**NO.**

IN THE
**SUPREME COURT OF THE UNITED STATES**

GIOVANNA SETTIMI CARAFFA, as personal representative of the Estate of BENEDETTO EMANUELLE CARAFFA

*Petitioner*,

*vs.*

CARNIVAL CORPORATION

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FOR THE THIRD DISTRICT, STATE OF FLORIDA

# PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

This case involves an important question of federal maritime law, which should be settled by this Court. That is, when a Jones Act seafarer alleges negligence based on asbestos exposure, is the applicable causation test the 'featherweight'[1] causation standard, or is it the 'substantial factor' causation test as applied in products liability cases?

The relevant decisions of this Court make clear that the applicable causation standard is the "featherweight" standard. *CSX Transp., Inc. v. McBride*, 131 S. Ct. 2630 (2011).

The lower court decided this important federal question by instead finding that the "substantial factor" causation test, found in products liability cases, applies.

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[1] This Court made clear that the proper causation test in a Jones Act negligence case is whether the defendant's negligence played "***any*** part in bringing about the injury." *CSX Transp., Inc. v. McBride*, 131 S. Ct. 2630 (2011). Courts routinely refer to this test as the "featherweight" causation standard. *See, e.g. Solano v. Carnival Cruise Lines, Inc.*, 491 So. 2d 325 (Fla. 3d DCA 1986) (emphasis supplied) ("[g]iven the "**featherweight**" burden of proof necessary to establish Jones Act negligence and/or the exceptionally light burden of proof necessary to establish proximate cause in unseaworthiness cases, it was error for the court to have directed a verdict.")

In order to maintain uniformity amongst this Court's decisions, Certiorari review is warranted to answer the following question:

1. When a Jones Act seafarer alleges negligence based on asbestos exposure, is the applicable causation test the 'featherweight' causation standard, or is it the 'substantial factor' causation test as applied in products liability cases?

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully submits this petition for a writ of certiorari to review the judgment of District Court of Appeal for the Third District, State of Florida.

## OPINIONS BELOW

The District Court of Appeal denied Petitioner's Motion for Rehearing En Banc on December 6, 2016. Appx. A.[2] The District Court of Appeal entered its Opinion on October 19, 2016. Appx. C. The trial court entered its Order on Post-Trial Motions, and entered Final Judgment, on February 11, 2015. Appx. D, E.

None of the opinions or orders were reported.

## JURISDICTION

The District Court of Appeal entered its Opinion on October 19, 2016. Appx. C. The District Court of Appeal denied Petitioner's Motion for Rehearing En Banc on December 6, 2016. Appx. A.

28 U.S.C. § 1257 confers on this court jurisdiction to review on a writ of certiorari the order in question.

[2] All references to the Appendix are denoted as "Appx. __."

## STATUTORY PROVISIONS INVOLVED

The Jones Act, 46 U.S.C. § 30104. *Personal injury to or death of seamen:*

> A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

## STATEMENT OF THE CASE

This is a case about a Jones Act seafarer who died of asbestos-related lung cancer which was caused, at least in part, by exposure to asbestos while working aboard numerous Carnival Corporation cruise ships. This is the first known asbestos case to be tried to verdict against one of the major Miami-based cruise lines.

From 1985-2000, Benedetto Caraffa worked as an electrician on several Carnival Corporation cruise ships, including the M/S Celebration, M/S Festivale, M/S Tropicale, M/S Carnivale, M/S Mardi Gras, M/S Holiday, M/S Fantasy, M/S Sensation, M/S Inspiration and M/S Ecstasy.

While working for Carnival, Caraffa lived and worked aboard these cruise ships for six (6) to ten (10) months at a time.

Throughout a decade and a half, Carnival exposed Caraffa to asbestos. This is particularly true concerning the earliest Carnival steamships that Caraffa worked aboard: the Carnivale, Mardi Gras and Festivale.

These early steamships, all built prior to 1975, are now known to have used substantial amounts of asbestos as insulation in the machine areas and engine rooms. Asbestos was the insulation material of choice during that era.

This exposure to friable asbestos caused Caraffa to develop lung cancer in 2001, which ultimately led to Caraffa's death. After 4 years of pain and

suffering, Mr. Caraffa agonizingly died in February 2005.

On January 17, 2006, Plaintiff/widow, Giovanna Caraffa, sued Carnival Corporation averring that Mr. Caraffa died as a result of asbestos exposure while working on ships owned and controlled by Carnival. The estate of Caraffa filed suit in Florida state court against Caraffa for negligence under the Jones Act, 46 U.S.C. § 30104.

A frequent theme of the litigation below was the applicable causation test.

At the Summary Judgment stage, Carnival argued that the applicable causation test was the substantial factor test as set out in numerous asbestos products liability cases. In response, Petitioner succinctly argued that Carnival's reliance on products liability case law had no application in a Jones Act negligence case.

