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Cruise lines and recreational activity providers market their products as gateways to fun and adventure, but when injuries occur, they vigorously fight to avoid liability. Here are some ways to overcome their defenses.

EXCURSIONS GONE WRONG



Outdoor recreation is a titanic industry, enticing millions of people annually to travel close to home or pack their bags for a faraway adventure. Entrepreneurs across the world capitalize on their regions' natural beauty and create exotic excursions to attract vacationers. Meanwhile, corporate powerhouses—major resorts and cruise lines—recognize the allure of exciting experiences in unfamiliar environments, and they aggressively advertise and oversee these adventures. But when tragedy strikes—such as a jet ski crash, drowning during a scuba dive, or an all-terrain vehicle crash—the same tour operators and vacation providers who courted your client will fervently try to avoid accountability.

When seeking justice for a client's travel loss, you will encounter cunning and preemptive legal barricades. At first glance, these defenses may seem daunting—especially as you try to match resources with a corporate giant's legal department. Know the specific issues to look for and liability theories to pursue to increase your likelihood of success.

Challenging Waiver and Release

In recreational outdoor activities, regardless of their nature or intensity, participants often must sign a waiver and release. This waiver usually is an exculpatory contract—it purports to relieve the vendor, in blanket fashion, from being sued for negligence for injuries a person sustained while participating in the activity. A waiver usually allows the provider to raise affirmative defenses such as express waiver and assumption of risk. If successful, these defenses result in the case being dismissed, so finding a way to render the waiver unenforceable or immaterial must be your top priority.

While some jurisdictions have slightly different approaches to the waiver and release issue, the analysis generally focuses on three factors: whether

the injury arises out of the activity and risks detailed in the contract, whether the parties' intentions are expressed in clear and unambiguous language, and whether the waiver violates state law or public policy. The defendants in these cases almost always argue that the waiver justifies dismissing the case, so it is critical to study the waiver and formulate a plan of attack before filing suit.

You can explore several different approaches to render a release and waiver unenforceable. For example, if your client is injured by the defendant's negligence per se, the waiver may be invalid.¹ Negligence per se occurs when the defendant violates a specific statute that was enacted to prevent a particular injury to a particular class of persons.² For example, when boat race organizers³ and personal watercraft renters⁴ failed to follow boater safety statutes, waivers were held unenforceable.

Liability waivers also may be unenforceable when their language is ambiguous. The releasee must clearly and unequivocally intend to be relieved from liability, using language understandable to an ordinary and knowledgeable person—so participants know what they contracted away.⁵ A Florida court held

that a waiver was ambiguous when it used the word “activity”—described only as scuba diving and diving with compressed air—and did not identify the activities or risks associated with a more advanced deepwater shipwreck dive.⁶

Conflicting provisions within a release may create ambiguity, rendering the waiver invalid.⁷ For example, a Florida court held a liability waiver unenforceable because one paragraph claimed to absolve the defendant of liability for any actions except those constituting gross negligence, while another claimed to release the defendant from any form of negligence, including gross negligence.⁸ Waivers like this routinely are thrown out. Additionally, many jurisdictions do not permit an exculpatory clause to relieve a party of liability for acts of gross negligence.⁹

LIABILITY WAIVERS SHIFT THE RISK OF LOSS TO THE PARTY LEAST EQUIPPED TO TAKE NECESSARY PRECAUTIONS TO AVOID LOSS.

Finally, some jurisdictions are reluctant to enforce exculpatory clauses, finding that they run contrary to sound public policy because they relieve a party of its obligation to exercise due care.¹⁰ As a result, these liability waivers shift the risk of loss to the party least equipped to take necessary precautions to avoid loss.¹¹ In these jurisdictions, a release and waiver will be strictly construed against the party claiming to be relieved of liability.¹²

When representing families, a parent signing a release and waiver on a minor child’s behalf generally does not

preclude the child from making a claim. The release and waiver is not enforceable against the child even if it is enforceable against the parent.¹³ This exception reflects the state’s strong interest in protecting children, as it prevents parents from contracting away their children’s rights.¹⁴

