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MARITIME LAW ASSOCIATION

CRUISE LINES + PASSENGER SHIPS COMMITTEE NEWSLETTER

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COMMITTEE MEETING

DATE: Wed., April 29, 2015
TIME: 10:30 a.m. - 12:00 p.m.
LOCATION:
Freehill Hogan & Mahar, LLP
80 Pine Street, New York, NY 10005
(212)-425-1900

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Password: CruiseShip

AGENDA

CRUISE LINES AND PASSENGER SHIPS COMMITTEE MEETING

I. Introductions

Carol L. Finklehoffe, Esq.
Leesfield Scolara, P.A.

II. *Franza v. Royal Caribbean* - Vicarious Liability for Shipboard Medical Staff and its Impact on Maritime Claims

Andrew Waks, Waks & Barnett, P.A.
Philip Parrish, Philip Parrish P.A.

III. The Impact of the CVSSA on Prosecuting and Defending Sexual Assault Claims

Curtis Mase, Mase Lara, P.A.

IV. An Update on the Maritime Law Affecting Cruise Ship Litigation

Suzanne Vazquez, Esq., Carnival Cruise Lines
Andrew Ciganek, Kreindler & Kreindler

V. Arbitration: Venue and Applicable Law

Professor Martin Davies, Tulane Law School

THE IMPACT OF THE CVSSA ON PROSECUTING AND DEFENDING SEXUAL ASSAULT CLAIMS

Curtis Mase, Esq.,
Mase Lara P.A., Miami, FL

In 2010, Congress passed the Cruise Vessel Security and Safety Act ("CVSSA"), mandating, *inter alia*, video surveillance systems on passenger cruise vessels embarking and departing passengers in the U.S. Since then, closed-circuit television ("CCTV") monitoring systems have become standard throughout the industry. The statute, however, does not detail how many cameras are required or the areas of coverage, nor does it dictate the method of surveillance. The number of cameras and their placement vary widely among cruise operators. The CVSSA states only that the ship must "maintain a video surveillance system to assist in documenting crimes on the vessel and providing evidence for the prosecution of such crimes." 46 U.S.C. §3507(b)(1).

Though Congress empowered the Coast Guard to "issue such regulations as are necessary to implement [the CVSSA]," 46 U.S.C. §3507(j), it has been slow in doing so. Proposed on January 16, 2015, [1] regulations under consideration would require, among other things, cruise line video surveillance systems "in areas to which passengers and crew members have common access," excluding passenger staterooms or crew cabins. 80 FED. REG. 11 (to be codified at 46 C.F.R. pt. 70). The proposed regulation states that the Coast Guard "would expect the vessel owner or operator to make whatever arrangements are necessary to ensure effective system placement," but "does not require real time monitoring." *Id.*[1]

Even if these proposed regulations become law, the CVSSA still lacks specificity regarding the *number* of cameras required or specific *locations* which must be covered by those cameras. Moreover, the ambiguity inherent in "areas to which passengers and crew members have common access" is likely to become a source of disagreement, debate and, potentially, litigation.

Both before enactment of the CVSSA and after, there have been personal injury claims alleging that the use, or lack thereof, of security video cameras and CCTV monitoring on cruise vessels caused or contributed to the injury/incident. These claims have generally taken two forms: (1) alleging failure to monitor CCTV systems; and/or (2) alleging noncompliance with the CVSSA. Both types of claims have been rejected to date.

The leading case on failure to monitor is *Mizener v. Carnival Corp.*, No. 05-22965, 2006 U.S. Dist. LEXIS 44332 (S.D. Fla. July 16, 2006). There, a passenger disappeared while traveling on the Carnival *Pride* and was presumed to have gone overboard. The personal representative argued that by placing video cameras aboard its vessel, Carnival voluntarily assumed a duty (i.e., the so-called "undertaker doctrine") to monitor the cameras at all times and to protect the safety of its passengers. *Mizener*, No. 05-CV-22965 [ECF No. 1]. The Court disagreed, finding that no duty to monitor the cameras aboard its vessel existed. *Id.* [ECF No. 24]. District Judge Marcia Cooke concluded that to hold otherwise would, in effect, require cruise lines who installed CCTV to "insure the safety of their passengers or patrons." *Id.*

While *Mizener* predated enactment of the CVSSA, in *Doe v. Royal Caribbean Cruises, Ltd.*, 2011 WL 6727959 (S.D. Fla. Dec. 21, 2011) a post-CVSSA enactment case, a passenger alleged she was sexually assaulted by another passenger who pulled her into a

women's bathroom. The events leading up to the assault were captured on the vessel's CCTV and included her rebuffing two prior attempts to pull her into the bathroom. *Id*. at *1. This went unnoticed by the vessel's security personnel. The passenger argued that the cruise line breached its duty to assign sufficient personnel to continuously monitor the cameras, in essence, arguing, *inter alia*, that the CVSSA's requirement to maintain video surveillance necessarily implied a requirement to monitor same. Magistrate Judge Jonathan Goodman rejected this argument, adopting *Mizener*'s reasoning that "the mere installation of video cameras does not create a duty to monitor them." *Id*. at *3.

In *Fiorillo v. Carnival Corp.*, 2013 WL 632264 (S.D. Fla. Feb. 20, 2014), a passenger alleged that a crewmember sexually assaulted her as she slept in her stateroom. In a separate count of her complaint, she alleged that the CVSSA created a duty to "maintain an adequate video monitoring system to regulate access by crewmembers to passenger cabins." *Fiorillo*, No. 12-CV-21599 [ECF No. 1]. District Judge James Cohn dismissed the claim, holding that breach of the CVSSA did not create a private right of action. *Id*. [ECF 34]. *See also Perciavalle v. Carnival Corp.*, 2012 WL 2412179 (S.D. Fla. June 26, 2012) at *2 n.2 ("Although Plaintiff has pled [a violation of CVSSA] as a basis for his spoliation claim, *the statute does not appear to create a private cause of action* for a failure to report an incident to the FBI.") (emphasis added).

The decisions to date, however, do not appear to completely settle the issue of CVSSA CCTV-based claims. Plaintiffs may still seek to bring negligence claims alleging insufficient and/or inadequate video recording systems. They may attempt to demonstrate that systems are inadequate by establishing non-conformity with the CVSSA. Such claims may seek to circumvent the *Mizener*, *Doe*, and *Fiorillo* decisions by alleging a ship's CCTV system is not reasonable under the circumstances – especially given prior onboard incident history (i.e., akin to land based negligent security claims). Success on such claims seems less likely given *Mizener* and its progeny, but not altogether impossible, if framed as negligence claims which – rather than relying on the CVSSA to create the duty or cause of action – use it as a statute which creates a benchmark for reasonableness under the circumstances (i.e., violation of a statute as evidence of negligence).