Once again, at trial, the issue of the appropriate causation standard (Jones Act "featherweight" vs. products liability "substantial factor") was raised. To this point, Petitioner filed a "Trial Memorandum regarding Defendant's Improper Attempt to apply Products Liability case law to the jury instructions which should simply follow the Pattern Jury Instructions in Seafarer's Cases." Appx. F.

This memorandum again laid out how Federal Law squarely holds that the applicable causation standard is the "featherweight" burden of proof.

At trial, the following record evidence of Caraffa's exposure to friable asbestos aboard Carnival cruise ships was presented:

**A.)** A former Carnival Chief Engineer who testified there was asbestos "everywhere" on the earliest steamships that Caraffa lived and worked aboard for more than **3 years**. He also testified that asbestos was cut "quite often" in the areas Caraffa worked, and that Carnival did nothing to protect its workers from asbestos exposure.

**B.)** Two doctors gave the opinion that the latency period for Caraffa's type of lung cancer was 10-12 years from exposure to asbestos, which corresponds precisely to the time that Caraffa worked extensively aboard Carnival cruise ships known to be laden with asbestos.

**C.)** Caraffa's Pathology slides of his lungs reveal asbestos fibers in the tumor.

**D.)** Even Carnival's own Expert Pathologist, Dr. Allan Feingold agreed that Caraffa was exposed to friable asbestos.

**E.)** Carnival's Corporate Representative agreed that "Ships that were constructed between 1940 and 1975 used substantial amounts of asbestos for insulation and fire protection." Carnival also agreed that the Carnivale, Mardi Gras, and Festivale were all built prior to 1975. Thus, the record reveals the undisputed fact that the **Carnivale, Mardi Gras**, and **Festivale** used **substantial amounts of asbestos** for insulation and fire protection.

On these three ships alone, Caraffa lived and worked a total of nearly 3 years. That is nearly three years of living and working as an electrician on ships where it was **undisputed** that **substantial amounts of asbestos** were used and cut in the machine and engine rooms that Caraffa worked.

Undeniably, the issue of causation was the linchpin issue in the case. As shown, there was evidence presented at trial that proved:

- there was asbestos on the ships Caraffa worked aboard;

- there was asbestos found in Caraffa's lungs on autopsy;

- and there were several medical experts who testified that Caraffa's death was caused by asbestos exposure(s) aboard Carnival's cruise ships.

Yet Carnival repeatedly argued this causation evidence was insufficient under the products liability "substantial factor" causation test.

At the conclusion of Plaintiff's case, Carnival moved for directed verdict on the grounds that there was not adequate evidence of exposure aboard Carnival cruise ships.

Carnival's Motion was denied.

Thereafter, the jury awarded $10,339,504.59, but found the Plaintiff was 65% comparatively

negligent, which made the net award $3,618,826.61. Appx. B.

Post-trial, Carnival renewed its Motion for a Directed Verdict, which was granted by the trial court. Appx. D.

Caraffa timely appealed.

The District Court of Appeal entered its Opinion on October 19, 2016. Appx. C.

The District Court of Appeal denied Petitioner's Motion for Rehearing En Banc on December 6, 2016. Appx. A.

## REASONS FOR GRANTING THE PETITION

Certiorari review is required and requested in this matter in order to clarify the applicable causation standard in a Jones Act negligence case involving alleged asbestos exposure.

The case is of exceptional importance because it is the first known asbestos case to be tried to verdict against one of the major Miami-based cruise lines (Carnival Corp., Royal Caribbean International, etc.).

The decision will have an impact on a significant number of presently pending and future cases. Since the filing of the instant matter, there are several other lawsuits which have been filed against Carnival Corporation regarding asbestos exposure on its cruise ships. *See e.g. Vassallo v. Carnival*

*Corporation et al.*, CASE NO. 12-46815 CA 42 (pending); *Coco v. Carnival Corporation*, CASE NO: 2015-024206-CA-01 (resolved).

The case is also exceptionally important as it directly implicates the centuries old public policy of protecting seafarers (like Caraffa) as Wards of the Admiralty Courts. *See, e.g. U.S. Bulk Carriers, Inc. v. Arguelles*, 400 U.S. 351, 355 (1971).

The trial court decided an important federal question in a way that conflicts with the relevant decisions of this Court. More specifically, numerous decisions from this Honorable Court squarely hold that the applicable causation standard in a Jones Act negligence case is the "featherweight" causation standard. *CSX Transp., Inc. v. McBride*, 131 S. Ct. 2630 (2011).

Conversely, Carnival repeatedly argued, and the lower court ruled, it was the substantial factor causation standard that is found in products liability case law.

Consequently, the lower court decided an important federal question in a way that conflicts with relevant decisions of this Court.

