Cruise Ship Doctor & Their Responsibilities

There is reason for imposing such liability, because the employment of a cruise ship doctor aboard a ship is a beneficial substitute for the shipowner's otherwise more costly duty to sick passengers. Where the ship carries no ship physicians or nurses, the carrier is under a duty to provide such care and attention as is reasonable and practicable under the circumstances, and this has traditionally required the master to change course and put in at the nearest port, according to the gravity of the illness. This duty extends to both passengers and seamen whose lives may be threatened by illness on board the ship. Any dereliction of the master in his duty to detour may be negligence for which the ship owner could be liable under the principle of respondeat superior. The shipowner, by providing a physician aboard ship, avoids his sometimes inconvenient and costly duty to change course for the benefit of an ailing passenger. This arrangement gives the ship owner competitive advantage in the maritime passenger industry over those sea-going carriers which have not provided the safety of on-board medical service.

181 F. Supp. at 220-221 (citations omitted). See also Fairley v. Royal Cruise Line, Ltd., 1993 AMC 1633 (S.D. Fla. 1993)(criticizing Barbetta and supporting the rationale of Nietes, while recognizing the viability of an apparent agency theory of recovery). This issue has never been squarely addressed by this court or the Florida Supreme Court, and we, like many of the commentators, find Nietes to be the most persuasive precedent. See e.g., Norris, The Law of Maritime Personal Injuries, 4th Ed, §3:10 ("In light of the modern trends with respect to tort liability, it is probable that the earlier cases holding that in passenger matters the shipowner's duty is fulfilled by employing a duly qualified and competent surgeon and medical practitioner and is only liable for negligence in hiring him but not for treatment by him, will not be followed," citing Judge Sweigert's "excellent opinion" in Nietes.); Beth-Ann Erlic Herschaft, Cruise Ship Medical Malpractice Cases:

Must Admiralty Courts Steer by the Star of Stare Decisis?, 17 Nova L. Rev. 575 (1992); Michael J. Compagno, Malpractice on the Love Boat: Barbetta v. S/S Bermuda Star, 14 Tul. Mar. L. J. 381 (1990). While Barbetta criticized Nietes as unrealistically presuming away the problem by assuming a ship's doctor was under sufficient control via modern communication with a company's chief surgeon, the Barbetta line of cases rests on even shakier fictions. Barbetta's finding that the cruise line should not be held responsible is premised on the unrealistic suggestion that an ailing cruise passenger at sea has some meaningful opportunity to simply forego treatment by the ship's doctor and demand that the captain fulfill one. Barbetta also misreads Nietes as assuming: That by hiring any doctor to sail with the vessel,the carrier discharges that duty. . . Given that the Nietes court wrongly assumed that without respondeat his duty of care in some other fashion:

Second, as the Barbettas' counsel acknowledged during oral argument, even though a ship's doctor is provided for the passenger's convenience, no passenger is required to use the doctor's services; consequently, as counsel also conceded, a carrier must honor a passenger's decision not to use the ship's doctor and, when necessary, discharge its duty to provide aid in some other way. Barbetta, 848 F.2d at 1372. A cruise passenger at sea and in medical distress does not have any meaningful choice but to seek treatment from the ship's doctor. The underlying basis in Barbetta and its progeny for the

idea that the passenger has some choice in the matter, and that the cruise line lacks control because it cannot interfere in the doctor-patient relationship, is the following statement regarding ill passengers from O'Brien v. Cunard S.S. Co.,154 Mass. 272, 28 N.E. 266 (Mass. 1891):

They may employ the ship's surgeon, or some other physician or surgeon who happens to be on board, or they may treat themselves if they are sick, or may go without treatment if they prefer . . .154 Mass. at 276. Noticeably absent from this list is the option of demanding that the captain fulfill the duty of reasonable care "in some other way," likely because that concept was no more realistic in 1891 than it is today. Barbetta, it appears, employed this fiction to ameliorate the harshness of the rule it espoused. Superior liability, a carrier could escape legal responsibility simply by providing any doctor for its passengers, we reject that court's analysis of why vicarious liability is necessary. Barbetta, 848 F.2d at 1372. Nietes, however, made no such assumption and, in fact, specifically recognized the duty to use due care in the hiring of a competent physician and the cause of action for a ship owner's breach of that duty. 188 F.Supp. at 221. Contrary to the implication of Barbetta, the duty to use due care in hiring does not obviate the duty to exercise reasonable care toward a passenger during a voyage.

