Maritime Law Association
Cruise Lines and Passenger Vessels Committee
Case Law Update – May 2017

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PASSENGER CLAIMS

Collateral Source

***Sampson v. Carnival Corporation,* 15-24339-civ-JLK (S.D.Fla. December 12, 2016)**
Defendant wants to preclude the amounts that were billed but not actually paid to a third party for healthcare. Court held that consistent with prior rulings, Plaintiff is precluded from admitting into evidence the amount billed by healthcare providers, rather than the amount actually paid.

***Westermeyer v. Sea Leveler, Inc., et. al.,* 13-024111 (18th Cir. January 15, 2017)**
"The difference between the amount billed and the amount paid is not considered a discharge of a debt, or payment from a "collateral source." Defendants may not introduce into evidence at the trial in this case that the Plaintiff had the benefit of health insurance and/or Medicare to pay and cover his medical expenses.

Daubert/Motion in Limine

***Barruw v. NCL (Bahamas) Ltd.,* 15-23182-civ-KMW (S.D.Fla. January 19, 2017)**
The Court granted the Plaintiff's request to exclude references to when she hired a lawyer. Court also granted Plaintiff's request to exclude medical bills because the bills, their amounts, and their payment or non-payment are irrelevant as she is not claiming past or future medical bills. Introduction of the medical bills would also unfairly prejudice Plaintiff because jurors might use those amounts to determine any verdict for pain, suffering, disability, and loss of enjoyment of life. The Court denied the Plaintiff's request to exclude testimony of "the physical conditions or recoveries from injury of the general population or average person" as this type of testimony may be part of information reviewed and considered by an expert.

***Brown v. NCL (Bahamas) Ltd.,* 2016 WL3251931 (S.D.Fla. June 10, 2016)**
Plaintiff's expert witness use of information contained in medical records, literature, and research and a lengthy discussion with Plaintiff is a reliable methodology even though the expert never physically examined the Plaintiff. The fact that the expert witness failed to review Plaintiff's pre-incident medical records would go to the weight the jury should give to the expert's opinion, not to the reliability, and the Defendant could explore these issues on cross examination.

***Brown v. NCL (Bahamas) Ltd.,* 15-21732-civ-JAL (S.D.Fla. October 13, 2016)**
Since the Court granted the Defendant's motion to exclude any reference to the Plaintiff's incident being referred to as a "criminal act" or the scene of the incident being referred to as a "crime scene," the Defendant could not present any evidence that the assailant was not arrested, charged or prosecuted as a result of the incident. The Court also excluded social media posts not made by the Plaintiff. However Plaintiff's posts which refer to nail polish testing for date rape drugs as the evidence is not clearly admissible and should be deferred until trial so that questions of admissibility, foundation and relevance could be resolved in their proper context. The Court also excluded reference to Plaintiff's child custody battle, rejecting the Defendant's arguments that it was an alternative or additional cause of Plaintiff's claimed injuries and damages. Evidence regarding prior occurrences of sexual assaults on Defendant's vessels would be irrelevant, and any relevance it might have would be substantially outweighed by the danger of unfair prejudice, confusing the issues, and misleading the jury.

***Flaherty v. Royal Caribbean Cruise, Ltd.,* 15-civ-22295-JAL (S.D.Fla. January 17, 2017)**
A DUI that occurred about twenty-three (23) years before deposition it was too remote in time and should be excluded. Fact that the Plaintiff was discharged under less than fully honorable conditions is not relevant and excluded. Defendant is prohibited from attempting to limit liability of the Plaintiff, and any evidence of any ticket bought in connection with the shore excursion as it would be irrelevant and unfairly prejudicial. Defendant cannot introduce evidence of lack of other incidents if it objected to discovery about other incidents.

***Flaherty v. Royal Caribbean Cruise, Ltd.,* 15-civ-22295-JAL (S.D.Fla. March 15, 2017)**
Although the Plaintiff's expert was qualified, his testimony is limited. Even though he has years of outdoor recreational experience he can provide no scholarly citations that handholding while scaling waterfall is a dangerous practice nor has he ever guided individuals up a waterfall or been to Dunn's River. Expert is also prohibited from testifying that the center route is more dangerous as the trier of fact can easily understand that without specialized expertise.

