



Cruise ship litigation

Cruise ships often become the subject of lawsuits and criminal investigations. Just knowing how to proceed with litigation can be a challenge.

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It is estimated that more than nine million passengers travel on pleasure cruises departing North American ports each year. While this number has increased significantly in just the past five years, the safety aboard these ships has not correspondingly increased. Claims of injuries, assaults by crew members, and violent illnesses have become seemingly commonplace. Recently, with the publicity surrounding a string of disappearances aboard cruise ships, the cruise line

industry has come under heightened scrutiny. For those who litigate cruise line cases, these shocking stories and tragic results come as no surprise.

Cruise ships are not merely common carriers, they are virtual floating cities. These floating cities, however, lack fundamental safety policies, protocols and procedures to protect passengers from harm. In addition, antiquated laws and contractual language limiting rights and remedies, puts travelers in a precarious position. As one judge stated, the lesson to be learned from over a hundred years

of non-evolving case law and confusion regarding limitations on rights and remedies, is essentially the following: "Don't have an accident, don't get sick, and hope for an uneventful cruise vacation, otherwise you will discover that your rights and remedies as an aggrieved consumer are governed by antiquated legal principles which favor cruise lines to the detriment of cruise passengers."

That being said, the ability to recover from the negligence involving cruise ships is not impenetrable. Several American courts, realizing the impracticality



and injustice resulting from the current state of affairs, have handed down landmark decisions regarding the accountability of cruise ship corporations to their passengers. This article will provide a brief overview of the current state of personal injury law relating to cruise ship passengers, an examination of the procedural pitfalls, customary cruise contract limitations on rights and remedies, recent statutory interpretations, and promising verdicts.

Statute of limitations

As a practitioner, one of the procedural pitfalls that causes the greatest concern is the statute of limitations. Generally, statutes of limitation provide a reasonable amount of time to investigate a matter and file a claim. For instance, in personal injury cases in Florida, there is a four-year statute of limitations. Medical malpractice and wrongful death are two years. For injuries occurring due to negligence associated with a cruise line, however, the contractual provisions typically call for a much more limited time-frame. For injuries or deaths stemming from negligence associated with a cruise ship, the contract, which is usually contained in the ticket package, typically provides that a passenger must provide notice of a claim to the cruise line within six months and commence a lawsuit within one year.¹

Occasionally, courts will reject such restrictive limitations based on lack of notice,² tolling for a minor passenger,³ equitable estoppel,⁴ contractual overreaching,⁵ accidents on shore,⁶ and settlement fraud.⁷ However, these limitations are generally upheld. For non-physical injury claims, cruise lines impose a shorter limitation period. Most cruise lines require that written claims be filed within days as opposed to months after the accident.⁸ Courts may decide not to enforce these limitations if they were unreasonable under the circumstances,⁹ or contrary to a state statute of limitations.¹⁰

Forum selection clauses

Another procedural pitfall concerns forum selection clauses. These provisions, also contained in the ticket package, dictate where a lawsuit may be filed against the cruise line. It does not matter where the passenger is from, or where the cruise departed. Currently, cruise lines have limited the location where claims may be brought to a handful of cities where larger ports are located, such as Miami, Seattle and Los Angeles.

Several carriers have worded their forum selection clauses to provide that cases must be brought in the United States District Court. For instance, in Florida, Carnival Cruise Lines recently altered its forum selection clause to provide: "It is agreed by and between the Guest and Carnival that all disputes and matters whatsoever arising under, in connection with or incident to this Contract or the Guest's cruise, including travel to and from the vessel, shall be litigated, if at all, before the United States District Court for the Southern District of Florida in Miami, or as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida, U.S.A. to the exclusion of the Courts of any other county, state or country."¹¹ Several recent cases have upheld this type of forum selection clauses. In *Wiggins v. Carnival Corporation d/b/a Carnival Cruise Lines*,¹² the court found no reason why the forum selection clause should not be enforced even though the plaintiffs argued they did not have adequate notice of the forum selection clause and it is fundamentally unfair. Similarly, in *Valenti v. Norwegian Cruise Line*,¹³ the court held: "The source of substantive law for the action was federal maritime law. Under federal maritime law a forum selection clause in a maritime contract was prima facie valid unless there was some independent justification for refusing to enforce it. The cruise line's requirement that litigation be initiated in a court in Florida was fair and reasonable." Unless a

passenger can meet the high burden of proving fraud or a patently unfair situation, a forum selection clause in a cruise ticket contract must be enforced.¹⁴