It remains unclear moving forward how courts will treat these types of claims, but it seems likely passengers will continue to assert claims based on failure to follow the CVSSA and its video surveillance requirement.

I would like to thank Mase Lara, P.A. associate Andrew Beaulieu for his contributions to this article.

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[1] The text of the proposed regulations (Federal Register Vol. 80, No. 11 – Cruise Vessel Security and Safety Act of 2010) can be found at the following link: http://www.uscg.mil/hq/cg5/cg521/docs/80FR2350.pdf.

The proposed regulations would also require CCTV footage to be "kept for at least 14 days after a voyage, and for 120 days when a serious incident is reported." 80 FED. REG. 11. The proposed regulations describe "serious incidents" to include "sexual assault and the disappearance of passengers at sea." *Id*.

THE APPLICATION OF U.S. LAW IN SEAMAN'S ARBITRATIONS

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Although those circuit courts which have weighed in on the subject have made it clear that they will enforce arbitration provisions contained in collective bargaining agreements applicable to seamen, only one has expressly addressed the issue of whether arbiters must apply U.S. maritime law in such proceedings. While the Fifth Circuit has recently upheld an award following the application of Philippine law, it is nevertheless clear under existing Supreme Court precedent that U.S. maritime law must be applied or the resulting arbitration award will be unenforceable.

The starting point for a better understanding of this issue begins with a discussion of the longstanding policy inherent in maritime law protecting seamen.

I. The Strong Policy of U.S. Maritime Protecting Seamen's Remedies

Because of the nature and unique hazards of their work at sea, seamen have always been provided with special protections by maritime law, dating back to the days of the ancient Phoenicians. These special protections have been deemed necessary in large part to prevent unscrupulous shipowners from taking advantage of their seamen, who are generally powerless to protect themselves.[1]

Accordingly, U.S. maritime law has historically treated seamen as "wards of the court."[2] The special solicitude given to seamen pre-dates even our Constitution, and although times have changed, even today's seaman faces a much more difficult and challenging environment than land based workers as recognized by the Court in *Pope & Talbot v. Hawn*, Inc.[3]

From ancient times admiralty has given to seamen rights which the common law did not give to landsmen, because the conditions of sea service were different from conditions of any other service, even harbor service. . . . While his lot has been ameliorated, even under modern conditions the seagoing laborer suffers an entirely different discipline and risk than does the harbor worker. His fate is still tied to that of the ship. His freedom is restricted. He is under an unusual discipline and is dependent for his food, medicine, care and welfare upon the supplies of the ship. Contrast the lot of this plaintiff who lived at home, was free to leave his employment, took no risks of the sea and had no different condition or hazard attached to his employment than would have attached to a carpentry job in a building ashore.

Because of this special solicitude, the federal courts have expressly held on numerous occasions over the years that a seaman can not be deprived of his or her remedies under the Jones Act,[4] doctrine of unseaworthiness[5] or maintenance and cure[6] by contract.

II. The Convention on the Enforcement of Foreign Arbitral Awards

In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*,[7] the Supreme Court created a two-step approach for the consideration of defenses to arbitration agreements under the Convention on the Enforcement of Foreign Arbitral Awards.[8] Under this two-step approach, only those limited defenses contained in Article II of the Convention may be raised in the initial arbitration enforcement stage. Additional defenses,

including those based upon violation of public policy and unconscionability, which are recognized in Article V of the Convention, may only be asserted at the post arbitration award enforcement stage.

Although involving claims under U.S. securities laws, *Mitsubishi's* two step approach has been the rock upon which all of the subsequent Eleventh Circuit cases construing seamen's contracts have been based.

Since the defendant seeking to compel arbitration in *Mitsubishi* agreed to the application of U.S. securities laws, the Court was not called upon to decide whether the use of foreign law would have invalidated the arbitration result. The Court went on, however, to warn:

We merely note that in the event the choice-of-forum and choice-of-law clauses operated in tandem as a ***prospective waiver*** of a party's right to pursue statutory remedies for antitrust violations, we would have little hesitation in condemning the agreement as against public policy.[9]

The Supreme Court has reiterated its adherence to the prospective waiver doctrine in a number of subsequent cases.[10]

In *Mitsubishi* and its progeny, the Court has treated arbitral provisions as "a specialized kind of forum-selection clause."[11] While recognizing the validity of arbitration as the forum, it nevertheless has gone on to explain:

By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.[12]

Although *Mitsubishi* did not expressly address the issue of whether arbiters could apply U.S. law in the face of contrary contractual provisions, the Court left little doubt, however, that it believed that arbiters had such a power:

To be sure, the international arbitral tribunal owes no prior allegiance to the legal norms of particular states; hence, it has no direct obligation to vindicate their statutory dictates. The tribunal, however, is bound to effectuate the intentions of the parties. Where the parties have agreed that the arbitral body is to decide a defined set of claims which includes, as in these cases, those arising from the application of American antitrust law, ***the tribunal therefore should be bound to decide that dispute in accord with the national law giving rise to the claim. And so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function.***[13]

In *Bautista v. Star Cruises*,[14] the Eleventh Circuit adopted this two-step approach and held that the seamen's argument that the arbitration agreement was unconscionable, because they were coerced into signing it could only be raised *following the arbitration* in subsequent enforcement proceedings. In reliance upon *Mitsubishi*, the court concluded that the only defenses which could be asserted to challenge the requirement for arbitration where the requisites for recognition were met, were those based upon "fraud, mistake, duress, and waiver."

Subsequently, in *Thomas v. Carnival Corp.*,[15] another panel of the Eleventh Circuit concluded that an arbitration provision which required the application of foreign (Panama) law violated U.S. maritime law's strong public policy protecting seamen's remedies and therefore constituted a prospective waiver invalidating the arbitration provision altogether.

Thereafter, another panel of the Eleventh Circuit decided in *Lindo v. NCL (Bahamas), Ltd.*,[16] that the Thomas court had violated the Eleventh Circuit's precedent rules by failing to follow the two-step approach adopted in

Bautista in considering the public policy defense *at the initial arbitration enforcement stage*, rather than waiting until after the arbitration to determine what law was in fact applied.

