "On their way back to the ship from Coki Beach (plaintiffs) rode 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 Liz Marie was killed by gunfire which she was a passenger on the bus"; motion by Carnival to dismiss denied, claim stated for failure to

warn; complaint alleged, inter alia, "Carnival was familiar with Coki Beach because it sold excursion 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 caused Liz Marie's death").

Third Party Beneficiary Theory

The Perry Case

In Perry v. Hal Antillen NV[25] the cruise passenger was run over by a tour van hired as a subcontractor by the tour operator Rain Forest Aerial Tram, Ltd.(RFAT). RFAT had entered into a contract with the cruiselines (HAL) and executed a copy of a manual entitled 'Tour Operator Procedures and Policies"(TOPPS). TOPPS 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).

The Haese Case

In Haese v. Celebrity Cruises, Inc.[26] the plaintiff and her mother were parasailing in tandem during shore excursion when "the guide rope supporting them broke and both women fell into the water". As a result mother died and daughter sustained "catastrophic injuries" [causes of actions based upon third party beneficiary theory and joint venture stated)].

Apparent Agency/Agency By Estoppel

On-Board Medical Malpractice

Traditionally, cruise ships have not been held vicariously liable for the medical malpractice of the ship's doctor or medical staff [Barbetta v. S/S Bermuda Star[27]].

Policy Unfair

This policy was unfair and has been criticized by some Courts [see e.g., Nietes v. American President Lines, Ltd.,[28] (cruise ship vicariously liable for medical malpractice of ship's doctor who was a member of the crew) and commentators[29]]

The Carlisle Case

In Carlisle v. Carnival Corp.[30] a 14 year old female

passenger became " ill with abdominal pain, lower back pain and diarrhea and was seen several times in the ship's hospital by the ship's physician " who misdiagnosed her condition as flu when, in fact, she was suffering from an appendicitis. After several days of mistreatment the she was removed from the cruise ship, underwent surgery after the appendix ruptured and was rendered sterile. In rejecting a long line cases in the 5th Circuit absolving cruise ships for the medical malpractice of a ship's doctor, the Carlisle Court stated " The rule of the older cases rested largely upon the view that a non-professional employer could not be expected to exercise control or supervision over a professionally skilled physician. We appreciate the difficulty inherent in such an employment situation, but we think that the distinction no longer provides a realistic basis for the determination of liability in our modern, highly organized industrial society. Surely, the board of directors of a modern

steamship company has as little professional ability to supervise effectively the highly skilled operations involved in the navigation of a modern ocean carrier by its master as it has to supervise a physician's treatment of shipboard illness. Yet, the company is held liable for the negligent operation of the ship by the master. So, too, should it be liable for the negligent treatment of a passenger by a physician or nurse in the normal scope of their employment, as members of the ship's company, subject to the orders and commands of the master. ". Unfortunately, the Florida Supreme Court reversed this decision in Carlisle v. Carnival Corp.[31].

Pre-Franza Cases

Recently, however, a few courts have allowed the victims of medical malpractice to assert a claim against the cruiseline

based on apparent agency and negligent or fraudulent misrepresentations [See Lobegeiger v. Celebrity Cruises, Inc.,[32] ("Plaintiff alleges Celebrity 'held out' Dr. Laubscher as an officer of the ship's crew 'through his title, his uniform, his living quarters on board the ship and his offices on board the ship'...Taking these allegations as true, Plaintiff has sufficiently alleged that Celebrity made manifestations which could cause Plaintiff to believe Dr. Laubscher was an agent of Celebrity"; cause of action for fraudulent misrepresentation stated); Lobegeiger v. Celebrity Cruises Inc.[33] (summary judgment for defendant on apparent agency theory of liability for medical malpractice); Hill v. Celebrity Cruises, Inc.[34] (no actual agency; no apparent agency; but misrepresentation that ship would have two doctors but only provided one stated claim for negligent misrepresentation).

The Franza Case

In Franza v. Royal Caribbean Cruises, Ltd.[35] an elderly cruise passenger, Pasquale Vaglio, fell and bashed his head while on shore. Allegedly due to the "negligent medical attention" that he received from the ship's Doctor and Nurse his life could not be saved. "In particular the ship's nurse purportedly failed to assess his cranial trauma, neglected to conduct an diagnostic scans and released with no treatment to speak of. The onboard doctor, for his part, failed to meet with Vaglio for nearly four hours...Vaglio died about a week later".

Indicia Of Apparent Agency

"For starters, Franza's complaint plausibly established: (1) that Royal Caribbean 'acknowledged' that Nurse Garcia and Dr.

