

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Miami Division

CASE NO:

AT LAW AND IN ADMIRALTY

KARL M. BROBERG, Individually, and
as Administrator of the Estate of
SAMANTHA JOYCE BROBERG,
Deceased,

Plaintiff,

CARNIVAL CORPORATION,
d/b/a CARNIVAL CRUISE LINES,

Defendant.

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiffs, KARL M. BROBERG, Individually, and as Administrator of the Estate of SAMANTHA JOYCE BROBERG, hereinafter referred to as "Plaintiff" or the "Decedent," files this Complaint against, hereinafter referred to as "Defendant" or "CARNIVAL" and alleges:

THE PARTIES

1. At all times material, the Plaintiff, KARL M. BROBERG, was the husband of Samantha Joyce Broberg.

2. The Plaintiff, KARL M. BROBERG is a resident of the State of Texas, and has been duly appointed as Administrator of the estate of his late wife, Samantha Joyce Broberg.

3. The Plaintiff, KARL M. BROBERG, is *sui juris*.

4. The Plaintiff, KARL M. BROBERG, brings this action in his individual capacity, and in his representative capacity as Administrator of the Estate of Samantha Joyce Broberg,

pursuant to Letters of Independent Administration issued by the Probate Court, Tarrant County, Texas, on December 14, 2016.

5. This action is brought on behalf of the Estate of Samantha Broberg and all survivors who are entitled to recover, including but not limited to, decedent's children Ryleigh Ranell Christine de Bose, age 8, and Aaliyah Reshea Williams, age 15, and her dependent stepchildren Kalee Broberg, age 7, and Savannah Shay Broberg, age 11.¹

6. The Defendant, CARNIVAL CORPORATION, is a Panamanian Corporation, with its principal place of business in Miami-Dade County, Florida, and is authorized to do business in the State of Florida, and does business in Miami-Dade County, Florida.

7. At all times material, CARNIVAL owned, operated, managed, maintained and/or controlled the cruise ship, *Carnival Liberty*, IMO 9278181.

8. At all times material, CARNIVAL, in the County and 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;

JURISDICTION AND VENUE

9. This is an action for damages which exceeds the sum specified in 28 U.S.C. 1332, exclusive of interest and costs.

¹ Ages stated refer to age on date of decedent's death on May 13, 2016, as per presumption of death letter issued by the USCG.

10. The Court has subject matter jurisdiction, as there is complete diversity of citizenship pursuant to 28 U.S.C. § 1332, as this action is between citizens of a State, and/or citizens or subjects of a foreign state.

11. This Court also has jurisdiction pursuant to 28 U.S.C. §1333.

12. The causes of action asserted in this Complaint are governed by the General Maritime Law of the United States and the laws of the State of Florida.

13. The incidents described herein occurred upon navigable waters.

14. All conditions precedent and necessary for the filing and maintenance of this action have been fulfilled, waived, or do not apply.

FACTUAL BACKGROUND

15. The events set forth in this Complaint occurred aboard the *Carnival Liberty*, while the vessel was en route from Galveston Texas to Cozumel, Mexico on May 12 – 13, 2016.

16. On the afternoon of May 12, 2016, Samantha Joyce Broberg, age 33, boarded the *Carnival Liberty* cruise ship in Galveston Texas along with two (2) traveling companions for a planned four (4) day “girls-weekend” cruise.

17. Starting at 1:06 PM on May 12, 2016, and continuing into the afternoon, Mrs. Broberg was served alcoholic drinks throughout the ship’s many bars, including in the Casino, at the ship’s indoor bars, and the outer pool deck bar.

18. In the ensuing twelve (12) hours, Samantha Joyce Broberg was excessively served alcoholic beverages by Carnival bar servers and tenders to the point where she became visibly and highly inebriated.

19. By late afternoon and well into the evening, the Carnival’s bar personnel knew

that Mrs. Broberg was intoxicated, yet continued serving her alcohol, including at least six of the many Carnival “drink specials,” a “Make it a Double” of “Titos” vodka and several beers.

20. By 1:15 AM on May 13, 2016, Mrs. Broberg was observed by other passengers sitting in a Promenade Bar in a “drowsy state” and “nodding off to sleep,” yet Carnival personnel continued to serve her alcoholic beverages.

21. Shortly before 2:00 AM (CST), Mrs. Broberg proceeded to make her way from a Promenade Bar on Deck 5 to Deck 10.

22. As Mrs. Broberg approached the ship’s outer rail, in her inebriated state, she unceremoniously stepped on one of the many ship’s lounge chairs, neatly lined up near the ship’s outer deck rail, turned her back to the water, momentarily sat on the rail, and within a split second, fell backwards, head over heels, into the Gulf of Mexico.

