

No. 17-1697

In The
Supreme Court of the United States

LEIGH ANNE MARSHALL,

Petitioner,

v.

ROYAL CARIBBEAN CRUISES LTD.,

Respondent.

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

**BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI**

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**RESTATEMENT OF THE
QUESTION PRESENTED**

Whether the Eleventh Circuit Court of Appeals' confirmation that Respondent had no duty to warn Petitioner of an open and obvious condition, nor a duty to protect Petitioner from an allegedly dangerous condition of which it had no actual or constructive notice, conflicts with prior Supreme Court precedent or presents a novel question as to the interplay of state and maritime law.

CORPORATE DISCLOSURE STATEMENT

Pursuant to S. Ct. R. 29.6, undersigned counsel certifies that Respondent, ROYAL CARIBBEAN CRUISES LTD., is a publicly traded company and no other publicly held corporation owns more than 10 percent of its stock.

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INTRODUCTION

Petitioner seeks a Writ of Certiorari under two alternative bases. Both fail and do not warrant this Court's review of the Eleventh Circuit's decision below.

First, Petitioner seeks this Court's review based on a contention that the Eleventh Circuit's decision below conflicts with prior decisions of this Court. On this point, Petitioner's Writ rests on a seriously flawed interpretation of this Court's prior opinions. While Petitioner argues *Fed. Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 416-17, n.18 (1969) imposes a duty on a shipowner to inspect and discover dangerous conditions, the Court in *Fed. Marine Terminals* never imposed such a duty. As such, Petitioner's Writ seeks to manufacture conflict and re-define the standard of care shipowners owe its passengers to resemble strict liability.

Second, Petitioner seeks this Court's review based on a contention that the Eleventh Circuit's decision presents a novel question as to the interplay of state and maritime law. However, under the facts of this case, the Eleventh Circuit's decision does not conflict with Florida law.

In sum, this Court's traditional standards for the exercise of certiorari jurisdiction leads to the conclusion that review is not warranted here. The Eleventh Circuit below did not deviate from Supreme Court precedent, and the Eleventh Circuit's decision does not present a novel question as to the interplay of state

and maritime law. For the reasons set forth below, Petitioner's Writ of Certiorari should be denied.

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BASIS FOR JURISDICTION

The Court of Appeals' opinion is reported at 706 Fed.Appx 620 (11th Cir. 2017). *See also* (Pet. App. Ex. A). The Court of Appeals' Order denying the petition for rehearing was entered on January 23, 2018 (Pet. App. Ex. C). The District Court's findings of fact and conclusions of law are reported at 2017 WL 5308902 (S.D. Fla. Jan. 6, 2017) (Pet. App. Ex. D). This Petition for Certiorari was filed on June 20, 2018. 28 U.S.C. § 1254(1) allows the Court to consider whether certiorari should be granted.

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COUNTERSTATEMENT OF THE CASE

This case involves a routine bodily injury claim in which Petitioner, LEIGH ANNE MARSHALL, fell while descending stairs while aboard Respondent ROYAL CARRIBEAN CRUISES LTD.'s cruise ship, the *Enchantment of the Seas*. Pet. App. Ex. D, at App. 7. Petitioner claims that a dangerously slippery condition created by excess rainwater located at the base of an exterior stairway caused her to fall and injure her leg. *See* Pet., pg. 3.

The undisputed record evidence established that:
(1) it had been raining on and off the entire day of

Petitioner's incident (Pet. App. Ex. D, at App. 7); (2) Petitioner had been drinking a variety of alcoholic beverages throughout the day and into the evening (*id.*); and (3) the wet condition of the deck was open and obvious, which Petitioner could have perceived through the ordinary use of her senses (*id.* at App. 15-17). For those reasons, the District Court merely followed existing precedent and confirmed that Respondent had no duty to warn Petitioner of the open and obvious condition posed by the rainwater on the exterior deck. *Id.* at App. 17.

