

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

PAOLA ARBOLEDA NIEVES,

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO.

11-18340 GA13

v.

CELEBRITY CRUISES, INC.,

Defendant.

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**COMPLAINT AND DEMAND FOR JURY TRIAL  
WITH ATTACHED INTERROGATORIES, REQUEST FOR  
ADMISSIONS, REQUEST FOR PRODUCTION AND MOTION  
FOR IMMEDIATE INSPECTION OF VESSEL AND WITNESSES**

Plaintiff, Paola Arboleda Nieves, sues Defendant, Celebrity Cruises, Inc., and alleges:

1. This is an action seeking damages in excess of the jurisdictional limits of the Circuit Court, in and for Miami-Dade County, Florida.
2. Defendant, at all times material hereto, personally or through an agent:
  - a. Operated, conducted, engaged in or carried on a business venture in this state and/or county or had an office or agency in this state and/or county.
  - b. Were engaged in substantial activity within this state.
  - c. Operated vessels in the waters of this state.
  - d. Committed one or more of the acts stated in Florida Statutes, Sections 48.081, 48.181 or 48.193.

EXHIBIT C

e. The acts of Defendant set out in this Complaint occurred in whole or in part in this county and/or state.

3. Defendant is subject to the jurisdiction of the Courts of this state.

4. The causes of action asserted in this Complaint arise under the Jones Act, 46 U.S.C. Section 30104, and the General Maritime Law of the United States.

5. At all times material hereto, Defendant owned, operated, managed, maintained and/or controlled the vessels, CONSTELLATION AND SOLTICE.

6. At all times material hereto, Plaintiff's employer was either the ship owner or an agent of the ship owner and/or ship operator.

7. Sometime in October of 2008, the Plaintiff signed on the cruise ship, CONSTELLATION and was assigned the job tasks of an assistant waiter.

8. Prior to being assigned the job tasks of an assistant waiter, and the physical requirements associated with the job, the company performed a Pre-Employment Physical Examination and the Plaintiff was found fit to perform the job duties of an assistant waiter.

9. At all times material hereto, Plaintiff was working as an assistant waiter, and the Defendant was aware there were a number of crewmembers with similar jobs who reported suffering orthopedic injuries, including back, knee and lower extremities injuries, which were associated with the strenuous job requirements of an assistant waiter, including the excessive number of hours, the amount of bending, stooping, twisting and lifting required of the job.

10. Despite the number of injuries presented by those working as assistant waiters, Defendant failed to conduct any type of ergonomic studies in order to evaluate the job tasks of an assistant waiter, and take appropriate measures to reduce the number of injuries.

11. Sometime after signing on the CONSTALATION, approximately in November of 2008, Plaintiff reported to the ship's medical staff with complaints of knee and foot pain. Despite the fact the Plaintiff had complaints of knee pain, Plaintiff was returned to work performing the job duties of an assistant waiter.

12. Thereafter, Plaintiff would continually report to the ship's medical staff complaining of knee and foot pain. On or about March 30, 2009, Plaintiff was diagnosed with chondromalacia of her knees. Despite the diagnosis, Plaintiff was continually returned to work doing the strenuous job tasks required of an assistant waiter.

13. As Plaintiff continued to work, her pain increased and she would continually return to see the ship's medical staff. She was told that there was nothing wrong with her and she could continue performing her assigned job duties. Plaintiff relied on the doctors chosen by the Defendant to treat the Plaintiff for her injuries, who told her that she could continue working performing her assigned job tasks.

14. After Plaintiff's initial contract she returned home for vacation. Plaintiff was then reassigned to the SOLSTICE. After she began to work on the SOLSTICE Plaintiff's pain continued. She sought treatment with the ship's medical staff and in August of 2009, after she continued to complain of knee pain, the doctors chosen by the Defendant to treat the Plaintiff for her injuries recommended a referral for a surgical evaluation. Despite this referral for a surgical evaluation, Plaintiff was returned to work. The Plaintiff continued to return to the ship's medical staff complaining of knee pain in both legs. Plaintiff was found fit for duty and returned to the strenuous job activities required of her as an assistant waiter.

15. As a result of the strenuous requirements of Plaintiff's job as an assistant waiter, she developed lower back pain. She was diagnosed with a herniated disc.

16. Despite the diagnosis of a herniated disc together with her continual complaints of leg and knee pain, the Plaintiff was returned to work.

17. Plaintiff's condition continued to worsen and she was eventually disembarked in Colombia in December of 2009 for further medical care and treatment. After Plaintiff returned home to Colombia for further medical care and treatment she came under the care of the doctors chosen by the Defendant to treat her for her injuries who became agents of the Defendant.