***Gehres v. Cruise Operator, Inc.* 2016 WL 6995590 (S.D. Fla. November 30, 2016)**
At trial, Plaintiff intended to offer expert opinion that X-ray machine should have been onboard cruise ship. The expert opinion was based on recommended industry guidelines. Defendant sought to exclude evidence concerning industry guidelines and court denied motion. In rejecting Defendant's motion for reconsideration, the court noted that even though guidelines had not been disclosed during expert's deposition, Defendant did not inquire as to basis of that opinion at deposition, and that the existence of industry guidelines had been timely disclosed.

***Owens v. Norwegian Cruise Line*, Case 1:15-civ-23319-AOR (Consent Case) (S.D. Fla February 28, 2017)**

Passenger plaintiff brought claim against cruise line for injury to finger sustained while using fitness equipment, alleging that the knob on the weight machine was different from that designed by the manufacturer. Defendant's moved to exclude testimony regarding the knob, arguing that it was irrelevant, as well as misleading and confusing. Motion was denied.

***Sampson v. Carnival Corporation,* 15-24339-civ-JLK (S.D.Fla. December 12, 2016)**
Plaintiff was injured while walking on an outdoor deck in the early morning on Defendant's vessel. Defendant moved to exclude two treating physicians because they failed to conduct a mandatory differential diagnosis analysis to survive a *Daubert* challenge. Defendant relied on authority involving toxic tort cases which the court stated was a "distinguishable scenario given the facts presented." Although a temporal relationship alone is insufficient to prove causation, neither of Plaintiff's experts relied solely on this criteria. The experts each had separate medical reasons for their medical opinions and because they performed a thorough review of the Plaintiffs medical history, observed her in a clinical setting, considered the cause of her pain, and arrived at their respective opinions it was not alone a temporal relationship.

Discovery

***Flaherty v. Royal Caribbean Cruises Ltd.,* 15-22295-civ-JAL (S.D.Fla. January 18, 2017)**
Plaintiff's Motion to Conduct Two Depositions after the close of Discovery, is granted where the Defendant disclosed those witnesses in a separate matter pending in the same district. Good cause exists for permitting Plaintiff to depose those two witnesses. 14 days given to conduct additional discovery.

***Fleischer v. Carnival Corporation,* 15-24531-civ-KMM (S.D.Fla. June 15, 2016)**
Defendant is required to produce for a three year period, for both Carnival and Holland America, any and all communications by or between the cruise line, its employee's or cruise ships which have called on Half Moon Cay. The information is to include safety, repair or maintenance of any of the staircases at Half Moon Cay which lead passengers to and from Half Moon Cay's beach or the landings of the staircases. It also applied to accidents or injuries occurring on the staircases which lead passengers to and from Half Moon Cay's beach.

***Fleischer v. Carnival Corporation,* 15-24531-civ-KMM (S.D.Fla. July 28, 2016)**
Plaintiff failed to show that documents sent or received after the incident are relevant to whether a joint venture existed at the time of Plaintiff's accident. Requested discovery has not been shown by the Plaintiff to be proportional to the needs of this case.

Emotional Distress

***Blair v. NCL (Bahamas) Ltd.*, 2016 WL 5717560 (S.D. Fla. September 29, 2016)**
Plaintiff mother and one minor child witnessed two other children being pulled from a pool; one child drowned and the other did not sustain physical injuries. Summary judgment granted in part and denied in part. Court held that Plaintiff's emotional distress claims were not barred by the Death on the High Seas Act, but Plaintiff's failed to allege the existence of extreme or outrageous conduct. With regard to the claim of negligent infliction of emotional distress, court held that Plaintiff failed to allege that she and minor children were within the "zone of danger." However, the other child who was pulled from the pool could state a claim for negligence infliction of emotional distress.

***Elbaz v. Royal Caribbean Cruises, LTD.,* 16-24568-civ-CMA (S.D.Fla. January 12, 2017)**
DOHSA was the exclusive remedy and the Plaintiff could not supplement his claim with Bahamian law. Plaintiff properly stated a cause of action for intentional infliction of emotional distress where he and his husband were subjected to anti-gay slurs and discrimination, and that the cruise line dropped his husband into the ocean when he was hanging from lifeboat and then failed to immediately deploy rescue efforts. Plaintiff however did not state a cause of action for negligent infliction of emotional because Plaintiff does not allege he sustained any physical impact as a result of Defendant's conduct or was threatened with imminent physical impact.