Given the District Court's finding above, it did not need to address Petitioner's argument that Respondent had notice of the allegedly dangerous condition created by the rainwater on the external deck. *Id.* Nonetheless, as an additional basis for granting summary judgment, the Court also noted that the record was devoid of any evidence that Respondent had actual or constructive notice of the allegedly dangerously "slippery" wet deck. *Id.* at App. 17-21.

Petitioner also argued that she fell because of an alleged latent height variance between the last step and the deck flooring, as compared to other steps. *Id.* at App. 21. However, undisputed record evidence established that Respondent did not design the stairs. *Id.* at App. 23-24. Therefore, Respondent could not be liable for the allegedly defective stair design as a matter of law. *Id.* For these reasons, the District Court correctly entered summary judgment in Respondent's favor, and the Eleventh Circuit properly affirmed.

At its core, Petitioner simply takes issue with the Eleventh Circuit's affirmance of the District Court's finding that Respondent had no duty to warn her of an open and obvious condition (*i.e.* rainwater on the external deck), and no duty to protect her from an allegedly dangerous condition of which it had no actual or constructive notice (*i.e.* the allegedly dangerous condition created by the rainwater). Likewise, Petitioner is simply attempting to vicariously impose liability on Respondent for an allegedly defective design (*i.e.* an alleged latent height variance between a stair step and the deck floor), which it did not create. The Eleventh Circuit agreed with the District Court that based on the undisputed facts and evidence, summary judgment in Respondent's favor was proper. Pet. App. Ex. A.



REASONS FOR DENYING THE PETITION

Petitioner has not identified an issue of law warranting the Court's review. First, the Eleventh Circuit's opinion did not decide an important question that conflicts with any relevant decision of this Court. Second, this case does not present a novel question as to the interplay of state and maritime law. For the following reasons, Petitioner's Writ of Certiorari should be denied.

I. THE ELEVENTH CIRCUIT’S DECISION DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT.

Under general maritime law, it is well-established that the duty of care a carrier owes to its passengers is “reasonable care under the circumstances of each case.” *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 632 (1959). This is exactly the standard of care the Eleventh Circuit applied in this case when it held that Respondent had no duty to warn Petitioner of open and obvious conditions and no duty to protect her from allegedly dangerous conditions of which it had no actual or constructive notice. *See* Pet. App. A, at App. 3 (citing *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989)).¹

¹ In *Keefe v. Bahama Cruise Line, Inc.*, the Eleventh Circuit, interpreting *Kermarec*, held that:

... the benchmark against which a shipowner’s behavior must be measured is ordinary reasonable care under the circumstances, a standard which requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition, at least where, as here, the menace is one commonly encountered on land and not clearly linked to nautical adventure.

867 F.2d 1318, 1322 (11th Cir. 1989).

In this case, Petitioner slipped on an exterior deck while coming down stairs after it had been raining throughout the day, and after she had been drinking alcohol throughout the day. Wet walking surfaces and the alleged difference in stair riser heights between two steps were conditions Petitioner had encountered on land in her lifetime and were not conditions “clearly linked to a nautical adventure.”

Therefore, Petitioner’s Writ fails insofar as it is premised on a position that Respondent owed Petitioner “a duty to inspect its premises so as to discover dangerous conditions. . . .” Pet., pg. 6.

Petitioner’s reliance on *Fed. Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404, 416-17, n.18 (1969) to argue Respondent had such a duty is misplaced. This Court in *Fed. Marine Terminals, Inc. never held* that a shipowner owed a duty to its passengers to inspect its premises to discover dangerous conditions. *See id.* at 417 (“**We hold only that** federal maritime law does impose on the shipowner a duty to the stevedoring contractor of **due care under the circumstances. . . .**”) (emphasis added). *See also Scindia Steam Nav. Co. Ltd. v. De Los Santos*, 451 U.S. 156, 163, n.10 (1981) (discussing a shipowner’s duty of care and explaining that the standard is one of “ . . . reasonable care under the circumstances of each case”) (citing *Kermarec*, 358 U.S. at 632).²

Petitioner’s argument that “the Eleventh Circuit erred in ruling that a premises owner has no duty to inspect its premises so as to discover dangerous conditions” (Pet., pg. i), is simply an attempt to manufacture conflict where none exists. To be sure, the Eleventh Circuit did not base its ruling on any alleged “duty to inspect,” but instead on well-established law that a shipowner has no duty to warn its passengers of

² *Fed. Marine Terminals* reaffirmed the *Kermarec* standard while interpreting the duty of care a shipowner owes to a stevedore. This is an obvious distinguishing factor that Petitioner omits from her brief.

open and obvious conditions, and has no duty to protect them from allegedly dangerous conditions of which it has no actual or constructive knowledge.

