

## THE IMPACT OF THE CVSSA ON PROSECUTING AND DEFENDING SEXUAL ASSAULT CLAIMS

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In 2010, Congress passed the Cruise Vessel Security and Safety Act ("CVSSA"), mandating, *inter alia*, video surveillance systems on passenger cruise vessels embarking and departing passengers in the U.S. Since then, closed-circuit television ("CCTV") monitoring systems have become standard throughout the industry. The statute, however, does not detail how many cameras are required or the areas of coverage, nor does it dictate the method of surveillance. The number of cameras and their placement vary widely among cruise operators. The CVSSA states only that the ship must "maintain a video surveillance system to assist in documenting crimes on the vessel and providing evidence for the prosecution of such crimes." 46 U.S.C. §3507(b)(1).

Though Congress empowered the Coast Guard to "issue such regulations as are necessary to implement [the CVSSA]," 46 U.S.C. §3507(j), it has been slow in doing so. Proposed on January 16, 2015,<sup>1</sup> regulations under consideration would require, among other things, cruise line video surveillance systems "in areas to which passengers and crew members have common access," excluding passenger staterooms or crew cabins. 80 FED. REG. 11 (to be codified at 46 C.F.R. pt. 70). The proposed regulation states that the Coast Guard "would expect the vessel owner or operator to make whatever arrangements are necessary to ensure effective system placement," but "does not require real time monitoring." *Id.*<sup>1</sup>

Even if these proposed regulations become law, the CVSSA still lacks specificity regarding the number of cameras required or specific locations which must be covered by those cameras. Moreover, the ambiguity inherent in "areas to

which passengers and crew members have common access" is likely to become a source of disagreement, debate and, potentially, litigation.

Both before enactment of the CVSSA and after, there have been personal injury claims alleging that the use, or lack thereof, of security video cameras and CCTV monitoring on cruise vessels caused or contributed to the injury/incident. These claims have generally taken two forms: (1) alleging failure to monitor CCTV systems; and/or (2) alleging noncompliance with the CVSSA. Both types of claims have been rejected to date.

The leading case on failure to monitor is *Mizener v. Carnival Corp.*, No. 05-22965, 2006 U.S. Dist. LEXIS 44332 (S.D. Fla. July 16, 2006). There, a passenger disappeared while traveling on the *Carnival Pride* and was presumed to have gone overboard. The personal representative argued that by placing video cameras aboard its vessel, Carnival voluntarily assumed a duty (i.e., the so-called "undertaker doctrine") to monitor the cameras at all times and to protect the safety of its passengers. *Mizener*, No. 05-CV-22965 [ECF No. 1]. The Court disagreed, finding that no duty to monitor the cameras aboard its vessel existed. *Id.* [ECF No. 24]. District Judge Marcia Cooke concluded that to hold otherwise would, in effect, require cruise lines who installed CCTV to "insure the safety of their passengers or patrons." *Id.*

While *Mizener* predated enactment of the CVSSA, in *Doe v. Royal Caribbean Cruises, Ltd.*, 2011 WL 6727959 (S.D. Fla. Dec. 21, 2011) a post-CVSSA enactment case, a passenger alleged she was sexually assaulted by another passenger who pulled her into a

women's bathroom. The events leading up to the assault were captured on the vessel's CCTV and included her rebuffing two prior attempts to pull her into the bathroom. *Id.* at \*1. This went unnoticed by the vessel's security personnel. The passenger argued that the cruise line breached its duty to assign sufficient personnel to continuously monitor the cameras, in essence, arguing, *inter alia*, that the CVSSA's requirement to maintain video surveillance necessarily implied a requirement to monitor same. Magistrate Judge Jonathan Goodman rejected this argument, adopting *Mizener's* reasoning that "the mere installation of video cameras does not create a duty to monitor them." *Id.* at \*3.

In *Fiorillo v. Carnival Corp.*, 2013 WL 632264 (S.D. Fla. Feb. 20, 2014), a passenger alleged that a crewmember sexually assaulted her as she slept in her stateroom. In a separate count of her complaint, she alleged that the CVSSA created a duty to "maintain an adequate video monitoring system to regulate access by crewmembers to passenger cabins." *Fiorillo*, No. 12-CV-21599 [ECF No. 1]. District Judge James Cohn dismissed the claim, holding that breach of the CVSSA did not create a private right of action. *Id.* [ECF 34]. See also *Perciavalle v. Carnival Corp.*, 2012 WL 2412179 (S.D. Fla. June 26, 2012) at \*2 n.2 ("Although Plaintiff has pled [a violation of CVSSA] as a basis for his spoliation claim, the statute does not appear to create a private cause of action for a failure to report an incident to the FBI.") (emphasis added).

The decisions to date, however, do not appear to completely settle the issue of CVSSA CCTV-based claims. Plaintiffs may still seek to bring negligence claims alleging insufficient and/or inadequate video recording systems. They may attempt to demonstrate that systems are inadequate by establishing non-conformity with the CVSSA. Such claims may seek to circumvent the *Mizener*, *Doe*, and *Fiorillo* decisions by alleging a ship's CCTV system is not reasonable under the circumstances – especially given prior

onboard incident history (i.e., akin to land based negligent security claims). Success on such claims seems less likely given *Mizener* and its progeny, but not altogether impossible, if framed as negligence claims which – rather than relying on the CVSSA to create the duty or cause of action – use it as a statute which creates a benchmark for reasonableness under the circumstances (i.e., violation of a statute as evidence of negligence).

It remains unclear moving forward how courts will treat these types of claims, but it seems likely passengers will continue to assert claims based on failure to follow the CVSSA and its video surveillance requirement.

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<sup>1</sup> The text of the proposed regulations (Federal Register Vol. 80, No. 11 – Cruise Vessel Security and Safety Act of 2010) can be found at the following link: <http://www.uscg.mil/hq/cg5/cg521/docs/80FR2350.pdf>.

The proposed regulations would also require CCTV footage to be "kept for at least 14 days after a voyage, and for 120 days when a serious incident is reported." 80 FED. REG. 11. The proposed regulations describe "serious incidents" to include "sexual assault and the disappearance of passengers at sea." *Id.*