Equitable Tolling and Statute of Limitations

***Chang v. Carnival Corporation*, 839 F.3d 993, (11th Cir. October 6, 2016)**
Plaintiff filed suit in state court within one-year time limitation, but subsequently filed in federal court more than a year after the incident. Plaintiff acknowledged cruise ticket provided for one-year limitation to file suit and forum-selection clause, but claimed that limitation period should be extended based on doctrine of equitable tolling since she first filed in state court. Eleventh Circuit upheld District Court's ruling granting Defendant's motion for summary judgment, stating that plaintiff failed to demonstrate she was entitled to believe her state filing was sufficient, particularly because Defendant twice informed Plaintiff that she must adhere to the forum-selection clause requiring filing in Southern District of Florida rather than state court.

Forum Selection Clauses

***Young v. Holland America Line, N.V. 2016* WL 7451563 (N.D.Cal. December 28, 2016)**
Plaintiffs purchased tickets for a cruise operated by Holland America but did so using Costco Travel. Plaintiffs were injured on the subject cruise and filed suit in California. The Court denied Holland America's motion to transfer venue to the Western District of Washington pursuant to the terms of the forum selection clause in the ticket finding that it was not reasonably communicated. Plaintiffs did not buy their ticket through Holland America and were not notified of the forum selection clause until after they booked their cruise tickets. Even then, the clause was buried near the back of an eleven (11) page document. The Court stated it was "skeptical that a term disclosed only after a purchase

is made and at a time when cancellation would cost up to 75% of the tickets price can satisfy the reasonable communicativeness test." The 75% cancellation fee was much closer to a forfeiture of the entire fare. Plaintiff was never able to complete the online check-in process and Holland America representatives did not communicate to Plaintiff the forum-selection clause in multiple telephone conversations during the check-in process.

Independent Contractors

***Martins v. Royal Caribbean Cruises, Ltd.*, 2016 WL 6565942 (S.D. Fla. November 3, 2016)**

Woman died after allegedly eating bacteria-ridden food on cruise ship. Family filed wrongful death action under DOHSA and also for emotional distress. Court denied summary judgment on issue of independent contractors and apparent agency issues, stating that genuine issues of material fact existed based on the level of control the cruise line exerted over doctors, and whether the cruise line completely surrendered its control of the nurses to the doctors. Court also held that factual dispute over time of bacterial ingestion was issue of fact for jury. With respect to DOHSA claims, Court held that material facts existed regarding whether mother of deceased was an eligible party under DOHSA, but held that there was no evidence that sister, half-sister, or step-father of deceased were financially dependent on passenger to support DOHSA claim as dependant relative, and no evidence that deceased's half-sister sustained any pecuniary loss to support DOHSA claim.

Jurisdiction

***Brown v. Carnival Corporation*, 2016 WL 4613385 (S.D.Fla. August 12, 2016)**

Court granted excursion company's motion to dismiss for lack of personal jurisdiction because Plaintiff failed to show nexus between the alleged tort and company's connections in Florida, thus failing to satisfy Florida long-arm statute. Court held Plaintiff failed to allege excursion company had "continuous and systematic" contacts within the state of Florida, thus failing to demonstrate general jurisdiction over company.

***Phan v. Grand Bahama Cruise Line, LLC*, 2016 WL 5407919 (N.D.Cal. September 28, 2016)**

Motion to Dismiss denied where the Plaintiff has established there is a "colorable basis" for jurisdiction based on one of the three methods establishing agency. Plaintiff did so by highlighting the similarities in the webpages, documents, and phone numbers of the Defendants. The Plaintiff is entitled to conduct limited jurisdictional discovery.

Notice

***Kulakowski v. Royal Caribbean Cruises, Ltd.*, 2017 WL 237642 (S.D.Fla. January 18, 2017)**
Plaintiff brought negligence claim for injuries sustained after she slipped and fell while ice-skating on docked cruise ship that suddenly moved away from pier. The Court ruled that the risk of falling due to ship movement is an open and obvious condition and there is no duty to warn. Motion to Dismiss granted.