18. Plaintiff eventually underwent surgery on her left leg by doctors chosen by the Defendant to treat her for her injuries. Her surgery included the insertion of hardware.

19. Despite the fact that surgery was performed on her left leg, her condition continued to deteriorate. Plaintiff's pain increased after her surgery. Plaintiff was also to have surgery on her right leg, however, the doctors chosen by the Defendant to treat the Plaintiff for her injuries elected not to go forward with that surgery until such time as the Plaintiff had recovered from her left knee surgery.

20. Plaintiff continues with pain and disability in her surgically repaired left knee and is still waiting for surgery for her right knee.

21. Plaintiff was not provided with prompt, proper and adequate medical care and treatment. The surgery that was performed on her left leg was performed incorrectly. Additionally, Plaintiff was not provided with proper physical therapy prior to her surgery. Plaintiff is in need of further medical care and treatment. Plaintiff has been required to undergo extensive and painful medical care and treatment, and continues to be in need of further medical care at this time.

22. It is anticipated the Plaintiff will require significant future medical care and treatment.

**COUNT I**  
**Jones Act Negligence**

Plaintiff readopts and re-alleges Paragraphs 1 through 22, and further alleges:

23. Plaintiff was injured due to the fault and negligence of Defendant, and/or its Agents, servants, and/or employees as follows:

- a. Failure to provide a safe place to work due to creating a dangerous job and ordering Plaintiff to perform a dangerous job.
- b. Failure to adopt and implement rules and procedures to make the work environment safer.
- c. Failure to use reasonable care to provide Plaintiff a safe place to work.
- d. Failure to ascertain the cause of prior similar accidents so as to take measures to prevent their re-occurrence, and more particularly Plaintiff's injuries.
- e. Due to an unsafe working environment in that Plaintiff was required to work quickly at a physically taxing job and beyond her physical capacities.
- f. Failure to promulgate and enforce reasonable rules and regulations to insure the safety and health of the employees and more particularly the Plaintiff.
- g. Failure to provide adequate training, instruction, and supervision to the Plaintiff.
- h. Failure to follow sound management practices with the goal of providing Plaintiff a safe place to work.
- i. Prior to Plaintiff's injuries Defendant failed to investigate the hazards to Plaintiff and then take the necessary steps to eliminate the hazards, minimize the hazard or warn Plaintiff of the danger from the hazard.

- j. Failure to properly evaluate Plaintiff's physical capacities to perform the assigned job tasks.
- k. Failure to conduct a proper ergonomics study of the job tasks.
- l. Failure to implement safety precautions to avoid injuries to the crewmembers assigned the job tasks of an assistant waiter.
- m. Reassigning Plaintiff to the strenuous job tasks required of her;
- n. Failure to modify Plaintiff's job requirements;
- o. Requiring Plaintiff to work beyond her physical capabilities;
- p. Failure to promptly diagnose Plaintiff's condition;
- q. Failure to adequately treat the Plaintiff's condition;
- r. Providing Plaintiff with medical care and treatment that worsened her condition;
- s. Failure to advise Plaintiff of the risks of her job activities on her health;
- t. Failure to provide a safe place to work;
- u. Failing to provide Plaintiff with prompt, proper and adequate medical care and treatment.
- v. By returning the Plaintiff to work after her continual complaints, thus causing her condition to worsen.
- w. By failing to provide Plaintiff with prompt, proper and adequate medical care and specifically, the medical care that was provided was inadequate and incorrect thus causing the Plaintiff additional disability and the need for further medical care and treatment.

25. Defendant knew of the foregoing conditions causing Plaintiff's accident and injuries and did not correct them, or the conditions existed for a sufficient length of time so that Defendant, in the exercise of reasonable care, should have learned of them and corrected them.

26. As a result of the negligence of Defendant, the Plaintiff was injured about her body and extremities, suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, aggravation of any previously existing unknown and/or known condition, incurred medical expenses in the care and treatment of her injuries, suffered physical handicap, lost wages and her working ability has been impaired. The injuries are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

WHEREFORE, the Plaintiff demands judgment against the Defendant for compensatory damages, Court costs, and demands trial by jury.

