

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC04-393

CARNIVAL CORPORATION,

Petitioner,

v.

DARCE CARLISLE,

Respondent.

**AMICUS CURIAE BRIEF OF
INTERNATIONAL COUNCIL OF CRUISE LINES**

**ON REVIEW OF A DECISION OF
THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT**

CAMPBELL & MALAFY

John Campbell

Richard Malafy

2655 Le Jeune Road

Suite 201

Coral Gables, FL 33134

(305) 447-8580

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	III
STATEMENT OF INTEREST.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
CONCLUSION.....	9
CERTIFICATE OF SERVICE	11
CERTIFICATE OF COMPLIANCE.....	11

TABLE OF AUTHORITIES

<i>Amdur v. Zim Israel Navigation Co.</i> , 310 F. Supp. 1033, 1042 (S.D.N.Y. 1969).....	4
<i>American Dredging Co. v. Miller</i> , 510 U.S. 443, 447 (1994).....	6, 8
<i>Askew v American Waterway Operators, Inc.</i> , 411 U.S. 325, 93 S.Ct 1590, 36 L.Ed.2d 280 (1973).....	6
<i>Atlantic Transport Co. v. Imbrovek</i> , 234 U.S. 52, 60, 34 S.Ct. 733, 734, 58 L.Ed. 1208 (1914).....	7
<i>Barbetta v. S/S Bermuda Star</i> , 848 F.2d 1364, 1369 (5th Cir. 1988).....	4-6, 8
<i>Bowns v. Royal Viking Lines, Inc.</i> , 1977 AMC 2159 (S.D.N.Y. 1977).....	4
<i>Branch v. Compagnie Generale Transatlantique</i> , 11 F.Supp. 832 (S.D.N.Y. 1935).....	4
<i>Butler v. Boston & S. S. S. Co.</i> , 130 U. S. 527, 557, 32 L. Ed. 1017, 1024, 9 Sup. Ct. Rep. 612.....	6
<i>Churchill v. United Fruit Co.</i> , 294 F. 400, 402 (D. Mass. 1923).....	4
<i>Cimini v. Italia Crociere Int'l S.P.A.</i> , 1981 A.M.C. 2674, 2677 (S.D. N.Y. 1981).....	4
<i>Cummiskey v. Chandris, S.A.</i> , 719 F. Supp. 1183, 1190 (S.D.N.Y. 1989) affirmed, 895 F2d 107 (2d Cir. 1990).....	4, 8
<i>DeRoche v. Commodore Cruise Line, Ltd.</i> , 31 Cal. App. 4th 802, 809 (Cal. Ct. App. 1994).....	4

<i>Di Bonaventure v. Home Lines, Inc.</i> , 536 F.Supp. 100, 10304 (E.D. Penn. 1982).....	4
<i>Doe v. Celebrity Cruises</i> , 145 F. Supp. 2d 1337, 1345-46 (S.D. Fla. 2001).....	4
<i>Fairley v. Royal Cruise Line Limited</i> , 1993 AMC 1633, 1639 (S.D. Fla. 1993).....	4
<i>Garrett v. Moore-McCormick Co., Inc.</i> , 317 U.S. 239 (1942).....	7
<i>Gillmor v. Caribbean Cruise Line, Ltd.</i> , 789 F. Supp. 488, 491 (D.P.R. 1992).....	6
<i>Hilliard v. Kloster Cruise, Ltd.</i> , 1991 AMC 314, 316 (E.D. Va. 1990)....	4
<i>Jackson v. Carnival Cruise Lines, Inc.</i> , 203 F. Supp. 2d 1367, 1373-74 (S.D. Fla. 2002).....	4
<i>Knickerbocker Ice Co. v. Stewart</i> , 253 U.S. 149 (1919).....	3
<i>Laubheim v. De Koninglyke Neder Landsche Stoomboot Maatschappy</i> , 107 N.Y. 228, 13 N.E. 781 (1887).....	4
<i>Lee v. Regal Cruises, Ltd.</i> , 916 F. Supp. 300, 303 n.3 (S. D. N.Y. 1996).....	4
<i>Ludena v. The Santa Luisa</i> , 112 F. Supp. 401, 408 (1953) (S.D.N.Y.)....	4
<i>Madruga v. Superior Court of Cal.</i> , 346 U.S. 556, 561 (1954).....	8
<i>Malmed v. Cunardline, Ltd.</i> , No. 91 CIV. 8164 (KMW), at *2 (S.D.N.Y. August 22, 1995).....	4
<i>Mascolo v. Costa Crociere, S.p.A.</i> , 726 F. Supp. 1285, 1286 (S.D. Fla. 1989).....	4
<i>Metzger v. Italian Line</i> , 1976 AMC 453 (S.D.N.Y. 1975).....	4

