



Miami Lawyers Are Busy With This Litigation Surge

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By Lisa Willis

Miami attorneys are at the center of an emerging wave of litigation from the region's bustling tourism sector.

And they say alcohol and the lack of law enforcement officers at sea contribute to the spike in lawsuits that follow the surge in violent attacks.

The Port of Miami has been re-crowned as the world's busiest cruise port, taking the title from Port Canaveral, recording nearly 7.3 million passengers in the fiscal year 2023, shattering the port's previous 2019 record, according to Cruise Lines International Association.

But with the crowning title also comes news that sexual assault and rape complaints on cruise liners have almost doubled in five years, with 131 sex assaults reported on board vessels in 2023, according to FBI data.

"The cruise industry and cruising has become more dangerous," said Ira Leesfield, founding partner of Leesfield Scolaro. "There are more perils in cruising than ever before."

'A Hidden Epidemic'

Attorney Michael Alan Winkleman works for Lipcon, Margulies & Winkleman, Coral Gables.

Since 1971, his firm has sued nearly every major cruise line.

"I'd said 99 of the 100 cases in our office at any given time are cruise ship incidents, whether it's crew members or passengers that get hurt," Winkleman said. "And similarly, at any given time, we have about a dozen cases involving rapes and sexual assaults on cruise ships. That's been a constant for decades."

Winkleman said he thinks cruise passengers know little about what really happens on their ships.

"I always say is that there is a hidden epidemic going on at sea of rapes and sexual assaults," he said. "Unfortunately, by the time they come to us, and they've hired us, then they become intimately familiar with the dangerous reality of cruising."

The attorney blames two factors.

"In my opinion, the primary reasons for this ever-growing number of rapes and sexual assaults have to do with the over-service of alcohol and the fact that there is no independent law enforcement on cruise ships," Winkleman said.

Winkleman thinks the private security presence on board is not enough to protect passengers.

"We hear so often about situations where victims were heavily pressured to not report an incident of rape or sexual assaults by cruise line security guards, where they say things like, 'Oh, do you really want to do this? It's going to be he said, she said. Do you really want this to go into your permanent record? And most likely, nothing is going to be done,'" the attorney said.

Winkleman said those scenarios are a very common theme his firm hears from clients.

The attorney brought *K.T. v. Royal Caribbean Cruises Ltd.*, where a minor traveling with her grandparents was allegedly gang-raped aboard a Royal Caribbean ship.

K.T. sued Royal Caribbean, and the U.S. District Court for the Southern District of Florida dismissed her lawsuit under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim.

Winkleman and his team won the appeal when the U.S. Court of Appeals for the Eleventh Circuit reversed the lower court dismissal.

"For me, the most important part about successfully handling sexual assault litigation is taking care of your client and doing your best for them and making sure that the litigation process is nowhere near as difficult of the trauma as what they went through in the actual incident," Winkleman said.

Jurisdiction Issues

Leesfield, the Miami attorney whose firm concentrates on cruise ship incidents, says even though cruise lines depart from ports in Miami, Fort Lauderdale and Key West, a majority of passengers are not from South Florida, making litigation challenging.

“Most Cruise lines have conditions on their tickets that require any claims to be brought against them in the city and state in which they are based, which is almost always Miami,” Leesfield said.

These floating cities have real-life crime in their midst on board ships that can now hold 8 thousand people.

“Alcohol is flowing. You’re putting a lot of people together in a relatively small environment, and there’s no protection,” Leesfield said. “So on the onboard ship experience, the numbers of injuries are going up. The sexual assaults are going up even more.”

With those rising numbers, law firms are seeing a parallel rise in cruise ship litigation such as injuries, assaults and illnesses as more passengers embark.

The Role of Alcohol

Despite the growing popularity of cruises, the plaintiff counsel suggest passenger safety protocols have not significantly advanced, leaving many vulnerable, especially to sexual assault and rape.

International litigation and arbitration attorney Gary E. Davidson represents clients from many parts of the globe at Diaz, Reus & Targ. He is also an adjunct law professor at the Nova Southeastern University Shepard Broad Law Center and Co-author of “Don’t Fall Asleep at the Helm: Cruise Line Passenger Ticket Contracts and the Pitfalls of Personal Injury Litigation in U.S. Courts.”

Davidson said the nature of the design of the mass marketing campaign undertaken by the cruise industry can be fraught with peril.

“The goal is to fill that ship,” Davidson said. “They cut their rates as they need to accomplish that, and what you’re going to get in that mass market are people who are troublemakers. Maybe two or three, maybe five or 10 are going to be troublemakers, but they are there for the wrong reasons.”

Davidson began his career defending cruise lines, then switched to hotel and cruise line plaintiff representation.

He represents the family of a 24-year-old Wisconsin woman who allegedly drank poisoned alcohol. The wrongful death lawsuit is against a Mexican resort, where the woman died in the pool after ordering a drink at the bar.

“Cruise lines have a very delicate balance to strike,” Davidson said. “On one hand, people want to go on cruises to have fun and drink. Let’s just be candid about it. There is an element of people who go to all-inclusive hotels, and they go on cruise lines who are interested in the drinking aspect as perhaps the No. 1 joy.”

The attorney cautions passengers not to become clients by keeping their distance from people who are perceived to be shady or risky because they might very well be that.

“Anyone who practices in this area, there is repetition,” Davidson said. “A number of these sexual assault cases have patterns to them. And unfortunately, one of those patterns is alcohol abuse.”

In 2023, the FBI received reports of 131 sex-related crimes on cruise ships entering and leaving the U.S., as detailed by the Department of Transportation’s cruise line incident reports.