- **The applicable causation standard is "featherweight"**

Again, the critical federal question at issue herein is the applicable causation standard to be applied in a Jones Act case.

To answer this question, this Court made clear in *CSX Transp., Inc. v. McBride*, 131 S. Ct. 2630 (2011)[3], that the applicable causation standard is that a defendant caused or contributed to a plaintiff employee's injury if the defendant's negligence played ***any*** part in bringing about the injury. *Id.* at 2642-43 (citing *Rogers v. Missouri Pacific R. Co.,* 352 U.S. 500, 77 S.Ct. 443, 1 L.Ed.2d 493 (1957)).

Florida case law in Jones Act cases is directly in accord with this Court's precedent. In a Jones Act claim, the burden to take away a verdict is even more onerous. *Trochez v. Holland-American Cruise Lines*, 353 So.2d 864 (Fla. 3d DCA 1977).

In *Trochez*, the court stated: "**...under the Jones Act it is not necessary to show that the employer's negligence was the proximate cause of the injury, but it is sufficient to establish a jury question by simply showing some negligence on the part of the employer coupled by direct or circumstantial evidence to the injury of the employee.**" *Id.* at 866 (emphasis added).

[3] The Jones Act, 46 U.S.C. § 30104, grants seamen who suffer personal injury or death in the course of their employment, the right to seek damages in a jury trial against their employers. The remedies are the same as those available to railroad workers under the Federal Employers' Liability Act ("FELA"). Accordingly, rights and causes of action available to railroad workers under FELA, are also available to seafarers under the Jones Act.

Similarly, the court in *Dos Santos v. Ajax Nav. Corp.*, 531 So.2d 231 (Fla. 3d DCA 1988) (emphasis supplied) expressly stated:

In a Jones Act case a simple showing of **some negligence** on the part of the employer **coupled by direct or circumstantial evidence** to the injury sustained by the employee **creates a jury question**.

Yet again, in *Solano v. Carnival Cruise Lines, Inc.*, 491 So. 2d 325 (Fla. 3d DCA 1986) (emphasis supplied), this Court held,

[g]iven the "**featherweight**" burden of proof necessary to establish Jones Act negligence and/or the exceptionally light burden of proof necessary to establish proximate cause in unseaworthiness cases, it was error for the court to have directed a verdict.

*See also Lane v. Tripp*, 788 So. 2d 351 (Fla. 3d DCA 2001) ("[t]he prevailing law is still that the plaintiff has a **featherweight** burden to overcome a motion for summary judgment in a Jones Act negligence case") (emphasis supplied).

This case law sets out the applicable federal law establishing the causation standard.

Certiorari is required in order to maintain uniformity in maritime law. *See* S*outhern Pac. Co. v. Jensen,* 244 U.S. 205, 216, 37 S.Ct. 524, 529, 61 L.Ed. 1086 (1917).

- **Certiorari is warranted in light of this Court's well-entrenched public policy of protecting seafarers as Wards of the Admiralty Courts**

This case is also of exceptional importance because it directly involves the well-entrenched public policy of protecting seafarers as Wards of the Admiralty Courts.

The reason that seafarers, like Mr. Caraffa, are afforded special protections under the law is that for literally hundreds of years they have been treated as a favored class. "**Seafarers from the start were wards of admiralty**." *U.S. Bulk Carriers, Inc. v. Arguelles*, 400 U.S. 351, 355 (1971) (citing *Robertson* v. *Baldwin*, 165 U.S. 275, 287 (1897)). In 1823, Justice Story declared:

Every Court should watch with jealousy an encroachment upon the rights of a seaman, because they are unprotected and need counsel; because they are thoughtless and require indulgence; because they are credulous and complying; and are easily overreached. But Courts of maritime law have been in the constant habit of extending towards them a peculiar, protecting favor and guardianship. They are emphatically the wards of the admiralty…

*Harden v. Gordon*, 11 Fed. Cas. 480 (No. 6047) (C.C. Me 1823).

As this Court later stated: "[f]rom the earliest times maritime nations have recognized that unique

hazards, emphasized by unusual tenure and control, attend the work of seafarer." *Aguilar v. Standard Oil Co. of New Jersey*, 318 U.S. 724 (1943). The *Aguilar* Court continued: "the restrictions which accompany living aboard ship for long periods at a time combine with the constant shuttling between unfamiliar ports to deprive the seaman of the comforts and opportunities for leisure, essential for living and working that accompany most land occupations." *Id*. at 728.

In *Chandris, Inc. v. Latsis*, 515 U.S. 347, 355 (1995) (internal citations omitted), this Court reaffirmed this longstanding principle that seafarer are wards of the Admiralty Courts as a "feature of the maritime law compensating or offsetting the special hazards and disadvantages to which they who go down to sea in ships are subjected."