Pleading Requirements

***Jane Doe v. NCL (Bahamas) LTD.*, 2016 WL 6330587 (S.D.Fla. October 27, 2016)**
Plaintiff was served an unknown number of alcoholic beverages by a bartender, became disorientated and intoxicated and was sexually assaulted by the bartender in a storage room. The Court found that the Plaintiff failed to state a claim for negligent hiring, retention, training or supervision because she used boilerplate allegations. The Plaintiff must plausibly allege each element of a claim for negligent hiring and retention, negligent training, and negligent supervision. The Court further noted that that the complaint indirectly alleged that the bartender was incompetent or unfit to perform the work but alleged no facts to create a plausible inference that Defendant knew or should have known or any particular incompetence or unfitness. Further it was not alleged that the incompetence that Defendant knew or should have known caused the injury. Motion to Dismiss was granted with leave to amend.

Proximate Cause/Foreseeability

***H.S. v. Carnival Corporation*, 2016 WL 6583693 (S.D.Fla. November 4, 2016)**
Cruise line vessel offered teen nightclub, and made representations via its registration guidelines that club's activities would be supervised and age appropriate. Club had no sign-in or sign-out requirement and "unruly behavior" was prohibited. Plaintiff's mother registered 14-year-old Plaintiff for club event. At event, Plaintiff engaged in sexual contact with two other minors in the absence of adult supervisors. Later, Plaintiff accompanied two minors to a stateroom, consumed alcohol and became highly intoxicated, and was sexually assaulted. Court rejected Plaintiff's negligence claim, stating that she failed to show the breach of duty was the proximate cause of her injuries. The failure to supervise minors at a teen club was not the proximate cause of the subsequent sexual assault in a private area of the ship. Furthermore, Carnival was under no duty to prevent Plaintiff from visiting another person's stateroom and Carnival did not observe anything that reasonably put it on notice of impending danger to Plaintiff.

Shore Excursions

***Brown v. Carnival Corporation*, 2016 WL 4613385 (S.D. Fla. August 12, 2016)**

Plaintiff slipped and fell while on a shore excursion boat in Aruba. Court granted cruise line summary judgment motion because Plaintiff failed to sufficiently plead the appropriate standard of care, failed to demonstrate knowledge of a dangerous condition, or even identify what constituted the dangerous condition, and failed to demonstrate negligent hiring because the Plaintiff did not assert that cruise line knew or should have known that excursion company was incompetent or unfit to perform the work. Plaintiff also provided no factual allegations to support a joint venture theory of negligence.

***Ceithaml v. Celebrity Cruises, Inc.*, 2016 WL 5478425 (S.D.Fla. September 14, 2016)**
Plaintiff passenger brought negligence action against cruise line for injuries sustained during zip-line excursion while on shore. Summary judgment granted. Court rejected Plaintiff's argument that cruise line owed heightened duty of care, instead holding that Plaintiff provided no facts showing cruise line had actual or constructive notice of zip-line ride dangers. Plaintiff failed to state when the negligent misrepresentations regarding the zip-line's safety were made, thus failing to satisfy FRCP 9(b). Court rejected joint venture negligence claim because cruise line had explicitly stated in its Tour Operator Agreement that zip-line company was independent contractor. Court rejected apparent agency negligence claim because the zip-line ticket language, brochure, and passenger ticket release cruise line from liability. Finally, Court found no evidence to support actual agency relationship, particularly since cruise line never intended or acknowledged zip-line company would act as its agent, as spelled out in the Tour Operator Agreement.

***Kadylak v. Royal Caribbean Cruises, Ltd.*, 2017 WL 526037 (11th Cir. February 8, 2017)**
Plaintiff brought negligence action against excursion provider, cruise line, and off duty staff captain who was participating in the excursion. Summary judgment upheld. Cruise line was not strictly liable because no willful and wanton misconduct had been committed by staff captain against Plaintiff. The Court also rejected the argument that the cruise line was vicariously liable for the staff captain being present. The Court found that the staff captain was acting in a private, off-duty capacity and cruise line exercised no control over him. Finally, held cruise line not negligent because Plaintiff did not introduce any known dangers related to motorcycle excursion.

***McShane v. NCL (Bahamas) Ltd., and Dolphin Encounters Ltd.,* 16-20991-civ-JLK (S.D. Fla. December 8, 2016)**
Motion to Dismiss granted where Court found that the Plaintiff failed to allege facts sufficient to demonstrate entitlement to relief. Complaint did not state how Plaintiff was injured and did not show that NCL was aware of the dangerous condition on the excursion. Additionally, the shore excursion ticket expressly informed the Plaintiff that NCL did not "own or control the shore excursion operator", and tour operator was an independent contractor based on express language contained in Excursion Agreement and because of this, the Plaintiff could not allege a necessary element of a joint-venture claim.