In eleven subsequent decisions over the following three years, a variety of different panels of the Eleventh Circuit affirmed the two-step approach articulated in *Mitsubishi* and *Bautista*, holding only that public policy and unconscionability defenses can not be raised at the arbitration enforcement stage, but solely at the later award enforcement proceedings.[17] None of these cases even suggested that an arbitration award which applied foreign law so as to deprive a seaman of his U.S. maritime remedies would ultimately be enforceable. In fact, these opinions typically construed the court's prior opinion in *Lindo* as merely standing for the proposition:

> *As we held in Lindo*, only after arbitration may a court refuse to enforce an arbitral award if the award is contrary to the public policy of the country.[18]

In fact, the legal validity of the entire line of post *Thomas* cases is based upon the presumption that such authority exists. Since these cases all stand for the proposition that it is *premature* at the arbitration enforcement stage to conclude that U.S. maritime law will not be applied during the arbitration, they necessarily recognize that arbiters have the authority to apply U.S. law despite foreign choice of law provisions. Otherwise, the courts would be required to reject these arbitration agreements at the preliminary enforcement state as running afoul of the constraints established in *Mitsubishi* and *Vimar*. Thus the entire house of arbitration cards is built upon the presumption of such authority and if it is removed, the house will necessary collapse from a lack of underlying support.

III. Post Arbitration Opinions

To date there have been only two cases with reported opinions dealing with the consequences of the failure of arbiters to apply U.S. maritime remedies in a seaman's arbitration. In *Aggarao v. Mol Ship Management, Inc.*[19] the federal district court for Maryland concluded that the failure to provide a seaman with his full panopy of remedies guaranteed under U.S. maritime law "transgressed this country's strong and longstanding policy of protecting injured seafarers and providing them special solicitude," rendering the resulting arbitration award unenforceable.

In *Asignacion v. Rickmers Genoa Schiffahrts,*[20] the federal court for the Eastern District of Louisiana reached a similar conclusion, refusing to enforce an arbitration award from the Philippines in the amount of $1,870 for a seaman who sustained severe burns over 35% of his body while on a ship located on the Mississippi River. Shockingly, a panel of the Fifth Circuit recently reversed the district court's finding and reinstated the arbitration award.[21]

Although paying lip service to the Supreme Court's recognition of the principle of prospective waiver and the existence of the United States "'explicit public policy that is well defined and dominant' with respect to seamen. . . [who] have long been treated as 'wards of admiralty,'" the Fifth Circuit then proceeded to completely ignore these principles, acknowledging that "the causes of action and remedies available to seamen reflect this special status," the Fifth Circuit nevertheless concluded that U.S. courts were powerless to require their recognition where arbitrators refused to give them effect under the rationale "that a court cannot refuse to enforce an award solely on the ground that the arbitrator may have made a mistake of law or fact." (emphasis added).

The Fifth Circuit's rationale was even more mystifying, since it did not challenge the validity of the contrary decision in *Aggarao.* Instead of criticizing the district court's application of the prospective waiver doctrine, the Fifth Circuit sought to distinguish the completely contrary result in that case solely based upon the difference in severity between the seamen's respective injuries, relying upon the fact that the arbiters had concluded that Aggarao had sustained a Grade 1 disability, which was the highest level set forth in the contract, while Asignacion was found to only have a level 14 disability.

The disingenuous nature of this attempted distinction is completely unsupportable by law or logic. One of the fundamental flaws in the POEA contract is that it does not allow the arbiters to consider the actual medical evidence and testimony of the seaman's treating doctors, but instead requires that the panel accept the opinion of the doctor hired by the employer to assess the Plaintiff's disability.[22]

The utter unconscionability of the POEA system is clearly seen in this case in which the company doctor concluded that Asignacion was entitled to the lowest disability rating possible, even though the district court expressly found that the "Plaintiff sustained ***severe*** burns to 35% of his body, including his abdomen, upper and lower extremities; and genitalia, [which] . . . resulted in an insufficiency of skin in various areas of his body, affecting his body heat control mechanism. . . [and creating] multiple skin ulcerations and sexual dysfunction." Following emergency treatment, the Plaintiff was transferred to the burn unit of Baton Rouge General Medical Center for a month, after which he continued to receive medical treatment back in the Philippines, including plastic surgery in which "a significant amount of scar tissue was removed from [his] lower abdomen."

Despite the extremely substantial magnitude of the Plaintiff's injuries and obvious resulting permanent damages, the Fifth Circuit concluded that it found "no evidence" that the arbiter's award of $1,870.00 "was inadequate" or that it "violate[d] this nation's 'most basic notions of morality and justice." The Fifth Circuit's shocking lack of judicial conscience was even more astonishing in light of the district court's finding that:

> "in this case, the Philippine law applied by the arbitral panel did not simply apply less favorable remedies than United States general maritime law would have. Instead, the Philippine law provided ***no such*** remedies. Accordingly, the remedies available under Philippine law were not less favorable, but rather were nonexistent." (emphasis in the original)[23]

IV. Conclusion

Under the two-step approach established by the Convention, defenses based upon public policy and unconscionability may only be raised at the post arbitration stage and not at the initial arbitration enforcement phase. The Supreme Court has justified this procedure of putting the legal cart before the horse, by separating out the consideration of the forum selection and choice of laws provisions in the arbitration contracts in order to give arbiters the opportunity to apply U.S. legal remedies.

The Supreme Court has permitted the enforcement of arbitration provisions by treating arbitration as a "specialized kind of forum," which will still allow litigants the opportunity to enforce U.S. legal remedies. The Court has made it clear, however, that where such a forum selection clause operates in conjunction with a choice of law provision to deprive litigants of their guaranteed U.S. law remedies, it will constitute a prospective waiver invalidating the results of the arbitration.

Where the arbiters refuse to apply U.S. law, the arbitration award should therefore be rendered unenforceable as in *Aggarao*, notwithstanding the Fifth Circuit's recent opinion in *Asignacion*. In addition to the problems with the legal analysis underlying its opinion discussed above, the Fifth Circuit's refusal to give effect to the prospective waiver doctrine was also based in significant part upon a disingenuous construction of the record before it, which should result in significantly reducing its precedental value.

Although the district court's opinion recognized that the Plaintiff had filed suit under both the Jones Act and general maritime law and subsequently sought to vacate the arbitration award on the grounds that it deprived him of his rights under both,[24] it at times utilized the short handed expression "general maritime law" to describe the source of the substantive rights sought to be vindicated without each time including reference to the Jones Act. Ignoring the actual record, the Fifth Circuit jumped on the use of this short-handed expression to reject the application of the prospective waiver doctrine in the case, asserting that it "is limited to statutory rights and remedies."

While a strong argument can be made that the prospective waiver doctrine would also include the deprivation of non-statutory general maritime remedies created by the Supreme Court itself, the Fifth Circuit's rejection of the *application* of the doctrine in the case before it on these grounds as opposed to its *repudiation* of the doctrine all together in seamen's cases, should render its opinion inapplicable to cases where the district courts more carefully spell out the nature of the effected substantive rights as including those arising from federal statute, such as the Jones Act and Seaman's Wage Act.

