

IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.:

11-11287CA23

VICTOR ARMANDO SIFUENTES

Plaintiff,

vs.

CARNIVAL CRUISE LINES,

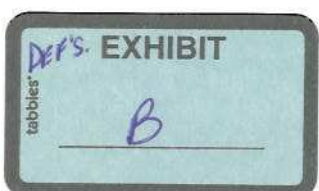
Defendant.

THE ORIGINAL FILED
ON APR 12 2011
IN THE OFFICE OF
CIRCUIT COURT DADE CO
CIVIL DIVISION

SEAMAN'S COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, VICTOR ARMANDO SIFUENTES, ("SIFUENTES"), by and through his undersigned attorneys, and sues the Defendant, CARNIVAL CRUISE LINES, ("CARNIVAL"), and alleges as follows;

1. This is an action for damages in excess of the Fifteen Thousand Dollars, (\$15,000.00), the jurisdictional limit of this Honorable Court, exclusive of interest and costs.
2. At all times material, CARNIVAL, personally or through an agent:
 - a. operated, conducted, engaged in, carried on a business venture or had is base of operations in the state and/or county or had an office or agency in the state and/or county;
 - b. were engaged in substantial activity within the state and/or county;
 - c. committed tortious acts within the state and county, including but not limited to breach of the duties owed to seaman, including those under the Jones Act, for unseaworthiness and the duty to pay wages, maintenance and cure to SIFUENTES in Miami-Dade County, Florida;
 - d. operated vessels in the waters of the state; and/or,



e. committed on or more of the acts stated in Florida Statutes, sections 48.081 or 48.193, in the state and/or county.

3. The acts of CARNIVAL set out in the Complaint occurred in whole and or in part in Miami-Dade County and/or the State of Florida.

4. The causes of action asserted in the Complaint arise under the Jones Act, Title 46 U.S.C. §688, Title 46 U.S.C. 10313, and the General Maritime Law of the United States.

5. At all times material hereto, CARNIVAL owned, operated, engaged, maintained and/or controlled the vessel, *CARNIVAL LEGEND*. The *CARNIVAL LEGEND* is a passenger cruise ship registered in a flag of convenience country.

6. At all times material hereto, CARNIVAL was SIFUENTES' employer and/or acted as an agent for an undisclosed principal who was the owner and/or operator of said ship.

7. At all times material hereto, said ship was located on navigable waters, and was engaged in navigation or was in the process of being prepared to engage in navigation.

COUNT I
(Jones Act Negligence)

SIFUENTES re-adopts and re-alleges paragraphs 1 through 7, and further alleges:

8. On or about April 17, 2008, SIFUENTES was employed by CARNIVAL as a seaman, was aboard said ship and was a member of said ship's crew. Said ship was in navigable waters and SIFUENTES was in the course of his employment with CARNIVAL by being in the service of the ship and answerable to the call of duty thereby.

9. On or about the above date, CARNIVAL owed a duty to provide SIFUENTES

with a reasonably safe place to work.

10. On or about the above date, CARNIVAL breached its duty to SIFUENTES, and SIFUENTES severely and permanently injured his left knee. The injury was solely due to the fault and negligence of CARNIVAL and/or their agents, servants, and/or employees including but not limited to the acts, conduct and/or omissions as follows:

- a. Failing to provide SIFUENTES with a safe place to work, including but not limited to (1) rushing SIFUENTES to do his work and requiring SIFUENTES to work unreasonable numbers of hours without sufficient rest; (2) not providing enough crew members; (3) requiring SIFUENTES to work without the proper safety equipment; (4) by requiring SIFUENTES to go back to work while taking medication prescribed by the ship's doctor after being injured; (5) failing to keep the decks clean and dry; (6) failing to have adequate trained crew to keep the decks clean and dry; (7) failing to have adequate number of crew to keep the decks clean and dry; (8) failing to properly supervise the crew to insure that the decks were kept clean and dry; (9) failing to warn of the dangerous condition of the deck
- b. Failing to provide an adequate number of crew members to safely and properly perform required jobs;
- c. Failing to provide adequate training and/or supervision;
- d. Failing to change or modify SIFUENTES 's job after knowing of his injuries;
- e. Failing to provide adequate injury protection equipment;
- f. Failing to provide adequate safety equipment for the performance of SIFUENTES 's duties;
- g. Failing to implement and/or enforce any safety rules, regulations, or policies to keep the vessel in a safe and seaworthy condition;
- h. Failing to provide prompt and adequate medical care, treatment, surgery and/or therapy;

