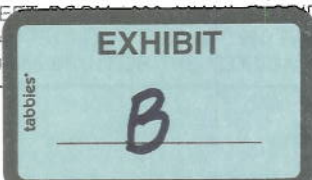


<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. <input type="checkbox"/> IN THE COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.				
DIVISION <input checked="" type="checkbox"/> CIVIL <input type="checkbox"/> OTHER		CIVIL ACTION SUMMONS (b) Form for Personal Service on a Natural Person		CASE NUMBER 437 66 CA 15
PLAINTIFF(S) JUAN R. SILVA		VS. DEFENDANT(S) CARNIVAL CORPORATION		CLOCK IN <i>DB 1/5/12 1:50pm</i>
THE STATE OF FLORIDA: TO EACH SHERIFF OF THE STATE, YOU ARE COMMANDED to serve this Summons and a copy of the Complaint in this lawsuit on defendant: CARNIVAL CORPORATION				
To Defendant(s): ARNALDO PEREZ		Address: 3655 NORTHWEST 87 AVENUE, MIAMI, FL 33178		
IMPORTANT A lawsuit has been filed against you. You have 20 calendar days after this summons is served on you to file a written response to the attached complaint with the clerk of this court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money and property may thereafter be taken without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book). If you choose to file a written response yourself, at the same time you file your written response with the Clerk of the Court, you must also mail or take a copy of your written response to the "Plaintiff/Plaintiff's Attorney" named below. The central location of the Clerk's office is at the Dade County Courthouse. The address of the courthouse, and branch locations are listed below for your convenience:				
Dade County Courthouse Clerk of Courts Room 133 73 West Flagler Street Miami, FL 33130	Joseph Caleb Center (20) Room 205 5400 NW 22 Avenue Miami, FL 33142	North Dade Justice Ctr (23) Room 100 15555 Biscayne Blvd. North Miami Bch, FL 33160	Hialeah District Court (21) Room 100 11 East 6th Street Hialeah, FL 33010	
Miami Beach District (24) Room 224 1130 Washington Avenue Miami Beach, FL 33139	Coral Gables District (25) Room 100 3100 Ponce de Leon Blvd. Coral Gables, FL 33134	South Dade Justice Ctr (26) Rom 1200 10710 SW 211 Street Miami, FL 33189	SERVICE	
Plaintiff/Plaintiff's Attorney RICARDO V. ALSINA Florida Bar No. 883182		Address: 2 S. BICAYNE BLVD., STE. 1776 MIAMI, FL 33131		
HARVEY RUVIN CLERK OF COURTS	BY: <u>TARON BETHEL</u> DEPUTY CLERK		DATED ON: DEC 29 2011 CLERK OF THE CIRCUIT COURT	
AMERICANS WITH DISABILITIES ACT OF 1990 IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE DADE COUNTY, COURT'S ADA COORDINATOR AT 73 WEST FLAGLER STREET, ROOM 133, MIAMI, FLORIDA, 33130, TELEPHONE NUMBERS (305) 349-7175 FOR VOICE, (305) 349-7174 FOR TDD AND (305) 349-7175 FOR RELAY SERVICE. (2) WORKING DAYS OF YOUR RECEIPT OF THIS DOCUMENT. TDD USERS MAY ALSO CALL 1-800-				

1/25 11/8/05



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

GENERAL JURISDICTION DIVISION

CASE NO. 1-43766CA15

JUAN R. SILVA,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendants.

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Plaintiff sues Defendant(s) and alleges:

1. This is an action seeking damages in excess of \$15,000.
2. Defendant(s), 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. Was 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, §§ 48.081, 48.181 or 48.193;
 - e. The acts of Defendant(s) set out in this Complaint occurred in whole or in part in this county and/or state.
3. Defendant(s) 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. §30104, the Seaman's Wage Act, 46 U.S.C. §10301 and 46 U.S.C. §10501 and the General Maritime Law of the United States.
5. At all material times hereto, Defendant(s) owned, operated, managed, maintained and/or controlled the vessel Glory. This vessel was registered in a flag of convenience country.
6. At all times material hereto, Plaintiff's employer was an agent of the shipowner and/or ship operator.

