

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PABLO ESTERSON, as attorney-in-fact for)	
LILA GRACIELA KOHN GALE,)	COMPLAINT
)	
Plaintiff)	IN ADMIRALTY AND AT LAW
)	
vs.)	(JURY DEMAND)
)	
HOLLAND AMERICA LINE-USA INC.;)	NO.
HOLLAND AMERICA LINE INC.;)	
HOLLAND AMERICA LINE N.V. LLC;)	
and HAL ANTILLEN N.V.,)	
)	
Defendants)	
_____)	

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Pablo Esterson, as attorney-in-fact for Lila Graciela Kohn Gale, by and through the undersigned counsel, hereby sues Defendants, Holland America Line-USA Inc.; Holland America Line Inc.; Holland America Line N.V. LLC; and, HAL Antillen N.V., and alleges:

I. GENERAL ALLEGATIONS

THE PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Pablo Esterson, as attorney-in-fact for Lila Graciela Kohn Gale, is a resident of the State of Illinois.

2. Pablo Esterson is the son of Lila Graciela Kohn Gale ("Mrs. Gale"). He has authority

1 to act for Mrs. Gale in the event that she is incapacitated through a durable power of attorney dated
2 May 14, 2012. (Attached hereto as Exhibit A.). Through the execution of the power of attorney he is
3 authorized to bring litigation on Mrs. Gale's behalf. (*Id.* at ¶ 1 (j)).
4

5 3. Mrs. Gale is a resident of the State of Illinois. Ms. Gale was a resident of the State of
6 Illinois at the time of the underlying events.
7

8 4. As a direct and proximate result of the conduct forming the basis of the litigation, Mrs.
9 Gale was rendered incapacitated and suffered severe and devastating neurological, cognitive, and
10 physical injuries. Pablo Esterson brings this action on her behalf as her duly appointed attorney-in-
11 fact.
12

13 5. Defendant, Holland America Line-USA Inc., is a Delaware Corporation with its
14 principal place of business in Seattle, Washington, and the owner, operator, or owner *pro hac vice* of
15 the cruise vessel MS *Zuiderdam* on which the subject incident occurred. At all times material,
16 Holland America Line-USA Inc. was the agent of the other Defendants named in this action.
17

18 6. Defendant, Holland America Line Inc., is a Washington Corporation with its principal
19 place of business in Seattle, Washington, and the owner, operator, or owner *pro hac vice* of the cruise
20 vessel MS *Zuiderdam* on which the subject incident occurred. At all times material, Holland
21 America Line Inc. was the agent of the other Defendants named in this action.
22

23 7. Defendant, Holland America Line N.V. LLC, is a Curacao Corporation and the owner,
24 operator, or owner *pro hac vice* of the cruise vessel MS *Zuiderdam* on which the subject incident
25 occurred.
26

27 8. Defendant, HAL Antillen Line N.V., is a Curacao Corporation and the owner,
28 operator, or owner *pro hac vice* of the cruise vessel MS *Zuiderdam* on which the subject incident
occurred.

10. The Court has jurisdiction over this matter pursuant to 28 U.S.C.A. § 1332 because the amount in controversy exceeds the sum or value of seventy five thousand dollars (\$75,000.00), exclusive of interest and costs, and there is complete diversity between the parties hereto. The Court also has jurisdiction over this matter because the causes of action asserted herein arise under 28 U.S.C. § 1333 and the General Maritime Laws of the United States.

11. The Court has personal jurisdiction over Defendants.

12. Venue is proper in this Court under 28 U.S.C. § 1391 (b) and (c) as the Defendants are subject to personal jurisdiction in this Judicial District and therefore are deemed to reside here. The cruise line ticket at issue also requires that suit be brought in this Court.