23. Mrs. Broberg had become the latest victim of Carnival’s abusive and flagrant disregard for its passengers’ safety, by the over-service of alcoholic drinks, and the callous indifference demonstrated by its ignoring the intent and purpose of the Cruise Vessel Security and Safety Act of 2010 (“CVSSA”), 46 *U.S.C.* §§3501 *et seq.*, the International Convention for the Safety of Life at Sea (“SOLAS”), International Safety Management Code (ISM Code) Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW), the International Ship and Port Facility Security Code (“ISPS”) the Maritime Security Transportation Act of 2002 (“MTSA”).

24. Mrs. Broberg had become the 270th person to fall overboard from a cruise ship

² See: <http://www.cruisejunkie.com/Overboard.html>. Also, certain statistical data is available at <https://www.transportation.gov/mission/safety/cruise-line-incident-reports> relating to “missing” persons. But, person overboard reporting has been an issue in the cruise industry for decades. The CVSSA

since the year 2000.

25. Of those, *nearly half* are from Carnival cruise ships and in a significant number of such falls, the person falling or going overboard is intoxicated. (*see: footnote # 2*)

26. The tragic image of Mrs. Broberg tumbling backwards off the railing of the *Carnival Liberty*, and splashing into the sea at 2:04 AM (CST), on Friday, May 13, 2016 was recorded by the ship's FLIR Thermal Camera system.³

27. Yet, the *Carnival Liberty* did not detect that Mrs. Broberg had gone overboard for 15 hours.

28. The *Carnival Liberty* sounded no alarms.

requires that cruise lines report missing persons to the Department of Transportation for posting after the FBI closes its investigative case. However, the web site does not distinguish whether missing persons are "missing" as a result of going overboard or otherwise "missing" and therefore Plaintiff submits that the more accurate account is set forth on www.cruisejunkie.com.

³ Further, the Cruise Lines International Association (CLIA) is a not-for-profit organization organized under the laws of the District of Columbia, with its principal place of business in Washington, D.C and over 62 members, including the Cruise Lines, and is a unified global organization that advocates for the common interests of the cruise community and protecting its members' legal interests in the jurisdictions where they operate. Despite efforts by the Department Homeland Security through the USCG to further the purpose and intent of the CVSSA in the immediate detection of persons falling overboard, according to CLIA, "image capture technology systems (closed circuit TV, thermal, etc.) have been proven to be reliable and have been successfully used in the maritime environment for many years. However, the technology to reliably detect persons or objects as they are in the process of going overboard is not yet readily available for use at sea. Because the statute does not require one method over the other, we anticipate that the cruise industry will focus on using capture systems rather than detection systems." See Federal Register/Vol. 80, No. 11/Friday, January 16, 2015/Proposed Rules (50 CFR Part 70 (Docket No. USCG-2011-0357)).

Plaintiff submits that this information is dated and/or inaccurate as at the time of Plaintiff's fall, the technology was available for automatic early detection and to further the intent and purpose of the CVSSA. It is respectfully submitted the purpose and intent of the CVSSA was not fulfilled by the *Carnival Liberty's* FLIR Thermal video capture of Mrs. Broberg, when on its face, the facts reveal that Carnival did not report the overboard incident for 15 hours after her fall overboard, and therefore Carnival failed to exercise reasonable care under the circumstances consistent with its duty under the General Maritime Law of the United States.

29. The *Carnival Liberty* did not slow its speed or stop.

30. The *Carnival Liberty* did not announce OSCAR, OSCAR, OSCAR, the time honored maritime alert to crew and passengers that someone had fallen overboard.

31. The *Carnival Liberty* made no Williamson or Anderson turn, or return the vessel to the “man overboard” (MOB) location, or give the command to launch the rescue boat.

32. The *Carnival Liberty* failed to launch any lifeboats to rescue Samantha Joyce Broberg.

33. The *Carnival Liberty* continued to plow through the waters of the Gulf of Mexico at a speed of 19.8 knots, all the way to Cozumel, Mexico, without even as much as *slightly dropping* her forward speed.

34. By 9:00AM (CST), Mrs. Broberg’s cabin mates informed *Carnival Liberty* personnel that she was “missing.”

35. Even though *Carnival Liberty* personnel were informed by her traveling companions that Mrs. Broberg was “missing;” even though the *Carnival Liberty* camera system recorded her fall overboard at 2:04 (CST) AM the night before; even though many *Carnival Liberty* bartenders and servers recognized her and had grossly over-served her alcohol in the 12 hours preceding her fall overboard; even though there were surveillance cameras throughout the public areas of the ship which would have captured her walk to the upper deck and her fall overboard at 2:04 AM (CST) after she made her way from the Promenade Bar where at 1:15 AM (CST) Carnival sold her last “Titos” – “Make it a double” Vodka, (based on information Carnival possessed - her Sale and Sign Card account registering the purchase); even though she was nearly asleep at the Promenade Bar when served her last “Make it a double” “Titos” vodka drink; even

