

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

NORMA FARRIS,

Plaintiff,

v.

CASE NO.

CARNIVAL CORPORATION,  
a Panama corporation d/b/a  
“CARNIVAL CRUISE LINES;”  
and PRASAD GEETA MISHRA  
DEEPAK, M.D. a/k/a MISHRA  
DEEPAK a/k/a DEEPAK MISHRA

Defendants.

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**COMPLAINT AND JURY DEMAND**

The plaintiff, **NORMA FARRIS** [hereafter “plaintiff” or “**FARRIS**”] sues the defendants **CARNIVAL CORPORATION**, a Panama corporation d/b/a “CARNIVAL CRUISE LINES” [hereafter collectively “**CARNIVAL**”], and **PRASAD GEETA MISHRA DEEPAK, M.D. a/k/a MISHRA DEEPAK a/k/a DEEPAK MISHRA** [hereafter “**DEEPAK**”] and alleges:

**General Allegations Common To All Counts**

1. This is a tort action for maritime negligence for damages in excess of the sum of Seventy-Five Thousand (\$75,000.00) Dollars; and jurisdiction of this claim is founded upon 28 U.S.C.A §1332 (diversity jurisdiction).

2. Plaintiff FARRIS is a 74 year old U.S. citizen who resides and is domiciled in the state of Texas.

3. Defendant CARNIVAL is a Panama corporation that operates foreign-flagged cruise ships and has its principal place of business in Miami-Dade County, Florida.

4. Defendant DEEPAK, upon information and belief and at all relevant times, is a medical doctor who entered into a working relationship with CARNIVAL in Miami-Dade County, Florida, and lives in Florida, and/or lives and works on a CARNIVAL ship that is home-ported in Florida.

5. The incidents complained of in this lawsuit occurred on navigable water aboard a vessel engaged in traditional maritime activity, and were potentially disruptive of maritime commerce.

6. This action is being pursued in this court, as opposed to state court as otherwise allowed by the Saving To Suitors Clause of 28 U.S.C. §1333(1), because CARNIVAL, at all relevant times, unilaterally inserts a clause into its cruise ticket contracts that requires all passengers from anywhere in the world to file all cruise-related suits, “if at all,” *only* in federal court *and only in this district and division*.

7. The plaintiff timely and adequately presented her claim in writing to CARNIVAL, and timely filed the present lawsuit, in accordance with applicable terms of the passenger ticket contract issued by CARNIVAL.

**COUNT I**

**(CARNIVAL's Negligence)**

8. The plaintiff, at all relevant times, was a fare-paying passenger aboard the *M/S Carnival Breeze* [“the subject vessel”] which at all relevant times is operated by CARNIVAL.

9. CARNIVAL and the subject vessel, at all relevant times, regularly transport passengers for hire between ports in the United States and foreign countries and are therefore marine common carriers of passengers.

10. CARNIVAL, at all relevant times, owed the plaintiff the duty to exercise care for her safety required of a marine common carrier of passengers.

11. Alternatively, defendant CARNIVAL and/or its agents and employees, at all material times, engaged in certain affirmative undertakings, as hereinafter alleged; and in doing so acquired a duty to exercise reasonable care in those undertakings.

12. CARNIVAL, at all relevant times, was also under a legal duty to comply with mandatory international vessel safety regulations that are promulgated by the International Maritime Organization (IMO) under authority expressly conferred by the U.S. Senate-ratified international Safety of Life at Sea (SOLAS) treaty, including *Part C, Regulation 13, subpart 1.1* (“safe escape routes shall be

provided.”); subpart 1.2 (“escape routes shall be maintained in a safe condition, clear of obstacles.”)

13. On or about February 26, 2017, a housekeeping employee of CARNIVAL deliberately and recklessly stretched a power cord from a cleaning appliance across a public hallway on the subject vessel, presenting a “trip wire” effect. The plaintiff, then age 73, was walking down the hallway and did not see the cord, which tripped her and caused her to sustain serious injuries [hereafter “the subject tripping incident”].

