

# VIOLENT CRIME ON CRUISE SHIPS

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By

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### **CRUISE SHIPS AND CRUISE LINES; BACKGROUND.**

According to Senator John D. (Jay) Rockefeller IV, “the cruise industry is large, successful, and vastly profitable. The industry’s revenues top \$25 billion a year. Nearly 13 million Americans took a cruise last year. The industry is growing with larger and larger ships entering service every year—some ships will carry over 5,000 passengers and crew... they are floating private cities.”<sup>2</sup>

Cruise lines market to and want to attract families onto their ships. Carnival Cruise Lines uses the jingle of “Fun for All and All for Fun.” Royal Caribbean Cruise Line uses “Way more than a cruise”. Both advertise using images of children and families. And cruise lines are seen as a friendly place for singles to meet. According to one social scientist who researches criminal and other incidents on cruise ships, the collection of individuals on a cruise ship is an “artificial community.”<sup>3</sup> Also according to Dr. Klein: while cruise holidays may be perceived by families as safe forms of travel and adventure, they are perceived by some crew and passengers as opportunities to party, find love, or express themselves sexually. This is a dangerous combination that is not explicit in advertisements, nor even implied, and is very likely a major cause of the many assaults and rapes.<sup>3</sup>

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<sup>2</sup> Statement of Senator John D. (Jay) Rockefeller IV, Chair United States Senate Committee on Commerce, Science, and Transportation, March 1, 2012, page 68. Senator Rockefeller. In that statement also observed that “...we must ask why an industry that earns billions and uses a variety of federal services—from the coast guard, to the customs bureau, to centers for disease control—pays almost no corporate income tax period.” See <http://www.commerce.senate.gov/public/index.cfm?p=hearings>

<sup>3</sup> Ross A. Klein, PhD., testimony of Dr. Klein before Senate Committee on Commerce, Science, and Transportation statement provided on Thursday, July 24<sup>th</sup> 2013.

Yet, the cruise lines select their crewmembers, many of whom are young men in their 20's, from third world countries or from countries like Croatia or Bosnia and Herzegovina which have been ravaged by war and suffer from high rates of unemployment. They choose young men from these countries because often these people are desperate for jobs. The countries from which many of these crewmembers hail oftentimes do not have complete or accurate criminal or employment records. Therefore, an individual's history of employment or crime may not be accurate or complete. This creates issues for employers, such as cruise lines, in terms of conducting background checks. As a result, cruise lines conduct very minimal screening and background checking on potential employees, relying instead on the cruise lines' "hiring partners"—agents in other countries—to perform these duties during the course of the hiring process.

These young men who work and live onboard the cruise ships are surrounded by female passengers who are all on vacation and many of whom are relaxing and drinking. Drinking is a large source of revenue for the cruise lines. In the words of the former President of Carnival Corporation, Bob Dickenson, "The single largest source of revenue onboard most ships, especially in the Caribbean, is the sale of beverages. For some reason, drinking and vacationing are in the minds of many people, at least those who enjoy cruising."<sup>4</sup> This combination of young female passengers who are drinking and relaxing (in a place where they do not have to drive home) and these crewmembers who are away from family and friends for months at a time can be a volatile combination.

### **THE 3 BASIC TENETS OF A PASSENGER CASE.**

There are three basic tenets which apply to any case of a passenger bringing an action against a cruise line for an injury received onboard or during the course of the cruise. First, **the general maritime law applies** to the case. The general maritime law usually is defined by the Federal Courts but can be defined by state courts as well.

Second, the standard of care applied usually is described as **reasonable care under the circumstances.**<sup>5</sup> As a corollary to this negligence action, comparative negligence of the passenger applies.

Third, the so called "**Passenger Ticket Contract**" governs many aspects of any suit against the cruise line. "Passenger Ticket Contract" is a misnomer. The ticket itself, that is the paper or certificate used to board the cruise ship, is generally not the Passenger Ticket Contract and does not contain all the terms and conditions of passage. The terms and conditions of passage generally are found on the cruise line's website under terms and conditions or Passenger Ticket Contract. These terms and conditions are usually contained in 14-18 pages of legal gobbledygook which have been written over time by maritime lawyers.

