

# Workers, Atty Groups Side With Worker In Carnival Injury Row

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Law360, New York (March 27, 2015, 8:34 PM ET) -- A group of nearly 600 former cruise ship workers and two advocacy groups have filed amicus briefs in support of a [U.S. Supreme Court](#) petition by a former Carnival Cruise Corp. employee who was injured on the job, challenging the enforceability of an arbitration clause exempting the company from liability under the Jones Act.

The Workers' Injury Law & Advocacy Group, the Florida Admiralty Trial Lawyers Association and a group of 571 current and former cruise line workers asked the court court to grant [the petition brought by former seafarer Vitalii Pysarenko](#) from the Eleventh Circuit, asking the high court to consider the enforceability of an arbitration clause in his seafarer's agreement, which he says takes away his statutory right to a jury trial under the Jones Act.

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 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 Seaman's Wage Act, according to his petition.

**"We think that the court should grant the petition,"** Kathleen Sumner of the Workers' Injury Law & Advocacy Group told Law360 Friday. **"When you get hurt on the job, you need to be able to proceed with your rights under the Jones Act and not arbitration."**

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, since 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 Injury Law & Advocacy Group argued that workers on cruise ships such as Pysarenko have little bargaining power to negotiate the agreements making them disfavored under U.S. law, according to their brief.

**"These clauses, by essentially eliminating the U.S. statutory and other rights of the seaman, illustrate and are in place only because of the unequal bargaining power of the parties to the employment agreement,"** their brief said.

The FLATLA argued that some of the circuit courts have improperly ruled that the exemption Federal Arbitration Act for seaman in Chapter 1 of the act is not applicable to claims under Chapter 2, which ratified a convention on enforcement of foreign arbitration awards, despite evidence of Congress' intent otherwise.

**"For a decade now, the lower federal courts have erroneously promoted a generalized pro-arbitration public policy over a very specific pro-seamen, ward of the court, public policy of theretofore impeccable pedigree,"** the FLATLA's brief said. **"And they have done so by twisting Congress' clearly stated intent to exclude seamen contracts from the FAA. The lower federal judiciary's refusal to apply Chapter 1's exclusion for seamen's employment contracts to Chapter 2 has scuttled the long-established maritime law of this country applicable to seamen."**

A representative for Carnival was not immediately available Friday.

Carnival had argued that enforcing the arbitration agreement is consistent with the FAA, the convention 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.

The cruise line workers are represented by Carlos Felipe Linas Negret of [Lipcon Margulies](#), Alsina & Winkelman PA.

The Workers' Injury Law & Advocacy Group is represented by Kathleen G. Sumner of the Law Offices of Kathleen G. Sumner.

The FLATLA is represented by Philip D. Parrish of Philip D. Parrish PA.

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 Carolina Bolado. Editing by Kelly Duncan.

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