14. Upon information and belief, the CARNIVAL employee who created the tripping hazard abruptly and quickly left the scene (without assisting the plaintiff) when she heard and saw what happened to the plaintiff.

15. The instrumentality causing the plaintiff to trip and fall (*i.e.*, the power cord) was then under sufficient exclusive control of the defendant and/or its housekeeping employee to give rise to *res ipsa loquitur*.

16. CARNIVAL, at all relevant times,

- A. Negligently failed to train and supervise the employee in question; and,
- B. Negligently created a tripping hazard in an escape route of the vessel - in violation of mandatory and legally-binding international vessel safety regulations derived from the U.S. Senate-ratified international Safety of Life at Sea (SOLAS) treaty, including *Part C, Regulation 13, subpart 1.1* (“safe escape routes shall be provided.”); subpart 1.2 (“escape

routes shall be maintained in a safe condition, clear of obstacles.”); and,

- C. Negligently failed to maintain the vessel in a reasonably safe condition; and,
- D. Negligently failed to warn the plaintiff; and,
- E. Otherwise negligently failed to exercise the level of care required of a marine carrier for the safety of fare-paying passengers.

17. CARNIVAL’s violation of applicable and mandatory SOLAS safety regulations constitutes negligence *per se*.

18. As a direct and proximate result of the subject tripping incident and CARNIVAL’s negligence, the plaintiff suffered bodily injury, aggravation of pre-existing conditions, physical and mental pain and suffering, disability, disfigurement, loss of capacity for enjoyment of life, costs of medical care and treatment, and loss of earnings and/or earning capacity. The injuries are permanent and the plaintiff will suffer these losses in the future.

WHEREFORE, the plaintiff demands judgment for all damages legally allowable under the facts of the case against defendant CARNIVAL, jointly and severally, including but not limited to compensatory and consequential damages, costs and prejudgment interest, and further demands trial by jury.

## COUNT II

### (DEEPAK's Negligence)

19. The plaintiff's injuries from the subject tripping incident required her to be transported from the scene of the subject tripping incident to the ship's infirmary (*i.e.*, the only available source of medical treatment on the ship). There, she was examined and treated by defendant DEEPAK, who was the ship's doctor.

20. DEEPAK, at all relevant times, owed the plaintiff a duty to conform DEEPAK's treatment of the plaintiff to the standard of care applicable to similar professionals under similar circumstances.

21. Defendant DEEPAK negligently breached that duty by cutting an artery in plaintiff's right knee while suturing a laceration (that the plaintiff had sustained in the subject tripping incident). This resulted in blood spurting "like a fountain" from plaintiff's knee.

22. The instruments DEEPAK used to cut the artery were then under sufficient exclusive control by DEEPAK to give rise to *res ipsa loquitur*.

23. As a direct and proximate result of DEEPAK's negligence, the plaintiff suffered bodily injury, aggravation of pre-existing conditions, physical and mental pain and suffering, disability, disfigurement, loss of capacity for enjoyment of life, costs of medical care and treatment, and loss of earnings and/or earning capacity. The injuries are permanent and the plaintiff will suffer these losses in the future.

WHEREFORE, the plaintiff demands judgment for all damages legally allowable under the facts of the case against defendant DEEPAK, jointly and severally, including but not limited to compensatory and consequential damages, costs and prejudgment interest, and further demands trial by jury.

### **COUNT III**

#### **(CARNIVAL's Vicarious Liability for DEEPAK's Negligence)**

24. Defendant DEEPAK, as the ship's doctor, was at all relevant times an agent or employee of CARNIVAL and was acting in the course and scope of DEEPAK's agency or employment.

