

No. _____

**In The
Supreme Court of the United States**

—◆—
LEIGH ANNE MARSHALL,

Petitioner,

v.

ROYAL CARIBBEAN CRUISES LTD.,
A LIBERIAN CORPORATION,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

—◆—
PETITION FOR A WRIT OF CERTIORARI

—◆—
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QUESTION PRESENTED

1. Whether the United States Court of Appeals for the Eleventh Circuit erred in ruling that a premises owner has no duty to inspect its premises so as to discover dangerous conditions under general maritime law, in contravention of *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 631-32 (1959) and *Fed. Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 416-17 n.18 (1969).

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI**

Petitioner Leigh Anne Marshall respectfully prays that a writ of certiorari issue to review the judgment below.



OPINION BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at appendix A to this petition. The court's opinion is published at 706 F. App'x 620 (11th Cir. 2017).



JURISDICTION

The United States Court of Appeals for the Eleventh Circuit issued its decision on November 30, 2017. A copy is attached at appendix A. The United States Court of Appeals for the Eleventh Circuit entered final judgment on the appeal on November 30, 2017. A copy of the judgment is attached at appendix B. On December 20, 2017, Petitioner filed a petition for panel rehearing. On January 23, 2018, the United States Court of Appeals for the Eleventh Circuit denied this petition for panel rehearing. A copy of the order denying rehearing is attached at appendix C. Petitioner's petition for writ of certiorari is timely under Supreme Court Rule 14(3). The jurisdiction of this Court is invoked

under 28 U.S.C. § 1254(1). The United States Court of Appeals for the Eleventh Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 because the district court granted summary judgment and final judgment was entered in favor of RCCL on January 6, 2017, which disposed of all parties' claims. A copy of the district court judgment is attached at appendix D. Ms. Marshall timely filed her notice of appeal of the final judgment on January 16, 2017. A copy of the notice of appeal is attached at appendix E. The basis for the jurisdiction of the district court was diversity of citizenship under 28 U.S.C. § 1332. Appellant/Petitioner Leigh Anne Marshall ("Ms. Marshall"), a citizen of the State of Georgia, sued Appellee/Respondent Royal Caribbean Cruises Ltd. ("RCCL"), a citizen of the State of Florida, for negligence in this controversy seeking over \$75,000 in damages. A copy of petitioner's second amended complaint is attached at appendix F.¹ The district court also had admiralty jurisdiction under 28 U.S.C. § 1333.



¹ The United States Court of Appeals for the Eleventh Circuit issued a jurisdictional question due to Ms. Marshall not sufficiently alleging RCCL's Florida citizenship, and Ms. Marshall subsequently submitted a motion to amend her complaint to the Eleventh Circuit, which the Eleventh Circuit granted, allowing the appeal to proceed.

STATEMENT OF THE CASE

On March 5, 2016, Appellant/Petitioner, Leigh Anne Marshall (“Ms. Marshall”), was aboard Appellee/Respondent’s, Royal Caribbean Cruises, Ltd.’s (“RCCL”), vessel, the *Enchantment of the Seas*. Ms. Marshall was attending a ship-sponsored party on deck four. However, due to inclement weather, the party was relocated to the Viking Crown Lounge. While searching for the area where the party was relocated, Ms. Marshall’s niece noticed a staircase leading to the Viking Crown Lounge. After Ms. Marshall walked to the top of the stairway, someone in her group tried to open the door, but it was locked. When Ms. Marshall went back down the stairs, she stepped off the last step onto the deck. Unbeknownst to her, there was a wet spot right where she stepped onto the deck, which she could not see due to inadequate lighting on this spot. As a result, her right foot slipped and rolled, causing her to fall and sustain severe injuries.

Ms. Marshall’s expert engineer and University of Miami engineering professor, Dr. Francisco De Caso Basalo, performed an inspection of the *Enchantment of the Seas* in the area where Ms. Marshall fell. His inspection revealed that the last step of the staircase where Ms. Marshall fell had a degree of elevation that was “dangerously higher” than the degree of elevation between the steps above it. Furthermore, Dr. De Caso found that the deck surface failed to meet the minimum 0.60 coefficient of friction when wet.

