



FIVE THINGS YOU NEED TO KNOW TO WIN YOUR CRUISE SHIP ACCIDENT CASE

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ARONFELD
TRIAL LAWYERS

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Part One: Trust

I have spent more than 20 years helping people who have been injured aboard cruise lines like Carnival, Royal Caribbean, Princess, Silverseas, and Disney get money for their medical expenses, lost wages, and mental and physical pain and suffering.

Every day our cruise ship injury lawyers speak with people who have fallen, tripped, slipped, or even have been sexually assaulted while on board a cruise ship. Many of those seeking our help live outside of Florida and are from around the world. Currently we are helping injured passengers from Shanghai to San Diego who believe they have a right to sue their cruise line.



BUILDING MUTUAL TRUST WITH YOUR ATTORNEY

I imagine that all the personal injury lawyers in Miami and the relationships they have with their clients are different. For me, the importance of establishing and building an ongoing relationship of trust and respect with my clients is absolutely crucial. Simply put, I have to believe them, I have to like them, and I have to understand them to help them. If I don't believe, like, and trust them, I cannot win their cases. But the feeling must be mutual. In other words, the people I try to help must believe, trust, and like me. When this does not occur, I cannot win, and those people are simply better served by hiring someone else.

THE FIRST CLIENT MEETING

As often as possible, I try to have my initial consultations with potential clients in person. But since most of our clients live outside South Florida or even the United States, it is almost always impractical. In those situations, we try to converse on SKYPE or by Facetime. Yet even that is not always an option—since the majority of our clients are over 65 years old and don't have laptops or smartphones. And when they are recovering from surgery or broken bones, the last thing they want to do or can do is run down to the Apple Store and buy an iPad.

Without the first interaction and continued periodic face-to-face connections, I am at a distinct disadvantage in assessing and monitoring their recovery and veracity, and it becomes difficult to counsel them meaningfully on the process of suing a cruise company.

I commonly meet my clients in person for the very first time a day or two before they have to testify. This puts us both at a disadvantage since nothing can replace multiple a face-to-face meetings, either virtually or in person over the course of time to build an essential relationship of mutual trust and understanding.

TRAVELING TO MIAMI FOR CRUISE SHIP PERSONAL INJURY CASES

Most cruise line tickets contain small print that requires every passenger injury lawsuit to be filed in the Southern District of Florida (Miami) Federal Court regardless of where the accident occurred or if the ship, passenger, or crew have ever been to Miami. This can be a startling realization for most people when they learn that they will need to make not one but several expensive and stressful trips to Miami to litigate their claims.



The first visit will be for their “plaintiff’s deposition.” A plaintiff’s deposition is basically an interrogation that occurs under oath in front of a court reporter with the Carnival or RCCL lawyers asking questions ranging from the color of their eyes to naming each and every doctor they have ever seen for any reason. For some of the people we try to help, this process can be a very frightening ordeal. I have sat through literally hundreds if not thousands of plaintiff’s depositions. Without a doubt, the better my client performs in her deposition, the more valuable her case will be to the cruise line’s claims adjuster and to the jury.

A poor deposition performance by a plaintiff can lead to a summary judgment, defense verdict, or—even worse—sanctions and the dismissal of their case. Accordingly, I spend an inordinate amount of time preparing the clients for this stage as it can and often does make or break a personal injury case. It is not uncommon for me to spend days preparing my clients for a deposition that may last only a few hours.

The trust-building nature of our relationship is even more difficult to establish when there are cultural and language differences. I speak fluent Italian and English and enough Arabic and French to get me into trouble. But when I am presented with an injured passenger from China, Romania, or Pakistan, my job is far more challenging. We use interpreters to ensure that the client understands the question as well as that we understand the answer. But it's just not the same as when we all speak the same language, so in those cases, time is needed. Meals are shared and other tools are used to create what I view as an essential bond.