Cruise Line Liability

Cruise lines arrange possibly more excursions and outdoor activities than any other vacation providers in the world. Like other providers, a cruise line often may require a signed release and waiver before it sells an excursion. But cruise lines are bound by a statute that activity operators on land are not: 46 U.S.C. §30509, which prohibits the operator of any passenger vessel that stops in at least one U.S. port from limiting



its liability for personal injury or death caused by its negligence.¹⁵ Some courts have held that §30509 forbids limiting or disclaiming liability arising from direct negligence, even if the incident occurred onshore.¹⁶

Further, the assumption of risk defense is unavailable in maritime cases involving personal injury.¹⁷ If your client was injured onshore, consider whether the cruise line failed to warn your client of the condition that caused the injury. The cruise line’s online and hard-copy promotional materials are great evidentiary fodder.

TRAVERSING THE LITIGATION SLOPES

Every winter, people flock to ski areas. When your client is injured by defective terrain or employee negligence, holding the ski area operator liable can be difficult but not impossible.

Christopher P. Koupal

The U.S. ski industry is changing. The mom-and-pop ski areas of yesteryear are being replaced by multimillion-dollar, publicly traded corporations. These corporate behemoths have cut costs, developed strong brand identities, and expanded their business models beyond selling lift tickets and hot chocolate—all while drawing in massive numbers of tourists. During the 2014–15 season, U.S. snowsport visits amounted to 53.6 million.¹

But ski law is local law. Most states with a significant ski industry have adopted statutes that govern claims between ski area operators and their users.² These statutory schemes typically focus on “inherent” skiing risks, providing ski area operators with absolute immunity from any claim arising from such a risk.³ Some common statutorily defined inherent risks include changing snow conditions, bare spots, forest growth, rocks, stumps, impact with lift towers, and variations in steepness or terrain. In other states, the fact-finder determines whether a risk is inherent to the sport.⁴

A few states, notably California, still operate primarily on established case law without a formal statutory framework in place. In some states, including California and Utah, certain counties have enacted ordinances addressing skiers’ legal duties—but attempts to use these ordinances to establish negligence per se have faced difficulty.⁵ In New York, a blend of statutory and common law governs issues of duty in ski cases.⁶

Despite these statutory schemes, recent decisions and jury verdicts in California, Colorado, New York, Oregon, and Washington have changed the

53.6 MILLION



The number of
snowsport visits
in the U.S. during
the 2014–2015 season.

national ski law landscape. Even if you don't practice in these states, the decisions provide guidance on the applicable duty of care for skiers, snowboarders, and ski area operators.

Challenging waiver and release agreements. One of the most significant issues in ski area cases is the enforceability of waiver or release agreements that claim to provide the ski area with blanket immunity—even from statutory duties of care. In 2014, for example, the Oregon Supreme Court held that a release agreement signed along with the purchase of a season ski pass was unconscionable and void as a matter of law.⁷ The court identified several factors: The parties' bargaining power was substantially unequal, the ski area offered customers the release on a "take-it-or-leave-it basis," the ski area had a "superior ability to guard against the risk of harm to its patrons arising from its own negligence," and the ski area could "absorb and spread the costs associated with insuring against those risks."⁸

But other courts struggle with the enforceability of release agreements. Several Colorado state courts have held that a waiver cannot bar a negligence per se claim, including ski area snowmobile operators' duties under the Colorado Snowmobile Act.⁹ However, Colorado federal courts have reached the opposite conclusion in similar cases—finding that a skier's season-pass waiver could be enforced to bar negligence per se claims under the same statute.¹⁰

Terrain park injuries and duty of care. Another major issue, especially with the increase in popularity of snowboarding, involves terrain park injuries—whether users assume the risks of injuries sustained in a terrain park or whether the ski area has a duty of care to safely design, construct, and mark terrain park features.

