UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

CASE NO.:

TONI CECIL

Plaintiff,

vs.

CARNIVAL CORPORATION, d/b/a “CARNIVAL CRUISE LINE”

And/or “CARNIVAL” Defendant,

/

# COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiff, TONI CECIL, hereinafter referred to as Plaintiff, by and through her undersigned counsel, sues the Defendant Carnival Corporation d/b/a "Carnival Cruise Line” and/or “Carnival”, hereinafter referred to as Defendant and alleges:

# JURISDICTION, VENUE AND PARTIES GENERAL ALLEGATIONS

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 (a) (1) because the amount in controversy exceeds $75,000, exclusive of interest and costs, and diversity of citizenship exists between the parties.
2. In addition to and/or in the alternative in the event this matter does not come under the diversity jurisdiction of the Court, the Plaintiff shall proceed under the maritime and admiralty jurisdiction of the Court and/or the Forum Selection Claus of Plaintiff's cruise ticket with Defendant.
3. Plaintiff is a U.S. citizen who resides and is domiciled in the state of Texas.

1

1. Defendant Carnival Corporation d/b/a "Carnival Cruise Line” and/or “Carnival” is a foreign corporation with its principal place of business in the State of Florida. At all times material, Carnival Corporation, was authorized to and conducted business in the State of Florida. Defendant has sufficient minimum contacts with Florida, or otherwise intentionally availed itself of the consumer markets within Florida to render the exercise of jurisdiction by Florida courts permissible under traditional notion of fair play and substantial justice. Indeed, the Passenger Ticket Contract that Carnival Corporation provided to Plaintiff included a forum selection clause that mandated that any litigation should be pursued before the United States District Court of the Southern District of Florida in Miami. A copy of the Contract is in the possession of Defendant and will be produced through discovery.
2. The causes of action asserted in this Complaint arises under the General Maritime Law of the United States.

# FACTUAL ALLEGATIONS

1. Plaintiff readopts, realleges and incorporates the allegations in paragraphs 1 through 5 as though alleged herein.
2. At all times material, Defendant Carnival Corporation, owned, operated, managed, maintaining and/or controlled the cruise vessel " *M/V Carnival Freedom".*
3. On or about May 27, 2017, Plaintiff was a passenger, lawfully aboard the ship for a multi- day cruise in May of 2017 (the cruise).
4. Defendant, at all times material hereto, owed the Plaintiff, as a passenger lawfully aboard the ship, a duty to exercise reasonable care under the circumstances for her safety.
5. While on the cruise on or about May 20, 2017, Plaintiff was caused to slip and/or trip on a tray improperly left on the floor of the hallway.

2

1. Based upon information and/or belief, Plaintiff allegedly was required to attend a safety meeting called by the ship and/or its master along with other passengers and had to use the hallway with them at such time to attend such safety meeting.
2. As a proximate result of the fall, Plaintiff suffered severe bodily injury and other damages.

# NEGLIGENCE

1. Plaintiff readopts, realleges and incorporates the allegations in paragraphs 1 through 12 as though alleged herein.
2. At all times material, Defendant owed the Plaintiff the duty to use reasonable care under the circumstances.
3. Defendant breached its duties to Plaintiff in one or more of the following respects, including but not limited to:
   1. Failing to exercise reasonable care in maintaining the hallway floor;
   2. Failing to adequately conduct inspections to ensure that a dangerous, hazardous and unsafe condition such as a tray did not exist on the hallway floor;
   3. Failing to warn Plaintiff that the hallway floor was unreasonably safe for use or to alert the Passenger or others using the hallway that obstacles may be present that would affect the safety of the use of the hallway;
   4. Failing to provide notice to Plaintiff that the hallway floor was unreasonably safe for use or to alert the Passenger or others using the hallway that obstacles may be present that would affect the safety of the use of the hallway;
   5. Failing to properly inspect and/or check the hallway floor so as to clean and/or remove obstacles and/or impediments to the use of the hallway;

3

* 1. Failing to properly train and supervise the crew members in the area where Plaintiff was caused to fall about Carnival's rules and regulations applicable to floor safety;
  2. Failing to provide a reasonable and safe walkway and/or hallway free of obstacles and/or impediments to its safe use;
  3. Engaging in a negligent mode of operation that allowed the dangerous condition to occur, among other things.