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<sup>4</sup> Dickenson, Bob and Vladimir, Andy; *Selling the Sea, An inside Look at the Cruise Industry*, Second Ed., 2008, p. 254.

<sup>5</sup> See, *Hall vs. Royal Caribbean Cruises, Limited*, 2004 A.M.C. 1913, 2004 WL 1621209, 29 FLWD 1672, Case No. 3D03-2132 (Fla. 3d DCA Opinion filed July 21, 2004), *Harnesk vs. Carnival Cruise Lines, Inc.*, 1992 AMC 1472, 1991 WL 329584 (S. D. Fla. 1991), *Carlisle vs. Ulysses Line Limited, S.A.*, 475 So. 2d 248 (Fla. 3d DCA 1985), and *McLean v. Carnival Corporation*, 2013 WL 1024257 (S.D. Fla.), citing *Vierling v. Celebrity Cruises, Inc.*, 339 F 3<sup>rd</sup> 1309, 1319 (11<sup>th</sup> Cir. 2003)

#### **4 BASIC TICKET TERMS: VENUE, NOTICE, STATUTES OF LIMITATIONS, AND THE ATHENS CONVENTION.**

Four issues addressed on the ticket are venue, notice requirements, statute of limitations, and the Athens Convention. These are discussed in this order below.

Generally, the **venue** for bringing an action against a cruise line is the place designated in the Passenger Ticket Contract. These venue selection clauses have been held to be enforceable by the United States Supreme Court in *Carnival Cruise Line v. Shute*.<sup>6</sup> The following are venues for the major cruise lines:

##### **Miami, Florida (Miami-Dade County)**

Azamara Cruises  
Bimini SuperFast Charter  
Carnival Cruise Lines  
Celebrity Cruise Lines  
Norwegian Cruise Lines  
Oceania Cruises  
Regent Seven Seas  
Royal Caribbean Cruises

##### **Ft. Lauderdale, Florida (Broward County)**

Celebration Cruise Line  
Costa Crociere (where the cruise touches a U.S. port)  
MSC Cruises  
Silversea Cruises

##### **Orlando, Florida (Brevard County)**

Disney Cruise Line  
Victory Casino Cruises

##### **Los Angeles, California**

Crystal Cruises  
Cunard Line  
Princess Cruises

##### **Seattle, Washington**

Holland America  
Seabourn (The Yachts of Seabourn)

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<sup>6</sup> 499 U.S. 585 (1991)

The Court in *Shute* dealt with Carnival's selection of Miami, Florida as the venue. The Court said that "Florida is not a remote alien forum" because Carnival maintains its base of operations in Florida.

More recently, the cruise lines have begun inserting a clause requiring that suit must also be filed in federal court. The "Federal Court selection clause" (not a venue selection clause) has been tested in a mid-level appellate state court in Florida which has held that such provisions are enforceable.<sup>7</sup>

The cruise passenger who files in Federal Court and alleges diversity jurisdiction has a right to a jury trial.<sup>8</sup> Where there is no diversity of citizenship between the parties, trial by jury may be granted when both parties consent to it. See, Federal Rule of Civil Procedure 39(c). In cases brought against cruise lines on the admiralty side (because of lack of diversity between the parties), courts have enforced the Federal Court selection clause where the cruise lines have consented to a trial by jury. The cruise passenger who files in state court (where the ticket does not require filing in Federal Court as in the Princess Cruises ticket), the passenger also is entitled to a jury trial.<sup>9</sup>

The Passenger Ticket Contract also requires that a passenger give **notice of a claim** usually within 6 months of the incident. The notice can be a letter. The notice should contain a description of the incident sufficient to allow the cruise line to investigate. As a practical matter, the cruise line will have received notice of the incident within minutes after it happened and will have investigated.

Usually, failure to provide notice of a claim should not be fatal to the claim. In *Rutledge v. NCL (Bahamas) Ltd*<sup>10</sup>, for example, the Court held that the mere fact that the passenger advised the cruise line that the passenger had an accident onboard and was injured was not notice of a claim. However, the Court held that the next determination was whether the cruise line had been prejudiced by this failure of notice. In that case, as in most cases, the cruise had not been prejudiced and in fact the cruise line already had investigated the accident on the cruise on which it occurred.

The **statute of limitations** provided for in the typical Passenger Ticket Contract is one year. These statutes of limitations have been upheld.<sup>11</sup> Failure to file within the statute of limitations can be fatal.