Several courts have held that a ski area has a duty of care, and that skiers and snowboarders do not assume the risk of a defectively designed or constructed terrain park feature.¹¹ In *Salvini v. Ski Lifts, Inc.*, a Washington state jury awarded \$14 million to a 27 year old paralyzed after dropping 37 feet from a ski jump.¹² In *Molloy v. New York*, an 18-year-old boy's

case went to trial when he was paralyzed after snowboarding off a terrain park jump.¹³ And in *Solis v. Kirkwood Resort Co.*, the California Court of Appeals held that there was an issue of fact as to whether the resort's unmarked series of jumps for a racing event increased skiers' risk of harm beyond those inherent in the sport.¹⁴ But other state courts have taken the opposite approach, holding that terrain park injuries are an assumed risk.¹⁵

In-area avalanche cases. One of the most controversial issues in current ski law is whether an avalanche that occurs within a ski area's boundaries should be considered an inherent risk of the sport. In May, the Colorado Supreme Court addressed this question in *Fleury v. IntraWest Winter Park Operations Corp.*¹⁶ In a narrowly tailored opinion, the court affirmed the state appellate court, holding that an in-area avalanche qualifies as an inherent risk of skiing under the Colorado Ski Safety Act.¹⁷ The court found that the phrase "snow conditions as they exist or may change" was broad enough to encompass an in-bounds avalanche.¹⁸

Although the snowsport industry continues to enjoy immunity for negligence in many circumstances, this immunity is not absolute. Armed with these recent decisions and verdicts, as well as state statutory schemes, you can hold ski operators accountable. ■



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NOTES

1. Nat'l Ski Areas Ass'n and RRC Assocs., *Kottke National End of Season Survey 2014/2015* at 16, www.nsaa.org/media/250531/kottke_visits_1415.pdf.

2. See, e.g., Colo. Rev. Stat. Ann. §33-44-101–114 (West 2016); Utah Code Ann. §78B-4-401 (West 2015); Mich. Comp. Laws Ann. §408.321 (West 2016); Ohio Rev. Code Ann. §4169.01 (West 2016).
3. See, e.g., Colo. Rev. Stat. Ann. §33-44-103(3.5); Conn. Gen. Stat. Ann. §29-212 (West 2016); Ohio Rev. Code Ann. §4169.08.
4. See *Clover v. Snowbird Ski Resort*, 808 P.2d 1037, 1047–48 (Utah 1991); *Jackson Hole Mountain Resort Corp. v. Rohrman*, 150 P.3d 167, 168 (Wyo. 2006).
5. See, e.g., Placer Cnty., Cal., Code §9.28.060 (listing skier duties); Wasatch Cnty., Utah, Ordinance No. 7.07.03(B) (May 23, 2008) ("The primary duty shall be on the skier or snowboarder to avoid collision with any person or object below him."); but see *Cheong v. Antablin*, 946 P.2d 817, 821 (Cal. 1997) (duties set forth in Placer County Code do not govern tort liability between skiers).
6. See N.Y. Gen. Oblig. Law §18-101–108 (2016); *Dailey v. Labrador Dev. Corp.*, 24 N.Y.S.3d 830, 831 (N.Y. App. Div. 2016).
7. *Bagley v. Mt. Bachelor, Inc.*, 340 P.3d 27 (Or. 2014).
8. *Id.* at 44.
9. See *Bradley v. Aspen Skiing Co.*, No. 11CV43 (Colo. Dist. Ct. Pitkin Cnty. May 10, 2012); *Harris v. Schreiber*, No. 09CV133 (Colo. Dist. Ct. Summit Cnty. Dec. 21, 2009); see also Colo. Rev. Stat. Ann. §33-14-101–120 (West 2016).
10. *Robinette v. Aspen Skiing Co., L.L.C.*, 2009 WL 1108093 (D. Colo. Apr. 23, 2009), *aff'd*, 363 Fed. App'x 547 (10th Cir. 2010).
11. *Salvini v. Ski Lifts, Inc.*, 147 Wash. App. 1005 (Oct. 20, 2008); *Molloy v. New York*, Claim No. 121709 (N.Y. Ct. Cl. Aug. 20, 2015) (ultimately dismissed for lack of evidence of a design or construction defect).
12. *Salvini*, 147 Wash. App. at 1005.
13. *Molloy*, Claim No. 121709.
14. *Solis v. Kirkwood Resort Co.*, 114 Cal. Rptr. 2d 265 (Cal. Ct. App. 2001); see also *Dunbar v. Jackson Hole Mountain Resort Corp.*, 392 F.3d 1145, 1146 (10th Cir. 2004) (risks inherent to alpine skiing do not include the risk of falling into the side of a snowboard half-pipe when following a resort employee's instructions on how to exit the terrain park).
15. See, e.g., *Martin v. State*, N.Y. State Olympic Reg'l Dev. Auth., 890 N.Y.S.2d 369 (N.Y. Ct. Cl. Mar. 18, 2008), *aff'd sub nom. Martin v. State*, 878 N.Y.S.2d 823 (N.Y. App. Div. 2009) ("Martin assumed the risks inherent in the sport of skiing . . . which include the risk of injury resulting from . . . falling while skiing across a narrow metal rail supported by metal posts."); *Anderson v. Boyne USA, Inc.*, 2012 WL 3966385 at *1 (Mich. Ct. App. Sept. 11, 2012) (Michigan Ski Area Safety Act barred the plaintiff's claim for a terrain park injury, because the jump was an inherent, obvious, and necessary danger of snowboarding.).
16. *Fleury v. IntraWest Winter Park Operations Corp.*, 2016 WL 3064678 (Colo. May 31, 2016).
17. *Id.* at *4.
18. *Id.* at *3.