25. In any event, CARNIVAL, at all relevant times, exercised sufficient control over DEEPAK to make CARNIVAL vicariously liable for DEEPAK's negligent treatment of the plaintiff. *Indicia* of CARNIVAL's control over DEEPAK, at all relevant times, included but was not limited to the following:

- A. CARNIVAL hired DEEPAK to be a ship's doctor; and,
- B. CARNIVAL directly charged guests for DEEPAK's treatment of them; and,
- C. CARNIVAL assigned DEEPAK to the vessel(s) DEEPAK worked on; and,
- D. CARNIVAL designated and considered DEEPAK to be a member of the vessel's crew under the command and discipline of CARNIVAL's more senior ship's officers; and,
- E. CARNIVAL required DEEPAK to be "bound by all shipboard rules" of CARNIVAL; and,

- F. CARNIVAL designated DEEPAK as an officer of the vessel; and,
- G. CARNIVAL required DEEPAK to wear a CARNIVAL officer's uniform furnished by CARNIVAL and otherwise imposed dress and appearance requirements on DEEPAK; and,
- H. CARNIVAL owned, operated, supplied, and advertised the vessel's medical facility where CARNIVAL assigned DEEPAK to work; and,
- I. CARNIVAL furnished DEEPAK with all of the equipment, instruments, and medications used by DEEPAK to treat CARNIVAL's guests and crew aboard the vessel; and,
- J. CARNIVAL set DEEPAK's work schedules; and,
- K. CARNIVAL required DEEPAK to comply with detailed guidelines in the management of injured guests and crew; and,
- L. CARNIVAL paid DEEPAK a salary (rather than by the job); and,
- M. CARNIVAL provided DEEPAK with free housing and all meals aboard the vessel; and,
- N. CARNIVAL had the right to fire DEEPAK.

WHEREFORE, the plaintiff demands judgment against defendant CARNIVAL, jointly and severally, for all damages arising from DEEPAK's negligence including, but not limited, to compensatory and consequential damages, costs and prejudgment interest, and further demands trial by jury.

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**COUNT IV**

**(CARNIVAL's Liability As Contractual Indemnitor of DEEPAK)**

26. CARNIVAL, at all relevant times, and upon information and belief, agreed with DEEPAK in writing to defend and indemnify DEEPAK against any claim or proceeding arising in the course of DEEPAK's duties as ship's doctor. Such defense and indemnity language is believed to be contained in DEEPAK's employment agreement with CARNIVAL which the plaintiff does not now have but which will be requested in discovery.

27. Plaintiff, as a victim of shipboard medical negligence by DEEPAK, at all relevant times was and is an obvious, intended third-party beneficiary of CARNIVAL's agreement to indemnify DEEPAK against claims of this nature.

WHEREFORE, the plaintiff demands judgment for all damages legally allowable under the facts of the case against defendant CARNIVAL, jointly and severally, including but not limited to compensatory and consequential damages, costs and prejudgment interest, and further demands trial by jury.

**COUNT V**

**(CARNIVAL – Fraud)**

28. CARNIVAL, at relevant times prior to and during the subject cruise, undertook to disclose to the plaintiff *some* information about the ship's medical staff and facilities that was material to (1) her decision to go on the cruise, and (2)

her ultimate decision to consent to invasive treatment by the ship's medical staff following the subject tripping incident.

29. For example, CARNIVAL purposefully advertises to the public that high-quality health care is available aboard its vessels, as a marketing tool to appeal to and attract the many prospective passengers who like the plaintiff are elderly and/or who have chronic medical conditions and who, in the absence of CARNIVAL's promise of the availability of such care aboard its ships, would otherwise be unwilling to be isolated for days on a slow-moving vessel and/or in Third-World ports of call.

30. CARNIVAL, by disclosing *some* material information to the plaintiff about the ship's medical staff and facilities, acquired a duty to fully disclose *all* relevant and/or material information regarding the same topics (*i.e.*, to tell "the whole truth").

