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See also U.S. Ct. of App. 11th Cir. Rule 36-2.

United States Court of Appeals, Eleventh Circuit.

Cynthia DAVIS, Leslie Mayberry,
Diane Tucker, Ana Santa Ana, Carmel Taylor,
et al., Plaintiffs-Appellants,

v.

VALSAMIS, INC., Defendant-Appellee.

No. 16-17081

|

Non-Argument Calendar

|

(August 30, 2018)

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Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 1:16-cv-20517-JAL

Before WILSON, HULL, and JULIE CARNES, Circuit Judges.

Opinion

PER CURIAM.

In this maritime tort action, Plaintiffs, a group of more than 100 former co-passengers on an ill-fated sailing of the cruise ship Carnival Triumph, appeal the district court’s grant of Defendant Valsamis, Inc.’s motion for summary judgment. The district court held that Plaintiffs’ failure to notify Defendant of their personal injury claims within 185 days, as required by a notice provision in their ticket contract, barred Plaintiffs’ claims that Defendant’s negligence caused a fire, resulting in harm to Plaintiffs. After careful review, we affirm.

I. BACKGROUND

A. Factual Background

1. The Ill-Fated Sailing of the Carnival Triumph

On February 7, 2013, Plaintiffs embarked on a cruise aboard the Carnival Triumph, a ship owned by Carnival Cruise Lines (“Carnival”). Carnival hired Defendant to maintain the ship’s engines and generators.

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During Plaintiffs' voyage, a fire in the ship's engine room disabled the ship, stranding its passengers and crew in the Gulf of Mexico. The fire caused a power outage. The power outage prevented toilets, refrigerators, air conditioners, and other electrical systems from working. The failure of those electrical systems caused living conditions aboard the ship to deteriorate. The unsatisfactory living conditions caused passengers discomfort and distress.

2. The Carnival Ticket Contract

Each Carnival Triumph passenger is bound by a Carnival ticket contract. Carnival's ticket contract contains provisions limiting passenger rights to assert claims arising from injuries sustained as a Carnival guest. The ticket contract alerts passengers of those restrictions on the first page in bold, capital letters:

**IMPORTANT NOTICE TO GUESTS THIS
DOCUMENT IS A LEGALLY BINDING
CONTRACT ISSUED BY CARNIVAL
CRUISE LINES TO, AND ACCEPTED BY,
GUEST SUBJECT TO THE IMPORTANT
TERMS AND CONDITIONS APPEARING
BELOW.**

**NOTICE: THE ATTENTION OF GUESTS
IS ESPECIALLY DIRECTED TO CLAUSES
1, 4 AND 10 THROUGH 13, WHICH CON-
TAIN IMPORTANT LIMITATIONS ON
THE RIGHTS OF GUESTS TO ASSERT
CLAIMS AGAINST CARNIVAL CRUISE
LINES, THE VESSEL, THEIR AGENTS**

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AND EMPLOYEES, AND OTHERS, INCLUDING FORUM SELECTION, ARBITRATION AND WAIVER OF JURY TRIAL FOR CERTAIN CLAIMS.

One such limitation on the rights of guests to assert claims against Carnival is a requirement to give timely notice of their personal injury claims. As stated in Clause 12(a):

Carnival shall not be liable for any claims whatsoever for personal injury, illness or death of the guest, unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of the injury, event, illness or death, and unless served on Carnival within 120 days after filing. Guest expressly waives all other potentially applicable state or federal limitations periods.

Clause 1(f) is a “Himalaya” Clause¹ that extends Carnival’s rights, like the 185-day notice requirement of Clause 12(a), to certain other potential defendants:

All rights, exemptions from liability, defenses and immunities of Carnival under this contract shall also inure to the benefit of Carnival’s facilities, whether at sea or ashore,

¹ Himalaya Clauses extend liability limitations to downstream parties and take their name from an English case involving a steamship called *Himalaya*. *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 20 n.2, 125 S. Ct. 385, 160 L.Ed. 283 (2004).

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servants, agents, managers, affiliated or related companies, suppliers, shipbuilders and manufacturers of component parts and independent contractors, including, but not limited to, shore excursion or tour operations, ship's physician, ship's nurse, retail shop personnel, health and beauty staff, fitness staff, video diary staff, and other concessionaires, who shall have no liability to the Guest, either in contract or in tort, which is greater than or different from that of Carnival.

B. Procedural History

On July 24, 2013, within the 185-day notice period of Clause 12(a), 31 passengers notified Carnival of their personal injury claims arising from their experience aboard the Carnival Triumph. None of the current Plaintiffs notified Defendant of their claim at that time.

Having failed to provide the required advance notice, Plaintiffs filed suit against Defendant on February 9, 2014, nearly one year after their return to port aboard the Carnival Triumph.² Plaintiffs allege that Defendant: (1) negligently maintained the ship's engines and generators; and (2) negligently designed, manufactured and/or constructed insulation panels,

² Plaintiffs filed suit in the United States District Court for the Southern District of Texas. The court transferred the case to the United States District Court for the Southern District of Florida on Defendant's motion to enforce the forum-selection clause in the ticket contract.

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fuel pipe covers, T-shaped structures, and other apparatuses installed on the diesel generators to reduce the temperature of existing hot spots on the ship's engines. Plaintiffs claim that Defendant's negligence caused the fire which disabled the ship and left them stranded at sea for days in undesirable conditions, causing them physical and emotional injuries.

Defendant moved for summary judgment, asserting that Clause 12(a) of the ticket contract barred Plaintiffs' claims because they failed to notify Defendant of their claims within the required 185 days. The court found that Defendant qualified as a "manufacturer of component parts" or an "independent contractor" within the meaning of the Himalaya Clause and was, therefore, entitled to receive notice of Plaintiffs' claims as specified in Clause 12(a). The court further found that: (1) Plaintiffs did not provide the required notice to Defendant; (2) notice to Carnival was insufficient under Clause 12(a) as properly interpreted; and (3) 46 U.S.C. § 30508 did not excuse their failure to provide notice because Plaintiffs produced no evidence that Defendant knew of their claims or was not prejudiced by their failure to give notice within 185 days. The court granted summary judgment for Defendant, holding that Plaintiffs' claims are barred by Clause 12 of the ticket contract.

Plaintiffs appeal, arguing that they satisfied their contractual obligations by providing notice of their claims to Carnival and that 46 U.S.C. § 30508 excuses any failure to provide sufficient notice.

II. DISCUSSION

A. Standard of Review

This Court reviews a district court's grant of summary judgment *de novo*, applying the same legal standards as the district court. *Chapman v. AI Transp.*, 229 F.3d 1012, 1023 (11th Cir. 2000) (en banc). A grant of summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In making this determination, we view all evidence and make all reasonable inferences in favor of the non-moving party. *Chapman*, 229 F.3d at 1023.

"[C]ontract interpretation is generally a question of law." *Underwriters at Lloyds Subscribing to Cover Note B0753PC1308275000 v. Expeditors Korea Ltd.*, 882 F.3d 1033, 1039 (11th Cir. 2018) (quoting *Lawyers Title Ins. Corp. v. JDC (Am.) Corp.*, 52 F.3d 1575, 1580 (11th Cir. 1995)). "The question of whether a contract is ambiguous is a question of law that we review *de novo*." *Id.* (citing *Carneiro Da Cunha v. Standard Fire Ins. Co./Aetna Flood Ins. Program*, 129 F.3d 581, 584–85 (11th Cir. 1997)).

B. Federal Maritime Law: Rules of Contract Interpretation

Plaintiffs' ticket constitutes a maritime contract because its primary objective is to accomplish the transportation of passengers by sea. *Norfolk S. Ry.*, 543 U.S. at 24, 125 S. Ct. 385. "Drawn from state and

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federal sources, the general maritime law is an amalgam of traditional common-law rules, modifications of those rules, and newly created rules.” *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864–65, 106 S.Ct. 2295, 90 L.Ed.2d 865 (1986) (citations omitted). “When a contract is a maritime one, and the dispute is not inherently local, federal law controls the contract interpretation.” *Norfolk S. Ry.*, 543 U.S. at 22–23, 125 S.Ct. 385; *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 590, 111 S.Ct. 1522, 113 L.Ed.2d 622 (1991) (enforceability of forum-selection clause in cruise ticket presented a case in admiralty governed by federal law). “Specifically, our interpretation of maritime contracts sounds in federal common law, so we look to the general common law of contracts.” *Internaves de Mexico s.a. de C.V. v. Andromeda Steamship Corp.*, 898 F.3d 1087, 1093 (11th Cir. 2018).

Maritime contracts “must be construed like any other contracts: by their terms and consistent with the intent of the parties.” *Norfolk S. Ry. Co.*, 543 U.S. at 31, 125 S.Ct. 385. Under general principles of contract interpretation, “[t]he plain meaning of a contract’s language governs its interpretation.” *In re FFS Data, Inc.*, 776 F.3d 1299, 1305 (11th Cir. 2015) (internal quotation marks omitted). “[A] document should be read to give effect to all its provisions and to render them consistent with each other.” *Id.* (internal quotation marks omitted) (citing Restatement (Second) of Contracts § 203(a) (Am. Law. Inst. 1981)). “The elementary canon of interpretation is, not that particular words may be isolatedly considered, but that the whole contract must

be brought into view and interpreted with reference to the nature of the obligations between the parties, and the intention which they have manifested in forming them.” *O’Brien v. Miller*, 168 U.S. 287, 297, 18 S.Ct. 140, 42 L.Ed. 469 (1897). Thus, courts look to “the contract as a whole to determine whether it unambiguously states the parties’ intentions.” *Sander v. Alexander Richardson Invs.*, 334 F.3d 712, 716 (8th Cir. 2003); *Feaz v. Wells Fargo Bank, N.A.*, 745 F.3d 1098, 1104 (11th Cir. 2014) (“Traditional contract-interpretation principles make contract interpretation a question of law, decided by reading the words of a contract in the context of the entire contract and construing the contract to effectuate the parties’ intent.”). A contract provision is ambiguous if it “is susceptible to two or more reasonable interpretations that can fairly be made.” *Dahl-Eimers v. Mut. of Omaha Life Ins. Co.*, 986 F.2d 1379, 1381 (11th Cir. 1993); *Sompo Japan Ins. Co. of Am. v. Norfolk S. Ry. Co.*, 762 F.3d 165, 179 (2d Cir. 2014) (maritime contract is ambiguous “where it is susceptible of two reasonable and practical interpretations”) (internal quotation marks omitted). An ambiguous provision in a maritime contract is interpreted against the drafter. *Edward Leasing Corp. v. Uhlig & Assoc. Inc.*, 785 F.2d 877, 889 (11th Cir. 1986).