***Reming v. Holland America Line, Inc.*, 2016 WL 5956740 (W.D.Wash. October 14, 2016)**

Plaintiff purchased tickets for shore excursion and was injured from fall due to collapsing pavement. Court upheld decision granting Defendant's motion for summary judgment, finding that cruise line exercised reasonable care with respect to Plaintiff. Cruise line had no duty to warn because walking on pavement was not unique to maritime travel and cruise line had no duty to warn.

***Thompson v. Carnival Corporation*, 174 F. Supp. 3d 1327 (S.D. Fla. March 30, 2016)**
Plaintiff injured on all-terrain vehicle (ATV) during shore excursion and brought negligence action against cruise line and foreign excursion companies. Court granted excursion companies motion to dismiss for lack of personal jurisdiction finding that excursion companies' Florida contacts were not "continuous and systematic" to render them "at home" within the forum state. Plaintiff's allegations of jurisdiction, specifically the excursion companies' contracts with cruise line, Florida bank accounts, relationship with a Floridian cruise association, and companies' alleged consent to litigation in Florida, were not "so substantial" such that it would make it an "exceptional" case to support a finding of personal jurisdiction. Nor did the Court find jurisdiction under FRCP 4(k)(2), stating that the companies' contacts were too attenuated to warrant finding of jurisdiction. Court granted cruise line's motion to dismiss, holding that Plaintiff failed to plead supporting facts by not showing that the cruise line knew or should have known of dangerous conditions that would give rise to a duty to warn.

***Wolf v. Celebrity Cruises, Inc.*, 2017 WL 1149092 (11th Cir. March 28, 2017)**
Plaintiff bought zip-line excursion ticket while onboard cruise ship and sustained injuries after slamming into a zip-line platform in Costa Rica. Plaintiff asserted negligence, claiming cruise line failed to warn him of the dangerous condition and that cruise line was liable for zip-line company's negligence under actual and apparent agency, and joint venture. Court upheld dismissal of zip-line company from suit for lack of personal jurisdiction, and upheld summary judgment in favor of cruise line for all remaining claims. Court held that zip-line company did not have sufficient Florida connections to establish personal jurisdiction. Company had no place of business or branch office, and although it used a mail-forwarding service via a PO Box in Miami, no mail was ever received there. Court found cruise line owed no duty of care to warn Plaintiff as the record contained no evidence of injuries or passenger concerns over the years to create such a duty. Court rejected actual agency theory because cruise line exerted no control over zip-line company's operations and rejected apparent agency theory because Plaintiff was provided two disclaimers stating that zip-line company was independent contractor and not agents of representatives of cruise line. Finally, Court rejected joint venture theory due to lack of evidence that companies had a joint proprietary interest or shared profits/losses.

Summary Judgments

***Aponte v. Royal Caribbean Cruises, Ltd.*, 2016 WL 4916967 (S.D.Fla. September 14, 2016)**
Plaintiff injured after slipping and falling in puddle of liquid soap on floor of cruise ship bathroom. Summary judgment granted because the Plaintiff could not establish cruise line had notice of soap puddle. Court noted that Plaintiff could not establish how long it

was there or how it got there, or that the puddle was there at the same time an employee was in the bathroom emptying a bucket into the sink. Court also held that liquid soap on floor was "open and obvious" condition. Court also denied Plaintiff's motion of partial summary judgment on liability because the passage of time between bathroom inspections is not enough to establish notice when no evidence was submitted demonstrating how long puddle was on the floor. Court also found that Plaintiff did not draw connection between employee emptying bucket into sink and soap puddle on floor.

***Brown v. NCL (Bahamas) LTD.,* 15-21732-civ-JAL (S.D.Fla. October 16, 2016)**
Summary judgment denied. Plaintiff alleged that Defendant was negligent for "failing to exercise reasonable care for the safety of its passengers, and by creating this dangerous condition by refusing to intervene to assist the Plaintiff when any reasonable prudent crew member would have taken action to deal with an obviously drunk passenger[.]" The Court found that a genuine issue of material fact existed as to whether Defendant breached its duty of ordinary reasonable care under the circumstances by failing to help Plaintiff.