However, the true figures are thought to be significantly greater, as the Rape, Abuse & Incest National Network states that more than two-thirds of all sexual assaults go unreported.

In Defense of the Carriers

Curtis C. Mase is a trial lawyer and president/shareholder with Mase Mebane & Briggs, who has represented cruise lines since beginning in the late 1980s.

His cases have varied, defending cruise ships from different types of personal injury lawsuits brought by passengers and crew members.

How does he work his defense?

“Much like you would approach a lawsuit for a land-based defendant,” Davidson said. “The first thing you’re going to do is try to understand what the facts are, because as we all know, the facts that are presented initially in a complaint brought by a plaintiff, oftentimes are not borne out when you go and examine it.”

The trial attorney said as in all civil litigation, the vast majority of cases brought against the cruise lines are settled amicably out of court.

“The short answer is we initially try to understand what the real facts are,” Davidson said. “And then we communicate, discuss, and try to decide what’s the best way to approach that, and as I said, in the vast majority of the cases that are brought, which have merit, they tend to resolve.”

Davidson said cruise lines, internally, are looking to improve from any incident and they have robust internal processes for examining the specifics of incidents.

The defense attorney said it’s important to understand under maritime law, cruise lines have a duty to use reasonable care under the circumstances.

“They are not insurers of passenger safety, and so there are limits,” Davidson said. “If there’s a risk that they know about or should know about, they have to take affirmative action to try to avoid a passenger from being injured by that risk or risk-creating condition, but they don’t have to foresee, like a soothsayer for example, every possible thing that could occur in every possible scenario.”

Of the sex crimes reported in 2023, passengers were responsible for 98 incidents, whereas crew members committed 27. An additional six incidents were attributed to “unknown” or “other” perpetrators, the FBI reported.

No Law Enforcement on Board

Each of the attorneys interviewed felt the lack of law enforcement creates a dangerous scenario for passengers to fall victim to those with nefarious intentions, and the laws that protect the cruise lines are a difficult hurdle.

“These are unique cases, and the law protects cruise ships because the law is really designed in the maritime capacity to protect international commerce,” said A. Dax Bello, shareholder at Stewart Tilghman Fox Bianchi & Cain.

Bello represents plaintiffs in the civil prosecution of wrongful death, catastrophic injury, and other complex matters, including cases involving cruise ships.

“These cruise ships are benefiting from laws that are designed, not necessarily for them, but for just different reasons,” Bello said. “What you have these days is the ships are getting bigger, gigantic, and I’m not sure that the cruise lines are doing anything.” Bello suggests there is no real incentive for the cruise to do anything to increase the quality of their security staff and the culture of alcohol, which he thinks is really the root of what is going on in these types of cases.

“What we’re seeing is a trend more than anything and underage sexual assault to two individuals who have somehow gained access to alcohol and who, who more likely than not, got it because bartenders are very quick to serve alcohol to folks who may not have the legal ability to get it or just the lack of oversight,” Davidson said.

“What you have is just a terrible ‘soup’ of lack of proper supervision, culture of alcohol, that’s way off the rails these days,” Davidson added, “And laws that protect the cruise lines and not so much the passengers.”

Davidson’s partner Gary Fox reached a settlement for a nurse on board the Carnival Cruise line allegedly raped by a crewmember at sea. The terms of the settlement were not disclosed, but Fox said the cruise line offered his client “the proverbial offer we couldn’t refuse, and we didn’t.”

Vetting

John “Jack” Hickey is a Miami attorney who specializes in cruise ship litigation, representing cruise lines, crew members or passengers for more than 40 years. He agrees sexual assault cases are rising at an alarming rate. Hickey points to the problem that arises when cruise ship employees might not be vetted properly.

“The employees on a cruise ship are usually from developing countries,” Hickey said. “They live in these developing countries which may have different mores [or] different standards than we do.”

Hickey Law Firm has represented clients in cases against every major cruise line, including Holland America, where the firm won \$9 million for a cruise ship passenger sexually assaulted and battered by a crew member onboard the ship. Settlement details were confidential.

“Once we file suit, the cruise lines, in the most recent past, have indicated a willingness to intimidate and re-victimize the passenger,” Hickey said. “The tactic is not to try to resolve this and own up to a bad thing that happened. The tactic is to ... intimidate.”

In the first 17 years of his law practice, Hickey defended cruise lines.

“It’s specialized for three reasons, Hickey said. “One, it involves the maritime law. There are nuances of the maritime law that are found in no other areas of law. Number two, almost all of it takes place in federal court. A lot of people think they know about federal court. It takes a lot of years of practice and study of all the various levels of rules to really know federal court. And number three, is you have to know the business of the cruise lines.”

Hickey said it is crucial for attorneys to know the operations on land as well as the operations of the ship and the hierarchies of the ship- the kind of documents kept on the ship, the systems, and the disciplinary proceedings related to the cruising industry.

Data Distortion

Covid 19 set the cruising Industry back from 2020-2022 with many ships sailing with limited numbers of passengers or not sailing at all.

Cruise ship defense attorney Curtis Mase said that some of the statistics, while accurate, are skewed due to the low attendance records during the pandemic. Mase also said he always makes sure, at trial, to point out that the number of incidents that lead to litigation is relative.

“In defending [the cruise lines] in a lawsuit, I say, that you’re safer on a cruise ship than you are in any city in America,” Mase said. “Statistically, you’re anywhere between 15 and 30 times safer. If you study the incidents of alleged assaults, in—pick a small city,

whichever one you want—and compare it to the number of passengers that are being carried in a given year and the number of alleged assaults at any of the major cruise lines.”