[1] See e.g. *Collie v. Fergusson*, 281 U.S. 52, 55 (1930)(the "evident purpose" of the Seamen's Wage Act is "to secure prompt payment of seamen's wages . . . and thus to protect them from the harsh consequences of arbitrary and unscrupulous action of their employers, to which, as a class, they are peculiarly exposed.").
[2] *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367, 376 (1932).
[3] 346 U.S. 406, 423-4 (1953).
[4] See e.g. *Corsair v. Stapp Towing Company, Inc.*, 228 F.Supp.2d 795 (S.D.Tex. 2002). Also see *Stevens v. Seacoast Co.*, 414 F.2d 1032 (5th C ir. 1969).
[5] *Reed*, 373 U.S. 410.
[6] *Cortes*, 287 U.S. 367.
[7] 473 U.S. 614 (1985).
[8] 9 U.S.C. §201 et seq.
[9] Id. at n. 19 (emphasis added).
[10] See e.g. *Vimar Seguros y Reaseguros v. M/V Sky Reefer*, 515 U.S. 528 (1995); *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989).
[11] See e.g. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 (1974).
[12] Mitsubishi, 473 U.S. at 628.2
[13] 473 U.S. at 636-7 (emphasis added).
[14] 396 F.3d 1289 (11th Cir. 2005).
[15] 573 F.3d 1113 (11th Cir. 2009).
[16] 652 F.3d 1257 (11th Cir. 2011).
[17] Henrique v. NCL (Bahamas), Ltd., 440 Fed. Appx 714 (11th Cir. 2011); Maxwell v. NCL (Bahamas), Ltd., 454 Fed. Appx. 709 (11th Cir. 2011); Doe v. Princess Cruises, Ltd., 657 F.3d 1204, n. 14 (11th Cir. 2011); Arauz v. Carnival Corp., 466 Fed. Appx. 815, n.2 (11th Cir. 2012); Fernandes v. Carnival Corp., 484 Fed. Appx. 362 (11th Cir. 2012); Quiroz v. MSC Mediterranean Shipping Co., 522 Fed. Appx. 655 (11th Cir. 2013); Brown v. Royal Caribbean Cruises Ltd., 549 Fed. Appx. 861, 864 (11th Cir. 2013); Singh v. Carnival Corp., 550 Fed. Appx. 683 (11th Cir. 2013); Paucar v. MSC Crociere, S.A., 552 Fed. Appx. 872 (11th Cir. 2014); Trifonov v. MSC Mediterranean Shipping Co., __ Fed. Appx. __, 2014 WL 5334740 (11th Cir. Oct. 21, 2014); Vera v. Cruise Ships Catering and Services, International, N.V., __ Fed. Appx. __, 2014 WL 6790710 (11th Cir. Dec. 3, 2014).
[18] *Henrique*, 440 Fed. Appx. at 716.
[19] 2014 WL 3894079 (D.Md. Aug. 7, 2014).
[20] 2014 WL 632177 (E.D.Lou. Feb. 10, 2014).
[21] Slip Op. Fifth Circuit Case No. 14-30132 (April 16, 2015).
[22] Aggarao, 2014 WL 3894079 (D.Md. Aug. 7, 2014) at *6.
[23] 2014 WL 632177 (E.D.Lou. Feb. 10, 2014) at *9.
[24] Asignacion, 2014 WL 632177 at *2.

UPDATE ON THE LAW

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PASSENGERS CLAIMS

ADA

***Seco v. NCL (Bahama), Ltd.*, 2014 U.S. LEXIS 18866 (11th Cir. October 2, 2014)**

Plaintiff brought suit for injunctive relief under the ADA alleging the cruise ship lacked handicapped-accessible exterior cabins with balconies or window views and that the doors were not ADA compliant because they required excessive force to open them. Case was dismissed because the plaintiff failed to allege an injury-in-fact because he did not plead that he suffers from a disability or a condition that would cause the lack of windows or balconies in his stateroom to affect his enjoyment of the cruise. In addition, the Court found that the ticket contract required the plaintiff to submit to binding arbitration as to his ADA claims are not "personal injury" claims.

Attorney Fees

***Schmieder v. NCL Am., Inc., 2014 Fla. App. LEXIS 20039;* 39 Fla. L. Weekly D 2559 (Fla. 3d DCA December 10, 2014)**

The plaintiff appealed the trial court's dismissal of her negligence claim for fraud on the court and a final judgment awarding the cruise line attorney's fees and costs. The appellate court affirmed the trial court's dismissal, but concluded that attorney's fees and costs pursuant to Florida Statutes Section 768.79 are inapplicable in admiralty cases. *See Royal Caribbean Cruises, Ltd. V. Cox,* 137 So. 3d 1157 (Fla. 3d DCA 2014), *rev. dismissed,* 145 So. 3d 822, 2014 Fla. LEXIS 1657 (Fla. 2014).

Consortium Claim

***Shore v. Magical Cruise Company, LTD and Steiner Transocean Limited*, 2014 WL 3687100 (M.D. Fla. 2014)**

Court denied cruise lines' motion to dismiss consortium claim. In light of *McBride v. Estis Well Service, L.L.C.*, 731 F.3d 505, 514 (5th Cir. 2013), the Court found that the law is no longer definitive on this issue.

***Friedhofer v. NCL (Bahama), Ltd.*, 2015 U.S. Dist. LEXIS 7264 (S.D. Fla. January 22, 2015)**

The Court granted the cruise line's motion to dismiss the plaintiff's loss of consortium claim. The plaintiff failed to respond to the motion to dismiss on this issue and therefore the Court saw no reason to depart from this long established precedent that general maritime law does not permit loss of consortium claims, referencing *Gandhi v. Carnival Corp.*, no.13-24509-CIV, 2014 WL 1028940, at *4 (S.D. Fla. Mar. 14, 2014).

Experts

***Farley v. Oceania Cruises, Inc.*, 2015 U.S. Dist. LEXIS 30576 (S.D. Fla. March 12, 2015)**

The plaintiff brought suit against Oceania for injuries he sustained from tripping over the leg of a lounge chair that was protruding into the walkway creating a dangerous and hazardous condition. The Court granted the defendant's motion to strike plaintiff's liability expert. Although the witness had the sufficient background, education and experience to qualify as an expert, the Court ruled the expert's opinions lacked reliability. The Court noted that the expert used very little

supporting materials or sources, failed to indicate how his analysis was conducted or how his experience formed that analysis, and what steps he took to verify his results.