The Fifth Circuit Court of Appeals explained the rationale for affording seafarers special protections in *Castillo v. Spiliada Maritime Corp.,* 937 F.2d 240, 243 (5th Cir. 1991):

[Seafarer] enjoy this status because they occupy a unique position. A seaman isolated on a ship on the high seas is often vulnerable to the exploitation of his employer. Moreover, there exists a great inequality in bargaining position between large ship-owners and unsophisticated seafarer. Ship-owners generally control the availability and terms of employment.

Accordingly, there is a rich tradition of protection of seafarers, which flowed from the uniquely abhorrent conditions workers face at sea. Directly undermined by the lower court's ruling herein!

It is not just the Courts which recognize the need to protect seafarers, as "[t]he policy of Congress, as evidenced by its legislation, has been to deal with [seafarers] as a favored class." *Bainbridge v. Merchants' & Miners' Transp. Co.,* 287 U.S. 278 (1932). This favored class status is shown through the Jones Act, 46 USC § 30104, which is to be liberally construed to carry out its full purpose, which was to enlarge admiralty's protection to its wards. *See, e.g. Garrett v. Moore-McCormack Co.,* 317 U.S. 239 (1942).

Because of the **policy of providing an expansive remedy for seamen**, submission of Jones Act claims to a jury requires a **very low evidentiary threshold**; **even marginal claims are properly left for jury determination**. *Leonard v. Exxon Corp*., 581 F.2d 522, 524 (5th Cir. La. 1978) (citing *Barrios v. Louisiana Construction Materials Company*, 465 F.2d 1157, 1162 (5th Cir. 1972)); *see also Ribitzki v. Canmar Reading & Bates, Ltd.*, 111 F.3d 658 (9th Cir. 1996); *Bavaro v. Grand Victoria Casino*, 2001 WL 289782 (N.D. Ill. March 15, 2001).

Accordingly, it is black letter law that the plaintiff has a "**featherweight**" burden of proof in establishing a claim for Jones Act negligence. This featherweight burden is of critical importance because applied herein, if Carnival exposed Caraffa to asbestos even one time (in his fifteen (15) year career), that would satisfy the featherweight burden of proof.

Yet herein, the lower decided an important question of federal maritime law that is directly in conflict with this Court's established precedent (and public policy considerations).

Certiorari is required in order to squarely address this case of exceptional importance and to maintain uniformity of this Court's decisions.

- **Jones Act seafarers in a Jones Act negligence case must not be subject to the causation standard for a Products Liability Case.**

Again, a frequent theme throughout the litigation was Carnival's repeated reliance on products liability cases. The inherent flaw in using products liability cases is that products liability cases do not apply.

In **all** of the cases Carnival argued to the lower court, a plaintiff sued numerous manufacturers of asbestos in addition to suing Jones Act employers. Those inapplicable cases exact a far higher standard regarding exposure (causation) than a Jones Act case.

This rule makes sense: when a plaintiff sues numerous different asbestos manufacturers, the plaintiff must prove which defendant's asbestos the plaintiff was exposed to. Here, Caraffa only needed to prove he was exposed to asbestos onboard Carnival ships because Carnival was the only defendant. Also, Caraffa worked on Carnival's

asbestos laden ships during the time periods he proved would cause cancer.

For example, one case defendant repeatedly relied on, *Stark v. Armstrong World Industries*, 21 Fed. Appx. 371 (6th Cir. 2001), expressly stated that: "[t]he analysis will therefore proceed under the assumption that plaintiff is fundamentally asserting a **products liability claim**." *Id.* at 375. The Court continued that "we have adopted a 'substantial factor' test as the correct standard for finding proximate cause in maritime asbestos cases pursued **under a theory of products liability**. *Miller v. American President Lines, Ltd.*, 989 F.2d 1450, 1464 (6th Cir. 1993)." *Id.*

Again, to be clear, this case was **not** brought under a products liability theory, it was brought under a Jones Act negligence theory. Thus, *Stark* is inapplicable, as is the "substantial factor" test.

Next, Carnival repeatedly relied on *Jackson v. A-C Product Liability Trust*, 622 F. Supp. 2d 641 (N.D. Ohio 2009). *Jackson* was a maritime asbestos wrongful death brought under the Jones Act, ***but*** it was based on a products liability theory brought against numerous defendants. Importantly, *Jackson* expressly relies on *Stark* (discussed above), which deals with products liability. As such, *Jackson* is also inapplicable.

