

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 1:17-cv-22018

JOSE R. PEREZ, as Personal
Representative of the Estate of
HORTENSIA SANTOS, Deceased;
MARIANO SANTOS (son); and
HORTENSIA SANTOS (daughter),

Plaintiffs,

vs.

NCL (BAHAMAS) LTD., a Bermuda
Company d/b/a NORWEGIAN CRUISE
LINE,

Defendant.

**COMPLAINT FOR DAMAGES
AND DEMAND FOR TRIAL BY JURY**

Plaintiffs, JOSE R. PEREZ, as Personal Representative of the Estate HORTENSIA SANTOS, Deceased; MARIANO SANTOS; and HORTENSIA SANTOS ("Plaintiffs"), by and through their undersigned counsel, sue Defendant, NCL (BAHAMAS) LTD., a Bermuda Company d/b/a NORWEGIAN CRUISE LINE, ("Defendant") and demand trial by jury, stating as follows:

PARTIES AND JURISDICTION

1. This is an action seeking damages in excess of \$75,000.00, exclusive of interest, costs, and attorney's fees.
2. Federal subject matter jurisdiction arises under and is by virtue of Diversity of Citizenship pursuant to 28 U.S.C. § 1332, as this is a civil action where the matter in controversy

exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States and/or citizens of a State and citizens or subjects of a foreign state, and arises under and is by virtue of the admiralty or maritime jurisdiction pursuant to 28 U.S.C. § 1333, and is being filed in Federal Court as required by the venue selection clause in the Norwegian Cruise Line Guest Ticket Contract issued by the Defendant in connection with a ticket sold to Decedent, HORTENSIA SANTOS (“Ms. Santos”).

3. This is a wrongful death case brought pursuant to Florida Statutes Sections 768.16-26, the “Florida Wrongful Death Act,” or alternatively, under the Death on the High Seas Act (“DOHSA”), 46 U.S.C. §§ 30301-8, for damages in excess of Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs as a result of the wrongful death of Ms. Santos.

4. Plaintiff, JOSE M. PEREZ, has been appointed Personal Representative of the Estate of Ms. Santos.

5. At all material times, Plaintiff, JOSE R. PEREZ, was and is a resident of Miami-Dade County, Florida, and is otherwise *sui juris*, and Ms. Santos was a resident of Miami-Dade County, Florida, and was otherwise *sui juris*.

6. At all material times, MARIANO SANTOS (“Son”), the son of the deceased, was and is a resident of Miami-Dade County, Florida, and is otherwise *sui juris*.

7. At all material times, HORTENSIA SANTOS (“Daughter”), the daughter of the deceased, was and is a resident of Miami-Dade County, Florida, and is otherwise *sui juris*.

8. Defendant is a foreign corporation incorporated in Bermuda that is authorized to conduct and that does conduct business in the State of Florida, who at all times material hereto was and is doing business in Miami-Dade County, Florida, and who maintains its corporate headquarters and principal place of business in Miami-Dade County, Florida.

9. Defendant, at all times material hereto, personally or through an agent, in the County and in the District in which this Complaint is filed:

- a. Operated, conducted, engaged in or carried on a business venture in this state and/or county; and/or
- b. Had an office or agency in this state and/or county; and/or
- c. Engaged in substantial activity within this state; and/or
- d. Committed one or more of the acts stated in Florida Statutes, Sections 48.081, 48.181 or 48.193.

10. All conditions precedent for filing and maintaining this action have been fulfilled, have been waived, or do not apply, including notice as required under the relevant contract for carriage.

OTHER ALLEGATIONS COMMON TO ALL COUNTS

11. On May 31, 2016, Ms. Santos was a lawfully paying passenger aboard the Defendant's cruise ship vessel, the Norwegian Getaway (the "Getaway").

12. Ms. Santos was the matriarch of a tightly-knit Cuban family consisting of two children, six grandchildren, and five great-grandchildren, all of whom reside in South Florida, and all of whom cherished their "Nenita" with whom they visited frequently, and whose guidance and wisdom they relied on in their own lives. Ms. Santos was active and ambulatory through May 31, 2017, and one of her favorite activities was travelling with different members of her family, which she did with great frequency. The trip she booked on the Getaway was one of those times, as well as a celebration of her birthday.

