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The Dangerous Dance Floor

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Who knew a dance floor on a cruise ship could be a dangerous place? Over the years, dance floors on cruise ships have been the sites of many personal injuries. In turn, those injuries gave rise to lawsuits against the cruise lines. Surprisingly, the cruise lines were not always held liable for what happened on the dance floor.

Open and Obvious Condition in the Disco

Under established federal maritime law, a vessel owner owes only a duty of reasonable care under the circumstances to passengers, not the higher duty of seaworthiness owed by a vessel owner to crewmembers. In *Salazar v. Norwegian Cruise Line Holdings Ltd.* 188 F.Supp.3d 1312 (S.D. Fla 2016) the district court held the duty of reasonable care did not include a duty to warn passengers of conditions that were open and obvious.

After drinking three or four beers before dinner and two glasses of wine at the captain's dinner, cruise passenger Salazar went to one of the ship's discos. As he sat with friends at a table, he saw several passengers dancing on the dance floor with drinks in their hands. He got up from his table and walked toward the DJ booth under blinking strobe lights. He slipped on liquid that had spilled on the floor, and injured his shoulder. He sued the vessel owner alleging negligence in caring for the safety of passengers, and in failing to warn of dangers such as spilled liquid on the dance floor.

The district court entered summary judgment in favor of the vessel owner. It held the cruise line did not have a duty to warn passengers of open and obvious dangers, that is, dangers that should be obvious "by the ordinary use of one's senses." It reasoned Salazar had sufficient notice of the potential for spilled drinks and a slick floor because he could observe passengers at various levels of intoxication drinking and dancing. The district court also found a reasonable person could have seen liquid accumulated on the floor when the strobe lights were on.

Dance Competition

In *Yukso v. NCL (Bahamas) Ltd.* 424 F.Supp.3d 1231 (S.D.Fla 2020), the district entered summary judgment in favor of the defendant cruise line for an alleged head injury suffered by plaintiff Yukso. Yukso was a passenger and an experienced dancer. She volunteered to enter a dance competition on board the vessel in which passengers were paired with crew members. Yukso was paired with a profession dancer employed by the cruise line, Kaskie. After dancing with Kaskie for less than one minute, she fell on the dance floor and hit her head. She contended Kaskie "flung [her] around on the dance floor" and danced in a dangerous manner.

Yukso sued the cruise line alleging negligence in, among other things, failing to warn of the dangers of the dance competition, failing to train employees, and failing to determine whether a passenger was physically capable of being in the dance competition. The cruise line moved for summary judgment which was granted.

The district court found there was a triable issue of fact about whether Kaskie was actually dancing in a risk-creating manner. It reasoned after viewing the video, the jury could decide if it was risk-creating or not. However, the district court found that triable issue of fact did not preclude the entry of summary judgment.

To establish liability for the allegedly dangerous condition, Yukso had to show the cruise line had actual or constructive notice of it. The cruise line argued there had been no prior accidents during dance competitions. Nor had there been comments from passengers about dangers

during the competition to have put the cruise line on notice of the possibility of an injury. Further, Kaskie testified that in the three-year period he had been partnering with passengers for the competition, there had been no incidents. Accordingly, the district court held even if Kaskie's dancing style presented a risk of injury, Yukso failed to prove the cruise line had notice of it.

Falling Mirror Above Dance Floor
In *Sutton v. Royal Caribbean Cruises, Ltd*, 774 Fed. Appx 508 (11th Cir. 2019), Sutton was injured when a mirror from a lighting machine above the dance floor fell on her head, causing her to experience frequent and intense migraine headaches.

The cruise line employed sound and light technicians to clean and inspect the lighting machines and keep a log of findings. The subject light machine had been inspected and cleaned two months before the incident. No concerns were noted in the log during that inspection and cleaning. Sutton's expert opined the mirror should have been inspected on a quarterly basis and fell because "more likely than not" the bolts loosened over time. He further opined the cruise line should have known the mirror was coming loose.The district court entered summary judgment in favor of the cruise line. It reasoned there was no evidence establishing it had notice of any dangerous condition posed by the mirror in the lighting machine. Without evidence of any prior incidents involving the mirror, the district court held the cruise line did not owe a legal duty to Sutton with respect to the mirror. Sutton appealed.

