

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

MICHELLE MARKHAM, Individually, and  
As Personal Representative of the Estate of  
Clint Markham, and JOYCE MARKHAM, and  
CHANEL MARKHAM,

Plaintiffs

vs.

CARNIVAL CORP., d/b/a  
CARNIVAL CRUISE LINES, INC.

Defendant.

**COMPLAINT**

COME NOW, Plaintiffs, MICHELLE MARKHAM, Individually, and As Personal Representative of the Estate of Clint Markham, and JOYCE MARKHAM, and CHANEL MARKHAM, by and through undersigned counsel, and sue the Defendant, CARNIVAL CORP., d/b/a CARNIVAL CRUISE LINES, INC., and further state as follows:

**GENERAL ALLEGATIONS**

1. This is a cause of action which is brought in the District Court for the Southern District, Florida pursuant to 28 U.S.C. 1333, and the forum selection clause of Plaintiff MICHELLE MARKHAM's passenger cruise ticket with Defendant. The cause of action is in excess of \$75,000.00. There is diversity of citizenship. Plaintiffs are citizens and residents of the state of Texas. This is a maritime cause of action.

2. Plaintiff has complied with all conditions precedent to bringing this action.

3. Defendant CARNIVAL CORP., d/b/a CARNIVAL CRUISE LINES, INC., is,

upon information and belief, a foreign and/or Panamanian corporation, licensed to do business in Florida as a cruise line. Defendant's base of operations is in Miami, Dade County, Florida.

4. Plaintiff MICHELLE MARKHAM, on September 23, 2011 was the lawful spouse of Clint Markham, deceased, and mother of CHANEL MARKHAM and JUSTIN MARKHAM, a minor child.

5. Plaintiff JOYCE MARKHAM, on September 23, 2011, was the mother of Clint Markham, deceased and is a widow. Clint Markham was her only child.

6. Plaintiff CHANEL MARKHAM on September 23, 2011 was over the age of eighteen and *sui juris*.

7. On the aforesaid date, Plaintiff MICHELLE MARKHAM and her husband Clint Markham, were passengers on Defendant's passenger cruise ship CARNIVAL CONQUEST. The vessel departed from the port of Galveston, Texas on September 18, 2011. The last scheduled stop on the cruise was Cozumel, Mexico, where Defendant CARNIVAL CORPORATION built and operates a fifty million dollar dining, drinking and entertainment complex called the Costa Maya Resort.

8. Plaintiff MICHELLE MARKHAM and her husband Clint had taken the cruise to celebrate his fortieth birthday. Clint Markham was a successful property preservation specialist who made a good living. Clint had just started a new job with anticipation of a six-figure income. In 2008, he earned \$253,145.00; in 2009, \$190,300 and in 2010, \$187,000. Clint was the sole support of his family. He also provided financial assistance to his widowed and disabled mother. Clint was Plaintiff JOYCE MARKHAM's only son.

9. MICHELLE MARKHAM and Clint were together for twenty years and married for eighteen at all times material, had one minor child, a boy Justin, and a girl Chanel who was

eighteen years old. Chanel had just graduated high school in May, 2011. Clint provided all of her financial support. Justin had just started his senior year in high school and was scheduled to compete in a state-wide band competition shortly after the cruise was over. He had pre-enlisted in the armed forces with his parents' written permission. Clint Markham was a devoted husband and father who cared deeply for his wife, children and his mother JOYCE MARKHAM.

10. On September 23, 2011, Plaintiff and her husband had purchased a shore excursion from Defendant called "Isla Pasion by Twister" which featured an unlimited amount of alcoholic beverages. The excursion expressly invites passengers who are "daredevils at heart." The excursion carried the Markhams and other passengers by powerboat to an island called Pasion or Passion Island. The consumption of alcohol began before Clint left the ship that day, and then continued on with unlimited Rum Punch, Margaritas and beer that started at 10:30 a.m. Clint Markham drank heavily until about 3:30 p.m. There was little food consumed by Clint Markham, mostly which consisted of tortilla chips, guacamole, Pico de Gallo and chicken nuggets available at the free buffet.