In this regard, Courts have held that to be enforceable, forum selection clauses in cruise tickets or brochures must be fundamentally fair.¹⁵ Fundamental fairness means that the forum was not selected to discourage pursuit of legitimate claims, there was no fraud or overreaching, the notice of the forum selected was adequate, and the consumer had a reasonable opportunity to reject the cruise contract without penalty.¹⁶ Plaintiffs have been successful in challenging forum selection clauses where they can prove that they did not receive the cruise contract early enough to be able to cancel without being subject to a cancellation fee.¹⁷ For instance, where a cruise line ticket was delivered 13 days before the cruise, the court determined that adequate notice of the forum selection clause was not provided and would not be enforced.¹⁸

Choice of law provisions

In addition to forum selection clauses, passenger tickets may also designate the law to be applied in resolving any issue which may arise. The law applied to a claim can have a dramatic influence on the likelihood of recovering adequate damages. Generally choice of law clauses have been held enforceable, unless a passenger can demonstrate that enforcement would be unreasonable, to prevent fraud or overreaching,¹⁹ or if "enforcement would contravene a strong public policy of the forum in which the suit is brought."²⁰ Courts may consider several factors in determining whether choice of law clauses should be enforced such as, the place of the wrongful act, the law of the flag, the allegiance or domicile of the injured passenger, the allegiance of the ship owner, the place of the contract, the inaccessibility of the foreign forum, and the law of the forum.²¹ One caveat: a practitioner should not automatically assume that United States law always favors



the plaintiff. With the demise of nonpecuniary damages in maritime death cases, there may be cases where foreign law provides more favorable remedies than United States law.

Jurisdictional issues

As a cruise ship litigator, you should be aware of the jurisdictional issues involved when initiating a lawsuit against a carrier. In order to sue a cruise line locally, the consumer's court must have jurisdiction.

Most jurisdictional issues arise when an accident occurs in territorial waters and involve in rem claims against the ship.²² There may be other basis for the assertion of personal jurisdiction over a cruise carrier. If a cruise line conducts business through an agent, for example, or maintains an office with a staff, a bank account, and a local telephone number, then the assertion of personal jurisdiction would generally be appropriate.²³ If such indicia are not present, then certain courts have applied what is known as the "solicitation-plus doctrine." The "solicitation-plus doctrine" applies if there was active solicitation of business plus some financial or commercial dealings in the state, if the foreign company holds itself out as operating in the state, and/or if contract formation is in the state.²⁴ However, the "solicitation-plus" doctrine does not apply to all circumstances of active solicitation of business plus financial dealings – particularly when a cruise company takes reservations and distributes brochures through travel agents.²⁵

Validity of cruise contract disclaimers and exclusions

Practitioners must keep in mind that although many situations concerning cruise ship liability are riddled with complexity, cruise ships are common carriers and are held to a reasonable standard of care under the circumstances.²⁶ Cruise vessels that touch U.S. shores may not disclaim liability for loss, death, damage or delay caused or contributed to by the

vessel's negligence.²⁷ A passenger ticket may contain clauses which seek to disclaim liability for a variety of problems but instances of gross negligence and intentional misconduct may not be disclaimed by common carriers.²⁸ In addition, many cases, including several that our firm has successfully handled, have held that disclaimers of simple negligence, particularly regarding the health and safety of the passengers, such as ingress and egress from the cruise ship, will not be enforced. Provisions that try to disclaim liability for either gross or simple negligence are usually held to be void under common law and against public policy.²⁹

Specifically, in *Kornberg v. Carnival Cruise Lines*,³⁰ a case involving malfunctioning toilets, the cruise line sought to enforce a clause in the passenger contract disclaiming liability for the discomfort of passengers.

The *Kornberg* court stated:

Of the three disclaimers, the disclaimer of liability for negligence appears to be the most applicable to this suit. Yet, for good reason Carnival does not rely on this disclaimer. 46 U.S.C.A. §183c expressly invalidates any contract provision purporting to limit a ship's liability for negligence to its passengers. It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability.³¹

Unfortunately, the courts have been willing to enforce disclaimers of liability regarding accidents that occur during shore excursions.³² This is especially troubling since cruise ships generate a substantial amount of money from these excursions, which are typically delivered by independent contractors not subject to