C. The District Court Properly Granted Summary Judgment for Defendant

Plaintiffs assert the district court erroneously granted summary judgment on the legally flawed conclusion that the ticket contract entitled Defendant to

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receive notice of Plaintiffs' injuries within 185 days. This case warrants summary judgment only if: (1) Defendant qualifies to exercise the protections afforded by the Himalaya Clause; (2) Clause 12(a) requires Plaintiffs to provide notice of their claims to Defendant, as opposed to Carnival; and (3) 46 U.S.C. § 30508 does not excuse Plaintiffs' failure to provide such notice to Defendant. We address each issue in turn.

1. Defendant Qualifies to Exercise the Rights Conferred by the Himalaya Clause

The ticket contract permits Defendant to assert the right to notice under Clause 12(a) only if the Himalaya Clause extends that right to Defendant. The Himalaya Clause states that “[a]ll rights, exemptions from liability, defenses and immunities of Carnival under this contract shall also inure to the benefit of Carnival’s . . . suppliers, shipbuilders and manufacturers of component parts and independent contractors.” Plaintiffs maintain that “Defendant was hired, retained and otherwise authorized by Carnival to perform maintenance on the [Carnival Triumph], in particular its engines and diesel generators, and equipment appurtenant thereto.” Plaintiffs further contend that Defendant “designed, manufactured, and/or constructed insulation panels fuel pipe covers, T-shaped structures and other apparatuses that the company installed on diesel generators and in other places in order to reduce the temperature of existing hot spots on the [ship’s] engines.” The services performed by Defendant indisputably make Defendant a

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supplier, manufacturer of component parts, or an independent contractor, as those terms are ordinarily defined.

We find Plaintiffs' argument that the Himalaya Clause is ambiguous because it fails to define the term "independent contractor" unconvincing. First, Defendant qualifies to receive the rights conferred by the Himalaya Clause as a "supplier" or "manufacturer of component parts" for the Carnival Triumph. Our holding is not dependent on characterizing Defendant as an independent contractor.

Second, unlike the bill of lading in the cases cited by Plaintiffs, the ticket contract here unambiguously defines the independent contractors receiving extended rights—those contractors employed by Carnival. *See La Salle Mach. Tool, Inc. v. Maher Terminals, Inc.*, 611 F.2d 56, 60 (4th Cir. 1979) (finding provision of bill of lading extending liability limitation to independent contractor "ambiguous because it does not indicate Whose agents and independent contractors are meant" and holding terminal operator not covered by that provision where terminal operator was "not clearly acting as an independent contractor of the carrier"); *Caterpillar Overseas, S.A. v. Farrell Lines, Inc.*, 1988 A.M.C. 2894, 2895 (E.D. Va. Apr. 28, 1988), *aff'd sub nom.*, *Caterpillar Overseas, S.A. v. Marine Transp. Inc.*, 900 F.2d 714 (4th Cir. 1990) (relying on *La Salle Machine Tool* and holding that Himalaya Clause extending ocean carrier's liability limitations to "all independent contractors" did not unambiguously apply to an interstate trucking company not engaged in

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normal maritime operations). This is not a case like those cited where defendant's relationship to the contracting party was tangential or uncertain or defendant was engaged in non-maritime activity that one would not reasonably expect to be covered by the contract. Plaintiffs acknowledge that "Defendant was hired, retained and otherwise authorized by Carnival to perform maintenance on the [Carnival Triumph]." That Defendant is an independent contractor of Carnival engaged in normal maritime activity requires no speculation. Defendant is squarely within the reasonable scope of the Himalaya Clause.

Plaintiffs contend that the Himalaya Clause should be strictly construed to exclude Defendant because "Carnival's passenger ticket is plainly intended to govern the carriage of passengers on holiday cruises and protect those providing services to Carnival with respect [to] matters immediately affecting the cruise," i.e. ship personnel and shore excursion or tour operators. But the second paragraph in the ticket contract boldly declares in all capital letters that the contract imposes "**IMPORTANT LIMITATIONS ON THE RIGHTS OF GUESTS TO ASSERT CLAIMS AGAINST CARNIVAL CRUISE LINES, THE VESSEL, THEIR AGENTS AND EMPLOYEES, AND OTHERS**" (underline added). That same bolded and capitalized paragraph specifically directs passengers to Clause 1, containing the Himalaya Clause, and Clause 12, containing the notice provision. The Himalaya Clause extends rights to suppliers, shipbuilders, and manufacturers of component parts, as well as

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independent contractors. Thus, the ticket contract expressly and conspicuously limits the liability of those not directly providing services to passengers while on the cruise. *See Estate of Myhra v. Royal Caribbean Cruises, Ltd.*, 695 F.3d 1233, 1246 (11th Cir. 2012) (concluding that the physical characteristics of the warning in ticket contract were sufficient to reasonably communicate a forum-selection clause to passengers). Moreover, if Plaintiffs' allegations prove true, one can hardly imagine how Defendant's conduct did not "immediately affect[] the cruise," the ambiguous standard Plaintiffs urge us to adopt.

We also reject Plaintiffs' argument that extending notice rights to Defendant "is poor public policy because it disrupts the uniformity of maritime law reflected in the uniform three-year statute of limitations for maritime tort." Section 30106 of Title 46 of the United States Code establishes a three-year statute of limitations for bringing a civil action for damages for personal injury arising out of a maritime tort. It does not prohibit parties from contractually shortening that limitations period. Instead, 46 U.S.C. § 30508 permits a shipowner to contractually require notice of personal injury in as little as six months and to require an action be brought in one year. 46 U.S.C. § 30508(b). The provisions at issue here comply with the notice and filing limitations permitted by § 30508³ and do not

³ Plaintiff concedes that "this statute allows a vessel transporting passengers . . . between ports in the U.S. and a port in a foreign country to limit its liability through clauses such as used by Carnival's ticket."

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“contravene an act of Congress” or “prejudice the characteristic features of maritime law.” Whether these congressionally sanctioned limitations constitute “poor public policy,” as Plaintiffs contend, is not for us to decide.

The ticket contract here differs markedly from the contracts evaluated in Plaintiffs’ cited district court cases declining to extend contractual liability limitations to others. In *Sharpe v. West Indian Company, Ltd.*, the district court held that a clause purporting to extend a cruise line’s exclusions and limitations to owners of shoreside properties was overbroad and ambiguous because it extended to shoreline properties that have no connection to the cruise line. *Sharpe v. W. Indian Co., Ltd.*, 118 F. Supp. 2d 646, 653 (D.V.I. 2000). The Himalaya Clause here, however, is expressly limited to “Carnival’s . . . independent contractors.” Likewise, in *Stotesbury v. Pirate Duck Adventure, LLC*, the district court held that a ticket contract did not reasonably communicate that suits against independent contractors are subject to a one-year limitations period because the language extending the limitations period was buried in fine print in a section not highlighted by the contract. *Stotesbury v. Pirate Duck Adventure, LLC*, No. 3:11-CV-00018, 2013 WL 3199353, at *3 (D.V.I. June 25, 2013). The ticket contract here alerts passengers to the specific provisions limiting independent contractor liability in bolded capitalized letters in the second paragraph of the contract.

Even when strictly construed, the ticket contract unambiguously extends the rights afforded Carnival to

Carnival's suppliers, manufacturers, and independent contractors, like Defendant, and reasonably communicates that fact to passengers. In particular, the ticket contract entitles Defendant to the notice rights provided in Clause 12(a).

2. The Notice Provision of the Ticket Contract Entitles Defendant to Receive Notice of Plaintiffs' Claims within 185 Days

Having concluded that the Himalaya Clause extends the notice rights of Clause 12(a) to Defendant, we now endeavor to discern what right the notice provision actually confers: the right for the alleged offending party to receive notice of claims, or the right to have Carnival notified of claims? Plaintiffs argue that Clause 12(a) requires only that Carnival be notified of Plaintiffs' claims, even when Carnival is not accused of wrongdoing and is not a party to the suit. We disagree.

The application of general principles of contract interpretation yields the conclusion that the ticket contract requires Plaintiffs to provide notice of their claims to the alleged offending party. The notice provision states: "Carnival shall not be liable for any claims whatsoever for personal injury, illness or death of the guest, unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event illness or death giving rise to the claim." Clause 12(a) grants Carnival the right to be notified of the full particulars of claims against them within 185 days of the date of injury. The Himalaya Clause grants

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Defendant that same right: “[a]ll rights, exemptions from liability, defenses and immunities of Carnival under this contract ***shall*** also inure to the benefit of [Defendant].” Viewing the contract as a whole, as we must, Clause 12(a) clearly expresses the intent to bar suit unless notice of a claim is timely provided to the offending party. Since the clause defines Carnival’s rights, the clause identifies Carnival as the offending party. But when Carnival’s right is extended to others, the clear intent is for that party to receive notice of the claim. The specific recitation in the Himalaya Clause that Defendant shall have all of Carnival’s rights and shall not have any liability different from that of Carnival renders unreasonable any interpretation of the notice provision that holds Defendant liable without receiving notice of Plaintiffs’ claims within the allotted time.⁴

Plaintiffs’ argument that the right conferred by the notice provision of Clause 12(a) is merely the right to have Carnival receive notice does not provide Defendant “[a]ll rights” Carnival has under the contract, as required by the Himalaya Clause. Plaintiffs’

⁴ We note that, even if we held that notice to Carnival complied with the ticket contract, the only evidence cited by Plaintiff to establish notice to Carnival is a letter from Carnival acknowledging receipt of a letter from counsel on behalf of 31 Carnival Triumph passengers. Plaintiffs submitted no evidence of an attempt to notify Carnival of injuries sustained by any of the remainder of the more than 100 Plaintiffs in this case, much less evidence demonstrating that each Plaintiff submitted the “full particulars” of their claims to Carnival. That said, for purposes of this ruling, we assume that Carnival received notice that was compliant with the contract.

construction results in a different right being afforded Defendant (i.e. the right for a third-party to receive notice of claims) than that possessed by Carnival (i.e. the right to actually receive notice of claims). Under Plaintiffs' construction, Defendant faces liability without receiving timely notice of claims against it where Carnival would be exempt from liability absent receiving notice. Plaintiffs' construction does not give full effect to the Himalaya Clause, which extends "all rights" of Carnival to Defendant and expressly states that Defendant "shall have no liability to the Guest, either in contract or in tort, which is greater than or different from that of Carnival." "[A contract] should be read to give effect to all its provisions and to render them consistent with each other." *In re FFS Data, Inc.*, 776 F.3d at 1305 (quoting *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995)). Accordingly, we find that the notice provision unambiguously requires notice be provided to Defendant.

That Clause 12(a) also bars liability for any suit "unless served on Carnival within 120 days after filing" provides another indication that "Carnival" as used in Clause 12(a) refers to the offending party. Reading that provision to require service of a suit on Carnival when it is not a party to that suit is neither reasonable nor sensible. See *Golden Door Jewelry Creations, Inc. v. Lloyds Underwriters Non-Marine Ass'n*, 117 F.3d 1328, 1338 (11th Cir. 1997) ("[A]n interpretation which gives a reasonable meaning to all provisions of a contract is preferred to one which leaves a part

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useless or inexplicable.”) (internal quotation marks omitted). Moreover, nothing in the ticket contract suggests that “Carnival” as used in the notice provision should be read differently from “Carnival” as used in other parts of Clause 12, and other provisions exempting Carnival from liability. The only reasonable consistent interpretation is that “Carnival” in Clause 12(a) refers to the offending party when the relevant liability limiting rights are being exercised by those extended protection under the Himalaya Clause.

