

**HOW (AND WHERE) TO PRESERVE YOUR CLAIM  
AGAINST THE CRUISE LINES; *THE 5 THINGS YOU SHOULD KNOW***

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*For AARP  
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It happened again. I got a call this last week from a young lawyer who realized too late that he was beyond the statute of limitations in a case against a cruise line. (I am a maritime trial lawyer located in Miami, Florida and have 32 years of experience with cruise line claims. For the first 17 years of my career, I represented the cruise lines; for the last 15 years, I have represented injured passengers and crew members against the cruise lines. I get about 2 to 3 calls like this from around the country every year).

This lawyer's client had a slip and fall accident on a cruise ship and was injured. The lawyer who called me was located in New York and was **not** experienced in cruise ship claims. He did not know about the requirement to give notice of a claim within six months and the requirement to file suit within one year. He dealt with the adjuster for the cruise line himself. The adjuster kept writing the lawyer saying that the lawyer needs to send more documentation of the claim. Then time passed and it was more than one year after the accident. Then the adjuster said the cruise line did not have to pay anything because the deadline had passed. That is called "Gotcha". Now the cruise line can refuse to pay anything at all. And that is just what they do.

Here are the *5 things you should know* about any claim against the cruise line for personal injury, slip and fall, trip and fall, or sexual assault or rape:

**1. REPORT THE INCIDENT IMMEDIATELY.** Report the incident immediately to the security officer and other personnel in the immediate area. When you provide the security or safety officer with a statement, ask that you be provided a copy of that statement right then and there. If you do not receive a copy then and there, they will not give you a copy.

If you have injuries, seek medical treatment immediately. Go to the ship's infirmary and report the accident. Please note that the cruise lines train their doctors to be advocates for the cruise line and not physicians for its passengers. For example, the physicians are trained by the claims department in how to ask questions and what questions to ask. That is why the doctors will seem more concerned with blaming you for the accident than finding out what is wrong with you and treating your injuries.

In the case of a sexual assault or rape, report the incident immediately to the FBI. Do not rely upon the cruise line to report it to the FBI. The FBI has jurisdiction at least over some semblance of an investigation in these matters. The thoroughness and eagerness of the FBI into the incident depends upon the particular agent assigned to the task. Further, the cruise lines use the involvement of the FBI as an excuse to discontinue any further investigation. After all, investigation will get to the facts which point in the direction of the cruise line's fault. The FBI often times will not do a thorough investigation; they will not understand procedures on the ship. You have to pursue the FBI and ask them to keep you updated about the investigation.

Medical treatment in the case of rape or sexual assault will in course include a rape kit examination. That examination should be accomplished as soon as possible. The cruise line doctors typically are not competent and not well trained to perform such examinations. However, time is of the essence. If you do not seek a rape kit examination within a certain period of time, it may be too late to gather evidence.

After you leave the cruise ship, you should seek medical treatment right away for any physical injuries or problems. If you have an orthopedic injury, you should go to an orthopedic surgeon. If you have a neurological injury, you should go to a neurologist. In any event, it is wise to get thoroughly evaluated as soon as you get back to your home.

**2. PRESERVE THE EVIDENCE.** Preserving the evidence is critical in any claim or injuries caused by the cruise line. This is because the cruise line will not preserve evidence for you and will not provide such evidence. If you file a claim, the cruise lines are not obligated to provide photographs which are taken in the course of their investigation. Accordingly, you need to take photographs or have someone take good digital photographs of the area. Take photographs of the entire area as well as photographs of whatever it was that caused the accident.

The investigation by the cruise line may take place hours or days after the accident. Before taking photographs, the safety officer and others typically will place warning signs or slippery when wet signs in the area and then take the photographs. The testimony later given by these witnesses is that the signs were there in place at the scene of the accident all along. If there were warning signs in place at the time of the accident, take photographs of them. Typically, these warning signs are placed in the wrong area which is exactly why the accident occurred. The sign itself proves that the cruise line knew that there was a problem in the area. They merely put the sign in the wrong place.

Also take photographs of any cameras which are mounted in the ceiling either in an exposed position or behind a half dome of glass or plastic. This is because the cruise lines typically deny that there is any video of the accident. The first thing in the series of events which takes places when you report the accident to the infirmary to get medical treatment is that the physical types in to his or her system the beginnings of the medical report. At the same time, the physician notifies the safety officer. The safety officer then examines the videotape of the area of the accident to see how the accident occurred. Then

the officer comes to the infirmary or tracks you down on the ship to interview you and your family. Sometimes the safety officer will need to talk to you before he or she examines the videotape. In any event, 99 times out of 100, the cruise line denies that any video of the accident happens. This of course is the best evidence of the accident. However, cruise lines will produce it only if they believe, usually incorrectly, that the video is in their favor.