13. On the morning of May 31, 2016, while the Getaway was in US territorial waters,¹ Ms. Santos was seated at a table in a common dining area of the Getaway having

¹ Upon information and belief, the subject incident that led to Ms. Santos death took place onboard the Getaway while the ship was in U.S. territorial waters. Notwithstanding, Defendant is

breakfast. At that time, another passenger who was being escorted in a wheelchair through the dining area by an employee or crew member of Defendant, slammed into Ms. Santos, pinning Ms. Santos' torso with great pressure against the table where she was sitting, severely injuring Ms. Santos.

14. Rather than immediately providing medical help to Ms. Santos, Defendant's crew escorted Ms. Santos back to her cabin. In the hours following the incident, Ms. Santos began to throw up blood and started vomiting a viscous liquid with the appearance of thick, brown cola.

15. At 4:30 A.M., with her situation worsening, she was taken to the clinic onboard the Getaway where she was intubated and a dark substance removed from her stomach. The physician tending to Ms. Santos advised that hemoglobin testing should be performed every six (6) hours as hemoglobin levels would indicate whether Ms. Santos was losing blood. The physician also advised that an endoscopy should be performed at the nearest hospital once the ship -- which was still on the high seas -- docked in Costa Maya, Mexico (the next port of call for the Getaway), so that it could be determined whether Ms. Santos' deteriorating health was due to internal injuries and/or internal bleeding.

16. When the ship finally docked in Costa Maya, Ms. Santos was directed by Defendant's medical staff and crew to a specific local Mexican hospital. The attending physician at the local hospital ordered a sonogram but explained to Ms. Santos' relative that they had to wait for "the administrator." The Administrator explained that Ms. Santos had been stabilized, but the attending physician added that she needed "a procedure" and that her condition "was caused by something having hit her." The endoscopy that was urged by the physician onboard the Getaway was never performed.

best positioned to offer evidence of the ship's location at the time of the Incident, and thus, until such evidence is proffered, Plaintiff pleads Count II -- wherein it is alleged that the ship was outside of US territorial waters -- in the alternative, pursuant to 46 U.S.C. §§ 30301-8.

17. Ms. Santos' relative explained that she would be flying back to Miami immediately, and the attending physician and Administrator did not object. The hospital disconnected Ms. Santos' IV and discharged her; but despite knowing that she would be flying back to Miami, did not provide a "fit to fly" report. On the flight back to Miami, Ms. Santos continued to vomit up blood, and during the flight her condition deteriorated completely so much so that the plane had to make an emergency landing in Miami. Ms. Santos was rushed to University of Miami Hospital where she was pronounced dead.

18. As a direct and proximate result of the incident, Ms. Santos suffered severe and debilitating injuries, which led to her death four (4) days later.

19. Defendant breached the standard of reasonable care that it owed Ms. Santos in its failure to:

- (i) Properly monitor and or assist in transporting the wheelchair-bound passenger so as to not cause injuries to other passengers, such as Ms. Santos;
- (ii) Properly train and supervise its crew in assisting wheel-chair bound passengers through crowded common areas;
- (iii) Implement appropriate policies and procedures for addressing passengers who suffer onboard injuries;
- (iv) Implement appropriate policies and procedures addressing passenger safety while onboard;
- (v) Properly treat or tend to Ms. Santos while she was aboard the Getaway by not having her see a physician onboard immediately following the incident; and
- (vi) Assure that the hospital and physicians in Mexico to which it referred Ms. Santos for medical care met the same standard of reasonable care to which its own medical professionals were subject.

COUNT I – WRONGFUL DEATH

20. Plaintiffs hereby adopt and re-allege each and every allegation in Paragraphs 1 through 19 as if fully set forth herein.

21. The Defendant owed a duty to exercise reasonable care under the circumstances for the safety of its passengers. This includes, but is not limited to, the duty to:

- (i) Properly monitor and or assist in transporting wheelchair-bound passengers so as to not cause injuries to other passengers, such as Ms. Santos;
- (ii) Properly train and supervise its crew in operating motorized wheelchairs or assisting wheelchair-bound passengers in operating same;
- (iii) Implement appropriate policies and procedures for addressing passengers who suffer onboard injuries;
- (iv) Implement appropriate policies and procedures addressing passenger safety while onboard;
- (v) Properly treat or tend to injured passenger while aboard the Getaway by not having them immediately see a physician onboard after suffering an injury; and
- (vi) Assure that the hospital and physicians in Mexico to which it refers its passengers who are in need of medical care which Defendant is not equipped to provide onboard its vessel, meet the same standard of reasonable care to which its own medical professionals are subject.