Plaintiffs argue that Clause 12(a) of the ticket contract fails to reasonably communicate that the 185-day pre-suit written notice provision must be given to Defendant and not to Carnival. We are unpersuaded. As we see it, Clause 12(a) clearly expresses the intent that notice of claims be provided to the offending party and no reason exists to contravene the Himalaya Clause’s express grant of that right to Defendant.⁵ *Norfolk S. Ry. Co.*, 543 U.S. at 31–32, 125 S.Ct. 385 (citing *Green v. Biddle*, 21 U.S. 1, 8 Wheat. 1, 89–90, 5 L.Ed. 547 (1823) (“[W]here the words of a . . . contract, have a plain and obvious meaning, all construction, in hostility with such meaning, is excluded”)).

The only reasonable interpretation of the notice provision consistent with the entirety of Clause 12(a),

⁵ That Defendant’s “claims contact information is absent from the passenger ticket” does not compel a different conclusion. The ticket contract does not contain “claims contact information” for Carnival either. Moreover, such information is available through the exercise of ordinary diligence, as Plaintiffs demonstrated in filing this action.

and the ticket contract as a whole, is that it requires notice of claims be provided to those being sued. Any ambiguity caused by the reference to “Carnival” when reading the notice provision of Clause 12(a) in isolation cannot undermine the manifest intent to provide all of Carnival’s rights, exemptions from liability, defenses and immunities, including the right to receive notice of claims, to those extended protections by the Himalaya Clause. *Internaves de Mexico s.a. de C.V.*, 898 F.3d at 1092-93.

3. Plaintiffs Failed to Demonstrate
that 46 U.S.C. § 30508 Excuses Their
Non-Compliance with the Notice Provision

Plaintiffs argue that under § 30508(c) Defendant must prove prejudice from lack of notice for the notice provision of the ticket contract to bar their claims. Section 30508(c) states: “When notice of a claim for personal injury or death is required by a contract, the failure to give the notice is not a bar to recovery if—(1) the court finds that the owner, master, or agent of the vessel had knowledge of the injury or death and the owner has not been prejudiced by the failure. . . .”

Plaintiffs offered no evidence to prove that Defendant had knowledge of their injuries. Defendant, however, submitted the Declaration of Dimitrios Valsamis, Defendant’s President, stating that “[Defendant] had no knowledge of Plaintiffs’ alleged injuries/illnesses until Plaintiffs filed their Original Complaint . . . on February 9, 2014.” Plaintiffs failed to

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rebut this declaration or otherwise offer admissible evidence raising a genuine issue of material fact concerning Defendant's knowledge of Plaintiffs' injuries.⁶ Consequently, Plaintiffs' failure to comply with the notice requirement cannot be excused.⁷ See *Shankles v. Costa Armatori, S.P.A.*, 722 F.2d 861, 867–68 (1st Cir. 1983) (declining to excuse plaintiff's failure to provide

⁶ Contrary to Plaintiffs' argument, Defendant's knowledge of Plaintiffs' injuries via news accounts of what Plaintiffs deem the "CARNIVAL TRIUMPH 2013 cruise debacle" is not an adjudicative fact of which we can take judicial notice. Fed. R. Evid. 201. "Judicial notice is a means by which adjudicative facts not seriously open to dispute are established as true without the normal requirement of proof by evidence." *Dippin' Dots, Inc. v. Frosty Bites Distribution, LLC*, 369 F.3d 1197, 1204 (11th Cir. 2004). What Defendant knew and when are not generally known and cannot accurately and readily be determined from reliable sources. See *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) (stating that judicial notice is appropriate if the fact is "one that only an unreasonable person would insist on disputing" and declining to take judicial notice that a defendant "refused to come to work.") Moreover, Plaintiffs submitted no evidence of the "widely known and exhaustive" news coverage that would permit us to authoritatively conclude that such coverage existed, much less that Defendant indisputably received knowledge of these particular Plaintiffs' injuries through the news.

⁷ Plaintiffs' argument that notice to Carnival is sufficient under § 30508(c) fails for the reasons already expressed in rejecting this same argument in connection with the notice provision. Defendant is entitled to the same rights as Carnival and Plaintiffs failure to provide notice of their injuries to Defendant may be excused under § 30508 only if Defendant had knowledge of their injuries and was not prejudiced from the lack of notice. Applying 46 U.S.C. § 30508 in the manner suggested by Plaintiffs would result in the illogical evaluation of whether a party not being sued was prejudiced by Plaintiffs' failure to notify them of injuries caused by another.

contractually required notice where plaintiff did not controvert affidavit accompanying defendant's motion for summary judgment, which stated that defendant had never received notice of her claim for personal injuries).

III. CONCLUSION

For the reasons explained above, we **AFFIRM** the decision of the district court.

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2016 WL 8677194

Only the Westlaw citation is currently available.
United States District Court, S.D. Florida.

Cynthia DAVIS, et al., Plaintiff,
v.

VALSAMIS, INC., Defendant.

CASE NO. 16-20517-CIV-LENARD/GOODMAN

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Signed 10/12/2016

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ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
(D.E. 57) AND CLOSING CASE

JOAN A. LENARD, UNITED STATES DISTRICT
JUDGE

THIS CAUSE is before the Court on Valsamis,
Inc.'s (hereinafter, "Valsamis" or "Defendant") Motion
for Summary Judgment (D.E. 57), filed on April 22,
2016. Plaintiffs filed their Response in Opposition
(D.E. 61) on May 9, 2016. Defendant replied on May 24,

2016. (D.E. 68.) Having reviewed the fully-briefed Motion for Summary Judgment and the underlying record, the Court finds as follows.

I. Background

This case arises out of the now infamous sailing of the Carnival Triumph in February 2013.¹ During this sailing, a fire in the engine room disabled the ship leaving its crew and passengers stranded in the Gulf of Mexico. During the next several days, everyone onboard the Carnival Triumph suffered from horrific living conditions including lack of food and water, electricity, and functional plumbing.²

Plaintiffs, who were all passengers onboard the Carnival Triumph, now sue Valsamis, the company responsible for maintaining the engines and diesel generators on the vessel. (Pls.'s 3d Am. Compl. at ¶ 5.03; D.E. 9 at 12.) They allege that Valsamis: (1) negligently maintained the engines and generators; and (2) negligently designed, manufactured and/or constructed insulation panels, fuel pipe covers, T-shaped structures

¹ This case was transferred from the United States District Court for the Southern District of Texas, Hon. George C. Hanks presiding, on February 9, 2016. (D.E. 30 and 31.) Judge Hanks granted the Defendant's Motion to Transfer based upon the Carnival Ticket Contract's forum selection clause. (D.E. 30.)

² In a related case *Terry v. Carnival Corp.*, United States District Judge Donald Graham provides a detailed description of the incident and the conditions onboard the vessel after making extensive findings of fact. Civ. Case No. 13-20571- DLG, Findings of Fact and Conclusions of Law (D.E. 309).

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and other apparatuses that were installed on the diesel generators in order to reduce the temperature of existing hot spots on the vessel’s engines. (*Id.* at ¶ 6.03; *id.* at 17.) They claim that Defendant’s negligence was the direct and proximate cause of the fire which disabled the vessel and left the passengers stranded at sea for days. (*Id.*; *id.*) Plaintiffs seek damages for their physical and emotional injuries which they claim were caused by Defendant’s negligence. (*Id.* at ¶ 6.16; *id.* at 23.)

On April 22, 2016, Valsamis filed its Motion for Summary Judgment asserting that all of the Plaintiffs’ claims are barred because they failed to provide Valsamis with notice of their injuries within the 185 days as required by the Carnival Ticket Contract (hereinafter, “Ticket Contract”). (D.E. 57.) Valsamis also argues, in the alternative, that the Plaintiffs who were previously plaintiffs in the *Terry* case are barred from recovery in this matter based upon the non-mutual collateral estoppel and one satisfaction doctrines. (*Id.*) In response, the Plaintiffs contend that: (1) the plain language of Section 12(a) of the Ticket Contract (i.e. the notice provision) only requires that notice be given to Carnival within 185 days—a condition which Plaintiffs satisfied; (2) to the extent that Section 12(a) could be construed to cover Valsamis, it is ambiguous and must be construed against the drafter; (3) even if Valsamis was covered by Section 12(a), it is not entitled to summary judgment because it has not shown it was prejudiced by the lack of notice as required by 46 U.S.C. § 30508; and (4) summary judgment is inappropriate

against the 31 Plaintiffs who were also plaintiffs in the *Terry* case, because Defendant has provided no evidence about the claims litigated or damages received in the *Terry* matter. (D.E. 61.)

II. Applicable Legal Standards

A. Summary Judgment

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.” Fed. R. Civ. P. 56(c). A material fact is one that might affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.* The Court “must view all the evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party,” *Stewart v. Happy Herman’s Cheshire Bridge, Inc.*, 117 F.3d 1278, 1285 (11th Cir. 1997), and “must resolve all reasonable doubts about the facts in favor of the non-movant.” *United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of Am.*, 894 F.2d 1555, 1558 (11th Cir. 1990).

Because “the interpretation of a written contract is a matter of law to be decided by the court,” cases involving the interpretation of ticket contracts are well-suited for summary judgment. *Cf. Nat'l Specialty Ins. Co. v. ABS Freight Transp., Inc.*, 91 F. Supp. 3d 1258, 1260 (S.D. Fla. 2014), aff'd sub nom. *Nat'l Specialty Ins. Co. v. MartinVegue*, No. 14-15811, 2016 WL 737780 (11th Cir. Feb. 25, 2016); *Marek v. Marpan Two, Inc.*, 817 F.2d 242 (3rd Cir. 1987), cert denied. 108 S.Ct. 155 (1987) (holding the interpretation of the passenger ticket contract, including the one-year contractual suit time limitation, and the issue as to whether a cruise operator may be estopped in asserting the suit time limitation are questions of law).

B. Choice of Law

It is well-established that a ticket for passage on a cruise ship constitutes a maritime contract and is governed by United States maritime law. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991); *accord Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 22–23, 125 S. Ct. 385, 392, 160 L.Ed. 2d 283 (2004) (holding federal maritime law controls the interpretation of a maritime contract when the dispute is not inherently local).

III. Discussion

The threshold issue in this case is whether Valsamis can assert the rights afforded to Carnival in Section 12(a) of the Ticket Contract. If Valsamis is entitled to assert the contractual notice provision, then

Plaintiffs' claims are barred.³ If not, then the Court must consider Valsamis' alternative arguments.

To answer this question, the Court must interpret several clauses contained in the Ticket Contract.