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<sup>7</sup> See, e.g., *Leslie v. Carnival Corp.*, 22 So.3d 561 (Fla. 3d DCA 2008), *affirm'd*, 22 So.3d 567 (Fla. 3d DCA 2009) (en banc), *rev. den'd*, 44 So.3d 1178 (Fla. 2010), *cert. denied*, \_\_\_U.S. \_\_\_, 131 S.Ct. 1603, 179 L.Ed.2d 499 (2011).

<sup>8</sup> See, *Luera v. M/V Alberta*, 635 F.3d 181 (5<sup>th</sup> Cir. 2011) (which cited to *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 83 S.Ct. 1646, 10 L.Ed.2d 720 (1963)) and *Leslie v. Carnival Corp.*, 22 So.3d 561 (Fla. 3d DCA 2008)

<sup>9</sup> See, *Leslie v. Carnival Corp.*, 22 So.3d 561, 563

<sup>10</sup> Case No. 08-21412-CIV, (S.D. Fla. 2010)

<sup>11</sup> See, *Bailey v. Carnival Cruise Lines, Inc.*, 774 F.2d 1577 (11<sup>th</sup> Cir. 1985); *Crist v. Carnival Corp.*, 410 Fed.Appx. 197 (11<sup>th</sup> Cir. 2010); *Psurny v. Royal Caribbean Cruises, Ltd.*, 926 F.Supp.2d 1325 (S.D. Fla. 2013)

Passenger Ticket Contracts typically reference **the Athens Convention**. The Athens Convention is a treaty. The Passenger Ticket Contracts typically incorporate the terms of the Athens Convention because the Convention provides a cap on damages.

The Athens Convention provisions **do not apply to any voyage which touches a U.S. port.**<sup>12</sup> That is because the United States has not adopted the Convention. Also, the Athens Convention does not apply to cases of intentional torts such as rape.<sup>13</sup>

Whether the Athens Convention will apply to a claim depends on whether the terms of the convention were reasonably communicated within the Passenger Ticket Contract. That communication has to be reasonable either mechanically or physically within the ticket, for example, by use of headings and large font. The Athens Convention also has to be communicated clearly using language which does not reference multiple laws and the cap on the amount of recovery has to be presented in terms of U.S. dollars.<sup>14</sup> The ticket can be rendered too confusing to satisfy the requirements of reasonable communication if it includes references to multiple different conventions and statutes.<sup>15</sup>

The most recent version of the Athens Convention provides the cap on damages in terms of special drawing rights (SDRs) as defined by the International Monetary Fund. The 2002 protocol of the Athens Convention increased the limitation to 250,000 SDRs. As of January 22, 2014, 250,000 SDRs were equivalent to \$383,225.<sup>16</sup> Given the notice requirements of the case law, the Passenger Ticket Contract probably will provide the limitation in U.S. dollars. One question is which limitation will apply, the SDRs as converted at the time of trial, or the U.S. dollars expressed in the ticket.

### **PASSENGER VESSEL SECURITY AND SAFETY ACT OF 2010**

In 2010, Congress enacted the Passenger Vessel Security and Safety Act. 46 USC Section 3507. That act was enacted after accounts on the news of criminal activity onboard cruise ships. Those started with the disappearance of honeymooner George Smith on July 5, 2005 which was followed by daily yearlong media coverage of the mystery of what happened to that passenger. The media recounted the cruise line destroying evidence at the scene, creating inaccurate reports of the incident to the flag state authority, in that case the Bahamian Maritime Authority, and failing to follow up on the disappearance until intense media coverage.<sup>16</sup> There also have been reports in the media of passenger rapes and

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<sup>12</sup> See, e.g., *Henson v. Seabourn Cruise Lines, Ltd.*, 410 F. Supp.2d. 1246 (S.D. Fla. 2005)

<sup>13</sup> . *Faraway v. Oceania Cruises, Inc.*, Case No. 1:10 CV 24312 JLK (S.D. Fla. June 10, 2011)

<sup>14</sup> See, e.g., *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827 (9<sup>th</sup> Cir. 2009); *Henson v. Seabourn Cruise Lines, Ltd.*, 410 F. Supp.2d. 1246 (S.D. Fla. 2005); *Ginsberg v. Silversea Cruises, Ltd.*, 2005 WL 565 4644 (S.D. Fla.)

