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The common law doctrine of respondeat superior, literally translated as "let the master answer," provides that an employer may be vicariously liable for the negligent actions of its employee when the actions take place within the scope of employment.¹

In medical settings, respondeat superior may be applied in order to hold hospitals and other healthcare employers liable for the negligent actions of their medical personnel.²

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¹ See City of Miami v. Simpson, 172 So. 2d 435, 437 (Fla. 1965); BLACK'S LAW DICTIONARY 1311-12 (6th ed. 1990). The restatement of agency provides:

(1) A master is subject to liability for the torts of his servants committed while acting in the scope of their employment.

(2) A master is not subject to liability for the torts of his servants acting outside the scope of their employment, unless:

(a) the master intended the conduct or the consequences, or
(b) the master was negligent or reckless, or
(c) the conduct violated a non-delegable duty of the master, or
(d) the servant purported to act or to speak on behalf of the principal and there was reliance upon the apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation.


² See 19 AM. JUR. TRIALS 431, §7 (2015). Generally, a patient must prove that the physician or medical personnel acted within the course and scope of employment. Id. Thus, the court must determine whether an employment relationship existed between the hospital and its employee, the scope of that employment, and whether the employee acted negligently. Id. The application of the respondeat superior doctrine to hospitals in medical negligence cases has a complicated history. See MARCIA M. BOUMIL & PAUL A. HAITIS, MEDICAL LIABILITY IN A NUTSHELL 239 (3d ed. 2002). This is due in part to the fact that most U.S. hospitals were initially organized as non-profit entities and therefore immune from liability under the notion of charitable immunity,
Vicarious liability under the theory of respondeat superior is also widely recognized and applied in tort cases under maritime law. In 1988, however, the Fifth Circuit carved out an exemption immunizing ship owners from respondeat superior liability in claims of medical negligence (the "Barbetta Rule").

which was intended to protect charitable organizations from using their funds to pay tort damages. \textit{Id.} at 239-40. As the nature and public perception of the hospital institution changed over time, hospital liability became more prevalent. \textit{Id.} at 240. In 1914, the Court of Appeals of New York held that a hospital might be liable if the causative act was administrative in nature, because such acts were within the realm of the hospital's control. Schloendorff v. Soc'y of N.Y. Hosp., 105 N.E. 92, 95 (N.Y. 1914). However, if the acts were medical in nature, the court held the hospital had insufficient control to establish an agency relationship. \textit{Id.} The central issue in these early cases was whether the hospital had sufficient control over the conduct involved; acts performed by licensed health professionals were not considered under the control of the hospital. BOUMIL \& HARRIS, \textit{supra} at 240-41. In 1957, this approach was abrogated by the New York Court of Appeals decision in \textit{Bing v. Thunig}, which held that a hospital might be held liable to a patient for injuries caused by the negligence of its employees acting within the scope of their employment, regardless of whether the hospital is a charitable organization. 143 N.E.2d 3, 12 (N.Y. 1957). Since these earlier cases, medical technology has undergone significant advancements, and the complexity of health care issues that accompany this progress necessitated the legal community to follow. See Jeannie Pinkston, \textit{Negligence: Stutmhart v. Perry Memorial Hospital: Taming the Monster of Corporate Negligence or Creating an Unpredictable Form of Hospital Liability?}, 48 \textit{OKLA. L. REV.} 797, 799 (1995). Today, hospitals may be held liable for the negligence of all employees, including physician employees, acting in their clinical capacity. See Johnson v. LoBonheur Children's Med. Ctr., 74 S.W. 3d 338 (Tenn. 2002); BOUMIL \& HARRIS, \textit{supra} note 2 at 241-42. In \textit{Johnson}, the court held that a statute which immunized state employees from liability for negligence would not protect a private hospital from respondeat superior liability, even though the residents working at the hospital were state employees. Johnson, 74 S.W. 3d at 346-47. While many jurisdictions presently apply the doctrine of respondeat superior to hospital liability, a minority of jurisdictions have been reluctant to hold hospitals liable for physician negligence. See Pinkston, \textit{supra} at 800-01.