Gonzalez would act on its behalf and (2) that each 'accepted' the undertaking. Most importantly, Franza specifically asserted that both medical professionals were 'employed by' Royal Caribbean, were 'its employees or agents' and were 'at all times material acting within the scope and course of [their] employment... Furthermore, the cruise line directly paid the ship's nurse and doctor for their work in the ship's medical center. Third, the medical facility was created, owned and operated by Royal Caribbean, whose own marketing materials described the infirmary in proprietary language...Fourth, the cruise line knowingly provided, and its medical personnel knowingly wore, uniforms bearing Royal Caribbean name and logo. And, finally, Royal Caribbean allegedly represented to immigration authorities and passengers that Nurse Garcia and Dr. Gonzalez were 'members of the ship's crew' and even introduced the doctor 'as one of the ship's Officers. Taken as true, these allegations are more than

enough to satisfy the first two elements of actual agency liability".

Barbetta Overruled

"We decline to adopt the rule explicated in Barbetta because we can no longer discern a sound basis in law for ignoring the facts alleged in individual medical malpractice complaints and wholly discarding the same rules of agency that we have applied so often in other maritime tort cases"

Apparent Agency Applies

"We are the first circuit to address whether a passenger may use apparent agency principals to hold a cruise line vicariously liable for the onboard medical negligence of its employees...we

conclude that a passenger may sue a shipowner for medical negligence if he can properly plead and prove detrimental, justifiable reliance on the apparent agency of a ship's medical staff member...The federal circuits have made only passing references to apparent agency principals in maritime tort cases...Nonetheless, given the broad salience of agency rules in maritime law...and the important role the federal courts play in setting the bounds of maritime torts...we think apparent agency principals apply in this context. Indeed, the equitable foundations of apparent agency are just as important in tort as in contract...Having long applied the principals of apparent agency in maritime cases, we discern no sound basis for allowing a special exception for onboard medical negligence, particularly since we have concluded that actual agency principals ought to be applied in this setting as well"

Additional Cruise Cases Discussing New Liability Theories

The Witover Case

In Witover v. Celebrity Cruises, Inc.,[36] a disabled passenger using a scooter disembarking for shore excursion fell to the ground and the scooter fell on top of her. The Court discussed several liability theories including breach of contract, duty to warn of foreseeable danger, negligent retention of tour operator and vicarious liability for tour operator negligence.

The Richards Case

In Richards v. Carnival Corporation[37] the cruise passenger was injured during a shore excursion tour when the ATV he was

riding "flipped over throwing the Plaintiff off'". The Court discussed various liability theories including various alleged negligent acts, apparent agency or agency by estoppel, joint venture between cruiseline and ground operator and negligent misrepresentation.

Assumption Of Duty/Due Diligence Investigations

Some cruiselines make a concerted effort to perform due diligence in the selection of shore excursion operators [See e.g., Smolnikar v. Royal Caribbean Cruises Ltd.[38](cruise line passenger injured while participating in a "zip line" excursion tour in Montego Bay, Jamaica operated by independent contractor Chukka Caribbean Adventures Ltd. (Chukka); Court addressed three theories of liability against the cruiseline one of which was the negligent selection of the zip line operators finding that based

on Florida law the cruise line had such a duty which could not be disclaimed (46 U.S.C. 30509); "Under Florida law, a principal may be subject to liability 'for physical harm to third persons caused by his failure to exercise reasonable care to employ a competent and careful contractor...Where such a duty exists, a plaintiff bringing a claim for negligent hiring or retention of an independent contractor must prove that '(1) the contractor was incompetent or unfit to perform the work; (2) the employer knew or reasonably should have known of the particular incompetence or unfitness and (3) the incompetence or unfitness was a proximate cause of the plaintiffs injury'...In determining whether Royal Caribbean knew or reasonably should have known of (Chukka's) alleged incompetence...the relevant inquiry is whether Royal Caribbean diligently inquired into (Chukka's) fitness...Royal Caribbean has provided...a multitude of reasons why it found (Chukka) to be a competent and suitable zip line tour operator

before and while it was offering the Montego Bay zip line tour. Those reasons include (1) that Royal Caribbean had an incident-free relationship was Chukka dating back 4-5 years before offering the Montego Bay tour, (2) that it had never been made aware of any accidents occurring on any of Chukka's other tours, (3) the positive feedback received from Royal Caribbean passengers who participated in Chukka's other tours, (4) Chukka's reputation as a first class tour operator...(7) that at least two other major cruise lines had been offering the Montego Bay zip line tour for approximately one year, (8) that it had sent representatives to participate on the tour and there was no negative feedback...(12) that it never received any accident reports from Chukka pertaining to the Montego Bay tour. These indicate that Royal Caribbean's inquiries were diligent and that its decisions (in selecting Chukka) were reasonable").

