

ADMIRALTY LAW

Expert Analysis

Cruising for a Bruising?

*Sailing takes me away
to where I've always heard
it could be
Just a dream and the wind
to carry me
And soon I will be free.*

—“Sailing” by
Christopher Cross



By
James E.
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The passengers aboard the cruise ship MS WESTERDAM are singing a far different tune. That vessel has been turned away from five countries and at last report was seeking refuge in Cambodia due to the suspected outbreak of the Coronavirus on board.

Indeed, it seems on every channel these days, a cruise ship is in the news. There's nothing like a good cruise to unwind, dream, be free and explore. But, like nearly everything else fun in life, sometimes things go haywire.

With the popularity and capacity of cruise ships, it is no wonder that viruses originating in one sliver of a country can spread so rapidly

across the world. *Celebrity Cruises v. Essef*, 2005 U.S. Dist. LEXIS 46721, 2006 AMC 528 (S.D.N.Y. 2005) (jury held in favor of passengers who contracted Legionnaires disease originating from a hot tub aboard cruise ship, resulting in an outbreak onboard).

As a result of the spread of the Coronavirus, the world has been reintroduced to the word *quarantine*. Of course, quarantine is a word that originated in maritime history, like almost everything else (if you ask me). It comes from a 17 century Italian word *quaranta giorni* meaning 40 days—the period that all ships were required to be isolated before passengers and crew could go ashore during the Black Plague.

Three cruise ships have been quarantined for at least 14 days off the coast of Asia as a result of the Coronavirus. Passengers must remain in their cabins during quarantine. At least 61 people onboard these ships have tested

positive for the Coronavirus. Closer to home, passengers reportedly showed signs of sickness aboard Royal Caribbean's Anthem of Seas and were being quarantined and tested for the virus after the ship arrived in Bayonne, N.J., on Feb. 7, 2020.

The U.S. Coast Guard issued a Marine Safety Information Bulletin on the Coronavirus, advising ship owners and operators to be aware of quarantine station points for any passengers reported sick.

S.O.S.

In addition to such outbreaks, far and few between, cruise ships carry

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an array of scenarios resulting in maritime litigation.

Under maritime law, an owner or operator of a cruise ship owes a duty of exercising reasonable care to their passengers. The degree of

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care considered “reasonable” in any particular circumstance depends upon the extent to which the circumstances surrounding maritime travel are different from those encountered in daily life. The Second Circuit has stated that where an allegedly defective condition constituting the basis of a plaintiff’s complaint is not unique to the maritime context, the ship owner or operator could be held liable “only when it has actual or constructive notice of the condition.” *Lee v. Regal Cruises*, 1997 U.S. App. LEXIS 13763 (2d Cir. 1997) (holding that cruise ship operator was not liable for passenger’s fall from errant ice cubes and water on a staircase); *Monteleone v. Bahama Cruise Line*, 838 F.2d 63, 65 (2d Cir.1988) (reversing summary judgment and holding that cruise line is not liable for trip and fall down a staircase as a result of a protruding screw).

On July 7, 2019, an 18-month old girl died during a Caribbean cruise in a highly-publicized case when her grandfather held her over a railing in a children’s play area aboard the ship without realizing that there was no glass panel in front of him. The child fell more than 100 feet below to a concrete deck. A criminal investigation has resulted in charges brought against the grandfather. The cruise line has been sued civilly in Florida by the family.

In 2012, the COSTA CONCORDIA, an Italian cruise ship, ran aground and overturned off the coast of Tuscany when she struck a rock formation close to shore, allegedly because the captain was saluting

onlookers ashore or was otherwise distracted. The captain was charged with manslaughter and sentenced to 16 years in prison as a result of sailing off course in such shallow waters. The cruise line apparently did not face any charges.

One of the most notorious maritime disasters occurred on April 15, 1912, when the ‘unsinkable’ TITANIC struck an iceberg and sunk during her maiden voyage from Southampton UK to New York City. The casualty resulted in over 1,500 deaths. The vessel owner filed a petition in the Southern District of New York to limit its liability under maritime

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law to the value of the remaining lifeboats. That case wound its way to the U.S. Supreme Court.

Cruising for a Bruising

Cruise ship owners manage their vessels from a distance. i.e., while ashore. Thus, the owner generally does not have notice of dangers that occur during the voyage. This, and lack of advanced notice to the onboard crew of certain hazards, makes for some interesting rulings:

- In 2020, *Broberg v. Carnival*, Nos. 19-10388, 19-12033 (11th Cir. Jan. 24, 2020) (Eleventh Circuit affirmed finding that the cruise line was not negligent for serving its passenger at least 16 drinks at different

bars before she fell overboard. Court held that while passenger was intoxicated, Carnival Cruise Line’s crewmembers were not on notice that she was intoxicated to the point of being in danger).