Next, Carnival repeatedly cited *Lindstrom v. A-C Product Liability Trust*, 424 F. 3d 488 (6th Cir. 2005). This case expressly states it is also a products liability based action. As the Court states, "**[o]nly**

**the products liability claims are at issue in this appeal**." Therefore, *Lindstrom* is inapplicable.

Lastly, Carnival repeatedly cited to *Bartel v A-C Product Liability*, 2014 US Dist. LEXIS 130240 (E.D. PA 2014). Notably, *Bartel* discusses the difference between the products liability case law Carnival relied on, and the Jones Act 'featherweight' case law that actually applies. As the *Bartel* Court stated:

With respect to the product identification and causation standard in the context of a general maritime asbestos claim, Plaintiff contends that in order to maintain an action for negligence or strict liability he must prove that "(1) [Decedent] was exposed to the defendant's product, and (2) the product was a substantial factor in causing the injury [Decedent] suffered." *Lindstrom v. A-C Prod. Liab. Trust*, 424 F.3d 488, 492 (6th Cir. 2005) (citing *Stark v Armstrong World Indus., Inc.*, 21 F. App'x 371, 375 (6th Cir. 2001)). However, with respect to claims against Defendant under the Jones Act, Plaintiff contends that the causation standard is incorporated from the Federal Employers Liability Act ("FELA") and is "slight causation" (as opposed to "substantial factor causation"). Plaintiff contends the case law makes clear the burden of proof to establish causation under a FELA case (and, by incorporation, a Jones Act case) is "relaxed" or "featherweight" and can be satisfied by purely circumstantial evidence. *See Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500, 508, 77 S. Ct. 443, 1 L. Ed. 2d 493 (1957).

This is precisely the argument that Caraffa makes herein; that is, the law is dramatically

different in a products liability claim versus a Jones Act claim. *Bartel* solidifies this point.

Herein, the trial court improperly decided an important question of federal law when applied a heightened products liability causation standard. For this reason, certiorari is required.

In this case, the record is replete with evidence that there was asbestos on the vessels on which Mr. Caraffa worked and that Carnival did nothing to protect its workers from asbestos exposure (no training, no rules, no warnings, no specialized protective gear).

There is also direct evidence coupled with direct inferences demonstrating that Mr. Caraffa was exposed to friable asbestos during the time he worked on Carnival's cruise ships.

Consequently, ample record facts and inferences supported the jury's verdict, particularly in light of the "featherweight burden" in a Jones Act negligence case.

The lower court decided an important question of federal law that conflicts directly with this Court's precedent. The well-established causation standard is the "featherweight" test.

Certiorari is also required in order to maintain confidence in the judiciary, as the lower court clearly usurped the role of the jury.

Here, post-trial, after denying Carnival's Motion for Directed Verdict, the lower court changed its

mind and re-weighed the evidence, which is a role expressly reserved for the jury according to this Court. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict."

As this Court has admonished, "Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable.'" *Sentilles v. Inter-Caribbean Shipping Corp.*, 361 U.S. 107, 80 S.Ct. 173, 4 L.Ed.2d 142 (1959) (citing *Tennant v. Peoria & Pekin Union R. Co.*, 321 U.S. 29, 35, 64 S.Ct. 409, 412, 88 L.Ed. 520); *see also Perry v. Red Wing Shoe Co.*, 597 So. 2d 821, 822 (Fla. 3d DCA 1992) (citing *Laskey v. Smith*, 239 So.2d 13, 14 (Fla.1970)) ("It was…error for the trial judge to "sit as a seventh juror" and set aside the jury's verdict.").

## CONCLUSION

As stated herein, Certiorari is required in order to maintain uniformity in this Court's decisions and to protect seafarers as Wards of the Admiralty Courts.

Respectfully submitted on March 3, 2017.

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# APPENDIX

**APPENDIX A — ORDER DENYING REHEARING *EN BANC* OF THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT, DATED DECEMBER 06, 2016**

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

CASE NO.: 3D15-0356

L.T. NO.: 06-964

GIOVANNA SETTIMI CARAFFA, ETC.,

*Appellant(s)/Petitioner(s),*

vs.

CARNIVAL CORPORATION,

*Appellee(s)/Respondent(s).*

DECEMBER 06, 2016

The joint stipulation for substitution of counsel filed November 2, 2016 is recognized by the Court.

Upon consideration, appellant's motion for rehearing *en banc* is treated as having included a motion for rehearing. The motion for rehearing is denied.

WELLS, and LOGUE, JJ., and LEVY, Senior Judge, concur.

The motion for rehearing *en banc* is denied.

## APPENDIX B — VERDICT OF THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA, DATED DECEMBER 16, 2014

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 06-00964 CA 42

GIOVANNA SETTIMI CARAFFA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENEDETTO EMANUELE CARAFFA, DECEASED,

*Plaintiff,*

v.

CARNIVAL CORPORATION,

*Defendant.*

### VERDICT

We, the jury, return the following verdict:

1. Was there negligence on the part of Carnival Corporation which was a legal cause of loss, injury or damage to Mr. Caraffa?

YES __X__ No ____

*Appendix B*

2. Was there unseaworthiness on the part of one or more of Carnival's vessels which was a legal cause of loss, injury or damage to Mr. Caraffa?

