

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO.:

AT LAW AND IN ADMIRALTY

LYNDA MALONEY,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.

COMPLAINT FOR DAMAGES

The Plaintiff hereby sues the Defendants and files this Complaint for Damages, and says:

THE 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. **THE PLAINTIFF**. The Plaintiff, LYNDA MALONEY, is a permanent resident and citizen of Riverside County, California.
3. **THE DEFENDANT**. The Defendant, CARNIVAL CORPORATION d/b/a CARNIVAL CRUISE LINES (hereinafter referred to as CARNIVAL or Defendant or the cruise line), has its principal place of business in Miami, Florida. CARNIVAL is incorporated outside the state of Florida, but does business in the State of Florida, and at all times material hereto was and is

doing business in Miami-Dade County, Florida. At all times material hereto, the Defendant owned and/or operated the cruise ship on which the subject negligence occurred.

4. **FEDERAL SUBJECT MATTER JURISDICTION.** 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. This action arises under and is by virtue of the admiralty or maritime jurisdiction pursuant to 28 U.S.C. § 1333. This action is being filed in the Federal District Court for the Southern District of Florida, as required by the venue selection clause in the Passenger Contract Ticket issued by the Defendant.

5. **VENUE AND PERSONAL JURISDICTION.** The 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;

6. All conditions precedent for filing and maintaining this action have been fulfilled, have been waived, or do not apply.

OTHER ALLEGATIONS COMMON TO ALL COUNTS

7. **DATE OF INCIDENT.** This incident occurred on July 11, 2011.

8. **LOCATION OF INCIDENT.** This incident occurred on the vessel *Carnival Freedom*, a ship in navigable water while the Plaintiff was a passenger aboard. Accordingly, the Plaintiff's claims are governed by the general maritime law. Specifically, the incident occurred somewhere near the Endless Aft Pool and Bar on the Lido Deck of the *Carnival Freedom*.

9. **STATUS OF PLAINTIFF AS OF DATE AND TIME OF INCIDENT.** At all times material hereto, the Plaintiff was a passenger on the subject cruise ship described herein and, accordingly, was an invitee while on the vessel. The Plaintiff is not in possession of the Passenger Contract Ticket. The Defendant is in possession of the Passenger Contract Ticket or a facsimile thereof.

10. **DESCRIPTION OF THE INCIDENT.** The Defendant cruise line owns and operates the cruise ship, *Carnival Freedom*. Carnival actively participated in the design and construction of this ship. Carnival through its new build department, in house engineers, architects, and designers, and others actively participated in the design and construction and chose or participated in choosing the materials such as the type of flooring on the deck where this incident occurred. The cruise line contracted with design firms to design the interior elements including the decking of the Lido Deck somewhere near the Endless Aft Pool and Bar where this accident occurred, contracted with the shipyard to build this ship, stationed representatives at the shipyard to oversee construction and design elements, and through the contract documents and the relationship as owner had the ultimate ability to accept or reject the design, construction and materials chosen, including but not limited to the decking material on the Lido Deck.

12. After installation of the material on this deck, Carnival was made aware of problems with the surface and the unsafe character of the surface. Carnival knew and certainly

should have known about the dangerous characteristics of this surface especially when wet, and that the material is not appropriate to have near a pool. This material is not appropriate in these circumstances for foot traffic on the Lido Deck which is a deck open to shower water, pool water, spills of food and drink, and rain water. Carnival should have treated or altered the material to make it safer. Further, Carnival failed to maintain the deck so that it is clean and safe and free of large puddles of water.

13. Further, Carnival allowed a large puddle of water for an extended period of time after it was deposited or placed or existed on that deck on the day of the incident. The puddle caused the surface onto which it flowed to be slick, slippery, and extremely dangerous. Carnival knew or should have known that that particular floor is prone to having water spills because of its location near the pool. Further, Carnival should have cleaned up and dried up the large area of water on the slick, slippery surface where passengers are allowed to walk. As a result of the Defendant's negligence, the Plaintiff on that day and time of the incident walked into the area and she slipped and fell, causing serious, debilitating, and permanent injuries.

COUNT I **NEGLIGENCE**

14. The Plaintiff, LYNDA MALONEY, hereby adopts and realleges each and every allegation in paragraphs 1 through 13, above.