13. All conditions precedent for filing and maintaining this action have been satisfied, waived, or do not apply.

II. INTRODUCTION

II. INTRODUCTION

14. This case arises out of acts of shocking and appalling negligence and callous disregard for human life. Four hours into the underlying voyage Mrs. Gale suffered a stroke. The dire nature of her emergency medical condition was readily apparent and acknowledged by the ship physician of the MS *Zuiderdam*, who failed to act reasonably under the circumstances. At that early juncture in the voyage the MS *Zuiderdam* was in close proximity to South Florida, where several comprehensive stroke centers could have promptly and properly treated Mrs. Gale. The Defendants should have immediately made the decision to air-evacuated Mrs. Gale from the vessel so that she could receive timely and proper care from physicians at a comprehensive stroke center. Instead of being properly

1 assessed and properly air-evacuated to a competent and capable medical facility, Mrs. Gale was
 2 treated without basic regard to her needs by Defendants. She went untreated on the vessel and
 3 declined as the hours passed by. She was eventually loaded onto a tugboat in the middle of the night
 4 and shipped to a recognized poorly equipped hospital that was ill-suited to provide any care or
 5 treatment for Mrs. Gale. Prior to transferring Mrs. Gale onto the tug boat the Defendants failed to do
 6 even the bare minimum due diligence for continuity of care such as confirming that the hospital could
 7 provide care and treatment for a stroke patient, that it had a functioning CT scan, that it had a
 8 neurosurgery department, that it had neurological specialists, or even whether the local airport for
 9 medivac flight was opened or closed. Because the Bahamian hospital chosen by Defendants could
 10 not provide care and treatment for a stroke patient, did not have a functioning Ct scan, did not have a
 11 neurosurgery department, did not have neurological specialists and the local airport was in fact
 12 closed, Mrs. Gale was left without necessary, timely and appropriate medical care. She was
 13 eventually flown back to Broward County, Florida after an excessive and unreasonable 15-hour delay
 14 from the onset of her stroke symptoms. During the unreasonable delay her brain was slowly dying
 15 from the mounting pressure of blood crushing down on her brain tissue. Time was of the essence to
 16 save Mrs. Gale's slowly dying brain, and Defendants completely failed her. As a direct and
 17 proximate result she suffered catastrophic injuries from which she will not recover. Lila Gale's brain
 18 and body was decimated as a result of Defendants' wanton, willful, and outrageous conduct.

23 III. FACTUAL BACKGROUND

24 15. Plaintiff entered into a contract of carriage with Defendants for the purpose of a cruise
 25 aboard the MS *Zuiderdam*. The cruise embarked from Fort Lauderdale, Florida, on March 21, 2018,
 26 at approximately 4:00 p.m.

28 16. Defendants, as common carriers, are engaged in the business of providing vacation

1 cruises to the public aboard vessels including the MS *Zuiderdam*. At all times material hereto,
2 Defendants owned, operated, managed, maintained, and/or controlled the MS *Zuiderdam*.

3 17. Defendants, through online, television, radio and print advertisements specifically
4 market their cruises as family friendly vacations with extensive offerings and activities for people of
5 all ages and abilities.
6

7 18. As part of providing vacation cruises, Defendants are obligated to provide
8 competent medical care and facilities, as well as personnel capable of making sound medical and
9 medical evacuation decisions.
10

11 19. As part of providing vacation cruises, Defendants advertised that the ship's onboard
12 medical center was staffed by licensed physicians and critical care nurses and that it is well equipped
13 to handle most emergencies.
14

15 20. Defendants charged money to passengers for medical services provided. As such,
16 Defendants are in the business of providing medical services to passengers for profit and owe a non-
17 delegable duty to provide competent and non-negligent medical care and services.

18 21. Defendants owned, operated, controlled, and/or maintained the medical center aboard
19 the MS *Zuiderdam*. Defendants maintained a Fleet Medical Operations division at corporate
20 headquarters in Seattle. The onboard medical center and Fleet Medical Operations division work as a
21 team in the event of medical evacuation emergency. A structured emergency response team onboard
22 each of Defendants' vessels run monthly practice drills. Defendants are aware that medical
23 emergencies may arise on its vessels and are aware of the essential need to promptly evacuate
24 passengers suffering from serious medical emergencies.
25
26

27 22. Defendants, through their shore-side Fleet Medical Operations division, had the ability
28 to control and monitor each and every step taken by its medical staff onboard via telephone, video

1 conference, skype, or otherwise.

2 23. Defendants' officials and employees had the ability to monitor and participate in
3 safety, security, and medical emergencies onboard the vessel by communicating with the ship's crew
4 via telephone, videoconference, Skype and other means of communication. Defendants, through both
5 the crew onboard and their shore-side officials and employees, who acted in consultation with one
6 another, failed to properly care and promptly and properly evacuate Mrs. Gale.

