

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

GARY WALSH,

Plaintiff,

v.

PANAMA CRUISES, LTD.,

Defendant.

COMPLAINT

Plaintiff, Gary Walsh (“Walsh”), brings this action against Defendant, Panama Cruises, LTD. (“Panama Cruises”), for negligence and negligent maintenance, and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Walsh is an individual over the age of eighteen who resides in Miami, Florida.
2. Panama Cruises is incorporated under the laws of the Republic of Panama, with its principal place of business in Miami-Dade County, Florida.
3. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 because (a) the amount in controversy exceeds \$75,000, exclusive of interest and costs; and (b) this is a civil action between a citizen of Florida and a citizen of a foreign state. Additionally, this Court has maritime or admiralty jurisdiction under 28 U.S.C. § 1333 because this case arises out of an accident that occurred on the navigable waters of the United States.

4. Venue is proper in the Southern District of Florida because the venue selection clause in the passenger ticket that Walsh purchased from Panama Cruises requires that he file suit in federal court in Miami-Dade County, Florida.

5. All conditions precedent to this action have been performed or waived.

FACTUAL ALLEGATIONS

6. Walsh is a student at the University of Miami School of Law (“Miami Law”).

7. Panama Cruises operates and conducts business in Florida. Specifically, Panama Cruises provides vacation cruises aboard its vessel, the *Odyssey*. At all material times, Panama Cruises owned, operated, managed, maintained, and controlled the *Odyssey*.

8. At the conclusion of Walsh’s first semester at Miami Law, he purchased a ticket for a three-day cruise aboard the *Odyssey*.

9. On December 21-24, 2018, Walsh and his girlfriend, Selina Meyer (“Meyer”), were fare-paying passengers on the *Odyssey* cruise that departed from the Port of Miami and sailed to the Florida Keys on navigable waters.

10. On December 23, 2018, Walsh and Meyer visited the spa aboard the *Odyssey* to exercise and relax. One of the spa attendants showed them the amenities and invited them to relax in the sauna. The attendant recommended that Walsh and Meyer wear their bathing suits while inside the sauna.

11. Consistent with the attendant’s guidance, Walsh and Meyer wore their bathing suits while inside the sauna. Additionally, Meyer wore sandals and a towel that covered her waist, hips, and legs. Walsh and Meyer sat on the wooden benches inside the sauna for approximately twenty minutes (8:00-8:20 p.m.). Walsh began to feel heat and pain along his legs and feet, so he walked out of the sauna.

12. Upon exiting the sauna, Walsh realized that the skin on the soles of his feet and along the backs of his thighs and calves—the areas that had been exposed to the seating and flooring materials in the sauna—was red and blistering.

13. Walsh immediately sought treatment at the medical office aboard the *Odyssey*. While being treated, Walsh learned that the ship's medical staff had previously treated other passengers for similar injuries. Specifically, he learned that two passengers suffered burns after spending time in the sauna aboard the *Odyssey* in November and December 2018.

14. Given the severity of Walsh's burns, the ship's medical staff arranged to have an ambulance meet the ship at the Port of Miami to transport Walsh to Jackson Memorial Hospital. Walsh was hospitalized for approximately three weeks, during which doctors performed surgery and related procedures to remove dead and damaged tissue from Walsh's legs and feet. The burns on Walsh's legs and feet became infected and gangrenous. The infection spread through Walsh's body; Walsh suffered kidney failure, among other complications.

15. Walsh was released from the hospital on January 12, 2019, with orders for continuing medical treatment and physical therapy. Given his therapy schedule, deteriorated physical condition, and emotional distress, Walsh could not begin his second semester at Miami Law. He obtained a medical leave of absence.

16. Panama Cruises selected the flooring and seating materials that were installed in the sauna aboard the *Odyssey*. Specifically, Panama Cruises selected a synthetic material distributed and sold under the brand name "SyntheTeak."

17. By December 23, 2018, Panama Cruises had actual or constructive notice that SyntheTeak tended to become unreasonably and dangerously hot.

COUNT I: NEGLIGENCE

18. Walsh incorporates and reasserts the allegations contained in paragraphs 1 through 17 as if fully set forth herein.

19. Panama Cruises owes its passengers a duty of reasonable care. Panama Cruises breached that duty in one or more of the following ways:

(A) Panama Cruises created a dangerous condition, or permitted a dangerous condition to be created, when it built or installed a sauna with flooring and seating materials that become dangerously hot.

(B) Panama Cruises knew about the dangerous condition, or should have known about it, because it existed for a sufficient time period during which cruise passengers were injured by the unreasonably hot materials in the sauna.

(C) Panama Cruises failed to eliminate the dangerous condition by, for example, replacing the SyntheTeak with safer materials or preventing passengers from using the sauna.

(D) Panama Cruises failed to warn passengers, such as Walsh and Meyer, about the sauna's unreasonably hot flooring and seating surfaces.

20. The instrumentality that caused Walsh's injuries—the sauna—was under the exclusive control of Panama Cruises.

21. Walsh suffered injuries as a direct and proximate result of Panama Cruises' negligence. Walsh has suffered physical injuries, disfigurement, pain and suffering, mental anguish, loss of enjoyment of life, and loss of earnings. Walsh has incurred, and will continue to incur, medical expenses for the care and treatment of his injuries, which have been diagnosed as

permanent or continuing in nature. Walsh's injuries are not of a type that would ordinarily occur in the absence of negligence.

WHEREFORE, the Plaintiff, Gary Walsh, demands that judgment be entered against the Defendant, Panama Cruises, awarding Walsh compensatory damages in excess of \$75,000. Walsh further demands a trial by jury of all issues so triable.

COUNT II: NEGLIGENT MAINTENANCE

22. Walsh incorporates and reasserts the allegations contained in paragraphs 1 through 17 as if fully set forth herein.

23. Panama Cruises owes its passengers a duty of reasonable care.

24. Panama Cruises breached that duty by failing to implement and follow proper policies and procedures for the maintenance, inspection, and safety of the synthetic material in the sauna—a place in which passengers are expected to walk barefoot and sit with minimal clothing.

25. Panama Cruises knew or should have known that the synthetic material it selected and installed in its sauna would become unreasonably and dangerously hot.

26. Panama Cruises failed to close the sauna or install protective surfaces to protect passengers from the dangerously hot synthetic material in the sauna.

27. Panama Cruises failed to properly train and supervise its crew members and employees to properly maintain the sauna to avoid dangerously hot conditions.

28. Panama Cruises breached its duty of care in other ways that will be determined through discovery as the Plaintiff's attorneys and expert witnesses are given access to the sauna in which Walsh was injured.

29. Walsh suffered injuries as a direct and proximate result of Panama Cruises' negligent maintenance. Walsh has suffered physical injuries, disfigurement, pain and suffering,

mental anguish, loss of enjoyment of life, and loss of earnings. Walsh has incurred, and will continue to incur, medical expenses for the care and treatment of his injuries, which have been diagnosed as permanent or continuing in nature. Walsh's injuries are not of a type that would ordinarily occur in the absence of negligence.

WHEREFORE, the Plaintiff, Gary Walsh, demands that judgment be entered against the Defendant, Panama Cruises, awarding Walsh compensatory damages in excess of \$75,000. Walsh further demands a trial by jury of all issues so triable.

Dated: February 22, 2019.

Respectfully Submitted,

Stephanie Perez

Stephanie Perez, Esq.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 19-1929-CIV-ANTON/RAMOS

GARY WALSH,

Plaintiff,

v.

PANAMA CRUISES, LTD.,

Defendant.

ANSWER AND AFFIRMATIVE DEFENSES

Panama Cruises, LTD. (“Panama Cruises”), responds to the Complaint and states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Panama Cruises lacks sufficient knowledge, and thus denies the allegations.
2. Admitted.
3. Panama Cruises admits that this Court has subject matter jurisdiction over this action.
4. Panama Cruises admits that venue is proper in the Southern District of Florida.
5. Denied.