The next chore for preserving evidence is to take down the name and contact information of all passengers and crewmembers who witnessed the incident or the condition of the area of the incident at any time before or after it happened. This information is crucial. This information is difficult to get from the cruise line.

**3. WHAT LAW APPLIES.** When you are injured on a cruise ship, maritime law applies. Maritime law is a specialized area of the law. Maritime law applies to personal injuries on any vessel (like a cruise ship or gambling boat or tanker or freighter) on a navigable waterway (like the Atlantic Ocean, the Inter-coastal Waterway, any river, or the Caribbean Sea). It applies to Jones Act seaman, that is the people who work on ships, and it applies to passengers on cruise ships. Because maritime law applies to injuries which occur on ships in navigable water, most lawyers do not specialize in or know this area of the law.

In fact, most maritime lawyers do not handle claims of passengers against the cruise lines. Passenger claims is also a specialty within the maritime law. The law for claims of passengers against the cruise lines is different than the law for claims of the ship's employees against the cruise lines. In both situations, maritime law applies. But there is a different set of laws which apply to claims brought by the employees (seaman) than for claims brought by the passengers.

**4. WHEN TO GIVE NOTICE AND FILE SUIT.** You preserve your claim only by providing the 6 month notice and filing suit within one year. Filling out an accident report and writing letters to the cruise line do not preserve your claim. Writing a letter to the cruise line does let them know about you and your claim. It does not preserve your claim. If you filled out an accident report on the day of the accident on the ship, and if you wrote a million letters to the cruise lines, but you do not file suit within one year, you probably have no claim (see section on equitable tolling below) and the cruise lines will pay you nothing. This is not to say that you cannot get a settlement in the right case before filing suit. Sometimes you can. But you need to right lawyer in the right city and state to do this.

You must do two things in order to preserve your claim. First, you must provide to the cruise line a notice in writing describing the incident within a certain period of time. Commonly, that period of time usually is 6 months or 180 days of the incident. (For property claims, the notice period can be as short as 30 days, and the filing period as short as 6 months). All of these requirements should be spelled out in the Passenger Contract

Ticket, that is the cruise passenger's ticket. The terms and conditions also sometimes appear on the cruise line's website. This is called the Passenger Ticket Contract because it is really numerous pages of legal gobbledigook that no passenger, other than maritime or other lawyers, understand. Further, these provisions are buried in the numerous paragraphs of the Passenger Ticket Contract.

The terms and conditions generally require that you give them notice of the facts of the accident. Generally, this should include how this happened and what caused it, when it happened (that is the date), where it happened (what ship and where on the ship), who (your identity and cabin number).

The terms and conditions also require that you make it clear that you will make a claim for you injuries and damages. The terms and conditions say when the notice has to be made.

In a recent case from the Southern District of Florida, *Rutledge v. NCL (Bahamas) Ltd.*, 2010 WL 4116473 (S.D.Fla. October 18, 2010), the Southern District held that failure to provide such notice was not fatal to the claim. In that case, the court did hold, however, that the party did fail to provide notice. The Plaintiff in that case argued that the notice provided on the form which the Plaintiff filled out in order to receive medical treatment onboard the ship qualified as written notice under the ticket contract.

The ticket contract required that a "written notice of the claim, including a complete factual account of the basis of such claim is delivered to the carrier within 185 calendar days from the date of the incident giving rise to such injury, illness, or death..." The court held that seeking medical treatment at the ship's infirmary is not giving notice of a "claim."

The court cited to *Brady v. Farley*, 27 F.Supp. 840, 843 (D.C.N.Y.1939) in which a New York court noted in dicta that a description of an accident to an onboard doctor does not qualify as written notice because "even assuming that the doctor was the agent of the company authorized to receive claims, ... acquainting the doctor with the fact of injury [is not the same as] making a claim upon the steamship company for damages resulting from the injury." *Brady*, 27 F.Supp. at 843.

The Court in *Rutledge* also cited to *Smith v. Commodore Cruise Line Ltd.*, 124 F.Supp.2d 150 (S.D.N.Y.2000). In that case, the Southern District of New York held that a passenger provided the requisite written notice when she wrote the cruise line a letter asking for a copy of their records for her file, as well as describing her accident, her injuries, and their alleged negligence. The Plaintiff in *Smith* explicitly stated in the letter that she "would like to collect for her bills." *Smith*, 124 F.Supp.2d at 157.

The Court in *Rutledge*, however, did not address the fact that when a passenger reports an accident to the ship's infirmary, the doctor onboard the ship starts the investigation process. The doctor notifies the safety officer. The safety officer then interviews the injured passenger and creates an accident report. If suit is filed and if the accident report is then requested, the cruise line refuses to provide the accident report because it was

prepared “in anticipation of litigation.” On that basis, the cruise lines assert the work product privilege. If in fact the cruise line anticipated litigation merely because there is an accident, the cruise line certainly is on notice of a claim or potential claim.

