

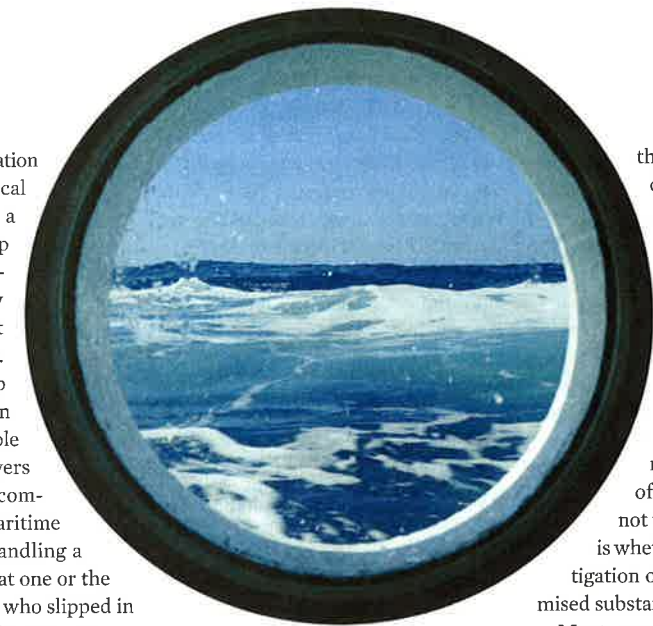
When a passenger is injured aboard a cruise ship, the lawsuit presents challenges unique to maritime law. Here are some points to consider before filing suit.

# Injuries on Deck

Although cruise ship litigation is not something the typical trial lawyer handles on a daily basis, the cruise ship *Costa Concordia's* capsizing off the coast of Italy in January shows that it's an active area of law. As suits begin piling up related to that incident, in which more than 30 people died, the plaintiffs' lawyers will be grappling with complicated questions of maritime law.<sup>1</sup> Whether you're handling a high-profile case like that one or the case of a ship passenger who slipped in a puddle, there are some basic tenets you must consider before filing suit.

Common injuries facing passengers on cruise ships include falls from slipping and tripping, sexual assaults by crew members or other passengers, assault and battery as a result of negligent security, medical malpractice by the ship's medical personnel, and injuries during shore excursions. Maritime law generally applies to all these claims.

The law provides that the cruise line has a duty to exercise reasonable care for its passengers' safety.<sup>2</sup> Courts have called it a "duty to exercise reasonable care under the circumstances."<sup>3</sup> The



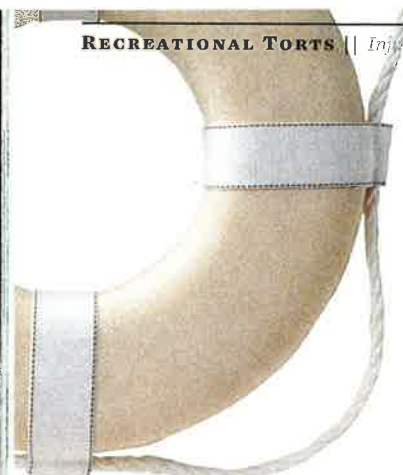
By || **JOHN H. "JACK" HICKEY**

cruise line's "duty is to warn of dangers known to the carrier in places where the passenger is invited to, or may reasonably be expected to visit."<sup>4</sup> The cruise line must provide safe ingress and egress to and from the ship.<sup>5</sup> That includes the gangway, the ramp provided to enter and exit a ship, and transportation to and from shore.

When you take a case against a cruise line, the first thing you must do is obtain the contract that came with

the passenger ticket. The detailed contract spells out the statute of limitations and specifies the forum, which courts have typically enforced.<sup>6</sup> Before filing suit, a plaintiff must provide notice to the cruise line. Under the ticket contracts, notice usually must be made within six months of the incident. If notice is not timely provided, the issue is whether the cruise line's investigation of the incident is compromised substantially.<sup>7</sup>

Most passenger ticket contracts have a one-year statute of limitations for personal injury suits, which generally has been applied. The Eleventh Circuit recently dismissed on limitations grounds a suit by a plaintiff who injured his knee when he stepped into a hole hidden beneath the carpet outside his cabin.<sup>8</sup> The court cited an earlier decision in which it held that "courts will enforce such a limitation if the cruise ticket provided the passenger with reasonably adequate notice that the limit existed and formed part of the passenger contract."<sup>9</sup> The court held that the limitations provision in the plaintiff's ticket