**COUNT I
JONES ACT NEGLIGENCE**

7. Plaintiff realleges, incorporates by reference, and adopts paragraphs 1 through 6 as though originally alleged herein.
8. On or about February 1, 2009, Plaintiff was employed by Defendant(s) as a seaman and was a member of the vessel's crew. The vessel was in navigable waters.
9. It was the duty of Defendant(s) to provide Plaintiff with a reasonably safe place to work.
10. On or about the above referenced date, Plaintiff was injured as follows:

On or around January 23, 2009, while in the course of his employment aboard the vessel Glory, Plaintiff due to the wetness in the dinning room floor near the Salad Bar.

11. Plaintiff's injuries are due to the fault and negligence of Defendant(s), and/or its agents, servants, and/or employees as follows:
 - a. Failure to use reasonable care to provide Plaintiff a reasonably safe place to work; and/or
 - b. Failure to promulgate and enforce reasonable rules and regulations to insure the safety and health of the Plaintiff, while engaged in the course of his employment on the Defendant(s)' vessel; and/or

- c. Failure to use reasonable care to provide Plaintiff a reasonably safe place to work due to:
 - i. Failed to have an adequately non slip or non skid surface on the floor area wherein Plaintiff fell, and/or,
 - ii. Failure to provide Plaintiff with adequately nonskid or nonslip footwear, and/or;
 - iii. Failure to warn about the presence of a wet slippery substance on the ground; and/or,
 - iv. Failure to have a floor areas that was safe and not wet; and/or,
 - v. Failure to warn the plaintiff of the danger of a slippery floor surface; and/or,
 - vi. Failure to maintain a dry floor; and/or,
 - vii. Creating and/or perpetuating a work environment where crew members are encouraged to return to work with injuries, and having in place a policy to provide injured crew members with pain killers and send them back to work, and/or,
- d. Failure to provide adequate instruction and supervision to crew members and Plaintiff; and/or
- e. Failure to provide prompt, proper, and adequate medical care to Plaintiff when he first sought it, which aggravated Plaintiff's injuries and caused him additional pain and disability; and/or
- f. Failure to ascertain the cause of prior similar accidents so as to take measures to prevent their re-occurrence, and more particularly Plaintiff's accident; and/or
- g. Defendant used outmoded work methods and procedures and neglected modern material handling techniques on board it's vessel;

- h. Defendant failed to train its crew members properly, and the work crews are undersized. As a result Defendant has small work crews doing jobs traditionally handled by larger crews;
- i. Failure to ascertain the cause of prior similar accidents so as to take measures to prevent their re-occurrence, and more particularly Plaintiff's accident, this is a violation of the ISM Code;
- j. Failure to follow sound management practices with the goal of providing Plaintiff a reasonably safe place to work.
- l. Prior to Plaintiff's accident Defendant failed to investigate the hazards to Plaintiff and then take the necessary steps to eliminate those hazards, minimize them or warn the Plaintiff of the danger from the hazard.
- m. Failure to perform an adequate pre-employment and/or re-employment physical on Plaintiff, so as to determine the dangers to Plaintiff of working on the vessel both prior to his first accident and each time Defendant(s) sent him back to work after being treated; and/or
- n. At all times material hereto, Defendant(s) negligently failed to determine the hazards to the Plaintiff while on the vessel, failed to eliminate the hazard, failed to modify the hazard and failed to properly warn the Plaintiff of the hazard. In addition, Defendant(s) violated the International Safety Management Code and failed to have a proper, adequate and safe Safety Management System Manual and/or to follow it on board the vessels on which the Plaintiff served. All of the above caused the Plaintiff to be injured and to not receive adequate care for his injuries.

- o. Defendant(s) knew of the foregoing conditions causing Plaintiff's accident and did not correct them, or the conditions existed for a sufficient length of time so that Defendant(s), in the exercise of reasonable care, should have learned of them and corrected them.
- p. As a result of the negligence of Defendant(s), the Plaintiff was injured about Plaintiff's body, experienced physical pain and suffering, mental anguish, a reasonable fear of developing future physical and medical problems, loss of enjoyment of life, physical disability, impairment and inconvenience in the normal pursuits and pleasures of life, feelings of economic insecurity caused by disability, incurred medical expenses in the care and treatment of Plaintiff's injuries, suffered physical handicap, lost wages in the past and into the future, lost income in the past and into the future, and his working ability and earning capacity has been impaired. The injuries and damages suffered by the Plaintiff are permanent or continuing in nature, and Plaintiff will continue to suffer these losses and impairments in the future. In addition Plaintiff in the past and in the future has lost the fringe benefits that come with Plaintiff's job, including but not limited to found, free food, free shelter, free medical care, free uniforms, vacation, and free air line ticket home and back.