11. At approximately 4:00 p.m., the powerboat took the passengers back to the pier at Cozumel. The Markhams then visited the Tres Amigos bar which is leased from an entertainment and dining center owned and/or operated by Defendant CARNIVAL CORPORATION at its Costa Maya Resort Complex. There, Clint Markham drank one or two very large and strong drinks which were served in a "yard" glass. The drink(s) contained a potent alcoholic beverage named "Everclear." Everclear is 190 proof, almost pure grain alcohol. The Markhams returned to the ship at about 6:00 p.m.

12. Plaintiff's decedent Clint Markham consumed so much alcohol in such a short period of time on September 23, 2011 that his judgment and physical coordination were

substantially impaired. Defendant negligently served alcoholic beverages to Plaintiff's decedent Clint Markham to excess so that his judgment and faculties were substantially impaired.

13. Defendant has a corporate policy of not keeping track of the amount of alcohol it freely serves its passengers, so as not to provide notice of overdrinking to passengers who might become injured in part or in whole due to intoxication, and attempt to sue the cruise line. This policy is present in other areas of ship operation.

14. When the Plaintiff MICHELLE MARKHAM and her husband returned to the CARNIVAL CONQUEST after a day of drinking alcoholic beverages and partying, Clint Markham was inebriated to the point of being unable to care for his own safety or to think clearly and rationally. He wanted to continue drinking and partying, however his wife, Plaintiff MICHELLE MARKHAM, tried to exert a calming influence on him and told him he had had too much to drink and that he should stay in the cabin and rest, take a shower, and get ready for dinner. The CONQUEST departed Cozumel shortly after the Plaintiff and her husband returned to the CARNIVAL CONQUEST. The ship sailed from Cozumel at approximately 6:00 p.m. under sunny skies and calm seas.

15. Even though he had consumed excessive amounts of alcohol, Clint Markham had been conditioned by Defendant to want to keep partying, and to take it to the limit and beyond. Clint Markham was a daredevil type with honed reflexes who sometimes enjoyed activities that most people would consider too risky, such as bungee-jumping or stock car racing. Clint Markham was also an individual who liked to "clown around." Thus a perfect storm was created for the tragedy that ensued.

16. Defendant CARNIVAL CORPORATION goes to great lengths to inebriate its passengers and, in so doing, to break down their inhibitions, and create an "anything goes"

atmosphere. Synonyms for the name of the Defendant's corporation, Carnival, include "bacchanal", "orgy", "debauch" and "merrymaking." The word "Carnival" has come to mean in the general lexicon a "self-indulgent festival." Defendant's business plan to cultivate this atmosphere among its passengers is no coincidence.

17. Although he had done a lot of heavy drinking, Clint Markham felt he could still party on. He did not want to "lie down", take a shower and get ready for dinner. Plaintiff's decedent was angry with his wife MICHELLE MARKHAM and was resentful that she tried to rein him in. He was being the wild, untamed warrior/hunter male while Plaintiff MICHELLE was being the archetypal female and mother just trying to protect the hearth and home.

18. Because Defendant CARNIVAL had conditioned Clint Markham to party hard, he wanted to continue drinking and partying. Clint Markham bickered with his wife about doing more partying and then left the cabin alone. Intoxicated and belligerent, at approximately 6:00 p.m., he proceeded to an upper deck of the ship. He encountered some friends on the upper deck, had some animated conversation with his friends and then with some unknown passengers, and then climbed up on the railing of the ship. He sat on the railing for a few moments and then fell face forward down into the sea. He appeared motionless after he hit the water. This was at approximately 6:25 p.m.

19. Despite having prior notice that passengers from time to time go over the side, Defendant Carnival negligently and/or intentionally failed to take even the most minimal precautions to prepare for this eventuality and to be able to either, a) prevent it from occurring and/or, b) rescue a passenger who falls into the sea.

20. Defendant did not train its deck personnel including wait staff, security officers, bartenders, pool attendants and supervisors to monitor the rail. Defendant failed to have a closed

circuit television camera trained on the rail and failed to have a system in place where it could see someone climb up on the rail and then intervene in a timely fashion. Defendant failed to have a reasonably safe rescue plan in place and then negligently failed to properly execute the plan it did have in place.

