

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO.: 17-CV-21537-FAM

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

Plaintiff,

vs.

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

Defendant.

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**TRIAL MEMORANDUM**

**Underlying Facts**

This case is specially set for trial before the Honorable Federico Moreno for August 13 and 14, 2018. In accordance with Fed. Rules Civ. Procedure, Rule 26(a)(3)(j), Plaintiff submits this memorandum of law. This case arises out of the death on the high seas of Mrs. Broberg, who was a passenger onboard the *Carnival Liberty* on May 12, 2016. According to the allegations, on the early morning of May 13, 2016, a heavily intoxicated Mrs. Broberg - purportedly because the bartenders served her excessive alcohol despite her visible inebriation - stepped onto one of the cruise ship's exterior lounge chair, sat on the railing of the ship, and fell overboard into the Gulf of Mexico. Mrs. Broberg was never located and was presumed dead by the USCG.

Plaintiff has pled one count of negligence under the Death on the High Seas Act based upon Defendant's excessive service of alcohol. Defendant has raised the defense of comparative negligence. On the date of her death, Mrs. Broberg was married to Karl Broberg and left two children, Aaliyah Reshea Williams, who was 15 years old and Ryleigh Ranell Christine De Bose

8 years old. Mrs. Broberg also left 2 step-children, Kalee Reese Broberg, age 7, and Savannah Shay Broberg, age 11.

### **Excessive Over Service of Alcohol**

General maritime law dictates that a shipowner owes its passengers a duty of reasonable care under the circumstances. *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630, 79 S. Ct. 406, 3 L. Ed. 2d 550 (1959). "[A] cause of action for over service of alcohol sounds in negligence." *Doe v. NCL (Bahamas) Ltd.*, No. 11-22230-CIV, 2012 U.S. Dist. LEXIS 162654, 2012 WL 5512347, at \*6 (S.D. Fla. Nov. 14, 2012). The passenger has the burden to prove that "(1) the defendant had a duty to protect the plaintiff from a particular injury; (2) the defendant breached that duty; (3) the breach [\*7] actually and proximately caused the plaintiff's injury; and (4) the plaintiff suffered actual harm." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012). "[A]s a prerequisite to imposing liability, . . . the carrier [must] 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." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). For over service of alcohol cases, the facts must show "that a reasonable defendant would have been on notice of the impending danger to the plaintiff. . . . Accordingly, the intoxicated passenger's behavior is relevant to the determination that Defendant . . . was on notice of the danger." *Doe*, 2012 U.S. Dist. LEXIS 162654, 2012 WL 5512347, at \*6 (internal quotation marks omitted). "Mere notice that a passenger is intoxicated, however, may not always be sufficient to put a defendant on notice that the passenger is in serious danger." *Doe v. NCL (Bahamas) Ltd.*, No. 11-22230-CIV, 2012 U.S. Dist. LEXIS 162654, 2012 WL 5512314, at \*3 (S.D. Fla. Nov. 14, 2012).

First and foremost, in defense, Carnival makes much of the double hearsay from bartender

Marilyn Mazon. However, her statements contained in the security report and advanced through Carnival Security Officer Sanjay Kumar was the subject of the Plaintiff's motion *in limine*. Notwithstanding, bartender Marilyn Mazon's testimony is irrelevant since Mrs. Mazon served Mrs. Broberg at 11:40 p.m., and even if she were to testify, she is obviously making her decision based on how Mrs. Broberg appeared to her *prior* to being served the double shot of Tito's Vodka and 16 oz. Miller Light (three drinks) which bartender Mazon served to Mrs. Broberg at 11:40 p.m. The actual bar receipts and the Sail & Sign Statement from the CARNIVAL *Liberty*. (P's Exhibit # 160, # 165 and # 113). The bar receipts demonstrate that, in addition to being served those three drinks at 11:40 p.m., CARNIVAL also served Mrs. Broberg another double shot of Tito's and a 12 oz. Corona beer (3 more drinks) a little over an hour later at 12:51 a.m. by a different bartender, Anali Sanchez Vasquez. There is no testimony from that bartender about Mrs. Broberg's condition before she was served those three drinks. Thus, Mrs. Broberg had seven additional drinks after bartender Mazon allegedly declared she did not appear intoxicated.