The owner of a vessel traveling in navigable waters owes all passengers a duty of reasonable care.¹⁸ This duty requires the cruise line to warn its passengers of dangers that exist on land if they are invited or reasonably expected to encounter those dangers—and, specifically, to warn of dangers it knows about but that would not be obvious to passengers.¹⁹

A cruise line is not relieved of the duty to warn merely because the plaintiff could have learned of the danger from an alternative source.²⁰ For example, a plaintiff successfully stated a claim that his cruise line failed to warn that volcanic gases encountered on a hike were hazardous to his health, even though the tour operators or park service could provide the warning.²¹

Any cruise line, resort, or tour operator also can be held liable for engaging in misleading advertising or making negligent, material misrepresentations to the public. Misrepresentations are material if a person would not have participated in an activity without them, or if a person attached importance to their existence or nonexistence when deciding on a choice of action.²²

For example, a cruise line stated in pamphlets and on its website that it used the best transportation available at every port and that it recommended only operators it had investigated beforehand. After an open-air bus with plywood seats crashed during an excursion, an injured passenger pleaded sufficient facts to support a claim that the cruise line had misled her.²³

Agency and Vicarious Liability

Even if you cannot establish that a cruise line was directly negligent, you can still use agency doctrine to hold it vicariously liable. Resorts, hotels, and cruise lines attract customers by advertising diverse outdoor recreational excursions. These advertisements highlight

the intense competition among vacation providers.

Resorts often direct their guests toward activities hosted by local—and purportedly independent—sources. But the resorts profit, either directly or indirectly, by making these activities readily available to their guests. There almost always is a contract for indemnity between the parties, and although vacation providers are happy to advertise the various outdoor activities available at their resorts, they remain steadfast in trying to avoid liability.

When seeking relief for your client, investigate beyond the incident and look into the defendant's business model and practices. You should file suit against all entities, including the resort, cruise line,



VACATION PROVIDERS ALMOST ALWAYS RELY ON SELF-SERVING LANGUAGE IN THEIR TICKETS OR OTHER CONTRACTS TO DISCLAIM LIABILITY UNDER THEORIES OF VICARIOUS LIABILITY.

or other similar entity that maintains a relationship with the tour operator. Legal doctrines such as vicarious liability, apparent agency, actual agency, and joint venture will help you hold less-obvious parties responsible. But avoid conclusory allegations of agency or joint venture—without factual support, those counts will be dismissed.