Part Two: Truth

In my opinion, the single most valuable element needed to win any kind of personal injury case, especially one involving a cruise ship accident—no matter why, where, how, and when it occurred—is the truth. Sounds simple enough, but reaching it is the most difficult task I face in trying to help people who have been hurt. To be clear, I am not saying that all claimants are liars—in fact I would never knowingly represent anyone who I believed was lying—it is just that it is incredibly hard for me to get some clients to just be... truthful.



I have been a personal injury attorney in Miami for over twenty years. Since 1991, I have handled cases ranging from a slip and fall at a Walmart to highly complex defective drug cases, like low testosterone replacement medication. And in every one of my cases, the single most valuable weapon in my arsenal is a truthful client.

TELLING THE TRUTH

I have often said that I cannot lose a case as long as both my client and I tell the jury the complete truth. That being said, the word “truth,” much like the word “love,” can mean a lot of different things to a lot of different people. I also know that not only the people I try to help but also I myself have often failed to be “truthful” without actually lying.

This can occur if a witness replies to a question, the real answer to which they don’t know, remember, or even understand. His or her answer, when given under oath in a deposition or interrogatories (written questions and answers), is incomplete, inaccurate, or just plain false and is later used to imply that the witness is not believable.

DRINKING ON A CRUISE SHIP BEFORE AN ACCIDENT

In a hypothetical case against a cruise line like Carnival, RCCL, or Disney, our client—a 39-year-old female passenger named Mary Jose, from San Diego—is hurt, either slipping on a wet deck, tripping over a threshold, falling down stairs, or engaging in some onboard activity. And let me point out that when someone is injured aboard a ship, that

does not automatically mean the cruise line is responsible at all. For more information about cruise ship liability, please read “Legal Rights of Cruise Ship Passengers.”

From the moment Mary’s incident occurs, everything in her life becomes potential evidence that can be used to prove how, why, and where the incident occurred, as well as the extent of her injury, medical expenses, lost time from work, and pain and suffering. This means that everything that is said to the crew, the medical staff, other witnesses, her family, and the doctors and nurses back at home becomes potential evidence for use in the case. Her medical and employment records, tax returns, insurance claim history, and even previous court cases will be discovered by the cruise line’s lawyers.

Imagine that our hypothetical client, Mary, fell after having a few daiquiris at the pool on the *Carnival Breeze*. Frequently, passengers are hurt after having consumed alcohol during dinner, at the pool, casino, or nightclub. And there certainly is no law against that; in fact, it is encouraged on most cruises.

Yet, I struggle with the people I represent to have them simply admit “that truth.” They’re afraid they may lose the case or that they will be penalized for having been under the influence at the time of their fall. So rather than “tell the truth,” they attempt to minimize or deny the fact. If Mary were my client, I would insist that she testify truthfully about the amount she drank, rather than minimize it or deny it.



I find myself spending inordinate amounts of time and energy simply counseling the people I am trying to help to accept that a jury will reward them for their honesty, candor, and credibility, rather than punish them for partying on a vacation. And of course, if the alcohol was a factor in causing the fall, in whole or in part, then we must accept that truth as well. Those conversations with clients are difficult to have. With Mary living in San Diego, I might not have a chance to meet her in person until she has to fly to South Florida for her deposition, medical examination, mediation, and trial—a challenge we face often.

I realize my approach may be different than that of other lawyers. The lawyer I am is very much due to the influence of my teacher, Gerry L. Spence. I am a disciple of his Trial Lawyers' College, where he and his talented faculty carved me from the rough, molded me from clay, and most importantly empowered me to be me—a seeker and purveyor of truth.

Part Three: Welcome To Miami

Most people who are hurt on board a cruise ship don't know that buried deep in their passenger ticket is language that requires them to file any potential claims against the cruise line within one year of the date of the incident and in Federal Court in Miami, Florida.

WHY ARE CRUISE SHIP ACCIDENT CASES TRIED IN MIAMI?

Perhaps the most common question I am asked by the people I try to help who have been hurt on a Carnival Cruise or other cruise line is why. "Why do I have to travel to Florida and hire a Miami lawyer to sue for a cruise ship accident that happened out in the middle of the ocean or even in another country?"



