

11th Circ. Revives Norwegian Cruise Slip-And-Fall Case

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Law360, New York (August 4, 2015, 6:45 PM ET) -- The Eleventh Circuit on Tuesday revived a slip-and-fall case against Norwegian Cruise Line, finding that a Florida federal judge improperly excluded evidence aimed at quantifying the slickness of a deck where a woman fell and broke her wrist, vacating a summary judgment order in the company's favor.

A three-judge panel for the appellate court said that a jury should be allowed to hear testimony from an expert called by plaintiff Teresita Sorrells and her husband, which suggested that the deck of the Norwegian Sky where Sorrells fell had a “coefficient of friction,” or slip resistance, below industry standards.

The district court abused its discretion by tossing the expert's standard and instead applying separate standards for passengers and crew members because both those groups regularly occupy the same areas. according to the Eleventh Circuit.

“A deck constructed of a single material (here, teakwood) cannot be designed to meet two different COF standards — one for passengers and one for crew members — at the same time,” the court said.

Sorrells alleged that she slipped on the Norwegian Sky's pool deck after a rain storm in April 2012 and sued Norwegian for negligence the following year.

She and her husband called in civil engineer Ronald Zollo to support their claims but the district court ruled all of his testimony was inadmissible.

While it did find that much of the plaintiffs' evidence was improperly excluded, the appellate court affirmed that the plaintiffs couldn't introduce evidence of 22 other falls aboard the Norwegian Sky because none of them occurred where Sorrells had fallen.

The Eleventh Circuit also affirmed that Zollo couldn't introduce COF data from the Occupational Safety and Health Administration and the Federal Register because he couldn't explain how they applied.

But Zollo had included a standard from Norwegian rival Carnival Corp. as well, and the circuit court said that standard may prove relevant in light of the re-admitted testimony.

The district court also excluded testimony from Norwegian employees who said they weren't sure whether warning signs were posted in the area where Sorrells fell, but the Eleventh Circuit said that was an error.

Whether or not the signs were posted, the employees' testimony addresses Norwegian's knowledge that the decks could be slippery when wet, the circuit court said.

Carol Lynn Finklehoffe, representing the plaintiffs, told Law360 that cruise lines have been on notice for years that pool decks can be dangerously slippery, and said Norwegian was “disingenuous” to suggest that there are two COF standards.

“We are very pleased with the decision because now our clients will get their day in court,” Finklehoffe said. “There’s a long history on all the cruise lines of people falling in these areas, and the cruise lines always try to deny liability.”

Counsel for Norwegian didn’t immediately respond to requests for comment on Tuesday.

U.S. Circuit Judges Adalberto Jordan and William H. Pryor Jr. and U.S. District Judge Steve C. Jones sat on the panel.

The plaintiffs are represented by Carol Lynn Finklehoffe of Leesfield Scolaro PA and Robert D. Peltz of The Peltz Law Firm PA.

Norwegian is represented by Michael John Dono, Jerry Dean Hamilton and Hector Virgilio Ramirez of Hamilton Miller & Birthisel LLP.

The case is Teresita Sorrells, et al. v. NCL (Bahamas) Ltd., case no. 13-15858 in the U.S. Circuit Court of Appeals for the Eleventh Circuit.

— Editing by Ben Guilfooy.