15. **DUTIES OWED BY THE DEFENDANT.** The Defendant owed a "duty to exercise reasonable care for the safety of its passengers" including the Plaintiff herein. See, *Hall vs. Royal Caribbean Cruises, Limited*, 2004 A.M.C. 1913, 2004 WL 1621209, 29 FLWD 1672, Case No. 3D03-2132 (Fla. 3d DCA Opinion filed July 21, 2004). The Defendant also owed a "duty to exercise reasonable care under the circumstances". See, *Harnesk vs. Carnival Cruise Lines, Inc.*, 1992 AMC 1472, 1991 WL 329584 (S. D. Fla. 1991). The Defendants "duty is to warn of dangers

known to the carrier in places where the passenger is invited to, or may reasonably be expected to visit.” See, *Carlisle vs. Ulysses Line Limited, S.A.*, 475 So. 2d 248 (Fla. 3d DCA 1985).

16. The Defendant breached those duties and was negligent by:
 - a. Failure to require crew members to wipe down and keep dry wet areas;
 - b. Failure to warn anyone including the Plaintiff who would walk on the pool deck, in the vicinity of the pool and bar of the dangerous condition and the fact that the floor was slippery;
 - c. Failing to inspect for and to observe the slippery area of the floor around the pool and bar;
 - d. Observing that the floor area around the pool and bar, but failing to wipe down and keep dry the wet floor area;
 - e. Failing to implement a method of operation which was reasonable and safe and would prevent dangerous conditions such as the one in this case and allowing negligent method of operations;
 - f. Failure to change out, alter, treat, modify, and/or otherwise make safe the resin surface which the cruise line knew for an extended period of time before this incident was unreasonably dangerous and unsafe under the circumstances;
 - g. Allowing an ongoing, recurring, continuous and/or repetitive problem to occur or to remain on the premises which would cause accidents or injuries;
 - h. Providing negligent maintenance to the area or to the premises;
 - i. Failing to otherwise maintain the area and the premises in a safe and reasonable manner;

- j. Failing to specify flooring in the design, construction, inspection, and approval process during and after design and construction of the ship which was and is reasonably safe under these circumstances;
- k. Failing to report, change, out, or modify the subject flooring after installation in order to make it safe;
- l. Choosing and approving a flooring surface for the subject area which was not reasonably safe under the circumstances;
- m. Failing to comply with applicable industry standards, statutes, and/or regulations the violation of which is negligence per se and/or evidence of negligence;
- n. Failing to otherwise provide its passengers with a safe place to walk.
- o. Failing to comply with applicable standards, statutes, and/or regulations the violation of which is negligence per se and/or evidence of negligence.
- p. Failure to comply with applicable industry standards, statutes, and/or regulations which invokes the Pennsylvania Rule and shifts the burden of proof to the Defendant in the proof of negligence or proof of the absence of negligence.

17. The Defendant created a dangerous condition on the subject ship and allowed the dangerous condition to exist thereby causing an incident on the date referenced above in which the Plaintiff was severely injured.

18. The Defendant either (a) created the dangerous condition, through its agents or employees; (b) had actual knowledge of the dangerous condition; and/or (c) had constructive knowledge of the dangerous condition.

19. The Defendant had constructive knowledge of the dangerous condition by, inter alia, (a) the length of time the dangerous condition existed; (b) the size and/or nature of the dangerous condition; and/or (c) the fact that the dangerous condition, a similar dangerous condition, or the cause of the dangerous condition was repetitive, continuous, ongoing, recurring, or occurring with some regularity. Thus, the dangerous condition was reasonably foreseeable and in the exercise of reasonable care the Defendant should have known about it.

20. In the alternative, notice to the Defendant is not required because the Defendant (a) engaged in and was guilty of negligent maintenance; and/or (b) engaged in and was guilty of negligent methods of operations.

21. The negligent condition was created by the Defendant; and was known to the Defendant; and had existed for a sufficient length of time so that Defendant should have known of it; and was a continuous or repetitive problem thus giving notice to the Defendant.

22. The negligent condition occurred with sufficient regularity so as to be foreseeable by the Defendant, and should have been foreseeable by the Defendant.

23. As a result of the Defendant's negligence, the Plaintiff has suffered bodily injury resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money. The losses are either permanent or continuing. The Plaintiff has suffered these losses in the past and will continue to suffer them in the future.

WHEREFORE, the Plaintiff demands Judgment against the Defendant for damages suffered as a result of Plaintiff's bodily injury and pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, the expense of hospitalization and

medical and nursing care and treatment, loss of earnings, loss of ability to earn money, loss of important bodily functions, and significant and permanent scarring or disfigurement, which have been incurred or suffered in the past and which will be incurred or suffered in the future; all court costs, all interest, and any and all other damages which the Court deems just or appropriate.

s/ **John H. Hickey**
John H. Hickey (FBN 305081)
Hickey@hickeylawfirm.com
HICKEY LAW FIRM, P.A.
1401 Brickell Avenue, Ste. 510
Miami, Florida 33131-3504
Telephone: (305) 371-8000
Facsimile: (305)371-3542
Attorneys for the Plaintiff, Lynda Maloney