though Carnival personnel possessed the ability to review the FLIR Thermal Video, and make a positive confirmation that she had gone overboard, Carnival failed to exercise reasonable care and due regard for the circumstance, and failed commence any type of search and rescue for Mrs Broberg; or search the waters of area of the ship's last known position where she last been seen, and did not even report that she was missing to the United States Coast Guard until 5:00 PM (CST) on Friday, May 13, 2016, thereby delaying any search and rescue for 15 hours after her fall overboard and a total of 18 hours considering necessary deployment time for USCG assets.

36. Following Mrs. Broberg's fall overboard at 2:04 AM (CST) on May 13, 2016, the Carnival Liberty did not report her missing to any maritime authorities for over 15 hours, when at 5:00 PM (CST), the *Carnival Liberty's* Captain finally reported the incident to the United States Coast Guard.

37. Carnival bar service personnel did not comply with Carnival's Responsible Service of Alcohol Modules and Procedures.

38. Carnival security personnel did not comply with Carnival's Safety Management System Manual (SMS), in relation to over service of alcohol, missing persons, or reporting of a man overboard event, as more fully described hereinafter.

39. Had Carnival not over-served Samantha Joyce Broberg alcoholic beverages, she would never have gone overboard, forever lost to the sea at 2:04 AM on May 13, 2016.

40. Carnival's method of operation required deck personnel to place the pool lounge chairs on Deck 10 against or in close proximity to the railing of the ship, subsequently reducing the ability of the rail to prevent passengers and crew from going overboard.

41. Had Carnival deck personnel not created a dangerous condition by placing the

pool lounge chairs on Deck 10 against or near the railing of the ship, Samantha Joyce Broberg would not have been able to readily climb onto the lounge chair and easily access the top of the railing.

42. Carnival personnel made no effort to restrict the service of alcohol to Samantha Joyce Broberg, despite her outward behavior and appearance of being excessively intoxicated that even an untrained server would have determined her to be inebriated to such an extent that Carnival's own *Responsible Service of Alcohol Manual* and its *Safety Management System (SMS)* would have called for refusing to serve her alcohol and require her to be escorted by security to her cabin and her cabin surveilled for at least one hour.

43. Carnival has prior notice that a significant percentage of those passengers falling overboard from Carnival ships and other cruise ships are impaired, such as Samantha Joyce Broberg, to the extent that their judgment and abilities are substantially impaired; to the point where they are unable to maintain their balance, due to their inebriation, and fall overboard.

44. Such incidents have occurred on Carnival ships on a regular basis, and Carnival is on notice that there is a direct correlation between Carnival's over-service of alcohol and falling overboard, particularly in the early morning hours, after the cruise ship's casino and other bars close.

45. It is foreseeable to Carnival that placing a lounge chair close to the rail creates a dangerous condition and significant risk of falling overboard for passengers that are inebriated and substantially impaired thereby increasing the risk of a passenger falling overboard, such as Samantha Joyce Broberg.

46. At all times material, a major source of income to Carnival was earned by selling

alcohol on its cruise ships.

47. Carnival encouraged over-serving of alcohol on its ships, for financial gain, without regard to the fact that it resulted in injury and fatality accidents.

48. Particularly, on or before the above referenced dates, Carnival promulgated and/or established a compensation scheme on board its vessels, including the *Carnival Liberty*, in which tips were the main source of income for bar servers and bartenders.

49. On or about the above referenced dates, Carnival knew that bartenders and bar servers would over-serve passengers, yet intentionally, willfully, wantonly, and/or recklessly ignored this issue, by failing to enforce its own policies and guidelines, in order to make more money from alcohol sales.

50. During this cruise, Carnival automatically charged passengers a gratuity for service of alcoholic beverages. Because gratuities grow in proportion to the quantity of alcohol purchased, Carnival intentionally, willfully, wantonly, and/or recklessly developed an incentive system in which bartenders are encouraged to over-serve passengers, including the Decedent.

51. Carnival did not make any meaningful steps to follow or enforce its reasonable alcohol policy, since it would have resulted in less profit for Carnival.

52. Carnival violated its own service of alcohol policies for handling highly intoxicated individuals, when it did not monitor Decedent after her last drink and when she exited Promenade Bar in visibly and highly intoxicated state.

53. Carnival operated a “floating dram shop,” permitting passengers, including Decedent, to become extremely intoxicated by over-serving them unreasonable amounts of alcohol for profit and not following its own service of alcohol policies.

