



Carnival Seaman Takes Injury Arbitration Row To High Court

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Law360, Miami (March 2, 2015, 3:28 PM ET) -- A former [Carnival Corp.](#) worker injured while working on a cruise ship wants the [U.S. Supreme Court](#) to consider whether the company can use an arbitration clause in an employment contract to exempt itself from liability under the Jones Act.

In a Feb. 19 certiorari petition, former seafarer Vitalii Pysarenko asked the high court to overturn an Eleventh Circuit decision enforcing the arbitration clause in his seafarer's agreement, which he said takes away his statutory right to a jury trial under the Jones Act.

Pysarenko said that the high court previously indicated that courts should not enforce arbitration clauses that act as a prospective waiver of U.S. statutory rights.

“Given its terms, and indeed its very existence, there is no question that this arbitration clause in Carnival’s seafarer’s agreement with petitioner is void according to Congress and void according to this court,” Pysarenko said.

Pysarenko, who is a Ukrainian national, was working on the Carnival Dream in November 2010 when he hurt his back while lifting heavy equipment, according to the petition. Pysarenko said he was required to do the lifting alone and without proper safety equipment.

The ship’s onboard doctor gave him pain medication and sent him back to work. Pysarenko said this aggravated the injury, which turned out to be a badly herniated disc.

Pysarenko sued in November 2013 in Florida state court, but the cruise company removed the suit under the Federal Arbitration Act to the Southern District of Florida. There, the trial judge ruled in favor of Carnival and said the arbitration clause had to be enforced. That decision was later upheld by the Eleventh Circuit.

The arbitration clause in question calls for an arbitration to take place in London, Monaco, Panama City or Manila, depending on where the claimant is based, and calls for application of Panamanian law, which Pysarenko says has no remedies comparable to the U.S.’ Jones Act or Seamen’s Wage Act.

The arbitration clause — which he was unable to negotiate, having been forced to sign it to be employed on the ship — takes away Pysarenko’s Jones Act rights to proceed in the Florida state court forum of his choice and to have a trial by jury, according to the petition.

Pysarenko is represented by **Tonya J. Meister of Meister Law LLC** and Elizabeth K. Russo of Russo Appellate Firm PA.

Carnival is represented by David J. Horr, Stephanie H. Wylie and Nicholas A. Applin of [Horr Novak & Skipp PA](#).

The case is Pysarenko v. Carnival Corp., case number 14-1004, in the Supreme Court of the United States.

--Editing by Edrienne Su.

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