U.S. jurisdiction and who are usually uninsured and unlicensed.³³ Some courts have held that a disclaimer for an on-shore excursion may not be enforceable if the passenger relied upon representations or warranties regarding the safety, competence, and reliability of on-shore suppliers of travel services.³⁴ Lastly, while disclaimers such as these might be enforceable against the cruise carrier, many courts have held that the ground service providers are not immune from liability.³⁵

Statutory schemes unique to the field of maritime personal injury and death

In the United States, claims for personal injuries and deaths that occur on or near navigable waters generally fall within a court's admiralty jurisdiction and require the application of substantive maritime law, which is federal law. In order to successfully handle cruise ship injury or death cases governed by United States federal maritime law, an understanding of the relevant federal statutes and regulations is first required. The United States Congress addressed maritime wrongful death remedies in 1920 when it passed the *Jones Act*,³⁶ which governs the right of recovery for crew members, and enacted the *Death on the High Seas Act (DOHSA)*, which provides a wrongful death remedy limited to pecuniary damages for fatalities on the high seas.

Courts have applied *DOHSA* to a variety of accidents in foreign territorial waters, including the death of a snorkeler from a heart attack in Mexican territorial waters during an expedition off the beaches of Cozumel;³⁷ the death of a snorkeler in Jamaican waters when the decedent was struck by the propeller of a 22-foot motorboat;³⁸ and the death of a cruise ship passenger of complications from an injury sustained on a gangway of a vessel in Mexican territorial waters.³⁹ In one of our firm's recent cases, *DOHSA* was also applied to the death of a scuba diver in Bahamian territorial waters



which was the result of cruise ship negligence. The significance of the applicability of *DOHSA* in all of these cases is important. The measure of damages set forth in *DOHSA*,⁴⁰ authorizing recovery by a decedent's survivors for their pecuniary loss, applies in the case of a death on the high seas, and survivors may not recover additional damages under general maritime law for loss of society or pre-death pain and suffering.⁴¹ State wrongful death statutes may not be used to supplement *DOHSA* remedies with nonpecuniary damages either.⁴² On a positive note, *DOHSA* is not intended to preclude the availability of a remedy for wrongful death under general maritime law in situations not covered by the act.⁴³

Another interesting situation arises when an accident occurs on the high seas, but the death occurs elsewhere. Several cases have addressed this issue. In *Howard v. Crystal Cruises, Inc.*,⁴⁴ a passenger sustained a laceration while disembarking from a cruise ship in Mexican territorial waters. He was first treated on the vessel and then underwent surgery in Acapulco to repair the injury. He returned home to Sacramento and died within a month from blood clots. His widow filed a wrongful death suit against the operator of the vessel. Finding it "undisputed that Howard died as the result of a wrongful act that occurred 'beyond a marine league (i.e., three nautical miles) from the shore of any State,' the court applied *DOHSA* as the exclusive remedy.⁴⁵ In a case out of the Fifth Circuit, *Motts v. M/V GREEN WAVE*,⁴⁶ the district court held that *DOHSA* did not apply to the claims because the delay in providing medical treatment caused Motts' death. The Fifth Circuit disagreed, noting that *DOHSA*'s reach "is not limited to negligent acts that actually occur on the high seas." Instead the court stated: "The place negligence or wrongful act occurs is not decisive. The place injury occurs and the function the injured person was performing are more significant."⁴⁷ Based on its review of the case law, the Fifth Circuit reasoned that the cruise ship's actions invoke *DOHSA* jurisdiction even though all

of the ship's actions and the decedent's death occurred onshore."⁴⁸ The Fifth Circuit concluded that the location of the accident determines whether *DOHSA* applies.⁴⁹ "That said, as long as the decedent is still on the high seas at the time the negligence begins, *DOHSA* must apply to post-accident negligence."⁵⁰ An award of punitive damages as well as an award of nonpecuniary damages was reversed.⁵¹

Non-*DOHSA* punitive damages

Although punitive damages are not awarded in cases which conform to *DOHSA* regulations, many courts have found that in certain circumstances state wrongful death remedial schemes can be applicable for maritime claims. In *Yamaha Motor Corp., U.S.A. v. Calhoun*, the Court held that a state wrongful death and survival statute could supplement federal remedies when a nonseaman's death occurred in territorial waters.⁵² *Calhoun* involved a 12-year-old who was killed in a jet ski accident on a beachfront resort in Puerto Rico.⁵³ Finding that Congress had not prescribed a comprehensive tort regime for territorial waters, the Court held that the remedy for wrongful death was governed by state law.⁵⁴ Two more recent cases have also allowed nonseamen to recover punitive damages in personal injury actions: *In re Horizon Cruises Litigation*,⁵⁵ and *In re Plaquemine Towing Corp.*⁵⁶ Both cases set forth an analytical framework for deciding the proper application of damages in claims brought under the general maritime law. The *Plaquemine* court stated:

A court must first evaluate the factual setting of the case and determine what statutory remedial measures, if any, apply in that context. If the situation is covered by a statute like the *Jones Act* or *DOHSA*, and the statute informs and limits the available damages, the statute directs and delimits the recovery available under the general maritime law as well. The general maritime law will not expand the available damages when Congress has spoken to the

relief it deems appropriate or inappropriate.⁵⁷

Medical malpractice aboard cruise ships

Currently, one of the hottest topics of debate in the United States courts concerns the nature and scope of the law governing cruise ship medical care. For the past 100 years, most courts in the United States have followed the same basic tenant: When a carrier undertakes to employ a doctor aboard a ship for its passengers' convenience, the carrier has a basic duty to employ a doctor who is competent and duly qualified. If the carrier breaches its duty, it is responsible for its own negligence. However, where the carrier otherwise employs a competent professional, if the doctor is thereafter negligent in treating a passenger, that negligence will not be imputed to the carrier.⁵⁸ The rationale used by the court is that a ship-owner owes its injured passengers the "duty to exercise 'reasonable care to furnish such aid and assistance as ordinarily prudent persons would render under similar circumstances,'" it is not legally obligated to provide a physician aboard its vessel.⁵⁹ Accordingly, where a physician is provided, the ship-owner only has a duty to use reasonable care in the selection of such physician.⁶⁰

Under federal maritime law, ship-owners are most often not vicariously liable for the negligence of the ships' doctors in treating passengers.⁶¹ In recent years, federal and state courts have revisited this draconian rule and twice found that a carrier may be liable for negligent treatment rendered by its on-board doctor. The most recent cases finding carriers liable for the negligence of shipboard doctors are the now overturned Florida state court decision of *Carlisle v. Carnival Corp.*,⁶² followed by the Illinois state court decision of *Mack v. Royal Caribbean Cruises, Ltd.*⁶³ These cases are the first since the 1959 decision of *Nietes v. American President Lines, Ltd.*¹ to hold that a passenger injured by the negligent treatment of a cruise line's on-board physician can maintain a vicarious liability cause of action



against the cruise line. In 2007 the *Carlisle* decision was unfortunately overturned on appeal to the Florida Supreme Court. The Florida Supreme Court reasons that the many years of precedent should not be overturned.ⁱⁱ This leaves only the Illinois case of *Mack v. Royal Caribbean Cruises Ltd.*ⁱⁱⁱ In *Mack* the court stated: "While we acknowledge that we are bound by federal statute to follow federal maritime law in this matter (see U.S.C. § 1333(1) (2004); *Offshore Logistics, Inc.*, 477 U.S. at 222-23 [91 L. Ed. 2d at 189-90]), *Nietes* and the federal cases that have followed its reasoning and holding indicate that the question of whether a vicarious liability claim against a ship-owner for the negligent treatment by its on-board doctor will stand under maritime law is not settled at this time.

Accordingly, for the reasons stated above, we elect to follow the holding of the federal courts in *Nietes*, *Huntley*,^{iv} and *Fairley*.^v

A promising federal decision out of the United States District Court for the Southern District of Florida is *Doonan v. Carnival Corporation*.^{vi} In this opinion, a cause of action for vicarious liability alleging an apparent agency theory of recovery was not dismissed. The court stated: "Apparent agency can be established despite the majority ruling of *Barbetta*. See *Fairley*, 1933 A.M.C. at 1639-40."^{vii} Florida courts have cited *Doonan* as making it "permissible for a court sitting in Admiralty, to hear vicarious liability claims premised upon the theory of apparent agency."^{viii} In other words, despite *Barbetta* a plaintiff may be able to sustain an apparent agency claim against a cruise line for the medical malpractice of the carrier's on-board physician.

Conclusion

Cruise line litigation should not be attempted without a thorough understanding of cruise ship law, especially since many areas of maritime law are now in flux and merit careful attention. Issues such as procedural concerns, contract exclusions, statutory schemes, and recent court decisions are continually and rap-

idly evolving in the area of cruise ship law. Hopefully this article has provided a comprehensive preview into many of the cruise ship litigation concerns and complexities and will aid the practitioner in clearing the murky waters surrounding these floating cities.