The Southern District of Florida in *Rutledge* went further in its analysis of the notice. In *Rutledge*, the court said that the fact that the plaintiff failed to give notice does not end the court’s inquiry. The court said:

The fact the Plaintiff failed to give notice does not end the court’s inquiry, however, because this case is governed by maritime law. Under 46 U.S.C. § 30508, “[w]hen notice of a claim for personal injury or death is required by a contract, the failure to give the notice is not a bar to recovery if ... the court finds that the owner, master, or agent of the vessel had knowledge of the injury or death and the owner has not been prejudiced by the failure.” 46 U.S.C § 30508(c)(1).

There must be evidence that the cruise line or its agent was aware of the passengers injury and that there was no prejudice resulting to the cruise line. See also, *Brown v. New Commodore Cruise Line Ltd.*, No. 98 CIV. 4402 BSJ, 2000 WL 45443, at 2 (S.D.N.Y. Jan.19, 2000).

In *Rutledge*, the Court held that the vessel obviously had knowledge of the injury. The passenger sought medical treatment onboard the ship. The Court also cited to the fact that the cruise line conducted an investigation immediately following the injury. That investigation included efforts to obtain Plaintiff’s blood alcohol level and efforts to assess the site of the accident. On that basis and under 46 U.S.C. § 30508, the Defendant’s motion for summary judgment was denied.

The one year statute of limitations in the Passenger Ticket Contract, generally, is enforceable. A recent case from the Eleventh Circuit held that the advice in the Celebrity Cruises Inc. ticket of the one year statute was reasonable communicated to the Plaintiff. This was one of many factors which made the ticket enforceable. In that case, *Racca v. Celebrity Cruises Inc.*, 376 Fed. Appx. 929 (11<sup>th</sup> Cir. 2010), the Eleventh Circuit affirmed a dismissal on the basis of statute of limitations. The court cited to the following factors:

The ticket contract was only 3 pages long within the entire Guest Vacation Brochure.

The ticket contract was received before the cruise began.

There is a warning on the outside of the ticket contract which says “contains important limitation on the rights of passenger” on the face of the Guest Vacation Brochure.

There is an index to the brochure which appears on page one noting that the ticket contract can be found on page 67 of the brochure.

The Plaintiff injured passenger had an attorney as early as July 2007 but waited until April 2008 to file the action.

The Plaintiff injured passenger's surgeries occurred within months of the accident in 2006 but the Plaintiff did not provided Defendant with any written notice of the claim at any time before filing suit.

The Eleventh Circuit in *Racca* cited the standard described in its earlier decision of *Nash v. Kloster Cruise A/S*, 901 F.2d 1565, 1566 (11<sup>th</sup> Cir.1990). In *Nash*, the courts said:

Courts will enforce such limitation if the cruise ticket provided the passenger with reasonably adequate notice that the limit existed and formed part of the passenger contract.

*Nash*, 901 F.2d. at 1566.

Equitable tolling can save the day if in fact a passenger has not filed suit within the one year time limit. In 2010 alone, there were 2 cases which addressed equitable tolling. Those cases were: *Crist v. Carnival Corporation*, 2010 WL 4904166, \_\_\_ F.3d \_\_ (11<sup>th</sup> Cir.2010) and *Sorgenfrei v. Carnival Corporation*, 727 F.Supp.2d 1354 (S.D.Fla. 2010). The Eleventh Circuit in *Crist* affirmed the District Court's granting of Defendant's Motion for Summary Judgment based on the one year contractual limitations in the Passenger's Cruise Ticket. The Court in *Crist* found that the attorney for the passenger wrote a letter to Carnival enclosing a copy of the ticket 8 months after the injury. The ticket spelled out the federal forum selection clause. Carnival responded in a letter which said, among other things, "Carnival will not waive its contractual defense if a lawsuit is filed in the wrong court." Despite this knowledge, the lawyer for the passenger filed suit in a state court in Miami, Florida. That suit was filed within the one year period. Carnival filed a motion to dismiss that suit. More than one year after the accident, the lawyer then filed an action in federal court. Court was not swayed by this late filing.

The Eleventh Circuit in *Crist* cited the rule and said:

Equitable tolling may be justified if a Plaintiff timely files a technically defective pleading, but in all other respects acts with proper diligence that the limitation period is intended to ensure. *Justice v. United States*, 6 F.3d 1474, 1479 (11<sup>th</sup> Cir.1993). However, [t]he Supreme Court has made clear that tolling is an extraordinary remedy which should be extended only sparingly. *Id.* (citing *Irwin v. Veterans Admin.*, 498 U.S. 89, 96, 111 S.Ct. 453, 457-58, 112 L.Ed.2d 435 (1990)).