YES _X_ No ___

*If your answer is "No," to both questions 1 and 2, this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," to either or both questions 1 or 2 go to the next question.*

3. Was there negligence on the part of Mr. Caraffa which was a legal cause of his loss, injury or damage?

YES _X_ No ___

*If your answer is "No," to question 3, please skip to question 5; if, however, your answer is "Yes," to question 3, please answer question 4.*

4. State the percentage of any negligence which was a legal cause of the loss, injury, or damage to Mr. Caraffa, that you charge to:

| | |
|---|---|
| CARNIVAL CORPORATION | 35 % |
| MR. CARAFFA | 65 % |
| Total must be | 100% |

*Appendix B*

*In determining the amount of damages, do not make any reduction because of the negligence, if any, of Mr. Caraffa. If you find that Mr. Caraffa was negligent, the court in entering judgment will make an appropriate reduction in the damages awarded.*

5. Pre-Death Damages:

   a. What is the total amount of Mr. Caraffa's damages for net lost earnings and benefits through the date of his death?

   $ 128,000

   b. What is the total amount of Mr. Caraffa's damages for pain and suffering, disability, physical impairment, mental anguish, inconvenience, aggravation of a disease and loss of capacity for the enjoyment of life through the date of his death?

   $ 10,000,000

6. Post-Death Damages:

   a. What is the total amount of damages to the estate for funeral expenses resulting from Mr. Caraffa's death?

   $ 19,504.59

b. What is the total amount of damages sustained by Mrs. Caraffa, as Personal Representative of the Estate for the loss of Mr. Caraffa's support resulting from Mr. Caraffa's death?

$ 192,000

c. What is the total amount of damages to the estate for loss of net accumulations?

$ 0

7. Did Mr. Caraffa know or by the use of reasonable care should he have known , on or before January 17, 2003, that his cancer was both asbestos related cancer and specifically related to the asbestos exposure aboard Carnival vessels; such that this lawsuit was not brought timely and Mr. Caraffa's estate should not recover?

YES X No ___

SO SAY WE ALL, this 16 day of December, 2014

/s/
FOREPERSON

STEVEN P. BERGES
(Print Name)

**APPENDIX C — OPINION OF THE THIRD DISTRICT COURT OF APPEAL, STATE OF FLORIDA, FILED OCTOBER 19, 2016**

THIRD DISTRICT COURT OF APPEAL
State of Florida

No. 3D15-356
Lower Tribunal No. 06-964

GIOVANNA SETTIMI CARAFFA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENEDETTO EMANUELLE CARAFFA,

*Appellant/Cross-Appellee,*

vs.

CARNIVAL CORPORATION,

*Appellee/Cross-Appellant.*

Opinion filed October 19, 2016
Not final until disposition of timely filed motion for rehearing

An Appeal from the Circuit Court for Miami-Dade County, Jacqueline Hogan Scola, Judge.

Before WELLS and LOGUE, JJ., and LEVY, Senior Judge.

WELLS, Judge.

*Appendix C*

Giovanna Settimi Caraffa, as personal representative for the estate of Benedetto Emanuelle Caraffa, appeals a final judgment in favor of the defendant below, Carnival Corporation. Finding no merit, we affirm the final judgment and therefore find no need to address, and do not address, Carnival Corporation's cross-appeal.

Affirmed.

## APPENDIX D — AMENDED ORDER OF THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA, FEBRUARY 11, 2015

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ASBESTOS DIVISION

CASE NO.: 06-00964 CA 59

GIOVANNA SETTIMI CARAFFA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENEDETTO EMANUELE CARAFFA, DECEASED,

*Plaintiff,*

v.

CARNIVAL CORPORATION,

*Defendant.*

### AMENDED ORDER ON POST-TRIAL MOTIONS

This cause came on to be heard on February 9, 2015, on various post-trial motions filed by the parties. The Court has reviewed the pleadings, heard argument of counsel, and hereby rules as follows:

*Appendix D*

1. Defendant Carnival ("Carnival") Corporation's motion to set aside the verdict and enter judgment in accordance with its prior motion for directed verdict is hereby granted. The Court does not believe the evidence was sufficient to demonstrate that on Carnival Cruise Line ships, the decedent was exposed at all to friable asbestos. There was evidence that he could have been, that he might have been, but even under a Jones Act case, it is this Court's belief that such evidence is not sufficient.

2. Carnival's alternative motion for new trial is denied. With respect to *Daubert*, the testimony of Plaintiff's experts was based on sufficient facts and data, was the product of reliable principles and methodology, and applied those principles and methodology to the facts of the case.