A. Terms of the Ticket Contract

The first page of the Ticket Contract provides a general warning to Carnival passengers about reading the contract to learn their rights and obligations:

IMPORTANT NOTICE TO GUESTS THIS DOCUMENT IS A LEGALLY BINDING CONTRACT ISSUED BY CARNIVAL CRUISELINES TO, AND ACCEPTED BY, GUEST SUBJECT TO THE IMPORTANT TERMS AND CONDITIONS APPEARING BELOW.

NOTICE: THE ATTENTION OF GUESTS IS ESPECIALLY DIRECTED TO CLAUSES 1, 4 AND 10 THROUGH 13, WHICH CONTAIN IMPORTANT LIMITATIONS ON THE RIGHTS OF GUESTS TO ASSERT CLAIMS AGAINST CARNIVAL CRUISELINES, THE VESSEL, THEIR AGENTS AND EMPLOYEES, AND OTHERS, INCLUDING FORUM SELECTION, ARBITRATION

³ The Eleventh Circuit recently enforced language in a cruise line ticket contract limiting the timeframe within which passengers may file suit. *See Chang v. Carnival Corp.*, No. 14-13228 (11th Cir. Oct. 6, 2016).

**AND WAIVER OF JURY TRIAL FOR
CERTAIN CLAIMS.**

(D.E. 16-1at 34) (emphasis in original). The Ticket Contract's general warning specifically directs passengers to review Clauses 1 and 12 which are particularly relevant in this case. Section 1(f) of the Ticket Contract purports to extend Carnival's rights and defenses to certain third-parties as defined below:

All rights, exemptions from liability, defenses and immunities of Carnival under this contract shall also inure to the benefit of Carnival's facilities, whether at sea or ashore, servants, agents, managers, affiliated or related companies, suppliers, shipbuilders and manufacturers of component parts and independent contractors, including, but not limited to, shore excursion or tour operations, ship's physician, ship's nurse, retail shop personnel, health and beauty staff, fitness staff, video diary staff, and other concessionaires, who shall have no liability to the Guest, either in contract or in tort, which is greater than or different from that of Carnival.

(*Id.* at 35.) And Section 12(a) sets forth the contractual deadline for providing Carnival with notice of any injuries and for filing suit:

Carnival shall not be liable for any claims whatsoever for personal injury, illness or death of the guest, unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event illness or death giving rise to the claim. Suit to recover

on any such claims shall not be maintainable unless filed within one year after the date of the injury, event illness or death, and unless served on Carnival within 120 days after filing. Guest expressly waives all other potentially applicable state or federal limitations periods.

(*Id.* at 44.) The Court must interpret these contractual provisions to determine whether the Plaintiffs were required to give Valsamis notice of their injuries within 185 days.

B. Rules of Construction

Maritime contracts “must be construed like any other contracts: by their terms and consistent with the intent of the parties.” *Norfolk S. Ry. Co.*, 543 U.S. at 31; *Rutledge v. NCL (Bahamas) Ltd.*, No. 08-21412-CIV. 2010 WL 4116473, at *2 (S.D. Fla. Oct. 18, 2010) (“Passenger ticket contracts are subject to the same principles as other contracts.”). “Drawing from state and federal sources, the general maritime law is an amalgam of traditional common-law rules, modifications of those rules, and newly created rules.” *E. River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858, 864–65 (1986) (footnote omitted). “It should, therefore, not come as a surprise to learn that general federal maritime law has adopted the general rules of contract interpretation and construction.” *F.W.F., Inc. v. Detroit Diesel Corp.*, 494 F. Supp. 2d 1342, 1356 (S.D. Fla. 2007), aff’d, 308 Fed.Appx. 389 (11th Cir. 2009) (citing

United States ex rel. E. Gulf, Inc. v. Metzger Towing, Inc., 910 F.2d 775, 779 (11th Cir. 1990)).

Courts “give effect to the plain language of contracts when that language is clear and unambiguous.” *Equity Lifestyle Properties, Inc. v. Florida Mowing And Landscape Serv., Inc.*, 556 F.3d 1232, 1242 (11th Cir. 2009) (citations omitted). When interpreting a contract, courts look to “the contract as a whole to determine whether it unambiguously states the parties’ intentions.” *Sander v. Alexander Richardson Invs.*, 334 F.3d 712, 716 (8th Cir. 2003); *see also O’Brien v. Miller*, 168 U.S. 287, 297–300 (1897) (“The elementary canon of interpretation is, not that particular words may be isolatedly considered, but that the whole contract must be brought into view and interpreted with reference to the nature of the obligations between the parties, and the intention which they have manifested in forming them.”); *Southern-Owners Ins. Co. v. Hayden*, 413 Fed.Appx. 187, 189 (11th Cir. 2011) (citing *Jones v. Warmack*, 967 So.2d 400, 402 (Fla. 1st DCA 2007)) (“[Courts] do not read clauses in a contract in isolation; we look to the contract as a whole.”); *Pac. Gas & Elec. Co. v. United States*, 536 F.3d 1282, 1288 (Fed. Cir. 2008) (“In construing the meaning of a contractual provision, the court does not interpret the disputed term or phrase in isolation, but ‘construes contract terms in the context of the entire contract, avoiding any meaning that renders some part of the contract inoperative.’”) (internal citations omitted). Every word, term or phrase of a maritime contract should, to the extent possible, be given effect and should not be interpreted

to render any provision of the contract meaningless or superfluous. *See, e.g., Am. Roll-On Roll-Off Carrier, LLC v. P & O Ports Baltimore, Inc.*, 479 F.3d 288, 293 (4th Cir. 2007); *Chembulk Trading LLC v. Chemex Ltd.*, 393 F.3d 550, 555 (5th Cir. 2004).

The language of a contract “will be deemed conclusively indicative of [the parties’] intentions where it is reasonably susceptible to only one interpretation.” *F.W.F., Inc. v. Detroit Diesel Corp.*, 494 F. Supp. 2d 1342, 1357 (S.D. Fla. 2007), aff’d, 308 Fed.Appx. 389 (11th Cir. 2009) (citation omitted). “Conversely, the language will be deemed ambiguous where it is reasonably susceptible to more than one interpretation.” (*Id.*); *see also Novak v. Irwin Yacht & Marine Corp.*, 986 F.2d 468, 472 (11th Cir. 1993) (holding that a contractual provision is only ambiguous if it is susceptible to two or more reasonable interpretations). Whether a contract is ambiguous is a question of law to be resolved by the court. *See East v. Premier, Inc.*, 98 Fed.Appx. 317, 319 (5th Cir. 2004); *Atl. Dry Dock Corp. v. United States*, 773 F.Supp. 335, 338 (M.D. Fla. 1991). “In cases of doubt, an instrument is to be taken against the party that drew it.” *Rams v. Royal Caribbean Cruise Lines, Inc.*, 17 F.3d 11, 12 (1st Cir. 1994) (quoting *Chelsea Industries, Inc. v. Accuray Leasing Corp.*, 699 F.2d 58, 61 (1st Cir. 1983)); *see also Alexandra H. v. Oxford Health Ins. Inc. Freedom Access Plan*, No. 15-11513, 2016 WL 4361936, at *5 (11th Cir. Aug. 16, 2016) (“[O]nce we conclude a term is ambiguous, the rule of *contra proferentem* requires us to construe any ambiguities against the drafter.”). However, it must be noted that a

maritime contract is not ambiguous simply because one of the parties disputes its proper interpretation. *Atl. Dry Dock Corp.*, 773 F.Supp. at 338.

C. Application

The first page of the Ticket Contract contains an introductory warning that alerts passengers that “clauses 1, 4 and 10 through 13 [] contain important limitations on the rights of guests to assert claims against Carnival Cruiselines [sic], the vessel, their agents and employees, *and others*.” (D.E. 16-1at 34.) This is the first signal to passengers that: (1) Carnival has certain contractual rights and defenses that may be asserted against them; and (2) individuals and entities other than the cruise line and vessel may also assert these rights and defenses based on their relationship with Carnival. Section 1(f) of the Ticket Contract then makes clear that all of Carnival’s rights and defenses “shall also inure to the benefit of . . . *ship-builders and manufacturers of component parts and independent contractors* . . . who shall have no liability to the Guest, either in contract or in tort, which is greater than or different from that of Carnival.” (*Id.* at 35.) Reading these two provisions together, passengers are put on reasonable notice that any of Carnival’s rights or defenses contained in the Ticket Contract may also be asserted by third-party entities including “ship-builders and manufacturers of component parts and independent contractors.”

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Section 12(a) of the Ticket Contract creates a right to notice of any injury within 185 days: “Carnival shall not be liable for any claims whatsoever for personal injury, illness or death of the guest, unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event illness or death giving rise to the claim.” This provision serves to limit Carnival’s liability if proper notice is not given.

In its Motion for Summary Judgment, Valsamis argues that it is an independent contractor and that it is entitled to all of Carnival’s contractual rights—including the right to notice of any injury within 185 days. In contrast, Plaintiffs contend that Section 12(a) clearly states that passengers need only provide notice to Carnival to satisfy their contractual obligation. Alternatively, Plaintiffs contend that Section 12(a), viewed in light of Section 1(f), is subject to two reasonable meanings and is therefore ambiguous.

Having read the Ticket Contract as a whole, it is unmistakable that Section 12(a) creates a contractual right and that Section 1(f)—along with the contract’s introductory warnings—confers all of Carnival’s contractual rights on “shipbuilders and manufacturers of component parts” and “independent contractors.” In this case, Plaintiff alleges that Valsamis was hired by Carnival to maintain the engines and generators and to manufacture and install parts on the ship’s generators. Therefore, under Section 1(f) Valsamis qualifies as a “manufacturer of component parts” or “independent contractor.” Because Valsamis is a “manufacturer of component parts” and/or “independent contractor,” it

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is entitled to assert all of Carnival's contractual rights—including the 185 day notice provision.

Plaintiffs' interpretation of the contract improperly isolates Section 12(a) from the rest of the contract and fails to give effect to the intent of the parties as evidenced by the contract's plain language. The better reading of the Ticket Contract is that an independent contractor (or other qualified third-party) steps into the shoes of Carnival and may assert its rights and defenses.⁴ Accordingly, the Court concludes that Valsamis was entitled to notice of any injury within 185 days of the occurrence, and that by failing to give notice, Plaintiffs violated Section 12(a) of the contract.⁵

⁴ This interpretation of the Ticket Contract accords with an earlier decision by this Court which interpreted virtually identical provisions and held that an onboard masseuse was a concessionaire and was entitled to assert the one year statute of limitations contained in the ticket contract. *Levick v. Steiner Transocean, Ltd.*, 377 F.Supp.2d 1251 (S.D. Fla. 2005) (Lenard, J.).