<sup>15</sup> See, *Wajnstat v. Oceania Cruises, Inc.*, 684 F. 3d 1153, 1155, 2012 AMC 1805 (11<sup>th</sup> Cir. 2012)

<sup>16</sup> . See, for example, [http://www.nbcnews.com/id/10725129/ns/msnbc-morning\\_joe/t/captains-comments-stir-smith-case/#.U4X2vsZOW70](http://www.nbcnews.com/id/10725129/ns/msnbc-morning_joe/t/captains-comments-stir-smith-case/#.U4X2vsZOW70).

passengers disappearing overboard. Because of these incidents, both the United States House of Representatives and the United States Senate held hearings on security on cruise ships. The author was fortunate enough to be a witness at a hearing of the House of Transportation Committee held on March 27, 2007.

The Passenger Vessel Security and Safety Act of 2010 (PVSSA) requires safety features on cruise ships like certain heights of rails,<sup>17</sup> peepholes in doors,<sup>18</sup> and security latches in time sensitive key technology<sup>19</sup>. The PVSSA also requires the vessel owner to maintain a video surveillance system “to assist in documenting crimes on the vessel and in providing evidence of the prosecution of such crimes, as determined by the secretary.”<sup>20</sup> The act also requires that the owner of the vessel provide a criminal activity prevention and response guide onboard the vessel.<sup>21</sup> This guide should provide, among other things, “a description of medical and security personnel designated onboard to prevent and respond to criminal and medical situations with 24 hour instructions...”

In regard to sexual assault, the PVSSA requires the owner of the vessel to maintain retroviral medications<sup>22</sup> and, among other things, to provide the patient free and immediate access to contact information for local law enforcement, the FBI, United States Coast Guard, and the nearest United States Consulate or embassy, and the national sexual assault hotline program.<sup>23</sup> The Act also restricts crew access to passenger cabins.<sup>24</sup>

The PVSSA requires that the Secretary of Transportation maintain a statistical compilation of all incidents described therein and to post that on a website. The statute specifically refers to four sections of the Federal criminal code. Thus, it is only those specifically defined crimes which are required to be reported. Those include aggravated sexual abuse,<sup>25</sup> sexual abuse<sup>26</sup>, sexual abuse of a minor or ward,<sup>27</sup> and abusive sexual contact.<sup>28</sup> The further

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<sup>17</sup> (46 USC Section 3507 (a)(1)(A))

<sup>18</sup> (46 USC (Section 3507 (a)(1)(B))

<sup>19</sup> (46 USC Section 3507 (a)(1)(C))

<sup>20</sup> 46 USC Section 3507(b)(1).

<sup>21</sup> 46 USC Section 3507 (c)(1).

<sup>22</sup> 46 USC Section 3507 (d)(1)

<sup>23</sup> 46 USC Section 3507 (d)(5)

<sup>24</sup> 46 USC Section 3507 (f)

<sup>25</sup> 18 USC Section 2241

<sup>26</sup> 18 USC Section 2242

<sup>27</sup> 18 USC Section 2243

limitation is that the reporting is required only for incidents involving a United States Citizen or incidents occurring within United States waters<sup>29</sup> and where the FBI investigation has been closed.<sup>30</sup>

The PVSSA seems like a step in the right direction. However, the reporting requirements are limited and, most importantly, there is no private right of action for a violation of the PVSSA.<sup>31</sup> However, the issue of whether the PVSSA creates a standard of care or a duty which can give rise to negligence has not been decided. Further, the PVSSA creates duties to maintain certain video and documentation. That certainly can be the subject of discovery in a negligence action.