54. On said dates, bartenders on board the *Carnival Liberty* over-served the Decedent large quantities of alcohol, including several double “Titos” vodkas” a cocktail containing at least two shots of distilled vodka, (and overpour) as well as multiple beers.

55. Notwithstanding that Carnival’s alcohol training modules identify the characteristics exhibited by Samantha Joyce Broberg as signs of extreme intoxication, in the time frame of 11:30 PM (CST) on May 12, 2016 to 1:15 AM (CST) of May 13, 2016, the bar servers did not stop serving her alcohol, did not notify security, did not escort her to her cabin, and took no measures whatsoever to secure her safety, or sequester her in her cabin, in accordance with Carnival’s policies.

56. Further, the Carnival Safety Management System (SMS) Manual, Section 4.6.2, provides that under the circumstances exhibited by Mrs. Broberg, and given the level of her intoxication at 1:15 AM (CST) on May 13, 2016; given the overt display of signs of intoxication which Mrs. Broberg exhibited while at the Promenade Bar # 128, Carnival security personnel should have escorted her to her assigned cabin and maintained at least one hour of surveillance of her cabin.

57. At all times material, Defendant owed Decedent a duty of reasonable care under the circumstances and by virtue of the Death on the High Seas Act, 46 U.S.C. Sections 30301-30308.

COUNT I
DEATH ON THE HIGH SEAS ACT (46 U.S.C. SECTIONS 30301-30308)

58. Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs 1 through 57 as though alleged originally herein.

59. Carnival had a duty to use reasonable care under the circumstance for the safety of

all passengers aboard the vessel, including Samantha Joyce Broberg.

60. Carnival has a duty to protect the plaintiff from being over-served alcoholic beverages; Carnival breached that duty, such that Samantha Joyce Broberg became visibly intoxicated, was incapable to care for herself, and suffered a fatal fall off of the *Carnival Liberty*.

61. Carnival's bartenders and servers failed to use reasonable care under the circumstances by failing to observe and control the number of drinks served to Mrs. Broberg

62. Carnival's bartenders and servers could easily access such types of information as it is clearly available on Carnival's "Sail and Sign" accounts and easy for Carnival to ascertain, in a concise and objective manner and determine whether a passenger has been over-served alcohol.

63. Carnival failed to use reasonable care under the circumstances to control its passenger's consumption of alcohol, a known risk given that many of the falls overboard occur in the early morning hours.

64. Carnival knew, or should have known, that deck personnel should have been assigned to maintain watch on the outer decks at or around the time that the Casino Bar and other of the numerous bars around the ship close for the night.

65. Carnival failed to comply with its own SMS Manual, Section 4.6.4 entitled "Passenger Deck Patrols" between the hours of 2200 (Zulu) and 0400 (Zulu) as required.

66. Carnival failed to use reasonable care under the circumstances by placing the deck lounge chairs at or near the outer rail of the ship, such that it caused a reduction in the distance between the lounge chair base to the deck top of the rail and reducing that distance to less than the mandated 42."

67. Carnival knew, or based on prior substantially similar cases, or should have foreseeably known and/or anticipated that passengers in an inebriated state may step onto the base of the ship's lounge chair to access or sit on the top of the deck rail and fall overboard.

68. Carnival failed to use reasonable care under the circumstances by failing to promptly or timely review the ship's FLIR Thermal Camera and/or CCTV surveillance video to ascertain sooner that Samantha Joyce Broberg had fallen overboard.

69. At all times material, Carnival owed the Decedent a duty to exercise reasonable care under the Death on the High Seas Act, 46 U.S.C. Sections 30301-30308.

70. Carnival failed to reasonably assess the risks of over-serving of alcohol and the potential for injuries directly related to the over-serving of alcohol in the bars aboard the *Carnival Liberty* offering "unlimited drinking."

71. Carnival failed implement its reasonable and appropriate measures to mitigate the risk of injury by following reasonable and adequate alcohol service policies and practices; providing employee training; management systems; and risk assessment to assess the risks where a large group of people are drinking alcohol in large quantities;

72. At all times material hereto, Carnival Corporation breached its duty to exercise reasonable care under the circumstances relating to the over-service of alcoholic beverages, during a period of time when Samantha Joyce Broberg exhibited "relaxed inhibitions," "impaired judgment," "slowed reaction time," and "impaired motor coordination," resulting in the death of Samantha Joyce Broberg, by committing one or more of the acts or omissions enumerated herein, as follows by:

- a. failing to comply with the Cruise Vessel Security and Safety Act of 2010 ("CVSSA"), 46 U.S.C. §§3501 *et seq.*, the International Convention for the Safety of Life at Sea ("SOLAS"), International Safety Management

Code (ISM Code) Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW), the International Ship and Port Facility Security Code (“ISPS”) the Maritime Security Transportation Act of 2002 (“MTSA”).