RCCL had a legal obligation under general maritime law to inspect these exterior stairs and discover these dangerous conditions, and then to correct them or to enact safety measures to address them (such as keeping the deck and steps reasonably dry after a day of intermittent rain, providing adequate lighting at nighttime, roping off the base of external, exit-only stairways, or, at least, warning its passengers to watch their step and to be aware of these dangerous conditions). However, RCCL either did not adequately inspect the stairs, or it inspected them and knew about these dangerous conditions, but did not enact adequate safety measures to address them. On March 30, 2016, Ms. Marshall filed suit. On January 1, 2017, the district court granted RCCL's motion for summary judgment, finding, in essence, that RCCL had no duty to inspect its ship and discover these dangerous conditions Ms. Marshall encountered, and no duty to subsequently address them adequately or to at least warn passengers of them. The district court's ruling was a departure from longstanding principles of premises liability, and as this Honorable Court has not addressed these principles under general maritime law for almost fifty years, and as the cruise industry has since grown into a billion dollar industry where millions of people cruise each year, certiorari review is proper.



REASON FOR GRANTING THE PETITION

I.

THIS HONORABLE COURT SHOULD GRANT THIS WRIT TO DECIDE WHETHER A PREMISES OWNER CAN BE FOUND LIABLE FOR FAILING TO DISCOVER DANGEROUS CONDITIONS UNDER GENERAL MARITIME LAW.

The compelling reason in this case to grant certiorari is because “a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, **or has decided an important federal question in a way that conflicts with relevant decisions of this Court.**” U.S. Sup. Ct. R. 10(c) (emphasis added). Furthermore, certiorari has been granted where the case presents novel questions as to interplay of state and maritime law. *Kossick v. United Fruit Co.*, 365 U.S. 731, 733, 81 S. Ct. 886, 889, 6 L. Ed. 2d 56 (1961).

“[T]he occupier of a ship[] ‘owes certain duties of care to a business invitee, . . . including the duty not to cause injury by negligent activity, the duty to warn of latent perils actually known to the occupier, **and the duty to inspect the premises to discover dangerous conditions.**’” *Fed. Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 416-17 n.18 (1969) (emphasis added) (citations omitted). While the distinction between invitees and licensees has been abolished in maritime law, *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 631-32 (1959), the effect of this abolishment is that individuals who

would have been common-law licensees are treated effectively the same as common-law invitees, not the other way around. *See id.* at 629.

Since RCCL has a duty to inspect its premises so as to discover dangerous conditions, in cases involving permanent structures or design defects, Florida law does not recognize a defense of lack of knowledge of a dangerous condition by an owner as to its own maintenance of its own property. *Di Mare & Drews, Inc. v. Kerrigan*, 810 So.2d 1066, 1069-70 (Fla. 4th DCA 2002). Furthermore, in *Owens v. Publix Supermarkets Inc.*, 802 So.2d 315, 320 (Fla. 2001), the Florida Supreme Court effectively abrogated the entire lack of knowledge defense in slip-and-fall cases devoid of foreign substances, finding “actual or constructive knowledge is irrelevant for dangerous conditions that are not transitory, foreign substances (i.e., the typical banana peel case), if ample evidence of negligent maintenance can be shown.” *Id.*; *see also Mabrey v. Carnival Cruise Lines, Inc.*, 438 So.2d 937, 938 (Fla. 3d DCA 1983).

RCCL did not dispute that Ms. Marshall was a lawfully paying passenger on its ship, the *Enchantment of the Seas*. Nevertheless, the United States Court of Appeals for the Eleventh Circuit found that “Royal Caribbean had no duty to protect Ms. Marshall from any dangerous condition of which it had no actual or constructive notice.” *Marshall v. Royal Caribbean Cruises, Ltd.*, 706 F. App’x 620, 621 (11th Cir. 2017) (“a cruise line cannot be held liable for an alleged improper design if the plaintiff does not establish that the

ship-owner or operator was responsible for the alleged improper design”) (citing *Thomas v. NCL (Bahamas), Ltd.*, 203 F. Supp. 3d 1189, 1194 (S.D. Fla. 2016)). However, RCCL’s duty to discover dangerous conditions only makes sense if it can be held accountable precisely in circumstances where it does not know of them, and whether RCCL created these dangerous conditions is immaterial in this regard.

Therefore, there is a conflict between the ruling by the United States Court of Appeals for the Eleventh Circuit in this case and *Kermarec*, as well as *Fed. Marine Terminals, Inc.* Alternatively, there is at least an important question of federal law as to whether premises owners have a duty to inspect their premises so as to discover dangerous conditions. Under either scenario, certiorari review is proper.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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