The answer has a lot to do with the legal infrastructure available to the cruise lines in Miami. Carnival, Royal Caribbean, and Norwegian all maintain their international headquarters here. In their offices, they have teams of experienced cruise accident lawyers, paralegals, claims adjusters, investigators—experts who do nothing else but defend their companies against both real serious passenger accidents and, I imagine, hundreds of frivolous claims made by passengers and crew members. And if a claim cannot be resolved, there are also a half of dozen admiralty law firms that can provide increased support and expertise to defend claims, from jury selection to appeal.

MEET CARNIVAL'S FAVORITE ORTHOPEDIC SURGEON

In addition to the legal defense team, anyone who is suing a cruise ship company will almost certainly be required to travel physically to Miami for a deposition (a sworn interrogation conducted by the cruise line's lawyers) and what is commonly miscalled an "Independent Medical Examination" or IME.

The IME is an opportunity for the cruise line to verify and defend claimants' injuries by having them examined by a carefully selected and highly paid doctor or doctors that will render an "opinion" as to whether or not the injuries are "real."

An IME requires that passengers show up at a pre-designated location and time with their medical records, x-rays, and test results. The ship's doctor will then poke and prod, probably take a few x-rays, and a few hours later—abracadabra!—out pops a report stating that whatever injury the passenger is claiming is either not from her fall or results from old age or a previous injury or, most of the time, that the claimant is not injured at all. Once in a while I will see a report come back that states that while the injury is from the onboard incident, it has completely healed, with no further medical care required. Never, in nearly 25 years of suing cruise ships, have I actually seen a medical report come back verifying the injury and stating that future medical care is required.

Since this IME doctor is local in Miami, he or she is available to come to trial or be deposed or meet with the cruise line's lawyer easily and inexpensively. By contrast, the physicians who actually treat the people we try to help are located in their home towns spread across the country. It is even more difficult for us when our clients come from outside the country and have been treated by doctors who may not speak English, are unfamiliar with our legal process, and will not make themselves available to testify or come to Miami for a trial.



FALLING ON A DISNEY CRUISE

Let me illustrate the consequences of this logistical issue of the passenger's doctor versus the ship's doctor when and if it comes time to go to trial. In this hypothetical case, the client, "M," is from Jeddah, Saudi Arabia. While aboard a Disney cruise with her husband and children, she slips in the buffet line on spilled ice cream. Her first encounter with any health care provider involves the on board doctors and nurses. They are specially trained in how to document passenger injuries and note very specific details that will be used as evidence in the case (should there be one).

M returns to her hometown five days later, after finishing the cruise and then flying home. By the time she can get an appointment with her primary doctor and a referral to an orthopedist, another two weeks have passed. The orthopedist now orders an MRI that shows a tear in the medial meniscus, cartilage in the knee. He recommends physical therapy. Months pass. The pain gets worse, and surgical options are considered. She undergoes a few months of pain injections in an effort to avoid having surgery.



Not confident or comfortable with the level of care available in Saudi Arabia, M travels with her mother to see a trusted orthopedic surgeon in Dusseldorf. He has her undergo an additional MRI and CT scan. This surgeon agrees with the Saudi doctor's opinion, and surgery is scheduled.

She returns to Germany a few months later and undergoes a procedure to repair her torn meniscus. The following few weeks she has the surgery, followed by nearly a month of physical therapy. Total medical expenses to date: \$68,000.00 plus travel, hotel, and time away from her work and family. Again, this is a typical personal injury claim against a cruise ship.

When the dust settles back home, it is now seven months since the fall, and for the first time she considers that perhaps the cruise line should be responsible for reimbursing her out-of-pocket expenses. Hopefully she calls me or another lawyer, who sues Disney Cruises before the one-year anniversary of the fall. As the statute of limitations is only one year, if she waits too long she will have lost all her rights to make any claim. Assuming she hires me and I sue Disney, she will be forced to travel to Miami for her deposition and her exam. Which she does. She will bring along her medical records, which are in Arabic and German.