⁵ The Supreme Court has held that a clause in a form passenger ticket contract is enforceable when (1) the terms withstand judicial scrutiny as to reasonableness and fundamental fairness and (2) the clause is "reasonably communicated" to the passenger by the carrier. *Shute*, 499 U.S. at 590. Here, the terms of the Ticket Contract were reasonable and fundamentally fair because they comply with the limitations imposed by Congress in 46 U.S.C. § 30508. Furthermore, the Ticket Contract reasonably communicated to passengers Carnival's contractual rights and defenses and that certain third-parties may also assert those rights and defenses. The first page of the Ticket Contract contains a bolded warning in all capital letters which instructs passengers to read Sections 1(f) and 12(a) because they contain "important limitations on the rights of guests to assert claims against

D. 46 U.S.C. § 30508(c)

Plaintiffs' failure to give notice under the contract does not necessarily bar recovery. Under 46 U.S.C. § 30508(c), “[w]hen notice of a claim for personal injury or death is required by a contract, the failure to give the notice is not a bar to recovery if . . . the court finds that the owner, master, or agent of the vessel had knowledge of the injury or death and the owner has not been prejudiced by the failure.” The statute provides that “the injured passenger need not provide the cruise line with a written notice that she intends to hold the ship legally liable for the injury, as long as there is evidence to show that the cruise line or its agent was aware of the passenger’s injury, and there was no prejudice as a result thereof.” *Rutledge*, 2010 WL 4116473, at *4 (quoting *Brown v. New Commodore Cruise Line Ltd.*, No. 98 CIV. 4402 BSJ, 2000 WL 45443, at *2 (S.D.N.Y. Jan. 19, 2000)).

Here, Plaintiffs claim that summary judgment must be denied because Defendant failed to produce any evidence that it was: (1) unaware of Plaintiffs’ injuries; and (2) prejudiced by the lack of formal notice. However, Plaintiffs completely misunderstand which party bears the burden of production regarding § 30508(c)’s bail-out provision. As the party asserting and deriving benefit from § 30508’s savings clause, the Plaintiffs were responsible for producing evidence that Valsamis knew of their injuries and was not prejudiced

Carnival Cruiselines, the vessel, their agents and employees, and others.”

by their failure to give notice within 185 days. Because Plaintiffs produced no such evidence, § 30508(c) is inapplicable in this case. Accordingly, Plaintiffs' claims are contractually barred because of Plaintiffs' failure to provide Valsamis with notice of their injuries within 185 days.

IV. Conclusion

For the reasons set forth above, it is **ORDERED** **AND ADJUDGED** that:

1. Plaintiffs' claims are barred by Section 12 of the Ticket Contract;
2. Valsamis' Motion for Summary Judgment (D.E. 57), filed on April 22, 2016, is hereby **GRANTED**;
3. Final Judgment shall be entered by separate order; and
4. This case is **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida this 12th day of October, 2016.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17081-GG

CYNTHIA DAVIS,
LESLIE MAYBERRY,
DIANE TUCKER,
ANA SANTA ANA,
CARMEL TAYLOR, et al.,

Plaintiffs - Appellants,

versus

VALSAMIS, INC.,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETI-
TION(S) FOR REHEARING EN BANC

(Filed Nov. 1, 2018)

BEFORE: WILSON, HULL and JULIE CARNES,
Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no
Judge in regular active service on the Court having

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requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Julie Carnes
UNITED STATES
CIRCUIT JUDGE

ORD-42

EXHIBIT C
TICKET CONTRACT

IMPORTANT NOTICE TO GUESTS THIS DOCUMENT IS A LEGALLY BINDING CONTRACT ISSUED BY CARNIVAL CRUISE LINES TO, AND ACCEPTED BY, GUEST SUBJECT TO THE IMPORTANT TERMS AND CONDITIONS APPEARING BELOW.

NOTICE: THE ATTENTION OF GUEST IS ESPECIALLY DIRECTED TO CLAUSES 1, 4, AND 10 THROUGH 13, WHICH CONTAIN IMPORTANT LIMITATIONS ON THE RIGHTS OF GUESTS TO ASSERT CLAIMS AGAINST CARNIVAL CRUISE LINES, THE VESSEL, THEIR AGENTS AND EMPLOYEES, AND OTHERS, INCLUDING FORUM SELECTION, ARBITRATION AND WAIVER OF JURY TRIAL FOR CERTAIN CLAIMS.

**IMPORTANT TERMS AND CONDITIONS
OF CONTRACT – READ CAREFULLY**

In consideration of the receipt of the full cruise fare, Carnival Cruise Lines (“Carnival”) agrees to transport Guest on the above – specified voyage on the following terms and conditions:

1. DEFINITIONS AND SCOPE OF CONTRACT

(a) Whenever the word “Carnival” is used in this Contract it shall mean and include the Vessel, its owners, operators, employees, agents, charterers and tenders. The term “Guest” shall include the plural where

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appropriate, and all persons or entities booking or purchasing passage and/or traveling under this Contract, including heirs, representatives and any accompanying minors. The masculine includes the feminine. “Guest” shall have the same meaning as “Passenger” in this Contract.

(b) “Cruise Fare” or “Fare” means the amount paid for the cruise which includes full board, ordinary ship’s food during the voyage, but not spirits, wine, beer, soft drinks or mineral waters, shore excursions, salon and spa services, or any other incidental charge or expense. The cruise fare shall be deemed to be earned when paid and not refundable except as stated in Carnival’s brochure applicable to the voyage and as provided in Clauses 7 and 8, herein.

(c) Cruise Fare does not include Government taxes and fees imposed or sanctioned by the U.S. Government or other Governments. “Government fees and taxes” may include any and all fees, charges, surcharges, tolls and taxes imposed by U.S. and/or foreign governmental or quasi-governmental authorities including, but not limited to, U.S. Customs fees, Guest Facility Charges, Security Surcharges, International Passenger Departure or Arrival Tax, Agricultural Inspection Fee, head taxes, Panama Canal tolls, dockage fees, wharfage fees, inspection fees, taxes on airline transportation, hotel or VAT taxes incurred as part of a land tour, immigration and naturalizations fees, and Internal Revenue Service fees, whether assessed on a per Guest, per berth, per ton or per vessel basis. In the

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case of per ton or per vessel assessments, those assessments will be spread over expected Guest counts.

(d) Cruise Fare does not include fuel supplement charges. "Fuel supplement" shall mean any additional charge to defray a portion of Carnival's fuel costs. The amount of fuel supplements and government fees and taxes collected are subject to change. Carnival reserves the right to charge a fuel supplement of up to \$9.00 per person per day, without prior notice, in the event that the price of light sweet crude oil according to the NY-MEX (New York Mercantile Exchange Index) is greater than \$70.00 per barrel of oil. Carnival may collect any fuel supplement in effect at the time of sailing, even if the cruise fare has been paid in full.

(e) This ticket is valid only for the person(s) named hereon as Guests and cannot be transferred or modified without Carnival's written consent. The acceptance or use of this ticket by the person(s) named hereon as Guests shall be deemed acceptance and agreement by each of them to all of the terms and conditions of this cruise Contract.

(f) All rights, exemptions from liability, defenses and immunities of Carnival under this contract shall also inure to the benefit of Carnival's facilities, whether at sea or ashore, servants, agents, managers, affiliated or related companies, suppliers, shipbuilders and manufacturers of component parts and independent contractors, including, but not limited to, shore excursion or tour operators, ship's physician, ship's nurse, retail shop personnel, health and beauty staff, fitness staff,

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video diary staff, and other concessionaires, who shall have no liability to the Guest, either in contract or in tort, which is greater than or different from that of Carnival.

(g) This contract constitutes the entire agreement between Carnival and Guest and supersedes all other agreements, oral or written. Any alteration to any term of this contract must be in writing and authorized by Carnival. Except as provided in Clause 13 below, should any provision of this contract be contrary to or invalid by virtue of the law of the jurisdiction in which this contract is sought to be enforced or be so held by a court of competent jurisdiction, such provision(s) shall be deemed to be severed from the Contract and of no effect and all remaining provisions herein shall be in full force and effect and constitute the Contract of Carriage.

2. NATURE OF CRUISE AND GUEST'S OBLIGATIONS

(a) The Guest admits a full understanding of the character of the Vessel and assumes all risks incident to travel and transportation and handling of Guests and cargo. The Vessel may or may not carry a ship's physician or other medical personnel at the election of Carnival. While at sea or in port the availability of medical care may be limited or delayed. Guest acknowledges that all or part of their voyage may be in areas where medical care and evacuation may not be available. Guest agrees to indemnify and reimburse

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Carnival in the event Carnival elects to advance the cost of emergency medical care, including medical care provided ashore as well as transportation and/or lodging in connection therewith.

(b) Carnival's vessels visit numerous ports in a number of countries. Guests assume responsibility for their own safety and Carnival cannot guarantee Guest's safety at any time. The United States Department of State, Centers for Disease Control and Prevention and other governmental and tourist organizations regularly issue advisories and warnings to travelers and Carnival strongly recommends Guests obtain and consider such information when making travel decisions. Carnival assumes no responsibility for gathering said information. The Guest acknowledges that the cruise may be booked in a location that is susceptible to severe weather systems, including but not limited to hurricanes, tropical storms and depressions, and that Carnival reserves the right to alter the ship's course, ports of call, itinerary, activity and shore excursions to avoid such weather systems and insure the comfort and safety of the Guest and crew.

(c) Proper travel documentation is required at embarkation and throughout the cruise. It is the guest's sole responsibility to bring and have available at all times all required travel documents. Guests are advised to check with their travel agent or the appropriate government authority to determine the necessary documents. Away guest traveling without proper documentation will not be allowed to board the vessel and no refund of the cruise fare will be issued.

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- (d) Guest acknowledges receipt of Carnival's applicable brochures and agrees to abide by the terms and conditions of Carnival's brochures and web site, including but not limited to the information contained in the "Frequently Asked Questions" and "Embarkation Information" sections.
- (e) Guest acknowledges that, for a voyage commencing in a United States port for a round-trip voyage via one or more United States ports, Guest must complete the voyage and disembark at the embarkation port. Failure to do so may result in a fine or penalty being imposed by the United States Customs Service or other governmental agency. In consideration for the fare paid, Guest agrees to pay any such fine or penalty imposed because of Guest's failure to complete the voyage.
- (f) Carnival shall refuse boarding to any Guest under the age of twenty-one unless: (1) the Guest is traveling in the same stateroom with an individual twenty-five years or older; (2) traveling in the same stateroom with their spouse; or (3) traveling with a parent or guardian in an accompanying stateroom. Proof of age and/or proof of marriage are required. Carnival shall not be liable to make any refunds or for any damages with respect to any Guest's failure to provide proper proof of age or marriage or otherwise comply with this provision.

3. YOUR TRAVEL AGENT

Any travel agent or sales agent utilized by the Guest in connection with the booking of the cruise, or this contract is solely the agent of the Guest and not Carnival. Carnival is not responsible for the financial condition or integrity of any travel agent utilized by Guest. In the event that an agent shall fail to remit to Carnival any monies paid to the agent by Guest, Guest shall be and remain liable for the fare due to Carnival, regardless of whether liability is asserted before or after embarkation. Issuance and validity of ticket contract is conditional upon final payment being received by Carnival prior to sailing. Any refund made by Carnival to an agent on behalf of Guest shall be deemed payment to Guest, regardless whether the monies are delivered by the agent to Guest. Receipt of this ticket contract, any other documentation or notification pertaining to the cruise by Guest's travel agent shall constitute receipt by Guest.

