

ADMIRALTY LAW

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Cruise Lines on the Radar Screen

With the recent disappearance of a passenger on open waters, the cruise lines are in the news. The analysis of a cruise lines case starts with the passenger ticket. The ticket is a contract that generally binds the passenger to terms stating, for example, where to sue, the time to commence suit and what law will apply. Tickets issued from U.S. ports invariably contain a one-year time limitation. Cruises from foreign ports to other foreign ports destinations have a two-year time to sue but a limitation of liability of about \$60,000.

Because of the recent mysterious loss of life on a Royal Caribbean Line cruise in July 2005, it is timely to review developments in the sometimes unfortunate mayhem at sea, and indeed ashore in ports-of-call. The disappearance of the Royal Caribbean passenger has morphed into allegations of the rape of a young lady.

Maritime Torts

An accident on navigable waters aboard a cruise ship or other vessel with passengers or visitors is governed by the General Maritime Law, where typically, the shipowner, is liable for any lack of reasonable care which causes injury.¹ Injuries caused by slip-and-fall accidents on board a vessel have consistently been found to constitute maritime torts.² The extent to which the circumstances surrounding maritime travel are different from those encountered shoreside and involve more danger to the passenger may determine how to evaluate whether the care was reasonable.³

Some accidents are unique to a ship while others are comparable to an injury ashore in a hotel such as *Keefe* (slip on wet spot on dance floor); *Monteleone* (protruding screw on stair); *Everett* (tripped over a threshold); *Muratore* (slip on stairs). In such cases, actual or constructive notice is required although the doctrine of *res ipsa loquitur* is available in maritime accident cases.⁴

Remedies

The cruise industry lobby is very close to legislators particularly in states where major cruise lines operate, such as Florida and Alaska. In 1996, certain laws such as 46 USC §183 were amended, limiting cruise line liability in various ways. Now, for example, no damages are allowed for infliction of emotional dis-



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stress without physical injury. Thus, a traumatic ship collision will not entitle a passenger to recover these damages (if uninjured), if these limitations are in the ticket. However, the damages recoverable for sexual harassment, sexual assault or rape have not changed.

The serving of liquor aboard cruise ships at very low cost can be an invitation for violent behavior. The so-called "dram shop" liability has led to varying results. Some courts allow a prima facie showing of liability in a dram shop case, while others find in favor of the cruise lines on dram shop claims.⁵

Crewmember Assaults

Jane Doe v. Celebrity Cruises Inc. is a maritime case about a crewmember's sexual battery of a passenger.⁶ The decision is of interest because the assault occurred not on the ship, but ashore in Bermuda during the cruise. This created questions of admiralty jurisdiction and a common carrier's responsibility for an employee's intentional tort while off-duty.

In a separate case, a Florida state court judge in 1999 required Carnival Cruise Lines to disclose statistics on alleged sexual assaults on its ships.⁷ There were 62 alleged shipboard sexual assaults by crew members reported from 1994 to 1998. Later, other numbers were added; and the count was 108. Of the 108 incidents, 22 were alleged rapes. The FBI had investigated 10. It may be assumed that many assaults are not reported because of adverse publicity or other concerns.

In the recent *Doe v. Celebrity* case, Ms. Doe purchased a ticket for a round-trip cruise from New York to Bermuda aboard Celebrity's M/V ZENITH. After a night out on the town in Bermuda with friends and crewmembers, a crewmember offered to assist the visibly intoxicated Ms. Doe back to the ship. The crewmember allegedly raped the passenger in a small public park not far from the ship. Ms. Doe sued the owner and operator of the ship and the company providing the catering personnel, alleging sexual assault, sexual battery, negligence, breach of contract of carriage, and intentional and negligent infliction of emotional distress.

A jury returned a verdict for Ms. Doe on her sexual battery claim awarding her \$1 million in compensatory damages.

Admiralty Jurisdiction

On appeal, the U.S. Court of Appeals for the Eleventh Circuit considered whether federal admiralty jurisdiction exists over an intentional tort claim

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Involving an off-duty crewmember that takes place off the ship.

Applying the standard two-pronged admiralty jurisdiction test of connection with maritime activity and location, the court first determined that as the cruise line industry is maritime commerce, a crewmember's sexual assault on a passenger obviously has a potentially disruptive impact on maritime commerce. In this regard, the court suggested that it was easy to imagine that if rape or other forms of sexual battery became a concern of passengers, cruise-ship business would necessarily suffer. Moreover, the interaction between crewmembers and passengers during an on-going cruise bears a substantial relationship to traditional maritime activity sufficient to satisfy the connection-with-maritime-activity prong.

The location-test was more troubling. The court commented that the "temptation exists to draw a bright line between a crewmember's assault of a passenger that occurs on the ship versus in a port-of-call."⁸ The Eleventh Circuit noted that these facts may represent the "outer boundaries" of admiralty jurisdiction over torts, but presented sufficient "genuine salty flavor" to extend jurisdiction. Significantly, not long before this appeal, the Supreme Court (and subsequently the U.S. Court of Appeals for the Second Circuit) took an expansive view of admiralty jurisdiction. In "a maritime case about a train wreck," the Supreme Court stated that in modern maritime commerce "the shore is now an artificial place to draw a line."⁹

Standard of Care

The issue of liability was attacked next. The cruise line argued for the well-settled reasonable care under the circumstances standard that applies in a maritime tort case involving a passenger. Plaintiff disagreed and suggested that as common carrier, a cruise line owes a special duty to its passengers and the standard should be strict liability. The cruise line's status as a "common carrier" under federal maritime law was undisputed.¹⁰ Hotly contested, however, was the applicable standard of care.¹¹ The principal liability issue in the case, therefore, was which standard governed the cruise line's liability to its passenger for a crewmember

assault: strict liability or reasonable care under the circumstances.

