Athens Convention
Clinical negligence on cruises
Navigating the issues

12
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Speaker



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Lies, Damned Lies and Statistics
Cruise Ship figures for 2025

- 2025 Global Market Report by Cruise Line International Association (CLIA)
- 37.2 million people took ocean cruises last year
  - 8.9 million from Europe
  - 2.54 million from the UK & Ireland
- Average cruise duration: 7 days
- Average passenger age: 46.7
- 34% of passengers over the age of 60
- CDC studies
  - roughly 50% of passengers seeking medical care are 60%
  - 10% of reported cases are consider medical emergencies or urgent

Scenarios

- Accident on board requiring medical assistance and inappropriate m treatment is given
  - Fall causing a hit to the head and a missed bleed on the brain
- Infection outbreak onboard and infection or symptoms not treated appropriately
  - Passenger develops a gastro illness but then develops complications leading or kidney issues due to dehydration
- Passenger presents with symptoms related to an existing condition is not treated properly
  - Passenger has a pre-existing heart condition / diabetes
- Passenger is unwell and is disembarked but the local medical faciliti not have the expertise or equipment to treat
  - Does the ship's doctor have a duty to take steps to ascertain the quality of loc facilities?
  - Does the ship have to accept the passenger back onboard if they are unwell?

Legal requirement: ship's doctor

- **English law**
  - Part 9 of the Merchant Shipping (Maritime Labour Convention)(Minimum Requirements for Seafarers etc.) Regulations 2014.
    - UK-registered Ship **must carry a qualified doctor** if it has **100+ people on board** and is on an **international voyage lasting more than 72 hours**.
- **International law**
  - Maritime Labour Convention 2006
  - Ships of 500 gross tonnes or more need and engaged on international voyages need a Maritime Labour Certificate and to comply with the MLC
  - Maritime Labour Convention 2006, Standard A4.1, para 4(b) and (c)
    - Ships carrying **100+ persons** and **ordinarily engaged on international voyages of more than 3 days must carry a qualified medical doctor**

Requirement for medical facilities

- **Maritime Safety Committee of the IMO**
  - Passenger ships should be crewed and equipped to ensure the health-safety, medical care and security of persons onboard until more specialised assistance is available
  - Owners and operators should establish medical… programmes based on guidelines and standards”

  IMO Circular, MSC/Cir/ 1129 (15 December 2004)
- Cruise ship should have medical equipment and medicines to treat the range of ailments likely to occur at sea
- American College of Emergency Physicians (ACEP) has developed guidelines for medical clinics, equipment and qualifications of staff in consultation with leading cruise ship carriers
  - CLIA cruise liners have agreed to meet or exceed those guidelines

Standard of facilities or maintenance of medical equipment

- Passengers should expect medical expertise, facilities and equipment of appropriate standard to to the voyage type
- Cruise ship should have medical equipment and medicines to treat the range of ailments likely to occur at sea
- International Medical Guide for Ships by the WHO
- American College of Emergency Physicians has developed guidelines for medical clinics, equipment and qualifications of staff in consultation with leading cruise ship carriers
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Is the carrier responsible for onboard medical personnel?



Liability under Athens for personal injury and death

- Often expressed as the carrier being liable for the fault or neglect of its servants or agents acting within the scope of their employment
  - Art. 3 of the Athens Convention 1974
    - The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the **fault or neglect of the carrier or of his servants or agents acting within the scope of their employment**
  - However, the Convention was revised by the 2002 Protocol and the wording was revised to:
    - Art. 3(4) carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier
    - Art. 3(5)(b) fault or neglect of the carrier" includes the fault or neglect of the **servants of the carrier, acting within the scope of their employment**

Liability under Athens for personal injury and death

- Was the removal of agents intended to restrict the carrier's liability for fault or neglect?
  - Not aware of any discussion around the 2002 Protocol suggesting this was intended.
  - The use of servants and agents remains in other Parts of the revised Athens Convention.
    - Art. 4(2): carrier's liability for acts and omissions of the performing carrier's servants and agents within the scope of their employment.
    - Art. 11 "**Defences and limits for carriers' servants**": a servant or agent of the carrier or of the performing carrier sued for damage covered by the Convention can rely on defences and limits of liability under this Convention.
    - Art. 12: limits of amounts recoverable refers to servants and agents of the carrier/performing carrier.