- b. over-serving Samantha Joyce Broberg with alcoholic beverages until she was inebriated and incapable of caring for her own safety and wellbeing;
- c. failing to comply with Carnival’s “Responsible Alcohol Service” Manual as Carnival personnel continued to serve her alcoholic beverages and failed to refuse (cut off) to serve her;
- d. failing to comply with Carnival’s Safety Management System (SMS) policy, by escorting and sequestering her to her assigned cabin and maintaining one hour of surveillance;
- e. failing to provide adequate training, instruction, and supervision of its bar service staff members and other bar service or supervisory bar personnel on the *Carnival Liberty*, to identify that Samantha Joyce Broberg was inebriated and ultimately prevent her fall overboard;
- f. failing to provide adequate training, instruction, and supervision of its security crew on the *Carnival Liberty*, to identify that Samantha Joyce Broberg was inebriated, sequestering her to her cabin, and ultimately prevent her fall overboard;
- g. failing to provide a reasonable and sufficient number of experienced, trained, and qualified bar service personnel and security staff on its cruise ships, to determine that a passenger, such as Samantha Joyce Broberg, is inebriated and likely to injure themselves and/or fall overboard;
- h. failing to enforce rules that prevent the service of alcohol to intoxicated passengers and/or encouraging the sale of alcohol to intoxicated passengers;
- i. failing to remedy a dangerous and unsafe condition on the *Carnival Liberty*, including, operating a “floating dram shop,” permitting passengers, including the Decedent, to become

extremely intoxicated by over-serving them unreasonable amounts of alcohol for profit;

- j. failing to warn the Decedent and other passengers of the dangers of becoming intoxicated due to over-serving of alcohol on the vessel;

73. At all times material hereto, Carnival breached its duty to exercise reasonable care under the circumstances, by failing to comply with the Cruise Vessel Security and Safety Act (CVSSA) Carnival to integrate man overboard detection systems on its ships, including the *Carnival Liberty*, a technology readily available in the maritime industry, and to prevent such circumstances as that occurring in this case wherein a Samantha Joyce Broberg was not reported as having fallen overboard to the USCG for a full fifteen (15) hours after her fall.

74. At all times material, Carnival Corporation breached its duty to exercise reasonable care under the circumstances in relation to detection of a man overboard event (MOB) resulting in the death of Samantha Joyce Broberg, by committing one or more of the acts or omissions enumerated herein, as follows by:

- a. failing to comply with the provisions of the Cruise Vessel Security and Safety Act of 2010 (“CVSSA”), 46 *U.S.C.* §§3501 *et seq.*;
- b. failing to comply with the provisions of the International Convention for the Safety of Life at Sea (“SOLAS”);
- c. failing to comply with the International Safety Management Code (ISM Code);
- d. failing to comply with the Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW);
- e. failing to comply with the provisions of the International Ship and Port Facility Security Code (“ISPS”);
- f. failing to comply with the provisions of the Maritime Security Transportation Act of 2002 (“MTSA”);

- g. failing to comply with Carnival's Safety Management System Manual (SMS);
- h. failing to comply with the CVSSA mandate that the deck rail height be at minimum of 42" on the exterior deck of the ship by placing the lounge chairs along the perimeter of the deck, at the location of Mrs. Broberg's fall, thereby reducing the distance to the top of the rail to less than the required minimum of 42 inches, which substantially contributed to Mrs. Broberg's fall overboard;
- i. failing to integrate available, reliable, technology that is used for detecting passengers who have fallen overboard, to the extent that such technology is available;
- j. failing to integrate such automatic early detection systems as the Mobtronic system developed by MARSS, a subsidiary of US company FLIR Systems, which utilizes a combination of radar and infrared sensors, and is capable of detecting MOB incidents with an average detection probability of 95% and is capable pinpointing where a passenger entered the water;
- k. failure to integrate proactive detection systems such as the Man Overboard Detection System from PureTech Systems, to accurately detect man overboard events and provide immediate, actionable data to response personnel, and provide accurate confirmation of the event including time of occurrence, location on the ship and location in the sea;
- l. failing to utilize a security system for automatically detecting and signaling the event of a person falling overboard from a vessel into a body of water by use of a radio frequency identification (RFID) tag worn by each passenger onboard a vessel, by employing the use of one or more RFID readers placed surrounding the hull of the vessel, and a control unit onboard the vessel wherein the RFID readers are individually connected, to an alarm system.
- m. failing to maintain a Vessel Security Plan (VSP) aboard the *Carnival Liberty*, and its other cruise ships, which includes provision for the *monitoring of deck areas and areas surrounding the ship* as mandated by 33 C.F.R. §104.305(b);
- n. failing to comply with the requirements of the Maritime Security Transportation Act of 2002 ("MTSA"), Pub.L.No.107-295, 116 Stat. 2064 (codified at 46 U.S.C. Chapter 701) requiring that the

vessel security plan of the *Carnival Liberty* to assess the number of vessel personnel and any existing security duties to which they are assigned;