Moreover, at 1:20 a.m., only 40 minutes before her fall overboard, Mrs. Broberg was photographed at the Promenade Bar by Tammy Ramirez, another *Liberty* passenger. This photograph tragically mirrors the photograph used by Carnival to demonstrate to bar personnel the effect of over-service of alcohol, (P's Exhibit # 202) as depicted below:



(Photo 2 Ramirez Affidavit P's Exhibit "202")



Carnival Responsible Service of Alcohol Manual  
CCL 18943-323 of P's Exhibit "181"

**The Evidence Concerning the Number of Drinks  
Which CARNIVAL Served to Mrs. Broberg**

Additionally, attached as Table 1 to P's Exhibit # 354, and listed immediately below, is a chronological list of drinks served to Mrs. Broberg prior to her falling overboard.

**Table 1. Chronological List of Drinks Served to Broberg Prior to the Fall Incident**

Drinks Served	Date/Time	Location	Verified by: <sup>d,e,f,g,h</sup>
#1 Tito's vodka (double)	May 12 at 1:06 pm	Red Rum Frog Bar	S &S Statement, Receipt, Churman, Brady
#2 Tito's vodka (double)	May 12 at 4:33 pm	Promenade Bar	S &S Statement, Churman, Brady
#3 Tito's vodka (double)	May 12 at 5:33 pm	Promenade Bar	Receipt, S &S Statement, Churman, Brady
#4 Tito's vodka (double)	May 12 at 6:32 pm	Red Rum Frog Bar	Receipt, S &S Statement
#5 Tito's vodka (double)	May 12 at 7:58 pm	Promenade Bar	Receipt, S &S Statement
#6 Blue Liquor Special (Grey Goose & Curacao blue)	May 12 at dinner (~8:30 pm)	Dining Room	Churman, Brady
#7 Shot	May 12 at ~9:45 pm	Casino Room	Churman, Brady
#8 Tito's vodka (double); #9 Miller Lite (16 oz)	May 12 at 11:40 pm	Promenade Bar	Receipt, S &S Statement
#10 Tito's Vodka (double); #11 Corona (12 oz)	May 13 at 12:51 am	Promenade Bar	Receipt, S &S Statement
#12 Beer bought by man (12 oz)	May 13 at ~1:20 am	Promenade Bar	Tammy Ramirez
Time of Fall incident	May 13 at 1:57 am	Deck 10	Report of Marine Accident, FLIR video

Several things need to be noted about the table. First, it is comprised of all of the evidence in the case, not just the drinks that were officially charged to Mrs. Broberg's Sail and Sign account. Second, the Court will note that 7 of the drinks were *double shots* of Tito's Vodka, meaning that they were the equivalent of 14 individual drinks. In addition to those 14 individual drinks of Tito's Vodka, CARNIVAL served Mrs. Broberg (as corroborated by her surviving dinner companions) a Blue Liquor Special, consisting of Grey Goose Vodka and Curacao Blue (liqueur) at dinner at approximately 8:30 p.m. For unknown reasons, neither Ms. Broberg nor her companions, were

charged for this drink on their Sail and Sign accounts. In addition, also corroborated by her surviving travelling companions, the three women were each given a shot of alcohol in the casino after one of them hit a jackpot while playing the slots. (P's Exhibits # 203 and # 204) Finally, Tammy Ramirez, an independent witness, testified that she saw CARNIVAL serve Mrs. Broberg a beer, purchased by a male passenger, at approximately 1:20 a.m. Thus, there is record evidence that CARNIVAL served Mrs. Broberg, who is 5'5" and weighed 120 pounds, a total of 19 drinks within a 12-hour period. *Nineteen!*

Table 2 of the Defendant's expert toxicologist, Dr. Whitekus' report (Exhibit # 354), shown immediately below, tracks Mrs. Broberg's blood alcohol content and stage of alcoholic influence in accordance with scientific and in industry standards. It is important to note that the BAC% column reflects Mrs. Broberg's BAC before she was served the drink(s) in question. See P's Exhibit 354 footnote n. Thus, her BAC was 0.00 before the first drink, and 0.132 before the 8<sup>th</sup> serving (13<sup>th</sup> drink) at 11:40 p.m.

