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## **Terry v. Carnival Corp. 3 F. Supp. 3d 1363 United States District Court for the Southern District of Florida, Miami Division (Decided January 16, 2014)**

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**CRUISE LINE’S MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF  
NEGLIGENCE DENIED WHERE PASSENGER PLAINTIFFS SHOW PHYSICAL  
MANIFESTATIONS OF EMOTIONAL INJURIES, UNDER THE ZONE OF DANGER TEST**

Terry v. Carnival Corp.  
3 F. Supp. 3d 1363  
United States District Court for the Southern District of Florida, Miami Division  
(Decided January 16, 2014)

**United States District Court, Southern District of Florida, Miami Division held that plaintiffs’  
partial motion for summary judgment would be granted; defendants’ motion for summary  
judgment would be granted in part and denied in part.**

Plaintiffs brought an action against defendant, Carnival Corp. (“Carnival”) in connection with their claims of injury while aboard Carnival’s ship, the Triumph.<sup>1</sup> The vessel became disabled after a fire broke out in the vessel’s engine room while en route back to Galveston, Texas.<sup>2</sup> Plaintiffs sought compensatory and punitive damages on claims of breach of contract, negligence and gross negligence, negligent misrepresentation, and fraud.<sup>3</sup> Plaintiffs and defendant moved for summary judgment on multiple counts.<sup>4</sup> Federal Rule of Civil Procedure 56 provides that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”<sup>5</sup>

First, the court addressed the claims of plaintiffs Pamela Morris (“Morris”), Larry Poret (“Poret”) and his daughter R.P. (“R.P.”), passengers of the Triumph.<sup>6</sup> Plaintiffs alleged that they suffered serious physical and emotional injuries.<sup>7</sup> Carnival moved for summary judgment asserting that, despite the plaintiffs’ claims, plaintiffs suffered no physical injury, emotional injury, financial injury, property damage, nor any other provable injury while on the Triumph.<sup>8</sup> Plaintiffs claimed to suffer from continuing stress, anxiety, and nightmares since their voyage on the Triumph.<sup>9</sup> All three acknowledged and agreed to the terms of the cruise ticket contract.<sup>10</sup> As to the breach of contract claim, Carnival asserted that it was entitled to summary judgment because the contract did not contain any provision guaranteeing safe passage, a seaworthy vessel, adequate and wholesome food, and sanitary and safe living conditions.<sup>11</sup> As a general rule of admiralty law, a ship’s passengers are not covered by the warranty of seaworthiness.<sup>12</sup> The court granted Carnival’s motion for summary

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<sup>1</sup> *Terry v. Carnival Corp.*, 3 F. Supp. 3d 1363, 1366 (S.D. Fla. 2014).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; Fed. R. Civ. P. 56(c).

<sup>6</sup> *Id.* at 1367.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 1367-1368. Seaworthiness imposes absolute liability on a sea vessel for the carriage of cargo and seamen’s injuries. See *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1335 (11<sup>th</sup> Cir. 1984).

judgment on the breach of contract claim as against these plaintiffs and an additional eleven plaintiffs.<sup>13</sup>

Carnival contended that it was entitled to summary judgment on plaintiffs' negligence and gross negligence claims because plaintiffs offered insufficient evidence to prove that they suffered a cognizable injury or actual harm as a result of the incident onboard the Triumph.<sup>14</sup> To establish a negligence claim, one must 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 actually and proximately caused the plaintiff's injury; and (4) the plaintiff suffered actual harm."<sup>15</sup> Negligent infliction of emotional distress requires "mental or emotional harm [ . . . ] that is caused by the negligence of another and that is not directly brought about by a physical injury, but that may manifest itself in physical symptoms."<sup>16</sup>

Under admiralty law, recovery for negligent infliction of emotional distress is only allowed if it passes the zone of danger test.<sup>17</sup> The zone of danger test "limits recovery for emotional injury to those plaintiffs who sustain a physical impact as a result of a defendant's negligent conduct, or who are placed in immediate risk of physical harm by the conduct."<sup>18</sup> Many jurisdictions that follow this test "also require that a plaintiff demonstrate a 'physical manifestation' of the alleged emotional injury."<sup>19</sup> Here, Morris, Poret, and R.P. complained only of emotional injuries that manifested through sleep deprivation and nightmares.<sup>20</sup> While viewing the evidence in the light most favorable to the non-moving party, the court found a genuine issue of material fact as to whether these plaintiffs were entitled to recover for their emotional distress when applying the physical manifestation test.<sup>21</sup> Accordingly, the court denied Carnival's motion for summary judgment on the claims for negligence and gross negligence.<sup>22</sup>