- o. failing to provide or maintain the appropriate training and certifications for its security personnel, as required by the MTSA, SOLAS and the ISPS Code;
- p. failing to observe the appropriate man overboard (MOB) protocols and minimum guidelines and/or requirements of the CVSSA, MTSA, SOLAS and ISPS Code for MOB events and detection equipment;
- q. failing to employ the use of an Automatic Early Detection (AED) to the extent of available technology, as required by the Cruise Vessel Security and Safety Act;
- r. failing use an automatic early detection system alarm (AED), to the extent such technology is available on its cruise ships, including the *Carnival Liberty*, to alert the ship's crew of a man overboard event;
- s. failing to use a FLIR Thermal Image Capture system which provides images that are readily available;
- t. failing to utilize FLIR Thermal Image Capture format which is easily viewed in fast forward mode, and timely detecting infrared images of an overboard incident;
- u. failing to use a CCTV surveillance camera system that covered all relevant public areas of the deck, particularly the areas of a deck where a person may go overboard;
- v. failing to install protective glass or other safe and/or nondefective railings on open decks, which protect passengers from unreasonable risk of falling overboard;
- w. failing to have sufficient number of trained and qualified security personnel in place to expedite a determination from captured images that a man overboard incident has occurred;
- x. failing to *detect* a man overboard event;
- y. failing to utilize a MOB System on the *Carnival Liberty* that lacked a fall detection alarm system or capability to notifying the

ship's bridge personnel, which resulted in an initial ten (10) hour delay in the discovery that Mrs. Broberg had fallen overboard;

- z. failing to utilize a FLIR Camera system on the *Carnival Liberty*, which is dated and uses *real time review features* of any given MOB incident, resulting in an additional five (5) hour delay in the bridge officer's report of the MOB event to the United States Coast Guard, thereby not providing the USCG with timely notification that Samantha Joyce Broberg had fallen overboard until 15 hours after her fall into the Gulf of Mexico;

75. At all times material, and specifically during early morning hours of May 13, 2016, Carnival Corporation breached its duty to exercise reasonable care under the circumstances in relation to the maritime rescue of overboard passenger, Samantha Joyce Broberg, resulting in her death, by committing one or more of the acts or omissions enumerated herein, as follows by:

- 76. Carnival failed to use reasonable care under the circumstances by:
 - a. failing to follow proper policies and procedures, including Carnival's Safety Management System Manual (SMS), for rescuing passengers who go overboard, to timely, properly and adequately rescue Broberg;
 - b. failing to timely divert the vessel to rescue Broberg;
 - c. failing to immediately stop the vessel and/or conduct a proper rescue operation in a safe, timely and prudent manner;
 - d. failing to enforce and comply with rules and policies to rescue passengers who fall overboard;
 - e. installing unsafe and/or defective railings and banisters on the deck of the ship, which placed passengers at unreasonable risk of falling overboard;
 - f. failing to maintain sufficient distance between the ship's deck lounge chairs and the outer rail of the ship to maintain at least 42" between the deck surface and the top of the rail;

- g. failing to comply with industry standards and/or international guidelines regarding the height and safety requirements for railings and banisters on the deck of the ship;
- h. failing to adhere to the Cruise Vessel Safety and Security Act of 2010 which requires all cruise line vessels to integrate technology that can be used for capturing images of passengers or detecting passengers who have fallen overboard;
- i. failing to comply with the International Management Code;
- j. failing to comply with Carnival's Safety Management System (SMS) Manual, Section 4.6.3, entitled "Missing Persons" by failing to take action in a timely manner, as prescribed therein, within thirty (30) minutes, as indicated therein;
- m. failing to comply with its Safety Management System (SMS) Manual, Section 4.6.3(5), by failing to implement a Search and Rescue Operation in accordance with Carnival's Safety Management System (SMS) EMERGENCY/PO12;
- n. failing to establish contact with the U.S. Coast Guard SAR Center, and/or proper government authorities after thirty (30) minutes of repeated paging over the PA system;"
- n. failing to follow proper policies and procedures for caring for intoxicated passengers;
- o. failing to properly train and/or supervise employees not to serve excessive amounts of alcohol to passengers; and,
- p. failing to warn passengers of the dangers of drinking alcohol to excess on a cruise ship.
- q. failing to employ the use of an alarm feature to detect and expedite a search and rescue for an overboard passenger, such as Samantha Joyce Broberg, and to prevent valuable time from being wasted reviewing camera footage;
- r. by delaying the report to the USCG that Samantha Joyce Broberg

had fallen overboard for 15 hours after her fall overboard;