**Table 2. Broberg's BAC and Stage of Alcoholic Influence at Each Drink Served**

Drinks Served	Alcohol Consumed (g)	BAC%	Stage of Alcoholic Influence <sup>1</sup>
#1- Tito's vodka (double) <sup>m</sup>	18.7	0.000 <sup>n</sup>	Not applicable
#2- Tito's vodka (double)	18.7	0.000 <sup>n</sup>	Not applicable
#3- Tito's vodka (double)	18.7	0.024 <sup>n</sup>	Subclinical
#4- Tito's vodka (double)	18.7	0.058 <sup>n</sup>	Euphoria
#5 Tito's vodka (double)	18.7	0.084 <sup>n</sup>	Euphoria
#6 Blue Liquor Special <sup>o</sup>	12.8	0.106 <sup>n</sup>	Excitement
#7 Shot (1 oz)	9.3	0.145 <sup>n</sup>	Excitement
#8 Tito's vodka (double); #9 Miller Lite (16 oz)	34.4	0.132 <sup>n</sup>	Excitement
#10 Tito's Vodka (double); #11 Corona (12 oz)	31.6	0.206 <sup>n</sup>	Confusion
#12 Beer (12 oz)	12.9	0.250 <sup>n</sup>	Stupor
Time of Fall incident	Not applicable	0.295 <sup>p</sup>	Stupor

Carnival Colleges’ Module 4, (P’s Exhibit # 180, pg. 4-5) titled Responsible Alcohol Service, “taught” to all Carnival bartender personnel contains a chart that shows that even under Carnivals own Responsible Alcohol Service Manual, a female weighing 120 lbs would have a BAC of .284 after 8 drinks, as per Carnival’s chart below.

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**WOMEN**  
(after one hour of drinking)

**Body Weight**

Number of Drinks	100	120	140	160	180	200	220	240
1	.029	.022	.016	.012	.009	.006	.004	.003
2	.074	.059	.048	.040	.034	.029	.025	.040
3	.119	.097	.080	.068	.059	.052	.045	.031
4	.164	.134	.113	.096	.084	.074	.066	.059
5	.209	.172	.145	.125	.109	.097	.086	.078
6	.254	.209	.177	.153	.134	.119	.107	.097
7	.299	.247	.209	.181	.159	.142	.127	.115
8	.344	.284	.241	.209	.184	.164	.148	.134

Indicates a BAC of .08 or higher

Markham, M.R., Miller, W.R. & Arciniega, L. (1983) BACCuS2.01: Computer software for quantifying alcohol consumption. Behavior Research Methods, Instruments, & Computers, 25, 420-421

Carnival’s Responsible Alcohol Service Manual, (P’s Exhibit # 180, pg. 4-7) utilizes for bartenders and service personnel an easy system to determine if the guest should be served, as per the illustration below:

**An easy system to help determine if the guest should be served is the TRAFFIC LIGHT SYSTEM.**

**STOP**

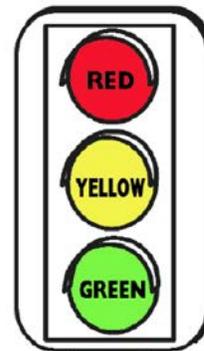
The guest appears visibly intoxicated and should not be served any alcohol.

**CAUTION**

The guest is not yet intoxicated but you are concerned.