The fallacy of the notion that the acutely ill passenger at sea has sifted through a series of options and ultimately chosen to use the ship's doctor underscores the fiction of the familiar incantation that the physician is on board merely for the "convenience of the passenger." In reality, as has been recognized, the ends of the cruise line are, at the very least, equally served by being able to fulfill its duty to ill or injured passengers without necessarily being required to disrupt the voyage or incur great expense to evacuate the patient every time a medical situation arises. See Nietes, 188 F.2d at 221; Fairley, 1993 AMC at 1639; Herschaft, supra, at 593; Compagno, supra, at 389-90. While the presence of an onboard physician is not required by law, the practical realities of the competitive cruise industry, and the reasonably anticipated risks of taking a small city of people to sea for days at a time, all but dictate a doctor's presence. There is also undoubtedly a benefit derived by the cruise line in being able both market the availability of a doctor and to more cost effectively address its duty to its passengers. In Rand we cited Barbetta for the proposition that general maritime law is applicable to a claim of medical malpractice in navigable waters and, in dicta, we noted the holding of Barbetta. We were not called upon there to address the underlying vicarious liability issue.

Barbetta's conclusion that there is a "lack of control" over the doctor-patient relationship is based on the fiction that the passenger freely chose the doctor and on the concept that the doctor's work is not the business of the cruise line. 848 F.2d at 1368. The treatment of cruise passengers by the ship's doctor, however, is not alien to maritime pursuits. Indeed, in Rand v. Hatch, 762 So.2d 1001 (Fla. 3d DCA 2000), in concluding that general maritime law applies to a claim for a ship's doctor's malpractice, we held that such treatment "bears a significant relationship to traditional maritime activity," stating:

In Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 543, 115 S.Ct. 1043, 130 L.Ed.2d 1024 (1995), the United States Supreme Court established that in considering whether a particular tort bears a significant relationship to traditional maritime activity to satisfy the nexus test, courts should consider whether the incident giving rise to the suit is likely to disrupt maritime activity and whether it is substantially related to traditional maritime activity to justify application of general maritime law. See Sisson v. Ruby, 497 U.S. 358, 365, 110 S.Ct. 2892, 111 L.Ed.2d 292 (1990)(discussing

these considerations). In this case, Dr. Rand and Nurse Jackson were brought onboard a commercial vessel which sailed on navigable waters by the shipowner in order to render medical attention to both crew members and passengers when such attention was needed. Sick and injured crew and passengers, either left untreated or inadequately treated, are certainly likely to disrupt maritime activity, such as the successful navigation of a commercial vessel. (Emphasis added).2

Maritime law embraces the principles of agency. See Cactus Pipe & Supply Co., Inc. V. M/V Montmarte, 756 F.2d 1103, 1111 (5th Cir 1985); West India Industries, Inc. v. Vance & Sons AMC-Jeep, 671 F.2d 1384, 1387 (5th Cir. 1982). These principles include that there is no inherent conflict between a physician's contractual independent contractor status and a binding of agency where the totality of the circumstances warrant, See Villazon v. Prudential Health Care Plan, Inc., 843 So. 2d 842, 854 (Fla. 2003); Restatement (Second) of Agency § 14N cmt. at (1958), and that a conclusory statement of independent contractor status in a contract document is not necessarily controlling. Villazon, 843 So. 2d at 853. See also Smith v. Commodore Cruise Line, Ltd., 124 F.Supp.2d 150, 157 (S.D.N.Y 2000)(ship's doctor was cruise line's agent, whose knowledge of personal injuries he treated is imputed to the cruise line). The record indicates a certain amount of control over the doctor's medical services in that the cruise line provides the medical supplies, selects the nurses, sets the hours of operation of the infirmary, and provides a policy and procedures manual for the operation of the infirmary. When considering a claim based on agency, it is the right of control, not actual control that may be determinative. Villazon, 843 So. 2d at 853. Here, in addition to being an officer of the ship and subject to the ship's articles, Dr. Neri's duties were to provide "medical services and treatment to passengers and crew in accordance with PURCHASER'S Physician. The record does not reflect the contents of the "Purchaser's Physician guidelines" referred to, although Carnival's director of medical credentialing, Dr. Diskin, testified Carnival did not provide ship's doctors with a manual as to specific medical procedures. He testified the policy and procedures manual for the operation of the infirmary was not geared toward the doctor, but more to the nurses who "essentially run the infirmary on a day-to-day basis." He further testified that he had assisted ship's doctors in determining whether certain new medications were appropriate for the ship's infirmary, and that a practice existed whereby land based doctors or hospitals under contract with Carnival to treat Carnival's crew members would maintain a telephone "hot line" to consult with ships' physicians when needed.

