

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case No. 14-cv-21125/SEITZ

ERMON "BUTCH" LEE BUTLER, JR.,
as the Personal Representative of
THE ESTATE
OF VOILET EILEEN BUTLER,

Plaintiff,

v.

CARNIVAL CORPORATION d/b/a
CARNIVAL CRUISE LINES,

Defendant.

_____ /

PLAINTIFF'S FOURTH AMENDED COMPLAINT

Plaintiff Ermon "Butch" Lee Butler, Jr., as personal representative of the Estate of Violet Eileen Butler (the "Estate"), and on behalf of himself and Amanda Beth Butler as survivors, sue Defendant Carnival Corporation d/b/a Carnival Cruise Lines ("Carnival") and alleges:

1. This action arises out of the tragic death of Violet Butler, who was vacationing with her husband and daughter aboard a Carnival cruise ship when she suffered a cardiac event. Despite witnessing Mrs. Butler's collapse, Carnival security personnel and crew made no attempt to seek aid or assistance to resuscitate Mrs. Butler. By the time Mrs. Butler's family was able to locate the ship's nurse and Mrs. Butler was finally revived, too much time had passed and she had suffered irreversible brain damage due to lack of oxygen. Mrs. Butler ultimately died sixteen days later. Plaintiff brings this lawsuit against Carnival for negligence in attending to Mrs. Butler's emergency condition, which ultimately resulted in her death.

PARTIES

2. Plaintiff Butch Butler was the husband of Violet Butler, and is the father of Amanda Butler. He is the duly appointed Personal Representative of the Estate. He resides in Lowndes County, Mississippi, and is the President of Butler Transportation, Inc., an interstate shipping company.

3. Defendant Carnival is a Panamanian Corporation with its principal place of business in Miami, Florida. Carnival owns, operates, and maintains the ship upon which Mrs. Butler suffered her cardiac event and where Carnival's negligence, as further set forth below, caused her death.

JURISDICTION

4. This Court has subject matter jurisdiction because the amount in controversy exceeds \$75,000, exclusive of interests and costs, and diversity exists between the Plaintiff and Defendant. *See* 28 U.S.C. § 1332(a)(2) (2013).

5. In the event this action does not fall under diversity of citizenship jurisdiction, this matter is brought under the admiralty and maritime jurisdiction of this Court.

6. Carnival is registered and authorized to do business in Florida with an office and agents in Miami-Dade County where it regularly conducts business. Carnival engages in substantial and not isolated activities in Florida where they operate, conduct, and carry on a business venture within this state. Furthermore, Carnival committed one of the acts stated in Florida Statutes, Sections 48.081, 48.181 or 48.193, subjecting it to jurisdiction of this state.

7. Venue is proper in Miami-Dade County, Florida, because Carnival has offices, agents, and conduct business here, and has selected the United States District Court for the

Southern District of Florida, as its forum pursuant to the forum selection clause in the Butlers' Cruise Line ticket.

FACTS

8. On April 14, 2013, Plaintiff, his wife Violet, and their daughter Amanda boarded the Carnival Conquest (the "Ship") in New Orleans, Louisiana, for a 7-day vacation cruise. The voyage was scheduled to take them to the Caribbean Islands and Mexico before returning back to New Orleans on April 20, 2013.

9. The cruise was supposed to be a fun-filled family getaway – something the Butlers had been looking forward to for some time. Tragically, it was the last vacation the Butlers would spend together as a family.

10. At all relevant times, the Ship was owned, operated, and maintained by Carnival, and was sailing in navigable waters.

11. On April 18, 2013, the Ship arrived at the Cayman Islands where the Butlers disembarked to enjoy a day at the beach.

12. The Butlers returned to the Ship that afternoon and entered the ship's security clearance area. Shortly after passing through security, Mrs. Butler suffered a cardiac event and collapsed to the ground.

13. Mrs. Butler fell to the ground, unconscious, in full view of at least three Carnival crew members. Yet despite witnessing the cardiac event, not one of the Carnival personnel made any immediate effort to render aid or call for assistance. Rather, the crew members ignored Mrs. Butler as she lay unconscious while they focused instead on closing off the corridor to prevent other passengers from seeing what had happened.

14. Amanda Butler frantically searched the ship for someone that could help her mother but received no aid. After approximately fifteen minutes, during which no Carnival employee attempted to aid Mrs. Butler, a nurse employed on the Ship finally arrived at the scene. The nurse, however, did not immediately attempt to revive Mrs. Butler. Instead, the nurse ordered that Mrs. Butler be taken to the Ship's medical center. All the while, Mrs. Butler was deprived of precious oxygen.

15. After multiple attempts at resuscitation in the medical center, Mrs. Butler was finally revived.

16. Meanwhile, and unbeknownst to the Butlers, Carnival's crew members entered the Butler family's staterooms and packed their belongings. The Butlers were then discharged from the Ship and transported to a dock on Grand Cayman Island.

17. Once at the dock, the Butlers waited, in the hot sun, for an ambulance to transport Mrs. Butler to a local hospital.

18. After spending an evening in the hospital in Grand Cayman, Mrs. Butler was airlifted, at the Butler family's expense, to a Miami, Florida hospital. There, the Butlers discovered that Mrs. Butler suffered irreversible brain damage due to lack of oxygen.