21. Were Clint Markham not overly-inebriated, he would not have fallen face down, would not have appeared lifeless in the water and would not have hit anything on the way down. If Clint Markham did intend to jump off the railing as a daredevil, clowning stunt, to make some kind of statement to his wife that he was still the king of the party, he would have survived the jump, had he not passed out first. It is apparent from the witness statements and the evidence that Clint Markham, blacked out and passed out and fell into the sea, unable to care for his own safety.

22. During the time that Clint Markham was on the main open passenger deck for at least ten to twenty minutes before going overboard. During that time, when he had climbed up onto the railing, and then sat on the railing and through the time he fell into the sea, there was no intervention by any security personnel nor were any security personnel visible on the deck, although other employees of Defendant were on the deck in the immediate vicinity of Clint Markham.

23. Clint Markham was neither depressed nor suicidal. He had no history of depression or of suicide attempts or ideations. He was looking forward to attending his son's statewide band competition. He was a devoted son, husband and father who took his family responsibilities of financially supporting his wife, children and mother seriously. He had many friends and was a well-respected member of the community in which he lived. He had just started a new job paying six figures and he and his wife were in the process of refinancing their

new home.

24. At the time that Clint Markham fell into the sea, there was no immediate response from the ship. No alarm was sounded immediately. No crew members immediately responded. Several passengers called 911 on the ship telephone but could not get through to the bridge. One passenger threw several life preserver rings into the sea. The ship did not slow for some time. There are reports that no rescue boat was lowered for more than twenty minutes after Clint fell into the sea. Despite this incident occurring in daylight while the ship was directly off the port of Cozumel, Mexico in relatively calm seas, Clint Markham was not rescued and his body was never recovered.

25. Before the ship had returned to its home port of Galveston, Texas, a representative of Defendant CARNIVAL CORPORATION had contacted Plaintiff JOYCE MARKHAM and specifically told JOYCE MARKHAM that her (only) son Clint Markham had committed suicide. JOYCE MARKHAM strongly disputed the assertion by Defendant.

26. Defendant CARNIVAL CORPORATION then caused the same misinformation to be disseminated to the local media. Camera people and news reporters converged on the home of JOYCE MARKHAM and pointedly questioned her as to why her son had committed suicide. When she angrily denied this and demanded to know why they were asking her why her only son had committed suicide, the news media told her that a representative from Defendant CARNIVAL CORPORATION had told them that Clint Markham had committed suicide on the CARNIVAL CONQUEST by jumping overboard.

27. News media converged on the ship as it docked waiting for MICHELLE MARKHAM to disembark. They also converged on the home of MICHELLE MARKHAM, making it impossible for her to return home for a few days. She had to stay with relatives until

things calmed down and she could return home. When she went on the Internet, she became aware of lawyers who had already posted the story on their websites, causing her further distress days later.

**COUNT ONE - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

28. Plaintiffs adopt and reallege paragraphs one through twenty-seven.

29. By contacting the local media, and Plaintiff JOYCE MARKHAM directly, and falsely informing the media that Clint Markham had committed suicide, Defendant wrongfully and intentionally inflicted needless emotional distress on Plaintiffs.

30. Telling a person's mother that her (only) son had committed suicide without any basis in fact for knowing that to be true is outrageous and exceeds the bounds of all civilized behavior. Telling the media that a passenger committed suicide without a basis in fact that such is true and knowing that this would be disseminated to Plaintiffs is outrageous and exceeds the bounds of all civilized behavior. Defendant either knew that the statement that Clint Markham committed suicide was false at the time it was made, or made the statement recklessly and wantonly without regard for the truth, or how such a statement would impact Clint Markham's mother.

31. The reason why Defendant believed it was necessary to disseminate this false information will be revealed in discovery in this case. The only evidence about Clint Markham's untimely demise that Defendant had at the time this false story was disseminated was from conflicting passenger witness statements. Some people said that Plaintiff's decedent had fallen into the sea face down, and may have hit some part of the CONQUEST on the way down to the sea and did not appear to be conscious when he was in the water. Others said he had "jumped." However, there was and is, no way to construe any of the witness statements to conclude that

Clint Markham “committed suicide.” There was no suicide note, for example, and no witnesses stated that Clint Markham had said he intended to take his own life.