\footnote{See e.g., Standard Oil v. Anderson, 212 U.S. 215, 220 (1909) (recognizing doctrine of respondeat superior as principle of maritime law); McDonough v. Royal Caribbean Cruises, Ltd., 48 F.3d 256, 258 (7th Cir. 1995) (holding cruise line vicariously liable for employee who pushed dolly over passenger's foot); Jackson Marine Corp. v. Blue Fox, 845 F.2d 1307, 1310 (5th Cir. 1988) (holding ship owner vicariously liable for captain's fraud on third party); De Los Santos v. Scindia Steam Navigation Co. Ltd., 598 F.2d 480, 489 (9th Cir. 1979) (explaining that ship owner could be vicariously liable for crewmembers' negligence); Pritchett v. Kimberling Cove, Inc., 568 F.2d 570, 579 (8th Cir. 1977) (holding boat owner liable for injuries caused when owner's agent negligently entrusted boat to minor).

\footnote{Barbetta v. S/S Bermuda Star, 848 F.2d 1364, 1372 (5th Cir. 1988). In \textit{Barbetta}, a couple brought suit against a cruise ship because the ship's doctor failed to diagnose the wife's diabetes while treating her on the cruise ship. \textit{Id.} at 1365. The court found that, while a ship owner that employs a doctor for the convenience of its passengers has a duty to employ a competent and qualified doctor, the negligence of the ship's doctor in treating passengers cannot be attributed to the ship owner under respondeat superior. \textit{Id.} at 1370-71. The court reasoned that the ship owner lacks the expertise required to exercise control over a physician as he practices medicine.}
the Eleventh Circuit considered whether a passenger may bring a claim against a ship owner for the negligence of its on-board medical personnel under the doctrine of respondeat superior, and ruled that such claims are not barred, as the existence of an agency relationship between a ship owner and its medical personnel is a question of fact.\textsuperscript{6}

The case was brought by Patricia Franza, the daughter and personal representative of the estate of Pasquale Vaglio, an elderly cruise ship passenger who fell and hit his head boarding a trolley while the cruise ship was docked in Bermuda.\textsuperscript{7} The cruise ship, "Explorer of the Seas," was owned and operated by defendant Royal Caribbean.\textsuperscript{8} Although the ship's nurse and doctor saw Vaglio after his fall, he was not

\textit{Id.} The \textit{Barbetta} decision led many plaintiffs to pursue their claims under alternative vicarious liability theories, particularly apparent agency, but they had limited success. \textit{See} Robert D. Peltz & Gretchen M. Nelson, \textit{New Destinations for Shipboard Malpractice}, 51 TRIAL 38, 38-39 (2015).

Although \textit{Barbetta} was decided in 1988, the principle of non-liability dates back to a number of cases beginning in 1887. \textit{Id.} \textsuperscript{5} 772 F.3d 1225 (11th Cir. 2014).

\textsuperscript{6} \textit{Id.} at 1235-36. The court's ruling effectively rejected the precedent set forth by the \textit{Barbetta} rule, which immunized ship owners from respondeat superior liability in medical negligence cases. \textit{Id.} at 1236. \textit{See also} Peltz & Nelson, \textit{supra} note 4, at 39 (discussing the likely jurisdictional impact of the \textit{Franza} decision). Because \textit{Barbetta} was a Fifth Circuit case, it was not overruled by the \textit{Franza} decision. \textit{Id.} However, as the Eleventh Circuit is home to most of the North American cruise line industry, \textit{Franza} is likely to replace \textit{Barbetta} as the new majority rule. \textit{Id.} The court also eased the requirements previously imposed on plaintiffs to establish a viable claim under an apparent agency theory. \textit{See} \textit{Franza}, 772 F.3d at 1252-53. In jurisdictions that continue to adhere to the \textit{Barbetta} rule, apparent agency will continue to be used as the primary mechanism for seeking recovery. \textit{See} Peltz & Nelson, \textit{supra} note 4, at 40 (discussing the implications created under \textit{Barbetta} rule based on evidence within each case). Since virtually all maritime precedent relating to apparent agency claims has come from district courts, these reduced evidentiary standards should be effective in jurisdictions which continue to follow \textit{Barbetta}. \textit{Id.} at 40. \textit{See also} Carolina Bolado, \textit{11th Circ. Opens Up Cruise Lines to Malpractice Onslaught}, LAW360 (Jan. 22, 2015, 9:00 PM), http://www.law360.com/articles/613794/11th-circ-opens-up-cruise-lines-to-malpractice-onslaught (explaining how 11th Circuit decision made it easier for passengers' malpractice claims to reach a jury).

\textsuperscript{7} \textit{Franza}, 772 F.3d. at 1228.

\textsuperscript{8} \textit{Id.}
given prompt and appropriate medical care necessary to treat his head injury. Vaglio died one week later as a result of his injury.