<i>Nanz v. Costa Cruises, Inc.</i> , 1991 AMC 48 (S.D. Fla. 1990).....	4
<i>Nietes v. American President Lines, Ltd.</i> , 188 F. Supp. 219, 220 (N.D. Cal. 1959).....	4, 5
<i>O'Brien v. Cunard Steamship Co.</i> , 154 Mass. 272, 28 N.E. 266, 267 (1891).....	4
<i>Offshore Logistics, Inc. v. Tallentire</i> , 477 U.S. 207 (1986).....	8
<i>Red Cross Line v. Atlantic Fruit co.</i> , 264 U.S. 109, 124 (1924).....	8
<i>Southern Pacific Co. v. Jensen</i> , 244 U.S. 205 (1917).....	8
<i>The Great Northern</i> , 251 F. 826, 830-32 (9th Cir. 1918).....	4
<i>The Korea Maru</i> , 254 F. 397, 399 (9th Cir. 1918).....	4
<i>The Lottawanna</i> , 88 U.S. 558, 575 (1874).....	6,10
<i>The Napolitan Prince</i> , 134 F. 159, 160 (E.D.N.Y. 1904).....	4
<i>Thomas v. Lane</i> , 23 Fed.Cas. pp. 957, 960, No. 13,902 (C.C.Me. 1813).....	7
<i>U.S. v Locke</i> , 529 U.S. 89, 120 S.Ct. 1135, 146 L.Ed.2d 69, 68 USLW 4184 (2000).....	5
<i>Warren v. Ajax Navigatin Corp.</i> , No. 91-02300-Civ-Ryskamp, at *2-*3 (S.D. Fla. 1995).....	4
<i>Workman v. New York</i> , 179 U. S. 552, 45 L. ed. 314, 21 Sup. Ct. Rep. 212.....	6

OTHER AUTHORITIES

Act of Sept. 1, 1789, ch. 11, § 1, 1 Stat. 55.....5

*Comprehensive Environmental Response,
Compensation and Liability Act of 1980 (CERCLA),
42 U.S.C. §§ 9601, et seq.....1*

*International Convention for the Prevention of
Pollution From Ships (MARPOL 73/78).....1*

*Oil Pollution Act of 1990 (OPA 90),
33 U.S.C. §§ 2701, et seq.....1*

Safety of Life at Sea Convention (SOLAS)1

The Federalist Nos. 44, 12, 64.....5

STATEMENT OF INTEREST

The International Council of Cruise Lines (“ICCL”) is a non-profit trade association consisting of the fifteen (15) largest passenger cruise lines that call on major ports in the United States and abroad.¹

ICCL’s role in the overnight cruise line industry is central to the coordination and cooperation of its members with the multiple national and international legal regimes that regulate the function of the industry. It serves the necessary and unique function as the industry trade organization to assist the industry and the national regulatory agencies such as the Coast Guard and the EPA to ensure compliance with United States law and regulation. *E.g., Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the Oil Pollution Act of 1990 (OPA 90).* ICCL also co-ordinates the industry’s compliance with the multiple international treaties to which our nation has agreed. *E.g., International Convention for the Prevention of Pollution From Ships (MARPOL 73/78); Safety of Life at Sea Convention (SOLAS)*

¹ ICCL member lines include: Carnival Cruise Lines; Celebrity Cruises; Costa Cruise Line N.V.; Crystal Cruises; Cunard Line, Ltd.; Disney Cruise Line; Holland America Line; Norwegian Cruise Line; Orient Lines; Princess Cruises; Radisson Seven Seas Cruises; Royal Caribbean International; Seabourn Cruise Line; Silversea Cruises and Windstar Cruises. ICCL’s members’ vessels account for approximately 90% of the North American passenger cruise line industry. ICCL is dedicated to helping the cruise industry provide a safe, healthy, secure and caring ship environment for both passengers and crew.