4. BAGGAGE, PERSONAL PROPERTY, PROHIBITED ITEMS, LIMITATION OF LIABILITY

(a) Each fully paid adult Guest will be allowed a reasonable amount of luggage on board containing their personal belongings. Luggage means only trunks, valises, satchels, bags, hangers and bundles with their contents consisting of only such wearing apparel, toilet articles and similar personal effects as are necessary and appropriate for the purpose of the journey.

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- (b) No tools of trade, household goods, presents and/or property of others, jewelry, money, cameras, documents, valuables of any description including but not limited to such articles as are described in Title 46 of the United States Code section 30503 shall be carried except under and subject to the terms of a special written contract or Bill of Lading entered into with Carnival prior to embarkation upon application of the Guest. The Guest warrants that no such articles are contained in any receptacle or container presented by him as baggage hereunder, and if any such articles are shipped in the Guest's baggage in breach of this warranty, no liability for negligence, gross or ordinary, shall attach to Carnival for any loss or damage thereto.
- (c) Carnival shall not be liable for: (1) Guest's failure to comply with the requirements set forth in Clauses 4(a) and 4(b); (2) any loss or damage before baggage comes into Carnival's actual custody on board or after baggage leaves Carnival's actual custody on board, including, but not limited to, loss or damage by airlines or other transportation services; (3) any loss or damage of baggage while not in the actual possession, custody and control of Carnival; (4) damage due to wear, tear or normal usage; (5) any loss or damage of perishable items, medicine, liquor, cash, securities or other financial instruments, or (6) any loss or damage while in the custody and control of stevedores.
- (d) It is stipulated and agreed that the aggregate value of Guest's property, does not exceed \$50 per guest or bag with a maximum value of \$100 per stateroom regardless of the number of occupants or bags and any

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liability of Carnival for any cause whatsoever with respect to said property shall not exceed such sum, unless the Guest shall in writing, delivered to Carnival, prior to embarkation, declare the true value thereof and pay to Carnival prior to embarkation a sum equal to 5% of the excess of such value. If Carnival shall be held liable for the loss of or damage to Guest's baggage or property it is agreed that such liability shall not exceed the lesser of: (1) the actual cash value, or (2) value declared in the manner above provided (up to U.S. \$100 if no such declaration has been made). Declared value amounts to be proportionately reduced in any case where less than all of Guest's baggage or property is lost, delayed or rendered unusable due to damage. In no event shall Carnival be liable to pay any compensation if the nature or value of the property has been misrepresented.

(e) No Guest is permitted, to bring on board the vessel live animals (other than qualified service animals, with not less than 14 days advance notice given to Carnival). Guest will be solely responsible for any and all damage and/or loss caused by service animals.

(f) Weapons, firearms, contraband, ammunition, explosives, incendiary devices, or other dangerous items are strictly prohibited aboard the vessel. Carnival reserves the right to confiscate, destroy and/or turn over to authorities these or any other items it deems in its sole discretion to be detrimental to the safety or comfort of any person or which are otherwise improperly in the possession of any Guest. Each Guest warrants that no such articles are contained in any receptacle or

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container carried or presented as baggage. Alcoholic beverages are prohibited except as provided for in clause 8(f). All Guests agree Carnival has, at all times with or without notice, the right to search Guest's baggage and/or personal effects for any of the prohibited items, at any location, to ensure compliance with these restrictions. Any Guest who refuses any such search or screening, or any Guest traveling with such items, may be denied boarding or disembarked and no refund of the cruise fare will be issued. The Guest will be solely responsible for any and all damage and/or loss caused by his violation of this policy.

5. FITNESS TO TRAVEL, SPECIAL NEEDS, PREGNANCY, INFANTS, DRINKING, DIS-EMBARKATION

(a) The Guest warrants that he and those traveling with him are physically fit to travel at the time of embarkation and is required to notify Carnival in writing at the time of booking the cruise of any physical disability or medical condition which may require special assistance during the voyage. Failure to do so will release Carnival from any liability for loss, damages or other compensation arising from or related in any way to such disability or condition. Upon booking the cruise, guests who have special needs are required to contact Carnival's Special Needs Desk (305-599-2600 ext. 70025) to discuss the details of their special needs. Carnival reserves the right to require that any Guest, who is not self-sufficient, travel with a companion who

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shall take responsibility for any assistance needed during the voyage and in case of emergency.

(b) Carnival and the Master each reserves the right to refuse passage, disembark or confine to a stateroom any Guest whose physical or mental condition, or behavior would be considered in the sole opinion of the Captain and/or the ship's physician to constitute a risk to the Guest's own well-being or that of any other Guest or crew member. Guest understands and acknowledges that in addition to the limitations on medical care described in Clause 2 (a), prenatal and early infant care, in particular, may require specialized diagnostic facilities and/or treatment that are not obtainable during the cruise on board the ship and/or ashore in ports of call. Therefore, the Guest agrees not to book a cruise or board the ship unless on the day of disembarkation she is pregnant for 24 completed weeks or less, nor for or with infants less than six months old – for trans-ocean crossings, South America and Hawaii the infant must be at least twelve months of age at the time of embarkation to sail. Carnival and the Master reserve the right to disembark any guest whose behavior affects the comfort, enjoyment, safety or well being of other guests or of any crew. All expectant Guests further agree to provide Carnival, prior to embarkation, with a physician's statement verifying that her gestational status is in accordance with this policy, and certifying her fitness to travel even if she will be less than twenty-four completed weeks pregnant upon disembarkation. Failure to do so shall result in the cancellation of the Guest's reservation without

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refund, compensation or payment except as set forth in Carnival's cancellation policy described in Clause 6, based on the timing of such cancellation.

(c) When traveling with a minor and both parents/legal guardians are not cruising, we strongly recommend bringing an original signed letter from the absent parent/guardian authorizing the minor to travel with you. This will expedite processing by the Department of Homeland Security. Please note that a letter to this effect is required if debarking with children in Mexico.

6. CANCELLATION BY GUEST, REFUNDS

Reservations will be held until 30 minutes prior to departure. No refunds will be made in the event of "no shows", unused tickets, lost tickets, interruptions, partially used tickets, cancellations received late or after the start of the cruise, or for Pack & Go program purchases. Carnival strongly recommends the purchase of trip cancellation insurance from your travel agent. Cancellation charges for individual bookings will be assessed as listed below. For cancellation charges related to group bookings, partial ship charters or full ship charters refer to your charter contract or group booking agreement for terms and conditions.

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	DAYS PRIOR TO DEPARTURE DATE	CANCELLATION CHARGE(per guest)
2,3,4 & 5 day cruises	Up to 61 days 60 to 46 days 45 to 30 days 29 to 15 days 14 days or less	None(except Cruises to Nowhere and Early Saver Fares*) Deposit** Deposit or 50% of Total Fare, which- ever is greater Deposit or 75% of Total Fare, which- ever is greater 100% of Total Fare
6 day or longer cruises (includ- ing Alaska and Hawaii)	Up to 76 days 75 to 46 days 45 to 30 days 29 to 15 days 14 days or less	None (except for Early Saver Fares*) Deposit Deposit or 50% of Total Fare, which- ever is greater Deposit or 75% of Total Fare, which- ever is greater 100% of Total Fare
Europe Cruises & Panama Canal Cruises 7,9, & 12 day	Up to 91 days 90 to 56 days 55 to 30 days 29 to 15 days 14 days or less	None (except for Early Saver Fares*) Deposit Deposit or 50% of Total Fare, which- ever is greater

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		Deposit or 75% of Total Fare, whichever is greater 100% of Total Fare
All cruises purchased under the Pack & Go program	Any time after booking	100% of Total Fare

Total Fare is defined as Cruise Fare, Air Fare Supplement, Transfer Services and Pre/Post Cruise Vacation Packages.

*The deposit is non refundable

**For cruises-to-nowhere, the cancellation charge is 25% of Total Fare.

7. CARNIVAL'S RIGHT TO INCREASE FARES, CANCEL OR CHANGE VOYAGE CHANGE STATEROOM ASSIGNMENTS:

(a) Carnival reserves the right to increase published fares and air fare supplements without prior notice. However, fully paid or deposited guests will be protected, except for fares listed, quoted, advertised or booked in error, fuel supplements, government taxes, other surcharges and changes to deposit, payment and cancellation terms/conditions, which are subject to change without notice. In the event that a cruise fare listed, quoted or advertised through any website, Carnival sales person, travel agent or any other source is booked but is incorrect due to an electronic error,

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typographical error, human error or any other error causing the fare to be listed, quoted or advertised for an amount not intended by Carnival, Carnival reserves the right to correct the erroneous fare by requesting the Guest to pay the correct fare intended, or by canceling the cruise in exchange for a full refund, but in no event shall Carnival be obligated to honor any such booking resulting from the error or otherwise be liable in such circumstances.

(b) Carnival reserves the right to offer promotional cruise fares that require a minimum occupancy requirement per cabin. When the booked cruise fare is contingent on a minimum occupancy requirement per cabin, cancellation by one or more guests in a cabin may cause an adjustment to the remaining guests booked cruise fare based on the prevailing and available rate at the time of the cancellation (“recalculated fare”). Final payment in full of the recalculated fares for all remaining guests in a cabin is due by 11:59:59 p.m. EST on the eve before the start of the cancellation penalty period. Failure to make timely final payment in full of the recalculated fares by all remaining guests in a cabin will result in automatic cancellation of the reservation for the entire cabin.

(c) Carnival has the right without previous notice to cancel this contract at the port of embarkation or any time during the voyage and shall thereupon return to the Guest, if the Contract is completely canceled, his passage money, or, if the Contract is partially canceled,

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a proportionate part thereof. Under such circumstances, Carnival shall have no further liability for damages or compensation of any kind.

(d) The Vessel shall be entitled to leave and enter ports with or without pilots or tugs, to tow and assist other vessels in any circumstances, to return to or enter any port at the Master's discretion and for any purpose, and to deviate in any direction or for any purpose from the direct or usual course, and to omit or change any or all port calls, arrival or departure times, with or without notice, for any reason whatsoever, including but not limited to safety, security, adverse weather, strikes, tides, hostilities, civil unrest, port closings, emergency debarkations of Guests or crew, late air, sea, car or motor coach departures or arrivals, mechanical breakdowns, US or foreign governmental advisories or travel warnings, all such deviations being considered as forming part of and included in the proposed voyage. Carnival shall have no liability for any compensation or other damages in such circumstances other than as provided by Carnival's change of itinerary policy at the time Guest or his agent acknowledges receipt and acceptance of the terms and conditions of the cruise ticket contract. Carnival's change of itinerary policy can be found at www.carnival.com.