32. As a direct result of the outrageous nature of Defendant’s conduct, Plaintiffs have suffered severe emotional distress and anguish therefrom entitling them to compensatory and punitive damages as a result.

WHEREFORE, Plaintiffs demand judgment from Defendant for damages and costs, punitive damages, prejudgment interest and any other remedies the Court deems just and proper. Plaintiffs demand trial by jury.

**COUNT TWO - NEGLIGENCE**

33. Plaintiffs reaver and reallege paragraphs one through twenty-seven as if fully set forth herein.

34. Defendant owed Plaintiff MICHELLE MARKHAM and Plaintiff’s decedent Clint Markham, a duty of reasonable care in the circumstances while she and Plaintiff’s decedent were passengers aboard the CARNIVAL CONQUEST.

35. Notwithstanding Defendant’s duty as aforesaid, Defendant breached same by:

- a) Over serving Plaintiff’s decedent Clint Markham alcoholic beverages to the point where he was physically and mentally impaired and unable to properly care for himself, and/or;
- b) Failing to have proper policies and procedures for rescuing passengers who go overboard on its vessels, and/or;
- c) Failing to have proper policies and procedures for supervising passengers to prevent persons from climbing up on ships’ railings where they will be in a position of great danger, and/or;

- d) Failing to conduct a rescue operation in a safe, timely and prudent manner, and/or;
- e) Failing to have proper policies and procedures for caring for intoxicated passengers, and/or;
- f) Failing to have adequate security for passengers on open decks, and/or;
- g) Encouraging passengers like Plaintiff's decedent to drink to excess to the point where they are incapable of caring for themselves, and/or, lose all their inhibitions, and/or;
- h) Selling and profiting from shore excursions where alcoholic beverages are served to passengers without limitation, and/or;
- i) Failing to train and/or supervise employees not to serve excessive amounts of alcohol to passengers, and/or;
- j) Failing to warn passengers of the dangers of drinking alcohol to excess on a cruise ship where there are many dangers to their safety, and/or;
- k) Encouraging passengers to drink alcohol to the point where they are incapable of caring for their own safety and/or their judgment becomes substantially impaired, and/or;
- l) Failing to have cameras which monitor passenger railings on open decks, and/or;
- m) Failing to have sufficient numbers of security personnel to provide reasonable security to passengers, and/or;
- n) Failing to learn from prior incidents of passengers falling into the sea on vessels owned and/or operated by Defendant and other cruise lines in

order to put in place a proper system for first preventing such occurrences and then rescuing such passengers who happen to fall into the sea.

36. As a result of the foregoing, the Plaintiff's decedent was caused and/or allowed or permitted to climb on the ship's railing and fall to his death from an upper deck on CARNIVAL CONQUEST after he had been served an excessive amount of alcohol, his judgment became impaired and he was physically unable to care for his own safety, there was no intervention or supervision of passengers like plaintiff who climb up on railings and his rescue was botched.

37. At all times material, Plaintiff's decedent was incapable of acting with due care for his own safety as a result of the conduct and actions of Defendant as hereinbefore alleged in paragraph thirty-five.

38. At all times material, Defendant either created the dangerous conditions of which Plaintiff MICHELLE MARKHAM complains and/or the dangerous conditions existed for a sufficient period of time that Defendant had constructive knowledge of the dangerous conditions and/or Defendant had actual knowledge of the dangerous conditions hereinbefore alleged in paragraph thirty-five to have caused or to have contributed to causing Plaintiff's decedent's untimely demise.

39. As a result of the negligence of the Defendant as aforesaid, Plaintiffs suffered damages including but not limited to loss of financial support and services, and other pecuniary losses, loss of nurture and guidance, funeral and estate expenses and all other damages allowed by DOHSA.

40. In the alternative, or in addition thereto, Defendant acted with gross negligence and/or reckless indifference for the safety of its passengers, including Plaintiff's decedent.

WHEREFORE, Plaintiffs demand judgment for damages, punitive damages, pre-judgment interest and costs. Jury trial is demanded.

DATED this 7th day of September, 2012.

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