THE CRUISE SHIP DOCTOR VS. YOUR DOCTOR

The doctor the cruise line hires is located less than 30 minutes from the courthouse, speaks flawless American English, and practices at a hospital that most everyone in the jury will know by name. He will have attended a medical school that the jury knows, too.

Meanwhile, M's doctors don't speak English, or speak it with a heavy accent, graduated from foreign medical schools, work at unknown hospitals, and are not willing or able to travel to Miami to testify for her. This then will require that each of their depositions be scheduled overseas, which is enormously expensive and complicated to do.



In the end, whom will a jury most likely believe and trust? Imagine you are sitting in the jury box, seeing a local orthopedic surgeon in his doctor's coat looking you in the eye, smiling, and telling you that M's injury is not what she claims, versus the gritty, poorly-lit, hard-to-hear videotaped deposition of a German surgeon, nervously explaining the injury in incomprehensible terms. That dynamic alone puts the cruise lines at an enormous advantage not only in their ability to persuade the jury and win that case, but also financially.

CRUISE LINES CAN OUTSPEND INJURED PASSENGERS AND THEIR LAWYERS

In other words, what will cost a cruise line \$2,000 in terms of evidence, can and will cost M's lawyers \$20,000 or more. This places the risk v. reward analysis firmly to the advantage of the cruise line. And this helps explain why cruise lines insist on having their cases filed in Miami.

Part Four: Mediation

In every Florida personal injury case, including in all injury claims filed by cruise ship passengers in Federal Court, the judge will order the parties to attend a settlement conference known as a mediation. Each judge is different; some force the parties to sit down early on—before unspeakably huge amounts of time and money are spent in litigation—to see if the claim can just be settled. Others wait to the last minute, mere days before trial. Either way, both the claimant and defendant at some point will have to attend mediation.



For years I have dreaded these meetings, where my clients and I are forced by court order to sit in some fancy conference room, across from a smug insurance defense lawyer and her claims adjuster, separated by a few feet of mahogany and a cup of cold coffee.

WHAT IS A MEDIATION?

Sitting at the head of the table is a Court-Appointed Mediator, someone who is usually an experienced and semi-retired trial lawyer, former judge, or in some cases just a lawyer who took a seminar to get certification. In fact, the Florida Bar offers courses and a detailed manual on how to conduct a mediation. As in everything in life, there are a few great mediators and many poor ones.

At a mediation, nobody decides who is wrong or right or how much or little money a case is worth. Rather, each side makes a presentation to the mediator. Those presentations can range from elaborate Power Point shows with animated computerized graphics, to nothing. My fifteen-year-old daughter Sara Rose helped me last week by creating a mediation presentation that used an old CNN story about a rare medical condition called RSD (Reflex sympathetic dystrophy) to educate the mediator in a cruise ship injury case about the alleged injury of a lady we are trying to help. The case settled.

The presentations also provide the defense lawyers a chance to speak directly to and at the plaintiffs in a manner that would be prohibited in any other setting, since everything that is said during the meeting is privileged and confidential. They often look the plaintiffs in the eyes and tell them how little their cases are worth and how they will lose at trial. It can be quite powerful and terrifying for an unprepared plaintiff.

Following the presentations, the parties are separated into different rooms so that the mediator can speak privately to each side. That process is called caucusing, and the mediator shuffles back and forth between the rooms, conveying offers and counter-offers that would remind anyone who has ever been to a bazaar or flea market of the haggling over a Persian rug.

Sophisticated negotiation techniques are used, like offering to “bracket” offers. Scenarios play out, such as if you go to X, then I will go to Y, in an effort to figure out just how much or little one side is willing to take.

HOW TO SETTLE WITH MEDIATION

Most mediations I participate in are not successful; in other words, they do not result in a settlement. Defense lawyers and I very rarely if ever agree on the value of a case. I always think the case is worth more than they do, or more than their clients are willing to offer to pay.