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Endnotes:

¹ See *Hughes v. Carnival Cruise Lines, Inc.*, 2003 WL 1740460, at *1 (S.D.N.Y. Mar. 31, 2003) (one-year time limitation period enforced); *Angel v. Royal Caribbean Cruises, Ltd.*, 2002 WL 31553524, at *1, *5 (S.D. Fla. Oct. 22, 2002) (passenger fell overboard; one-year time limitation enforced); *Konikoff v. Princess Cruises, Inc.*, 2001 U.S. Dist. LEXIS 14034, at *6 (D.V.I. Aug. 13, 2001) (passenger sustained injury exiting taxi during shore excursion; claim dismissed as untimely); *Stone v. Norwegian Cruise Line*, 2001 WL 877580, at *1-2 (E.D. Pa. May 15, 2001) (slip and fall in bathroom; time limitations period enforced); *Wall v. Mikeralph Travel, Inc.*, 2003 WL 178770, at *1 (Conn. Super. Ct. Jan. 6, 2003) (time limitations period enforced; "The fact that the ticket-contract, while never reaching the [passenger], resided with the travel agency...employed to purchase the ticket, inclines one to conclude that the opportunity to discover these restrictions existed for a significant period of time"); *Tateosian v. Celebrity Cruise Servs., Ltd.*, 768 A.2d 1248, 1252 (R.I. 2001) (food poisoning; one year time limitation period enforced); *Reeser v. NCL Bahamas Ltd.*, Civil Action No. 05-2344, 2005 U.S. Dist. LEXIS 17159 (E.D. Pa. August 17, 2005) (injured cruise lines passengers' claims dismissed as time barred for failing to file suit within one year despite cruise line's failure to inform plaintiff's lawyer of such provision while communicating with the lawyer during limitations period); *Levick v. Steiner Transocean Limited*, 2005 U.S. Dist. LEXIS 14770 (S.D. Fla. July 13, 2005) (one year passenger ticket limitation to file suit applied to claims against independent contractor who ran the spa on

the ship, and filing suit in state court did not toll the time period to file suit in federal court).

² *Ward v. Cross Sound Ferry*, 273 F.3d 520, 526 (2d Cir. 2001) (slip and fall on gangway; one-year time limitations clause not enforced; passenger receiving ticket two minutes before boarding did not have proper notice of time limitations clause).

³ *Gibbs v. Carnival Cruise Lines*, 314 F.3d 125 (3d Cir. 2002) (minor burned feet on hot deck surface; one-year time limitations period tolled for minor until after parent began to serve as guardian ad litem after filing of lawsuit).

⁴ *Dillon v. Admiral Cruises, Inc.*, 960 F.2d 743, 746 (8th Cir. 1992) (trip and fall in ship's lounge; cruise line may be estopped from relying on one-year time limitation).

⁵ See *Long v. Holland Am. Line Westours*, 26 P.3d 430, 436 (Alaska 2001).

⁶ *Rams v. Royal Caribbean Cruises, Inc.*, 17 F.3d 11, 13 (1st Cir. 1994) (one-year time limitation does not apply to accidents during shore excursions).

⁷ *Berg v. Royal Caribbean Cruises*, 810-12 (D.N.J. 1994) (passenger misled into not filing lawsuit within one year).

⁸ *Insogna v. Princess Cruises, Inc.*, N.Y.L.J., June 10, 2002, at 37; *Cronin v. Cunard Line*, 672 N.Y.S. 2d 864, 864-65 (N.Y. App. Div. 1998) (deceptive port charges; six-month time limitation in which to commence lawsuit enforced).

⁹ *Barton v. Princess Cruises, Inc.*, No. B123107, 2002 WL 31677178, at *7 (Cal. App. Nov. 27, 2002) (deceptive port charges; clause in passenger ticket requiring the filing of written notice of claims within fifteen days and the filing of a lawsuit within ninety days may be unenforceable).

¹⁰ *Johnson v. Commodore Cruise Line Ltd.*, 897 F. Supp. 740, 744-45 (S.D.N.Y. 1995) (passenger raped by crew member; claim for negligent infliction of emotional distress governed by Mississippi's three-year statute of limitations; passenger ticket time limitations of fifteen days to file claim and six months to sue for nonphysical claims void).

¹¹ See Important Notices to Guests; Important Terms and Conditions of Contract, available at http://www.carnival.com/CMS/Static_Templates/ticket_contract.aspx (last visited January 23, 2006).

¹² United States District Court for the Western District of Texas, El Paso Division. 2005 U.S. Dist. LEXIS 18235.