Torres v. Carnival Corporation, 2014 U.S. Dist. LEXIS 97217 (S.D. Fla. July 17, 2014)

The plaintiff alleged she tripped and fell over a raised ledge that was covered by a mat or similar material which obscured, disguised or hid the raised threshold. The Court struck the plaintiff's liability expert finding that the attempt to introduce expert testimony as to the floor features, lighting and warnings unnecessarily complicated the case. The Court commented that the jury is capable of understanding the mechanics of walking and the various reasons one may fall, including tripping over a carpet, as well as changes in brightness encountered on a daily basis.

Lancaster v. Carnival Corporation, case no.: 14-cv-20332-KMM (S.D.Fla. February 22, 2015)

The Court denied the cruise line's motion to strike plaintiff's expert finding that the expert's experience working aboard cruise ships as a security officer qualified him to testify as to crowd control and management. The Court rejected the defendant's argument that his experience as a security officer alone did not provide him with the requisite expertise because the disembarkation protocols fell under the umbrella of the cruise director and safety director. The Court did preclude the expert from testifying as to various SOLAS regulations and IMO circulars which were deemed inadmissible.

Forum and Venue

Klein v. Silversea Cruises, Ltd., 2015 U.S. Dist. LEXIS 4424, (N.D. Tex. January 14, 2015)

Plaintiff challenged the sufficiency of the notice in the Passage Contract. The Court found the Passage Contract provided sufficient notice as to the proper forum and the case was transferred to the Southern District of Florida.

Santos v. Costa Cruise Lines, Inc., 2015 U.S. Dist. LEXIS 29524 (E.D.N.Y. March 10, 2015)

The Court granted the cruise lines motion to dismiss for *forum non conveniens* where the Passage Contract had a clause that all claims arising out of a voyage that does not depart from, return to, or visit a U.S. port shall be brought in Genoa, Italy. The Court applied the four-part test articulated in *Phillips v. Audio Active Ltd.*, 494 F.3d 378, 383 (2d Cir. 2007), and determined that the forum-selection clause was valid and enforceable because: (1) it was communicated; (2) had mandatory force; (3) covered the claims and parties involved in the dispute; and (4) the resisting party did not demonstrate that enforcement would be unreasonable or unjust, or that the clause was invalid for reasons such as overreaching or fraud.

McQuillan v. Norwegian Cruise Line, 2014 U.S. Dist LEXIS 146970 (E.D. La. October 14, 2014)

In enforcing the forum selection clause and transferring the case to the Southern District of Florida, the Court ruled that the plaintiff's failure to read the ticket does not preclude her from being bound by it. The Court further concluded that a plaintiff's monetary or physical restrictions are insufficient to preclude enforcement in today's age of video conferencing and electronic filing because a plaintiff does not even need to set foot in a courtroom to bring a lawsuit.

Feinstein v. Carnival PLC, 2014 U.S. Dist. LEXIS 132103 (C.D. Cal. September 19, 2014)

In a medical malpractice suit, the plaintiff brought suit in state court against Carnival PCL (trading as Cunard) as the owner and operator of the vessel, its sister company Princess Cruise and Fleet Maritime Services, the entity which employees and pays the medical staff. The defendants removed the action to federal court under diversity jurisdiction. Applying the "Forum Defendant Rule" the case was remanded to state court. The Court determined that Princess was not a sham defendant. Because of the complex corporate relationships between the corporations, the Court could not definitively conclude that Princess did not have a role in the litigation. The Court noted that there was some record evidence that Princess and Carnival had an ongoing contractual relationship, that the Fleet Maritime Services was created while Princess and Carnival were one entity, and the defendant doctor oversaw medical centers on ships operated by both Carnival and Princess.

Portnov v. Carnival Corp., 2014 U.S. Dist. LEXIS 171708 (N.D. Cal. December 11, 2014)

The plaintiff filed suit alleging discrimination against the cruise line and argued that the forum selection and arbitration provisions in his ticket contract did not apply because he never actually boarded the boat, and therefore he was not a "guest." The Court noted that the contract itself defines "guest" as "all persons or entities booking or purchasing passage and/or traveling under [the] [c]ontract." Therefore, the plaintiff was bound by the contract from the moment of purchase, not from the moment of boarding the boat.

Gonzalez-Martinez v. Royal Caribbean Cruises, 2015 U.S. Dist. LEXIS 38764 (D.P.R. Mar. 26, 2015)

The Court rejected that the plaintiff's Forum Selection Clause in her Passage Contract was not reasonably communicated because it was not translated into their native language of Spanish. The Court noted that the plaintiff failed to state that she cannot read English, and therefore could not understand the Contract as written. The case was transferred to the Southern District of Florida.

International Safety Management Code

Alvarez v. Carnival Corp., 2014 U.S. Dist. LEXIS 152291 (S.D. Fla. October 27, 2014)

The plaintiffs brought a negligence claim against the cruise line when the vessel they were traveling on was stranded at sea without power following a shipboard fire. The defendant argued that the claims for negligence based upon breach of the International Safety Management Code impermissibly attempted to expand the duty of care. Relying on *Rinker v. Carnival Corp.*, 753 F. Supp. 2d 1237 (S.D. Fla 2011), which held that violations of the International Safety Management Code were insufficient in isolation to allege negligence absent a showing of causation, the claim was dismissed. As the parties stipulated to the *res ipsa loquitur* in the case as it relates to the fire, the remaining claims were upheld.

Jurisdiction

Summers v. Carnival Corporation et.al., case no. 13-23932-CV-McAlily (S.D.Fla. April 6, 2015)

The Court granted the ship's doctor's motion to dismiss for lack of personal jurisdiction. The plaintiff alleged, and the doctor admitted, that he entered into written contracts with the cruise line, served on vessels that embarked from ports in the state

of Florida, treated patients (crew and passengers) while the vessels were in Florida ports or territorial water, and attended annual seminars conducted in Florida. Nonetheless, the Court ruled that these contacts were insufficient to show continuous and systematic contacts between the doctor and Florida necessary to establish general jurisdiction pursuant to F.S.§48.193(2).

Medical Malpractice

Summers v. Carnival Corporation et.al., case no. 13-23932-CV-McAlily (S.D.Fla. April 6, 2015)

The Court denied the cruise line's motion to dismiss in light of the *Franza v. Royal Caribbean, Ltd.*, 772 F.3d 1225 (11th Cir. 2014) and found the plaintiff could proceed under the theories of vicarious liability, respondeat superior and apparent agency. The Court found the Defendant's reliance on the provisions in the guest ticket contract that the ship's doctor was an independent contractor, and the argument that plaintiff's belief that the medical staff were employees or agents *per se* unreasonable, was meritless. The Court did dismiss the count for negligent hiring, retention and training with leave to amend as the plaintiff failed to allege sufficient facts to state a cause of action.

