

Ex-Carnival Worker Urges Justices To Review Arbitration Row

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Law360, Miami (May 19, 2015, 6:02 PM ET) -- A former Carnival Cruise Corp. employee who was injured on the job has told the [U.S. Supreme Court](#) that the arbitration and choice of law clauses in his contract deprive him of the ability to pursue any claims against the company, urging the high court to take up his case.

In a reply brief filed May 8, former seafarer Vitalii Pysarenko said the enforceability of the arbitration clause in his seafarer's agreement takes away his statutory right to a jury trial under the Jones Act and removes the protections extended to seamen by Congress and the Supreme Court.

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

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 has no remedies comparable to the U.S.' Jones Act or Seamen's Wage Act, according to the petition.

"The tandem effect of the respondent-drafted choice of law and arbitration clauses here is to deprive petitioner not only of his U.S. statutory claims, but of all of his claims and of any accessible forum in which to present them," Pysarenko said in his May 8 reply brief. "And, clearly, that is the intended effect of the clauses."

The reply brief said Carnival did not deny this but instead pointed to a number of appellate decisions enforcing arbitration clauses in employment contracts. But Pysarenko, who calls seafarers the "single most exploitable group of workers on the planet," said that uniformity among courts of appeals on an issue should not be a basis for denying review of a case when the courts' conclusions conflict with high court precedent.

Carnival has argued that enforcing the arbitration agreement is consistent with the Federal Arbitration Act, a convention on enforcement of foreign arbitration awards and other legislative enactments, and that the "strong federal presumption to enforce the arbitration provision remains applicable even when a statutory claim is at issue," according to court documents.

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.

In March, Pysarenko [asked the Supreme Court to take up his appeal](#). The Workers' Injury Law & Advocacy Group, the Florida Admiralty Trial Lawyers Association and 571 current and former cruise ship workers [filed amicus briefs later that month](#).

The group of cruise line workers argued that the law set up in the U.S. to protect seaman — who face particular issues of long travel away from home, exposure of the "perils of the sea" and potential exploitation — are being swept away.

They said arbitration agreements that prospectively waive a litigant's right to pursue U.S. statutory remedies should be void as against public policy, because they will harm cruise consumers as cruise line operators will be "emboldened" to understaff their vessels and overwork their employees, and such agreements will allow "sweatshop" working conditions aboard cruise ships.

Further, the Workers' Injury Law & Advocacy Group argued that cruise ship workers like Pysarenko have little bargaining power to negotiate the agreements, making them disfavored under U.S. law.

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.

--Additional reporting by [Zachary Zagger](#). Editing by [Edrienne Su](#).

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