WHEREFORE, Plaintiff demands all damages entitled by law and demands jury trial of all issues so triable.

**COUNT II
UNSEAWORTHINESS**

- 11. Plaintiff realleges, incorporates by reference and adopts paragraphs 1 through 6 as though they were originally alleged herein.
- 12. On or about the previously stated date, Plaintiff was a seaman and a member of the crew of Defendant(s)' vessel, which was in navigable waters.

13. At all times material hereto, the vessels were owned, managed, operated and/or controlled by Defendant(s).
14. Defendant(s) had an absolute non-delegable duty to provide Plaintiff with a seaworthy vessel.
15. On or about the previously stated date, 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 conditions created by Defendant(s) as follows:
 - i. Failed to have an adequately non slip or non skid surface on the floor area wherein Plaintiff fell, and/or,
 - ii. Failure to provide Plaintiff with adequately nonskid or nonslip footwear, and/or;
 - iii. Failure to warn about the presence of a wet slippery substance on the ground; and/or,
 - iv. Failure to have a floor areas that was safe and not wet; and/or,
 - v. Failure to warn the plaintiff of the danger of a slippery floor surface; and/or,
 - vi. Failure to maintain a dry floor; and/or,
 - vii. Creating and/or perpetuating a work environment where crew members are encouraged to return to work with injuries, and having in place a policy to provide injured crew members with pain killers and send them back to work, and/or,
 - b. The vessel was not reasonably fit for its intended purpose;
 - c. The vessel's crew was not properly trained, instructed, or supervised;
 - d. The vessel did not have a fit crew;

- e. The vessel did not have adequate manpower for the task being performed;
- f. The crew and the Plaintiff were overworked to the point of being exhausted and not physically fit to carry out their duties.

16. As a result of the unseaworthiness of the vessel, the Plaintiff was injured about Plaintiff's body, experienced physical pain and suffering, mental anguish, a reasonable fear of developing future physical and medical problems, loss of enjoyment of life, physical disability, impairment and inconvenience in the normal pursuits and pleasures of life, feelings of economic insecurity caused by disability, incurred medical expenses in the care and treatment of Plaintiff's injuries, suffered physical handicap, lost wages in the past and into the future, lost income in the past and into the future, and his working ability and earning capacity has been impaired. The injuries and damages suffered by the Plaintiff are permanent or continuing in nature, and Plaintiff will continue to suffer these losses and impairments in the future. In addition Plaintiff in the past and in the future has lost the fringe benefits that come with Plaintiff's job, including but not limited to found, free food, free shelter, free medical care, free uniforms, vacation, and free air line ticket home and back.

17. **WHEREFORE**, Plaintiff demands all damages entitled by law and demands jury trial of all issues so triable.

**COUNT III
FAILURE TO PROVIDE MAINTENANCE AND CURE**

18. Plaintiff realleges, incorporates by reference, and adopts paragraphs 1 through 8 as though they were originally alleged herein.

19. On or about the previously stated date, Plaintiff was injured while in the service of the vessel as a crew member.

20. Under the General Maritime Law and by operation of treaty, Plaintiff, as a seaman, is entitled to recover maintenance and cure from Defendant(s), until he is declared to have reached maximum possible cure. This includes unearned wages (regular wages, overtime, vacation pay and tips), which are reasonably anticipated to the end of the contract or voyage, whichever ever is longer.
21. Maintenance and cure is an ongoing obligation of the Defendant(s) from the date of Plaintiff's injury up through trial and at times beyond, as Plaintiffs are allowed to bring serial lawsuits for maintenance and cure purposes. Although maintenance and cure can be properly terminated at the point when the crew member reaches Maximum Medical Improvement (MMI) and/or Maximum Medical Cure (MMC), it must be reinstated if the Plaintiff suffers a relapse of his condition that once again requires treatment to return the Plaintiff to an MMI/MMC status or if a cure becomes available that was not available to the Plaintiff at the time of the declaration of MMI/MMC. In addition, if an MMI/MMC declaration is challenged by another physician, the conflict must be resolved in favor of the crew member receiving the additional care (treatment/cure) that is recommended.
22. In this case, at the request of the Defendant(s)' medical department, Plaintiff's treating doctor(s) that was chosen and paid for by Defendant(s), were pressured to deny Plaintiff all his curative care and prematurely cleared the Plaintiff to return to work.
23. Defendant(s) 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. In addition, Defendant(s) is late in paying the maintenance and cure.

