TEXAS LAWYER
MARCH 21, 2016
An ALM Publication
www.texaslawyer.com

Winds Shift in Ship Owner/Medical Staff Liability

BY WILLIAM E. KIRILLOFF AND CRAIG P. LISZT

The maritime industry has traditionally had its own nuances when it came to issues pertaining to the relationship between a cruise ship and onboard medical staff. Courts often refer to the case of *Barbetta v. S.S. Bermuda Star* in citing to the prevailing law that a ship owner is not liable to a passenger for the negligence of a ship's medical staff to the extent that it provided a reasonably competent doctor. However, the recent decision in *Franza v. Royal Caribbean Cruises* marks a dramatic shift from this protection. Passenger vessels and cruise lines now must find a way to understand and protect themselves from this potential source of liability.

The *Barbetta* court cited to case law spanning decades, and its logic was rooted in two avenues. The first being that the cruise linehas a limited capacity to control the relationship between the passenger and the physician, the second being that "[a] shipping company is not in the business of providing medical services to passengers; it does not possess the expertise requisite to supervise a physician or surgeon carried onboard a ship as a convenience to passengers." The *Barbetta* rule certainly had its critics, the Supreme Court of Florida in *Carnival Corporation v. Carlisle* being one of them: "[A]fter reciting precedent that predicates the application of vicarious liability upon the existence of control, the *Barbetta* court itself avoided any analysis of record evidence relevant to control."

The *Barbetta* rule came under pressure from other courts as well, and the decision in *Franza* is the manifestation of the decades of scrutiny to the *Barbetta* rule.

In *Franza*, the court meticulously outlined the reasons for its departure from the *Barbetta* rule. The court found that the passenger's complaint was sufficient in demonstrating that, if true, there was an actual and apparent agency-type relationship between the medical staff and the cruise ship. Where actual agency stemmed from an employer's right to control its agents (employees), apparent agency pertained to principles in equity. Ironically, the court began with explaining its intent to create consistency with medical malpractice suits as they pertained to issues of maritime agency. The court clarified, albeit in footnotes, two important principles of its decision. The first principle was that 46 USC § 3507 would

TEXAS LAWYER

MARCH 21, 2016

not be read so broadly as to require "that ships carry medical personnel onboard … to meet the general health needs of their passengers" and avoided addressing the issue of whether the medical staffing requirements under the country in which the vessel is flagged applies to United States maritime law. The second principle was that the "powerful and motivating concern" of uniformity in maritime law did not require that the court follow the *Barbetta* rule.

The court declined to adopt *Barbetta*'s logic that a ship owner is precluded from exercising control over medical professionals due to a doctor's necessity for independent medical decision making. The court reasoned that there are modern day intricacies of medical doctors working in agency-type relationships for corporations ranging from hospitals to small clinics. The court was again careful to note that the agency was a question of fact, and that no bright-line rule should be read into its decision. Moreover, the court cited to the idea that vicarious liability was not limited to negligence arising from primary business undertaking and noted that "by investing in medical infrastructure and hiring more skilled medical employees, cruise ships avoid the potential high cost of providing reasonable care in more expensive ways," i.e. to avoid changing course for an ailing passenger. The court also declined to accept the argument that it is only the patient who exercises control over the medical staff, not the cruise ship, because passengers were clearly limited to their medical care options when at sea.

Finally, the *Franza* court allowed the complaint to stand on the theory of apparent agency because the complaint was properly plead to prove detrimental reliance on the apparent agency of the medical staff. The court reasoned because apparent agency relationships had already applied to maritime law, no exception should be given to maritime medical negligence claims.

Courts often refer to the case of *Barbetta v. S.S. Bermuda Star* in citing to the prevailing law that a ship owner is not liable to a passenger for the negligence of a ship's medical staff to the extent that it provided a reasonably competent doctor. However, the decision in *Franza v. Royal Caribbean Cruises* marks a dramatic shift from this protection.

The analysis of the *Franza* decision indicates that if a court is inclined to follow *Franza*, then cruise lines must concurrently negotiate two issues without creating potential conflict. On the one hand, the cruise line must posture itself to adequately defend against a medical negligence claim, and on the other hand, the owners must create distance between the company and the medical staff to avoid a finding of "a vicarious" liability. Cruise lines could insulate themselves by placing third party clinics onboard ships and require passengers to acknowledge the clinic's independent, third-party status for use of medical attention. Though it is clear that the interest of the cruise line is not to completely disregard the interests of the medical staff as there is the very real potential of finding an employer-employee relationship.

As exemplified by the *Franza* decision, the mere nature of agency being a question of fact does not foreclose on the disposition of some courts to push for a finding of agency. As such, while a cruise line would be wise to create as much distance between itself and the medical staff, the cruise line must also ensure that medical personnel are qualified to avoid a potential negligent hiring and medical negligence suit.

Craig P. Liszt is an attorney in the Miami office of Roig Lawyers and is a member of the Admiralty & Maritime practice group. Craig practices all aspects of admiralty and maritime law and litigation. **William E. Kirilloff** is an attorney in the Tampa office of Roig Lawyers. William concentrates his practice in the areas of Admiralty & Maritime, personal injury protection and commercial litigation.

ROIG LAWYERS