Carnival moved for summary judgment on the negligence claim of the additional eleven plaintiffs and asserted that these plaintiffs did not suffer any serious injuries.<sup>23</sup> Carnival argued that the plaintiffs could not recover on their stand-alone emotional distress claims because no evidence existed proving that they suffered a subsequent physical manifestation of their emotional distress.<sup>24</sup> Carnival claimed that plaintiffs failed to submit any evidence of damages and that such failure required entry of judgment in Carnival's favor on the negligence claim.<sup>25</sup> The court determined that ten of the eleven plaintiffs' complaints of anxiety, sleeplessness, and nightmares lasting more than a day sufficiently precluded a grant of summary judgment in favor of Carnival.<sup>26</sup>

Additionally, the court denied Carnival's motion for summary judgment for the negligent misrepresentation and fraud as to ten of the eleven other plaintiffs.<sup>27</sup> The court found one plaintiff did not suffer a cognizable injury when she suffered "emotional trauma" due to her husband, a non-passenger, worrying about her.<sup>28</sup>

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<sup>13</sup> *Id.* at 1368.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1368 (citing *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1336 (11th Cir. 2012)).

<sup>16</sup> *Id.* at 1369 (quoting *Chaparro*, 693 F.3d at 1337-38 (11th Cir. 2012)).

<sup>17</sup> *Id.* (citing *Smith v. Carnival Corp.*, 584 F.Supp.2d 1343, 1353-54 (S.D.Fla. 2008)).

<sup>18</sup> *Id.* (quoting *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 547-48 (1994)).

<sup>19</sup> *Id.* (quoting *Consolidated Rail Corp.*, 512 U.S. at 549 n. 11 (1994)).

<sup>20</sup> *Id.* at 1370.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1370-1371.

<sup>25</sup> *Id.* at 1371.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

Carnival moved for summary judgment on plaintiffs' claim for punitive damages.<sup>29</sup> Under general maritime law, personal injury claimants have no claim for punitive damages, except in exceptional circumstances, such as willful failure to furnish maintenance and cure to a seaman and intentional wrongdoing.<sup>30</sup> Plaintiffs failed to demonstrate intentional misconduct, therefore, the court granted Carnival's motion.<sup>31</sup>

Plaintiffs argued for partial summary judgment as to liability, or, in the alternative, for a presumption of liability against Carnival based upon the doctrine of *res ipsa loquitur*.<sup>32</sup> *Res ipsa loquitur* applies if: "(1) the injured party was without fault, (2) the instrumentality causing the injury was under the exclusive control of the defendant, and (3) the mishap is of a type that ordinarily does not occur in the absence of negligence."<sup>33</sup> As to the first prong, the court determined plaintiffs were without fault.<sup>34</sup> As to the second prong, the court found that the vessel, flexible fuel lines, and diesel generator were under the exclusive control and management of Carnival's agents during the subject cruise.<sup>35</sup> Finally, the court determined that the recorded evidence demonstrated that the fire was a mishap that ordinarily would not occur in the absence of negligence.<sup>36</sup>

Accordingly, the court held that Carnival's motion for summary judgment on plaintiffs Moris, Poret and R.P. was granted in part and denied in part.<sup>37</sup> The court granted plaintiffs' motion for partial summary judgment, as well as Carnival's motion as to the plaintiffs' claim for punitive damages only.<sup>38</sup> Carnival's Omnibus motion for summary judgment was granted in part and denied in part.<sup>39</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* (citing *In re Amtrak Sunset Ltd. Train Crash in Bayou Canot, Ala.* on Sept. 22, 1993, 121 F.3d 11421, 1429 (11<sup>th</sup> Cir. 1997)).

<sup>31</sup> *Id.* at 1371-1372.

<sup>32</sup> *Id.* at 1372.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 1372-1373.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 1373-1374.

<sup>38</sup> *Id.* at 1374.

<sup>39</sup> *Id.*