FACTUAL ALLEGATIONS

6. Panama Cruises lacks sufficient knowledge, and thus denies the allegations.
7. Panama Cruises admits, for purposes of this litigation only, that it conducts business in Florida and offers vacation cruises aboard its vessel, the *Odyssey*.

8. Panama Cruises admits that the Plaintiff purchased a ticket for a three-day cruise aboard the *Odyssey*.

9. Admitted.

10. Panama Cruises lacks sufficient knowledge, and thus denies the allegations.

11. Panama Cruises lacks sufficient knowledge, and thus denies the allegations.

12. Panama Cruises lacks sufficient knowledge, and thus denies the allegations.

13. Panama Cruises admits that the Plaintiff sought treatment at the medical office aboard the *Odyssey*. Panama Cruises denies all remaining allegations in paragraph 13.

14. Panama Cruises admits that the *Odyssey*'s medical staff arranged to have an ambulance meet the ship at the Port of Miami to transport the Plaintiff to Jackson Memorial Hospital. Panama Cruises lacks sufficient knowledge regarding the remaining allegations in paragraph 14, and thus denies them.

15. Panama Cruises lacks sufficient knowledge, and thus denies the allegations.

16. Admitted.

17. Denied.

COUNT I: NEGLIGENCE

18. Panama Cruises adopts and incorporates its responses to the allegations in paragraphs 1 through 17 as if fully set forth herein.

19. Panama Cruises admits that it owes its passengers a duty of reasonable care under the circumstances. Panama Cruises denies the remaining allegations in paragraph 19, including subparts A through D.

20. Denied.

21. Denied.

Panama Cruises denies that the Plaintiff is entitled to the relief sought in the wherefore clause.

COUNT II: NEGLIGENT MAINTENANCE

22. Panama Cruises adopts and incorporates its responses to the allegations in paragraphs 1 through 17 as if fully set forth herein.

23. Panama Cruises admits that it owes its passengers a duty of reasonable care under the circumstances.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

Panama Cruises denies that the Plaintiff is entitled to the relief requested in the wherefore clause.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's own negligence was the sole proximate cause of his injuries and damages, and thus any damages are barred as a matter of law. Alternatively, the Plaintiff's own negligence contributed to the subject incident and his injuries, and thus any award to the Plaintiff must be reduced under the principles of comparative negligence.

SECOND AFFIRMATIVE DEFENSE

This action is governed by and subject to the terms, limitations, and conditions contained in the contract for passage that the Plaintiff purchased from the Defendant.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff failed to mitigate his damages. The Plaintiff may have failed to seek or obtain appropriate medical treatment or may have failed to follow the advice of his medical treatment providers. The Plaintiff may have undergone unnecessary medical treatment, or may have unnecessarily incurred excessive or unreasonable medical expenses. Therefore, the Plaintiff's recovery, if any, should be reduced accordingly.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are governed by maritime law, and any recovery is limited by general maritime law.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiff's injuries, illness, and condition (if any) were preexisting. If any preexisting injury, illness, or condition was aggravated by the alleged incident, the Plaintiff is entitled to recovery solely for any degree of aggravation.

SIXTH AFFIRMATIVE DEFENSE

Any recovery is barred because the allegedly dangerous condition was open and obvious; as such, it should have been observed by the Plaintiff through the ordinary use of his senses.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's claims are barred because the Plaintiff knew of the existence of the alleged danger, realized and appreciated the possibility of injury arising from the danger, and voluntarily exposed himself to it despite a reasonable opportunity to avoid it.

EIGHTH AFFIRMATIVE DEFENSE

The Defendant is entitled to a set-off for any and all collateral source benefits paid or payable to the Plaintiff.

NINTH AFFIRMATIVE DEFENSE

The Defendant had no actual or constructive notice of the dangerous condition alleged by the Plaintiff. The alleged condition did not exist for a sufficient length of time such that Defendant could have learned of it or taken action to remedy it. As such, the Defendant cannot be held liable.

TENTH AFFIRMATIVE DEFENSE

The Defendant had no duty to protect the Plaintiff from the incident and injuries alleged in the Complaint, as they resulted from intervening, independent, superseding, or unforeseeable causes.

ELEVENTH AFFIRMATIVE DEFENSE

Any recovery is barred because the Plaintiff failed to reasonably exercise care and diligence to avoid loss and minimize damages. The Plaintiff had the last clear chance to avoid the alleged danger.

TWELFTH AFFIRMATIVE DEFENSE

The Plaintiff assumed the risk by knowingly and voluntarily exposing himself or consenting to the dangerous condition alleged in the Complaint. The Plaintiff was apprised of the existence of any alleged danger and the risk of possible injury, and he was given a reasonable opportunity to avoid same.

THIRTEENTH AFFIRMATIVE DEFENSE

Any recovery is barred because the Plaintiff executed a valid waiver before entering the sauna in question. The Defendant is, therefore, released from any claims and liability.

FOURTHEENTH AFFIRMATIVE DEFENSE

The Plaintiff's alleged damages, if any, were caused by the actions or omissions of third parties. To the extent that multiple joint tortfeasors are potentially liable for the Plaintiff's injuries, each tortfeasor's share of fault should be determined by the jury, and any recovery against the Defendant must be reduced by the amount of fault apportioned to such third parties.

Respectfully Submitted,

Julian Cohen

Julian Cohen, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I ALSO CERTIFY that the foregoing document is being served on this day on all counsel of record, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

/s/ Julian Cohen
THE COHEN LAW FIRM
juliancohenlawfirm@gmail.com
Florida Bar No. 956320

EXCERPTS FROM DEPOSITION TRANSCRIPT OF GARY WALSH

June 3, 2019
Offices of Star Court Reporting Company
Miami, Florida

APPEARANCES:

Ms. Stephanie Perez, on behalf of Plaintiff Gary Walsh
Julian Cohen on behalf of Defendant Panama Cruises, Ltd.

Page 1

1 COURT REPORTER: Please raise your right hand. Do you solemnly swear to tell
2 the truth, the whole truth, and nothing but the truth, so help
3 you God?
4 THE WITNESS: I do.
5 JULIAN COHEN: Good morning. Please state your name for the record.
6 THE WITNESS: My name is Gary Walsh.
7 Q. What is your date of birth?
8 A. April 9, 1995.
9 Q. Where do you currently live?
10 A. 755 Laguna Avenue, Coral Gables, Florida 33146.
11 *[testimony omitted]*

Page 2

1 Q. What is your educational background?
2 A. I graduated from the University of Colorado in 2018. I
3 started the University of Miami School of Law in the Fall of
4 2018. I was able to finish my first semester of law school. I
5 did really well. All A's and one B+.
6 Q. Let's discuss the cruise. When did you go on the cruise?
7 A. My girlfriend, Selina, and I went on the *Odyssey* cruise after
8 law school finals for a long weekend in December. We
9 needed time away to decompress after a long semester.
10 Q. Had you ever been on a cruise before?
11 A. No.
12 Q. How did you spend your time on the cruise?
13 A: We ate. A lot. There was food everywhere. I couldn't believe
14 it. After a day of just eating, Selina and I decided we needed
15 to be more active. Selina is obsessed with health and fitness.
16 We took some fitness classes during the day and saw some
17 shows at night. We also participated in fun activities when
18 the ship docked. The jet-skiing and ATV excursions were
19 incredible.

20 Q. Did you visit the spa on the *Odyssey*?

21 A. Yes, on our last full day, December 23. I bought Selina a
22 massage as part of her Christmas gift. We worked out
23 together, and I got a smoothie while Selina had her massage.
24 After her massage, Selina convinced me to join her in the
25 sauna in the spa area before dinner and the evening comedy
26 show.