The cruise line members of the ICCL operate passenger ships in the overnight vacation market around the globe. In Florida, the passenger ship industry employs hundreds of thousands of people and contributes billions of dollars to its economy. Specifically, in the year 2002 cruise lines contributed \$4.5 billion to Florida's economy through direct purchases – the largest amount for any state. Furthermore, Florida received nearly 38% of the industry's direct spending, which generated 126,559 jobs paying \$4.3 billion in wage income. Florida ports handled two-thirds of all U.S. cruise embarkations, an estimated 4.4 million passengers at the Port of Miami, Port Canaveral, Port Everglades and Tampa in 2002. Florida also hosts the majority of cruise line headquarters. On the national level, the cruise lines generated \$20.4 billion in economic benefit to the U.S. economy in 2002 and created 279,000 US jobs.

ICCL respectfully submits that its brief will assist the Court by demonstrating the negative impact the district court's decision will have of the uniform application of the general maritime law on the cruise line industry.

SUMMARY OF ARGUMENT

The district court's decision alters the established general maritime law of the United States. The decision changes a precedent, which state and federal courts have honored for more than one hundred years. This decision negatively impacts upon the constitutionally mandated uniformity of the general maritime law

and maritime industry practices. There is nothing in this matter that implicates some overriding local concern to justify deviation from the controlling principle of uniformity. In fact, the impact will inevitably be forum shopping, while ICCL members will continue to operate in multiple jurisdictions subject to inconsistent rules. Under these extraordinary circumstances, ICCL respectfully prays the Court to reverse the district court's decision and thereby confirm and re-assert the uniformity of the general maritime law of the United States.

ARGUMENT

I. The district court's decision abandons the constitutionally mandated rule requiring the uniform application of the maritime law of the United States.

It has been the historic policy that uniformity of the maritime law of the nation is adversely impacted by the existence of inconsistent rules. *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149 (1919) ("if every state may freely declare the rights and liabilities incident to maritime employment, there will at once arise the confusion and uncertainty which framers of the Constitution both foresaw and undertook to prevent.")

The rule as enunciated in *Barbetta v. S/S Bermuda Star*, 848 F.2d 1364, 1369 (5th Cir. 1988) has been settled maritime law since 1887.² Federal and state courts applying the general maritime law of the United States before and after *Barbetta* have adhered to this rule.³

Below, the district court relied on *Nietes v. American President Lines, Ltd.*, 188 F. Supp. 219, 220 (N.D. Cal. 1959) to reject the long-standing *Barbetta* rule.

² See, *The Korea Maru*, 254 F. 397, 399 (9th Cir. 1918); *The Great Northern*, 251 F. 826, 830-32 (9th Cir. 1918); *Di Bonaventure v. Home Lines, Inc.*, 536 F.Supp. 100, 10304 (E.D. Penn. 1982); *Cimini v. Italia Crociere Int'l S.P.A.*, 1981 A.M.C. 2674, 2677 (S.D. N.Y. 1981); *Amdur v. Zim Israel Navigation Co.*, 310 F. Supp. 1033, 1042 (S.D.N.Y. 1969); *Branch v. Compagnie Generale Transatlantique*, 11 F.Supp. 832 (S.D.N.Y. 1935); *Churchill v. United Fruit Co.*, 294 F. 400, 402 (D. Mass. 1923); *The Napolitan Prince*, 134 F. 159, 160 (E.D.N.Y. 1904); *O'Brien v. Cunard Steamship Co.*, 154 Mass. 272, 28 N.E. 266, 267 (1891); *Laubheim v. De Koninglyke Neder Landsche Stoomboot Maatschappij*, 107 N.Y. 228, 13 N.E. 781 (1887).