Ure v. Oceania Cruises, Inc., 2014 U.S. Dist. LEXIS 165649 (S.D. Fla. November 20, 2014)

In another post-*Franza* decision the Court granted a Motion of Reconsideration reinstating the plaintiff's claims against the cruise line under the theories of respondeat superior and negligence. Claims for apparent agency and negligent hiring and retention were dismissed without prejudice. The plaintiff was granted leave to amend to plead additional facts. The Court struck the plaintiff's claim for third-party beneficiary finding that plaintiff needed to show the cruise line, and not the medical provider breached the agreement citing to *Rinker v. Carnival*, 836 F.Supp. 2d 1309 (S.D.FLa.2011); *Haung v. Carnival* , 909 F.Supp.2d 1356 (S.D.Fla. 2012)

Pleading Requirements

Harding v. NCL (Bahamas), Ltd., 2015 U.S. Dist. LEXIS 31684 (S.D. Fla. February 25, 2015)

In a slip and fall accident, the Court dismissed the plaintiff's complaint for failure to allege sufficient factual allegations. The Court ruled absent factual allegations detailing how the cruise line failed to keep its deck dry, how it failed to close off the wet deck, and how it failed to give notice of the slippery conditions, the plaintiff did not satisfy the notice pleading requirements set forth in *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

Young v. Carnival Corp., 2014 U.S. Dist. LEXIS 153789 (S.D. Fla. October 30, 2014)

The Court denied the cruise line's motion to dismiss in a slip and fall claim. The Court rejected the defendant's position that the plaintiff was required to identify the slippery substance on the floor and precisely how the slippery substance caused her to fall. The Court stated that the plaintiff was not required to plead a "play-by-play" within the complaint.

Shore and v. Magical Cruise Company, LTD and Steiner Transocean Limited, 2014 WL 3687100 (M.D. Fla. 2014)

The Court rejected the cruise line's argument that the plaintiff failed to state a claim for negligence because she failed to plead facts to show that the cruise line owed her a duty to warn of the allegedly defective hair product, or that the company breached such a duty. The plaintiff alleged, inter alia, that the cruise line employee

applied an expired and contaminated product to plaintiff's scalp, and that the contamination and the expiration date were both visible upon inspection of the bottle containing the product.

Moseley v. Carnival Corp., 2014 U.S. App. LEXIS 21971 (11th Cir. November 21, 2014)

The plaintiff was injured when the bathroom sink dislodged and fell on her while using the port bathroom facilities in Freeport Harbour when the vessel called in the Bahamas. The Court rejected the failure to warn claim finding that the plaintiff did not plead any facts to show the cruise line knew or should have known of the risk of injury associated with using the bathroom facility in the port. The claim for vicarious liability was also dismissed as the Court noted that even assuming the plaintiff's adequately pled the elements of an agency relationship, the complaint failed to include any facts that Freeport knew or should have known of the risk by the use of reasonable care.

Sanctions

Villeta v. Carnival Corp., (S.D. Fla. November 5, 2014)

As a sanction for gross discovery violations the Court struck the cruise line's affirmative defenses regarding lack of notice and absence of a dangerous condition. The Court found that the defendant took an overly narrow view in responding to interrogatories when it stated there were no changes to the subject flooring after the accident when in fact a slip-resistant treatment had been applied to the tile flooring. The Court rejected the defendant's argument that it had viewed the request to mean there were no physical changes. Additional discovery violations were committed when the corporate representative testified that he was unaware of any inspections or testing to the subject area prior to the floor being treated and the defendant denied the existence of any inspection reports in response to production requests. Plaintiff later discovered that the corporate representative provided access to the ship so that a third party entity could conduct testing which the representative participated in. The sanction was found to be appropriate because it was specifically related to the particular claim at issue, which avoids any due process concerns. *Serra Chevrolet, Inc. v. Gen. Motors Corp.*, 446 F.3d 1137, 1151 (11th Cir. 2006).

Shore Excursions

Ash v. Royal Caribbean Cruises Ltd., 2014 U.S. Dist. LEXIS 164691 (S.D. Fla. November 25, 2014)

Plaintiff was injured when the bus he was riding in crashed on its way to a cruise line sponsored shore excursion. The cruise line entered into a contract with the shore excursion company who in turn contracted with a third party to provide bus transportation to the excursion site. The plaintiff brought a claim for third party beneficiary alleging that the cruise line and the excursion company entered into a contract that primarily and directly benefitted the plaintiff by requiring that the excursion chcompany purchase and maintain insurance as well as exercise reasonable care while operating their excursions. Citing to *Aronson v. Celebrity Cruises, Inc.*, No. 12-CV-20129, 2014 U.S. Dist. LEXIS 98071, 2014 WL 3408582, at *14 (S.D. Fla. May 9, 2014), the Court ruled that the plaintiff failed to clearly and specifically demonstrate an intent to primarily and directly benefit the plaintiff in his complaint. The claim was dismissed with leave to amend.

Statute of Limitations

Veverka v. Royal Caribbean Cruises, Ltd., 2015 U.S. Dist. LEXIS 33163 (S.D. N.J. March 18, 2015)

The Court granted summary judgment where the plaintiff brought suit two years after the initial injury despite a limitation clause within the Passage Contract. The Court rejected the plaintiff's argument that he did not receive the Passage Contract because her daughter booked the cruise, the defendant's failure to produce the original ticket renders the limitation causes unenforceable, and that it was a contract of adhesion and procedurally and substantively unconscionable. The Court stated that it is immaterial who booked the cruise and whether the plaintiff received it prior to boarding. The Passage Contract is valid so long as the terms are reasonably communicated and the plaintiff could have read the ticket after his injury.

Summary Judgment

Torres v. Carnival Corporation, 2014 U.S. Dist. LEXIS 100220 (S.D. Fla. July 22, 2014)

The plaintiff tripped and fell over a raised threshold that was covered by a carpet. Summary judgment was granted where the plaintiff testified that there were no objects or obstructions in her path, nothing impeded her view and she was not really paying attention as she walked to the ramp. Absent a defect (rip, tear, water or foreign substance), there was no evidence to show that there was an unreasonably dangerous condition, nor was there any duty to warn.

Lancaster v. Carnival Corporation, case no.: 14-cv-20332-KMM (S.D.Fla. February 9, 2015)

Plaintiff brought a negligence claim against the cruise line alleging failure to warn of the dangers of crowding during the disembarkation process and failure to take adequate precautions and follow proper procedures to prevent a crowd from forming in the corridor. Summary judgment was granted as to the failure to warn claim as the Court found that both the luggage the plaintiff tripped over and the crowd itself were open and obvious conditions. Although there was no duty to warn, the Court ruled that the cruise line still owed the plaintiff a reasonable duty not to create or cause (through selecting and dictating the manner of disembarkation) a hazardous condition that in turn injures a passenger. Summary judgment denied as a reasonable juror could find that the defendant failed to exercise due care by failing to maintain sufficient crowd-management personnel, the result of which was the crowding that caused the plaintiff to fall.