1. Defendant had actual knowledge of the dangerous condition; or if Defendant lacked such actual knowledge, this dangerous condition existed for such a length of time that, in the exercise of ordinary care, the Defendant, Carnival Corporation, should have known of the condition; or, in the alternative, the condition occurred with regularity and was therefore foreseeable.
2. That this condition was not readily apparent to those, like and/or similar to Plaintiff, who could suffer the same and/or similar event and/or injury.
3. At all times material, Defendant had exclusive custody and control of the area where Plaintiff was injured.

# DAMAGES

1. As a direct and proximate result of negligence of the Defendant, Plaintiff has suffered severe physical and mental pain and anguish, disfigurement and impairment in the past and, in all reasonable probability, Plaintiff will suffer such physical and mental pain and anguish, suffering, humiliation, scarring, disfigurement, and impairment, if not for the balance of her natural life. Furthermore, Plaintiff has incurred reasonable and necessary medical hospital pharmaceutical, chiropractic expenses in the past, and in all reasonable medical probability, will incur such charges medical and other expenses in connection with his injuries into the future. In addition to and without waiving the foregoing, Plaintiff would show that he has suffered a loss of wages in the past and in all

4

reasonable probability, will suffer a loss of wage earning capacity into the future in connection with her injuries. By reason of the above and foregoing, Plaintiff would show that she has been damaged in a sum within the jurisdictional limits of the Court.

# CONDITIONS PRECEDENT

1. All conditions precedent to Plaintiff's right to recover herein and to Defendant's liability have been performed or have occurred.

**WHEREFORE PREMISES CONSIDERED** Plaintiff Toni Cecil and respectfully requests that Defendant Carnival Corporation d/b/a “Carnival Cruise Line” and/or “Carnival" be cited to appear and answer, and that on final trial, Plaintiff have the following:

1.) judgment against Defendant for actual damages in an amount within the jurisdictional limits of the Court;

2.) pre-judgment interest as provided by law; 3.) post judgment interest as provided by law; 4.) costs of suit;

5.) such other and further relief to which Plaintiff may show herself to be justly entitled.

DATED this 19th day of April, 2018.

Respectfully submitted,

**Tylka Law Center, P.C.**

***/s/Tyler Tylka, Esq.***

Tyler J. Tylka

Florida Bar No. 110103 1104 East Main

League City, Texas, 77573 Telephone: (281) 557-1500

Telecopier: (281) 557-1510

E-mail: [legal@tylkalawcenter.com](mailto:legal@tylkalawcenter.com) ATTORNEYS FOR PLAINTIFF

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JS 44 (Rev.C06/a17s) e 1:18-cv-21630-RNS Docu**C**m**I**e**V**n**I**t**L**1-**C**1 **O**E**V**n**E**te**R**re**S**d**H**on**E**F**E**L**T**SD Docket 04/24/2018 Page 1 of 2