3. Carnival's motion for remittitur is denied. With respect to economic damages, the Court finds sufficient evidence, and that it was clear to the jury it was awarding a net amount. With respect to non-economic damages, every case rises and falls on its own facts. The testimony adduced at trial regarding pain and suffering was graphic, compelling and persuasive, and the jury's verdict was not the result of passion and prejudice, but human experience and knowledge. The jury was also aware of the reduction of damages which would be imposed by the percentage of comparative negligence attributed to the decedent.

4. Plaintiff's motion for judgment notwithstanding the verdict on comparative negligence is similarly denied. The evidence of comparative negligence was sufficient, the jury was properly informed, and made a well-reasoned decision.

5. Carnival's motion for temporary stay of post-judgment execution in order to post a supersedeas bond is denied as moot.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 02/11/15.

/s/_____
JACQUELINE HOGAN SCOLA
CIRCUIT COURT JUDGE

## APPENDIX E — FINAL JUDGMENT OF THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA, FEBRUARY 11, 2015

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ASBESTOS DIVISION

CASE NO.: 06-00964 CA 59

GIOVANNA SETTIMI CARAFFA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENEDETTO EMANUELE CARAFFA, DECEASED,

*Plaintiff,*

v.

CARNIVAL CORPORATION,

*Defendant.*

### FINAL JUDGMENT

Pursuant to court order granting Defendant Carnival Corporation's renewed motion for directed verdict, final judgment is hereby entered in favor of Carnival Corporation and,

*Appendix E*

It is ORDERED and ADJUDGED that Giovanna Settimi Caraffa, as personal representative of the estate of Benedetto Emanuele Caraffa, Via Tassara 7/5. 16035, Rapallo (GE), Italy, take nothing from this action and that Carnival Corporation shall go hence without day.

The Court reserves jurisdiction to tax costs and attorneys fees, if appropriate, on timely motion.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 02/11/15.

/s/
JACQUELINE HOGAN SCOLA
CIRCUIT COURT JUDGE

**APPENDIX F — TRIAL MEMORANDUM OF THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA, DATED DECEMBER 15, 2014**

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ASBESTOS DIVISION

CASE NO. 06-00964 CA 42

GIOVANNA SETTIMI CARAFFA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BENEDETTO EMANUELE CARAFFA, DECEASED,

*Plaintiff,*

v.

CARNIVAL CORPORATION,

*Defendant.*

**PLAINTIFF'S TRIAL MEMORANDUM REGARDING DEFENDANT'S IMPROPER ATTEMPT TO APPLY PRODUCTS LIABILITY CASE LAW TO THE JURY INSTRUCTIONS WHICH SHOULD SIMPLY FOLLOW THE PATTERN JURY INSTRUCTIONS IN SEAFARER'S CASES**

*Appendix F*

Plaintiff, Giovanna Settimi Caraffa, hereby files this trial memorandum described above, and for good cause relies on the following.

As it relates to the Jury Instructions in this matter, Carnival is improperly attempting to insert language taken from Asbestos Products Liability case law. The purpose of this memorandum is to show this Honorable Court that the cases relied on by Defendant are all based on theories of Products Liability, which have no application in a Jones Act case.

The parties have agreed to the use of the **Pattern** Eleventh Circuit Instruction for Jones Act and Unseaworthiness claims, but Defendant improperly seeks to include the following language:

> Asbestos in its solid form is not harmful. Therefore, even if asbestos is present on a ship, the mere presence of asbestos is insufficient to establish that Mr. Caraffa's cancer was caused by asbestos. Therefore, even if you believe that any of Carnival's ships contained asbestos, this would not establish that Mr. Caraffa was harmed by asbestos. Plaintiff must establish that Mr. Caraffa was exposed to asbestos dust. Such exposure cannot be presumed and a mere minimal exposure to asbestos is not sufficient to establish causation. Plaintiff has the burden of establishing that Mr. Caraffa was exposed to a high enough level of asbestos while working aboard Carnival's ships such

> that these alleged exposures were a substantial factor in causing his cancer. In order to meet this burden, Plaintiff must establish evidence of specific exposures to asbestos such as the time, the place, and what Mr. Carraffa was doing on a Carnival ship as well as evidence regarding the frequency and level of any such exposures. The Plaintiff must also prove that Mr. Caraffa had asbestosis as mere exposures to asbestos is insufficient to cause an increased risk of lung cancer in cigarette smokers. It is not enough for Plaintiff to merely introduce evidence of what Mr. Caraffa might have been doing or that it might have been possible that he was exposed to asbestos aboard Carnival ships. If Plaintiff does not meet this burden, you must find for Carnival on the negligence claim.

First and foremost, all of this requested language is argument, and not properly given in a jury instruction.

Furthermore, most if not all of this requested language is taken from a series of Asbestos Products Liability cases that have no bearing on the instant matter.