***Demain v. NCL (Bahamas) Ltd*, 15-cv-23297-DPG (S.D.Fla. November 4, 2016)**
Plaintiff was injured when he struck his hand on a sharp diamond shaped piece of metal protruding from a hanging picture frame/marquee. The Court found genuine issues of material fact which precluded entry of summary judgment. Determinations of how the protruding metal came about and whether the Defendant was aware of the condition must be resolved, in part, by weighing the credibility of the crewmember who was responsible for cleaning the frame/marquee.

***Flaherty v. Royal Caribbean Cruise, Ltd.,* 15-civ-22295-JAL (S.D.Fla. March 15, 2017)**
While scaling a waterfall is an open and obvious danger, the Court cannot say that the rule requiring "handholding" posed an open and obvious danger. It is for the trier of fact to determine if this practice is actually dangerous and if so, open and obvious.

***Geyer v. NCL (Bahamas), Ltd.*, 2016 WL 4618758 (S.D. Fla. August 31, 2016)**
Plaintiff injured after child slid into him in cruise ship's water park. Court denied cruise line's motion for summary judgment, holding that genuine issues of material fact existed as to whether cruise line created a dangerous condition by having unsupervised children in water park, whether the cruise line's safety sign stating "no running" and "children must be accompanied" constituted constructive notice of danger, and whether children running and sliding on slide was an "open and obvious" danger such that it would obviate cruise line's duty to warn.

***Lavora v. NCL (Bahamas) Ltd.,* 2016 WL 7325592 (S.D.Fla. December 15, 2016)**
Plaintiff alleged she was injured falling down stairs leading to a hot tub. Surveillance footage showed that Plaintiff did not slip and fall on water as the complaint alleged, but instead missed a step and fell on her own accord. Plaintiff could not prove that the fall was a result of a dangerous condition. Summary Judgment was granted.

***Miller v. Norwegian Cruise Line*, 2017 WL 782282 (11th Cir. March 1, 2017)**

Court upheld grant of summary judgment in favor of cruise line. Plaintiff brought negligence claim for injuries sustained after vessel movement caused her to lose her footing and fall while dancing. Court held cruise line owed her no heightened duty of care, and that dangers of dancing on vessel are "open and obvious." The fact that the passenger sustained injuries after falling out of chair three hours beforehand was not "substantially similar" to Plaintiff's injury and did not establish notice. The Court also found that Captain's fact-based testimony of weather could not be inferred as providing notice of a risk-creating condition

***Noble v. Carnival Corp.,* 2016 WL 7373797 (S.D.Fla. December 19, 2016)**
Plaintiff alleged cruise line was negligent by allowing passengers to carry beverages outside the restaurant in uncovered containers without an employee stationed at the exit of the restaurant to monitor for spills or installing a rubber mat over the floor. In granting the summary judgment the Court found there is no genuine dispute as to whether Defendant had actual or constructive notice that Defendant had notice of the liquid outside the restaurant.

***Sampson v. Carnival Corporation,* 15-24339-civ-JLK (S.D.Fla. December 12, 2016)**
Plaintiff slipped and fell in the early morning on a walk on an outside deck. Plaintiff had done this exact walk at a similar time previously in the trip and had no incidents. Plaintiff observed crewmembers doing something on the deck forty feet away but did not observe the floor she was walking on being wet causing her to slip and fall. "Plaintiff purportedly looked at the deck floor before walking on it but could not identify any water given the lack of light – despite noticing the cruise ship's personnel. There is a noticeable difference between observing condensation on an outdoor deck as opposed to nearby crewmembers." It was determined that in this case there was no indication that the condensation on the outdoor deck was open and obvious. The record evidence is in dispute and as a result the Court decided that there is a genuine issue of material fact that is best reserved for a trial. Defendant's Motion denied.

***Taiariol v. MSC Crociere, S.A.*, 2017 WL 382316 (11th Cir. January 27, 2017)**
Plaintiff tripped on step, which had a protective cover, fell, and broke her ankle. She brought one-count complaint alleging company negligently failed to warn her of step's unsafe condition. Court affirmed summary judgment in favor of company, finding that Plaintiff failed to present evidence that company had notice of risk-creating condition or was aware that step's protective cover was defective or any different from other steps. Also, Plaintiff did not provide evidence of company's awareness of falls "substantially similar" to hers. Court also rejected argument that "Watch Your Step" sticker indicates company's awareness of step's alleged slippery condition.