I have said for years—in response to pompous defense lawyers, who pretend to know exactly how much a jury will return in a verdict for in a particular case, while making a demeaning offer to my injured client—“If either you or I really knew what the verdict would be, neither one of us would be sitting here right now.” In other words no one will ever know what a given jury will do with a given case, as that is nearly impossible to predict in most cases, except for those instances when the damages are catastrophic or liability is weak.

WHY MEDIATIONS FAIL?

I used to blame the process, the mediator, or stubborn clients. I have now turned my focus on myself. I closely watched a talented lawyer and friend of mine named Bob Brown settle case after case at mediation. To be sure, he used to be a defense lawyer and has the All-American charm usually reserved for quarterbacks and talk show hosts. But there had to be something more. How could he settle cruise ship accident cases at mediation while mine would always reach impasse, resulting in years of litigation, trials, and appeals?

What did he know that I didn't? I asked him, and he told me simply that sometimes, for some people I am trying to help, it is better for them to get the case behind them, even if it may mean taking less today than a jury might give three years down the road. A trial is not always in the best interest of the client, and by becoming friends with the defense lawyer, I can accomplish more than by always being on the attack.

When Bob first told me he would take the defendant's lawyer out for lunch, dinner, or drinks to discuss a case, I was baffled. How could I possibly break bread with the "other side"? But like any great diplomat, he showed me the power a sit-down can have towards reaching the ultimate goal of serving the client. For that lesson, I am grateful.

CRUISE SHIP ACCIDENT MEDIATIONS

In cruise ship litigation, the dynamic is much different than in a typical slip and fall at Walmart or Publix or a rear-end car accident, because defendant cruise lines like Carnival, Royal Caribbean, Norwegian, or Disney have such extraordinary resources at their disposal and can afford to pay most verdicts, literally from the profits they make in about six minutes in their respective casinos.

Part Five: Trial

Trials are the surgery of last resort for good lawyers for cruise line accidents. In other words, going to trial means that all attempts to investigate the facts and evidence and demonstrate the emotional, physical, and financial damages of an injured passenger have not been persuasive enough to convince the cruise company's lawyers and insurance company to pay whatever amount the plaintiff and her lawyer think is reasonable. One thing is sure: one side is wrong.



THE TRIAL

Cases that go to trial are presented to eight jurors at the Federal Courthouse in Miami (regardless of where the accident occurred). To find out why, [click here](#). That assumes the case gets past a Federal Judge by overcoming all of the cruise line's efforts to have the case dismissed based upon an endless list of legal technicalities.

Frequently, as an experienced maritime passenger injury claim lawyer, I see the case very much the same way as the cruise line's lawyer—once all of the cards are on the table. But rarely does either side show its entire hand. And the cruise line is the side holding the most cards, in that it is far more difficult and expensive for me to obtain facts, interview, and depose witnesses and find out what happened and why than it is for the defendant's counsel.

SLIP AND FALL ON A CARNIVAL SHIP

For example, in a typical trip and fall case against Carnival, by the time the case gets to me, it could be weeks or months after the incident. Carnival would have already investigated the accident, taken witness statements (most of which come from crew members), reviewed CCTV footage of the incident, checked the passenger's bill for alcohol consumption and other purchases, and reviewed whether or not she got off at different ports.

When deciding the value of a case, the defendant's counsel will have investigated, interrogated, and engaged a physician to examine the passenger making the injury claim. For more information about this process, please read *Five Things You Need to Know to Win Your Cruise Ship Accident Case--(Part Two: Truth)*. And often for the passenger's counsel to get the same level of information will require tens of thousands of dollars in depositions and travel to far off ports of call to find the crew members and other witnesses that seemingly have scattered across the globe.

Contact Us

FREE CRUISE SHIP ACCIDENT LEGAL CONSULTATION

If you want to know more about suing a cruise company, please email me, Spencer Aronfeld, or call my office toll-free at 1-866-597-4529 for a free initial consultation. For more than 20 years I have fought hard to hold cruise companies accountable when they put their profits ahead of their passengers' safety.



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