**GO**

No signs of visible intoxication are observed. It is acceptable to serve alcohol to guests.



## TRAFFIC LIGHT SYSTEM- RED LIGHT

- RED LIGHT- DISCONTINUE SERVICE OF ALCOHOL
  - Status of Guest :
    - Falling asleep
    - Swaying and staggering
    - Slurred speech
    - Spilling drinks
  - RSA Goals
    - Stop the service of alcoholic beverages
    - Take action
  - Service Goals
    - Politely inform the guest that you are unable to serve them any more alcoholic beverages
    - Provide the guest with a glass of water
    - Inform the BOM on duty as well as security of the situation and guest folio number
    - Keep a close eye on the guest and try to keep them in the location
    - Coordinate with Security when they arrive on the scene
  - Service Style
    - Politely stop service and offer water



## HOW TO IDENTIFY INTOXICATION

- Whenever serving alcohol to guest, you must look for the signs of Intoxication:
  - Crude behavior
  - Becoming loud and boisterous
  - Annoying other guest
  - Spilling drinks
  - Become agitated or argumentative
  - Falling asleep
  - Clumsy uncoordinated movements such as swaying, stumbling or falling down
  - Bumping into furniture or other guest
  - Slurred speech
  - Glassy Eyes, loss of focus/eye contact
  - Unable to light a cigarette
  - Rambling conversation or nonsensical statements
  - Difficulty signing bar checks



The deposition testimony of Sanjay Kumar (P's Exhibit # 313) sets forth Carnival Cruise Lines' ship Security Manual, marked Exhibit D (P's Exhibit # 319 and # 188) for the handling of intoxicated individuals under section 4.6.2 of the manual, which provides as follows:

If a guest is considered under the influence of alcohol, the Bar Manager will instruct the bar personnel not to serve that person any more alcohol. In a case of extreme intoxication, the Chief Security Officer will invite the person to follow him to their assigned cabin. A brief period of surveillance is suggested (at least for the first hour). The medical department will be informed if the condition of guest, warrants this action. Ref: SMS/COMM/PO21

Based upon the evidence, Mrs. Broberg exhibited signs of extreme intoxication at the time of Carnival's service of her last drink. Had Carnival complied with its own security manual, including its modules for the responsible service of alcohol, and escorted Mrs. Broberg to her assigned cabin, surveilling her for one (1) hour, the clear and non-refuted evidence reveals that Mrs. Broberg would have not fallen overboard at 1:57 a.m. into the Gulf of Mexico.

### **Death on the High Seas Act**

From a historical perspective, the adoption of the Death on the High Seas Act in 1920, was to provide a remedy for death occurring at sea. It was originally codified at 46 U.S.C. §761, et seq. Title 46 was re-codified and now the statute is found at 46 U.S.C. §30301 through §30308. This provides:

§ 30301. Short title

This chapter may be cited as the "Death on the High Seas Act".

§ 30302. Cause of action

When the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible. The action shall be for the exclusive benefit of the decedent's spouse, parent, child, or dependent relative.

§ 30303. Amount and apportionment of recovery

The recovery in an action under this chapter shall be a fair compensation for the pecuniary loss sustained by the individuals for whose benefit the action is brought. The court shall apportion the recovery among those individuals in proportion to

the loss each has sustained.

§ 30304. Contributory negligence

In an action under this chapter, contributory negligence of the decedent is not a bar to recovery. The court shall consider the degree of negligence of the decedent and reduce the recovery accordingly.

§ 30305. Death of plaintiff in pending action

If a civil action in admiralty is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in section 30302 of this title and the individual dies during the action as a result of the wrongful act, neglect, or default, the personal representative of the decedent may be substituted as the plaintiff and the action may proceed under this chapter for the recovery authorized by this chapter.

Hence, in cases governed by DOHSA involving the deaths of vessel passengers, such as the case *sub judice*, wrongful death damages are recoverable by surviving family members, as set forth herein.