A successful claim will state the most detailed factual basis possible, demonstrating why it was reasonable for your client to believe that a tour operator was more than just an independent contractor. The vacation provider's website often shows the existence of a partnership between the provider and the operator.

Carnival Cruise Lines, for example, boasts that it chooses the best tour

operators at each port of call and takes care of all the details.²⁴ Celebrity Cruises invites the public to “discover the heart of the destinations with *our* knowledgeable and experienced guides. . . . [E]xcursions are planned by insured *partners* who adhere to the highest safety standards in the industry.”²⁵

These representations suggest to an ordinary observer that some kind of partnership exists, but vacation providers almost always rely on self-serving language in their tickets or other contracts—declaring that tour operators are independent contractors and not agents or partners—to disclaim liability under theories of vicarious liability.

Fortunately, some courts do not assent to these legal masquerades, instead allowing the facts to guide their



analysis.²⁶ One court even held that such language in a cruise line ticket is invalid because it amounts to a limitation of liability forbidden under §30509.²⁷

Apparent agency. The doctrine of apparent agency may be available even when theories of respondeat superior and direct negligence are not. This doctrine allows a plaintiff to sue a principal for the misconduct of an independent contractor who reasonably appeared to be the principal's agent.²⁸

Although jurisdictions vary slightly, a properly pleaded apparent agency claim will state that the principal made a manifestation leading your client to reasonably believe an agent had authority to act for the principal's benefit, and that your client reasonably relied on that belief to his or her detriment. The exercise of control is the key element.²⁹

When trying to hold a cruise line vicariously liable for a tour operator's negligence, focus on the cruise line's manifestation to your client.³⁰ For example, a plaintiff injured during an excursion pleaded a valid claim of apparent agency when he alleged that the cruise line had arranged the shore excursion,

marketed it with the cruise line's logo, sold tickets onboard, and recommended that the plaintiff avoid tours not sold through the cruise line.³¹

Joint venture. Another theory worth pursuing is that the vacation provider and tour operator were involved in a joint venture. A joint venture is an undertaking in which two or more parties together carry out a single business enterprise for mutual profit.³² To argue that a joint venture exists, a plaintiff generally must show that the parties intended to create a joint venture, had a joint proprietary interest in the joint venture's subject matter, and had a right to share the profits.³³ Avoid making bare-bones allegations and use as detailed facts as possible.³⁴

Before you set out to prove any of these elements, recognize that resorts' and cruise lines' implicit purpose is to provide entertainment—to sell an experience. When your client chose to travel on a cruise ship rather than fly to a specific destination, surely the diversions offered aboard the ship, as well as onshore excursions, were persuading factors.

As cruise lines readily admit, they fervidly work with locals at ports of call to create vacation packages for passengers. The cruise industry profits from tour operators because these excursions attract more passengers, and tour operators profit from the massive influx of tourists that each cruise ship delivers.

Given the challenges of proving intent—especially in light of defendants' self-serving testimony—some courts sensibly avoid rigidly applying the first element, instead inferring intent from the surrounding circumstances.³⁵ In these jurisdictions, being unable to allege sufficient facts proving intent is not fatal to your case, as long as the pleading fulfills the remaining elements.³⁶ Even so, to survive a motion for summary judgment, you must have proof of each and every element—so you should develop as many facts as possible.³⁷

For example, in one case, the plaintiff showed an intent to create a joint venture when the cruise line made all the arrangements for her to participate in an excursion.³⁸ Likewise, she showed that there was a joint proprietary interest when she alleged that the cruise line decided the amount to charge for an excursion, had sole discretion to refund passengers, shared a portion of the ticket price with tour operators, and retained authority to inspect and supervise all aspects of the operation of the excursion.³⁹

When a client is injured during an activity booked through a vacation provider, it is crucial that you approach the case with a wide lens and an ambitious strategy. These cases present unique legal barriers, designed to frustrate plaintiffs' attempts to hold providers accountable.