- r. by delaying the report to the USCG watchstanders of the 8th Coast Guard District command center that Samantha Joyce Broberg had fallen overboard for over 5 hours after Carnival was informed that she was “missing.”
- s. by delaying the commencement of the USCG on site search and rescue of Samantha Joyce Broberg for approximately 18 hours after her fall overboard, given the location of the MOB incident and distances from the USCG Aviation Training Center in Mobile Alabama, and the Air Station Corpus Christi SAR Facility at the time of reporting by the *Carnival Liberty*, which deployed sorties and an HC-144 Ocean Sentry aircrew to the reported location.
- t. failing to properly identify the correct latitude and longitude of the *Carnival Liberty* at 02:04 (CST) as compared with the Automatic Identification System Satellite data, resulting in variance of the Search and Rescue (SAR) grid location by a significant distance;
- u. failing to determine that Samantha Joyce Broberg had fallen overboard sooner in order to respond in a reasonably timely manner after her fall overboard;
- v. failing to adhere to notice provided from prior incidents of passengers falling into the sea on vessels owned and/or operated by Defendant and other cruise lines in order to put in place a proper system for first preventing such occurrences and then rescuing such passengers who happen to fall into the sea;
- w. failing to use its power to expedite an orderly and conclusive conduct a drill or order all individuals to their respective cabins, to ascertain sooner whether Samantha Joyce Broberg was “missing” or had actually fallen overboard; and,
- x. failing to inform other Carnival vessels passing through the search and rescue area that a passenger from the *Carnival Liberty* fallen overboard and was in the water, and requesting that the fleet maintain a sharp lookout for Samantha Joyce Broberg;

77. Carnival’s failure to comply with applicable industry standards, statutes, and/or

regulations invokes the Pennsylvania Rule and shifts the burden of proof at trial to the Defendant to prove that a violation of such standards, statutes, and/or regulations was not a contributing cause of the over service of alcohol, the man overboard incident, and/or the negligent rescue claimed herein.

78. As a direct of Carnival's acts and omissions Carnival, Samantha Joyce Broberg's body was never recovered despite the USCG's opinion that the survivability of Mrs Broberg following her fall was as much as six (6) days.

79. As a result of the Carnival's negligence as described herein, Samantha Joyce Bromberg was determined by the United States Coast Guard to be missing and presumed dead May 13, 2016.

80. Moreover, a man overboard event (MOB) event is a nautical and maritime travel circumstance, fundamentally measured by a heightened degree of care. See: *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir.1989) (citing *Rainey v. Paquet Cruises, Inc.*, 709 F.2d 169 (2d Cir.1983).

81. This Circuit recognized in *Keefe* that "the benchmark against which a ship owner's behavior must be measured is ordinary reasonable care under the circumstances, a standard which requires, as a prerequisite to imposing liability, that the carrier have had actual or constructive notice of the risk-creating condition, at least where ... the menace is one commonly encountered on land *and not clearly linked to nautical adventure.*" (*Id.*) (Emphasis added).

82. Hence, in this action, Carnival's duty to exercise reasonable care under the circumstances, must be analyzed under both "the circumstances" of the case and whether the hazard is one "clearly linked to nautical adventure" and Carnival negligence must be measured with a higher standard of care.

83. Carnival owed a heightened degree of care under the circumstances.

84. The man overboard event described herein and suffered by Mrs. Broberg is a maritime event and Carnival had actual knowledge of the probability that passengers (and crew) fall overboard and/or had constructive knowledge of such a dangerous condition and overboard incidents.

85. Carnival had notice of the dangerous condition which exists from the failure to use the available detection technology to detect that Samantha Joyce Broberg fell overboard, by the prior continuing and repetitive man overboard incidents that have occurred on the *Carnival Liberty*, and plagued Carnival cruise ships throughout its fleet of 25 cruise ships and on other cruise lines owned and affiliated with Carnival.

86. Carnival had constructive knowledge of the dangers of the over-service of alcohol, which created a dangerous condition to passengers, and Defendant knew that the over-service of alcoholic beverages to passengers would result in injuries or death to its passengers, as is evident by the very existence of Carnival policies and guidelines prohibiting such over-service of alcohol, yet such guidelines and policies were not followed in this instance by Carnival bartenders and servers, such that, inter alia, security personnel should have escorted her to her assigned cabin and maintained at least one hour of surveillance of her cabin.

87. This dangerous condition existed aboard the *Carnival Liberty* for such a length of time; and/or was repetitive, continuous, ongoing, recurring, or occurring with some regularity, that Carnival knew or should have known that passengers may become inebriated and fall overboard.