27 Q. You said “convinced.” Were you hesitant to go in the sauna?

28 A. I am not really a spa-person; I also do not enjoy being really
29 hot. I like mountains, snow, and cold weather sports. My
30 parents moved to Florida, and I ended up following them for
31 law school. But, if the truth be told, I really prefer the colder
32 weather over the heat and humidity in Florida.

33 Q. If you don’t like being hot, why did you end up going in the
34 sauna?

35 A. Selina loves to spend time in saunas. She has one in her
36 building at home and uses it several times a week. She
37 always asks me to join her; I just never wanted to. But we
38 were on vacation on a nice ship and the sauna was co-ed, so
39 I thought I would give it a go.

40 Q. Did you have any alcohol before entering the sauna?

41 A. No, I was coming from the gym. We were planning to get
42 drinks after the spa, before dinner.

43 Q. Was any part of your body sunburnt on December 23?

44 A. No. Being from Colorado and living in Miami, I am overly
45 cautious about not having too much sun exposure.

46 Q. Before December 23, had you ever been in a sauna?

47 A. Steam-room, yes; and hated it. Sauna, no. As I said, the heat
48 is not really my thing.

49 Q. Did a spa attendant help you in the spa?

50 A. Not really; Selina told me what to do. I just followed Selina’s
51 lead. The attendant only showed us around and pointed out
52 where the sauna was located. The attendant also suggested
53 we wear bathing suits for covering while inside the sauna
54 area. I assumed that was because the sauna is co-ed, and
55 well, you know, it would be awkward if people didn’t cover
56 themselves.

57 Q. Did you wear a bathing suit inside the sauna?

58 A. Yes, of course. So did Selina.

59 Q. Did you wear anything else?

60 A. No.

61 Q. What about Selina?

62 A. She wore the spa flip flops from her spa locker and a towel
63 around her waist; the towel was huge. It practically went to
64 the floor.

65 *[testimony omitted]*

Page 5

- 1 Q. Why didn't you use a towel?
2 A. There was only one left, I guess because it was so late in the
3 day. I let Selina use it.
4 Q. Why didn't you ask the spa attendant for a towel?
5 A. I didn't think I needed one, plus the attendant left the area
6 for a while after showing us around.
7 Q. You didn't wear slippers or flip-flops of any kind in the
8 sauna?
9 A. No, I came from the gym and only had my sneakers with me.
10 My locker didn't have any flip-flops, so I just went in
11 barefoot. I didn't see any sign that said shoes were required
12 inside the sauna, and no one told me I should wear them.
13 Q. Were there any instructions or warnings regarding using the
14 sauna in the spa?
15 A. I think there was a typical warning sign that said people with
16 certain health conditions should consult with a doctor before
17 entering the spa area. There may have also been some
18 language about not staying in the sauna for too long. And
19 maybe some other language like that. I wasn't really paying
20 too much attention; I was there to relax. I didn't read it
21 carefully. It didn't occur to me that there was a chance I
22 could get burned.
23 Q. When you boarded the cruise, were there any safety
24 announcements?
25 A. Yes, for the first hour or so you could hear certain
26 announcements on the loudspeakers about safety
27 instructions regarding life-vests and fire drills. Similar
28 announcements could also be found on a channel on the
29 televisions in our cabin.
30 Q. Were there any warnings in particular about the use of the
31 spa facilities on the *Odyssey*?
32 A. There was a video that ran on the televisions in the cabins
33 that discussed safety instructions while on the cruise. I don't
34 remember the details, but I think at some point it mentioned
35 something about spa safety and to review the spa instructions
36 before entering and to ask the attendants if you had any
37 questions.
38 *[whereupon a conversation took place off the record]*

Page 6

- 1 Q. How long did you stay in the sauna on the day of the
2 incident?

3 A. The spa area or the actual coffin that the *Odyssey* calls a
4 sauna?
5 JULIAN COHEN: Objection. Move to strike. Just answer the question.
6 A. Selina and I were in the sauna for about 20 minutes.
7 Q. How did you feel when you were in the sauna?
8 A. At first, I felt fine, but then I started to feel hot. Too hot. I
9 got up to look at the thermometer that was on the wall. I am
10 fidgety, and it's hard for me to sit still. Selina finds it so
11 annoying. Anyway, I got up at one point and looked at the
12 thermometer; it was 176 degrees Fahrenheit.
13 Q. Did you feel anything other than "hot?"
14 A. I began to feel pain along my legs and feet. Intense and
15 uncomfortable pain. I couldn't really breathe, and I felt
16 really dizzy.

Page 9

1 Q. How long had you been in the sauna when you started to feel
2 this pain?
3 A. About 10 minutes, I think.
4 Q. Did the attendant come by to check on you and Selina while
5 you were in the sauna?
6 A. Yes, the attendant came by about 5 minutes after we had
7 entered the sauna to check on us.
8 Q. Did you tell the attendant you weren't feeling well?
9 A. No, I was still feeling comfortable at the time. The attendant
10 came by and knocked lightly on the sauna door and peeked
11 through the glass window. The attendant gave us a thumbs-
12 up signal.
13 Q. How did you respond to the attendant's presence at that
14 time?
15 A. I didn't.
16 Q. Did you indicate in any manner, whether verbal or physical,
17 that you weren't feeling well?
18 A. No.
19 Q. Did the attendant come by a second time while you were in
20 the sauna?
21 A. Not that I saw.
22 *[testimony omitted]*

Page 10

1 Q. Earlier you mentioned that you heard some sort of video
2 urging spa patrons to discontinue use of the amenities if you
3 felt dizzy or uncomfortable while using the spa facilities,
4 correct?

5 A. Yes, but I didn't know that what I was feeling was unusual.
6 Selina seemed fine and told me to just relax.
7 Q. So, even though you were extremely hot, uncomfortable, and
8 dizzy, you stayed in the sauna for approximately 20 minutes?
9 A. Yes.
10 Q. You stayed in the sauna even though you were advised to
11 immediately stop use if you felt uncomfortable in any way?
12 A. Yes, as I said, I didn't know that there was something really
13 wrong.
14 Q. What happened when you left the sauna?
15 A. That's when I realized that the skin on my feet and legs was
16 red and blistering. It was so painful.
17 Q. What about Selina? Did she have the same physical
18 reaction?
19 A. No. But, I noticed that her towel was discolored. I wasn't
20 sure what it was, but now I think it was singe marks from the
21 sauna.
22 Q. What did you do when you left the sauna?
23 A. I went into the shower to cool off. I thought it would help.
24 Q. Did it?
25 A. No, it probably made my condition worse.
26 *[testimony omitted]*

Page 11

1 Q. After the shower, did you seek medical treatment?
2 A. Yes, I immediately went to the infirmary on the ship.
3 Q. What did the medical staff in the infirmary tell you?
4 A. They couldn't understand why my burns were so severe.
5 Maybe I stayed in the sauna longer than I should have; I
6 don't know. But one of the nurses told me that two
7 passengers had suffered burns in the same sauna just a few
8 weeks before my injury. I don't know why they would have
9 kept the sauna open if so many people were getting hurt.
10 JULIAN COHEN: Objection. Move to strike. Just answer the question.
11 *[testimony omitted]*

Page 12

1 Q. What happened after you left the infirmary?
2 A. I went back to my room with Selina. I was in excruciating
3 pain, and I really wanted to get off the ship. We were at sea,
4 so I had to wait until the next morning for us to reach the
5 Port of Miami. It seemed like a lifetime. An ambulance was
6 waiting to take me to Jackson Memorial Hospital when the

7 ship arrived at the port. I was hospitalized for several weeks
8 and needed surgery and several procedures to remove the
9 dead and damaged tissue from my legs and feet. It was
10 horrible. And then, to make matters worse, my legs and feet
11 become infected and gangrenous. The infection spread, and
12 I had kidney failure and other problems. My parents were
13 scared I wouldn't make it.
14 Q. Did anyone at the hospital tell you what caused your
15 injuries?
16 A. No one seemed to be sure. They thought there was some sort
17 of issue with my skin making contact with the wood or the
18 oil in the sauna. Someone thought maybe I just stayed in
19 there too long, but that doesn't make sense because Selina
20 was fine. She didn't complain of being too hot or that she
21 was dizzy. Her skin was not affected in any way.
22 Q. You testified that Selina had a towel that covered her waist
23 and legs while she was in the sauna, correct?
24 A. Yes, I already told you that.
25 *[testimony omitted]*

Page 13

1 Q. You also testified that Selina also had flip-flops on her feet
2 while she was in the sauna, correct?
3 A. Again, yes.
4 Q. So, would you agree that Selina followed the spa attendant's
5 instructions to be properly covered while in the sauna, and
6 she suffered no injuries?
7 A. No, I don't agree. The attendant told us to wear bathing suits,
8 which we did. The attendant said nothing about footwear,
9 towels, or anything else.
10 Q. And you would agree that you failed to follow those
11 instructions, and even though you felt sick and dizzy, you
12 stayed in the sauna for approximately 20 minutes with
13 Selina.
14 A. The instructions were unclear. I thought we were supposed
15 to be covered because it was a co-ed facility, not because it
16 was unsafe to have my legs and feet exposed to whatever
17 material the sauna was made of. Because of the defective
18 sauna, I have had skin grafts and other medical treatment,
19 and physical therapy a few times a week to help me walk. I
20 am still in pain. I couldn't go back to law school for my
21 second semester. I can't believe I am going to be behind my
22 classmates. I don't know how I will be able to make up the
23 work, and I probably will lose my summer job.
24 *[further testimony omitted]*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 19-929-CIV-ANTON/RAMOS

GARY WALSH,

Plaintiff,

v.

PANAMA CRUISES, LTD.,

Defendant.

**EXCERPTS FROM DEPOSITION TRANSCRIPT OF DEFENDANT
PURSUANT TO FED. R. CIV. P. 30(b)(6)**

October 10, 2019
Offices of the Cohen Law Firm
Miami, Florida

APPEARANCES:

Ms. Stephanie Perez on behalf of Plaintiff Gary Walsh

Mr. Julian Cohen on behalf of Panama Cruises.

Page 1

1 COURT REPORTER: Do you solemnly swear to tell the truth, the whole truth, and nothing
2 but the truth?
3 THE WITNESS: Yes.
4 STEPHANIE PEREZ: Please state and spell your name for the record.
5 THE WITNESS: Richard Splett. R-i-c-h-a-r-d S-p-l-e-t-t.
[testimony omitted]

Page 3

1 Q. Mr. Splett, are you testifying today as the corporate designee of
2 Panama Cruises, Ltd., which I am going to refer to as Panama,
3 regarding the topics listed in Plaintiff's Notice of Deposition
4 Pursuant to Federal Rule of Civil Procedure 30(b)(6)?
5 A. Yes.
6 Q. I need to be clear that this is a deposition of Panama Cruises, Ltd.

7 Do you understand that?
8 A. Yes, of course I do.
9 Q. What is your position at Panama?
10 A. I am the Senior Vice President of Operations and Compliance.

[testimony omitted]

Page 5

1 Q. I'm showing you the document that I have marked as Exhibit 1. Do
2 you recognize Exhibit 1?
3 A. Yes, I do. This is the deposition notice listing the topics I am
4 supposed to testify about today.
5 Q. And what are those topics?
6 A. There are five of them. First, the maintenance of the spa on the
7 *Odyssey*. Second, the installation of the SyntheTeak sauna. Third,
8 Panama's procedures for inspections and maintenance of the
9 SyntheTeak sauna. Fourth, Panama's knowledge of past complaints
10 of injuries on the *Odyssey* or similar injuries sustained on other
11 vessels in the fleet. And fifth, Panama's investigation, if any, into
12 the injuries the Plaintiff sustained in the sauna on the *Odyssey*.
13 Q. Are you the person most knowledgeable at Panama about these
14 topics?
15 MR. COHEN: Objection. Counsel, you and I both know that the standard under
16 Rule 30(b)(6) is not that the designee must be the person most
17 knowledgeable.
18 MS. PEREZ: Let me rephrase. Are you prepared to testify as the corporate
19 representative on behalf of Panama regarding these five topics?
20 THE WITNESS: Yes, I sure am.
21

[testimony omitted]

Page 8

1 Q. What do you do as Vice-President of Panama?
2 A. Well, Panama Cruises is one of the premier cruise lines in the
3 industry. We pride ourselves on our state-of-the-art vessels, culinary
4 excellence, intuitive service, and luxurious accommodations and spa
5 experiences. Panama currently has eight vessels that sail all over the
6 Caribbean and Western Atlantic on three-day, four-day, five-day,
7 and seven-day cruises. As Vice President of Operations and
8 Compliance, I oversee the day-to-day operations of Panama,
9 including expense control, staff management, and department
10 supervision. I control the operations of the fleet.
11 Q. Okay. Perfect. So, let's talk about the *Odyssey* in particular. Can
12 you tell me a bit about the vessel?

13 A. The *Odyssey* is one of our older ships. Although, compared to other
14 cruise companies, our entire fleet is young. We launched the
15 *Odyssey* in 2003. It operates as either a three-day cruise, sailing
16 Friday to Monday, or as a five-day cruise, sailing Sunday to Friday.
17 Like all our ships, the *Odyssey*'s spa had a major renovation within
18 the last year or so.

19 Q. Can you tell me about that? And for the record, this will touch on
20 Topics 1 and 2 of the deposition.
21

22 A. Absolutely. The entire fleet's spas were overhauled between
23 December 2017 and September 2018. We pride ourselves on being
24 top of the line. Our cruises are focused on rejuvenation and
25 relaxation, so, naturally, the spas need to be best in the industry. In
26 this vein, we partnered with Elemis. Essentially, we brought its
27 brand on board with the remodel.

28 Q. What does that mean in business terms?
29 A. This is pretty common in cruising. Celebrity is partnered with
30 Canyon Ranch. Essentially, the name is attached to the spa. Our
31 guests are familiar with the major spa companies, so they're more
32 inclined to use the amenities. Realistically, this means the Elemis
33 name and mission are attached to our onboard spas. Branding is
34 important. But, Panama controls all the operations.
35
36

Page 9

1 Q. When was the *Odyssey* refurbished?
2 A. In May 2018, the ship was docked in Miami for three weeks. It was
3 one of our last ships to be completed, so the refurbishment went
4 quickly.

5 Q. As you know, we are here today because Mr. Walsh alleges he was
6 burned in the sauna on the *Odyssey*. Was the wood in the sauna
7 replaced during the refurbishment? And for the record, again, this
8 goes directly to topics 1 and 2 in the Notice of Deposition.