In January of 2013, Franza brought suit in federal court against Royal Caribbean under 28 U.S.C. § 1333 and the general maritime laws of the United States. The complaint charged Royal Caribbean with the negligence of the ship’s medical personnel. Notably, Franza did not name the medical personnel as individual defendants. Both counts alleged the same nine categories of negligent conduct,

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9 Id. at 1229. According to the plaintiff, after the fall, Vaglio was “required to go to the ship’s medical center to be seen for his injuries” despite other possible treatment options. Id. Vaglio was wheeled to the ship’s infirmary where he was initially seen by a nurse who was employed full-time by Royal Caribbean. Id. The nurse was aware of the accident and observed a lump and abrasion on Vaglio’s head. Id. After performing a brief evaluation, and without performing or recommending any diagnostic scans, the nurse advised Vaglio that he was “fine to return to his cabin.” Franza, 772 F.3d at 1229. The nurse cautioned Vaglio’s wife that he might have a concussion and told her to keep an eye on his condition. Id. Ninety minutes later, Vaglio’s family noticed his condition deteriorating and called 911. Id. Vaglio waited about twenty minutes for somebody to take him in a wheelchair to the infirmary, and then was further delayed when the medical staff refused to examine him until they obtained credit card information. Id. After nearly four hours, Vaglio was finally seen by the ship’s physician, who was also a full-time employee of Royal Caribbean. Id. The physician started a Mannitol drip and ordered that Vaglio be transferred to the King Edward Memorial Hospital in Bermuda “for further care and treatment.” Id. Unfortunately, “Vaglio’s life was beyond saving” by the time the physician gave the order. Franza, 772 F.3d at 1229. The next day, Vaglio was airlifted to a hospital in New York where he remained in intensive care for a week. Id.

10 Franza, 772 F.3d at 1229. Franza alleged that Vaglio’s deteriorated condition upon arriving at the hospital was a direct and proximate result of the negligence of the ship’s medical personnel. Id. at 1254. According to Franza, had Vaglio received appropriate medical treatment, he likely would have survived. Id.

11 Franza, 772 F.3d at 1254. 28 U.S.C. § 1333 provides that “district courts shall have original jurisdiction ... of any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.” 28 U.S.C. § 1333(1) (2012).

12 Franza, 772 F.3d at 1229-30. The complaint initially brought three claims against Royal Caribbean, including one count of “negligent hiring, retention and training,” which Franza dropped on appeal. Id. See also infra notes 23-24 (providing a general background of maritime law).

13 Franza, 772 F.3d at 1229; see also Robert D. Peltz, Has Time Passed Barbetta By?, 24 U.S.F. MAR. L.J. 1, 32-33 (2011). Many on-board physicians are not American citizens, and “it is generally nearly impossible to obtain jurisdiction over a foreign doctor in a U.S. court, even though he or she works for a cruise line headquartered in Miami, Los Angeles, or Seattle.” Id.
invoking the doctrine of actual agency and, alternatively, the theory of apparent agency.\(^\text{14}\)

The district court granted Royal Caribbean's motion to dismiss both claims by applying the *Barbetta* rule and reasoning the claim was based on a duty of care that was not recognized under maritime law.\(^\text{15}\) The court determined that Franza failed to put forth a plausible claim that Vaglio had in fact relied on the appearance of an agency relationship under her apparent agency theory.\(^\text{16}\) In this case, the Eleventh Circuit addressed whether a cruise line could be found liable under actual or apparent agency claims for the medical negligence of its on-board medical personnel.\(^\text{17}\)

The court held

\[14\] *Franza*, 772 F.3d at 1230. The following nine categories are what qualify as negligent conduct:

- (1) failing to properly assess [Vaglio's] condition;
- (2) allowing a nurse to make the initial assessment;
- (3) failing to have a doctor assess [Vaglio];
- (4) failing to timely diagnose and appropriately treat [Vaglio];
- (5) failing to order appropriate diagnostic scans to further assess the degree of injury;
- (6) failing to obtain consultations with appropriate specialists;
- (7) failing to properly monitor [Vaglio];
- (8) failing to evacuate [Vaglio] from the vessel for further care in a timely manner; and
- (9) deviating from the standard of care for patients in Mr. Vaglio's circumstances who had suffered a significant blow to the head.

