

## LEGAL MEMORANDUM

TO: Ilena Alvarez, Esq.

FROM: Daniela Osorio

DATE: 2019

RE: [0011] [Celia Logan] [Luxury Cruise SS Kanola] – [Corporate/Business Law]

### ISSUES PRESENTED

1. Whether the client is responsible for injury of passenger Susan Gilbert when the latter hurt herself in intoxicated state of excessive alcohol consumption on second night at the cruise.
2. Whether the client is eligible to be subjected to judicial measures for stomach disorders and gastroenteritis of Mrs. Ramsey who filed suit against the client for neglecting basic hospitality etiquettes resulting in the breach of declared warranty of merchantability, and strict liability.
3. Whether the client is susceptible to the legal charges for alleged medical malpractice by a ship's doctor and whether a passenger can file suit for negligent hiring of a ship's doctor.

### BRIEF ANSWERS

1. Yes. As the cruise liner is responsible for taking care of the passengers boarded until the trip is covered, serving alcohol to an already intoxicated passenger indicates breach of duty and service accountability.
2. No. The cruise line can never be found strictly liable for the quality of food as there was no express warranty of merchantability in the contract and maritime law does not recognize implied warranties in contracts.

3. No. The cruise line can never be legally held responsible for the negligence of the doctors in their care and treatment of her.

## FACTS

### *Issue #1*

As to issue #1, Ms Susan Gilbert, passenger of the cruise has filed a suit against the cruise line for the injuries she received in intoxicated state from the etched glass partition near the lounge. She was highly intoxicated due to over-consumption of Vodka Martini and broke her nose on hitting the etched glass partition.

### *Issue #2*

As to issue #2, Mrs. Ann Ramsey, one of the passengers of the cruise suffered from severe gastroenteritis due to consumption of chef specialty dish, Shrimp Lonomakua. She filed a suit against the cruise line for negligence, breach of implied warranty of merchantability, and strict liability.

### *Issue #3*

As to issue #3, passenger Paul Stanton visited the infirmary of the ship, headed by Doctor Goddard, complaining of serious cases of stomach disorders. Dr. Goddard identified the issue to be a severe case of gastroenteritis and dehydration and prescribed remedies, which did not work, and Mr Stanton was carried to a hospital reachable from the ship on aerial path. He had to surpass a very grave and serious medical operation which could had resulted to his death. Based on this incident, he has filed suit upon the client and the doctor on ship. He also is suing the client for negligent hiring.

## ANALYSIS

I. **ISSUE #1: Whether the cruise line will be liable for injuries suffered by Ms. Gilbert in intoxicated state?**

**Rules:** According to the general maritime law, a cruise ship has the responsibility of granting reasonable care to its passenger regarding their safety.

In *Hall v. Royal Caribbean Cruises Ltd.*, 888 So. 2d 654, 655 (Fla. 3d DCA 2004) case, similar incident took place. According to the issue of the case, an intoxicated passenger, after being served alcohol by one of the ship's employees, injured himself when he staggered from the lounge and fell down two flights of open stairways.

The trial court had dismissed Mr. Hall's complaint, but the Third District Court of Appeals reversed the trial court, finding that the cruise line owed the responsibility for the safety of its passengers,

**Application:** Both the parties of this case are bound by legal agreement according to the general maritime law and relevant business parameters. Ms. Gilbert attained the intoxicated state due to over-consumption of Vodka Martini. She was completely drunk before she appeared for the final rounds of the drinks. Even after seeing her conditions, the waiters kept on serving her with alcoholic drinks. This action clearly demonstrates the negligence of cruise employees in taking proper care of the passengers.

According to the general maritime protocols, it is the legal and rightful responsibility of the cruise line to take care of passengers and hence, serving alcohol to already intoxicated passenger displays breach of conduct and professional accountability.

**Conclusion:** The cruise line is strictly liable for the injuries suffered by Ms. Gilbert as the serving of alcohol to a clearly intoxicated passenger by ship personnel can be found to be a breach of this duty.

II. **ISSUE #2: Whether the cruise line will be liable for gastroenteritis of Mrs. Ramsey due to consumption of chef specialty dish, Shrimp Lonomakua during the cruise?**

**Rules:** Courts have manifested a strong reluctance to imply warranties in contracts governed by maritime law.

As in the case of *Bird v. Celebrity Cruise Line, Inc.*, 428 F. Supp. 2d 1275, 1279 (S.D. Fla. 2005), a woman took a seven-night cruise pursuant to a contract. Upon returning home, she became violently ill and was rushed to the emergency room. She was diagnosed with bacterial enteritis, which she claimed she contracted on the cruise. Her lawsuit against the cruise lines included a count for breach of accountability towards merchantability and strict liability.