(e) If the performance of the proposed voyage is hindered or prevented (or in the opinion of Carnival or the Master is likely to be hindered or prevented) by war, hostilities, blockage, ice, labor conflicts, strikes on board or ashore, restraint of Princes, Rulers or People, seizure under legal process, breakdown of the Vessel,

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congestion, docking difficulties or any other cause whatsoever or if Carnival or the Master considers that for any reason whatsoever, proceeding to, attempting to enter, or entering or remaining at the port of Guest's destination may expose the Vessel to risk or loss or damage or be likely to delay her, the Guest and his baggage may be landed at the port of embarkation or at any port or place at which the Vessel may call, at which time the responsibility of Carnival shall cease and this contract shall be deemed to have been fully performed, or if the Guest has not embarked, Carnival may cancel the proposed voyage without liability to refund passage money or fares paid in advance.

(f) Carnival and the Master shall have liberty to comply with any orders, recommendations or directions whatsoever given by the Government or Department of any nation or by any person acting or purporting to act with the authority of such Government or Department or by any Committee or person having under the terms of the War Risks Insurance on the Vessel the right to give such orders, recommendations or directions, and if by reason of, and in compliance with any such orders, recommendations or directions anything is done or is not done the same shall not be deemed a deviation or a breach of this contract. Disembarkation of any Guest or discharge of baggage in accordance with such orders, recommendations or directions shall constitute due and proper fulfillment of the obligation of Carnival under this Contract.

(g) Specific stateroom assignments are not guaranteed. Carnival reserves the right to move Guests to a

comparable stateroom for any reason, including but not limited to, instances in which a stateroom is booked with fewer than the maximum number of Guests the stateroom can accommodate; or when a partial Guest cancellation occurs and the remaining number of Guests do not match the maximum number of Guests the stateroom can accommodate.

8. COMPLIANCE WITH RULES, SOLICITATION, SMOKING, DRINKING, ILLEGAL ACTIVITY, SEARCHES

- (a) Guest agrees during the course of the voyage to follow the directions of the ship's Master, or his authorized officer. Guest further agrees not to solicit anyone on the vessel for any commercial or professional purposes. Guest agrees that any violation of this Clause may subject guest to disembarkation.
- (b) Guest acknowledges that Carnival's vessels contain non-smoking sections. Guest agrees to refrain from smoking in those sections and agrees that Carnival has the right to disembark the Guest for failure to observe Carnival's non-smoking policy.
- (c) Carnival has designated the Spa stateroom and suite accommodations as an entirely smoke free environment. Guest booked in a Spa cabin agrees to strictly comply with this non-smoking policy and refrain from smoking or allowing any other Guests from smoking in the Spa cabin. Guest further acknowledges and agrees that any violation of this policy shall, in the sole discretion of Carnival, constitute a material breach of this

cruise contract. In the event of such breach, Guest forfeits all rights hereunder, including the right to occupy the Spa Cabin and remain on board. Carnival reserves the right to move the Guest(s) to a non-Spa cabin or to disembark the Guest(s), at any port, as determined by Carnival. Carnival shall not be liable for any refund or other compensation or damages whatsoever to any Guest vacated from the Spa Cabin or disembarked pursuant to this provision, or who disembarks because another Guest is so disembarked, and all such Guests forfeit all rights under Carnival's "Vacation Guarantee." Guest and Carnival further agree that any violation of the non-smoking policy would also cause Carnival to incur damages, including but not limited to, loss of Guest goodwill, revenue, cleaning, maintenance and/or other costs. Guest and Carnival expressly acknowledge the difficulty of ascertaining the amount of such damages, and therefore agree that a reasonable estimate of the damages for any violation of the non-smoking policy is \$250. Guest authorizes a charge in this amount as liquidated damages, as well as repatriation expenses (including airfare) against Guest's on board charge account, without further notice, for any violation of the non-smoking policy.

(d) Guest agrees, in all ports of call, to return to the Vessel not less than 30 minutes before the scheduled departure time. Guest further acknowledges that shipboard and shore side clocks may have different times, but it is Guest's responsibility to return to the vessel so as not to miss vessel's departure. Any costs

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associated with transporting Guest to rejoin the vessel including, but not limited to, governmental fees, visa fees, subsistence, lodging, air fare, launch fare, car hire or agency fees shall be for the account of Guest.

(e) Carnival has a “zero tolerance” policy toward any illegal activity or behavior by Guests or crew aboard. Guest agrees to comply with this policy and further acknowledges that it is Carnival’s policy to report incidents of illegal activity or behavior to the appropriate law enforcement authorities.

(f) Except as noted below, Guests are prohibited from bringing alcohol on Carnival’s vessels for on board consumption. However, at the beginning of the cruise during embarkation day, guests 21 years and older may bring on board, only in their carry-on luggage, one bottle, per person, of wine or champagne, 750ml or less. A \$10 corkage fee per bottle will be charged should guests wish to consume this wine/champagne in the dining room, or a \$14 corkage fee per bottle if consumed in the Supper Club. All alcohol, additional quantities of wine/champagne and excessive non-alcoholic beverages will be confiscated and discarded without compensation. Alcoholic beverages purchased in the vessel’s gift shops or at a port of call will be retained by Carnival until the end of the voyage. Carnival reserves the right to refuse to serve alcohol to any passenger. Guest acknowledges that the minimum age permitted for the purchase, possession or consumption of alcoholic beverages aboard Carnival’s vessels is twenty-one (21). Guest agrees to supervise all persons under age twenty-one (21) under Guest’s charge to

insure that they do not violate this, or any other, shipboard regulation. Guests who attempt to purchase alcohol by using false identification or the Sail & Sign card of a Guest who is twenty-one or older will be deemed in violation of this policy. Any Guest twenty-one or older who attempts to or purchases alcohol for any guest under twenty-one will also be deemed in violation of this policy. Guest agrees that Carnival has the right to disembark any guest who violates this policy and as well as any adults traveling with minors who violate this policy or any other shipboard regulation.

(g) All Guests agree Carnival has, at all times with or without notice, the right to enter and search Guest's stateroom, personal safe or storage spaces, or to search or screen any Guest, and/or personal effects, at any location, to ensure compliance with any of the restrictions set forth in this agreement. Any Guest who refuses any such search or screening may be denied boarding or disembarked and no refund of the cruise fare will be issued.

9. GUEST'S REIMBURSEMENT FOR FINES, EXPENSES, DEBTS AND DAMAGES

(a) The Guest shall be liable to and shall reimburse Carnival or the Master for any fines or penalties imposed on Carnival by any government, governmental agency or official, port or port official, for Guest's failure to observe or comply with local requirements in respect of immigration, border patrol, customs and

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excise, agriculture, health or any other government regulation whatsoever.

(b) The Guest or Guest's estate shall be liable to and shall reimburse Carnival for all deviation expenses (including loss of revenue), damages to the Vessel, its furnishings, operations or equipment, or any property of Carnival caused directly or indirectly, in whole or in part, by any misconduct, willful or negligent act or omission on the part of the Guest or any minors traveling with Guest. The Guest or Guest's estate shall defend and indemnify Carnival and the Vessel, their servants and agents against liability which Carnival or the Vessel or such servants or agents may incur towards any person, company or Government for any damage to property, personal injury or death caused directly or indirectly, in whole or in part, by any misconduct, willful or negligent act or omission on the part of the Guest or minors traveling with Guest.

(c) Carnival and the Vessel shall have a lien upon all baggage, money and other property whatsoever accompanying the Guest and the right to sell the same by public auction or otherwise for all sums whatsoever due from the Guest under this Contract and for the costs and expenses of enforcing such lien and such sale.

10. INDEPENDENT CONTRACTORS, SHORE EXCURSIONS AND OTHER SERVICES

(a) Guest acknowledges that all Shore excursions/tours (whether conducted in the water, on land or by air), airline flights and ground transportation, as well

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as the ship's physician, and on board concessions (including but not limited to, the gift shops, spa, beauty salon, fitness center, golf and art programs, video/snorkel concession) are either operated by or are independent contractors. Even though Carnival shall be entitled to collect a fee and earn a profit from the ticketing or sale of such services by such persons or entities, Carnival neither supervises nor controls their actions, nor makes any representation either express or implied as to their suitability. Carnival, in arranging for the services called for by the physician or nurse, all on board concessions, all shore excursion/tour tickets, all pre and post cruise airline flights or other transportation off of the ship and its tenders, does so only as a convenience for the Guest and Guests are free to use or not use these services. Guest agrees that Carnival assumes no responsibility, does not guarantee performance and in no event shall be liable for any negligent or intentional acts or omissions, loss, damage, injury or delay to Guest and/or Guest's baggage, property or effects in connection with said services. Guests use the services of all independent contractors at the Guest's sole risk. Independent contractors are entitled to make a proper charge for any service performed with respect to a Guest

(b) Guest acknowledges that the ship's masseuse, barber, hair dresser, manicurist, fitness or golf instructor, videographer, art auctioneer, gift shop personnel, wedding planners or other providers of personal services are employees of independent contractors and Carnival is not responsible for their actions. Guest

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further acknowledges that although independent contractors or their employees may use signage or clothing which contains the name “Carnival” or other related trade names or logos, the independent contractor status remains unchanged. Independent contractors, their employees and assistants are not agents, servants or employees of Carnival and have no authority to act on behalf of Carnival.

11. LIMITATIONS OF CARNIVAL’S LIABILITY

- (a) In consideration for the fare paid, it is agreed that Carnival shall not be held vicariously liable for the intentional or negligent acts of any persons not employed by Carnival nor for any intentional or negligent acts of Carnival’s employees committed while off duty or outside the course and scope of their employment.
- (b) In consideration for the fare paid, it is agreed that Carnival shall have no liability as a consequence of guest’s use of ship’s athletic or recreational equipment or as a consequence of guest’s decision to participate in any athletic or recreational activity or event.
- (c) On cruises which neither embark, disembark nor call at any U.S. port, Carnival shall be entitled to any and all liability limitations and immunities provided under the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea of 1974, as well as the 1976 Protocol to the Convention Relating to the Carriage of Passengers and Their Luggage by Sea (“Athens Convention”), which limits Carnival’s liability for death or personal injury of a passenger to no

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more than 46,666 Special Drawing Rights as defined therein (approximately U.S. \$60,000 which fluctuates depending on daily exchange rate as printed in the Wall Street Journal), and all other limits for damage or loss to personal property.

(d) Carnival shall not be liable to the passenger for damages for emotional distress, mental suffering/anguish or psychological injury of any kind under any circumstances, except when such damages were caused by the negligence of Carnival and resulted from the same passenger sustaining actual physical injury, or having been at risk of actual physical injury, or when such damages are held to be intentionally inflicted by Carnival.

(e) In addition to all the restrictions and exemptions from liability provided in this Contract, Carnival shall have the benefit of all statutes of the United States of America providing for limitation and exoneration from liability and the procedures provide [sic] thereby, including but not limited Title 46 of the United States Code sections 30501 through 30509, and 30511. Nothing in this Contract is intended to nor shall it operate to limit or deprive Carnival or any such statutory limitation of or exoneration from liability under any applicable laws.