### **CREW MEMBERS ASSAULTING PASSENGERS**

The first of the two categories is crew members assaulting passengers. The ship owner is strictly liable for the actions of the crew members in such assaults.<sup>32</sup> The 11th Circuit case of *Doe v. Celebrity Cruises Inc* involved a crew member rape of a passenger. The rape took place in Bermuda after the passenger met the crew member at a club just outside the port. The plaintiff in *Doe v Celebrity* brought an action for, among other things, sexual assault, sexual battery, negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress. The court in determining the ship owner's strict liability for the intentional conduct of its crew members toward its passengers, used the reasoning in railroad cases, which also involve "common carriers." The Court in *Doe v. Celebrity* relied upon the 1891 United States Supreme Court Case, *New Orleans & N.E.R. Co v. Jopes*<sup>33</sup> which involved a conductor shooting a train passenger. The Supreme Court in *Jopes*, as cited by the 11th Circuit in *Doe v. Celebrity*, relied upon a legal treatise "for the proposition that a common carrier is bound absolutely to see to it that no unlawful assault or injury is inflicted upon [passengers] by their own servants." *Id.* The Courts in *Jopes* and in *Doe v. Celebrity* dismissed the Defense arguments that the employees

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<sup>28</sup> 18 USC Section 2244

<sup>29</sup> 46 USC Section 3507 (g)(3)(B)

<sup>30</sup> 46 USC Section 3507 (g)(4)(A).

<sup>31</sup> See, *Fiorillo v. Carnival Corporation*, \_\_\_\_\_ F. Supp 2d \_\_\_\_\_ Case No. 12-21599-CIV-COHN/Seltzer (Order Granting Defendant's Motion for Partial Summary Judgment<sup>FN1</sup> dated February 20, 2013); *Perciavalle v. Carnival Corporation*, \_\_\_\_\_ F. Supp 2d \_\_\_\_\_, Case No. 12-CV-20996-Ceitz/Simonton (S.D. Fla. June 26<sup>th</sup> 2012) Order Granting in Part Motion to Dismiss,<sup>FN2</sup> *Rinker v. Carnival Corporation*, 753 F. Supp. 2d 1237, <sup>FN3</sup> (S.D. Fla. 2010).

<sup>32</sup> *Doe v. Celebrity Inc*, 394 F 3d 891 (11<sup>th</sup> Cir. 2004). See also *Garcia v. Carnival Corporation*, 838 F. Supp. 2d 1334 (S.D. Fla. 2012).

<sup>33</sup> 1891 United States Supreme Court Case, *New Orleans & N.E.R. Co v. Jopes* 142 U.S. 18, 12 S. Ct. 109, 35 L. ed. 919 (US 1891)

violent acts were willful and wanton and, accordingly, outside the scope of the employment. The Court in *Jopes* and now cited by the 11th Circuit in *Doe v. Celebrity* held that “owing to the peculiar circumstances which surround the carrying of passengers, as stated, a more stringent rule of liability has been cast upon the employer; and he has been held liable although the assault was wanton and willful, and outside the scope of the employment.”<sup>34</sup> Also, the 11<sup>th</sup> Circuit in *Doe v. Celebrity* held that the negligence standards announced in the “physical condition cases” do not apply in a crew member assault on a passenger.<sup>35</sup>

The holding of *Doe v. Celebrity* and interpretations of that holding make it clear that nonsexual assaults are also subject to the strict liability rule. In *Garcia v. Carnival Corp.*, for example, the Southern District of Florida held that Florida courts recognize battery, assault, and false imprisonment as intentional torts.<sup>36</sup> And, intentional torts are subject to the strict liability rule.

In *Garcia*, a passenger on a cruise ship had a “disagreement” with bartender in a casino onboard the Carnival Destiny. After that, passenger Garcia was approached by seven crew members. According to the plaintiff, the crew members “grabbed her, kicked her, and punched her and threw her to the ground multiple times.” The crew members, according to the complaint, confined passenger Garcia to her cabin by placing a crew member immediately outside the cabin door and prevented her from leaving until the following day. The Court held that these allegations did state a cause of action for false imprisonment. The Court citing to an 11th Circuit case said that false imprisonment is defined as “the unlawful restraint of a person against his will, the gist of which action is unlawful detention of the plaintiff and the deprivation of his liberty.”<sup>37</sup>

The Federal Civil Remedies for Personal Injuries statute (CRPI) also provides a cause of action if the victim was a minor. The statute applies if the attack occurred onboard a cruise ship “within the special maritime jurisdiction of the United States”.<sup>38</sup> That statute provides for compensatory damages and attorneys’ fees in the private right of action brought by the minor victim of sexual assault. The statute requires that the victim suffer a “personal injury as a result

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<sup>34</sup> *Doe v. Celebrity Cruises Inc.* 394 F. 3d at 906.

<sup>35</sup> *Doe v. Celebrity Cruises Inc.*, 394 F. 3d at 910. See also, Phillip H. Budwick, “strict liability or negligence: what standard of care applies when crew members assault passengers on cruise ships?” 19 Tul. Mar. L.j. 353, 358 (1995). The 11th Circuit in *Doe v. Celebrity* also noted that “the Supreme Court continues to shape its federal maritime law from its decisions about common carriage involving trains. See, *Norfolk Southern R. Co. v. Kirby* \_\_\_\_\_ U.S. \_\_\_\_\_ 125 S.Ct. 385, 389 (2004) citing *Great Northern R. Co. v. O’Connor*, 232 U.S. 508, 34 S. Ct. 380, 58 L. ed. 703 (1914). *Doe v. Celebrity Cruises Inc.* 394 F. 3d<sup>FN 15</sup> .

<sup>36</sup> See *Herzfeld v. Herzfeld*, 781 S. 2d 1070, 1071 (Fla. 2001).

<sup>37</sup> *Johnson v. Barnes & Noble Booksellers, Inc.*, 437 F. 3d 1112, 1116 (11th Cir. 2006).

<sup>38</sup> 18 USC Section 2255



of such violation, regardless of whether the injury occurred while such person was a minor.”<sup>39</sup> The statute also requires that suit be filed in the United States District Court. Further, the statute provides a floor of \$150,000 in actual damages.<sup>39</sup>

The CRPI can be invoked whenever there is a violation of other incorporated criminal statutes. These include aggravated sexual abuse,<sup>40</sup> sexual abuse,<sup>41</sup> sexual abuse of a minor or ward,<sup>42</sup> and sexual exploitation of children.<sup>43</sup>

The cruise line/ship owner, as well as the perpetrator, are responsible and liable under the CRPI.<sup>44</sup>

### **PASSENGERS ASSAULTING OTHER PASSENGERS**

The other category of cases is where passengers on cruise ships assault other passengers. In these cases, the reasonable care under the circumstances standard would apply.<sup>45</sup> The Defendant ship owner owes a “duty to exercise reasonable care under the circumstances.”<sup>46</sup> The Defendants “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>47</sup>

The cause of action in any passenger on passenger assault on a cruise ship will be negligence based on these standards. The breaches of duty include failing to provide security which translates into failing to hire, train, and monitor its employees; failing to provide and enforce proper

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<sup>39</sup> The statute 18 USC Section 2255 (a)

<sup>40</sup> 18 USC Section 2241

<sup>41</sup> 18 USC Section 2242

<sup>42</sup> 18 USC Section 2243

<sup>43</sup> 18 USC Section 2251.

<sup>44</sup> See, *Jane Doe No. 8, v. Royal Caribbean Cruises Limited*, 860 F. Supp. 2d 1337 (S.D.Fla. 2012). The court in *Jane Doe No. 8*, relied upon *Doe v. Celebrity* in its statutory construction of the civil remedy for personal injuries statute.

<sup>45</sup> See, for example, *Jane Doe v. NCL (Bahamas) Ltd*, \_\_\_\_\_ F. Supp 2d \_\_\_\_\_; Case No. 11-2230-CIV-COOKE-TURNOFF (S.D. Fla. 2012) (Order Granting in Part Defendant’s Motion for Summary Judgment. See, *Hall vs. Royal Caribbean Cruises, Ltd.*, 2004 A.M.C. 1913, 2004 WL 1621209, 29 FLWD 1672, Case No. 3D03-2132 (Fla. 3d DCA Opinion filed July 21, 2004).

<sup>46</sup> See, *Harnesk vs. Carnival Cruise Lines, Inc*, 1992 AMC 1472, 1991 WL 329584 (S. D. Fla. 1991).

<sup>47</sup> See, *Carlisle vs. Ulysses Line Ltd, S.A.*, 475 So. 2d 248 (Fla. 3d DCA 1985).

security measures and rules and regulations; failing to make reasonable inquiry into the unusual or apparently or potentially violent activities of passengers; failing to have or to implement adequate security measures such as surveillance video throughout the ship; failing to warn passengers about the potentially criminal activities of other passengers; failing to patrol with physical patrols the ship and to have adequate numbers of guards or patrols; and failing to monitor the service of alcohol and in fact over serving alcohol to passengers.