The Eleventh Circuit affirmed the district court's grant of summary judgment on two grounds. First, it noted the duty owed to passengers is "reasonable care under the circumstances." It further noted it would not hold a vessel owner/operator liable unless it had actual or constructive notice of the condition causing a risk of injury. Sutton failed to identify any prior incidents involving the lighting machines over the dance floor. Further, she failed to offer evidence of safety issues found by the sound and light technicians who inspected and cleaned the lighting machine.

Second, the Eleventh Circuit held Sutton did not prove the required elements under the res ipsa doctrine which creates an inference of negligence under certain circumstances. Under maritime law, to rely on the res ipsa doctrine, the plaintiff must prove three things: 1) the plaintiff was not at fault;2) the instrumentality of the injury was within the defendant's exclusive control; and 3) what occurred does not ordinarily occur in the absence of negligence. The Eleventh Circuit found Sutton did not prove the third required element. It reasoned the mirror might have fallen due to a design defect or the bolts might have loosened undetectably due to sound vibrations. It noted the sound and light technicians inspected the lighting machine two months before the incident and did not log observations about loose bolts.

Name that Tune
Krug v. Celebrity Cruises, Inc., 745 Fed. Appx. 863 (11th Cir. 2018) involved a music trivia game. Krug and her husband were passengers on a cruise ship. Krug had a history of back pain and had undergone numerous surgeries. Because of the pain she could not walk more than two blocks, stand more than 15 minutes, or run. She regularly took a prescription pain relief drug.

On the day of the incident, Krug took one of her prescription pills in the morning and one in the afternoon. While having lunch, she consumed one or two cocktails and sips from a glass of wine. After lunch she and her husband participated in a music trivia game called "Name that

Tune." She had played the game twice before in a room that had a large dance floor. She had previously walked across the dance floor while playing the game without difficulty and did not notice it to have been in disrepair.

As part of a tie-breaking contest, Krug and other team players lined up on one end of the dance floor. The host was to play a song and the person who recognized it was to run across the dance floor to the stage, pick up a microphone left there, and shout out the name of the song. Krug recognized the song and either quickly stepped or ran across the dance floor to the stage. She fell and hit her head on the stage. She had to be airlifted off the ship for medical treatment. She did not remember what caused her to fall. Nor did she remember tripping, slipping, or coming into contact with another participant.

Krug sued the cruise line alleging it had created a dangerous condition and failed to warn the passengers about it. The district court entered summary judgment in favor of the cruise line. Krug appealed, arguing the cruise line was negligent because 1) the risks associated with the tie-breaker game were not open and obvious; 2) the cruise line had actual or constructive notice of the risks; and 3) the tie-breaker game violated industry standards. The Eleventh Circuit rejected all of the arguments and affirmed the grant of summary judgment to the cruise line.

The Eleventh Circuit found there were no hidden dangers in playing the game. It noted Krug had previously walked across the dance floor without incident. It further noted any danger created by a group of people rushing toward the stage would have been apparent to a reasonably prudent person through the exercise of common sense and the ordinary use of eyesight. It concluded the cruise line did not breach any duty owed to Krug by not warning her of a condition she should have been aware of.

The Eleventh Circuit also rejected the argument about the cruise line's notice of the dangers posed by the tie-breaker game. While the cruise line had used the same tie-breaker game in the past, Krug did not offer any evidence of injuries occurring on those occasions. Finally, the Eleventh Circuit rejected the "breach of industry standards" argument because Krug's experts failed to identify which industry standards had been breached.

In sum, at first it might seem a cruise line should be liable for injuries suffered by passengers on the dance floor. However, a cruise line owes only a duty of reasonable care to the passengers and unless the cruise line has actual or constructive notice of a condition posing a risk of an injury to a passenger, the cruise will not be held liable.