Guidelines" and he was subject to dismissal for "failure to perform duties to the satisfaction of" Carnival. More significantly, because it is foreseeable that some cruise passengers at sea will develop medical problems and the only realistic alternative for such an ill or injured passenger is treatment by the ship's doctor provided by the cruise line, there is an element of control over the doctor-patient relationship which Barbetta failed to recognize. We reject the holding of the Barbetta line of cases and hold that the cruise line's duty to exercise reasonable care under the circumstances extends to the actions of the ship's doctor placed on board by the cruise line. We accordingly hold that, regardless of the contractual status ascribed to the doctor, for purposes of fulfilling the cruise line's duty to exercise reasonable care, the ship's doctor is an agent of the cruise line whose negligence should be imputed to the cruise line. In imposing such vicarious liability we note that, on any given cruise, the cruise line is already held vicariously liable for the negligence of the same ship's doctor in the treatment of hundreds of people — the crew — under the maritime duty to provide maintenance and cure. See De Zon v. American President Lines, 318 U.S. 660. 63 S.Ct. 814, 87 L.Ed. 1065 (1943); De Centro v. Gulf

Fleet Crews, Inc., 798 F.2d 138, 140 (5th Cir. 1986); Fitzgerald v. A.L. Burbank & Co., 451 F.2d 670, 679 (2d Cir. 1971); Gulf Central Steamship Corp. v. Sambula, 405 F.2d 291 (5th Cir. 1968). Thus, in the case of a seaman, a ship owner is liable for the negligence of the cruise ship's doctor regardless of the degree to which the doctor's medical activities, or the doctor-patient relationship, can be controlled by the ship owner. As for the exculpatory language contained in the passenger ticket, 46 App. U.S.C.A. §183c invalidates certain purported disclaimers of liability: It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability, or from liability beyond any stipulated amount, for such loss or injury . . .All such provisions or limitations contained in any such rule, regulation, contract, or agreement are declared to be against public policy and shall be null and void and of no effect. See Carlisle v. Ulysses Line, Ltd., 475 So. 2d 248 (Fla. 3d DCA 1985)(exculpatory clause attempting to relieve cruise line from liability for negligence of its servants would be unlawful under 464w Where a cruise passenger's medical negligence claim is limited to the cruise ship's doctor individually, the passenger is effectively faced with having to engage in a game of personal jurisdiction and service of process roulette, with the ability to proceed against the doctor depending on various factors such as contacts with the state, whether medical treatment was provided in Florida waters or at sea, and the practical realities of effectuating service of process. See, e.g., Rana v. Flynn, 823 So. 2d 302 (Fla. 3d DCA 2002)(personal jurisdiction present where treatment in Florida waters and there were multiple contacts with state); Elmund v. Mottershead, 750 So. 2d 736 (Fla. 3d DCA 2000)(no personal jurisdiction over non-resident ship's doctor with insufficient Florida contacts); Rossa v. Sills, 493 So. 2d 1137 (Fla. 4th DCA 1986)(sufficient contacts to support personal jurisdiction). Two years after this matter was filed the Carlisles had not been able to serve process on Dr. Neri. As a result of our ruling it is unnecessary to address the issues raised with regard to apparent agency. We find no error 14 U.S.C § 183c). See also Fairley, 1993 AMC at 1641, n.7 (citing 46 App. U.S.C.A. §183c for the proposition that cruise line's disclaimer of liability for physician's negligence did not, as a matter of law, preclude apparent authority claim). To the extent the cruise ticket seeks to limit Carnival's liability for the negligence of its agent, it is invalid.4 A cruise ship is a city afloat with hundreds of temporary citizens, some of whom are passengers and some of whom are the employees and agents of the cruise line who comprise the ship's crew, each of whom, within their particular sphere, owe a duty of reasonable care to the passengers. The cruise line's duty of reasonable care under the circumstances includes the duty of the ship's doctor to adhere to the standard of care of a reasonable ship's doctor under the circumstances. In that portion of the summary judgment on the claim of negligent hiring. See Barbetta, 848 F.2d at 1373-74. 15 On the basis of the foregoing we reverse the summary judgment on the issue of vicarious liability and remand this matter for further proceedings consistent herewith.

Cruise Ship Accident

Common carriers owe to their passengers the duty to exercise reasonable care under the circumstances. The vessel is not, however, the insurer of the safety of the passengers. Merely because a cruise ship accident occurs, a carrier does not become liable to a passenger. While there is a duty of

the carrier to warn the passenger of dangers, this obligation extends only to those dangers which are not apparent and obvious to the passenger.

Over the past many years, we have had occasion to be involved in numerous passenger boating accidents and injuries. These accidents can be just as serious and disabling as injury occurring on oceangoing vessels, involving experienced mariners.

“Rules of the road” do apply to passenger boats, and many of these rules are common sense, just as in operating a motor vehicle. However, licensing requirements are virtually non-existent, but no license does not mean no responsibility. Passenger injury occurred on cruise ship accidents where the operator failed to observe operating conditions, including large wakes from passing vessels, resulting in severe passenger’s injury; intoxicated boat operators who caused crash-related injury; jet ski and high-speed operators causing injury by striking swimmers, water skiers, or causing injuries to persons in the water from prop-related injury. We have also become involved in cases where operators of recreational facilities have failed to adequately outfit customers with proper equipment or inadequately equipped boats and gear.

Passenger boating is, in some circumstances, also subject to maritime and admiralty law requirements and procedures. In many circumstances, this may allow for access to courts and remedies that expand an injured person’s right to bring a claim. If you have been involved in a recreational boat injury, the best way to learn of your rights is to consult with competent legal counsel.

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