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Disney Cruise Line must pay former employee \$4 million for injury, jury finds

BY TAYLOR DOLVEN
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A Brevard County jury found Disney Cruise Line owes former worker Maria Ana Reis Martins \$4 million. Martins was a dining room server on the Disney Dream cruise ship in 2013 when she was hit by a car in Nassau, Bahamas. DAVID ROARK/DAVID ROARK, PHOTOGRAPHER

Disney Cruise Line must pay a former cruise ship employee \$4 million, a jury in Brevard County, Fla. ruled.

In September 2013, Maria Ana Reis Martins, now 39, was a dining room server aboard the Disney Dream ship that cruised to the Caribbean from Port Canaveral.

A car hit her while she was on shore in Nassau, Bahamas, breaking three of her ribs. The ship's medical team failed to diagnose her fractures and found she was fit for work, so she continued to serve tables for 10 days. A doctor in Florida found she had broken three of her ribs and the company sent her home to Portugal to receive treatment for five months.

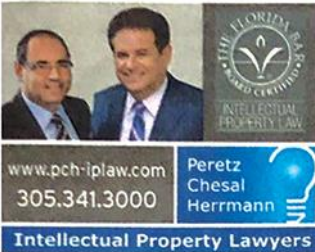
She returned to work on the Disney Dream in April 2014 but had to leave only a month later after complaining of pain in her ribs. She returned to Portugal and was diagnosed with nerve damage. Martins sued the cruise line in December 2015.

Martins' attorney Julio Ayala, based in Miami, argued before a jury earlier this month that Disney Cruise Line was negligent and failed to provide adequate medical care. Disney Cruise Line argued that it had fulfilled its duties of care under maritime law.

After five hours of deliberation on Dec. 19, jurors found that Disney Cruise Line had to pay Martins \$1 million for pain and suffering, \$2 million for lost earnings and \$1 million as punishment. The jury attributed 70% of negligence associated with Martins' injury to the company and 30% to her. The verdict marks the first jury trial against Disney Cruise Line for the personal injury of a ship worker, according to Ayala.

Disney Cruise Line did not respond to a request for comment about the verdict. The company has not yet appealed the decision.

Unlike its competitors, Disney Cruise Line employment contracts do not include mandatory arbitration clauses, but do require employees to sue in either Brevard County Circuit Court of the U.S. District Court in the Middle District of Florida.



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DAILY BUSINESS REVIEW

'I thought I Was Going To Get Killed': South Florida Lawyers Win \$4 Million Against Disney Cruise Line

by Raychel Lean

Julio J. Ayala of the Crewmember & Maritime Advocacy Center in Coral Gables teamed with Fort Lauderdale solo practitioner Ralph O. Anderson to obtain a \$4 million verdict against Magical Cruise Co. Ltd. — better known as Disney Cruise Line — on behalf of a crew member who claimed she received poor medical care from a doctor on board the Disney Dream.

It was the first time the defendant had faced a crew member in a jury trial, according to Ayala.

Dining room server Maria Ana Reis Martins sued two years after she was hit by a car in Nassau, Bahamas, during a port-of-call stint in September 2013. Emergency workers took her to a local public hospital, but according to Ayala, she didn't feel comfortable being treated there because of allegedly unclean conditions.

Martins, who was on her first employment contract with the cruise line, claimed staff at the ship had heard about her accident but didn't reach out. According to Ayala, she then walked "in horrible pain" back to the ship's medical center.

Once there, Martins described extreme pain in her right side, particularly in her chest, ribs and back. The ship's doctor ran an X-ray, which came back negative. Based on that, the doctor found that Martins only had a soft tissue injury.

What the doctor should have done, according to experts Ayala retained, was a physical examination of Martins' ribs and painful areas.

"Based on the physical examination and the history given to you by the patient who's just been run over by a fairly large truck, you err on the side of caution and you tell the person to take it easy and not engage in heavy lifting," Ayala said.

Instead, Martins was sent back to work, where she carried heavy trays.

"She was crying while at work. She was in so much pain," Ayala said. "But the doctor told her there was nothing wrong with her, so she just worked."

Eight days later, Martins returned to the medical center claiming she was in too much pain to keep going. A second X-ray showed two fractured ribs, which had become displaced due to lack of treatment, so Martins was sent home to Portugal to recover.

After physical therapy and rest, Martins returned to work in April 2014, but claimed the pain returned as soon as she started lifting trays again. The ship's doctor diagnosed her with intercostal neuralgia, which is pain around the ribs, chest and back caused by irritated or compressed nerves.

The plaintiff then saw a neurosurgeon, who declared her at maximum medical improvement because he couldn't offer a surgical solution.

Maintenance and cure is a remedy under maritime law, which holds that ship owners have a duty to provide medical care and wages to employees injured or ill at sea until they recover, regardless of whether negligence is a factor.

"It's one of the oldest remedies known to man, and dates back to the Medieval times," Ayala said. "These laws were passed so ship owners wouldn't leave injured sailors all over the world and just abandon them."

Disney Cruise Line claimed its legal obligation to provide medical treatment to Martins ended with the neurosurgeon. But Ayala argued the cruise line still owed a duty to her as the Portuguese disability board had declared her 63% disabled, and other doctors specializing in pain management, neurology and psychiatry had not declared her at maximum improvement, instead recommending followup treatment and therapy.



"I thought it was going to be a suicide mission going up there," said Coral Gables attorney Julio J. Ayala, who landed a \$4 million jury verdict against Disney Cruise Lines in its "backyard."

Martins also sought punitive damages and accused the cruise line of negligence under the Jones Act, claiming the ship's doctor aggravated her injuries by failing to properly diagnose and treat her from the start.

Defense counsel Richard McAlpin of McAlpin Conroy in Miami did not respond to a request for comment by deadline.

The defendant denied any wrongdoing, arguing that it had met its maintenance and cure obligations, and highlighted the plaintiff's decision to walk to another hospital while injured. The cruise line also pointed out that Martins can receive free health care in her home country.

'SUICIDE MISSION'

Ayala said he went into the case with real concerns as the defendant's employment contracts mandate Brevard County as the forum. But the defendant had offered less than \$200,000 to settle, and his client felt the truth was on her side.

"I thought it was going to be a suicide mission going up there. I thought I was going to get killed," Ayala said. "This is Brevard. Brevard is Disney's backyard. The demographics in Brevard are a much more conservative people that live in that part of the state, and they don't award a lot of money compared with other jurisdictions."

But during voir dire, and even while out for dinner later, Ayala said he was surprised to hear many potential jurors say they disliked Disney.

"Of course, they didn't get picked, but I sensed that there was this undercurrent of this sentiment that was there, and if I could tap into it I could get them to go with my client," Ayala said.

Ayala said he had a realization: All he had to do was present the facts.

"This was somebody that was requesting what she was owed under the law, and Disney refused to be reasonable and provide it," he said.

Ayala said Martins, who is 39, needs ongoing treatment and has been applied to more than 30 jobs but hasn't found one that will accept her physical limitations.

After a 10-day trial and five hours of deliberation, Brevard County jurors found the defendant 70% negligent and the plaintiff 30% negligent. They found the cruise line failed to provide the maintenance and cure it owed, and awarded \$1 million for pain and suffering, \$2 million in economic damages and \$1 million in punitive damages.

Raychel Lean reports on South Florida litigation for the Daily Business Review. Send an email to rlean@alm.com, or follow her on Twitter via @raychellean.

Case: Maria Ana Reis Martins v. Magical Cruise Co.
Case No.: 2015-CA-051858
Description: Maritime personal injury
Filing date: Dec. 1, 2015
Verdict date: Dec. 19, 2019
Judge: Brevard Circuit Judge James E. Earp
Plaintiffs attorneys: Julio J. Ayala, Crewmember & Maritime Advocacy Center, Coral Gables; Ralph O. Anderson, Ralph O. Anderson P.A., Fort Lauderdale
Defense attorney: Richard McAlpin, McAlpin Conroy, Miami
Verdict: \$4 million