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

|  |  |  |
| --- | --- | --- |
| 1. **(a) PLAINTIFFS**   TONI CECIL   * 1. County of Residence of First Listed Plaintiff   *(EXCEPT IN U.S. PLAINTIFF CASES)*   * 1. Attorneys *(Firm Name, Address, and Telephone Number)*   Tyler Tylka, Esq.  Tylka Law Center, P.C.  1104 E. Main, League City, Texas 77573 | | **DEFENDANTS**  CARNIVAL CORPORATION, D/B/A "CARNIVAL CRUISE LINE"  AND/OR CARNIVAL  County of Residence of First Listed Defendant  *(IN U.S. PLAINTIFF CASES ONLY)*  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.  Attorneys *(If Known)* |
| **II. BASIS OF JURISDICTION** *(Place an “X” in One Box Only)*   * 1 U.S. Government ’ 3 Federal Question | **III. CITIZENSHIP OF PRINCIPAL PARTIES** *(Place an “X” in One Box for Plaintif (For Diversity Cases Only) and One Box for Defendant)*  **PTF DEF PTF DEF** | |
| Plaintiff *(U.S. Government Not a Party)* | Citizen of This State ’ 1 ’ 1 Incorporated *or* Principal Place ’ 4 ’ 4  of Business In This State | |
| * 2 U.S. Government ’ 4 Diversity   Defendant *(Indicate Citizenship of Parties in Item III)* | Citizen of Another State ’ 2 ’ 2 Incorporated *and* Principal Place ’ 5 ’ 5  of Business In Another State | |
|  | Citizen or Subject of a ’ 3 ’ 3 Foreign Nation ’ 6 ’ 6 Foreign Country | |

*f*

1. **NATURE OF SUIT** *(Place an “X” in One Box Only)* Click here for: [Nature of Suit Code Descriptions](http://www.uscourts.gov/forms/civil-forms/civil-cover-sheet).

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **CONTRACT** | **TORTS** | | **FORFEITURE/PENALTY** | **BANKRUPTCY** | | **OTHER STATUTES** |
| * 110 Insurance * 120 Marine * 130 Miller Act * 140 Negotiable Instrument * 150 Recovery of Overpayment & Enforcement of Judgment * 151 Medicare Act * 152 Recovery of Defaulted Student Loans (Excludes Veterans) * 153 Recovery of Overpayment of Veteran’s Benefits * 160 Stockholders’ Suits * 190 Other Contract * 195 Contract Product Liability * 196 Franchise | **PERSONAL INJURY**   * 310 Airplane * 315 Airplane Product Liability * 320 Assault, Libel & Slander * 330 Federal Employers’   Liability   * 340 Marine * 345 Marine Product Liability * 350 Motor Vehicle * 355 Motor Vehicle   Product Liability   * 360 Other Personal Injury * 362 Personal Injury -   Medical Malpractice | **PERSONAL INJURY**   * 365 Personal Injury -   Product Liability   * 367 Health Care/   Pharmaceutical Personal Injury Product Liability   * 368 Asbestos Personal   Injury Product Liability  **PERSONAL PROPERTY**   * 370 Other Fraud * 371 Truth in Lending * 380 Other Personal   Property Damage   * 385 Property Damage Product Liability | * 625 Drug Related Seizure   of Property 21 USC 881   * 690 Other | ’  ’ | 422 Appeal 28 USC 158  423 Withdrawal  28 USC 157 | * 375 False Claims Act ’ 376 Qui Tam (31 USC 3729(a)) * 400 State Reapportionment * 410 Antitrust * 430 Banks and Banking * 450 Commerce * 460 Deportation * 470 Racketeer Influenced and Corrupt Organizations * 480 Consumer Credit * 490 Cable/Sat TV * 850 Securities/Commodities/ Exchange * 890 Other Statutory Actions * 891 Agricultural Acts * 893 Environmental Matters * 895 Freedom of Information Act * 896 Arbitration * 899 Administrative Procedure Act/Review or Appeal of Agency Decision * 950 Constitutionality of State Statutes |
| **PROPERTY RIGHTS** | |
| * 820 Copyrights * 830 Patent * 835 Patent - Abbreviated New Drug Application * 840 Trademark | |
| **LABOR** | **SOCIAL SECURITY** | |
| * 710 Fair Labor Standards Act * 720 Labor/Management Relations * 740 Railway Labor Act ’ 751 Family and Medical Leave Act * 790 Other Labor Litigation * 791 Employee Retirement Income Security Act | ’  ’  ’  ’  ’ | 861 HIA (1395ff)  862 Black Lung (923)  863 DIWC/DIWW (405(g))  864 SSID Title XVI  865 RSI (405(g)) |
| **REAL PROPERTY** | **CIVIL RIGHTS** | **PRISONER PETITIONS** | **FEDERAL TAX SUITS** | |
| * 210 Land Condemnation * 220 Foreclosure * 230 Rent Lease & Ejectment * 240 Torts to Land * 245 Tort Product Liability * 290 All Other Real Property | * 440 Other Civil Rights * 441 Voting * 442 Employment * 443 Housing/   Accommodations   * 445 Amer. w/Disabilities -   Employment   * 446 Amer. w/Disabilities -   Other   * 448 Education | **Habeas Corpus:**   * 463 Alien Detainee * 510 Motions to Vacate Sentence * 530 General * 535 Death Penalty   **Other:**   * 540 Mandamus & Other * 550 Civil Rights * 555 Prison Condition * 560 Civil Detainee -   Conditions of Confinement | * 870 Taxes (U.S. Plaintiff or Defendant) * 871 IRS—Third Party   26 USC 7609 | |
| **IMMIGRATION** |
| * 462 Naturalization Application * 465 Other Immigration Actions |