Indeed, the standard of care Petitioner argues the Court should now craft is something akin to strict liability. *See* Pet., pg. 7 (“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.”) (*italics added*). It should be clear that Petitioner has misconstrued this Court’s well-established law providing the general duty of care shipowners owe their passengers, *i.e.* *Kermarec*, 385 U.S. at 632, to make her primary argument to the Court, and has simply attempted to manufacture conflict where none exists.

In light of the above authorities, the standard of care a shipowner owes its passengers is well-entrenched. In this case, the Eleventh Circuit followed binding precedent interpreting that duty of care and reached the correct result. As such, Petitioner’s position that the Eleventh Circuit’s opinion in the instant case “conflicts with relevant decisions of this Court” is erroneous.

II. THIS CASE DOES NOT PRESENT A NOVEL QUESTION AS TO THE INTERPLAY OF STATE AND MARITIME LAW.

Petitioner's second reason for this Court's review also fails. As explained above, Respondent did not owe Petitioner a duty to search out and discover latent conditions (here, the allegedly dangerous condition of the exterior deck posed by rainwater and the alleged latent height variance in stair elevation between a stair step and the ground floor); therefore, the Eleventh Circuit's ruling in this case does not present any conflict with Florida law.

Notwithstanding, the first allegedly dangerous condition Petitioner attempted to hold Respondent liable for was the allegedly dangerous "slippery" condition of the deck created by rainwater. That is a "transitory condition" – so even under Florida law, Respondent's alleged notice of that dangerous condition is an absolute prerequisite to imposing liability. *See Owens v. Publix Supermarkets Inc.*, 802 So.2d 315, 320 (Fla. 2001) (" . . . when a person slips and falls on a transitory foreign substance, the rule has developed that the injured person must prove that the premises owner had actual knowledge or constructive knowledge of the dangerous condition . . . ").

The second allegedly dangerous condition for which Petitioner attempted to hold Respondent liable was the alleged latent height variance in stair elevation between the last step and the deck surface as compared to the height between the other steps. Again,

even under Florida law, notice of the allegedly dangerous condition posed by variance in step heights would be a prerequisite to imposing liability on Respondent because that alleged condition is latent and has nothing to do with negligent maintenance of the stairway. *See id.* at 323 (“[A]ctual or constructive knowledge is irrelevant in cases not involving transitory, foreign substances (i.e. the typical banana peel case), if ample evidence of negligent maintenance can be shown.”) (citing *Mabrey v. Carnival Cruise Lines, Inc.*, 438 So.2d 937, 938 (Fla. 3d DCA 1983)).

In light of the above analysis, this case does not present a novel question as to the interplay of state and maritime law. Therefore, this Court should deny Petitioner’s request for review.

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CONCLUSION

The District Court applied well-entrenched law on the issue of Respondent’s duty of care and found that Respondent did not breach any duty of care owed to Petitioner. The Eleventh Circuit likewise applied well-established law in this Circuit and properly affirmed the District Court’s decision.

Petitioner completely fails to identify how the Eleventh Circuit’s opinion conflicts with prior decisions of this Court, as Petitioner’s Writ for Certiorari rests on a seriously flawed interpretation of this Court’s prior opinions. Moreover, the Eleventh

Circuit's opinion does not present any novel question as to the interplay of state and maritime law.

For the reasons set forth above, Respondent respectfully requests that this Court deny Petitioner's Writ of Certiorari.

Respectfully submitted,

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