

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: _____

FERNANDO OSORIO and DENIA IVETH
RODRIGUEZ-VISSUETTE,
as Personal Representative of the Estate
of Fernando Osorio Rodriguez,

Plaintiffs,

vs.

PRINCESS CRUISE LINES, LTD.,
d/b/a PRINCESS CRUISES, a
foreign corporation,

Defendant.

_____ /

COMPLAINT

COME NOW, the Plaintiffs, FERNANDO OSORIO and DENIA IVETH RODRIGUEZ-VISSUETTE (“OSORIO”), by and through their undersigned counsel and file this Complaint against the Defendant PRINCESS CRUISE LINES, LTD. d/b/a PRINCESS CRUISES, a foreign corporation (“PRINCESS”), and state as follows:

Background Facts

1. This is an action for compensatory damages in excess of One Million Dollars (\$1,000,000.00), exclusive of interest and costs.
2. This is a general maritime action against PRINCESS CRUISE LINES, LTD. (“PRINCESS”) arising out of the negligent, intentional and/or reckless actions and omissions of the

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Defendant and/or the captain, officers and/or crew members aboard the STAR PRINCESS on or about March 10, 2012.

3. Jurisdiction exists in this case under 28 U.S.C. §1332 since there is complete diversity of citizenship between the parties as the Defendant PRINCESS is a citizen of either Florida or California, while the Plaintiff's are citizens of Panama and the amount in controversy exceeds \$75,000.00

4. At all times material hereto, the Defendant PRINCESS owned and/or operated the cruise ship STAR PRINCESS.

5. The master, officers and crew of the STAR PRINCESS were employees and/or agents of the Defendant PRINCESS and accordingly, the Defendant PRINCESS is vicariously liable for the actions of said master, officers and crew members.

6. At all times material hereto, Fernando Ariel Osorio Rodriguez, age 16 was the son of Denia Iveth Rodriguez-Vissuette and Fernando Osorio and residing with his parents and family members in Rio Hato Sur, Panama, including his sisters Aleska (age 6), Melissa (age 14) and Yarelis (age 20) and his brother Oscar (age 15).

7. On February 24, 2012, Fernando Osorio Rodriguez and two friends, Oropeces Betancourt, and Adrien Vasquez entered into an agreement with Edwin Moreno to use his 26 foot "panga" called the "*Fifty Cents*" to fish off the coast of Panama. Shortly after the group left from Rio Hato, the engine of the *Fifty Cents* died and the boat drifted out to sea.

8. On or about March 10, 2012, after the boat had been drifting without power for 15 days, it drifted within sight of the STAR PRINCESS, which is a luxury cruise ship with a passenger

capacity of 2590 and a crew capacity of 1150. At the time the *Fifty Cents* was so far from shore that it was obvious that it was not fishing, but instead without power and adrift.

9. When the decedent Fernando Osorio Rodriguez and his companions Adrian Vasquez and Oropeces Betancourt saw the STAR PRINCESS, they repeatedly signaled that they were in distress and in need of rescue, waving their arms, waving a shirt tied to a pole and otherwise signaling to the passengers and crew of the STAR PRINCESS their dire predicament.

10. Three passengers aboard the STAR PRINCESS, who were using special optical equipment for bird watching, spotted the *Fifty Cents* and its occupants signaling for help and quickly recognized that the boat was in distress and that the men were in danger of dying if not rescued by the STAR PRINCESS.

11. These three passengers immediately reported the dire and life threatening condition of the occupants of the powerless and drifting fishing boat to a crew member of the STAR PRINCESS and provided him with their equipment to see for himself. After looking through this equipment, the crew member acknowledged to the passengers that he recognized that the *Fifty Cents* was adrift and in a dire emergency state and he in turn reported this emergency situation to the bridge.

12. The STAR PRINCESS is an extremely modern 109,000 ton cruise ship built at a cost of over \$430 million with the most sophisticated navigational, radar and tracking equipment and a crew trained to locate other vessels and potential navigational hazards while sailing. As a result of its highly sophisticated equipment and crew, the decedent Fernando Osorio Rodriguez and the other occupants of the *Fifty Cents* were identified and/or through the exercise of reasonable care should

have been identified as a vessel in distress by the STAR PRINCESS even without the express notification of the passengers as described above.