³ *Cummiskey v. Chandris, S.A.*, 895 F.2d 107, 108 (2d Cir. 1990); *Jackson v. Carnival Cruise Lines, Inc.*, 203 F. Supp. 2d 1367, 1373-74 (S.D. Fla. 2002); *Doe v. Celebrity Cruises*, 145 F. Supp. 2d 1337, 1345-46 (S.D. Fla. 2001); *Lee v. Regal Cruises, Ltd.*, 916 F. Supp. 300, 303 n.3 (S. D. N.Y. 1996); *Malmed v. Cunardline, Ltd.*, No. 91 CIV. 8164 (KMW), at *2 (S.D.N.Y. August 22, 1995); *Warren v. Ajax Navigatin Corp.*, No. 91-02300-Civ-Ryskamp, at *2-*3 (S.D. Fla. 1995); *Fairley v. Royal Cruise Line Limited*, 1993 AMC 1633, 1639 (S.D. Fla. .1993); *Gillmor v. Caribbean Cruise Line, Ltd.*, 789 F. Supp. 488, 491 (D.P.R. 1992); *Hilliard v. Kloster Cruise, Ltd.*, 1991 AMC 314, 316 (E.D. Va. 1990); *Nanz v. Costa Cruises, Inc.*, 1991 AMC 48 (S.D. Fla. 1990); *Mascolo v. Costa Crociere, S.p.A.*, 726 F. Supp. 1285, 1286 (S.D. Fla. 1989); *Bowns v. Royal Viking Lines, Inc.*, 1977 AMC 2159 (S.D.N.Y. 1977); *Metzger v. Italian Line*, 1976 AMC 453 (S.D.N.Y. 1975); *Ludena v. The Santa Luisa*, 112 F. Supp. 401, 408 (1953) (S.D.N.Y.); *DeRoche v. Commodore Cruise Line, Ltd.*, 31 Cal. App. 4th 802, 809 (Cal. Ct. App. 1994).

Since 1959, no other state or federal court has followed *Nietes*. The adoption of the *Nietes* rule changes the long-standing rule of the general maritime law. It creates conflicting rules. In the third district the *Nietes* rule will apply unless this Court reverses the decision. In every other forum and jurisdiction in which ICCL members operate, the *Barbetta* rule applies. This situation defies the constitutional mandate for uniform application of the general maritime law and invites forum shopping.

The Constitution, the Congress and the federal and state courts have recognized the importance of and the need for uniform regulation of maritime commerce since the embarkation of the new American nation into the sea of world commerce. The federal authority to regulate interstate navigation, without conflict with state made law, was cited in the Federalist Papers as one of the reasons for adopting the Constitution. *E.g.*, The Federalist Nos. 44, 12, 64. In 1789, the First Congress enacted a law by which vessels were certified by the federal government and entitled to "the benefits granted by any law of the United States." Act of Sept. 1, 1789, ch. 11, § 1, 1 Stat. 55. See, *U.S. v Locke*, 529 U.S. 89, 120 S.Ct. 1135, 146 L.Ed.2d 69, 68 USLW 4184 (2000).

The United States Supreme Court has often held that in the absence of some controlling statute, the general maritime law, as accepted by the Federal courts, constitutes part of our national law, applicable to matters within the admiralty and

maritime jurisdiction. *The Lottawanna*, 88 U.S. 558, 575 (1874); *Butler v. Boston & S. S. S. Co.*, 130 U. S. 527, 557, 32 L. Ed. 1017, 1024, 9 Sup. Ct. Rep. 612; *Workman v. New York*, 179 U. S. 552, 45 L. ed. 314, 21 Sup. Ct. Rep. 212.

In *The Lottawanna*, Mr. Justice Bradley, speaking for the court, said:

That we have a maritime law of our own, operative throughout the United States cannot be doubted. The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction.' . . . One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the states with each other or with foreign states.

The Lottawanna, 88 U.S. 558, 575 (1874); *Accord American Dredging Co. v. Miller*, 510 U.S. 443, 450-51 (1994).

The established rules of general maritime law will override state statutory and decisional law just as do the acts of Congress. *Askew v American Waterway Operators, Inc.*, 411 U.S. 325, 93 S.Ct 1590, 36 L.Ed.2d 280(1973). The *Barbetta* rule represents established general maritime law upon which the maritime industry has relied for over 100 years.

The historic view of the United States Supreme Court has been that the maritime law governs torts occurring on the navigable waters of the United States.

Mr. Justice Story remarked:

In regard to torts I have always understood, that the jurisdiction of the admiralty is exclusively dependent upon the locality of the Act. The admiralty has not, and never (I believe) deliberately claimed to have any jurisdiction over torts, except such as are maritime torts, that is, such as are committed on the high seas, or on waters within the ebb and flow of the tide. *Thomas v. Lane*, 23 Fed.Cas. pp. 957, 960, No. 13,902 (C.C.Me. 1813).

The general maritime law has been thought to reach “(e)very species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters.” *Atlantic Transport Co. v. Imbrovek*, 234 U.S. 52, 60, 34 S.Ct. 733, 734, 58 L.Ed. 1208 (1914).