- In 2018, *Caron v. NCL (Bah.) Ltd.*, 910 F.3d 1359 (11th Cir. 2018) (affirming dismissal of negligence suit brought by passenger against cruise line where the passenger drank too much, entered a crew-only area and fell down an open hatch).

- In 2011, *Smolnikar v. Royal Caribbean Cruise Line*, 780 F. Supp. 2d 1308 (S.D. Fla. 2011) (Summary judgment granted to cruise ship in action by passenger who slammed into a tree at high speed during a zip-line shore excursion. Court held that cruise line had no reason to know of the alleged absence of padding on the tree at the end of the zip line, and had no duty to conduct its own inspection of the zip line course).

Crews on the Cruise

Indeed, under the radar screen of “reasonable care,” ship owners are often not found culpable for dangerous conditions or negligence that occurs onboard, even if caused by their own crew members.

- *York v. Commodore Cruise Line*, 863 F. Supp. 159 (S.D.N.Y. 1994) (cruise ship owner and operator held not liable for failing to install locks on cabin door when crewmember gained entry to cabin and raped passenger inside).

- *Dawsey v. Carnival*, 2018 U.S. Dist. LEXIS 180312 (action brought by passenger who sustained fractured hip as a result of bamboo massage; cruise operator not liable for negligent hiring of masseuse) (S.D. Fla. 2018).
- *Desiderio v. Celebrity Cruise Lines*, 1999 U.S. Dist. LEXIS 9699, 1999 AMC 2723 (S.D.N.Y. 1999) (action brought by passengers against cruise ship operator and captain; complaint was dismissed when Court found that defendants were not negligent in setting sail from New York to Bermuda despite the likelihood that ship would encounter an approaching hurricane).
- *Yusko v. NCL (Bahamas)*, No. 1:19-cv-20479, 2020 U.S. Dist. Lexis 1126 (S.D. Fla. Jan. 3, 2020) (ship owner held not liable for passenger injured onboard when flung to the floor by her crew-member-dance partner because the cruise line was not on notice of the risk given the absence of prior similar accidents).

Time and Place for Everything

In New York and elsewhere, forum selection clauses and time limitation clauses are not only common but also enforceable in passenger tickets:

- *Palmer v. Norwegian Cruise Line & Norwegian Spirit*, 741 F. Supp. 2d 405 (E.D.N.Y. 2010) (one-year limitations provision in the passenger ticket was enforced and summary judgment granted in lawsuit brought
- by passenger who was injured when wooden slats on cruise ship bed collapsed while passenger was asleep).
- *Commander v. American Cruise Line*, 389 F. Supp. 3d 180 (N.D.N.Y. 2019) (New York man whose thumb was severed aboard cruise on waterways in Oregon and Washington required to litigate action in Connecticut under passenger ticket's forum selection clause).
- In *Lurie v. Norwegian Cruise Lines*, 305 F. Supp. 2d 352 (S.D.N.Y. 2004), a husband and wife living in New York took a cruise around Hawaii. Ironically, the wife was a paralegal at a law firm hired to defend the cruise line operator in a class action brought by crewmembers suing for alleged unpaid overtime work. Because of her affiliation with the firm, while the couple was onboard the cruise, the crewmembers locked the wife and her husband in a room and refused to let them disembark. The husband and wife brought suit in New York for false imprisonment and despite that the cruise never sailed in Florida waters, the action was transferred to the Southern District of Florida pursuant to a forum selection clause contained in the passenger ticket.
- In *Vega v. Norwegian Cruise Lines*, 2007 U.S. Dist. LEXIS 44642 (E.D.N.Y. 2007), a passenger domiciled in New York saw an ad for a cruise in New York and purchased tickets for that cruise through a New York travel agent. The cruise departed from

a terminal in New York City and returned to the same New York City terminal at the end of the voyage. The New Yorker broke her leg onboard and brought suit in New York. The court transferred the matter to the Southern District of Florida pursuant to a forum selection clause contained in the passenger ticket. The New York court explained: "a forum is not necessarily inconvenient because of its distance from pertinent parties or places if it is readily accessible in a few hours of air travel".

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A cruise is typically a wondrous seafaring adventure. But sometimes "the ship hits the fan" and the "dream" that Christopher Cross sings about in *Sailing* can become a nightmare. Fortunately, courts sitting in admiralty are steered by well-settled maritime law and precedent to adjudicate most any challenging situation.