The Plaintiff in *Crist* relied on *Booth v. Carnival Corporation*, 522 F.3d 1148 (11<sup>th</sup> Cir.2008). In *Booth*, the Plaintiff filed an action in state court within the one year period. In *Booth*, however, Carnival did not clearly indicate that it would be asserting its venue defense. In *Sorgenfrei*, the District Court, granted Defendant's Motion for Summary Judgment on the statute of limitations. The court held that the *Booth* equitable tolling did not apply. In *Sorgenfrei*, the Plaintiff filed an action in Louisiana and then waited until the state actions were resolved in Carnival's favor based on the valid forum selection clause. The Plaintiff in *Sorgenfrei* then filed suit in federal court well past the one year statute of limitations period.

In *Crist*, the Eleventh Circuit did resolve an apparent conflict within the Eleventh Circuit cases on the standard of review for dismissal of an action where Plaintiff has raised equitable tolling. Previously, there were cases holding that the standard was de novo review. See, for example, *Booth v. Carnival Corporation*, 522 F.3d 1148, 1149 (11<sup>th</sup> Cir.2008). But there were other cases in which the Eleventh Circuit even held that this standard of review is discretionary. See, *Arce v. Garcia*, 434 F.3d 1254, 1260 (11<sup>th</sup> Cir.2006). The Eleventh Circuit held that in *Crist*, that they are bound to follow their decision in *Bailey*, the most recent panel decision, "and apply a plenary or de novo standard of review to the question of whether equitable tolling applies." *Crist*, \_\_\_ F.3d at \_\_\_, fn1, 2010 WL 4904166 (December 2, 2010).

**5. WHERE TO FILE SUIT.** The cruise lines require that you file suit against them in a certain city and state specified in your ticket. This is called in the law a "venue selection clause". These clauses generally are enforceable. See, *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). Buried in the fine print of your Passenger Contract Ticket, back many pages, there is a paragraph about where you have to sue them. It is usually toward the end of the ticket. **No matter where you are from, no matter where you bought the ticket, no matter where you got on the ship, this rule applies.**

- ✓ **In all cases against Carnival Cruise Lines, you must file suit in Miami, Florida.**
- ✓ **In all cases against Royal Caribbean Cruise Lines, you must file suit in Miami, Florida.**
- ✓ **In all cases against Norwegian Cruise Lines, you must file suit in Miami, Florida.**
- ✓ **In all cases against Celebrity Cruise Lines, you must file suit in Miami, Florida.**
- ✓ **In all cases against Oceania Cruises, you must file suit in Miami, Florida.**
- ✓ **In all cases against The Yachts of Seabourn, you must file suite in Miami, Florida.**
- ✓ **In all cases against Celebration Cruise Line, you must file suit in Ft. Lauderdale, Florida.**

- ✓ In all cases against Costa Crociere, where the cruise touches a U.S. port, you must file suit in Ft. Lauderdale, Florida. Where the cruise does not touch a U.S. port, the claim must be filed in Genoa, Italy.
- ✓ In all cases against Discovery Cruises, you must file suit in Ft. Lauderdale, Florida.
- ✓ In all cases against MSC Cruises, you must file suit in Ft. Lauderdale, Florida.
- ✓ In all cases against Silversea Cruises, you must file suit in Ft. Lauderdale, Florida.
- ✓ In all cases against Disney Cruise Line, you must file suit in Orlando, Florida.
- ✓ In all cases against Crystal Cruises, you must file suit in California.
- ✓ In all cases against Cunard Line, you must file suit in Los Angeles, California.
- ✓ In all cases against Princess Cruises, you must file suit in Los Angeles, California.
- ✓ In all cases against Holland America, you must file suit in Seattle, Washington.

Other cruise lines specify other cities and states.

If you follow these five steps, you will be successful in preserving and prosecuting your claim against the cruise line.

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John H. (Jack) Hickey is a Past President of the Dade County (Miami) Bar Association, and current member of the Board of Governors of The Florida Bar. This year, for the seventh year in a row, he was **named by his peers (other lawyers)** as a **“SuperLawyer”** by SuperLawyers.com, a member of the **“Legal Elite”** by **Florida Trend Magazine**, and a **“Top Lawyer”** in the areas of **personal injury and maritime by the South Florida Legal Guide**. Hickey is rated A/V, the highest rating possible, by Martindale-Hubbell, the international directory of lawyers. He is also Board Certified as a Civil Trial Lawyer by The Florida Bar and by the National Board of Trial Advocacy (the only national board of certification which is accredited by the American Bar Association).

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