- I. Failing to remove SIFUENTES from the vessel to provide his with competent shore side medical care in a timely manner;

11. CARNIVAL knew of the foregoing conditions causing SIFUENTES 's accident and injuries and did not correct them, despite a reasonable opportunity to do so, or the conditions existed for a sufficient length of time in the exercise of reasonable care should have learned of them and corrected them.

12. As a result of the negligence of CARNIVAL, SIFUENTES was injured, suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, economic insecurity caused by disability, inconvenience, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of his injuries, suffered physical handicap, lost wages and lost income in the past and his future working ability and earning capacity has been impaired. The injuries are permanent or continuing in nature, and SIFUENTES will suffer these loses into the future. In addition, SIFUENTES in the past and into the future has lost the fringe benefits that were included in his job, including but not limited to found, free food, free shelter, free medical care, free uniforms, vacation, and free air fare to his home country and then back to the vessel.

WHEREFORE, the Plaintiff, VICTOR ARMANDO SIFUENTES, demands judgment against the Defendants, CARNIVAL CRUISE LINES., for damages in excess of Fifteen Thousand Dollars, (\$15,000.00), court costs, interest where permitted by law, and demands trial by jury.

COUNT II
(Unseaworthiness)

SIFUENTES re-adopts and re-alleges paragraphs 1 through 7, and further alleges:

13. CARNIVAL had the absolute nondelegable duty to provide SIFUENTES with

a seaworthy vessel.

14. On or about the previously stated date, the unseaworthiness of the aforesaid vessel was a direct legal cause of the injury and damage to SIFUENTES by reason of the following:

- a. The vessel was unsafe and unfit due to the conditions created by CARNIVAL'S acts, conduct and omissions stated in paragraph number 10;
- b. The vessel was not reasonably fit for its intended purposes;
- c. The vessel's crew was not properly trained, instructed or supervised;
- d. The vessel did not have a fit crew or adequate manpower for keeping the floors in the galley clean and dry and a reasonably safe condition;
- e. The vessel unreasonably exposed its crew, including SIFUENTES, to unsafe and unfit conditions;
- f. The vessel was in violation of United States Coast Guard regulations and/or other applicable rules and regulations; and,
- g. The vessel failed to provide adequate means for repairing and/or preventing crew injuries in light of the vessel's unsafe and unfit conditions known to CARNIVAL.

15. As a result of the unseaworthiness of the vessel, SIFUENTES was injured, suffered physical pain, mental anguish, lost of enjoyment of life, disability, disfigurement, economic insecurity caused by disability, inconvenience, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of his injuries, suffered physical handicap, lost wages and lost income in the past and his future working ability and earning capacity has been impaired. The injuries are permanent or continuing in nature, and SIFUENTES will suffer losses and impairments in the future. In

addition, SIFUENTES in the past and into the future has lost the fringe benefits that were included in his job, including but not limited to found, free food, free shelter, free medical care, free uniforms, vacation, and free air fare to his home country and then back to the vessel.

WHEREFORE, the Plaintiff, VICTOR ARMANDO SIFUENTES, demands judgment against the Defendants, CARNIVAL CRUISE LINES., for damages in excess of Fifteen Thousand Dollars, (\$15,000.00), court costs, interest where permitted by law, and demands trial by jury.