As referenced in the introduction of this paper, service of alcohol provides a significant portion of the gross income to cruise lines. Service of alcohol is encouraged and promoted onboard cruise ships. The cruise lines serve alcohol at bars and restaurants and waiters walk around with pre-made drinks on trays.

The dram shop statute of any state, which usually limits the liability of the server of alcohol, does not apply onboard the ship; these statutes are preempted by the General Maritime Law.<sup>48</sup> In *Doe v. NCL*, the court said that the field of service of alcohol “is already preempted by the general principles of negligence.”<sup>49</sup>

In the *Doe v. NCL (Bahamas) Ltd.* case the Court held that “whether the plaintiff was visibly intoxicated is an issue for the jury and judgment as a matter of law is not warranted on the issue of the alleged over-service of alcohol by defendant.”

### **LOCATION OF THE ASSAULT**

Maritime jurisdiction, and the application of maritime law, can extend to assaults which take place off of the ship at a port of call.<sup>50</sup> In *Doe v. Celebrity*, the 11th Circuit held that maritime jurisdiction and therefore maritime law did apply to the rape of a passenger by a crew member in Bermuda. The passenger met the crew member at a club near the port and within view of the cruise ship itself. The passenger was inebriated and nauseous and needed assistance. She accompanied the crew member because she thought he was reliable because he was a crew member. Further, the court cited the fact that the crew member was a waiter onboard the ship and that the cruise line’s own policies encouraged crew members to engage with passengers in order to persuade them to tip more. The waiter’s tips were significant and in this case most if not all of the waiter’s compensation.

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<sup>48</sup> See, *Jane Doe v. NCL (Bahamas) Ltd.*, \_\_\_\_\_ F. Supp. 2d \_\_\_\_\_; Case No. 11-22230 CIV-Cooke/Turnoff (S.D. Fla 2012) (Order Granting in Part Defendant’s Motion for Summary Judgment)

<sup>49</sup> See, for example, *Kermarec v. Co. Gen. Transatlantique*, 358 U.S. 625, 626 (1959) (rejecting New York’s premises liability law in favor of the “settled principles of maritime law” that a ship owner owes a duty of reasonable care under the circumstances declining, where the guests of a cruise ship passenger sued the cruise line for injuries sustained in a fall on a stairway of the vessel).

<sup>50</sup> See, for example, *Doe v. Celebrity Cruises Inc.* 394 F 3d 891 (11th Cir. 2004). See also *Chaparro v. Carnival Corporation* 693 F 3d 133 (11th Cir. 2012).

The court in *Doe v. Celebrity* held that admiralty jurisdiction was probably invoked because the claim satisfied both the conditions of location and connection with maritime activity.<sup>51</sup> According to the 11th Circuit in *Doe v. Celebrity* the cruise line industry is maritime commerce and, accordingly, a crew member's sexual assault on a passenger "obviously has a potential disruptive impact on maritime commerce."<sup>52</sup> The court said that Bermuda was a scheduled port of a call "and was an integral part of the ongoing cruise or maritime activity in this case. Ports of call not only add to the enjoyment of a cruise but form an essential function of the cruise experience."<sup>53</sup> The 11th Circuit in *Doe v. Celebrity* also said "where a passenger or cruise vessel puts into various ports in the course of the cruise, these stopovers are the *sine qua non* of the cruise."<sup>53</sup>

As for location, the court cited *Norfolk Southern Railway Company v. Kirby*<sup>54</sup> which held that "the shore is now an artificial place to draw a line" in regard to maritime jurisdiction.<sup>55</sup>

Further, the extension of admiralty jurisdiction to land also applies to assaults by third parties.<sup>56</sup> In *Chaparro*, the 11th Circuit reversed the District Court's dismissal of the complaint. In *Chaparro* the allegations were that the plaintiff took a cruise on the Carnival Victory. At St. Thomas, a port of call, a Carnival employee encouraged the plaintiffs to visit Coki Beach. According to the allegations of the complaint, Carnival was familiar with the beach because it sold excursions to passengers to that beach and Carnival knew or should have known of the gang violence that took place in and around the beach. Yet, Carnival failed to warn the plaintiffs of these dangers. Upon return from the beach, when the plaintiffs were in a bus, gang violence resulted in gun shots. One of the bullets struck and killed a cruise passenger in the presence of the passenger's father and brother.