13. Despite this express notification that the *Fifty Cents* was adraft and in dire distress, as well as the fact that it was in clear view of this modern cruise ship with all of its sophisticated equipment, the STAR PRINCESS failed to discharge its duty under the law to render assistance to the stranded vessel and its occupants, literally leaving them to die.

14. Several days after they reported the stranded *Fifty Cents* on March 10, 2012, the three passengers who witnessed the distressed boat followed up with an Officer of the STAR PRINCESS and asked him what had happened to the distressed boat they reported. This Officer did not have an answer for them and walked away without explanation.

15. Even after receiving this follow up report of the distressed vessel, the Officer of the STAR PRINCESS did nothing to alert anyone of this emergency situation. This Officer was given express notification that the stranded boat had been abandoned by the STAR PRINCESS on March 10, 2012 and once again, despite a second chance, the Defendant PRINCESS, failed to discharge its legal duty.

16. Following the failure of the STAR PRINCESS to come to the aid of the stranded fishing boat, Oropeces Betancourt died of heat stroke and/or dehydration. Five days after the STAR PRINCESS abandoned the *Fifty Cents*, Fernando Osorio Rodriguez also died as a result of heat stroke and dehydration. Adrian Vasquez survived and was rescued thirteen days later by another fishing boat near the Galapagos Islands.

Jurisdiction

17. PRINCESS is a for profit foreign corporation, headquartered in Santa Clarita, California, with a base of operations in various locations in the United States, including a substantial base of operations in South Florida. PRINCESS conducts substantial business in the State of Florida.

18. At all times material hereto, PRINCESS personally or through an agent:
- a. Operated, conducted, engaged in and/or carried on a business venture in the State of Florida;
 - b. Engaged in substantial business activity in the State of Florida;
 - c. Operated vessels and provided vessels for cruises in the water of this state; and
 - d. Committed one or more acts as set forth in Florida Statutes § 48.161, 48.181, and 48.193, which submit PRINCESS to jurisdiction and venue of this Court.

19. PRINCESS personally or through an agent, among other things:
- a. Maintains at least three (3) offices in Florida. At least one of these offices is an operational facility. This one operational facility solicits and accepts employment applications for administrative, secretarial, management, warehouse and other employment opportunities with PRINCESS. Another of the at least three offices is a consolidation center located in Fort Lauderdale. This consolidation center is one of only two in the United States which PRINCESS identifies in its Freight Shipping Information Guide for Suppliers. The consolidation center is a hub to which suppliers of nearly every manner of goods ship their respective goods for PRINCESS to subsequently distribute to its various ships, ports, properties or people. Another facility PRINCESS maintains in Broward County is a warehouse facility;
 - b. PRINCESS maintains in Florida numerous employees, agents, telephones, facsimiles, inventory, mail boxes and/or post office boxes. PRINCESS also maintains its bank accounts in Broward County from which it transacts business;

- c. PRINCESS has a registered agent in Florida;
- d. PRINCESS utilizes the Port of Miami and Port Everglades as its embarkation point for a multitude of cruises, including the CARIBBEAN PRINCESS, CORAL PRINCESS, DAWN PRINCESS, GOLDEN PRINCESS, ISLAND PRINCESS, REGAL PRINCESS, ROYAL PRINCESS, SEA PRINCESS, STAR PRINCESS and SUN PRINCESS;
- e. PRINCESS solicits business for its cruise operations in Miami-Dade County and state-wide. PRINCESS' website allows Floridians to simply type in an address and/or zip code to be directed to a travel agent nearest them, which agent will be able to book a PRINCESS cruise without hesitation;
- f. PRINCESS solicits and entices people from around the globe to visit Miami and Fort Lauderdale as a shore excursion, and, furthermore, makes provision for a tour of the cities' attractions;
- g. PRINCESS enters into contracts with various companies in Florida and Miami in particular, including Steiner Leisure to supply personnel to work in the spas and gyms aboard its ships. In addition, it also employs people as casino dealers and slot technicians through Carnival Corporation, headquartered in Miami, Florida;
- h. PRINCESS is part of Carnival Corporation, the largest cruise line operation in the world, which is headquartered in Miami, Miami-Dade County, Florida;
- i. PRINCESS is one of seventeen (17) cruise lines whose presence in Dade and Broward Counties accounts for business activity output of over one billion dollars and local tax revenue of over forty million dollars. Together with these sixteen (16) other cruise operations, PRINCESS is responsible for directly employing over 6,500 people in Dade and Broward Counties;
- j. PRINCESS is an active member of the Cruise Line International Association ("CLIA"), which is an agent for PRINCESS and the trade organization for the cruise industry; CLIA has a headquarters and of its base of operations in Florida.

