ADMIRALTY COMMITTEE

THE ELEVENTH CIRCUIT BREAKS LONG-STANDING MARITIME PRECEDENT IN MEDICAL MALPRACTICE CRUISE SHIP INJURY CASE


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Chair

The Eleventh Circuit decision in *Franza v. Royal Caribbean Cruises, Ltd.*, 13-13067, November 10, 2014, overruled application in the Eleventh Circuit of the long-standing precedent of *Barbetta v. S.S. Bermuda Star*, 848 F.2d 1364, 1988 AMC 2650 (5th Cir. 1988) that "[G]eneral maritime law does not impose liability under the doctrine of *respondeat superior* upon a carrier or ship owner for the negligence of a ship's doctor who treats the ship's passengers." Franza conflicts with the Fifth Circuit decision of *Barbetta* and two 96-year-old Ninth Circuit precedents: *The Great Northern*, 251 Fed. 826 (9th Cir. 1918); and *The Korea Maru*, 254 Fed. 397 (9th Cir. 1918). *Cummiskey v. Chandris, S.A.*, 895 F.2d 107 (2nd Cir. 1990), is a weak *per curium* precedent that followed Barbetta.

In *Franza*, a maritime negligence dispute, an elderly cruise ship passenger fell and bashed his head while the vessel, the "Explorer of the Seas," was docked at port in Bermuda. The injured traveler, Pasquale Vaglio, was wheeled back onto the ship, where he sought treatment from the onboard medical staff in the ship's designated medical center. Over the next few hours, Vaglio allegedly received such negligent medical attention that his life could not be saved. In particular, the ship's nurse purportedly failed to assess his cranial trauma, neglected to conduct any diagnostic scans, and released him with no treatment to speak of. The onboard doctor, for his part, failed even to meet with Vaglio for nearly four hours. Tragically, Vaglio died about a week later. Vaglio's daughter, appellant Patricia Franza, sought to hold the cruise line, Royal Caribbean Cruises, Ltd., vicariously liable for the purported negligence of two of its employees, the ship's doctor and its nurse, under one of two theories: actual agency (also termed *respondeat* superior) or apparent agency.

The U.S. District Court for the Southern District of Florida dismissed the complaint in its entirety under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim based on the so-called "Barbetta rule." In reviewing de novo the District Court dismissal, the 11th Circuit appellate court stated, "Although the general maritime law of the United States has long embraced the principles of agency law, the so-called "Barbetta rule" immunizes a ship owner from *respondeat superior* liability whenever a ship's employees render negligent medical care to its passengers. The rule confers this broad immunity no matter how clear the ship owner's control over its medical staff or how egregious the claimed acts of negligence." In reversing the dismissal, the appellate court stated, "After thorough review, we hold that both [agency] theories are available in this case. We have repeatedly emphasized that vicarious liability raises fact-bound questions, and we can discern no sound reason in law to carve out a special exemption for all acts of onboard medical negligence. ... We decline to adopt the rule explicated in Barbetta, because we can no longer discern a sound basis in law for ignoring the facts alleged in individual medical malpractice complaints and wholly discarding the same rules of agency that we have applied so often in other maritime tort cases."

In *Franza*, the appellate court held that the basis for liability was adequately pleaded, and presented issues of fact where it was plausibly alleged that (1) the carrier acknowledged that the nurse and doctor in issue were acting on its behalf, (2) each accepted the undertaking, (3) both were employed by the carrier as its employees or agents, (4) both were at all times material acting within the scope

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and course of their employment, (5) the carrier directly paid the ship's nurse and doctor for their work in the ship's medical center, (6) the medical facility was created, owned, and operated by the carrier, (7) the carrier's own marketing materials described the medical center proprietary language, (8) the carrier knowingly provided, and its medical personnel knowingly wore, uniforms bearing the carrier's name and logo, (9) the carrier represented to immigration authorities and passengers that nurse and doctor were members of the ship's crew and introduced the doctor as one of the ship's officers, and (10) the carrier exercised control over the ship's medical personnel. The theory of vicarious liability of a principal for the acts of its agent turns primarily on the ability of the principal to control the acts of the agent. Restatement (Second) of Agency § 220(1) (1958).

The Franza case, available on my website, **BarbCookLaw.com**, is worth reading in its entirety for its thorough review of the authority for and development of judge-made maritime law in general, as well as maritime tort agency law and its application in medical malpractice cases.

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