**Pecuniary Damages Recoverable under DOHSA**

**Loss of Support**

The Death on the High Seas Act specifically allows for the recovery of the financial support and contributions the deceased would have made to his/her family if he or she had lived. See *Higginbotham v. Mobil Oil Corp.*, 360 F.Supp. 1140 (W.D. La. 1973); *Death on the High Seas Act--Damages*, 16 A.L.R. Fed. 679.

The claim for loss of support is not the same as a claim for the decedent's future earnings, since the earnings must be reduced by income taxes and also by the amounts that the deceased would have consumed himself in order to reach an amount available for the support of family members. *Martinez v. Puerto Rico Marine Management, Inc.*, 755 F. Supp. 1001 (S.D. Ala. 1990); *Matter of Adventure Bound Sports, Inc.*, 858 F.Supp. 1192 (S.D.Ga. 1994); and *Rohan v. Exxon Corp.*, 896 F. Supp. 666 (S.D.Tex. 1996). As those cases illustrate, the awards should be adjusted

for expected increases in the decedent's earnings, and then reduced to present value at the after-tax earnings rates on the safest available investments. The trial opinions of plaintiff's economist Bernard Pettingill, PhD track this formula. See, for example, the loss calculation tables prepared by the plaintiffs' economist which were incorporated into the opinion of Dr. Pettingill as set forth in his report. P's Exhibit # 362. Whether the deceased spouse's employer replaced the decedent is not an element of the loss of support formula and of no import.

Spouses are normally entitled to claim loss of support from earnings over the work life expectancy of the deceased, and from projected retirement pension or Social Security benefits unless those benefits are already being paid. *Adventure Bound Sports*, supra. Children are usually permitted to recover support until the age of majority, some cases have awarded support beyond that. In *Hamilton v. Canal Barge Co.*, 1977 A.M.C. 2276 (E.D. La. 1975), the court awarded loss of support until the child reached age 22 because it appeared likely that he would attend college.

In some cases, on an appropriate showing, the courts have awarded damages for the cost of a college education. *Solomon v. Warren*, 540 F.2d 777 (5<sup>th</sup> Cir. 1976). Compare the awards to the families of the two decedents in *Adventure Bound Sports*, supra. In that case, one decedent left a widow and two sons, who had all lived together. Since that family was being compensated for all of the decedent's after-tax earnings that he would not have consumed himself, and from which he would have paid the cost of college educations, no additional funds were awarded for that purpose. The other decedent was divorced and left two children who did not live with him. Those children were awarded loss of the child support he was required to pay under state law. Since those amounts would not consume his disposable earnings, and the court found that the children were likely to attend college, those additional costs were awarded to each child.

### **Loss of Inheritance**

Spouses and children, whose life expectancies exceed the life expectancy of the deceased, have a reasonable expectation of benefiting from any prospective accumulation of the decedent's estate. Therefore, loss of inheritance is a legitimate pecuniary loss in a DOHSA action. *Solomon v. Warren*, supra; *Cox v. Northwest Airlines, Inc.*, 379 F.2d 893 (7<sup>th</sup> Cir. 1967); *National Airlines, Inc. v. Stiles*, 268 F.2d 400 (5<sup>th</sup> Cir. 1959). Again, compare the awards to the two families in *Adventure Bound Sports*, supra, which make it clear that loss of inheritance can be a separate item of pecuniary loss only when the support awards do not consume all of the decedent's disposable income. Here, there is no evidence whatsoever that Mrs. Broberg would have consumed all of her disposable income. Moreover, outside of innuendo and unsupported argument, the defense has failed to provide any controverting economist to render opinions counter to those of Dr. Pettingill.

The pecuniary losses sustained by children do not necessarily end at the age of majority. If the evidence in a case indicates that the decedent would have continued to accumulate assets and enlarge his/her inheritable estate had he lived, that can constitute a separate pecuniary loss recoverable by the family. While each of the children and stepchildren of Mrs Broberg were minors at the time of her death, the importance of this damage element is accentuated by the case of adult children surviving a decedent, in that this claim may be the only pecuniary loss they can claim. If the decedent was a young, high wage earner, this loss can be substantial. See *Rohan v. Exxon Corp.*, supra, where the plaintiff's economist projected that the inheritance of the decedent's daughter would exceed \$1,200,000.00.