The district court crafted a radical and dramatic change in the general maritime law concerning torts. If allowed to stand, the passenger ship industry will be subject to conflicting rules in the multiple jurisdictions in which it operates. It creates one rule for maritime torts litigated in Southern Florida and another rule for virtually all other jurisdictions throughout the United States. This situation is likely to lead to industry confusion and uncertainty.

Nor does this decision involve a practice within a recognized exception to the uniformity requirement, i.e., some overriding local concern. *See, Garrett v. Moore-McCormick Co., Inc.*, 317 U.S. 239 (1942).

ICCL submits that this rule change is also improper under the stare decisis rules governing courts interpreting general maritime law. In exercising jurisdiction

over a maritime claim a state court may "adopt such remedies, and . . . attach to them such incidents as it sees fit *so long as it does not attempt to make changes in the substantive maritime law.*" *American Dredging Co. v. Miller*, 510 U.S. 443, 447 (1994) (emphasis added), *citing Madruga v. Superior Court of Cal.*, 346 U.S. 556, 561 (1954) (*quoting Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 124 (1924)). *Accord Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986). The state courts should "not attempt to make changes in the substantive maritime law" when the state remedy "works material prejudice to the characteristic features of the general maritime law *or* interferes with the proper harmony and uniformity of that law in its international and interstate relations." *Id.* (emphasis added), *citing Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917). The district court's rejection of the *Barbetta* rule does both. Maritime law has traditionally required shipowners to exercise due care in the hiring and retention of shipboard medical personnel and has held cruise lines liable in cases where they have breached that important duty. Moreover, the rule that a shipowner may not be held vicariously liable for a doctor's negligence is a "characteristic feature" of maritime law, dating back at least to 1887. *See* cases cited in *Barbetta*, 848 F. 2d at 1369. It is settled general maritime common law. *See Cumiskey v. Chandris, S.A.*, 719 F. Supp. 1183, 1190 (S.D.N.Y. 1989), *affirmed*, 895 Fd. This decision is beyond the scope of the state court's role in the formation of the general maritime law of the United States.

The decision is more social engineering than it is a faithful application of *stare decisis* principles. It should be reversed.

CONCLUSION

The general maritime law of the United States mandates uniform standards absent some overriding local interest. The federal interest in uniform rules affecting maritime commerce has been manifest since the founding of the Republic. The district court's decision delineates a separate maritime rule for Florida courts. It patently deviates from a long established rule of the general maritime law. The practical effect on maritime commerce goes well beyond the four corners of this case or even the vicarious liability rule in question. It subjects the cruise line industry to the application of inconsistent rules in the various state and federal courts exercising maritime jurisdiction. It creates the very situation the constitutionally mandated principle of uniformity sought to forestall. "It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states." *The Lottawanna*, supra, p.7.

For the reasons stated and in reliance on the authorities cited, ICCL respectfully requests this Court to quash the decision of the district court and reinstate the trial court's entry of summary judgment.

Respectfully submitted,

Campbell & Malafy
2655 Le Jeune Road, Suite 201
Coral Gables, FL 33134
(305) 447-8580
(305) 476-8383 fax

JOHN CAMPBELL
Fla. Bar No.: 443972
RICHARD MALAFY
Fla. Bar No.: 0153620

Counsel for ICCL

CERTIFICATE OF SERVICE

We certify that on April _____, 2005 we mailed copies of ICCL's Amicus Brief to David H. Pollack, Esq., The Law Office of David H. Pollack, LLC (counsel for respondent), The Ingraham Building, 25 S.E. 2nd Avenue, Suite 1020, Miami, FL 33131; Charles R. Lipcon, Esq., Law Offices of Charles R. Lipcon (counsel for respondent), Two South Biscayne Boulevard, Suite 2480, Miami, FL 33131; and Lenore C. Smith, Holland & Knight, 701 Brickell Avenue, Suite 3000, Miami, Florida 33131; and Jeffrey B. Maltzman and Darren W. Friedman, Kaye Rose & Maltzman, LLP, 2 South Biscayne Boulevard, #2300, Miami, Florida 33131.

John Campbell

CERTIFICATE OF COMPLIANCE

We certify that this brief complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure. We have used 14-point Times New Roman type.

John Campbell