9 A. Yes, when we refurbished the spas, we hired SyntheTeak to handle
10 the design and installation of our saunas. SyntheTeak is the premier
11 sauna manufacturer; notably, it created SyntheTeak, the synthetic
12 wood used in the saunas. We chose SyntheTeak for a few reasons.
13 First, the company is top notch and handles every aspect of the sauna
14 construction. And, we wanted to go with a synthetic wood. Synthetic
15 woods are easier to maintain, last longer, are more environmentally
16 friendly, and provide a healthier spa experience because they can be
17 cleaned more easily than natural wood. And SyntheTeak is the way
18 of the future. We did our research, and SyntheTeak is the synthetic
19 wood being used all across the spa industry, not just among cruise

20 ships. The cruise ships that have renovated their spas have installed
21 it, as have spas like Elemis, Canyon Ranch, etc. It's tried and true.
22 And we pride ourselves on being environmentally friendly.
23 SyntheTeak is made from recycled materials. The natural woods we
24 were using before SyntheTeak came from trees that are becoming
25 endangered. One of our goals is to work toward preventing the
26 deforestation of the Amazon. Using SyntheTeak furthered that goal.
27 Q. Still focusing on the same topics. Are you familiar with how saunas
28 operate?
29 A. Obviously. I am the VP of operations.
30

Page 10

1 Q. Great. Can you give us a brief tutorial?
2 A. Sure. Saunas are different from other spa amenities involving heat
3 due to the type of heat used. Steam rooms and steam showers use
4 moist heat. Moist heat actually feels hotter than dry heat because the
5 moisture-rich air prevents sweat from evaporating and cooling your
6 body. Saunas, on the other hand, use dry heat. In order to guarantee
7 the relaxing effects of a sauna, the temperature must be at least 150
8 degrees Fahrenheit. For devoted sauna worshipers, even hotter
9 conditions are preferred and deemed safe. Our spas are regulated at
10 the targeted temperature of 176 degrees.
11 Q. Describe how the sauna on the *Odyssey* works.
12 A. Saunas are made of natural or synthetic wood. Obviously, metals or
13 plastics would be unbearable to sit on. The SyntheTeak sauna
14 remains relatively cool at the high temperatures and absorbs the
15 steam, stores the heat, and releases soothing aromatics with every
16 use. It is the safest in the industry. A sauna is a mind-body
17 experience. One can use many different heat sources to heat the
18 sauna, but on Panama vessels, we use a kiuas, which is a small stove.
19 A kiuas can be electric, gas, or wood burning. Ours are electric.
20 Essentially, a kiuas heats a pile of rocks providing continual heat,
21 and at the same time emits essential oils throughout the air.
22 Q. What is the source of heat in your kiuas?
23 A. All the kiuas need sauna rocks that can maintain this high
24 temperature. We rely on peridotite as our source. Again, it is
25 environmentally friendly and SyntheTeak recommends it be used.
26 We have found it works best with the SyntheTeak.

Page 11

1 Q. So, the rocks are in the kiuas?
2 A. Exactly. The kiuas heat the rocks and the rocks heat the air inside
3 the sauna. You can see the kiuas and rocks in the sauna. To raise the

4 temperatures in the saunas, a spa attendant pours water infused with
5 essential oils onto the rocks. The water will create steam, adding
6 humidity to the air and elevating the apparent heat. The result is
7 invigorating and purifying at the same time.
8 Q. You sound like a sauna enthusiast yourself.
9 A. Oh, I am. It's one of the best perks of my jobs. I utilize the spas,
10 particularly the saunas, anytime I am onboard.

[testimony omitted]

Page 15

1 Q. Okay, let's get back to the questioning about the spas. You said
2 the kiuas on the *Odyssey* are electric?
3 A. Yes, we chose to heat our kiuas by electric means because it
4 provides the most uniform sauna experience. The concept of
5 "saunaing" dates back to the Native Americans and their traditional
6 sweat lodges. Obviously, they didn't have the benefit of technology
7 like we do, so adding modern technology to an ancient practice just
8 perfects the experience.
9 Q. What do you mean?
10 A. Well, it isn't any different than a wood-burning stove. Our heaters
11 are just plugged in. Our kiuas have a U-Shaped resistor inside that
12 is covered with the rocks. The kiuas are plugged into an electric
13 source that maintains the temperature. Electric heaters allow for a
14 sleeker design and take up less space.
15 Q. So, the stoves aren't heating the SyntheTeak directly?
16 A. No, of course not. The rocks are the heating element in the sauna.
17 The stoves are covered by the SyntheTeak, but that is just for design
18 purposes. The entire sauna is outfitted in the SyntheTeak.
19 Q. Got it. So, sauna patrons are sitting on the SyntheTeak?
20 A. Yes, the entire inside of the sauna is lined in SyntheTeak. The
21 SyntheTeak is heated by the rocks inside the kiuas. The temperature
22 of the rocks is increased by pouring water on top of them. That heat
23 is then absorbed by the SyntheTeak.

Page 16

1 Q. Understood. Are the saunas popular and frequented by patrons on
2 your vessels?
3 A. Of course. They are probably our most popular amenity. It's actually
4 sort of silly. People come on cruises and eat and drink in excess.
5 They think they can sweat it out in the sauna and then eat and drink
6 in excess again. Not sure the logic is sound, but it certainly keeps
7 the spa busy.
8 Q. So how do you maintain the saunas?

9 A. Basically, as you know, it is a highly regulated industry. The Vessel
10 Sanitation Program (VSP) and Center for Disease Control regulate
11 how cruise ship spas are maintained. Regulations dictate how often
12 we inspect our spas and who we hire to run our spas. In addition, we
13 ask our patrons to fill out surveys about our cleanliness,
14 professionalism, and overall spa experience, and we always receive
15 the highest marks.

16 Q. With all due respect, Mr. Splett, we aren't here today because
17 your spa is clean. We are here because Mr. Walsh got severely
18 burned in your sauna. What specifically is done to regulate the
19 temperature inside the sauna aboard the *Odyssey*?

20 A. Well, like I said, the electric burner heats the rocks, which, in turn,
21 heat the sauna. There is a built-in temperature gauge that maintains
22 the temperature at 176 degrees. We have a thermometer that can be
23 read inside the sauna and also one outside the sauna.

24 Q. How do you know the thermometers are accurate?

Page 17

1 A. Like I said, we maintain all equipment on our vessels. As required
2 by the VSP, our saunas undergo routine maintenance checks every
3 three weeks and full maintenance every quarter.

4 Q. Who conducts these maintenance checks, and what exactly is the
5 difference between the routine and full inspections?

6 A. The routine check every three weeks is like an oil change. A tune
7 up. We have on-board technicians who have been trained by
8 SyntheTeak, the company who designed and installed our saunas.
9 They come in after hours and check to make sure everything is
10 working correctly, change the rocks if necessary, and make sure the
11 electrical connections are secure. Essentially, they handle regular
12 maintenance. Every quarter, the sauna has a check-up by outside
13 technicians who come aboard while we are docked. The rocks are
14 changed, the grills the rocks are on are steam cleaned, and the sauna
15 undergoes a deep clean as required by the VSP.

Page 18

1 Q. Do you keep logs documenting this maintenance?
2 A. Of course. I reviewed the logs for the *Odyssey* before this
3 deposition.

4 Q. And was it maintained according to the schedule you delineated
5 above?

6 A. Yes. Well, according to our records, we missed a few of the
7 scheduled maintenance checks. In November 2017, January 2018,
8 and July 2018 we went six weeks between regular inspections.

9 Q. So, the sauna was not maintained according to the VSP and your
10 own ship standards?
11 A. We missed three maintenance appointments in a 15-month period.
12 This is not a big deal. And if a problem would have arisen, our on-
13 board technicians would have fixed it. It's like an oil change: if you
14 wait an extra week, nothing happens to your car. The logs do show
15 that the sauna on the *Odyssey* had its quarterly maintenance done in
16 October of 2018. October 5, to be exact.

[testimony omitted]

Page 19

1 Q. Let's get to daily maintenance. What does that entail?
2 A. Basically, it is about hygiene. The hot temperatures should kill any
3 and all germs, but each night our cleaning crew wipes the sauna
4 down, cleans the SyntheTeak surface, replaces the ladle that is used
5 to spoon the water over the rocks, makes sure it is ready to go the
6 next morning. The cleaning crew also makes sure there are towels
7 outside the sauna.
8 Q. That happens only once a day?
9 A.: No, of course not. Our spa attendants ensure the entire spa is clean
10 all day, every day. But each night there is a more thorough cleaning
11 of the spa. Clients are coming in and out of the spa and using the
12 amenities all day. We don't shut down the sauna for a major cleaning
13 while clients are enjoying it, but the attendants wipe it down in
14 between uses.
15 Q. Okay. We actually touched on topic 3 above, but I want to get into
16 it in more detail. What kind of measures are taken to inspect the
17 sauna on the *Odyssey*?
18 A. There is a log assigned to the sauna. An attendant who is trained by
19 both Elemis and Panama is assigned to the sauna. His or her job is
20 to check on our guests while they are enjoying the sauna, answer
21 any questions they may have, make sure towels are available, and
22 wipe it down as necessary. He or she also pours the oil-infused water
23 on top of the rocks to maintain the temperature in the sauna, and if
24 necessary, mixes the oil with the water to ensure our clients have a
25 relaxing experience. The smell is intoxicating.