**The instant matter is NOT a products liability action; it's a Jones Act claim.**

In all of the cases cited by the Defendant, the plaintiff was suing numerous manufacturers of asbestos in addition to suing Jones Act employers. In cases such as those cited by the Defendant, a far higher standard

regarding exposure (causation) is required to maintain a cause of action than in a Jones Act case. This rule makes sense where a Plaintiff sues numerous different asbestos manufacturers because it creates a mechanism to determine which defendant's asbestos the plaintiff was exposed to. Such a fact scenario is not present here.

For example, the first case relied on by Defendant, *Stark v. Armstrong World Industries*, 21 Fed. Appx. 371 (6th Cir. 2001)(copy attached as Exhibit 1), expressly stated that "[t]he analysis will therefore proceed under the assumption that plaintiff is fundamentally asserting a **products liability claim**." Id. at 375. The Court continued that "we have adopted a "substantial factor" test as the correct standard for finding proximate cause in maritime asbestos cases **pursued under a theory of products liability**. *Id*.

Next, Carnival relies on *Jackson v. A-C Product Liability Trust*, 622 F. Supp. 2d 641 (N.D. Ohio 2009)(copy attached as Exhibit 2). *Jackson* was a maritime asbestos wrongful death brought under the Jones Act, *but it was based on a products liability theory brought against numerous defendants*. Importantly, *Jackson* expressly relies on Stark (discussed above), which deals with products liability. As such, *Jackson* is also inapplicable.[1]

Lastly, Carnival relies on a 2014 case called B*artel v A-C Product Liability*, 2014 US Dist. LEXIS 130240

1. Notably, the *Jackson* case talks about the proper jury instruction to be given and states that it should be based on the relaxed or featherweight standard. *Jackson* at 649-50.

(E.D. PA 2014)(copy attached as Exhibit 3). Importantly, in *Bartel*, the court discusses the difference between the products liability case law Carnival relies on, and the Jones Act 'featherweight' case law. As the Court stated:

> With respect to the product identification and causation standard in the context of a general maritime asbestos claim, Plaintiff contends that in order to maintain an action for negligence or strict liability he must prove that "(1) [Decedent] was exposed to the defendant's product, and (2) the product was a substantial factor in causing the injury [Decedent] suffered." *Lindstrom v. A-C Prod. Liab. Trust, 424 F.3d 488, 492 (6th Cir. 2005)* (citing *Stark v Armstrong World Indus., Inc., 21 F. App'x 371, 375 (6th Cir. 2001))*. However, with respect to claims against Defendant under the Jones Act, Plaintiff contends that the causation standard is incorporated from the Federal Employers Liability Act ("FELA") and is "slight causation" (as opposed to "substantial factor causation"). Plaintiff contends the caselaw makes clear the burden of proof to establish causation under a FELA case (and, by incorporation, a Jones Act case) is "relaxed" or "featherweight" and can be satisfied by purely circumstantial evidence. *See Rogers v. Missouri Pacific R. Co., 352 U.S. 500, 508, 77 S. Ct. 443, 1 L. Ed. 2d 493 (1957).*

**This is precisely the argument that the Plaintiff makes herein**. That is, the law that is applicable for

the jury instructions is predicated on the United States Supreme Court case law supporting a relaxed or featherweight causation standard, not the heightened standard for a products liability case. As such, *Bartel* cements in the point that the law is dramatically different in a products liability claim versus a jones act claim.[2]

Despite this **dramatic** difference in what is required to reach a jury, the *Bartel* Court found it did not matter because even under the relaxed Jones Act standard, there still was not enough evidence to survive summary judgment.

In conclusion, all of the case law relied on by Defendant is predicated on a products liability theories, **none** of which are applicable herein. Furthermore, none of the language Defendant seeks to use is based on case law discussing jury instructions. Accordingly, to allow any such deviations from the Standard jury instructions for Jones Act and unseaworthiness cases would be clear error.

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2. Two other cases relied on by Defendant at the Summary Judgment stage were also products liability cases. First, Carnival cited to *Hickman Sweeney v. Saberhagen Holdings*, 2011 U.S. Dist LEXIS 13563 (E.D. Pa. 2011). Yet *Hickman* expressly states that "Plaintiff has asserted products liability claims based in negligence and strict liability." Id. The *Hickman* court also expressly relies on the Stark substantial factor test, which is inapplicable. Next, Carnival cited to a case called *Lindstrom v. A-C Product Liability Trust*, 424 F. 3d 488 (6th Cir. 2005), and yet this case expressly states it is also a products liability based action. As the Court states, "Only the products liability claims are at issue in this appeal." As such, *Lindstrom* is inapplicable.

*Appendix F*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true copy of the foregoing has been emailed to: Noah Silverman, One Biscayne Tower 2 South Biscayne Blvd, Suite 2300, Miami, Fl 33131-1803; on December 15, 2014.

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ALSINA & WINKLEMAN P.A.
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BY *s/Michael A. Winkleman*
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