Liability under Athens for personal injury and death

- Why is this important?
  - Carriers often state that medical personnel onboard are independent contractors and there are not liable for them
  - This position is often reflected in the terms and conditions of the Contract of Carriage
  - The Carrier will argue that they do not have the expertise or ability to control, direct or supervise medical personnel as specialist medical practitioners relying on their skill and training to treat passengers
  - Passengers who engage medical staff are choosing what treatment they do and do not have which the Carrier has no control over
  - There are lots of independent contractors working on cruise ships (hairdressers, masseurs, etc that the Carriers will seek to exclude liability for

Liability under Athens for personal injury and death

- What does English case law say on this?



Gordon v Norwegian Capricorn Line (Australia) Pty Ltd [2007] VSC 517



Barbetta v S/S Bermuda Star 848 F.2d 1364 (1988)
United States Court of Appeals, Fifth Circuit.

- Cs married couple
- Whilst on cruise in Mexico, C1 fell ill
- Attended doctor and treated over 5 days during which she deteriorated and fell into a coma
- Cs argued that C1 had diabetes which the ship's doctor failed to diagnose
- D had been negligent in selecting the doctor as he had no US medical qualification and was only qualified to practice medicine in the Philippines



Barbetta v S/S Bermuda Star

- Went to a preliminary hearing on whether Ds responsible for th doctor and whether the selection of the doctor was negligent
- Found: ship's doctor is not a servant or agent of the carrier and carrier is not liable for their acts or omissions
  - Any physician provided was solely for the convenience of the Passenge services rendered to the Passenger are at the latter's expense.
  - The passenger chooses to enter the patient/doctor relationship and th has no control over it
  - A ship operator does not have the expertise to supervise the doctor ca board for the convenience of passengers. "**A ship is not a floating hos**
  - This was the position taken by a number of courts over 100 years
- A carrier could only be liable for breaching its duty to employ a who is qualified and competent

Franza v Royal Caribbean Cruises Ltd
772 F.3d 1225 (2014)
United States Court of Appeals
Eleventh Circuit.



- Claim by Deceased's daughter
- Mr Vaglio fell onshore whilst the ship was docked in Bermuda and hit his head
- Wheeled back onboard to the medical centre
- Nurse failed to assess or carry out appropriate tests / scans and released him without treatment
- The ship's doctor did not assess him for nearly 4 hours
  - Delay responding to a request
  - Then a delay whilst they awaited his credit card information
- By the time he was transferred to a hospital, he was beyond saving due to his brain injury and he died after 1 week in intensive care

Franza v Royal Caribbean Cruises

- C argued D liable for medical staff as agents / alternatively ostensible agency as a employees or agents
- D successfully had both claims dismissed at first instance
- The 5th Circuit Appeal Court declined to follow the Barbetta rule
  - The rule snaked back to a wholly different world
    - "we should not follow a rule of law simply because "it was laid down in the time of particularly where "the grounds upon which it was laid down have vanished long s the rule simply persists from blind imitation of the past."
  - Modern cruise ships are floating cities with well stocked infirmaries and urgent care c
  - Carriers could exercise control with modern communication and access to land-based departments
  - A wide range of other employers are vicariously liable for doctors – why are ship oper different
  - On the facts, RCL clearly had control over the medical personnel

Franza v Royal Caribbean Cruises

We accept the well-pled allegations in the complaint a
construe them in the light most favorable to the plain

What will the position be under Athens?