***Villa v. Carnival Corporation*, 2016 WL 6211032 (S.D.Fla. September 12, 2016)**
Plaintiff sustained injuries after he fell in cruise ship's men's bathroom, claiming the floor was wet. He also claimed there was a cruise line employee in the bathroom at the time he fell. Court denied cruise line's motion for summary judgment, stating that genuine issue of material fact existed as to whether the alleged wet floor created a dangerous condition. Court rejected cruise line's argument that summary judgment was warranted because Plaintiff did not know what he slipped on, how it got there, or how long it was

there. Court also found genuine issue of material fact existed as to whether cruise line created the dangerous condition by employee mopping the bathroom deck.

***Webb v. Carnival Corporation* 15-24230-CIV-Cooke/Torres (S.D.Fla. January 13, 2017)**
Order Denying Motion for Summary Judgment. Highly intoxicated passenger on a cruise that went back to cabin and fell overboard. Defendant argued that its duty of reasonable care was discharged once Decedent returned to his cabin. The Court found that "even accepting Carnival could have discharged its duty in this situation, it is unclear whether it did so. In fact, it is possible Carnival violated its policies for handling highly intoxicated individuals when it did not monitor Decedent after his last drink and when he exited to his cabin alone." These issues are best determined by a jury.

CREWMEMBER CLAIMS

Arbitrations

***Cvoro v. Carnival Cruise Lines*, 2017 WL 216020 (S.D. Fla. January 13, 2017)**
Serbian national Plaintiff, employed on cruise line vessel homeported in Florida, sustained personal injuries from medical malpractice by shoreside physician selected by cruise line to treat injuries arising from her service aboard ship. Under seafarer agreement, arbitration occurred in Monaco, which applied Panamanian law. Arbitral award dismissed her claims rejecting the vicarious liability and Jones Act claims. Plaintiff brought action to vacate/refuse enforcement under Convention of Enforcement of Foreign Arbitral Awards, implemented through Federal Arbitration Action, on grounds it violated public policy under the prospective waiver doctrine. Magistrate denied cruise line motion to dismiss finding it had subject matter jurisdiction under Convention to determine whether to enforce or refuse to recognize a foreign arbitral award, and held that Plaintiff should be permitted to pursue her prospective-waiver argument regarding Jones Act claims. Magistrate also found that *res judicata* doctrine did not bar Plaintiff's claim because the arbiter did not decide whether Plaintiff's inability to present Jones Act claims under Panamanian law violated US public policy.

Choice of Law

***Loncar v. NCL (Bahamas) Ltd.,* case no.: 01-16-0004-3640 (February 14, 2017)**
Respondent's Motion to Dismiss the "Jones Act Negligence" claim was denied. The parties' employment contract, specifically requires such claims to be referred to and resolved by binding arbitration. The claim for punitive damages is also denied as Bahamian law permits the recovery of the same.

***Soanka v. Norwegian Cruise Lines*, Case No. 01-16-0004-0022 (April 5, 2017)**

Claimant, a US citizen and employee of NCL, was injured while working as aerial gymnast on Bahamian-flagged cruise ship. Arbitrator rejected Claimant's request to disregard choice of law in his employment contract, which required Bahamian law to control his employment. Arbitrator distinguished this case from *Hellenic Lines, Ltd. V. Rhoditis*, 398 U.S. 306 (1970), in which Supreme Court overrode choice of law provision in employment contract because of the location of the injury and the extensive U.S. connections of the company/owner. Here, the injury occurred on the high seas, the vessel was Bahamian-flagged, the allegiance of the owner was Bahamian, and the choice of law was the Bahamas.

Suazo v. NCL (Bahamas) Ltd., case no.: 01-16-0002-5409 (April 11, 2017)
Bahamian law does not recognize, or limits U.S. statutory claims for Jones Act, Unseaworthiness and maintenance and cure and the application of Bahamian law would deprive or limit the Claimant's claims under these theories which are unambiguously preserved in the CBA and employment contract. The CBA and employment contract are therefore ambiguous as they guarantee these claims and waive the same ones. U.S. law applies because resolving such an ambiguity in favor of waiver of such critical seaman's rights would be contrary to basic contract law.

