

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO:

LOIS KAHAN,

Plaintiff,

vs.

AZAMARA CLUB CRUISES,

Defendant

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**COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL**

Plaintiff, **LOIS KAHAN**, by and through undersigned counsel, hereby sues the Defendant, **AZAMARA CLUB CRUISES**, and alleges as follows:

1. This is an action for damages that exceeds this Court's minimum jurisdictional requirements, to wit, \$75,000.00, exclusive of all interest and costs.

2. This Court has jurisdiction over this matter pursuant to 28 USC § 1333 (1) and 28 U.S.C. § 1332 (a)(1), and general maritime law.

3. Venue in the United States District Court for Southern District of Florida is appropriate pursuant to the forum selection clause contained in the passenger ticket between Plaintiff and Defendant.

4. At all times material, Plaintiff, **LOIS KAHAN**, is and was a resident of and domiciled in the State of New York, now living in New York, New York, and at all times material was a passenger on board defendant's vessel, **QUEST**.

5. At all times material, Defendant, **AZAMARA CLUB CRUISES**, personally or through an agent:

- A. Operated, conducted, engaged and/or carried on a business venture in the State of Florida, and in particular Miami-Dade County, Florida;
- B. Were engaged in substantial business activity in the State of Florida, and in particular, in Miami-Dade County, Florida;
- C. Operated vessels and provided vessels for cruises in the waters of this state;
- D. Committed one or more acts as set forth in F.S. §48,081, 48.181 and 48.193, which submit the defendant to the jurisdiction and venue of this Court. Further, this court has jurisdiction of this action under 28 U.S.C. §1333(1);
- E. The acts of defendants set out in the Complaint occurred in whole or in part in Miami-Dade County and/or the State of Florida.

6. All conditions precedent to the institution of this action have been satisfied, or otherwise excused, including the pre-suit notice required by the terms and conditions of Defendant's cruise ticket. (See notice letter attached as Exhibit "A"). (The ticket is no longer in Plaintiff's possession).

#### COUNT I - NEGLIGENCE

7. On or about December 12, 2012, Defendant owned and operated a passenger cruise ship known as the "QUEST."

8. At such time and place, Plaintiff, **LOIS KAHAN**, was lawfully and legally aboard said vessel as an invitee and paying passenger with the actual and/or constructive consent of Defendant.

9. On December 12, 2012, while on board the **QUEST**, which was operating in navigable waters, the Plaintiff, **LOIS KAHAN**, was seriously injured when a treadmill she was using in the gym on Deck 9 accelerated suddenly and well beyond the speed that she entered,

causing her to fall.

10. At all times material hereto Defendant, **AZAMARA CLUB CRUISES**, owed a duty to Plaintiff and other similarly situated passengers to exercise reasonable care under the circumstances.

11. Defendant, **AZAMARA CLUB CRUISES**, breached its duty owed to Plaintiff by committing one or more of the following acts or omissions:

- A. Failing to exercise reasonable care for the safety of its passengers by creating a dangerous condition in the gym of the Azamara Quest;
- B. Failing to properly maintain the treadmills' controls in the gym in a reasonably safe condition;
- C. Failing to regularly inspect the treadmills, including their controls in a sufficient and diligent manner to determine if they were safe for their intended use by passengers, and functioning properly, including Plaintiff;
- D. Failing to provide reasonably safe and properly working treadmills in the gym, for use by its passengers;
- E. Failing to warn passengers, including Plaintiff, of malfunctioning treadmills, which Defendant was aware of due to previous complaints and injuries from the rapid acceleration of the treadmills causing injury to Plaintiff and other passengers;
- F. Negligently establishing and enforcing a method of operation in the gym which failed to sufficiently and regularly inspect and maintain the treadmills and their controls;

- G. Failing to discover and remove malfunctioning treadmills, the existence of which Defendant either knew or in the exercise of reasonable care under the circumstances, should have known;
- H. Allowing a dangerous condition to exist notwithstanding prior similar injury incidents, including the same type and design or manufacturer of treadmills used on the Quest;
- I. Failing to train crew members in the assessment, inspection, and discovery of malfunctions in and maintenance of the treadmills in the gym aboard the Azamara Quest;
- J. Failure to comply with all treadmill warranties, uses, maintenance and inspections, recommendations and requirements;
- K. Failing to comply with its own internal policies and procedures established by the ISM Code, SQMS, and other internal operational procedures required by the ISM Code, SOLAS, all applicable health, building and safety codes and ordinances in accordance with 33 CFR 96.100 et. seq., 46 USC Section 3201 et. seq. and all Rules and Regulations, including, but not limited to all relevant standards NVIC's of the United States Coast Guard, and IMO.

12. As a direct and proximate result of Defendant's negligence and above referenced breaches of duty, Plaintiff, **LOIS KAHAN**, suffered bodily injuries and resulting pain and suffering, physical and mental pain and anguish, disability, loss of capacity for the enjoyment of life, expense of hospitalization, surgery and medications, loss of earnings in the past, loss and/or impairment of the ability to earn money, expenses for physical and occupational therapy, and medical and nursing expenses. Said losses are either permanent or continuing in nature and

Plaintiff will suffer these losses into the future.

**WHEREFORE**, Plaintiff, **LOIS KAHAN**, demands judgment, interest and costs against Defendant, **AZAMARA CLUB CRUISES**, a trial by jury and any such other relief to which the Plaintiff may be justly entitled.

Dated: February 11, 2014.

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