**COUNT II**  
**Unseaworthiness**

Plaintiff readopts and re-alleges Paragraphs 1 through 22, and further alleges:

27. Plaintiff was a seaman and a member of the crew of Defendant's vessel, which was in navigable waters.

28. At all times material hereto, the vessel was owned, managed, operated and/or controlled by Defendant.

29. Defendant had the absolute non-delegable duty to provide Plaintiff with a seaworthy vessel.

30. The unseaworthiness of Defendant's vessel was a legal cause of injury and damage to Plaintiff by reason of the following:

- a. The vessel was unsafe and unfit due to the unsafe working environment created by Defendant.
- b. The vessel was unsafe and unfit due to failure to adopt and implement safety rules and procedures to make the working area reasonably fit for the intended purpose;
- c. The vessel was unsafe and unfit due because vessel's crew was not properly trained, instructed, or supervised.
- d. The vessel was unsafe and unfit due to unsafe procedures.
- e. The vessel was unsafe and unfit due to assignment of job tasks without adequate assistance or equipment, especially after the accident.
- f. The vessel was unsafe and unfit due to assignment of physically taxing and dangerous tasks.
- g. The lack of a proper risk analysis of the job;
- h. The lack of an appropriate ergonomics study and implementation of ergonomic principles;
- i. The vessel was unsafe and unfit due to an inadequate medical staff that continuously returned Plaintiff to work despite her complaints.

31. As a result of the unseaworthiness of the vessel, the Plaintiff was injured about her body and extremities, suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, aggravation of any previously existing conditions, incurred medical expenses in the



care and treatment of her injuries, suffered physical handicap, lost wages and his working ability has been impaired. The injuries are permanent or continuing in nature, and Plaintiff will suffer losses and impairments in the future.

WHEREFORE, the Plaintiff demands judgment against the Defendant for compensatory damages, Court costs, and demands trial by jury.

**COUNT III**  
**(Failure to Treat/Inadequate Medical Care)**

Plaintiff readopts and realleges paragraphs 1 through 22, and further alleges:

32. Defendant failed to provide Plaintiff with prompt, adequate and complete medical care. Defendant's failure contributed to Plaintiff suffering additional injury, pain, disability and/or prolonged Plaintiff's recovery.

33. The medical care that was provided to the Plaintiff was inadequate. Plaintiff would constantly be seen by the ship's medical staff and returned to work despite her complaints. As a result, Plaintiff's condition continued to worsen. Plaintiff was eventually repatriated home for further medical care and treatment. Plaintiff was not provided with adequate physical therapy before her surgery. The doctors chosen by the Defendant to treat the Plaintiff for her injuries performed an inadequate surgery causing the Plaintiff further pain, suffering and disability. Plaintiff is in need of further medical care and treatment as a result of the inadequate medical care provided to the Plaintiff.

34. As a result of the failure to provide prompt, proper and adequate medical care and treatment, Plaintiff was injured about her body, extremities, suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, inconvenience, aggravation of any previously existing conditions, incur medical expenses in the care and treatment of her injuries,

suffered physical and psychological injuries, which resulted in the Plaintiff being handicapped, Plaintiff has lost wages in the past and her working ability has been impaired. Plaintiff will continue to suffer lost earnings and loss of earning capacity in the future. Plaintiff's injuries are permanent or continuing in nature, and Plaintiff will suffer all of the above described losses and impairments in the future.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages, including his past and future pain and suffering, mental anguish, physical handicap and impairment, disfigurement, disability, inconvenience, lost wages in the past, loss of ability to earn money in the future, and loss of capacity for the enjoyment of life. Plaintiff, also demands prejudgment interest, and trial by jury.

#### **COUNT IV**

#### **(Failure to Provide Entire Maintenance and Cure)**

Plaintiff readopts and realleges paragraphs 1 through 22, and further alleges:

36. On or about the previously stated date, Plaintiff, while in the service of the vessel as a crewmember was injured.

37. Under the General Maritime Law, Plaintiff, as a seaman, is entitled to recover maintenance and cure from Defendants, until she is declared to have reached maximum possible cure.

38. Defendants willfully and callously delayed, failed and refused to pay Plaintiff's entire maintenance and cure so that Plaintiff has become obligated to pay the undersigned a reasonable attorney's fee.

39. Defendants' failure to pay Plaintiff's entire maintenance and cure is willful, arbitrary, capricious, and in callous disregard for Plaintiff's rights as a seaman. As such, Plaintiff would be entitled to punitive damages and attorneys' fees under the General Maritime Law of the United States. It is Plaintiff's intent to file a motion to amend the Complaint by interlineation to demand punitive damages when appropriate. In the meantime the allegations in support of a claim for punitive damages are contained in this Complaint; however, only attorney's fees are demanded at this time.

WHEREFORE, Plaintiff demands judgment against the Defendants for compensatory damages, including his past and future pain and suffering, mental anguish, physical handicap and impairment, disfigurement, disability, inconvenience, lost wages in the past, loss of ability to earn money in the future, and loss of capacity for the enjoyment of life.

DATED this 14 day of June, 2011.

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