Holderbaum v. Carnival Corp., 2015 U.S. Dist. LEXIS 22289 (S.D. Fla. Feb. 19, 2015)

The plaintiff alleges she was injured when her shoe caught on a gap between the metal "wear strip" on the nose of the top of a staircase and the carpet lining. The Court denied the cruise line's summary judgment motion finding that there was sufficient evidence to establish that the condition existed at the time of the incident. The Court relied on expert testimony, photographs and the plaintiff's shipboard statement. The Court noted that the law does not require a slip-and-fall victim to gather evidence of a risk creating condition immediately before the accident in order to survive a summary judgment motion. With regards to establishing the existence of a hazardous condition, the plaintiff showed that the carpet, stairs, and stair railings violated various industry safety standards, naming the National Fire Protection Association and the American Society for Testing and Materials as two relied-upon standards. The Court restated the long-standing Fifth and Eleventh Circuit norms that "advisory guidelines are recommendations, while not conclusive,

are admissible as bearing on the standard of care in determining negligence[,]"citing to *Cook v. Royal Caribbean Cruises, Ltd.*, No-11-20723-CIV, 2012 U.S. Dist. LEXIS 67977. Finally, actual or constructive notice were taken by the Defendant in placing "Watch Your Step" warnings signs in comparable locations on other *Fantasy*-class ships, nearly-identical falls and subsequent injuries sustained by other passengers aboard the same ship as well as on other *Fantasy*-class ships and the remedial measures taken by those boats to prevent the nearly-identical injuries.

Poole v. Carnival Corp., 2015 U.S. Dist. LEXIS 45927 (S.D. Fla. April 8, 2015)

Summary judgment was granted where the Court found the plaintiff failed to establish evidence that the cruise line breached its duty. The plaintiff was injured when she walked into a glass door. The defendant submitted testimony from experts and the investigating security officer which indicated the door had a waist-high sign saying "push" along with a handle and a metal door frame. Although the plaintiff alleged lack of sufficient warning, she did not cite to any record evidence to support her statements. The Court also struck the plaintiff's experts as being untimely.

Seamen Claims

Arbitration

Rutledge v. NCL (Bahamas) Ltd., 2015 U.S. Dist. LEXIS 12554 (S.D. Fla. February 3, 2015)

A ship photographer brought suit for a slip and fall accident and a claim for sexual harassment and sexual assault by her supervisor. The Court granted the cruise line's motion to dismiss and to enforce arbitration as to the claims arising from the slip and fall accident. The Court denied the motion as to the claims relating to the sexual assault and harassment, determining they did not arise directly from the plaintiff's employment and obligations while working aboard the vessel. The Court relied on *Doe v. Princess Cruise Lines, Ltd.*, 657 F.3d 1204 (11th Cir. 2011) in reaching its opinion.

Trifonov v. MSC Mediterranean Shipping Co., 2014 U.S. App. LEXIS 20102 (11th Cir. October 21, 2014)

The 11th Circuit Court of Appeals upheld the District Court's Motion to Dismiss pursuant to the mandatory arbitration agreement. The Court confirmed that plaintiff's conclusion that the arbitration agreement violated public policy was premature, as the Convention only permitted this affirmative defense on the "award-enforcement" stage, not at the "arbitration-enforcement" stage. The Court further ruled that the "effective vindication" doctrine recognized by the Supreme Court in *American Express Co. v. Italian Colors Rest.*, 133 S.Ct. 2304, 186 L. Ed. 2d 417 (2013), did not apply to invalidate the arbitration agreement.

Pysarenko v. Carnival Corp., 581 Fed. Appx. 844, 2014 U.S. App. LEXIS 21394 (11th Cir. November 12, 2014)

The plaintiff worked as a karaoke host aboard one of Carnival's ships, and claims he was injured while moving karaoke equipment on the boat. The plaintiff alleges negligence, failure to provide him with reasonable medical care and that Carnival denied him the benefit of maintenance and cure. The case was removed to the Southern District of Florida from state court, and the Defendants moved to dismiss the action and compel arbitration pursuant to the plaintiff's employment contract. The District Court granted the motion and the plaintiff appealed. The plaintiff raises five reasons why the district court erred in granting the Defendant's motion to compel arbitration. The 11th Circuit

adopts the "well-reasoned opinion" from the district court, and affirms on all counts.

Vera v. Cruise Ship Catering & Servs. Int'l, N.V., 2014 U.S. App. LEXIS 23004 (11th Cir. December 3, 2014)

The plaintiff appealed the ruling to arbitrate arguing that the defendant failed to demonstrate that the plaintiff actually signed the arbitration agreement by providing any documentation thereof; and the arbitration clause should be declared void for public policy reason in that it requires him to waive his right to pursue remedies under United States statutes prospectively. In rejecting both arguments, the Court found that the plaintiff's employment contract which incorporated by reference the collective bargaining agreement was sufficient since both countries were signatory to the convention. The plaintiff's public policy argument also failed because it was made premature as it must be raised at the arbitration-enforcement phase.

Wong v. Carnival Corp., 2015 U.S. App. LEXIS 4970 (11th Cir. Mar. 27, 2015).

The plaintiff appealed the district court's order that compelled him to arbitrate arguing that Panamanian law would bar his claims for negligence under the Jones Act and for maintenance and cure and unseaworthiness under general maritime law. Plaintiff argued *Lindo* is no longer good law because federal courts can invalidate an arbitration agreement as against public policy if it prevents the effective vindication of a federal statutory right and because the Court is bound by the contrary ruling in *Thomas*. In upholding the order to arbitrate, the Court stated that *Thomas* was inconsistent with prior law *Bautista v. Star Cruises*, 396 F.3d 1289 (11th Cir. 2005), and that *Bautista* and *Lindo* still control. The Court also rejected the plaintiff's summary of *American Express Co. v. Italian Colors Restaurant*, 570 U.S. __, that it gives a court power to invalidate an arbitral agreement if the enforcement of that agreement prevents rights granted under federal statutes.

D'Cruz v. NCL (Bahama) Ltd., 2015 U.S. Dist. LEXIS 40326 (S.D. Fla. Mar. 30, 2015)

The plaintiff was an employee on the defendant's ship, working as a systems manager in its IT department. He challenged the order to arbitrate on the grounds that he performed all his duties aboard the vessel and not in a foreign state. The Court rejected this argument finding that "abroad" to mean outside of the United States adding that if the legislature intended to limit the applicability of the Convention, it could have done so.