The strict liability of a common carrier (whether ship or train) for assaults by employees on passengers is historically rooted in the entrustment of passengers' personal safety to the common carrier.¹² This strict standard according to the Eleventh Circuit's rationale, rests upon the implied special duty of protection and safe transport that a common carrier owes to its passengers, and not that the act is incident to a duty within the scope of the crewmember's employment.

For example, in 1906, the Second Circuit renounced as "archaic" the doctrine that the moment a servant of a carrier commits a wanton assault upon a passenger, he acts outside the scope of his authority

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and thus releases his employer from liability.¹³ The Second Circuit follows the reasonable care standard for tort lawsuits by passengers where no crewmember assault is involved.¹⁴

In *Doe*, the Eleventh Circuit made a clear distinction between an assault (or other intentional tort) committed by a crewmember on a passenger, compared to a garden variety negligence case. The U.S. Court of Appeals for the Ninth Circuit has also applied absolute liability to a common carrier for crewmember assaults on passengers, rejecting the reasonable care standard.¹⁵ Within the U.S. Court of Appeals for the First Circuit, strict liability seems to apply,¹⁶ while one Second Circuit case required negligent hiring proof.¹⁷

Conclusion

In the final analysis, the Eleventh Circuit concluded that cruise lines owe a nondelegable duty to protect their passengers from crewmember assaults and to provide safe transport. The court was not convinced that the special carrier-passenger relationship was severed because

the passenger and crewmember were off the ship since the incident occurred within the seven-day period of the cruise. An integral part of the carrier-passenger relationship encouraged socializing with passengers while off duty in the ship's scheduled port of call and, therefore, the relationship continued during their interaction ashore. Accordingly, the interaction between the passenger and crewmember was not outside the scope of the ongoing relationship or, the ongoing cruise.

The jury's verdict for the plaintiff was affirmed and a petition for writ of certiorari was denied by the United States Supreme Court on Oct. 31, 2005.¹⁷ This once again demonstrates that federal admiralty jurisdiction relating to "modern maritime commerce" may be greater than many would expect.

1. *Kemarec v. Compagnie Générale Transatlantique*, 353 U.S. 629 (1959).

2. *Palmer v. Fayard Moving and Transportation Co.*, 930 F.2d 437, 441 (5th Cir. 1991).

3. *Rainey v. Paquet Cruises, Inc.*, 709 F.2d 169, 172 (2d Cir. 1983) (citing leading cases); see *In re Catalina Cruises, Inc. v. Carnival Cruise Lines*, 137 F.3d 1433 (9th Cir. 1998) (heavy weather).

4. E.g., *The City of Panama*, 101 U.S. 453 (1879); *Carey v. Bahama Cruise Lines*, 864 F.2d 201 (1st Cir. 1985); *Muratore v. MIS SCOTIA PRINCE*, 845 F.2d 347 (1st Cir. 1988); *Beard v. Norwegian Caribbean Lines*, 900 F.2d 71 (8th Cir. 1990); *Everett v. Carnival Cruise Lines*, 912 F.2d 1355 (11th Cir. 1990); *Monteleone v. Bahama Cruise Lines*, 838 F.2d 63 (2d Cir. 1988); *Keefe v. Bahama Cruise Line Inc.*, 857 F.2d 1318 (11th Cir. 1989).

5. Compare *Guinn v. Commodore Cruise Lines*, 1997 WL 164290 (SDNY 1997); *Hall v. Royal Caribbean Cruises* (3d Dist. App. Fl. 7/21/04) (a federal law applied; appeal denied); and *Voillat v. Red and White Fleet*, 2004 Dist. Lexis 4359 (D.C. Ca. 2004); *Meyer v. Carnival Cruise Lines*, 1995 A.M.C. 1652 (N.D. Ca. 1994) (state dram shop law applied; liability only for service to an "obviously intoxicated minor").

6. *Jane Doe v. Celebrity Cruises Inc. et al.*, 394 F.3d 891, 895 (11th Cir. 2004).

7. *Navin, Bonita, MARITIME LAW REPORTER*, Vol. 11, No. 5 at 54.

8. *Jane Doe v. Celebrity Cruises, Inc.*, 394 F.3d 900, at 901.

9. *Norfolk Southern Railway Co. v. Kirby*, 543 U.S. 14, 125 S. Ct. 384 (2004); see also *Folk-samerica Reinsurance Co. v. Clean Water of New York, Inc.*, 413 F.3d 307, 2005 United States App. LEXIS 13041 (2d Cir. 2005) (CGL insurance policy issued to marine entity is a maritime contract).

10. *Schultz v. Florida Keys Dive Center*, 224 F.3d 1269, 1273 (11th Cir. 2000) (describing cruise ships as common carriers).

11. *Jane Doe* at 906 n.13.

12. *The Minnetonka*, 146 F. 509 at 513 fn.28 (2d Cir. 1906).

13. See, e.g., *Monteleone v. Bahama Cruise Line Inc.*, 838 F.2d 63 (2d Cir. 1988); *Rainey v. Paquet Cruises Inc.*, 709 F.2d 169 (2d Cir. 1983).

14. *Monteleone v. Bahama Cruise Line Inc.*, 838 F.2d 289 (9th Cir. 1993).

15. *Peterson v. Scotia Prince Cruises*, 328 F. Supp.2d 119 (D.C. Me. 2004).

16. *York v. Commodore Cruise Lines*, 1994 WL 441982 (S.D.N.Y. 1995).

17. 126 Sup. Ct. 548, 163 L. Ed.2d 499; 2005 U.S. LEXIS 8179 (2005).