Update On Litigation Roadblocks

In our 2014 Tulane Maritime Law Journal article[39] on cruise passenger rights we enumerated several substantive and procedural litigation roadblocks which make it difficult, if not impossible, to efficiently and fairly prosecute cruise passenger claims.

The Limitation Of Liability Act

The Limitation Act, 46 U.S.C. 30501 et al, established in 1851 "is premised on the notion that a vessel owner should not be liable beyond the value of the vessel for incidents that occur outside the owner's control in the inherently risky business of the sea...The defense recently appeared on the general public's radar screen again when the ill fated cargo ship EL FARO sank will all hands en route to Puerto Rico in October 2015. On

October 30, 2015, attorneys for Tote Maritime, owners of the EL FARO filed a petition for exoneration or limitation of liability in a Florida federal district court...Although the EL FARO is a total loss (with zero value) the limitation fund filed by its owner is $15,309,003-a figure comprised of $2,072,703 for 'pending freight' (as the statute requires) and...$420 per gross ton to increase the fund in respect to injury or death claims"[40].

"Since its inception, general maritime law (case law) has succeeded in expanding the reach of the Limitation Act to 'vessels' outside the realm of commercial shipping, such as yachts, pleasure craft and even jet skis"[41]. The Limitation Act should be modified or repealed, especially as it relates to cruise ships and jet skis. In 2010 a bill entitled "Fairness in Admiralty and Maritime Law Act" was introduced in the U.S. House of Representatives calling for the repeal of the Limitation Act. "It was considered by the Senate on July 15, 2010, before being

sunk by the Committee on Commerce, Science and Transportation later that year"[42].

Time Limitations

As noted in 2014 the time limitations for making a claim and filing a lawsuit for physical injuries [six months to file claim, one year to commence a lawsuit] and non-physical injury claims [thirty days to file claim, ninety days to commence a lawsuit] are way out of sync with land based statutes of limitations for commencing similar lawsuits running the spectrum from 2.5 years [physical injury] to 6 years [breach of contract, fraud].

Jurisdiction

There has been little change in asserting personal

jurisdiction over out of state travel purveyors such as the cruiselines based in the states of Florida, New York and Washington through the marketing efforts of travel agents and Internet travel sellers. The "solicitation plus doctrine" still remains the rule in many jurisdictions.

Forum Selection And Mandatory Arbitration Clauses

There has been little change in the enforceability of forum selection clauses including federal forum selection clauses in cruise passenger contracts. Even within the context of often misleading and deceptive Internet marketing, forum selection, choice of law and mandatory arbitration clauses, often lurking in hyper-links, have been enforced with some exceptions. [See Dickerson & Berman, Consumers' Loss of Rights in the Internet Age[43]]. Although there still may be some dispute over what

constitutes adequate notice of such clauses before purchase and before boarding the cruise ship [Dickerson, Forum Selection Clauses in Travel Contracts: Should Adequate Notice Be Required[44]] they are still routinely enforced. As far as mandatory arbitration clauses coupled with class action and class arbitration waivers [See Gilroy v. Seabourne Cruise Line, Ltd[45]] are concerned they may or may not be enforceable based upon common defenses of fraud, duress and unconscionability [See Dickerson & Chambers, Challenging 'Concepcion' in New York State Courts[46]].

Disclaimers Of Liability

As we noted above disclaimers of liability for the tortuous and contractual misconduct of ship's medical personnel and of shore excursion ground operators are no longer enforced with the

rigidity that they once were. New theories of cruiseline liability have been welcomed by many courts.

Athens Protocol

The Athens Protocol was approved by the European Union and ten individual countries and went into effect on April 23, 2014. It does not apply to cruiseships that touch U.S. ports unless a Court decides otherwise if the passenger contract mentions the Athens Convention and the limitation amount [See Wallis v. Princess Cruises, Inc.[47]]. The impact of this new regime remains to be seen but for the 20% of U.S. citizens that cruise on ships that do not touch U.S. ports, it substantially increases recoverable damages for injury or death claims. The new protocol makes the cruise line liable up to 250,000 SDRs and for more damages the limit is 400,000 SDRs. The new protocol has a two-

tier provision for liability. The first is strict liability for personal injury and death caused by a 'shipping incident' defined as "shipwreck, capsizing, collision or stranding of the ship, explosion or fire of the ship or a defect in the ship". A "defect in the ship" is "any malfunction, failure or non-compliance with applicable safety regulations with respect to any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers, or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage or damage control after flooding or when used for the launching of life-saving appliances".

Conclusion

Cruise vacations can be wonderful experiences. While there

has been a noticeable and positive sea change in cruise passenger rights and remedies, especially, as they relate to onboard medical malpractice and shore excursion accidents, potential cruise passengers are still well advised to think carefully about their legal rights should they be dissatisfied, injured, or worse while traveling on a cruise vacation.