To circumvent these obstacles, you must use all available legal avenues. Study the defendants' past tactics and establish a detailed factual record showing the intricacies of their operations, because many judges are amenable to

the idea that a business relationship's substance should outweigh its form. Success in these cases is never easy or guaranteed, and you can achieve it only through creative and zealous representation that enables your client's case to reach a jury. ▣



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NOTES

1. *Straw v. Aquatic Adventures Mgmt. Grp., Inc.*, 2011 WL 5008359 at *2 (N.D. Fla. Oct. 20, 2011) (citing *Torres v. Offshore Prof'l Tour*, 629 So. 2d 192, 193 (Fla. Dist. Ct. App. 1993)).
2. *Id.* (citing *deJesus v. Seaboard C.L.R. Co.*, 281 So. 2d 198, 201 (Fla. 1973)).
3. *Torres*, 629 So. 2d at 193.
4. *Tassinari v. Key West Water Tours, L.C.*, 2007 WL 1879172 at **3-5 (S.D. Fla. June 27, 2007).
5. *Diodato v. Islamorada Asset Mgmt., Inc.*, 138 So. 3d 513, 517 (Fla. Dist. Ct. App. 2014); *Sunny Isles Marina, Inc. v. Adulami*, 706 So. 2d 920, 922 (Fla. Dist. Ct. App. 1998).
6. *Diodato*, 138 So. 3d at 515-20.
7. *Alack v. Vic Tanny Int'l of Mo., Inc.*, 923 S.W.2d 330, 337 (Mo. 1996).
8. *Sunny Isles Marina*, 706 So. 2d at 922.
9. *Courbat v. Dahana Ranch, Inc.*, 141 P.3d 427, 439-40 (Haw. 2006); *BellSouth Telecomms., Inc. v. Kerrigan*, 55 F. Supp. 2d 1314, 1319 (N.D. Fla. 1999) (citing *Southworth & McGill v. S. Bell Tel. & Tel. Co.*, 580 So. 2d 628, 631 (Fla. Dist. Ct. App. 1991)); *Alack*, 923 S.W.2d at 337; *Wolf v. Ford*, 644 A.2d 522, 525-26 (Md. 1994).
10. *E.g., Sanislo v. Give Kids the World, Inc.*, 157 So. 3d 256, 260 (Fla. 2015); *Carlson v. Barta*, 2014 WL 5314027 at *4 (Minn. Ct. App. Oct. 20, 2014); *Jordan v. Diamond Equip. & Supp. Co.*, 207 S.W.3d 525, 530 (Ark. 2005); *Topp Copy Prods., Inc. v. Singletary*, 626 A.2d 98 (Pa. 1993).
11. *UCF Athletics Ass'n Inc. v. Plancher*, 121 So. 3d 1097, 1101 (Fla. Dist. Ct. App. 2013) (citing *Applegate v. Cable Water Ski, L.C.*, 974 So. 2d 1112, 1114 (Fla. Dist. Ct. App. 2008)), *quashed in part* by 175 So. 3d 724 (Fla. 2015).
12. *Carlson*, 2014 WL 5314027 at *4; *Southworth & McGill*, 580 So. 2d at 634.
13. *In re Royal Caribbean Cruises Ltd.*, 459 F. Supp. 2d 1275, 1279-81 (S.D. Fla. 2006) (following a WaveRunner accident in which a father and his minor son were injured, a release and waiver was enforceable against only the father who signed on their behalf because the parental pre-injury release was invalid because it involved an activity run by a for-profit business outside a school or community setting).
14. *Bonne v. Premier Athletics, LLC*, 2006 WL 3030776 at **1, 5 (E.D. Tenn. Oct. 23, 2006) (mother who signed a release allowing her son to participate in a cheerleading competition was not barred from filing a claim following her son's death because the mother "could not execute a valid release or exculpatory clause as to the rights of her son against [the defendant]").