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### Athens Convention

Cruise passenger tickets contain a reference to a treaty called the Athens Convention. This international law establishes liability for damages suffered by passengers on a seagoing vessel if the injury was due to the carrier's fault or neglect.<sup>16</sup> Unless the carrier acted with intent to cause the damage or acted recklessly with knowledge that the injury would probably result, damages are limited to about \$70,000 per person.<sup>17</sup>

The United States has not ratified the Athens Convention nor adopted its damages limitations. As a result, those limitations cannot apply to cases where the cruise itinerary includes a U.S. port.<sup>18</sup> The location of the ship or the passenger at the time of the injury is not relevant.<sup>19</sup> For example, if the plaintiff is injured and has to disembark in a foreign port before the ship reaches a U.S. port, the Athens Convention still does not apply if the itinerary included a U.S. port. "The determinative basis for the ticket contract is not an individual passenger's location, but rather the vessel's voyage."<sup>20</sup>

U.S. statute 46a U.S.C. §183c (a) expressly prohibits a common carrier from enforcing contract provisions that limit the liability to passengers. The act provides in relevant part:

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 . . . 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.

If the Athens Convention applies, courts have adopted a two-pronged test to determine whether a limitation on liability was reasonably communicated to a passenger.<sup>21</sup> The first prong focuses on the physical characteristics of the ticket, such as the font and the conspicuousness of the notice,<sup>22</sup> and the second prong is "the circumstances surrounding the passenger's purchase and subsequent retention of the ticket/contract."<sup>23</sup> This prong allows the court to examine more subjective, "extrinsic factors indicating the passenger's ability to become meaningfully informed."

Plaintiffs in cruise ship cases are entitled to the same economic and non-economic damages as plaintiffs in other types of cases, but the collateral source rule applies in maritime cases.<sup>24</sup> That means the court should exclude evidence that the plaintiff received benefits from third parties, and the entire amount of the loss or medical expenses can be recovered at trial without reduction.<sup>25</sup> "The collateral source rule is fully applicable in admiralty so that personal injury damages are not reduced by disability, unemployment, social security, insurance benefits, or a pension which may be due and owing to the victim."<sup>26</sup> The discounts offered by health care providers to insurance companies also are not admissible.<sup>27</sup>

### Preparing Your Case

As with other personal injury cases, you must develop a detailed factual record of an injury on a cruise ship. Have your

client describe everything he or she remembers. If your client slipped in a puddle, for instance, ask if there was dirt or liquid in the puddle, how large the puddle was, what parts of the person's clothing and body were wet after the fall, and whether there were track marks in the puddle indicating that a worker walked through it with a cart without cleaning it up. How did the puddle look, feel, and smell? Was it greasy? Why didn't the client see the puddle before falling; was it camouflaged?

Make sure the client thoroughly describes the ship and the area where the accident happened. Find out how the ship was laid out, on which deck the fall occurred, what type of flooring was used on that deck, and what else was in that area. Were any cleaning machines or crew members around? Was anything blocking the puddle from view?

You must also determine when the client first reported the accident and how the crew responded. Was medical care provided on the ship? Find out whether a crew member made any statements about the incident or the cruise line's fault or discussed other accidents in the same area. Did any worker say anything that made the client think the workers knew there was a problem in the area? Had other passengers mentioned other accidents or near accidents before the fall?

Don't forget that a picture is worth a thousand words. The cruise ship is a moving object with restricted access, so photos of the accident area taken by your client or a traveling companion can be essential. You should also search the Internet for any useful photographs showing the area of the ship where the accident occurred. Check photo-sharing websites like Flickr and Photobucket, Google images, and the cruise line's website. Because the client often knows what the area looks like, have him or her look through these sites.

Although a slip-and-fall injury that occurred on a cruise ship is similar to a slip-and-fall case that occurred in a parking lot, there are unique considerations in maritime cases that you must be prepared to address. ■