¹³ United States District Court for the Southern District of New York, 2005 U.S. Dist. LEXIS 6811.

¹⁴ *Fisk v. Royal Caribbean Cruises, Ltd.*, 141 Idaho 290 (2005); *Hellman v. Royal Caribbean International*, 2005 U.S. Dist. LEXIS 14177.

¹⁵ See *Carnival Cruise, Inc. v. Shute*, 499 U.S. 585 (1991).

¹⁶ See *id.*; *Cismaru v. Radisson Seven Seas Cruises, Inc.*, No. Civ. A. 07-00-00100-CV, 2001 WL 6546, at *1 (Tex. App. Jan. 2, 2001); *Stobaugh v. Norwegian Cruise Lines, Ltd.*, 5 S.W. 3d 232, 235 (Tex. App. 1999).

¹⁷ See *Ward v. Cross Sound Ferry*, 273 F.3d 520, 525 (2d Cir. 2001).

¹⁸ *Casavant v. Norwegian Cruise Line, Ltd.*, 63 Mass. App. Ct. 785 (2005).

¹⁹ See *Long v. Holland Am. Line Westours, Inc.*, 26 P.3d 430 (Alaska 2001) (passenger fell during land tour of museum; maritime law does not govern land tour; choice of law clause in tour contract stating that "except when maritime law applied, the contract would be construed according to Washington state law" was rejected and the law of Alaska applied).

²⁰ *Milanovich v. Costa Crociere, SPA*, 954 F.2d 763, 768 (D.C. Cir. 1992).

²¹ See *Klinghoffer v. S.N.C. Achille Lauro*, 795 F. Supp. 112, 115-16 (S.D.N.Y. 1992).