20. PRINCESS has purposefully established minimum contacts with Florida by intentionally availing itself of the privilege of conducting business in Florida, such that PRINCESS

reasonably is expected to be haled into Court here. As such, PRINCESS is subject to the jurisdiction of the Courts of this State, and, particularly, the instant Court.

Princess' Legal Duty

21. It is a fundamental principle of the Law of the Sea as recognized by both longstanding international and U.S. law that a vessel has the *mandatory* legal duty to provide assistance to any vessel on the high seas in distress.

22. The International Convention for the Safety of Life at Sea (SOLAS), which was originally promulgated in response to the sinking of the *Titanic*, provides in Regulation 10:

The master of a ship at sea which is in a position to be able to provide assistance, on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service, that the ship is doing so.

(Emphasis added).

23. Similar requirements are set forth in numerous other international conventions and treaties, including but not limited to the Convention on the High Seas recognized by United Nations Treaty and the International Convention on Salvage.

24. The United States Congress has recognized a similar duty by its adoption of 46 U.S.C. §2304 as part of United States Shipping Code, which provides in pertinent part:

A master or individual in charge of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or individuals onboard.

(Emphasis added).

25. PRINCESS has acknowledged this mandatory duty and in fact issued the following press release:

We all understand that it is our responsibility and also the law of the sea to provide assistance to any vessel in distress, and it is not an uncommon occurrence for our ships to be involved in a rescue at sea. In fact, we have done so more than thirty times in the last ten years...

(Emphasis added).

COUNT I - NEGLIGENCE

26. The Plaintiffs repeat and adopt paragraphs one (1) through twenty-five (25) above and further avers:

27. The Defendant PRINCESS breached its legal duties and obligations to the decedent Fernando Osorio Rodriguez and his companions by failing and/or refusing to rescue them when its vessel, officers and/or crew knew, or should have known, of their precarious and life threatening situation and need for rescue.

28. As set forth in detail above, the crew of the STAR PRINCESS was expressly notified of the need to rescue Fernando Osorio Rodriguez and his companions by passengers aboard the vessel. This information was conveyed to a crew member, who acknowledged receiving it and further confirmed the accuracy of this information based upon his own observations. The crew member advised the passengers that he would report this information to the officers, Captain and bridge. This information was communicated again to an Officer on the vessel two days later with a request for an explanation as to why the vessel had not diverted to pick up the stranded fishermen. Even after this further notice, the ship failed to take any action to either attempt to locate the stranded seamen or to notify the appropriate naval authorities, who were involved in searching for them.

29. Even in the absence of such notification by its passengers, the STAR PRINCESS either knew or should have known of the life threatening peril that Fernando Osorio Rodriguez and

his companions were in as a result of their distressed vessel by virtue of its modern state of the art equipment, which was clearly capable of identifying the stranded vessel on its own.

30. Despite the foregoing knowledge and notice, the STAR PRINCESS, its officers and/or crew abandoned the decedent, Fernando Osorio Rodriguez and literally left him to his death.

31. At the very least, the above-described actions of the Defendant, its master and crew clearly constitute negligence, which negligence was a proximate cause of the decedent's subsequent extreme pain and suffering, severe psychological and emotional distress and bodily injury, which eventually led to the decedent's untimely and wrongful death.