12. JURISDICTION, VENUE, ARBITRATION AND TIME LIMITS FOR CLAIMS

(a) Carnival shall not be liable for any claims whatsoever for personal injury, illness or death of the guest,

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unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event, illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of the injury, event, illness or death, and unless served on Carnival within 120 days after filing. Guest expressly waives all other potentially applicable state or federal limitations periods.

(b) Carnival shall not be liable for any claims whatsoever, other than for personal injury, illness or death of the Guest, unless full particulars in writing are given to Carnival within 30 days after the Guest is landed from the Vessel or in the case the Voyage is abandoned, within 30 days thereafter. Legal proceedings to recover on any claim whatsoever other than for personal injury, illness or death shall not be maintainable unless commenced within six months after the date Guest is landed from the Vessel or in the case the Voyage is abandoned, within six months thereafter, and unless served upon Carnival within 120 days after commencement. Guest expressly waives all other potentially applicable state or federal limitation periods for claims which include, but are not limited to, allegations concerning any and all civil rights, the ADA, trade practices and/or advertising

(c) Except as provided in Clause 12(d) below, it is agreed by and between the Guest and Carnival that all disputes and matters whatsoever arising under, in connection with or incident to this Contract or the Guest's cruise, including travel to and from the vessel, shall be

litigated, if at all, before the United States District Court for the Southern District of Florida in Miami, or as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida, U.S.A. to the exclusion of the Courts of any other county, state or country.

(d) Any and all disputes, claims, or controversies whatsoever, other than for personal injury, illness or death of a Guest, whether brought in personam or in rem or based on contract, tort, statutory, constitutional or other legal rights, including but not limited to alleged violation of civil rights, discrimination, consumer or privacy laws, or for any losses, damages or expenses, relating to or in any way arising out of or connected with this Contract or Guest's cruise, no matter how described, pleaded or styled, between the Guest and Carnival, with the sole exception of claims brought and litigated in small claims court, shall be referred to and resolved exclusively by binding arbitration pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S. 3, 1970 U.S.T. LEXIS 115, 9 U.S.C. §§ 202-208 ("the Convention") and the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq., ("FAA") solely in Miami-Dade County, Florida, U.S.A. to the exclusion of any other forum. Guest hereby consents to jurisdiction and waives any venue or other objection that may be available to any such arbitration proceeding in Miami-Dade, Florida. The arbitration shall be administered by National Arbitration and

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Mediation (“NAM”) under its Comprehensive Dispute Resolution Rules and Procedures and the fee schedule in effect at the time of initiating the proceeding with NAM, which are deemed to be incorporated herein by reference. If you have a question about the arbitration process or to obtain a current copy of the Comprehensive Dispute Resolution Rules and Procedures and/or fee schedule, you can contact them at: National Arbitration and Mediation, attention Claims Department, 990 Stewart Street, First Floor, Garden City, NY 11530, telephone number (800) 358-2550.

NEITHER PARTY WILL HAVE THE RIGHT TO A JURY TRIAL OR TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE APPLICABLE ARBITRATION RULES AND HEREIN, OR OTHERWISE TO LITIGATE THE CLAIM IN ANY COURT (OTHER THAN SMALL CLAIMS COURT). THE ARBITRATOR’S DECISION WILL BE FINAL AND BINDING. OTHER RIGHTS THAT GUEST OR CARNIVAL WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION. An award rendered by an arbitrator may be entered in any court having jurisdiction under the Convention or FAA. Carnival and Guest further agree to permit the taking of a deposition under oath of the Guest asserting the claim, or for whose benefit the claim is asserted, in any such arbitration. In the event this provision is deemed unenforceable by an arbitrator or court of competent jurisdiction for any reason, then and only then the provisions of Clause 12(c) above governing venue and jurisdiction shall exclusively

apply to any lawsuit involving claims described in this Clause.

13. CLASS ACTION WAIVER

THIS CONTRACT PROVIDES FOR THE EXCLUSIVE RESOLUTION OF DISPUTES THROUGH INDIVIDUAL LEGAL ACTION ON GUEST'S OWN BEHALF INSTEAD OF THROUGH ANY CLASS ACTION. EVEN IF THE APPLICABLE LAW PROVIDES OTHERWISE, GUEST AGREES THAT ANY ARBITRATION OR LAWSUIT AGAINST CARRIER WHATSOEVER SHALL BE LITIGATED BY GUEST INDIVIDUALLY AND NOT AS A MEMBER OF ANY CLASS OR AS PART OF A CLASS ACTION, AND GUEST EXPRESSLY AGREES TO WAIVE ANY LAW ENTITLING GUEST TO PARTICIPATE IN A CLASS ACTION. IF GUEST'S CLAIM IS SUBJECT TO ARBITRATION UNDER CLAUSE 12(d) ABOVE, THE ARBITRATOR SHALL HAVE NO AUTHORITY TO ARBITRATE CLAIMS ON A CLASS ACTION BASIS. GUEST AGREES THAT THIS SECTION SHALL NOT BE SEVERABLE UNDER ANY CIRCUMSTANCES FROM THE ARBITRATION CLAUSE SET FORTH IN SECTION 12(d) ABOVE, AND IF FOR ANY REASON THIS CLASS ACTION WAIVER IS UNENFORCEABLE AS TO ANY PARTICULAR CLAIM, THEN AND ONLY THEN SUCH CLAIM SHALL NOT BE SUBJECT TO ARBITRATION.

14. CARNIVAL'S USE OF GUEST'S LIKENESS

Carnival and/or its promotional partners have the exclusive right to include photographic, video and other visual portrayals of Guest in any medium of any nature whatsoever for the purpose of trade, advertising, sales, publicity or otherwise, without compensation to Guest, and all rights, title and interest therein (including all worldwide copyrights therein) shall be Carnival's sole property, free from any claims by Guest or any person deriving any rights or interest from Guest.

15. GUEST'S USE OF PHOTOS, VIDEOS OR RECORDINGS PROHIBITED

Guest hereby expressly agrees that he/she will not utilize any tape recording, video, or photograph(s) of himself/herself, any other guest, crew, or third party on board the vessel, or depicting the vessel, its design, equipment, or any part thereof whatsoever, for any commercial purpose or in any media broadcast, or for any other non private use, without the express written consent of Carnival. Guest acknowledges that by boarding the vessel, at any time, Guest irrevocably agrees to this provision, which is a condition precedent to being permitted on board the vessel and can be enforced by any legal means, including, but not limited to, injunctive relief.

**16. GUEST'S OBLIGATIONS FOR EXPENSES
OR IF CONFINED, DENIED BOARDING OR
DISEMBARKED**

- (a) Guest agrees if Carnival incurs any expense or sustains any damage as delineated in but not limited to Clauses 2, 4, 8, 9 and 16, that Carnival may charge Guest's on-board charge account for any expense incurred or damage sustained.
- (b) If guest is denied boarding, confined to a state-room or disembarked from the vessel pursuant to any provision of this contract, including but not limited to Clauses 2, 4, 5, or 8, guest agrees:
 - i. Carnival will not be liable for any refund of Cruise Fare, other compensation or any damages.
 - ii. All rights under Carnival's Vacation Guarantee are forfeited. This forfeiture also applies to any guest who disembarks because another guest is disembarked.
 - iii. Disembarkation and repatriation to the embarkation port or any other destination will be at guest's sole expense.
 - iv. To indemnify Carnival and that Carnival may charge Guest's on-board charge account for any and all expenses incurred by Carnival in relation to Guest's disembarkation and/or repatriation.

**IMPORTANT TERMS AND CONDITIONS
FOR NON CRUISE PORTIONS OF VACATION
PACKAGES PLEASE READ CAREFULLY**

1. Please see pages 1 through 11 for the applicable terms and conditions for the cruise portion of Guests vacations. The terms and conditions in paragraphs 1 through 11 herein apply only to Carnival's responsibilities for non cruise portions of vacation packages. Other terms and conditions with respect to air travel, hotel and other non cruise activities may be applied by the entities providing those services.
2. The payment of the required deposit or any partial or full payment for reservation of a land package before or after the cruise shall constitute acceptance and consent to all of the terms and conditions of this Contract and the General Information and Vacation Package Conditions and Restrictions contained in the brochure for such vacation package and/or the brochures and circulars of the suppliers. These provisions are hereby [sic] incorporated by reference in this Contract and vacation package Guests (hereinafter referred to as Guests) are advised to take note of them.
3. Carnival Cruise Lines, its affiliates, subsidiary companies, agents, servants, and employees (hereinafter referred to as "CARNIVAL") is the principle [sic] tour operator and its responsibility to Guests is limited to the arrangement of all tours and accommodations offered in these vacation packages. CARNIVAL shall not be responsible for personal injuries, death, or property damage, economic loss, inconvenience or delay, consequential

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damages, or change of itinerary or accommodations incurred by any person or Guest which may occur due to acts or omissions or tortious conduct on the part of any direct or supplemental air carrier, hotel or other suppliers of arrangements and services or other independent contractors, their employees, agents or others not under the direct control of CARNIVAL.

4. CARNIVAL reserves the right to decline to accept or to reject any person as a Guest, at any time, or to cancel a vacation package due to circumstances beyond the control of CARNIVAL.
5. CARNIVAL reserves the right to substitute hotels for other hotels in a similar category, to substitute air carriers, and to change schedules without prior notice should circumstances so require.
6. If a change in the itinerary is needed due to factors or conditions beyond CARNIVAL'S control, no refund or credit will be made, however, CARNIVAL will make an effort to provide accommodations and services of a comparable quality and standard as set forth in the brochure. Any such change shall not modify the cancellation provisions in the brochure. No credit will be allowed nor refund given for any services provided in the brochure should any such services not be utilized by Participants.
7. CARNIVAL makes no representations or warranties, implied or otherwise, in regard to the reliability of suppliers or independent contractors, nor does it assume a duty of safety or responsibility for the independent acts of suppliers, independent contractors, their employees or agents.

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8. Vacation packages are non-transferable. Fares shall be deemed to be earned when paid and non-refundable unless otherwise expressly stated in the cancellation provisions in the brochure.
9. CARNIVAL shall not be liable for any claims whatsoever other than for personal injury, illness or death, of the Guest unless full particulars thereof in writing are given to CARNIVAL within 30 days after the Guest shall complete the packages, or in the case that the tour is abandoned, within 30 days thereafter. Suit to recover any claim shall not be maintainable in any event unless commenced within six months after the date of the loss.
10. Carnival shall not be liable for any claims whatsoever for personal injury, or illness or death of the guest unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event, illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of the injury, event, illness or death, and unless served on Carnival within 120 days after filing.
11. It is agreed by Guest and CARNIVAL that all disputes between Guest and CARNIVAL arising under or in connection with a vacation package shall be litigated, if at all, in and before the United States District Court for the Southern District of Florida in Miami-Dade County, Florida, U.S.A., to the exclusion of the courts of any other state or county.