Attorneys Fees & Punitive Damages

Hicks v. Vane Line Bunkering, Inc., Case No. 13-1976-cv (2d. Cir. April 17, 2015)

The Second Circuit upheld an award of attorneys fees and punitive damages where a jury found that the Defendant willfully breached its maintenance and cure obligations. The Second Circuit noted that there was a discrepancy amongst the district courts as to whether punitive damages may be limited only to attorney's fees or whether both punitive damages and attorney's fees could be awarded to a prevailing plaintiff. The Second Circuit stated that it held in *Kraljic v. Berman Enter., Inc.*, 575 F. 2d 412, 415-16 (2d. Cir. 1978) that the amount of punitive damages was limited to the amount of reasonable attorneys' fees. However, the Second Circuit concluded that more recent holdings by the Supreme Court, namely *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009), undermined the holding in *Kraljic*. *Atlantic Sounding* changed the

landscape of binding caselaw, which clearly stated that punitive damages are in no way limited to only attorneys' fees.

Maintenance and Cure

***Ramirez v. CAROLINA DREAM, INC.*, 2014 WL 3703746 (1st Cir. 2014)**

Summary judgment in favor of the ship owner reversed. Court found that there was a genuine issue of material fact which existed as to whether seaman's aplastic anemia arose or became aggravated during his service to the vessel.

Pain and Suffering

***Hicks v. Vane Line Bunkering, Inc.*, Case No. 13-1976-cv (2d. Cir. April 17, 2015)**

The Second Circuit affirmed a denial to set aside a jury verdict. At trial, the jury found that the Defendant willfully breached its maintenance and cure obligations, awarding the plaintiff compensatory and punitive damages. The Defendant argued that the plaintiff's pain and suffering found by the jury was insufficient as a matter of law. The Defendant relies on statements made by the plaintiff that his condition did not significantly improve after the initial injury; therefore the pain and suffering experienced by the plaintiff were a result of the initial injury, not the failure to fulfill its maintenance and cure obligations. The Court concluded that this statement is misguided under Second Circuit jurisprudence, stating that "the prolonging or worsening of a condition as a result of the employer's breach will sustain a pain and suffering damages award[,]" citing to *Messier v. Bouchard Transp.*, 688 F. 3d 78, 84-85 (2d Cir. 2012). The Court noted that the jury reasonably concluded that the actions taken by the Defendant cut off maintenance and cure prematurely, which forced the plaintiff back to work before he was declared fit because the plaintiff's financial situation was dire (his house ended up being foreclosed on). Therefore, the district court did not abuse its discretion in holding that the jury acted reasonably when deciding to award pain and suffering.

Seaman's Status

***Bendlis v. NCL (Bahamas), Ltd.*, 2015 U.S. Dist. LEXIS 30578 (S.D. Fla. March 11, 2015).**

The cruise line made arrangements for a crewmember to travel from his home country of Nicaragua to Copenhagen to join the vessel for his new contract. Before the crewmember could join the vessel, he became mentally disoriented and was admitted to a psychiatric hospital in Copenhagen. He was ultimately diagnosed with a brain cyst. The cruise line argued that because the crewmember had not yet begun working under his new contract, his old employment contract governed, which had a provision that stated he was not an employee unless and until he signs a new employment contract. Since he was not an employee, no maintenance and cure was owed. Relying on *Archer v. Trans/American Services, Ltd.*, 834 F.2d 1570 (11th Cir. 1988), the Court found that the plaintiff was "in the service of the vessel" when the incident occurred because the cruise line required him to arrive in Copenhagen two days prior to the boarding.

ARTICLES OF INTEREST

Seaworthy: To Protect Seafarers, Congress and The Federal Courts Have Created a Strong Set of Common Law Rights and Privileges; Los Angeles Lawyer, Vol. 37, page 34 (December 2014), by Carlos Felipe Llinas Negret, Esq.,

New Destinations for Shipboard Malpractice, AAJ Trial Magazine, Vol. 51, page 38 (February 2015) by Robert Peltz, Esq. and Gretchen Nelson, Esq.

RECENT TRIAL RESULTS AND SETTLEMENTS

$7.5 million Jones Act Settlement

Crewmember was injured when an air receiver tank exploded while he was working in the engine room. Suit was brought against the Jones Act employer and the boat company where the vessel was docked for repairs and who supplied the labor and parts. The plaintiff alleged that the tank was installed without a pressure relief and drain valve, and that the employer and the boat company failed to recognize the hazards. In addition, on the day in question the workers were operating the compressor on manual without a working pressure relief valve. The Court granted the plaintiff's motion to plead for punitive damage under common law negligence. The trial court denied the defendants' motion to reconsider which cited the pending *en banc* decision in *McBride v Estis Well Service LLC*.

Lancaster v. Carnival Corporation 2015 Jury Verdicts LEXIS 1102 (S.D. Fla. February 26, 2015)

Plaintiff alleged he tripped and fell during the disembarkation process due to narrow corridors that were congested and obstructed by passengers and luggage. Plaintiff alleged that the cruise line failed to have and/or follow reasonable disembarkation procedures. The Defendant argued that the luggage and groups of people were open and obvious conditions and that the plaintiff failed to exercise reasonable care for his own safety when traversing the corridor. Defendant further argued that the plaintiff's damages were a result of his pre-existing conditions and not the fall. Defense verdict granted in favor of the cruise line.

Terry et. al. v. Carnival Corporation 2015 Jury Verdicts LEXIS 1104 (S.D. Fla. February 27, 2015)

The plaintiffs were stranded at sea without power and proper sanitation following a fire in the engine room. The plaintiffs proceeded to trial on their claim on negligence by applying a *res ispa* presumption to their theory of causation. A bench trial was held as to the plaintiffs

claimed physical and emotional injuries. The Court made individual awards to the plaintiffs ranging between $16,000 and $1,000.

***Giovanna Caraffa, as personal representative of the Estate of Benedetto Caraffa v. Carnival Corporation*, case no.: 2006-000964-CA-01, 11th Judicial Circuit in and for Miami-Dade County, Fl (February 11 2015)**

The plaintiff claimed that her husband was exposed to asbestos while working on Carnival's ships between 1985 and 2000 and that the exposure to asbestos caused him to develop squamous cell carcinoma, a cancer of the lung. The cruise line argued at trial that there was no evidence that the decedent was ever exposed to any solid or respirable asbestos on a Carnival ship and that he did not have asbestosis, a necessary link between asbestos exposure and lung cancer. During trial, the defendant moved for a directed verdict which the Court denied, permitting the matter to go to the jury. The jury returned a verdict in favor of the plaintiff for approximately $5.6 million, but found decedent to be 65% comparatively negligent. The Court subsequently granted the defendant's post-trial motion to set aside the verdict and entered judgment in favor of the cruise line.

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