88. The dangerous condition was created by the Defendant; known by 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.

WHEREFORE, the Plaintiff demands judgment against the Defendant for economic damages, including loss of support, household services, nurture and guidance in the past, medical and funeral expenses, and future economic damages including but not limited to loss of support, income, loss of the ability or potential to earn money in the future, in accordance with Death on the High Seas Act (DOHSA), 46 U.S.C. app. §761 (2006) (current version at 46 U.S.C.A. §30301 (2008)), together with interest under the maritime law or which otherwise accrues from the date of the incident described herein, and any and all other damages which the Court deems just or appropriate and demands trial by jury of all issues so triable.

COUNT II
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

89. Plaintiff KARL M. BROBERG reavers and re-alleges each and every allegation contained in paragraphs 1 through 57.

90. In the morning hours of May 13, 2016, Mrs. Broberg's traveling companion contacted Plaintiff to advise him that she had not returned to the cabin the prior evening.

91. Immediately, the Plaintiff began calling Carnival's Guest Care Hotline hourly to ascertain the plight of his wife in a desperate attempt to find out more information about his wife's whereabouts on the *Carnival Liberty*.

92. Despite his calls and concern for his wife, Carnival did not return Mr. Broberg's calls until over 15 hours after her fall overboard and instead Mr. Broberg learned of his wife's death by numerous media and news stations calling and contacting him directly advising him that his wife had fallen overboard and that she was not rescued.

93. Instead of contacting Plaintiff to inform him of his wife's fall overboard,

Defendant Carnival acted with reckless indifference by communicating first with the media concerning Mrs. Broberg disappearance and fall overboard, without prior notification to Plaintiff that she had fallen overboard, resulting in extreme emotional distress to the Plaintiff.

94. In a civilized society, Carnival owes a duty to its passengers' family members, including Karl M. Broberg, and the decedent's children and stepchildren, to exercise reasonable care under the circumstances, to timely deliver the news that Mrs. Broberg's fell overboard in a reasonably dignified and timely manner.

95. Carnival acted recklessly and with callous indifference under the circumstances, particularly by not contacting the Plaintiff for 15 hours, and never notified Karl M. Broberg, as her next of kin, that she had fallen overboard, despite Plaintiff's repeated and insistent calls to Carnival.

96. Carnival's conduct following Mrs. Broberg's fall overboard and her being lost at the sea was atrocious and utterly intolerable in a civilized community.

97. Carnival's conduct was extreme and outrageous by first contacting and releasing her identity and information concerning her fall overboard to the news media without first contacting the Plaintiff, her husband.

98. Carnival's actions resulted in torment to the Plaintiff in a manner beyond human decency and that our society views as utterly deplorable, by making public media announcements about her death, without first notifying her next of kin, the Plaintiff, Karl M. Broberg, that she had fallen overboard and was never recovered.

99. Carnival's conduct was so extreme and outrageous and as a direct result, the Plaintiff began receiving disturbing telephone phone calls from numerous news media stations concerning his wife fall overboard and informing him that she was not recovered.

100. Carnival's communication with the media first, while ignoring the Plaintiff's calls concerning his wife, was a failure on the part of Carnival Defendant that goes beyond the bounds of decency.

101. As a direct result, Karl M. Broberg suffered additional extraordinary severe emotional distress beyond that which would customarily be associated with learning of his wife's fall overboard and demise.

102. As a direct result of the outrageous nature of Defendant's conduct, Plaintiff has suffered severe emotional distress and anguish therefrom entitling him to compensatory and punitive damages as a result.

WHEREFORE, Plaintiff demands judgment from Defendant Carnival for compensatory damages, punitive damages, prejudgment interest, costs, and any other remedies the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable as a matter of law.

Respectfully submitted this 25th day of April 2017.

ROBERT L. GARDANA, P.A.
Attorney for Plaintiff
12350 SW 132 Court, Suite 204
Miami, FL 33186
P: 305.358.0000
F: 305.358.1680
E-Mail: Gardanalaw@gmail.com

By: /s/Robert L. Gardana, Esq.
Florida Bar No. 279668

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KARL M. BROBERG, Individually and as Administrator of Estate of SAMANTHA JOYCE BROBERG,

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert L. Gardana, P.A. 12350 SW 132nd Court, # 204, Miami, FL 33186 Ph: 305-358-0000 Fax: 305-358-1680 - E-mail: Gardanalaw@gmail.com

DEFENDANTS

CARNIVAL CORPORATION, a Panamanian corporation d/b/a Carnival Cruise Lines

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHERS/STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332 and 1333

Brief description of cause:
Death on the High Seas (46 U.S.C. Sections 30301-30308) and IIED

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
04/25/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: