

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No: 05-22968-Civ-Cooke/Klein

ROXANA MARIA BORCEA, CIPRAN)
CIURARU, TIHOMIR DANCHEV, ATUL)
KANADE, individually and on behalf of all)
others similarly situated,)
)
)
Plaintiffs,)
)
vs.)
)
CARNIVAL CORPORATION, d/b/a)
CARNIVAL CRUISE LINES, INC.,)
)
Defendant.)

FILED by <i>Jam</i> D.C. MGC
MAY - 4 2006
CLARENCE MADDOX CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI

Omnibus Order Granting Joint Motion for Preliminary Approval of Class Action Settlement and Other Relief

This cause came before the Court on the plaintiffs' Joint Motion for Preliminary Approval of Class Action Settlement and for Other Relief. The Court has considered the motion, the memoranda of law in support of the motion, and otherwise has been duly advised. It is ordered and adjudged that:

1. The proposed Second Amended Complaint shall be deemed filed as of the date of this order. In light of the proposed settlement submitted by the parties, Carnival need not respond to the Second Amended Complaint unless the Court enters a subsequent order disapproving of the settlement. If the settlement is disapproved, the Second Amended Complaint shall be stricken and the case shall proceed on the First Amended Complaint.

2. Solely for purposes of effectuating the proposed settlement of the parties, the Court certifies the following class:

All former and current, non-P.O.E.A. seafarer-employees, who have worked or are working for and aboard various ships owned by Defendant Carnival at any time from November 16, 2001, through the date that notice is first provided to the class for class certification and who Carnival has (i) failed to pay adequate wages due under contract or law or (ii) failed to pay penalties for failure to pay adequate

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wages due under contract or law. "Seafarer-employees" shall not include Carnival's corporate officers or corporate directors. An officer or director of a Carnival vessel is not a corporate officer or corporate director solely by virtue of his or her position on a vessel. Carnival's vessels, include, but are not limited to, the following:

- (1) Carnival Valor
- (2) Carnival Miracle
- (3) Carnival Glory
- (4) Carnival Conquest
- (5) Carnival Legend
- (6) Carnival Liberty
- (7) Carnival Pride
- (8) Carnival Spirit
- (9) Carnival Victory
- (10) Carnival Triumph
- (11) Paradise
- (12) Elation
- (13) Carnival Destiny
- (14) Inspiration
- (15) Imagination
- (16) Fascination
- (17) Sensation
- (18) Ecstasy
- (19) Fantasy
- (20) Celebration
- (21) Holiday
- (22) Jubilee
- (23) Tropicale
- (24) Other ships owned or operated by Carnival from November 16, 2001 through the date that notice is first provided to the class of class certification.

If the Court disapproves the settlement of the parties, the class certification shall be revoked by virtue of the disapproval of the settlement and all findings made herein regarding class certification shall be set aside so that the Court may revisit the issue of class certification *de novo*. Certification of this class is appropriate solely for purposes of settlement for the following reasons:

A. Numerosity. The members of the class are so numerous and geographically dispersed throughout the United States and abroad that joinder of all class members is impracticable. The class consists of at least fifteen thousand (15,000) seafarers, whose payroll records, work time records, and work schedules are maintained by Carnival. The Court does not anticipate any difficulties in the management of the action as a class action.

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B. Commonality. There appear to be questions of law and fact that are common to the claims of plaintiffs and the entire class. Among these common questions are the following:

- a. Whether the Defendant has engaged in a pattern or practice of requiring uncompensated work.
- b. Whether Carnival failed to pay the seaman adequate wages for hours worked,
- c. Whether Carnival's failure to pay the seamen adequate wages was made without sufficient cause.
- d. Whether the seamen are entitled to penalty wages under 16 U.S.C. §10313(g).

C. Typicality. Plaintiffs' claims appear to be typical of the claims of the class in that each seaman is claiming a failure by Carnival to pay adequate wages and penalty wages due to Carnival's failure to pay them in accordance with contract or law and also is claiming damages as a result of Carnival's actions.

D. Adequacy of Representation. Plaintiffs appear to be adequate representatives of the class and will fairly and adequately protect the interests of the class. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in litigation of this nature, to represent them. There is no apparent hostility between plaintiffs and the unnamed class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action. To prosecute this case, Plaintiffs have chosen the law firms Kozyak, Tropin & Throckmorton, P.A., Julio J. Ayala, P.A., Crewmember and Maritime Advocacy Center, P.A., and Downs, Brill & Whitehead, P.A., and who collectively are law firms with vast experience in maritime litigation and class action litigation. The law firms have the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

E. Predominance. The questions of law or fact common to the claims of plaintiffs and of each class member predominate over any questions of law or fact affecting only individual members of the class. All claims by named plaintiffs and unnamed class members are based on the failure to pay adequate wages or the failure to pay penalties for non-payment of wages or other compensation. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there are some individualized damages. As a result, when determining whether common questions predominate, courts focus on the liability issue and if

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the liability issue is common to the class as in the case at bar, common questions are held to predominate over individual questions. Since all claims by the plaintiffs and the class members are based on the same alleged "across the board" failure to pay adequate wages, other compensation, or penalties, the predominance requirement of Fed.R.Civ.P. 23(b)(3) is satisfied.

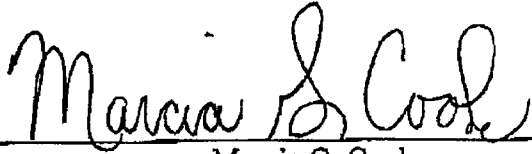
F. Superiority. A class action is superior to thousands of individual actions in part because of the non-exhaustive factors listed below:

- a. Joinder of all class members would create extreme hardship and inconvenience for the affected seafarers because of their immense geographical dispersion. Class members reside in the United States, Central and South America, Europe, Asia, India and Africa.
 - b. It is highly unlikely that individual plaintiffs would shoulder the burden of this vast and complex litigation as many are simply too poor or ignorant to bring separate actions.
 - c. There are no known individual class members who are interested in individually controlling the prosecution of separate actions.
 - d. The interests of justice will be well served by resolving the common disputes of potential class members in one forum.
 - e. Individual suits would not be cost effective, especially in light of the fact that many of the Class members are foreign nationals.
 - f. A class action is a superior method of seeking relief because certain members of the class fear retaliation from Defendant with respect to their present employment.
 - g. The action is manageable as a class action; individual lawsuits are not economically maintainable as individual actions.
3. The proposed settlement agreement is hereby preliminarily approved.
 4. The Court hereby appoints claims administrator to be agreed by the parties. If any party is dissatisfied with the services of the claims administrator at any time, the party unilaterally may seek a revocation of this appointment for good cause.
 5. Carnival shall engage the claims administrator and pay for the fees and expenses of the claims administrator. The fees and expenses shall not be paid from the settlement fund established by the settlement agreement.
 6. Carnival shall provide notice to the class in accordance with the class notice provision of the settlement agreement.
 7. All members of the class are hereby enjoined from prosecuting any claims that seek to recover from Carnival any wages or other compensation or any penalties for failure to

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pay adequate wages or other compensation or penalties for failure to pay adequate wages. Any member of the class who opts out of this class action in accordance with the procedures set forth in the notice that will be given to the class will not be subject to this injunction; provided, however, that any class member who opts out can prosecute claims solely on his or her own behalf or on behalf of a class of others who opt out of this class action. This injunction shall remain in place throughout the pendency of this action unless the injunction is vacated or modified by subsequent order. The Court will consider entry of a permanent injunction at the fairness hearing conducted on the proposed settlement agreement.

Done and ordered in chambers at Miami, Florida, this 4 day of May,
2006.



Marcia G. Cooke
United States District Judge

Copies furnished to
all counsel of record.