1. **ORIGIN** *(Place an “X” in One Box Only)*

* 1 Original

Proceeding

* 2 Removed from State Court
* 3 Remanded from

Appellate Court

* 4 Reinstated or Reopened
* 5 Transferred from Another District *(specify)*
* 6 Multidistrict

Litigation - Transfer

* 8 Multidistrict

Litigation - Direct File

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity****)*:

**VI. CAUSE OF ACTION** Brief description of cause:

General Maritime Law

1. **REQUESTED IN**

**COMPLAINT:**

1. **RELATED CASE(S)**

* CHECK IF THIS IS A **CLASS ACTION**

UNDER RULE 23, F.R.Cv.P.

**DEMAND $** CHECK YES only if demanded in complaint:

**JURY DEMAND:** ’ Yes ’ No

**IF ANY** *(See instructions):* JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

04/20/2018 /s/ Tyler Tylka

**FOR OFFICE USE ONLY**

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**Print**

**Save As...**

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JS 44 ReversCe a(Rseve. 061/1:71) 8-cv-21630-RNS Document 1-1 Entered on FLSD Docket 04/24/2018 Page 2 of 2

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

* 1. **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  2. **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

1. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

1. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
2. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](http://www.uscourts.gov/forms/civil-forms/civil-cover-sheet).
3. **Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date. Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

1. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
2. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
3. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

\_\_\_\_\_\_\_\_\_\_ District of \_\_\_\_\_\_\_\_\_\_

TONI CECIL

*Plaintiff(s)*

v.

CARNIVAL CORPORATION, d/b/a "CARNIVAL CRUISE LINE" and/or CARNIVAL

*Defendant(s)*

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) Civil Action No.

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**SUMMONS IN A CIVIL ACTION**

To: *(Defendant’s name and address)*

Carnival Corporation

by serving NRAI SERVICES, INC as registered agent 1200 South Pine Island Road

Plantation, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.

P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney,

whose name and address are:

Tyler Tylka, Esq.

Tylka Law Center, P.C.

1104 E. Main

League City, Texas 77573

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.

You also must file your answer or motion with the court.

*CLERK OF COURT*

Date:

*Signature of Clerk or Deputy Clerk*

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

Civil Action No.

**PROOF OF SERVICE**

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

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

* + I personally served the summons on the individual at *(place)*

on *(date)* ; or

* + I left the summons at the individual’s residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

|  |  |  |
| --- | --- | --- |
| on *(date)* , and mailed a copy to the individual’s last known address; or |  | |
| * I served the summons on *(name of individual)* |  | , who is |
| designated by law to accept service of process on behalf of *(name of organization)* |  |  |
| on *(date)* | ; or |  |
| * I returned the summons unexecuted because |  | ; or |

* + Other *(specify):*

.

My fees are $ for travel and $ for services, for a total of $

0.00 .

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

Date:

*Server’s signature*

*Printed name and title*

*Server’s address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**