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### NOTES

1. See e.g. *Labaton v. Carnival Corp.*, No. 1:12-cv-00598 (N.D. Ill. filed Jan. 26, 2012); *Csepi v. Carnival PLC*, No. 1:12-cv-03498 (S.D.N.Y. filed May 3, 2012); *Scimone v. Carnival Cruise Lines*, No. 13-2012-CA-003496 (Fla., Miami-Dade Co. Cir. filed Jan. 27, 2012).
2. *Hall v. Royal Caribbean Cruises, Ltd.*, 888 So. 2d 654, 654-55 (Fla. App. 2004) (citing *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625 (1959); *The Moses Taylor*, 71 U.S. 411 (1866); *Carlisle v. Ulysses Line Ltd., S.A.*, 475 So. 2d 248 (Fla. App. 1985)).
3. See e.g. *Harnesk v. Carnival Cruise Lines, Inc.*, 1991 WL 329584 at \*4 (S.D. Fla. 1991).
4. *Carlisle*, 475 So. 2d at 251; see also *Vierling v. Celebrity Cruises, Inc.*, 339 F.3d 1309, 1319-20 (11th Cir. 2003).
5. See e.g. *Bellochio v. Italia Flotte Riunite Cosulich Line Lloyd Sabaudo Navigazione Generale*, 84 F.2d 975 (2d Cir. 1936); *Tittle v. Aldacosta*, 544 F.2d 752, 755 (5th Cir. 1977); *Chan v. Socy. Expeditions, Inc.*, 123 F.3d 1287 (9th Cir. 1997); *Vierling*, 339 F.3d at 1319 ("[C]ourts sitting in admiralty have long recognized an obligation on the part of a carrier to furnish its passengers with a reasonably safe means of boarding and leaving the vessel, that this obligation is non-delegable, and that even the 'slightest negligence' renders a carrier liable."); *Samuelov v. Carnival Cruise Lines, Inc.*, 870 So. 2d 853, 855-56 (Fla. App. 2003).
6. See e.g. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593-95 (1991).
7. *Rutledge v. NCL (Bahamas) Ltd.*, 2010 WL 4116473 at \*2-4 (S.D. Fla. 2010).
8. *Racca v. Celebrity Cruises, Inc.*, 376 Fed. Appx. 929 (11th Cir. 2010) (per curiam).
9. *Id.* at 931 (quoting *Nash v. Kloster Cruise A/S*, 901 F.2d 1565, 1566 (11th Cir. 1990) (per curiam)).
10. *Id.*
11. *Id.*
12. *Just v. U.S.*, 6 F.3d 1474, 1479 (11th Cir. 1993) (citing *Burnett v. N.Y. Central Ry. Co.*, 380

### MORE ON CRUISE SHIPS

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- U.S. 424, 430 (1965)).
13. *Irwin v. Dept. of Vets. Affairs*, 498 U.S. 89, 96 (1990).
  14. 522 F.3d 1148 (11th Cir. 2008).
  15. *Id.* at 1152.
  16. See Intl. Mar. Org., *Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (PAL)* (updated 2011), <http://tinyurl.com/bmrtnhl>.
  17. *Id.*
  18. See e.g. *Chan*, 123 F.3d at 1296 (declining to apply Liberian law, which contained a damages limitation under the Athens Convention, in a wrongful death suit brought on behalf of a cruise line passenger); see also *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 835 (9th Cir. 2002); Thomas J. Schoenbaum, 1 Admir. & Mar. L. §5-5 (5th ed., Thomson Reuters 2011).
  19. *Henson v. Seabourn Cruise Line Ltd. Inc.*, 410 F. Supp. 2d 1246, 1248 (S.D. Fla. 2005).
  20. *Id.*
  21. See e.g. *Shankles v. Costa Armatori, S.P.A.*, 722 F.2d 861, 866 (1st Cir. 1983); *Dempsey v. Norwegian Cruise Line*, 972 F.2d 998, 999 (9th Cir. 1992) (per curiam).
  22. See e.g. *Wallis*, 306 F.3d at 835-36; *Nash*, 901 F.2d 1565.
  23. *Wallis*, 306 F.3d at 835; see also *Shankles*, 722 F.2d at 865.
  24. See e.g. *Thyssen, Inc. v. S/S Eurounity*, 21 F.3d 533, 537 (2d Cir. 1994); *Trico Marine Assets Inc. v. Diamond B Marine Servs. Inc.*, 332 F.3d 779 (5th Cir. 2003).
  25. *Turnbull v. USAir, Inc.*, 133 F.3d 184, 186-87 (2d Cir. 1998).
  26. Schoenbaum, *supra* n. 18, §5-15 to -16 (citing as examples *Thomas v. Humble Oil & Refining Co.*, 420 F.2d 793 (4th Cir. 1970); *Gypsum Carrier, Inc. v. Handelsman*, 307 F.2d 525 (9th Cir. 1962); *Compl. of Farrell Lines, Inc.*, 389 F. Supp. 194 (S.D. Ga. 1975)).
  27. *Jones v. Carnival Corp.*, No. 1:04-cv-20407, (S.D. Fla. Jan. 24, 2006).