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- ²² See *Benson v. Norwegian Cruise Line Ltd.*, 859 So.2d 1213 (Fla. Ct. App. 2003) (physician was subject to personal jurisdiction in Florida under Florida's long-arm statute for wrongful death action because cruise ship was within Florida territorial boundaries); *Pota v. Holtz*, 852 So.2d 379, 381 (Fla. Ct. App. 2003) (pregnant passenger complaining of stomach cramps misdiagnosed as having bladder infection goes into contractions and bleeding and cruise line denies request for airlift to hospital in Grand Cayman Island; passenger taken to hospital only after ship docks, gives birth and baby dies a few hours later; jurisdiction over ship's doctor onboard a ship docked in Florida port); *Rana v. Flynn*, 823 So.2d 302, 303 (Fla. Ct. App. 2002) (passenger suffered heart attack and was treated by ship's doctor as cruise ship sailed into Florida waters and docked in the port of Miami; jurisdiction over ship's doctor found).
- ²³ *Dickerson, Thomas A., The Cruise Passenger's Dilemma: 21st Century Ships, Nineteenth Century Rights*. 28 Tul. Mar. L.J. 447 at 482.
- ²⁴ See *Falcone v. Mediterranean Shipping Co.*, Civil Action No. 01-3918, 2002 U.S. Dist. LEXIS 11392, at *5 (E.D. Pa. Apr. 3, 2002) (passenger suffered physical injury aboard cruise ship; no jurisdiction based upon sales by local travel agent "with no authority to confirm reservations"); *Kauffman v. Ocean Spirit Shipping, Ltd.*, 1993 AMC 177, 180 (Mich. 1990) (dissemination of cruise brochures through travel agents and advertising in scuba magazine insufficient to support long arm jurisdiction); *Duffy v. Grand Circle Travel, Inc.*, 756 N.Y.S. 2d 176, 177 (N.Y. App. Div. 2003) (passenger sustained injury in France; no jurisdiction over Massachusetts cruise company); *Sanderman v. Costa Cruises, Inc.*, 55 Pa. D & C. 4th 328, 333 (Pa. C.P. 2001) (consumer paid Florida travel agent \$21,775 for cruise on Costa Romantica that failed to remit any money to cruise line; no jurisdiction over cruise line not doing business in Pennsylvania).
- ²⁵ *Id.*
- ²⁶ *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1334 (11th Cir. 1984).
- ²⁷ See *Royal Ins. Co. Of Am. v. Southwest Marine*, 194 F.3d 1009, 1016 (9th Cir. 1999).
- ²⁸ See *Washington Metropolitan Area Transit Authority v. Reading*, 674 A.2d 44 (Md.App. 1996); *Bellocchio v. Italia Flotte Riunite Cosulich Line*, 84 F.2d 975 (2d Cir. 1936). *Tullis v. Fidelity and Casualty Co. of New York*, 397 F.2d 22 (5th Cir. 1968); *Marshall v. Westfal-Larsen & Co.*, 259 F.2d 575 (9th Cir. 1958); *Goode v. Oceanic Steam Nav. Co.*, 251 F. 556 (2d Cir. 1918); see also, *White v. United States of America* 53 F.3d 43 (4th Cir. 1995), *Florida Fuels, Inc. v. Citgo Petroleum Corp.* 6 F.3d 330 (5th Cir. 1993) and *Romero Reyes v. Marine Enterprises, Inc.* 494 F.2d 866 (1974); *Russell v. City Ice & Fuel Co.*, 539 F.2d 1318 (4th Cir. 1976); *Kermarec v. Compagnie Generale Trans-Atlantic*, 358 U.S. 625, 79 S.Ct 406 (1959); *Marshall v. Westfal-Larsen Co.*, 259 F.2d 575 (9th Cir. 1958); *Meyers v. M/V Eugenio C.* 842 F. 2d 815 (5th Cir. 1988); *Orian v. Milstead*, 473 F.2d 948 (8th Cir. 1973).
- ²⁹ See *Liverpool & Great W. Steam Co. v. Phoenix Ins.*, 129 U.S. 397, 441 (1889).
- ³⁰ 741 F.2d 1332, 1985 AMC 826 (11th Cir. 1984).
- ³¹ *Id.* at 1335, 1985 AMC at 828.
- ³² See *Henderson v. Carnival Corp.*, 125 F. Supp. 2d 1375, 1377 (S.D. Fla. 2000) (passenger injured on catamaran trip while on excursion from cruise; notwithstanding Carnival logo on catamaran and crew member shirts, cruise ship disclaimer of ownership or control of catamaran company enforced); *Mashburn v. Royal Caribbean Cruises, Ltd.*, 55 F. Supp. 2d 1367, 1370 (S.D. Fla. 1999) (day trip to Coco Cay Island owned by cruise line; passengers rented Sea-Doo, signed waiver and were injured in accident; no negligence found); *Dubret v. Holland Am. Line Westours, Inc.*, 25 F. Supp. 2d 1151, 1153 (W.D. Wash. 1998) (bus accident during shore excursion; disclaimer of liability enforced).
- ³³ *Hernandez v. Holiday Inn, N.Y.L.J.*, Mar. 23, 1993, at 21.
- ³⁴ *Winter v. I.C. Holidays, Inc.*, N.Y.L.J., Jan. 9, 1992, at 23 (holding that tour operator has duty to select responsible independent contractors).