### **Loss of Services of the Deceased**

The loss of the household services performed by the decedent, such as lawn maintenance work, painting and repair of the family home, maintenance of the family vehicles, and providing transportation to family members, constitutes pecuniary losses to the family. *Sea-Land Services*,

*Inc., v. Gaudet*, 414 U.S. 573 (1974); and *Tallentire v. Offshore Logistics, Inc.*, 754 F.2d 1274, 1287 (1985), *reversed on other grounds* 477 U.S. 207 (1986) where the Fifth Circuit had remanded the case to the District Court to determine the value of the decedent's repair work on the home and family automobiles.

To recover for this pecuniary loss, a claimant must present testimony assigning a value to the services performed by the decedent. *Ivy v. Security Barge Lines*, 585 F.2d 732, 740 (5th Cir. 1978). Here the widow and other family members will testify as to the number of hours per week the decedent spent performing household chores, and how much the family has paid for other persons to perform those services after the decedent's death. *Adventure Bound Sports*, *supra* at 1201. The plaintiff need not prove the value of such services with mathematical precision. In the District Court opinion in *Higginbotham*, *supra* at 1144, no specific evidence was cited, and the opinion simply states that "The Court is aware that services such as these have a value which the Court estimates at approximately \$50.00 per month."

Recovery of damages for loss of household services requires proof that such services were expected and likely to be provided, but for the wrongful death. *Bergen v. F/V St. Patrick*, *supra*; *Verdin v. C & B Boat Co., Inc.*, 860 F.2d (5<sup>th</sup> Cir. 1979).

### **Loss of Nurture, Guidance and Instruction**

The loss to children of the nurture, instruction, guidance and the physical, intellectual and moral training that they would have received from their parent, but for the wrongful death of a parent, constitutes a pecuniary loss recoverable under DOHSA. This pecuniary value was illustrated by the District Court opinion in *Higginbotham*, *supra* at 1144, where the court found:

"Higginbotham provided the guidance, care and discipline of a good father to the minor child Donna, who was residing in his household. His moral qualities, sense of values, beliefs and experiences in life, when considered with the close relationship that existed between him and his child, leads this Court to conclude

that the minor child has sustained, during her minority, and will continue to sustain, further loss from the lack of her father's care, guidance and discipline. This item of damages is assessed at \$2,000.00 a year for the child throughout her minority and school years."

See also *Solomon v. Warren*, *supra*, and *Nygaard v. Peter Pan Fisheries*, 701 F.2d 77 (9<sup>th</sup> Cir. 1983).

*Solomon* contains a lengthy discussion of the loss of care, nurture and guidance with much favorable language. In that case, the three children of the decedent had all reached the age of eighteen at the time of his death. The issue was whether the court's award of \$25,000.00 per child for post-majority loss of care and guidance was appropriate. The Fifth Circuit found that there was no evidence in this case to support such an award. However, in reaching that decision, the court reviewed the law with respect to care, nurture and guidance for children under the age eighteen. In describing these losses, the court stated:

"Without serious dispute, children may suffer a pecuniary deprivation, apart from the loss of support and financial contribution, from the death of their parents in the loss of parental guidance and training, commonly identified as a loss of nurture... Although this item damages can not be computed with any degree of mathematical certainty, the courts in applying the structured pecuniary loss test of DOHSA have held that the loss to children of the nurture, instruction, and physical, intellectual, and moral training that they would have received from their parents, but for the parent's wrongful death, may constitute a pecuniary loss, and as such may be a recoverable element of damages under DOHSA." [*Solomon*, 540 F. 2d at 788.]