Page 20

1 Q. We will get to the oil-infused water in a second, but tell me about
2 your attendants' training.
3 A. Unlike most cruises, we hire only spa attendants who are licensed in
4 the United States. And they must have experience working in spas.
5 Once they are hired by Panama, they attend a week-long training at
6 Elemis, where they learn the ins and outs of our unique spa

7 experience. However, none of this is new to them because they have
8 worked in spas before. We just want to ensure they understand our
9 brand and the unique experience we provide aboard a Panama
10 vessel. After they are trained, they start on our vessels by shadowing
11 a more experienced attendant. They learn the ins and outs of the spa
12 aboard the vessel. The most experienced spa attendants are running
13 the front desk, ensuring waivers are signed, and of course, trying to
14 sell services to our patrons.

15 Q. So, the newbies are the ones running the sauna?
16 A. No, I didn't say that. All of our attendants are trained extensively.
17 But monitoring the amenities requires different skills than selling
18 products and services.

19 Q. So, what do the attendants that monitor the saunas do?
20 A. When patrons come in wanting to use our sauna, they are directed
21 to the sauna, instructed to wear their bathing suits while in the sauna,
22 offered a towel, and told to enjoy the experience. They are informed
23 that they should exit the sauna if they feel lightheaded, dizzy, or
24 overheated. A usual sauna experience lasts about 10-20 minutes.
25 During this time, the attendant walks by the sauna and checks on the
26 patrons by looking through the glass window.

Page 21

1 Q. The attendant doesn't go inside the sauna?
2 A. No, not unless he or she is asked to enter. It is a private, relaxing
3 experience. Patrons do not want to be disturbed. The attendant will
4 look in to make sure everyone looks content and satisfied. If the
5 patron's eyes are open, the attendant will give a thumbs up sign. If
6 the patrons want something, they will flag the attendant in and he or
7 she will attend to their needs. If not, the visual checks will suffice
8 until the sauna experience is finished.

9 Q. Well, how do the people inside the sauna know their time has
10 ended? I am assuming the spa goers aren't watching the clock
11 while they are inside.

12 A. Of course not. Usually, even the most experienced sauna devotees
13 have had enough after 15-20 minutes. If not, our attendant will
14 inform them that it is time to step out.

15 Q. Are there logs that keep track of this as well?
16 A. Yes, we have logs that track all aspects of supervision and inspection
17 on our vessels. Our logs are done electronically. You know those
18 logs that hang inside bathrooms at restaurants? The ones used by
19 managers to check on cleanliness and sanitation? We don't like the
20 look of having papers hanging outside our amenities, so our
21 attendants and the cleaning crew have individual electronic devices.
22 When they inspect the sauna, or any other spa amenity, they input
23 the information on their devices. When patrons enter and exit the

24 spa, the attendants input this information as well. It not only makes
25 our spa look cleaner, it allows for individuals, like myself, to
26 monitor the process from the ports.
27 Q. How often should a sauna be inspected—for all the things
28 you mentioned above?
29 A. Well, our sauna is inspected every three hours during operation for
30 cleanliness. During those inspections, the water is checked and
31 changed if necessary. Patrons are checked on a few minutes after
32 they have entered the sauna, and at the same time, the attendant
33 looks at the thermometer reading outside the sauna.
34 Q. And your logs indicate that these protocols are followed?
35 A. Almost all of the time they are.
36 Q. Doesn't sound like you are abiding by that VSP are you?
[colloquy between counsel omitted]

Page 22

1 Q. What do you mean by most of the time?
2 A. Exactly what we said. And, we are within VSP standards. Our
3 saunas are clean. Our patrons are happy. But sometimes, the log is
4 not updated. It may be a computer glitch. The attendant likely
5 updates his or her log online, but sometimes, as you know, there are
6 glitches.
7 Q. Or sometimes they just aren't doing the required inspections?
8 A. I didn't say that. Our saunas are state-of-the-art. As are our spas.
9 They are impeccably clean and safe. I don't know what you are
10 insinuating.
11 Q. Let's move on. Tell me about the oil-infused water. What is it?
12 A. Oh! In my opinion, this is one of the very best parts of our sauna
13 experience. SyntheTeak has its own version of essential oils that are
14 used to enhance the sauna experience. Drops of essential oils are
15 mixed with the water that is poured over the stones. The essential
16 oils provide a soothing scent that just magnifies the experience.
17 Because the oils are in the air, they are absorbed into the
18 SyntheTeak. In effect, the oils protect the paneling by lubricating
19 the synthetic wood. We had SyntheTeak create our own scent when
20 we contracted with them for the sauna overhaul. It's a secret blend
21 unique to Panama, but it is just heavenly. It's a combination of
22 wood, lavender, and eucalyptus. It is exquisite. All of our spa
23 products mimic the same scent and you can buy lotions and bath oils
24 onboard as well.
25 Q. Your spas sound like profit centers. How is this oil used?
26 A. It comes with a measuring cup. It's not that different than a
27 household essential oil diffuser. You pour a few drops into the
28 water and voila! The whole sauna becomes a place of respite.

29 Q. I'm going to need a bit more detail than that. How many drops are
30 your attendants using?
31 A. They follow the instructions provided by SyntheTeak. It's a quarter
32 cup of oil per gallon of water. A gallon of water usually lasts for
33 about 8 sauna uses. A little bit goes a really long way. And before
34 you ask, whenever the oil-infused water is replenished, the attendant
35 logs it on his or her handheld device.
36 Q. Each and every time, right? Oh, wait, except when there is a wifi
37 glitch.
38 MR. COHEN Objection. Really, Stephanie? Why don't you let my client
39 continue?
40 Q. I'll move on. So how often do you have to replace your supply of
41 essential oils?

Page 23

1 A. Like I said, a little bit goes a long way. However, we totally
2 underestimated the success we would see with our new spas.
3 Unfortunately, we ran out of the oil on all our vessels in July 2018.
4 SyntheTeak's business has blown up since the Panama
5 refurbishment. I hear they are doing Norwegian and Royal
6 Caribbean right now, which is huge because their fleets are
7 enormous. Anyhow, for obvious reasons, replacing our oil is not
8 their top priority.
9 Q. I am a bit confused. You've been going on and on about your
10 signature oil and how it is essential to the Panama sauna experience.
11 Now you are telling me you have not used the oil since July of last
12 year?
13 A. No, I said SyntheTeak was not able to replenish our supply. I did not
14 say we weren't using oil. In this industry, everyone talks. Like I said
15 earlier, other cruise lines did their refurbishments before we did
16 ours. I knew Celebrity was likely in the same situation, so I reached
17 out to my friend who handles Celebrity's operations. Celebrity had
18 also run out of its signature scented oil and started getting it from a
19 supplier in China. She said it smelled exactly the same and cost less.
20 Time was of the essence, so I contacted the supplier in China, and
21 they were able to produce our scent as well. Problem solved.
22 Q. Is this oil specifically designed to be used with SyntheTeak?
23 A. SyntheTeak recommends we use SyntheTeak essential oils. But we
24 ran out and they could not fulfill our purchase order. The saunas
25 need the oil, so we had to look elsewhere. The supplier in China has
26 been able to meet our supply, and our clients are happy. Truth be
27 told, it smells identical to the SyntheTeak oil.