*Id.* Franza attributed the negligent conduct to Royal Caribbean by alleging it was negligent "by and through the acts of its employees" or alternatively, that it "manifested to [Vaglio] ... that its medical staff ... were acting as its employees and/or actual agents ... [and Vaglio] relied to his detriment on his belief that the physician and nurse were direct employees or actual agents of [Royal Caribbean]." *Id.*


\[16\] *Id.* at 1332-33. The district court acknowledged that other courts had applied the doctrine of apparent agency under similar facts; however, it dismissed the claim as inadequately pled. *Id.*

\[17\] *Franza*, 772 F.3d at 1228. The questions presented were whether a passenger may impute liability to a cruise line for the medical negligence of its on-board medical personnel by invoking the principles of actual, or alternatively, apparent agency. *Id.* See supra note 14 (describing details of Franza's actual and apparent agency claims). Historically, passengers have been permitted to bring negligence claims against ship owners under the doctrine of respondeat superior. *Franza*, 772 F.3d at 1234. In 1943, the Supreme Court held that a ship owner could be liable for damages caused by the medical negligence of the onboard physician. *De Zon* v. Am. President Lines, Ltd., 318 U.S. 660, 669 (1943). The Supreme Court limited this holding, however, to apply only when the physician breached his duty to seaman under the Jones Act, but not to a passenger. 46 U.S.C. § 688; *De Zon*, 318 U.S. at 668. The *Barbetta* rule solidified that limitation and created a blanket exemption for ship owners when a passenger's actual agency claim relates
that both theories were available to the plaintiff, reversed the district court’s decision, and remanded the case for further proceedings. 18

to the negligence of medical personnel. See Barbetta v. S/S Bermuda Star, 848 F.2d 1364, 1371 (5th Cir. 1988). Under Barbetta, passengers are still permitted to bring claims against ship owners under an apparent agency theory. Peltz & Nelson, supra note 4, at 38, 40. Unlike actual agency, which stems from a principal’s control over its agents, apparent agency is derived from equitable concerns and arises when actors appear to be agents but are not. See Franzia, 772 F.3d at 1249; RESTATEMENT (THIRD) OF AGENCY § 2.03 cmt. a (2006).

Franzia, 772 F.3d at 1236. According to the court, these facts plausibly established that Royal Caribbean acknowledged the doctors’ employment relationship. Id. Some of the facts pled by Franzia which the court found significant in establishing control by Royal Caribbean over its medical personnel included allegations that Royal Caribbean hired the nurse and doctor involved to work in a facility owned and operated by the cruise line; that their salaries were paid by Royal Caribbean; they were under the command of the ship’s superior officers. Id. at 1237. Further, Royal Caribbean paid to stock the medical centers and billed passengers for medical services on the passenger’s shipboard charge card. Id. The court also significantly softened the plaintiff’s burden of proof in establishing a claim under apparent agency. Peltz & Nelson, supra note 4 at 38, 40. Earlier cases required the plaintiff to prove the ship owners’ representations to the passenger effectuated the reasonable belief that the medical personnel were the ship owner’s agents, followed by the passenger’s detrimental reliance. Id. While the court in Franzia emphasized the importance of establishing these elements, it eased the plaintiff’s burden of
Outside of the maritime law setting, courts frequently recognize principles of vicarious liability for medical negligence and impose liability on a variety of employers, even if they are not in the health care industry. In particular, courts have considered vicarious liability in cases "where the provision of some medical services is incidental to the principal's core business." Courts have also rejected the notion that mere physical separation between principals and agents defeats vicarious liability.

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proof, specifically with regard to the plaintiff's detrimental reliance. *Franza*, 772 F.3d at 1252; *Peltz & Nelson*, supra note 4, at 39-40. The district court ruled that *Franza*'s complaint failed to establish how Vaglio detrimentally relied on his belief that the ship's doctor and nurse were agents of Royal Caribbean. *Franza*, 772 F.3d at 1252. The Eleventh Circuit disagreed, and in particular, held that *Franza* was not required to specifically claim that Vaglio would not have followed the advice of the ship's medical personnel had he known or suspected they were not agents of Royal Caribbean. *Id.* at 1253. According to the court, the facts alleged in the complaint sufficiently established that Vaglio detrimentally relied on his belief that the nurse and doctor were employees or agents of Royal Caribbean in that he followed the advice of the medical personnel, despite the fact that they failed to order necessary further medical testing or evaluation in Bermuda. *Id.* at 1252-53 (emphasis added).

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19. See supra note 2 (discussing complicated history of application of vicarious liability in medical setting). See also *Eads v. Borman*, 277 P.3d 503, 511-12 (Or. 2012) (en banc) ("[M]ost jurisdictions now hold that an entity that employs a physician is subject to vicarious liability for that physician-employee's malpractice if the negligent act was committed in the course and scope of the employment."); *Villazon v. Prudential Health Care Plain, Inc.*, Inc., 843 So. 2d 842, 854-55 (Fla. 2003) (finding the same under Florida law); *Dias v. Brigham Medical Assocs., Inc.*, 780 N.E.2d 447, 451 (Mass. 2002) (finding the same under Massachusetts law); Univ. of Ala. Health Servs. Found., P.C. v. Bush *ex rel.* Bush, 638 So. 2d 274, 799 (Ala. 1994) (acknowledging vicarious liability for medical negligence under Alabama law). Vicarious liability for physician malpractice has not been limited to hospitals; some courts have extended it to other entities such as health maintenance organizations (HMO) and non-hospital patient treatment facilities under theories of actual or apparent agency. *Eads*, 277 P.3d at 513. See also, e.g., *TransCare Md., Inc. v. Murray*, 64 A.3d 887, 889 (Md. 2013) (regarding an ambulance transport company); *Cox v. M.A. Primary & Urgent Care Clinic*, 313 S.W.3d 240, 254 (Tenn. 2010) (regarding an urgent care clinic); *Villazon*, 843 So. 2d at 854 (regarding a health maintenance organization); *Univ. of Ala. Health Servs.*, 638 So.2d at 801-02 (regarding a university foundation); *Allrid v. Emory Univ.*, 285 S.E.2d 521, 525-26 (Ga. 1982) (regarding a hospital); *Mrachek v. Sunshine Biscuit, Inc.*, Inc., 126 N.Y.S.2d 383 (N.Y. App. Div. 1953) (regarding a corporate bakery); *Rannard v. Lockheed Aircraft Corp.*, 157 P.2d 1, 6 (Calif. 1945) (regarding an aerospace corporation); *Ebert v. Emerson Elec. Mfg. Co.*, 264 S.W. 453, 458 (Mo. Ct. App. 1924) (regarding a manufacturing plant); *Jones v. Tri-State Tel. & Tel. Co.*, 136 N.W. 741, 741-42 (Minn. 1912) (regarding a telephone company). The application of the doctrine is fact-specific, with control of the agent by the principal being paramount. See *Villazon*, 843 So. 2d at 853-54.

20. See, e.g., *Emory Univ. v. Porubiansky*, 282 S.E.2d 903, 903-04 (Ga. 1981) (holding that status as training institution did not exempt dental clinic from duty to exercise reasonable care); *Speed v. Iowa*, 240 N.W.2d 901, 904 (Iowa 1976) (applying vicarious liability for medical malpractice occurring at University's Student Health Infirmary); *Santiago v. Archer*, 524 N.Y.S.2d 106, 108
General maritime law is a blend of established common law rules, modifications to those rules, and new rules that are created out of necessity. Unless Congress has enacted a relevant statute, the general maritime common law established by the judiciary applies. At present, while U.S. regulations impose some obligations that are medical in
nature on cruise ship owners, Congress has not addressed a ship owner’s liability for the medical negligence of its on-board medical personnel.\textsuperscript{24} In tort actions, cruise ships are generally held to a reasonable standard of care under the circumstances of each case.\textsuperscript{25} This standard demands a fact-based analysis, and has been largely applied in cases involving agency relationships that give rise to vicarious liability.\textsuperscript{26} Importantly, the federal admiralty jurisdiction. THOMAS J. Schoenbaum, ADMIRALTY AND MARITIME LAW 6 (West 5th ed. 2012).


\textsuperscript{26} See Garanti Finansal Kiralama A.S. v. Aqua Marine & Trading Inc., 697 F.3d 59, 71 (2d Cir. 2012) (concluding actual or apparent authority is a determination of fact based on agency principles); Hawkspere Shipping Co., Ltd. v. Intamex, S.A., 330 F.3d 225, 236 (4th Cir. 2003) (deeming overt acts by principle as sufficient in creating a “triable issue of fact”); Chan v. Soc’y Expeditions, Inc., 39 F.3d 1398, 1406 (9th Cir. 1994) (affirming that existence of agency relationship “is a question of fact”); Equilease Corp. v. M/V Sampson, 756 F.2d 357, 363 (5th Cir. 1985) (emphasizing stricter appellate standards of reversal because an “agency relationship is a question of fact”); Bartlett-Collins Co. v. Surinam Nav. Co., 381 F.2d 546, 550 (10th Cir. 1967) (stating “the existence of an agency is a question to be decided by the trier of the fact”). See also Whetstone Candy Co. v. Kraft Foods, Inc., 351 F.3d 1067, 1077 (11th Cir. 2003) (finding a lack of agency relationship existing between the parties). Establishing an agency relationship requires “(1) the principal to acknowledge that the agent will act for it; (2) the agent to manifest an
analysis focuses on whether the ship exercised sufficient control over the employee's actions.\textsuperscript{27}

In \textit{Barbetta v. S/S Bermuda Star}, the Fifth Circuit created an exemption for ship owners from claims by passengers alleging vicarious liability for the medical negligence of on-board medical personnel.\textsuperscript{28} The court rejected the standard fact-based agency analysis, holding instead that under general maritime law, there is no recognition of respondeat superior liability of ship owners for the medical negligence of a ship's physician in treating the ship's passengers.\textsuperscript{29} Subsequently, courts have adopted \textit{Barbetta} as the controlling authority on the issue of a ship owner's liability for the medical negligence of on-board medical personnel.\textsuperscript{30} Many of these courts cite to uniformity in

\textsuperscript{27} See, e.g., \textit{Whetstone Candy Co.}, 351 F.3d at 1077 (requiring the element of control in an agency relationship).

\textsuperscript{28} \textit{Barbetta v. S/S Bermuda Star}, 848 F.2d 1364, 1372 (5th Cir. 1988).

\textsuperscript{29} \textit{Id.} The \textit{Barbetta} court provided two justifications for the rule. \textit{Id.} at 1369-70. First, it reasoned that the relationship between the passenger and the physician, also referred to as the doctor-patient relationship, is not a traditional activity over which the ship owner has control. \textit{Id.} (citing \textit{O'Brien v. Cunard S.S. Co.}, 154 Mass. 272, 276 (1891)). Second, the court reasoned that a ship is not in the business of providing medical services to its passenger, even if a ship carries a doctor on board it is for its passengers' convenience. \textit{Id.} (citing \textit{Amdur v. Zim Israel Navigation Co.}, 310 F. Supp. 1033, 1042 (S.D.N.Y. 1969)). The court reasoned that carriers lack the expertise to supervise on-board physicians, and that the relationship between physician and passenger is under control of the passenger, not the carrier. \textit{Id.}

\textsuperscript{30} See e.g., \textit{Wajnstat v. Oceania Cruises, Inc.}, No. 09-21850-Civ, 2011 WL 465340, at *2 (S.D. Fla. Feb. 4, 2011) (stating ship doctor's negligence in treating passenger "will not be imputed to the carrier"); \textit{Peterson v. Celebrity Cruises, Inc.}, 753 F. Supp. 2d 1245, 1248 (S.D. Fla. 2010) (holding actual agency claim against ship owner for physician's medical negligence fails as matter of law); \textit{Doonan v. Carnival Corp.}, 404 F. Supp. 2d 1367, 1371 (S.D. Fla 2005) (finding no justification to deviate from majority rule stated in \textit{Barbetta}). \textit{See also Peltz, supra note 13, at 9 (explaining an agency relationship giving rise to vicarious liability is an issue of fact). Although \textit{Barbetta} has been applied almost universally, there have been decisions to the contrary. Robert D. Peltz & Vincent J. Warger, \textit{Medicine on the Seas}, 27 Tul. Mar. L.J. 425, 445 (2003). \textit{See also Huntley v. Carnival Corp.}, 307 F. Supp. 2d 1372, 1374 (S.D. Fla. 2004) (denying ship owner's motion to dismiss vicarious liability claim because passengers could plausibly prove facts sufficient for relief); Nites
The Supreme Court, however, has indicated that uniformity should not always control, noting that our evolving experience and changed circumstances sometimes warrant new conceptions of maritime concerns.  

In *Franza v. Royal Caribbean Cruises, Ltd.*, the Eleventh Circuit rejected the *Barbetta* rule and eliminated ship owners' broad immunity from medical negligence suits.  Emphasizing that agency claims raise fact-based questions, the court remarked...
that there is no longer any justification for the rule’s grant of broad immunity to ship owners, regardless of the level of control over medical staff or how heinous the claimed acts of negligence.\textsuperscript{34} Ultimately, the existence of an agency relationship between a ship owner and the ship’s on-board medical personal is a question of fact and should be examined as such.\textsuperscript{35} The court also eased the plaintiff’s burden of proof in establishing a claim under the theory of apparent agency, specifically with regard to proving detrimental reliance.\textsuperscript{36}

\textsuperscript{34} Franza, 772 F.3d at 1239-40. Critics of Barbetta have pointed out that by rejecting the fact-intensive analysis, the decision implies no set of facts could ever justify holding a ship owner vicariously liable for the negligent medical care rendered by the ship’s physician. See Carlisle, 953 So. 2d at 467. While the Carlisle court ultimately applied the Barbetta rule, it criticized its reliance on the factual conclusions of earlier maritime cases from nearly a century earlier to support the general rule, rather than analyzing the particular facts before it. \textit{Id}. The Franza court’s criticism of Barbetta followed similar reasoning. See Franza, 772 F.3d at 1238-39. “Instead of nineteenth-century steamships ... we now confront state-of-the-art cruise ships that house thousands of people and operate as floating cities, complete with well-stocked modern infirmaries and urgent care doctors.” \textit{Id}. Significant changes to the industry since the Barbetta decision include the publishing of guidance documents in 1995. \textit{See Health Care Guidelines for Cruise Ship Medical Facilities, AM. C. OF EMERGENCY PHYSICIANS, www.acep.org/content.aspx?id=29500 (last visited Nov. 11, 2015) (providing medical guidelines for cruise ships). See also Peltz & Nelson, supra note 4, at 40. The ACEP guidelines set minimum credentialing and training requirements as well as criteria for the ship’s hospital, including medication and equipment requirements. Id. (citing Flueras v. Royal Caribbean Cruises, Ltd., 69 So. 3d 1101, 1116 n. 21 (Fla. Dist. App. 2011)). The Franza court also highlighted how cruise lines now boast cutting-edge facilities and the availability of telecommunication with shore-based experts. See Franza, 772 F.3d at 1239. Further, it noted that in the world of medicine today, there are very few truly independent doctors and nurses compared with the practice a century ago since the majority of medical professionals today work for corporate masters. \textit{Id}. at 1240.

\textsuperscript{35} \textit{Id}. at 1228, 1235-36, 1248. According to the court, Franza’s complaint plausibly established a claim against Royal Caribbean under a theory of actual or apparent, agency. \textit{Id}. at 1236. See also supra notes 1, 20, and 28 (describing agency principles and the court’s application of same to the facts alleged by Franza).

\textsuperscript{36} Franza, 772 F.3d at 1252-53. The Eleventh Circuit held that it was unnecessary for Franza to claim that Vaglio would not have followed the advice of the ship’s medical personnel had he known or suspected they were not agents of Royal Caribbean. \textit{Id}. at 1253. See also supra notes 6, 17-18 (discussing the history of apparent agency claims and the Franza court’s eased requirements).
The *Franza* court correctly rejected the timeworn rule of non-liability adopted in *Barbetta* by holding that a ship owner may be held liable under the theory of respondeat superior for the medical negligence of its employees.\(^{37}\) The decision in *Franza* provides a just and adequate remedy for aggrieved passengers, many of whom historically had limited options for legal recourse as courts deferred to the outdated reasoning of *Barbetta* and ignored the revolutionary medical and technological changes in the cruise line industry, including modern medical facilities and the availability of telemedicine.\(^{38}\) Furthermore, while land-based physicians and their employers are subject to government and agency standards and investigations, there is no uniform criteria for the qualifications of cruise ship medical personnel or their exercise of reasonable care when treating passengers.\(^{39}\) Thus, not only does the *Franza* decision provide a previously unavailable legal outlet to passengers harmed by on-board medical negligence, it also provides an incentive for ship owners to improve the level of care available to their passengers, thereby decreasing the likelihood of negligent medical care.\(^{40}\)

\(^{37}\) See supra note 34 (describing criticism of the *Barbetta* rule’s outdated rationale and its continued application to modern tort cases).

\(^{38}\) See supra note 34 (holding no justification for the rule’s broad of immunity to ship owners). See generally Peltz & Nelson, supra note 4, at 38, 42-44 (discussing court’s decision in *Franza*). Many aggrieved passengers were also prevented from bringing claims against individual on-board medical personnel due to jurisdictional barriers. Id. at 38, 41. The decision in *Franza* also eased a plaintiff’s burden of proof in apparent agency claims, which passengers will continue to rely on in jurisdictions that continue to adhere to the *Barbetta* rule. See *Franza*, 772 F.3d at 1252-53; Peltz & Nelson, supra note 4 at 41. See also supra notes 16-18 (discussing the court’s analysis of *Franza’s* apparent agency claim).