In that case, the court indicated that claimants must present evidence that they would have received or did received in the past care, nurture and guidance from their parent prior to his or her death. In declining to award such damages to the children who were past the age of majority in that particular case, the *Solomon* court specifically noted that damages of this type were important for minors in their formative years. Here, Mrs. Broberg left four daughters, a 7, 8, 11, and 15-year-old, all minors in their informative years and whose loss of nurture and guidance is inescapable.

Although the value of care, nurture and guidance may not be capable of computation with

any mathematical certainty, the child of the decedent may offer evidence of salaries of teachers, guidance counselors, and psychologists. See *Adventure Bound Sports*, supra at 1201 (Court permitted evidence of the salaries of professions which analogize to the roles that the father would have filled in raising his sons) Considering this evidence and acknowledging the difficulty of reducing to an economic figure what is to these children an invaluable loss, the court went on to award each of the decedent's sons \$10,000.00 per year through their eighteenth birthday.

Whether the child lived with the decedent is a factor that the courts have considered in the determining the amount of damages to award for loss of care, nurture and guidance. See *Barrett v. United States*, 660 F. Supp. 1291 (S.D.N.Y. 1987) where the court held that this element of damages must be limited because the child was in her mother's custody at the time of her father's death. See also matter of *Adventure Bound Sports, Inc.*, supra, where the court awarded more money in loss of care, nurture and guidance to the children who lived at home with their father, than to the children of the other decedent who was divorced, and his children lived with their mothers. Here, all four children lived with Mrs. Broberg and the evidence at trial will establish that she received no support from her two children's biological fathers.

### **Funeral Expenses**

Funeral expenses are allowed as pecuniary loss only if paid by the decedent's dependents. *Sea-Land Services v. Gaudet*, supra at 591; *Wilhelm Seafoods, Inc. v. Moore*, 328 F.2d 868 (5<sup>th</sup> Cir. 1964). At least one case has held that funeral expenses are not a pecuniary loss under DOHSA if paid by the decedent's estate rather than by the decedent's dependents. *Barbe v. Drummond*, 507 F.2d 794 (1<sup>st</sup> Cir. 1974).

### **CONCLUSION**

This is a tragic case involving the completely avoidable death of SAMANTHA

BROBERG due to an egregiously excessive over service of alcohol on the part of CARNIVAL. CARNIVAL, like all cruise lines, aggressively promotes and profits from the sale of alcohol to its passengers. Indeed, cruise lines such as CARNIVAL barely make a profit simply by selling cruises. The majority of their profit comes from gambling revenues and alcohol sales.

At first blush one might be inclined to assess a significant amount of comparative negligence to an adult passenger such as Mrs. Broberg who voluntarily consumed an excessive amount of alcohol. But at some point – and 19 drinks is far past that point – the Plaintiff’s comparative negligence is no longer a reasonable excuse for CARNIVAL’s actions. Let us assume that Mrs. Broberg, after consuming 19 drinks, had gone back to another passenger’s room, and that passenger had sex with her. That passenger could be prosecuted for rape, because, as a matter of law, Mrs. Broberg would have been in no condition to consent to engaging in sexual relations. In fact, Mr. Cervantes, who is seated to Mrs. Broberg’s left in the picture above, expressed that potential concern to the FBI when he was interrogated.

No, after the service of 19 drinks, Mrs. Broberg was in no condition to accept responsibility for her actions. That is precisely why CARNIVAL ostensibly maintains and enforces a “Responsible Alcohol Service Manual” and policies. CARNIVAL inexcusably breached its duties in this case. Had CARNIVAL followed its own protocol, Mrs. Broberg would have been escorted safely back to her cabin. Instead, she wandered out of the bar in a state of stupor and fell overboard.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 6, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record, or pro se parties, identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Robert L. Gardana  
Robert L. Gardana (279668)

**ATTORNEY SERVICE LIST**

**KARL M. BROBERG, et. al. vs. CARNIVAL  
CASE NO: 17-CV-21537-FAM**

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