In *Chaparro*, the plaintiffs sued for negligence and for negligent infliction of emotional distress. The 11th Circuit held that "a cruise line owes its passengers a duty to warn of known dangers beyond the point of debarkation in places where passengers are invited or reasonably expected to visit."<sup>57</sup>

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<sup>51</sup> . United States Supreme Court case of *Jerome B. Grubart Inc. v. Great Lakes Dredge & Dock Co.* 513 U.S. 527, 534, 115 S. Ct. 1043, 1048, 130 L. Ed. 2d 1024 (1995).

<sup>52</sup> *Doe v. Celebrity Cruises Inc.*, 394 F.3d at 900.

<sup>53</sup> *Doe v. Celebrity Cruises Inc.*, 394 F.3d at 901 citing to a (9th Cir Case). In *Doe v. Celebrity Cruises Inc.*, 394 F.3d at 901 citing *Isham v. Pacific Far East Line, Inc.*, 476 F.2d 835, 837 (9th Cir 1973).

<sup>54</sup> \_\_\_\_\_ U.S. \_\_\_\_\_ 125 S.Ct. 385, 389 (2004) citing *Great Northern R. Co. v. O'Connor*, 232 U.S. 508, 34 S. Ct. 380, 58 L. ed. 703 (1914).

<sup>55</sup> *Norfolk*, 125 S. Ct. at 388.

<sup>56</sup> See, *Chaparro v. Carnival Corporation*, 693 F.3d 1333 (11th Cir. 2012).

<sup>57</sup> *Carlisle v. Ulysses Line Ltd., S.A.*, 475 S.2d 248, 251 (Fla. 3d DCA 1985). *Chaparro* 693 F.3d at 1336. See also, *Koens v. Royal Caribbean Cruises Ltd.*, 774 F.Supp.2d 1215, 1219-1220 (S.D. Fla. 2011); *McLaren v. Celebrity Cruises Inc.* case No. 11-23924-CIV, 2012 WL1792632, at 8-9 (S.D.

As for negligent infliction of emotional distress, the 11th Circuit in *Chaparro* made clear that “federal maritime law has adopted *Gottshall’s* application of the ‘zone of danger’ test which allows recovery if a plaintiff is ‘placed in immediate risk of physical harm by [defendant’s negligent] conduct.’”<sup>58</sup> The claim for negligent infliction of emotional distress requires “mental or emotional harm (such as fright or anxiety) that is caused by the negligence of another and is not directly brought about by a physical injury, but that may manifest in physical symptoms.”<sup>59</sup>

## **CONCLUSION.**

Cruise ships are at times a cauldron of criminal activity. The General Maritime Law governs any claims for the injuries suffered as a result of the negligent acts of the cruise line or the criminal activity of the crew. The standard of care and causes of action which apply depend on the status of the perpetrator, crew or passenger.

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Fla May 16, 2012); *Gentry v. Carnival Corp*, case No. 11-21580-CIV, 2011 WL4737062, at 3(S.D. Fla October 5, 2011).

<sup>58</sup> *Chaparro*, 693 F 3d at 1338. Citing *Stacy v. Rederit Otto Danielsen, S.A.* 609 F 3d 1033, 1035 (9<sup>th</sup> Cir. 2010); *Williams v. Carnival Cruise Lines Inc*, 907 F. Supp. 403, 406 (S.D. Fla 1995).

<sup>59</sup> *Consolidated Rail Corp v. Gottshall* 512 U.S. 532, 544, 114 S. CT. 2396, 2405, 129, L.Ed.2d 427 (1994).” *Chaparro* 693 F. 3d 1338. See also, *Caldwell v. Carnival Corporation*, 944 F. Supp. 2d. 1219 (S.D. Fla. 2013) (where the district court denied motion to dismiss in a slip and fall case of a passenger where the slip and fall occurred at the port, slipperiness of which the cruise line knew or should have known. The court in *Caldwell* cited to the United States Supreme Court the case of *Jerome B. Grubart Inc, Norfolk, Doe v. Celebrity Cruises and Chaparro v. Carnival*, all cited herein.