Page 24

- 1 Q. But, the SyntheTeak oil was designed to be used with the
2 SyntheTeak sauna. How do you know this oil is chemically identical
3 and does not alter the way in which the SyntheTeak is heated?
4 A. Well, no one is complaining about it.
5 Q. Actually, Mr. Walsh is, which is why we are here. Let's move on to
6 the next topic. What can you tell me about the incident that occurred
7 on December 23, 2018?
8 A. Well, that was one of our busiest cruises. People love to get away
9 before the holidays. The weather is perfect, and school and work are
10 out. It's festive and everyone loves to kick off the holiday season.
11 The ships are all decorated, we have themed parties. It's my favorite
12 time of year to cruise.
13 Q. Can you tell me specifically about what happened to Mr. Walsh?
14 A. Mr. Walsh and his companion visited the spa the evening of
15 December 23, 2018. They had just exercised on the top deck and
16 Ms. Meyer had a massage. They were helped by two of our
17 attendants, Amy who is a seasoned *Odyssey* attendant, and Mike
18 who was new to our vessel. Mr. Walsh purchased a massage for Ms.
19 Meyer as an early holiday gift. Mr. Walsh waited in our spa café
20 while Ms. Meyer had her massage. After her massage, Ms. Meyer
21 suggested they use our sauna. Ms. Meyer indicated that she was a
22 frequent sauna user; however, Amy sensed some trepidation from
23 Mr. Walsh. She informed them of our standard operating
24 procedures: they were required to wear bathing suits, towels were
25 located outside, and she or Mike would be checking on them. She
26 also told them to let her or Mike know if they needed anything.
27 Everyone signs a waiver before entering the sauna, and they both
28 signed their waivers.

Page 25

- 1 Q. Does the *Odyssey* have any warning signs posted outside the sauna?
2 A. Of course. There are general signs outside of the Elemis spa
3 informing patrons to use the amenities at their own risk. There is
4 also a sign located right next to the door of the sauna. It's a generic
5 sign like most warning signs found outside most saunas in spas. I'm
6 sure you've seen something similar before. It alerts users to the risk
7 of overheating.
8 Q. I am showing you what is marked as Exhibit 2. Mr. Splett, do you
9 know what this is?
10 A. Of course I do. It is a picture of the warning sign outside the sauna

11 on the *Odyssey* we were just talking about. I told you the sign is
12 pretty unseemly, but it is required by the VSP.
13 Q. Can you please tell me what it says?
14 A. Sure. It says, "Exit immediately if uncomfortable, dizzy, or sleepy.
15 Supervise children at all times. Check with a doctor before use if
16 pregnant, in poor health, or under medical care, and breathing heated
17 air in conjunction with consumption of alcohol, drugs, or medication
18 may cause unconsciousness."
19 Q. Thank you. Did Mr. Walsh and Ms. Meyer see the sign?
20 A. I don't know. He is your client—why don't you ask him?
21 MR. COHEN: Richard, we are getting close to the end. Please just answer the
22 questions Stephanie is asking so we can get out of here.
23 MS. PEREZ: Thanks, Julian. Mr. Splett, we have a lot of ground to cover. If you
24 need a break, we can take a few minutes.
25 WTINESS: No, thank you. I'd prefer we continue.
26 Q. Okay. Do you know if Mr. Walsh saw the signs?
27 A. The sign is impossible to miss. It's the only thing that is not white
28 or grey in the entire spa. In any case, it's also common sense. Why
29 would anyone continue to sit in a sauna if they were feeling
30 uncomfortable?
31 Q. Did your attendants tell Mr. Walsh to sit on a towel or wear
32 sandals?
33 A. Neither Amy nor Mike could recall what was said on that
34 particular date. You have to understand that hundreds of patrons
35 come through the spa each day using the sauna and other amenities.
36 But, it isn't required that one wear shoes, and most patrons do not
37 wear a towel either. By design, the sauna is hot. For most, wearing
38 the towel would make the experience too uncomfortable.

Page 26

1 Q. Okay, and while they were in the sauna, were any other patrons in
2 there with them?
3 A. No, they were able to have a private experience. The spa usually gets
4 really crowded after 2:00 p.m. and remains busy until it closes. They
5 visited the spa just before 8:00 p.m. The spa closes at 9:00 p.m., and
6 they were the last clients in the spa for the day. They were lucky and
7 were able to use the sauna on their own.
8 Q. So, what do the inspection logs say about the evening of December
9 23?
10 A. There are a few gaps in the log. Mike or Amy should have logged
11 when they entered the spa. Amy logged that she poured oil-infused
12 water on the rocks just before they entered the sauna at 8:00 p.m.
13 There aren't any other entries regarding Mr. Walsh's spa
14 experience.
15 Q. Probably a wifi glitch?

16 A. I don't appreciate the sarcasm. It could have been a glitch or
17 one of them could have missed the log-in. Either way, Amy
18 recalls knocking on the door shortly after they entered the sauna,
19 making eye contact with Mr. Walsh and Ms. Meyer, and giving the
20 thumbs-up sign. Neither of them indicated they needed anything.
21 Q. What about at 8:20 p.m.?
22 A. Well there isn't an entry, but Mr. Walsh and Ms. Meyer exited the
23 sauna and spa at that time.
24 Q. Did Mr. Walsh indicate to either of the attendants that he was injured
25 when he left the sauna?
26 A. Mr. Walsh indicated that he didn't feel well and that he was
27 uncomfortable. They didn't seem overly alarmed. But, he seemed
28 like he was in a rush to get out of the spa.
29 Q. Did he look injured?
30 A. He looked hot. Everyone looks hot and sweaty when they exit a
31 sauna. That's the point.

[colloquy between counsel omitted]

Page 28

1 Q. What about Ms. Meyer? How did she seem?
2 A. According to Amy, she was relaxed and very happy.
3 Q. Did anyone in the spa notice any burns or injuries on Mr. Walsh's
4 skin?
5 A. No. No one in the spa was alerted to anything out of the ordinary
6 until later that evening after Mr. Walsh was seen at the clinic.
7 Okay. So, Mr. Walsh visited the clinic later that day?
8 A. Yes, he visited our clinic at 9:00 p.m., complaining of pain on his
9 feet and legs. He was examined by our Nurse Practitioner,
10 Catherine. Catherine's notes indicate he had blisters on his feet and
11 on the backs of his legs.
12 Q. What did Catherine do to treat him?
13 A. She applied Silvadene ointment, which is standard for treating
14 burns, and wrapped his wounds with a thin gauze to prevent
15 infection, but also allow them to air out. She asked him if he had any
16 medical history or previous instances of skin reactions. He informed
17 her he had not. He was very agitated and screaming about suing
18 Panama. Unfortunately, there wasn't much Catherine could do other
19 than treat the wounds and give him Tylenol for pain.
20 Q. Ms. Meyer was not seen for any injuries?
21 A. No. Ms. Meyer did not have any injuries. Catherine recalled that Ms.
22 Meyer was still wrapped in her towel from the spa when she and Mr.
23 Walsh entered the clinic. Mr. Walsh noticed some discoloration on
24 the back of the towel and told Ms. Meyer she should save the towel
25 as evidence.
26 Q. As evidence? Evidence of what?