22. Defendant breached each of those independent duties and was negligent by failing to:

- (i) Properly monitor and or assist in transporting the wheelchair-bound passenger that slammed into Ms. Santos so as to not cause injuries to Ms. Santos;
- (ii) Properly train and supervise its crew in operating motorized wheelchairs or assisting wheel-chair bound passengers in operating same;

- (iii) Implement appropriate policies and procedures for addressing passengers who suffer onboard injuries;
- (iv) Implement appropriate policies and procedures addressing passenger safety while onboard;
- (v) Properly treat or tend to Ms. Santos while she was aboard the Getaway by not having her see a physician onboard immediately following the incident; and
- (vi) Assure that the hospital and physicians in Mexico to which Defendant's physicians and crew referred Ms. Santos for medical care which Defendant was not equipped to provide onboard the Getaway, met the same standard of reasonable care to which its own medical professionals and crew were subject.

23. Defendant's negligence proximately caused great bodily harm to Ms. Santos, and ultimately proximately caused her death, in that, but for Defendant's negligence, Ms. Santos debilitating injuries would not have occurred.

24. As a result of the Defendant's negligence, Ms. Santos suffered severe bodily injury resulting in her death, and Ms. Santos' family has suffered the loss of support and services from the date of the incident to her or death, and future loss of support and services since her passing. The decedent's two children have also suffered the loss of parental companionship, instruction, and guidance and for mental pain and suffering since the date of the incident.

25. The losses are either permanent or continuing, and have been suffered in the past and will continue to be suffered in the future.

**COUNT II – WRONGFUL DEATH
(IN THE ALTERNATIVE, UNDER DOHSA)**

26. Plaintiffs hereby adopt and re-allege each and every allegation in Paragraphs 1 through 19 as if fully set forth herein.

27. The Defendant owed a duty to exercise reasonable care under the circumstances for the safety of its passengers. This includes, but is not limited to, the duty to:

- (i) Properly monitor and or assist in transporting wheelchair-bound passengers so as to not cause injuries to other passengers, such as Ms. Santos;
- (ii) Properly train and supervise its crew in operating motorized wheelchairs or assisting wheel-chair bound passengers in operating same;
- (iii) Implement appropriate policies and procedures for addressing passengers who suffer onboard injuries;
- (iv) Implement appropriate policies and procedures addressing passenger safety while onboard;
- (v) Properly treat or tend to injured passengers while aboard the Getaway by not having them immediately see a physician onboard after suffering an injury; and
- (vi) Assure that the hospital and physicians in Mexico to which it refers its passengers who are in need of medical care that Defendant is not equipped to provide onboard its vessels, meet the same standard of reasonable care to which its own medical professionals are subject.

28. Defendant breached each of those independent duties and was negligent by failing

to:

- (i) Properly monitor and or assist in transporting the wheelchair-bound passenger that slammed into Ms. Santos so as to not cause injuries to Ms. Santos;
- (ii) Properly train and supervise its crew in operating motorized wheelchairs or assisting wheel-chair bound passengers in operating same;
- (iii) Implement appropriate policies and procedures for addressing passengers who suffer onboard injuries;
- (iv) Implement appropriate policies and procedures addressing passenger safety while onboard;
- (v) Properly treat or tend to Ms. Santos while she was aboard the Getaway by not having her see a physician onboard immediately following the incident; and

- (vi) Assure that the hospital and physicians in Mexico to which Defendant's physicians and crew referred Ms. Santos for medical care which Defendant was not equipped to provide onboard the Getaway, met the same standard of reasonable care to which its own medical professionals and crew were subject.

29. Defendant's negligence proximately caused great bodily harm to Ms. Santos, and ultimately proximately caused her death, in that, but for Defendant's negligence, Ms. Santos debilitating injuries would not have occurred.

30. As a result of the Defendant's negligence, Ms. Santos suffered severe bodily injury resulting in her death, and Ms. Santos' two children, Plaintiffs, Son and Daughter, have suffered and continue to suffer pecuniary losses including loss of support, loss of services, and loss of nurture and guidance.

31. The losses are either permanent or continuing in nature, and have been suffered in the past and will continue to be suffered in the future.

WHEREFORE, Plaintiffs demand Judgment against Defendant, NCL (BAHAMAS) LTD., a Bermuda Company d/b/a NORWEGIAN CRUISE LINE, for damages suffered as a result of the wrongful death of Ms. Santos, which have been incurred or suffered in the past and which will be incurred or suffered in the future; for all court costs, pre- and post-judgment interest, and for any and all other relief which the Court deems just or appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Dated this 30th day of May, 2017.

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By: _____ /S/
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