32. That as a direct and proximate result of the negligence of the Defendant PRINCESS, the Estate and survivors of Fernando Osorio Rodriguez are entitled to recover under the applicable law the following compensatory damages:

- a. The decedent's extreme pain and suffering, severe emotional and psychological injuries, and his physical and bodily injuries occurring from the date of the Defendant's refusal to rescue him up until the time of his death; and
- b. DENIA IVETH RODRIGUEZ-VISSUETTE, decedent's mother, is entitled to recover for her moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of her son.
- c. FERNANDO OSORIO, decedent's father, is entitled to recover for his moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of his son.
- d. The Estate of Fernando Osorio Rodriguez is entitled to recover decedent's loss of earnings, loss of net accumulations, loss of inheritance and all other damages permitted under the applicable law.

- e. Aleska, Melissa, Oscar and Yarelis Osorio, the decedent's siblings are each entitled to recover for their moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of their brother.

WHEREFORE, the Plaintiffs FERNANDO OSORIO and DENIA IVETH RODRIGUEZ-VISSUETTE as the Personal Representatives of the Estate of Fernando Osorio Rodriguez, demand judgment for all damages recoverable under any applicable law against the Defendant, including those damages set forth in paragraph 32 above and demands trial by jury of all issues triable as a right by a jury.

COUNT II - NEGLIGENCE PER SE

33. The Plaintiffs repeat and adopt paragraphs one (1) through twenty-five (25) above and further avers:

34. The Defendant PRINCESS had a statutory non-delegable duty to rescue and come to the aid of the decedent Fernando Osorio Rodriguez and failed and/or refused to do so in violation of the above-described statutory and treaty obligations and accordingly, is guilty of negligence per se.

35. The decedent Fernando Osorio Rodriguez was in the class of persons intended to be protected by the above-described statutory and treaty obligations.

36. As a direct and proximate result of the negligence per se of the Defendant PRINCESS, the Estate and survivors of Fernando Osorio Rodriguez are entitled to recover under the applicable law the following damages:

- a. The decedent's extreme pain and suffering, severe emotional and psychological injuries, and his physical and bodily injuries occurring from the date of the Defendant's refusal to rescue him up until the time of his death; and

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- b. DENIA IVETH RODRIGUEZ-VISSUETTE, decedent's mother, is entitled to recover for her moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of her son.
- c. FERNANDO OSORIO, decedent's father, is entitled to recover for his moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of his son.
- d. The Estate of Fernando Osorio Rodriguez is entitled to recover decedent's loss of earnings, loss of net accumulations, loss of inheritance and all other damages permitted under the applicable law.
- e. Aleska, Melissa, Oscar and Yarelis Osorio, the decedent's siblings are each entitled to recover for their moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of their brother.

WHEREFORE the Plaintiffs, FERNANDO OSORIO and DENIA IVETH RODRIGUEZ-VISSUETTE as the Personal Representatives of the Estate of Fernando Osorio Rodriguez, demand judgment for all damages recoverable under any applicable law against the Defendant, including those damages set forth in paragraph 36 above and demands trial by jury of all issues triable as a right by a jury.

COUNT III - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

37. The Plaintiffs repeat and adopt paragraphs one (1) through twenty-five (25) above and further avers:

38. Although the Defendant PRINCESS, by and through its agents and employees had express knowledge that Fernando Osorio Rodriguez and his companions were stranded on a small panga, which was adrift over 100 miles from the nearest land, its vessel, officers and crew refused to rescue the decedent and his companions, despite an absolute legal duty to do so with the

knowledge and/or substantial certainty that Fernando Osorio Rodriguez and his companions would either die, or be subjected to extreme and unconscionable mental distress, psychological injury, bodily injury and pain and suffering.

39. This extreme conduct of the Defendant PRINCESS through the STAR PRINCESS, its officers and crew was outrageous and under the circumstances so beyond all bounds of decency as to be regarded as shocking, atrocious and utterly intolerable in a civilized society, especially in light of their knowledge that their actions would be substantially certain to subject the decedent to thirst, starvation, dehydration, sun stroke and other perils of the sea and most likely result in his death, which they did.

40. As a direct and proximate result of the actions of PRINCESS, its vessel, officers and crew, the decedent Fernando Osorio Rodriguez suffered significant and extensive bodily injury including, but not limited to physical, emotional and psychological injuries, pain and suffering and anguish, dehydration and sunstroke which eventually resulted in his death.