COUNT III
(Failure to Provide Maintenance and Cure)

SIFUENTES re-adopts and re-alleges paragraphs 1 through 7, and further alleges:

16. On or about April 17, 2008, while a crew member on the *CARNIVAL LEGEND*, SIFUENTES severely and permanently injured his left knee.

17. Under the General Maritime Law, SIFUENTES, as a seaman, is entitled to recover maintenance and cure from CARNIVAL, including but not limited to prompt, proper and adequate medical treatment, transportation to and from the health care providers, room and board, and unearned and/or sick wages, which encompass regular wages, overtime, vacation pay, leave pay and tips to the end of the contract or voyage which ever is longer.

18. SIFUENTES has not been declared to have reached MMI, or was improperly declared to have reached MMI and/or there is a conflict amongst the physicians treating SIFUENTES regarding whether he has reached MMI. As such, all doubts regarding the provision of maintenance and cure being resolved in favor of the seaman, SIFUENTES is entitled to continuing maintenance and cure.

19. Prior to the filing of this action, SIFUENTES has made numerous demands on CARNIVAL for the payment of maintenance and cure, including but not limited to medical treatment, unearned and/or sick wages, room and board.

20. CARNIVAL willfully and callously delayed, failed and refused to pay SIFUENTES 's entire maintenance and cure, including but not limited to unearned and/or sick wages, so that SIFUENTES has had to hire the undersigned and become obligated to pay the undersigned a reasonable attorney's fee. In addition, CARNIVAL are late in paying the maintenance and cure benefits.

21. CARNIVAL's failure to pay SIFUENTES 's maintenance and cure, including but not limited to unearned and/or sick wages, is willful, arbitrary, capricious, and in callous disregard for SIFUENTES 's rights as a seamen. Accordingly, SIFUENTES would be entitled to attorney's fees under the General Maritime Law of the United States. Moreover, CARNIVAL's willful, arbitrary and capricious failure to provide and pay SIFUENTES with maintenance and cure is part of an ongoing pattern of ignoring seamen's rights to maintenance and cure, and has aggravated SIFUENTES 's condition and caused SIFUENTES to suffer additional compensatory damages including but not limited to physical pain, mental anguish, lost of enjoyment of life, disability, disfigurement, economic insecurity caused by disability, inconvenience, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of his injuries, suffered physical handicap, lost wages and lost income in the past and her future working ability and earning capacity has been impaired, and has incurred medical and hospital expenses in the past and into the future.

WHEREFORE, the Plaintiff, VICTOR ARMANDO SIFUENTES, demands judgment

against the Defendants, CARNIVAL CRUISE LINES., for damages in excess of Fifteen Thousand Dollars, (\$15,000.00), court costs, attorney's fees, pre and post judgment interest where permitted by law and demands trial by jury. Seaman SIFUENTES also reserves his right to amend this count to provide for an award of punitive damages.

COUNT IV
(Wages and Penalties)

SIFUENTES re-adopts and re-alleges paragraphs 1 through 7, and further alleges:

21. At all times material, SIFUENTES was employed as a seaman, was in the service of the ship, and performed all his work and duties required of his and carried out all orders given by his superiors.

22. CARNIVAL has sole custody and control of SIFUENTES 's payroll records, wage records and personnel file. SIFUENTES needs these documents and the information contained therein to show exact dates and amounts regarding his earned wages due and owing, as well as deductions made from his earned wages.

23. Pursuant to Title 46 U.S.C. §10313, SIFUENTES is entitled to payment of his earned wages and deductions therefrom, and two days wages for each day said payments are delayed.

WHEREFORE, the Plaintiff, VICTOR ARMANDO SIFUENTES, demands judgment against the Defendant, CARNIVAL CORPORATION, earned wages and any deductions made therefrom, delay wages, pre and post judgment interest as permitted by law, attorney's fees, court costs, and demands trial by jury.

DEMAND FOR JURY TRIAL

The Plaintiff, VICTOR ARMANDO SIFUENTES, hereby demands a trial by jury of all of the issues triable by right.

Dated the 12TH day of April, 2011.

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by: _____

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