The U.S. District Court (Florida) granted the defendant appeal to dismiss because there was no express warranty of merchantability in the contract and maritime law does not recognize implied warranties in contracts.

**Application:** The issue of health as stated by Mrs. Ramsey in her suit states severe cases of gastroenteritis. The claim is that she suffered from the ailment due to consumption of chef specialty dish, Shrimp Lonomakua on the cruise. Eighty percent of 320 passengers who consumed the dish reported mild to severe cases of gastroenteritis. From this fact, it is evident that fault was in the raw materials of the dish prepared.

Partner Celia has examined the contract passengers on the cruise signed and the contract does not supports any sort of express warranties.

On this context, the cruise line can never be held liable for the health issues of passengers due to consumption of food on the cruise deck.

**Conclusion:** Lawsuit of Mrs. Ramsey against the cruise line accounting for incompliance towards implied warranty of merchantability and strict liability does not stands valid as there was no express warranty of merchantability in the contract and maritime law does not recognize implied warranties in contracts.

III. **ISSUE #3: Whether the cruise line will be liable for medical negligence showed by Dr. Goddard to Mr. Stanton and will the cruise line be penalized for negligence in hiring?**

**Rule:** It is the duty of the carrier to recruit a qualified and competent doctor aboard. A doctor recruited in a ship has all his credentials verified thoroughly. Hence, if the cruise line fails to conduct its duty, it shall be held responsible for the breach; but, negligence of doctor for his treatment to the passengers of the cruise can never be the liability of the carrier on legal grounds.

In the case, *Carnival Corp. v. Carlisle*, 953 So. 2d 461, 466 (Fla. 2007), the doctor of ship Carnival detected a fourteen-year-old girl to have flu who was suffering from issues related to severe muscular and stomach deformities. The family reduced their vacation for diagnosis of the girl who got detected of a severely affected appendix. Although it was removed, an infection ensued and the girl was rendered infertile.

The Florida Supreme Court found that the ship's owner can never be held liable for the medical malpractice of the shipboard physician.

According to maritime law, a cruise line should always elect a physician for its passengers and with utmost care and responsibility. In this procedure, the responsibility of the client ends as soon as he recruits a doctor after verifying all his credentials and testimonials. Hence, a single issue can never prove the incompetency of a practitioner over his knowledge, skills and specialization.

**Application:** According to the general maritime law governing this module of the suit, cruise can never be held responsible for any type of medical negligence by the doctor in the cruise. The task of the cruise line is to select an eligible candidate to take up the post of cruise doctor. The process of selection undergoes various rounds of verifications and crosschecks. Dr. Goddard is practicing since last eight years of which he has served at the cruise for 3 years. In this duration, one malpractice suit was filed against him which was later dropped. This indicates that he was innocent in that matter.

Mr. Stanton was operated for some bowel irregularities and abnormalities, which had restricted the circulation of blood in the bowel cavity. This indicates that the issue was not due to any service or product used while aboard the cruise. Such issues are chronic and has initial long-term association with the patient. This bereaves Dr. Goddard from any strict judicial measure on legal

grounds as being doctor of a cruise line, his accountability is wholly and solely for patients who suffer from sea-related ailments and mishaps while aboard.

Hence, the suit of Mr. Stanton who was detected to be suffering from dehydration by Dr. Goddard does not possess strong grounds to hold the suit against the cruise line or Dr. Goddard.

**Conclusion:** According to the maritime laws and legal parameters, the cruise line or Dr. Goddard, none can be held legally responsible for the health issues of Mr. Stanton.

Reference:

*Bird v. Celebrity Cruise Line, Inc.*, 428 F. Supp. 2d 1275, 1279 (S.D. Fla. 2005)

*Carnival Corp. v. Carlisle*, 953 So. 2d 461, 466 (Fla. 2007)

*Doonan v. Carnival Corp.* 404 F. Supp. 2d 1367, 1371 (S.D. Fla. 2005)

*Hall v. Royal Caribbean Cruises Ltd.*, 888 So. 2d 654, 655 (Fla. 3d DCA 2004),

*Hesterby v. Royal Caribbean Cruises Ltd.*, 515 F. Supp. 2d 1278, 1284 (S.D. Fla. 2007)

*Jackson v. Carnival Cruise Lines, Inc.*, 203 F. Supp. 2d 1367, 1374 (S.D. Fla. 2002)