ENDNOTES

1. Barbetta v. S/S Bermuda Star, 848 F. 2d 1364 (5th Cir. 1988).

2. Dickerson, The Cruise Passenger's Dilemma: Twenty-First-Century Ships, Nineteenth-Century Rights, 28 Tul. Mar. L.J. 447 (2004).

3. Franza v. Royal Caribbean Cruises, Ltd., 772 F. 3d 1225 (11th Cir. 2014).

4. Michael Drennen in *Captaining The Ship Into Culpability*, 40 Tul. Mar. L.J. 177 (2015).

5. Perrin, What I Learned Moonlighting as a Cruise Ship Trainee www.cntraveler.com/perin-post/2013/04.

6. Carothers, Cruise Control, Stop Press, Conde Nast Traveler, July 2006, p. 56.

7. Solomon, Voyage to the Great Outdoors, New York Times Travel Section, October 2, 2005 at p. 12.

8. Perry v. Hal Antillen NV, 2013 WL 2099499 (W.D. Wash. 2013).

9. Gayou v. Celebrity Cruises, Inc., 2012 WL 2049431 (S.D. Fla. 2012).

10. McLaren v. Celebrity Cruises, Inc., 2012 WL 1792632 (S.D. Fla. 2012).

11. Smolnikar v. Royal Caribbean Cruises Ltd., 787 F. Supp. 2d 1308 (S.D. Fla. 2011).

12. Koens v. Royal Caribbean Cruises Ltd., 774 F. Supp. 2d 1215 (S.D. Fla. 2011).

13. Chan v. Society Expeditions, Inc., 123 F. 3d 1287 (9th Cir. 1998).

14. Wolf v. Fico Travel, 2011 WL 5920918 (D.N.J. 2011).

15. Rovinsky v. Hispanidad Holidays, Inc., 180 A.D. 2d 273, 580 N.Y.S. 2d 49 (1992).

16. Glenview Park District v. Melhus, 540 F. 2d 1321 (7th Cir. 1976)].

17. Wolff v. Holland America Lines, 2010 WL 234772 (W.D. Wash. 2010).

18. Gartland v. Douchette, 2002 WL 1815982 (Conn. Super. 2002).

19. Winter v. I.C. Holidays, Inc.,New York Law Journal, Jan. 9, 1992, p. 23, col. 4 (N.Y. Sup.).

20. Zapata v. Royal Caribbean Cruises, Ltd., 2013 WL 1296298 (S.D. Fla. 2013).

21. Perry v. Hal Antillen NV, 2013 WL 2099499 (W.D. Wash. 2013).

22. Gibson v. NCL (Bahamas) Ltd., 2012 WL 1952667 (S.D. Fla. 2012).

23. Reming v. Holland America Line, Inc., 2013 WL 594281 (W.D. Wash. 2013).

24. Chaparro v. Carnival Corporation, 693 F. 3d 1333 (11th Cir. 2012).

25. Perry v. Hal Antillen NV, 2013 WL 2099499 (W.D. Wash. 2013).

26. Haese v. Celebrity Cruises, Inc., 2012 A.M.C. 1739 (S.D. Fla. 2012).

27. Barbetta v. S/S Bermuda Star, 848 F. 2d 1364 (5th Cir. 1988).

28. Nietes v. American President Lines, Ltd., 188 F. Supp. 219 (N.D. Cal. 1959).

29. See e.g., Herschaft, Cruise Ship Medical Malpractice Cases: Must Admiralty Courts Steer By The Star Of Stare Decisis, 17 Nova L. Rev. 575, 592 (1992). (" It would be in the best interests of the traveling public for admiralty courts to revoke this harsh policy of holding carriers harmless for the torts of physicians engaged by them. However, if admiralty courts continue to exonerate carriers in passenger medical malpractice cases, there are three possible ways to provide better care to travelers: First, the legislature can amend current statutory descriptions of a ship's staff so that a doctor is specified as an employee of the carrier; second, passengers can invoke the doctrine of agency by estoppel; and third, a shipping company may indemnify itself against potential medical malpractice claims ")

30. Carlisle v. Carnival Corp., 2003 Fla. App. LEXIS 12794 (Fla. App. 2003).

31. Carlisle v. Carnival Corp., 953 So. 2d 461 (Fla. Sup. 2007).

32. Lobegeiger v. Celebrity Cruises, Inc., 2011 WL 3703329 (S.D. Fla. 2011).

33. Lobegeiger v. Celebrity Cruises Inc., 2012 WL 2402785 (S.D. Fla. 2012).

34. Hill v. Celebrity Cruises, Inc., 2011 WL 5360247 (S.D. Fla. 2011).

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