41. As a direct and proximate result of the intentional and reckless acts of the Defendant PRINCESS, and its vessel, officers and crew, the Estate and survivors of Fernando Osorio are entitled to recover under the applicable law the following compensatory damages:

- a. The decedent's extreme pain and suffering, severe emotional and psychological injuries, and his physical and bodily injuries occurring from the date of the Defendant's refusal to rescue him up until the time of his death; and
- b. DENIA IVETH RODRIGUEZ-VISSUETTE, decedent's mother, is entitled to recover for her moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of her son.

- c. FERNANDO OSORIO, decedent's father, is entitled to recover for his moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of his son.
- d. The Estate of Fernando Osorio Rodriguez is entitled to recover decedent's loss of earnings, loss of net accumulations, loss of inheritance and all other damages permitted under the applicable law.
- e. Aleska, Melissa, Oscar and Yarelis Osorio, the decedent's siblings are each entitled to recover for their moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of their brother.

WHEREFORE, the Plaintiffs, FERNANDO OSORIO and DENIA IVETH RODRIGUEZ-VISSUETTE, as the Personal Representatives of the Estate of Fernando Osorio Rodriguez, demand judgment for all damages recoverable under any applicable law against the Defendant, including those damages set forth in paragraph 41 above and demands trial by jury of all issues triable as a right by a jury.

COUNT IV - INTENTIONAL TORT AND/OR RECKLESS MISCONDUCT

42. The Plaintiffs repeat and adopt paragraphs one (1) through twenty-five (25) above and further avers:

43. Although the Defendant PRINCESS by and through its agents and employees had express knowledge that Fernando Osorio Rodriguez and his companions were stranded on a small panga which was adrift over 100 miles from the nearest land, its vessel, officers and crew consciously and intentionally refused to rescue the decedent and his companions, despite an absolute legal duty to do so and acted with the knowledge and/or substantial certainty that Fernando Osorio Rodriguez and his companions would either die, or be subjected to extreme and unconscionable mental distress, psychological injury, bodily injury and pain and suffering.

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44. As a direct and proximate result of the deliberate and intentional actions of PRINCESS, its vessel, officers and crew, the decedent Fernando Osorio Rodriguez suffered significant and extensive bodily injury including, but not limited to physical, emotional and psychological injuries, pain and suffering and anguish, dehydration and sun stroke which was eventually resulted in his death.

45. As a direct and proximate result of the deliberate and intentional acts of the Defendant PRINCESS, vessels, officers and crew, the Estate and survivors of Fernando Osorio Rodriguez are entitled to recovery under the applicable law of the following compensatory damages:

- a. The decedent's extreme pain and suffering, severe emotional and psychological injuries, and his physical and bodily injuries occurring from the date of the Defendant's refusal to rescue him up until the time of his death; and
- b. DENIA IVETH RODRIGUEZ-VISSUETTE, decedent's mother, is entitled to recover for her moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of her son.
- c. FERNANDO OSORIO, decedent's father, is entitled to recover for his moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of his son.
- d. The Estate of Fernando Osorio Rodriguez is entitled to recover decedent's loss of earnings, loss of net accumulations, loss of inheritance and all other damages permitted under the applicable law.
- e. Aleska, Melissa, Oscar and Yarelis Osorio, the decedent's siblings are each entitled to recover for their moral damages, loss of affection and feelings, mental pain and suffering, anguish, loss of support and services and all other damages permitted under the applicable law for the death of their brother.

46. In addition, as a further direct and proximate result of the deliberate and intentional conduct of the Defendant PRINCESS, its vessel, officers and crew, which were performed with the

knowledge and/or substantial certainty that Fernando Osorio and his companions would either die, or be subjected to extreme and unconscionable mental distress, psychological injury, bodily injury and pain and suffering, the decedent's estate and survivors are further entitled to a recovery of punitive damages from the Defendant.

WHEREFORE, the Plaintiffs, FERNANDO OSORIO and DENIA IVETH RODRIGUEZ-VISSUETTE, as the Personal Representative of the Estate of Fernando Osorio Rodriguez, demand judgment for all damages recoverable under any applicable law against the Defendant, including those set forth in paragraphs 45 and 46 above and demands trial by jury of all issues triable as a right by a jury.

DATED this 41 day of June, 2012.
Miami, Florida.

By:



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