19. In Miami, Mrs. Butler languished on life support for sixteen days before she died on May 4, 2013.

20. Mrs. Butler's death was the direct and proximate result of Carnival's negligence, as more particularly set forth below. Accordingly, Plaintiff brings the below-listed claims for damages on behalf of the Estate and the survivors.

COUNT I
WRONGFUL DEATH UNDER DEATH ON THE HIGH SEAS ACT (“DOHSA”)

21. Plaintiff readopts and realleges paragraphs 1 through 20 above and further alleges:

22. Carnival, as the operator of a cruise ship transporting paying passengers, owed to its sick and injured passengers the nondelegable duty to exercise reasonable care under the circumstances.

23. By and through its agents and employees, Carnival failed in its duty to provide reasonable care under the circumstances by:

- a. Failing to render assistance to Mrs. Butler immediately following her collapse;
- b. Failing to alert medical personnel immediately following her collapse;
- c. Delaying in seeking medical personnel to attend to Mrs. Butler;
- d. Failing to assist Mrs. Butler in any manner whatsoever while her brain was starved for oxygen;
- e. Failing to render such aid and assistance as ordinarily prudent persons would render under such circumstances.

24. As a result of the failure of Carnival, its agents, servants, and employees, to fulfill the duty of reasonable care under the circumstances, an extended period of time elapsed before Mrs. Butler received appropriate medical treatment. Mrs. Butler remained unconscious for critical minutes after her cardiac event, causing a lack of oxygen to her brain and irreversible brain damage, leading to her subsequent death.

25. Accordingly, Mrs. Butler and her survivors suffered damages more specifically set forth below.

CLAIM FOR DAMAGES ON BEHALF OF THE ESTATE AND SURVIVORS

26. As a direct and proximate result of Carnival's negligence as alleged above, the Estate, and Mr. Butler and Amanda Butler as survivors, have suffered damages including but not limited to:

- a. Loss of earnings of Mrs. Butler from the date of her death; and
- b. Medical and funeral expenses incurred due to the death of Mrs. Butler which have become a charge against the Estate or that were paid by or on behalf of the survivors, loss of the value of their vacation cruise, and travel expenses.

CLAIM FOR PUNITIVE DAMAGES

27. As set forth above, Mrs. Butler suffered her cardiac event in full view of several Carnival crew members. Not only did these crew members make no effort to render aid or call for assistance upon witnessing Mrs. Butler fall to the ground, they continued to ignore her as she lay in front of them, unconscious. It was Mrs. Butler's daughter that frantically searched the ship for someone to help her mother. Carnival personnel ignored Mrs. Butler for approximately fifteen minutes before anyone attempted to aid her. All the while, Mrs. Butler's body was denied oxygen critical to her survival.

28. Accordingly, Carnival acted wantonly and willfully, with malice, recklessness, gross negligence, or conscious indifference with respect to the rights of Mrs. Butler, under the circumstances set forth above.

29. Thus, Plaintiff requests punitive damages.

WHEREFORE, Plaintiff demands judgment against Carnival for compensatory damages for all pecuniary losses allowed under DOHSA, punitive damages against Carnival, and demands jury trial of all issues so triable.

Dated this 6th day of November, 2014.

Respectfully submitted,

GROSSMAN ROTH, P.A.
2525 Ponce de Leon Blvd., Suite 1150
Coral Gables, Florida 33134
Telephone: (305) 442-8666
Facsimile: (305) 285-1668

By: /s/ Seth Miles
SETH MILES
Florida Bar No. 385530
E-mail: sem@grossmanroth.com
NEAL A. ROTH
Florida Bar No. 220876
E-mail: nar@grossmanroth.com

OF COUNSEL:

Marcus R. Spagnoletti (0085430)
Email: mspagnoletti@spaglaw.com
SPAGNOLETTI & CO.
401 Louisiana Street, 8th Floor
Houston, Texas 77002
Telephone: (713) 653-5600
Facsimile: (713) 653-5656

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with the Clerk of the Court using the CM/ECF System, which will send a notice of electronic filing upon all parties as noted in the service list below on this 6th day of November, 2014.

GROSSMAN ROTH, P.A.

By: /s/ Seth Miles
SETH MILES
Florida Bar No. 385530
Email: sem@grossmanroth.com
2525 Ponce de Leon Blvd., Suite 1150
Coral Gables, Florida 33134
Telephone: (305) 442-8666
Facsimile: (305) 285-1668

SERVICE LIST

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 14-cv-21125/SEITZ**

FOREMAN FRIEDMAN, PA

Jeffrey E. Foreman, Esq.

Florida Bar No. 0240310

jforeman@fflegal.com

Noah D. Silverman, Esq.

Florida Bar No. 0401277

nsilverman@fflegal.com

Amanda J. Ross, Esq.

aross@fflegal.com

Florida Bar No.: 0598666

Rachael A. Mitchell, Esq.

rmitchell@fflegal.com

Florida Bar No.: 91868

One Biscayne Tower, Suite 2300

2 South Biscayne Boulevard

Miami, FL 33131

Attorneys for Defendants

(SERVED VIA CM/ECF NOTIFICATION/EMAIL)