\(^{39}\) See Dickerson, supra note 25, at 472-73; Peltz & Nelson, supra note 4, at 38, 42-44. This is significant because a cruise line may be providing for medical care by nurses and physicians who are not subject to the same high standards and regulations as those practicing on land, and may not have the experience or training expected of their profession. Dickerson, supra note 25 at 472-74. Additionally, there is no assurance that the medical personnel will be subject to the same high degree professional standard of care. See id. Further, many of the medical personnel may be foreign citizens, and therefore not subject to personal jurisdiction in the United States. See supra note 13.

\(^{40}\) See supra notes 38-39 (describing limited legal options for passengers harmed by on-board medical negligence). See also Health Care Guidelines for Cruise Ship Medical Facilities, supra note 34
It is important to note that the Franza court held only that a passenger could use vicarious liability to state a cause of action against a ship owner—it did not establish that such an agency relationship exists as a matter of law. Thus, while the decision will likely prompt a significant influx of future litigation, plaintiffs must still plead and prove sufficient facts to establish an agency relationship with the ship's medical staff. Additionally, by affording plaintiffs the ability to pursue a cause of action under a vicarious liability theory, many of the claims used in past attempts to circumvent the Barbetta rule will likely become obsolete.

In Franza v. Royal Caribbean Cruises, Ltd., the Eleventh Circuit considered whether a passenger may bring a claim against a ship owner for the negligence of its on-board medical personnel using theories of actual, or alternatively, apparent agency. The court's decision effectively rejected the precedent set forth by the Barbetta rule, which provided ship owners with broad immunity from respondeat superior liability in

(providing recommendations for quality medical care on cruise ships). The impact of the decision will also spread to cruise ship "excursion operators, concessionaires, and other entities that carriers have developed to escape legal responsibility for injuries caused by their business operations." Peltz & Nelson, supra note 4, at 44. See also Bolado, supra note 6 (describing 11th Circuit's refusal to rehear malpractice claim of daughter of deceased cruise ship passenger).

Franza, 772 F.3d at 1236. See also Peltz & Nelson, supra note 4, at 41 (describing the principle of non-liability).

Id. See also supra notes 20, 41 (describing court's analysis of the adequacy Franza's factual allegations in supporting her agency claims). Despite the potential influx in litigation against cruise lines for the medical negligence of its on-board staff, plaintiffs still must establish sufficient facts to prove either an actual agency relationship or detrimental reliance on a reasonable belief of an agency relationship. See Peltz & Nelson, supra note 4, at 41. See also supra note 31 (discussing requirements for proving the existence of an actual agency relationship).

Peltz & Nelson, supra note 4, at 41-42. Examples of such earlier attempts include claims for negligent supervision, inadequate training, failure to provide sufficient numbers of medical personnel, failure to provide medical equipment, failure to promote and administer medical standards, and claims based on the unlicensed practice of medicine due to use of foreign physicians. Id.

Franza, 772 F.3d at 1228, 1236.
medical negligence cases. The court ruled that the existence of an agency relationship is a question of fact, which depends on the evidence in each case. As a result, cruise ship passengers are now able to bring a cause of action against ship owners for the medical negligence of on-board medical personnel. Given the significant technological advancements within the cruise line and health care industries, the Eleventh Circuit wisely recognized that the outdated view promulgated by Barbetta was no longer justified in this modern age.

45 See supra notes 6, 33 and accompanying text (discussing reasons for rejecting Barbetta precedent).
46 See supra notes 33, 34 and accompanying text (discussing the court's reasoning).
47 Peltz & Nelson, supra note 4, at 40 (reasoning that establishing apparent agency required a lesser burden of proof). See also Bolado, supra note 6 (describing potential influx of future litigation due to 11th circuit decision); Hugo Martin, Court Ruling Reinstates Negligence Suit Against Cruise Line, LA TIMES, Nov. 13, 2014, http://www.latimes.com/business/la-fi-cruise-malpractice-suit-20141113-story.html (revealing that the historic change is likely to increase industry responsibility to passengers); supra note 42 and accompanying text (discussing likely jurisdictional impact of Franz decision).
48 See Franz, 772 F.3d at 1239, 1248 (reasoning that upholding unfounded, out-of-date precedent would be comparable to blindly following the past); supra note 34 and accompanying text (describing medical and technological advancements in cruise ship industry noted by court in Franz).