- ³⁵ See *Berzonine v. Maui Classic Charters*, 1995 AMC 2628 (D. Haw. 1995) (350-pound handicapped passenger broke ankle because of inattention and lack of assistance by crew; misrepresentations in brochure that cruises were "suitable for handicapped individuals"; \$42,500 in special damages awarded); *Sharpe v. W. Indian Co.*, 118 F. Supp. 2d 646, 652 (D.V.I. 2000) (passenger left cruise ship to board waiting tour bus and was struck by failing railing; time limitations in cruise contract enforced as against cruise ship and clause that stated, "the exclusions or limitations of liability of carrier set forth in the provisions of this contract shall also apply to and be for the benefit of agents, independent contractors, concessionaires and suppliers of carrier as well as owners and operators of all shoreside properties at which the vessel may call" was unenforceable against dock operators and local truck company responsible for accident).
- ³⁶ Act of June 5, 1920, ch. 250, 41 Stat. 988 (codified at 46 U.S.C. app. §688 (2000)).
- ³⁷ *Moyer v. Klosters Rederi*, 645 F. Supp. 620, 1987 (S.D. Fla. 1986).
- ³⁸ *Kunreuther v. Outboard Marine Corp.*, 757 F. Supp. 633, (E.D. Pa 1991).
- ³⁹ *Howard v. Crystal Cruises Inc.*, 41 F.3d 527, (9th Cir. 1994).
- ⁴⁰ 46 App. U.S.C.A. §762.
- ⁴¹ *Dooley v. Korean Airlines Co., Ltd.*, 524 U.S. 116 (1998).
- ⁴² In *Re Korean Airlines Disaster of Sept. 1, 1983*, 117 F.3d 1477 (D.C. Circuit 1997), *aff'd*, 524 U.S. 116 (1998).
- ⁴³ *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375 (1970).
- ⁴⁴ 41 F.3d 527, 1995 A.M.C. 305 (9th Cir. 1994).
- ⁴⁵ *Id.* at 529.
- ⁴⁶ 210 F.3d 565, 2000 A.M.C. 1521 (5th Cir. 2000).
- ⁴⁷ *Motts*, 210 F.3d at 569.
- ⁴⁸ *Id.* at 569-70 (quoting *Smith*, 684 F.2d at 1111).
- ⁴⁹ *Id.* at 570.
- ⁵⁰ *Id.* at 571.
- ⁵¹ *Motts*, 210 F.3d at 571-72 (footnote omitted).
- ⁵² 516 U.S. 199, 206-07, (1996).
- ⁵³ *Id.* at 199.
- ⁵⁴ *Id.* at 215-216.
- ⁵⁵ In *re Horizon Cruises Litigation*, 101 F. Supp. 2d 204, 213 (S.D.N.Y. 2000) (quoting *Gravatt v. City of New York*, 53 F. Supp. 2d 388, 427-29 (S.D.N.Y. 1999)).
- ⁵⁶ In *re Plaquemine Towing Corp.*, 190 F. Supp. 2d 889, 892-94 (M.D. La. 2002).
- ⁵⁷ *Id.* at 893.
- ⁵⁸ *Barbetta v. S/S Bermuda Star*, 848 F.2d 1364, 1371 (5th Cir. 1988); *The Great Northern*, 251 F. 826, 830-32 (9th Cir. 1918); *Di Bonaventure v. Home Lines, Inc.*, 536 F. Supp. 100, 103-04 (E.D. Penn. 1982); *Cimini v. Italia Crociere Int'l S.P.A.*, 1981 AMC 2674, 2677 (S.D.N.Y. 1981); *Amdur v. Zim Israel Navigation Co.*, 310 F.Supp. 1033, 1042-43 (S.D.N.Y. 1969).
- ⁵⁹ *Barbetta v. S/S Bermuda Star*, 848 F.2d 1364, 1371 (5th Cir. 1988).
- ⁶⁰ See *Barbetta*, 848 F.2d at 1372; *Cummiskey v. Chandris*, 895 F.2d 107, 108 (2d Cir. 1990); *Nanz v. Costa Cruises, Inc.*, (S.D. Fla. 1991), *aff'd* 932 F.2d 977 (11th Cir. 1992); *Jane Doe v. Celebrity Cruises, Inc.*, 145 F. Supp. 2d 1337, 1345-46 (S.D. Fla. 2001); *Gillmor v. Caribbean Cruise Line, Ltd.*, 789 F. Supp. 488, 491 (D.P.R. 1992); *Hilliard v. Kloster Cruise, Ltd.*, 1991 AMC 314, 316-17 (E.D. Va. 1990); *Mascolo v. Costa Crociere*, 726 F. Supp. 1285, 1286 (S.D. Fla. 1989).
- ⁶¹ *Id.*
- ⁶² *Carlisle v. Carnival Corp.*, 864 So.2d 1 (Fla. DCA 2003).
- ⁶³ *Mack v. Royal Caribbean Cruises, Ltd.*, 838 N.E. 2d 80 (Ill. App. 2005).
- ⁶⁴ 188 F. Supp. 219, 221 (N.D. Cal. 1959).
- ⁶⁵ *Carnival Corp. v. Carlisle*, 953 So. 2d 461, 470 (Fla. 2007) ("this Court and the Florida district courts of appeal must adhere to the federal principles of harmony and uniformity when applying federal maritime law. At the time the instant case was decided by the Third District, with the exception of *Nietes*, the federal maritime law uniformly held that a ship owner is not vicariously liable for the medical negligence of the shipboard physician").
- ⁱ *Mack v. Royal Caribbean Cruises, Ltd.*, 838 N.E. 2d 80 (Ill. App. 2005).
- ⁱⁱ *Huntley v. Carnival Corp.*, 307 F. Supp. 2d 1372, 1373 (S.D. Fla. 2004).
- ⁱⁱⁱ *Mack v. Royal Caribbean Cruises, Ltd.*, 838 N.E. 2d 80 (Ill. App. 2005).
- ^{iv} *Doonan v. Carnival Corp.*, 404 F. Supp. 2d 1367 (D. Fla. 2005).
- ^v *Id.*
- ^{vi} *Hajtman v. NCL (Bahamas) Ltd.*, 526 F. Supp. 2d 1324 (D. Fla. 2007).

