Passenger Claims

Cruise Ship Passenger Injury and Accident Claims

In March of 1997, the Carlisle family embarked on a cruise aboard the Carnival cruise ship, the Ecstasy. During the cruise, 14 year old Elizabeth Carlisle felt ill with abdominal pain, lower back pain and diarrhea and was seen several times in the ship's hospital by the ship's physician, Dr. Mauro Neri. Over the course of several days Dr. Neri repeatedly advised the Carlisles that Elizabeth was suffering from the flu, assured them in response to their questions that it was not appendicitis, and provided antibiotics. Ultimately, the Carlisle family decided to discontinue their cruise and returned home to Michigan where Elizabeth was diagnosed as having a ruptured appendix. Her appendix was removed, and as a result of the rupture and subsequent infection, Elizabeth was rendered sterile. Her parents filed the instant suit against Carnival and Dr. Neri, alleging, among other things, that the cruise ship doctor had acted negligently in his treatment of Elizabeth and that Carnival should be held vicariously liable for such negligence under theories of agency and apparent agency, and that Carnival was negligent in the hiring of Dr. Neri. The trial court entered summary judgment in favor of Carnival and this appeal followed.

The contract between Dr. Neri (identified therein as "CONTRACTOR") and Carnival (identified therein as "PURCHASER"), provided, in part: CONTRACTOR agrees to provide services aboard vessel in the capacity of SHIP'S PHYSICIAN . . .Said services shall consist of the providing of medical services and treatment to passengers and crew in accordance with PURCHASER'S Physician guidelines and shall be performed on a seven (7) day -per-week basis during regular and on call vessel infirmary hours and for urgencies. The contract further provides that Dr. Neri would receive a weekly salary as his sole source of income during the term of the Agreement, and that Carnival could dismiss Dr. Neri for "violations of the Ship's Articles" or "failure to perform duties to the satisfaction of" Carnival. Dr. Neri was issued a ship's uniform and agreed his photograph, name and likeness could be used to promote and publicize Carnival's vessels in any and all media. The record shows that Dr. Neri was considered by Carnival to be an officer of the ship. In a separate agreement Carnival agreed to indemnify Dr. Neri for up to $1 million with regard to claims brought against him arising out of any act or omission on his part while acting in the course of his duties as cruise ship's doctor, and Dr. Neri agreed that Carnival, or its insurer, would be permitted to take absolute control over the defense and handling of such claims. The cruise ticket issued to the Carlisles provides, in part:

If the vessel carries a physician, nurse, masseuse, barber, hair dresser or manicurist, it is done solely for the convenience of the guest and any such person in dealing with the guest is not and shall not be considered in any respect whatsoever, as the employee, servant or agent of the carrier and the carrier shall not be liable for any act or omission of such person or those under his order or assisting him with respect to treatment, advice or

care of any kind given to any guest. Torts committed within maritime jurisdiction fall within the purview of maritime law.

See Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 79 S.Ct. 406, 3 L.Ed.2d 550 (1959); Klosters Rederi A/S d/b/a Norwegian Caribbean Lines, v. Cowden, 447 So. 2d 1017 (Fla. 3d DCA 1984). See also Rand v. Hatch, 762 So. 2d 1001 (Fla. 3d DCA 2000) (general maritime law applies to a claim for a cruise ship's doctor's malpractice). Additionally, a cruise ship ticket is a maritime contract, governed by maritime law. See The Moses Taylor, 71 U.S. (4 Wall.) 411, 427, 18 L.Ed. 397 (1866); Wallis v. Princess Cruises, Inc., 306 F.3d 827, 834 (9th Cir. 2002).

It is axiomatic under maritime law that a carrier owes a duty to its passengers to exercise reasonable care under the circumstances. See Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 79 S.Ct. 406, 3 L.Ed.2d 550 (1959); Muratore v. M/S Scotia Prince, 845 F.2d 347, 353 (1st Cir. 1988); Rindfleisch v. Carnival Cruise Lines, Inc., 498 So. 2d 488 (Fla. 3d DCA 1986).