Forum Selection Clauses

***Durkovic v. Park West Galleries, Inc.*, No. 3D-16-765 (Fla. Dist. Ct. App. April 5, 2017)**
Court upheld dismissal of case due to mandatory forum selection clause which required legal proceedings to be brought in Turks and Caicos. Court rejected Appellant's argument that Jones Act prohibits seaman who is a foreign national residing outside the United States from being bound by a contract provision mandating a specific foreign forum for disputes under the contract. Court held that forum selection clause was valid and enforceable unless forum is unjust and unreasonable such that it constitutes no forum at all. As Turks and Caicos lie within the courts of the UK, Court held that clause valid.

Jones Act

***Ghaleb v. American Steamship Company*, 2017 WL 1201017 (6th Cir. March 31, 2017)**
Plaintiff sued company for negligence and negligence per se under Jones Act for injuries sustained after cable knocked him to the ground during vessel winter storage operation. Jury found for company on all counts, but district court overruled jury on negligence per se claim. Since several workers involved in transfer, including Plaintiff, worked hours in excess of statutory limit, district court held that only a reasonable jury would conclude that fatigue was reason for injury and held that Plaintiff was entitled to judgment as a matter of law. Circuit court reversed and remanded, holding that evidence of Plaintiff's actions during storage operation could lead reasonable jury to conclude that fatigue did not

contribute to accident. Court held negligence by itself does not require a finding on causation, and Plaintiff's actions lacked any defining characteristic requiring inference of casual connection to fatigue.

***Martinez v. City of New York*, 2017 WL 1174384 (2nd Cir. March 29, 2017)**
Plaintiff, an oiler aboard the Staten Island Ferry, slipped and fell when climbing a ladder from steering compartment to main deck. Plaintiff brought claim for vessel unseaworthiness, and also negligence under Jones Act, based on alleged greasy steering compartment floor and lack of handgrabs near top of ladder. Summary judgment upheld because there was no history of ladder injuries and evidence revealed Company believed ladder to be safe due to recently passed inspections. Circuit court, however, vacated judgment on negligence and unseaworthiness claims regarding the condition of the steering compartment floor because Plaintiff claimed it was greasy and covered with oil during a deposition. Court held that a jury could find Plaintiff's affidavit and testimony credible, and thus it cannot be said that City is entitled to judgment as a matter of law, even if affidavits are "self-serving."

Personal Jurisdiction

***O'Berry v. Ensco International, LLC*, 2017 WL 1048029 (E.D.La. March 20, 2017)**
Plaintiff sued foreign corporation, for injuries sustained while engaged in a shore-based water survival training course conducted by alleged agent of defendant in Saudi Arabia. Court held that it did not have general jurisdiction over defendant. Citing *Daimler*, the Court found that the defendant did not have "substantial, continuous, and systematic contacts with the forum state. The Court failed to find specific jurisdiction under the three-factor analysis established by the 5th Circuit in *Nuova Pignone, SpA v. Sortman Asia M/V*, 310 F.3d 415 (5th Cir. 2002), stating that Plaintiff did not demonstrate plaintiff's "purposeful availment of the benefits and protection of and minimum contacts with the forum state." The Court did find jurisdiction under FRCP 4(k)(2) because several of its executives maintained offices in Texas. Finally, the Court rejected defendant's motion to dismiss based on *forum non conveniens*, stating that it failed to demonstrate any of the public or private factors recognized in *Gonzalez v. Naviera Neptuno AA*, 832 F.2d 876 (5th Cir. 1987). Court recognized that a plaintiff's choice of forum should not be disturbed, and that an American citizen's selection of his home forum deserves more deference than foreign plaintiff's selection of American forum.

Punitive Damages

***Tabingo v. American Triumph, LLC,* 391 P.3d 434 (Washington Supreme Court, March 9, 2017)**
Deckhand plaintiff's fingers were amputated aboard fishing trawler and he brought action against owner and operator, asserting claims for negligence and unseaworthiness of the vessel and requesting compensatory and punitive damages. Lower court dismissed punitive damages claim. Plaintiff filed direct interlocutory petition for review with the Washington Supreme Court, which was granted, and held that punitive damages were available for general maritime unseaworthiness claim. Court reasoned that punitive

damages are available in general maritime claims and there is no indication that unseaworthiness claims have been excluded from this general rule.