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15. 46 U.S.C. §30509 (2006).
16. *In re Royal Caribbean Cruises, Ltd.*, 991 F. Supp. 2d 1171 (S.D. Fla. 2013).
17. *De Sole v. United States*, 947 F.2d 1169 (4th Cir. 1991); *Skidmore v. Grueninger*, 506 F.2d 716 (5th Cir. 1975).
18. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959).
19. *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012) (citing *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989)).
20. *Lapidus v. NCL Am. LLC*, 924 F. Supp. 2d 1352, 1359–60 (S.D. Fla. 2013).
21. *Id.*
22. *Ribak v. Centex Real Estate Corp.*, 702 So. 2d 1316–17 (Fla. Dist. Ct. App. 1997); Restatement (Second) of Torts §538 (1938).
23. *Balaschak v. Royal Caribbean Cruises, Ltd.*, 2010 WL 457137 at *2 (S.D. Fla. Feb. 4, 2010).
24. Carnival, *Shore Excursions*, www.carnival.com/shore-excursions (“We’ve hand selected the best local providers at every port of call so you can relax and focus on having fun. . . . We take care of all the details.” To assure its customers that they are getting the best price available, Carnival challenges its guests: “Find a better price for any excursion we offer and we will refund you 110 percent of the price difference!”).
25. Celebrity Cruises, *Cruise Shore Excursions*, www.celebrityshoreexcursions.com; tinyurl.com/h853a26. (emphasis added).
26. *Lapidus v. NCL Am. LLC*, 2012 WL 2193055 at *5 (S.D. Fla. June 14, 2012).
27. *Gibson v. NCL (Bahamas) Ltd.*, 2012 WL 1952667 at *4 (S.D. Fla. May 30, 2012).
28. *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1249 (11th Cir. 2014).
29. *Wynn’s Extended Care, Inc. v. Bradley*, 619 Fed. App’x 216, 218 (4th Cir. 2015); *Franza*, 772 F.3d at 1252; *Belik v. Carlson Travel Grp., Inc.*, 864 F. Supp. 2d 1302, 1311 (S.D. Fla. 2011); *Ledet v. Fleetwood Enters., Inc.*, 2000 WL 191017 at **5–6 (5th Cir. Dec. 22, 2000).
30. *Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp. 3d 1379, 1396 (S.D. Fla. 2014); see also *Gibson*, 2012 WL 1952667 at *7; *Gayou v. Celebrity Cruises, Inc.*, 2012 WL 2049431 at *8 (S.D. Fla. June 5, 2012).
31. *Aronson*, 30 F. Supp. 3d at 1397.
32. *Simmons v. Ware*, 213 Cal. App. 4th 1035, 1051 (2013).
33. *Wolf v. Celebrity Cruises, Inc.*, 101 F. Supp. 3d 1298, 1309 (S.D. Fla. 2015) (also listing “joint control or right of control” and “a duty to share in any losses which may be sustained” as elements of joint venture); *Williams v. Obstfeld*, 314 F.3d 1270, 1275–76 (11th Cir. 2002).
34. *Fojtasek v. NCL (Bahamas) Ltd.*, 613 F.

- Supp. 2d 1351, 1357 (S.D. Fla. 2009).
35. *E.g., Fulcher’s Point Pride Seafood, Inc. v. M/V “Theodora Maria,”* 935 F.2d 208, 212–13 (11th Cir. 1991).
36. *Gentry v. Carnival Corp.*, 2011 WL 4737062 at *7 (S.D. Fla. Oct. 5, 2011) (failure to specifically allege parties’ intent to create joint venture is not fatal “so long as the other allegations provide enough factual

- material to make it plausible that the parties intended to create one”).
37. *Jackson-Shaw Co. v. Jacksonville Aviation Auth.*, 8 So. 3d 1076, 1089 (Fla. 2008) (holding that the absence of one of the elements precludes the finding of a joint venture); *Simmons*, 213 Cal. App. 4th at 1054.
38. *Gibson*, 2012 WL 1952667 at *8.
39. *Id.* at *8.

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