In arguing that this duty should not be a basis to impose vicarious liability upon a cruise line for the negligence of its ship's physician in treating passengers Carnival relies upon the long line of decisions exemplified by Barbetta v. S/S Bermuda Star, 848 F.2d 1364, 1369 (5th Cir.1988), which held: When a carrier undertakes to employ a cruise ship doctor aboard ship for its passengers' convenience, the carrier has a duty to employ a cruise ship doctor who is competent and duly qualified. If the carrier breaches its duty, it is responsible for its own negligence. If the doctor is negligent in treating a passenger, however, that negligence will not be imputed to the carrier. E.g., The Korea Maru, 254 F. 397, 399 (9th Cir.1918); The Great Northern, 251 F. 826, 830-32 (9th Cir.1918); Di Bonaventure v. Home Lines, Inc., 536 F.Supp. 100, 103-04 (E.D. Penn.1982); Cimini v. Italia Crociere Int'l S.P.A., 1981 A.M.C. 2674, 2677 (S.D.N.Y.1981); Amdur v. Zim Israel Navigation Co., 310 F.Supp. 1033, 1042 (S.D.N.Y.1969); Branch v. Compagnie Generale Transatlantique, 11 F.Supp. 832 (S.D.N.Y.1935); Churchill v. United Fruit Co., 294 F. 400, 402 (D. Mass.1923); The Napolitan Prince, 134 F. 159, 160 (E.D.N.Y.1904); O'Brien v. Cunard Steamship Co., 154 Mass. 272, 28 N.E. 266, 267 (1891); Laubheim v. De Koninglyke Neder Landsche Stoomboot Maatschappy, 107 N.Y. 228, 13 N.E. 781 (1887).

See also Cummiskey v. Chandris, 895 F.2d 107 (2d Cir. 1990); Doe v. Celebrity Cruises, 145 F.Supp.2d 1337 (S.D. Fla. 2001); Mascolo v. Costa Crociere, 726 F. Supp. 1285 (S.D. Fla. 1989). The stated basis for the Barbetta line of authority is the lack of the cruise line's ability to control the doctor-patient relationship and lack of expertise to control the doctor in his practice of medicine, in that "a ship is not a floating hospital." Barbetta, 848 F.2d at 1368-1371.

The Carlisles argue that the Barbetta cases are based upon flawed and outmoded assumptions regarding the cruise ship industry and the provision of medical services to passengers, and urge that Nietes v. American President Lines, Ltd., 188 F.Supp. 219 (N.D.

Cal. 1959) is a better reasoned decision. In Nietes, the cruise line was held vicariously liable for the negligence of the cruise ship's doctor who was a member of the crew: It is our opinion that, where a ship's physician is in the regular employment of a ship, as a salaried member of the crew, subject to the ship's discipline and the master's orders, and presumably also under the general direction and supervision of the company's chief surgeon through modern means of communication, he is, for the purposes of respondeat superior at least, in the nature of an employee or servant for whose negligent treatment of a passenger a shipowner may be held liable. . . While it has been stated that 'there is no more distinct calling than that of the doctor,' we are, nonetheless, persuaded to this conclusion by numerous cases which demonstrate the growing tendency to hold the doctor a servant in special circumstances, as where he is a resident physician on a hospital staff, or where he is a corporate employee performing medical services which accrue to the benefit of his employer The rule of the older cases rested largely upon the view that a non-professional employer could not be expected to exercise control or supervision over a professionally skilled physician. We appreciate the difficulty inherent in such an employment situation, but we think that the distinction no longer provides a realistic basis for the determination of liability in our modern, highly organized industrial society. Surely, the board of directors of a modern steamship company has as little professional ability to supervise effectively the highly skilled operations involved in the navigation of a modern ocean carrier by its master as it has to supervise a physician's treatment of shipboard illness. Yet, the company is held liable for the negligent operation of the ship by the master. So, too, should it be liable for the negligent treatment of a passenger by a physician or nurse in the normal scope of their employment, as members of the ship's company, subject to the orders and commands of the master. A carrier is under no duty to practice medicine . . ., But, when a carrier undertakes the treatment of illness through medical services, provided by it aboard ship, it assumes the duty to treat carefully.