31. CARNIVAL, at all relevant times, knew of, and deliberately and purposefully failed to disclose to the plaintiff and other unwitting passengers, certain material factors that were and are created and intended by CARNIVAL, in combination, to result in severe prejudicial legal consequences to the passenger-victims of shipboard medical negligence, namely that CARNIVAL for years has intentionally and purposefully sought by creative contracting to eliminate all practical legal remedies anywhere and everywhere, against anyone and everyone,

for passengers injured by medical negligence aboard CARNIVAL vessels, as follows:

A. By deliberately and purposefully crafting and inserting into its passenger ticket (and in other relevant contracts) demonstrably false provisions that term CARNIVAL's shipboard medical agents and employees as being "independent contractors," in an illegal effort by CARNIVAL, in violation of 46 U.S.C. §30509, to relieve itself of direct and vicarious liability (much as if an attorney for a similar purpose began falsely describing her legal assistant as an "independent contractor" in client contracts).

B. By deliberately and purposefully crafting and inserting into its passenger ticket contract the following exclusive venue provision:

*"13(c) [A]ll disputes and matters whatsoever arising under, in connection with or incident to this Contract or the Guest's cruise, including travel to and from the vessel, shall be litigated, if at all, before the United States District Court for the Southern District of Florida in Miami, or as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida, U.S.A. to the exclusion of the Courts of any other county, state or country. (emphasis added)*

C. By deliberately and purposefully crafting and inserting another provision in its passenger ticket contract that extends CARNIVAL's absolute, contractual Miami-Dade venue privilege and defense to the ship's medical staff, as follows:

*"1(f) All rights, exemptions from liability, defenses and immunities of Carnival under this contract shall also inure to ... [the] ship's physician, [and] ship's nurse...who shall have no liability to the Guest, either in contract or in tort, which is greater than or different from that of Carnival."*

D. By deliberately failing to require CARNIVAL's ships' medical providers, as a condition of employment by CARNIVAL, to waive objections to personal jurisdiction in Florida for passenger lawsuits

for shipboard medical negligence, as it has always been feasible for CARNIVAL to do.

E. By consciously planning and fully intending, in its future contractual defenses of ship's medical staff sued in Florida for shipboard negligence (see Count IV, *supra*), to seek personal jurisdiction dismissals of such shipboard medical defendants ***in and from the only forum in the world in which CARNIVAL contractually allows its passengers to bring such claims.*** See, *e.g.*, *Laux v. Carnival Corp.*, 470 F. Supp. 2d 1379 (S.D. Fla. 2007)(motion to dismiss Carnival medical provider for lack of personal jurisdiction); *Barnett v. Carnival Corp.*, 2007 WL 1526658 (S.D. Fla. May 23, 2007)(same); *Rinker v. Carnival Corp.*, 2011 WL 3163473 (S.D. Fla., July 26, 2011)(same); and *Summers v. Carnival Corporation*, 2015 WL 11983231 (S.D. Fla., Apr. 6, 2015)(same).

F. By purposefully concealing from unwitting passengers much of these material facts, and their complete, combined prejudicial legal effect intended by CARNIVAL.

32. CARNIVAL's intended purpose and goal in perpetrating this scheme against its fare-paying passengers, at all relevant times, was and is to eliminate all practical remedies anywhere in the world against anyone (including CARNIVAL) for passenger-victims of CARNIVAL's shipboard medical tortfeasors.

33. Carnival, in all these respects, acted willfully, wantonly, and in bad faith.

34. CARNIVAL's deliberate failure to disclose its entire knowledge and information on these topics (*i.e.*, the whole truth) to the plaintiff, who was otherwise unaware, was material to (1) her decision to go on the cruise, and (2) her ultimate decision to consent to invasive treatment by the ship's medical staff.

35. Had CARNIVAL disclosed “the whole truth” regarding these issues to the 73 year old plaintiff, she would not have taken the cruise, let alone consented to invasive treatment by the ship’s medical staff.

WHEREFORE, the plaintiff demands judgment for all damages legally allowable under these facts against defendant CARNIVAL, jointly and severally, including but not limited to compensatory, consequential, and exemplary damages, costs, attorney’s fees, and prejudgment interest, and further demands trial by jury.

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