- Watch this space.
- Ds likely argue they should only to be liable for the selection of competent medical staff a provision of appropriate medical facilities **#teambarbetta**
  - C will have recourse against the medical practitioner directly
- Could have a position where D only liable where it employees the medical staff (or found relationship akin to employment
- Alternatively, Art. 3 could be read purposively to include agents **#teamfranza**
  - It seems unusual that agents was left out of Art. 3
  - Agents could include independent contractors
  - On the facts, it could be argued that the medical staff were akin to employees
- In the meantime, important to marshal facts to establish control over / employment style relationship with medical staff
  - Uniforms
  - Medical records / forms / bookings with with the Ship's name / logo?
  - Who was in charge of ordering medical provisions and checking medical facilties?
  - What was the ship command structure and did the ship's doctor fall within it?
  - Who paid for the treatment?
  - How were medical staff paid?
  - Did they have access to onshore medical advice and who arranged this?
  - Who arranged and monitored ongoing CPD / training

Alternatives if carrier not responsible for medical personnel onboard

- Can the carrier be criticised for the selection of the medical practitioner, provision or maintenance of medical equipment?
- Did any action by the ship's crew contribute to the passenger not getting treatment
  - Should the captain have detoured to access onshore medical facilities
- Action against the medical personnel directly?
  - Complicated
- Package travel claim?
  - There is another talk on this
  - Consider whether that care forms part of the package
    - Good argument it must form part of the package if there is a legal requirement for the Ship to have a doctor

What is the test to determine fault or neglect by a medical practitioner?



- What is meant by **fault and neglect** in the context of medical care?
  - Currently no decided case in the UK
- English law:
- ***Bolam* test**
  - *"A doctor is not guilty of negligence if he has acted in accordance with a **practice accepted as proper by a responsible body of medical men skilled in that particular art**."*
- ***Bolitho test***
  - *Even if a responsible body of opinion supports the clinician's decision, **it must be reasonable and based on logic and evidence**.*
- ***Montgomery* Test:** informed consent
  - *duty to **take reasonable care to ensure the patient is aware of any material risks** involved in a proposed treatment and of reasonable alternatives*

Standard of the ship's doctor?

- UK registered Ship
  - MLC regulations 2014:
    - UK GMC registered:
      - A licence to practice
      - Good command of English
    - Not UK GMC registered:
      - Qualified from a medical school listed in the World Directory of Medical Schools with good command of English
      - Good command of English
      - Participate in a programme of education and QA to maintain their medical skills
- Ships registered elsewhere
  - Check requirements of the flag state
  - Check American College of Emergency Physicians guidelines and if cruise are part of CLIA

Breach of duty

- Expert evidence will be key.
- Must be a relevant medical practitioner who has:
  - Worked on cruise ships
  - Understands the applicable standard and facilities available at the time
- If there is more than one type of medical practitioner involved in the care, you may need an expert for each
  - It will depend on allegations of breach

Causation

- Establishing causation will be critical
  - Consider at the outset
- What would have be done if the medical personnel had provided the appropriate care or if the medical facilties, equipment and provisions were adequate
  - Would it have made a difference?
- Expert evidence will be required (often from a different expert than the breach expert)
  - Which expert(s) are required will depend on the facts of each case

Contibutory negligence

- Art. 6 allows for damages to be reduced for contributory fault:
  - Did the passenger declare relevant health conditions
  - Did they follow medical advice
  - Were they honest about their symptoms
  - Did they fail to seek more comprehensive medical advice onshore

Documents

- Contract of Carriage and booking documents
  - What do they say about medical facilities and medical care?
  - Was the passenger required to disclose any relevant medical conditions prior to embarkation and was this done?
- Any written contract for the provision of the medical services
  - Need to review the terms and conditions
- Ship's medical records and any logs by customer services regarding complaints of illness/injury
- Names and qualifications of the doctor and/or nurses
- Evidence of ongoing training
  - How long were they at sea and did they keep maintain their training requirements?
- Information as to the medical facilities available on board and any external medical providers
- Was the Captain / other relevant crew informed of a medical emergency and did they respond appropriately
  - What information were they given?
  - What other options did they have?
  - Would they have made a difference
- Inquest documents in cases of death

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Our voyage is at an end – time to depart!



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