27 A. Mr. Walsh seemed to think the discoloration was proof that the
28 sauna was too hot and had burned the towel.
29 Q. Was the towel burned?
30 A. The towel was not burned; according to Catherine, the back of the
31 towel had some lines that were brownish in color. The stains could
32 have been from anything; she was still wearing the towel an hour
33 after she left the sauna. I don't know what else she sat on.
34 Q. Moving on to topic 4. Sorry, we jumped around a bit. It looks like
35 we covered topic 5 already. Are you aware of other passengers being
36 injured in the sauna like Mr. Walsh?
37 A. This is really an isolated incident. Like I said earlier, we have 8
38 vessels sailing. On those 8 ships, we have had only two other
39 reported incidents of injuries sustained in the sauna.
40 Q. Can you please tell me about those instances?
[colloquy between counsel omitted]

Page 29

1 A. Sure. One incident happened in November 2018. November 15,
2 to be exact. A woman went to the clinic complaining of burns after
3 she visited the sauna on the *Odyssey*. Catherine was on duty that
4 afternoon as well. She reported that the passenger had burns on the
5 backs of her legs and arms. Catherine also noted that the patient was
6 extremely sunburnt, and her sunburn covered all of her extremities.
7 The passenger even had sun poisoning on her nose and shoulders.
8 Q. How long was the passenger in the sauna?
9 A. She reported being in the sauna for 15 minutes, and the logs
10 confirm that.
11 Q. This was Mr. Walsh's first time in a sauna. Do you know if the
12 passenger injured in November frequented saunas?
13 A. As a matter of fact, she did. She was injured on the last day of her
14 cruise, but she had used the sauna on the *Odyssey* on each day
15 without incident. She complained to the attendant that the sauna felt
16 hotter than usual, and that is why she got out after only 15 minutes.
17 Q. Was there anything different about her sauna experience and Mr.
18 Walsh's?
19 A. Not that I am aware of, except that the woman injured in November
20 was really sunburnt before she entered the sauna.
21 Q. Are people with sunburns prohibited from using the sauna?
22 A. Not prohibited. Many passengers on our cruises are sunburnt. I was
23 just commenting on it because I think all the details are important
24 here.
25 Q. Was the sauna the same temperature?

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- 1 A. Like I said, same experience. People often come out of the sauna
2 and remark about how hot it is. But, remember, that's the point.
3 Sitting in a 176-degree box is going to make you feel hot.
- 4 Q. Were you using the essential oils from SyntheTeak in November
5 or were you using the replacement blend from China?
- 6 A. We were using the Chinese blend. Like I said earlier, we ran out of
7 the SyntheTeak blend in July.
- 8 Q. Did you close the sauna after this incident?
- 9 A. No, of course not
- 10 Q. Did you stop using the replacement oil blend from China?
- 11 A. No, we did not.
- 12 Q. Okay. What about the other incident you mentioned?
- 13 A. The other incident occurred in the beginning of December.
14 December 3, I think. Another male passenger was seen in the clinic
15 complaining about burns he attributed to the sauna. This passenger
16 had burns on his back.
- 17 Q. And how long was he in the sauna?
- 18 A. He was in the spa for 28 minutes. When the spa attendant told him
19 it was time to leave, he refused. In fact, the attendant reported that
20 he was belligerent, so he was removed by the spa manager. Clearly,
21 he had been drinking.
- 22 Q. So, he stayed in five minutes longer and wound up with blistering
23 burns all over his back?

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- 1 A. I didn't say they were all over his back. He fell asleep laying on the
2 sauna bench and remained in the sauna longer than intended. That,
3 coupled with drinking, likely caused his injuries.
- 4 Q. And, did you close the sauna after this incident?
- 5 A. No, we did not.
- 6 Q. Did you discontinue using the oil blend from China?
- 7 A. No, we did not. The facts and circumstances surrounding these three
8 incidents are all very different. You are assuming the sauna was
9 unreasonably hot and that was the cause of their injuries, when in
10 fact, we have one passenger who had a bad sunburn and another who
11 stayed in the sauna for longer than recommended. Thousands of
12 passengers frequent our sauna each cruise. I believe your accusation
13 is unfounded.
- 14 Q. So, you are still using the oil from China even though it burned three
15 passengers?
- 16 MR. COHEN: Objection! Stephanie, this is getting out of hand.

17 MS. PEREZ: I'll rephrase, Mr. Splett, are you still using the Chinese oil in your
18 sauna?
19 A. As a matter of fact, as of March of this year, we are back to using
20 the SyntheTeak oil. They replenished our supply in March. They
21 gave us a discount because it took so long to produce; I wouldn't be
22 surprised if they are just buying it directly from China now.
23 Q. Interesting. Have you had any additional injuries since you resumed
24 using the SyntheTeak oil?
25 A. No, we haven't had any additional incidents. And, I maintain the
26 incidents we discussed were isolated. At Panama, we pride
27 ourselves on being industry leaders. Of course, accidents happen.
28 We have thousands of passengers on our vessels using our amenities
29 each month. But the spa on the *Odyssey* was just refurbished. Our
30 products are top of the line and our service is unparalleled. These
31 sorts of these things happen very infrequently, as I just explained.
32 Q. Did you do any investigation at all into these isolated incidents?
33 A. Our saunas were inspected per our protocol and maintenance was
34 conducted as I described above. According to our technicians, the
35 sauna was operating fine.
36 Q. Mr. Splett, haven't those two passengers also submitted demand
37 letters alleging their injuries stem from the unreasonably hot sauna?
38 A. Yes, they have. But Panama maintains that our saunas and our
39 vessels are safe. Causation has not been established in any of these
40 cases. Are we done yet?
41 *[testimony omitted]*

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1 Q. Do you have surveillance equipment in the sauna?
2 A. No, of course not. That would be a violation of privacy. We do have
3 surveillance cameras around the spa. I am sure I could pull up the
4 footage from the date of the incident and get it to you.
5 Q. Yes, I would appreciate that. I think I have covered everything we
6 need at this point. Thank you for taking the time to answer all of my
7 questions.
8 A. You're welcome. I suppose if you need any other information you
9 know how to reach me.

[whereupon a conversation took place off the record]

[further testimony omitted]

DEPOSITION
EXHIBITS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 19-1929-CIV-ANTON/RAMOS

GARY WALSH,

Plaintiff,

v.

PANAMA CRUISES, LTD.,

Defendant.

**PLAINTIFF'S NOTICE OF DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6) OF
DEFENDANT PANAMA CRUISES, LTD.**

Pursuant to Federal Rule of Civil Procedure 30(b)(6), Plaintiff, Gary Walsh, will take the deposition of Defendant, PANAMA CRUISES, LTD. ("Panama Cruises"), on the topics described in the attached Schedule A. This deposition will be recorded by stenographic means. If necessary, the deposition will continue from day to day until completed.

Date and Time of Deposition: October 10, 2019, at 9:00 a.m.

Location of Deposition: THE COHEN LAW FIRM
1444 Brickell Ave.
Miami, Florida 33130

Dated: September 9, 2019

Respectfully submitted,

Stephanie Perez

Stephanie Perez, Esq.

THE PEREZ LAW FIRM

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EXHIBIT 1

Schedule A

Walsh requests that Panama Cruises produce a witness who consents and is prepared to testify regarding the following topics:

1. Panama Cruise's policies and procedures regarding the maintenance of the spa, specifically the "SyntheTeak" sauna on the Odyssey vessel.
2. Panama Cruise's installation of the "SyntheTeak" sauna on the Odyssey vessel.
3. Panama Cruise's policies and procedures for inspections of the sauna(s) and spa on the Odyssey vessel.
4. Panama Cruise's knowledge of past complaints of similar injuries sustained on the Odyssey or on any vessels in its fleet equipped with "SyntheTeak."
5. Panama Cruise's investigation, if any, into Walsh's injury.

SAUNA SAFETY

REDUCE THE RISK OF OVERHEATING

- 1. EXIT IMMEDIATELY IF UNCOMFORTABLE, DIZZY OR SLEEPY.**
- 2. SUPERVISE CHILDREN AT ALL TIMES.**
- 3. CHECK WITH A DOCTOR BEFORE USE IF PREGNANT, IN POOR HEALTH OR UNDER MEDICAL CARE.**
- 4. BREATHING HEATED AIR IN CONJUNCTION WITH CONSUMPTION OF ALCOHOL, DRUGS OR MEDICATION MAY CAUSE UNCONSCIOUSNESS.**

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EXHIBIT 2