24. Defendant(s)' 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 attorney's fees under the General Maritime Law of the United States. Further Defendant(s) unreasonably failed to pay or provide Plaintiff's entire maintenance and cure which aggravated his condition and caused Plaintiff to suffer additional compensatory damages including, but not limited to, the aggravation of Plaintiff's physical condition, disability, pain and suffering, reasonable fear of developing future physical and medical problems, mental anguish, loss of enjoyment of life, feelings of economic insecurity as well as lost earnings or earning capacity, and medical and hospital expenses in the past and into the future. The injuries and damages are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

WHEREFORE, Plaintiff demands all damages entitled by law, attorneys fees and demands jury trial of all issues so triable.

**COUNT IV
FAILURE TO TREAT**

25. Plaintiff realleges, incorporates by reference and adopts paragraphs 1 through 6 as though originally alleged herein.

26. On or about the previously stated date, Plaintiff was employed by Defendant(s) as a seaman and was a member of the vessel's crew. The vessel was in navigable waters.

27. It was the duty of Defendant(s) to provide Plaintiff with prompt, proper and adequate medical care.

28. Defendant(s), through the ship's physicians and nurses, negligently failed to provide Plaintiff with prompt, proper, adequate, after he sought it. This conduct includes, but is not limited to:

- a. Defendant(s) not giving Plaintiff medical care in a timely manner after his initial injury and reporting of it to the medical staff on board; and/or
- b. Defendant(s) not giving Plaintiff proper or adequate medical care for his injuries after he was signed off the vessel and sent home; and/or
- c. Defendant(s)' manipulating and directing Plaintiff's medical care in such a way as to minimize their expense for same and at times delaying and denying the Plaintiff medical care that would have adequately treated his injuries.

29. As a direct and proximate result of Defendant(s)' failure to treat the Plaintiff in the United States, Plaintiff suffered additional pain, disability and/or Plaintiff's recovery was prolonged. In addition, the Plaintiff was injured about Plaintiff's body and extremities, suffered physical pain and suffering, mental anguish, reasonable fear of developing future physical and medical problems, loss of enjoyment of life, physical disability, impairment, inconvenience on the normal pursuits and pleasures of life, feelings of economic insecurity caused by disability, disfigurement, aggravation of any previously existing conditions therefrom, incurred additional medical expenses in the care and treatment of Plaintiff's injuries, suffered physical handicap, lost wages, income lost in the past, and Plaintiff's working ability and earning capacity has been impaired. The injuries and damages are permanent or continuing in nature, and Plaintiff will suffer the losses and impairments in the future.

30. This Count is alleged separately from Jones Act Negligence pursuant to *Joyce v. Atlantic Richfield Company*, 651 F.2d 676 (10th Cir. 1981) which states, in part, "Negligent failure to provide prompt medical attention to a seriously injured seaman gives rise to a separate claim for relief [for which separate damages are awardable]."

WHEREFORE, Plaintiff demands all damages entitled by law and demands jury trial of all issues so triable.

**COUNT V
WAGES AND PENALTIES
46 USCA SECTIONS 10313 AND 46 U.S.C. §10501 AGAINST DEFENDANT
EMPLOYER(S)**

31. Plaintiff realleges, incorporates by reference and adopts paragraphs 1 through 6 as though originally alleged herein.
33. At all times material hereto, Plaintiff was employed as a seaman in the service of the vessel.
34. While in the service of the ship, Plaintiff performed all the work required of him and carried out the orders given by his superiors.
35. Plaintiff was discharged without any lawful, just or sufficient cause. At the time of Plaintiff's discharge, the vessel was in a port of the United States.
36. At the time of Plaintiff's discharge, Defendant(s) did not pay Plaintiff all of his earned wages, including reimbursement of deductions previously made from Plaintiff's wages. Defendant(s) have sole custody and control of Plaintiff's wage records and personnel file. These documents are needed by Plaintiff to review to show exact dates and amounts with respect to earned wages owing to Plaintiff and deductions made from such earned wages.
37. At the time of Plaintiff's discharge, Plaintiff demanded all his wages, including reimbursement of deductions made from Plaintiff's earned wages.
38. Defendant(s) refused to pay Plaintiff all his earned wages or reimburse Plaintiff for the deductions made therefrom, without sufficient cause.
39. Under 46 U.S.C.A. §10313, Plaintiff is entitled to his earned wages, deductions, and two days wages for each day payment is delayed.

WHEREFORE, Plaintiff demands all damages entitled by law and demands jury trial of

all issues so triable.

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