7 24. Defendants advertise that they are "committed to providing the highest quality
8 onboard medical care for ship guest and crewmembers and providing excellent first response and
9 emergency care to passengers until they can be transferred to a shoreside medical facility."
10

11 25. Defendants advertise that they are recognized as an "industry leader in cruise
12 medicine."
13

14 26. Defendants advertise that it was the first cruise line to add thrombolytic treatment to
15 its on-board medical services.
16

17 27. Defendants advertise that its ships are able to access "any medical specialist through
18 the University of Texas Medical Branch in Galveston." And that "all ships have digital radiology."
19

20 28. Defendants advertise that they have procedures for emergency disembarks "via Coast
21 Guard helicopter if medically appropriate and logistically possible in relation to the ship's distance
22 from land."

23 29. Upon information and belief, the Master of MS *Zuiderdam* was consulted regarding
24 Mrs. Gale's deteriorating condition and the emergent nature of the situation. The Master is an
25 employee or agent of Defendants and had the ability to divert or control the vessel or make the
26 appropriate decision to afford one of his passengers the medical care and treatment she desperately
27 needed.
28

1 30. At all times Defendants were vicariously liable for the negligence of the medical staff
2 and doctors onboard the MS *Zuiderdam*, who were employees, apparent agents, actual agents, or joint
3 venturers of Defendants.

4
5 31. At all times Defendants were vicariously liable for the negligence of the non-medical
6 personnel onboard the MS *Zuiderdam*, who were employees, apparent agents, actual agents, or joint
7 venturers of Defendants.

8
9 32. At all times Defendants had control or the right to control all persons working in its
10 medical departments, including the Doctors and personnel that improperly treated and negligently
11 mismanaged Mrs. Gale's condition.

12 33. Mrs. Gale and her family relied upon Defendants' representations regarding its
13 available shipboard medical facility with its qualified and competent physicians in their decision to
14 purchase the cruise and contract with Defendants.

15
16 34. On March 21, 2018, Mrs. Gale was on board the MS *Zuiderdam* for a cruise from Fort
17 Lauderdale to the Panama Canal. Mrs. Gale was a paying passenger.

18 35. On the evening of March 21, 2018, at approximately 8:30 p.m., Mrs. Gale lost
19 consciousness while having dinner. A medical team from the MS *Zuiderdam* was dispatched and
20 noted her to be confused, drowsy and with slurred speech.

21
22 36. Mrs. Gale was transported to the medical center of the MS *Zuiderdam* where she was
23 given a provisional diagnosis of "Severe Stroke" or "Query Ruptured Cerebral aneurysm" by the MS
24 *Zuiderdam's* Senior Physician, Dr. Socrates Lopez.

25
26 37. In light of the symptoms and manifestations exhibited by Mrs. Gale, any reasonably
27 prudent healthcare provider in Dr. Socrates Lopez's position would have known that a medical air-
28 evacuation to a comprehensive stroke center was medically necessary.

1 38. An air-evacuation was both medically necessary and operationally feasible.

2 39. At all times material, Dr. Socrates Lopez was an employee or agent of Defendants, as
3 its ship physician and was at all time material acting within the course and scope of her employment
4 or agency with Defendants.
5

6 40. At the time that Mrs. Gale presented to the ship's medical center the voyage was in its
7 very early stages and the vessel was likely less than 100 miles from the South Florida coast, within
8 quick reach of several primary and comprehensive stroke centers.
9

10 41. Dr. Socrates Lopez assessed Mrs. Gale and noted that she required (1) a CT Scan of
11 the brain and (2) an emergent consult by a neurologist or neurosurgeon.

12 42. More than two hours passed as Mrs. Gale lay intubated in the unequipped medical
13 center of the MS *Zuiderdam*. Dr. Socrates Lopez noted that her condition deteriorated as the time
14 passed. Notwithstanding, he utterly failed to properly assess the situation and order an air-
15 evacuation.
16

17 43. At approximately 11:00 p.m. Mrs. Gale was transported off the MS *Zuiderdam* onto a
18 tug boat and taken to Rand Memorial Hospital in Freeport, Bahamas.

19 44. The medical staff and personnel on the MS *Zuiderdam* failed to do even the bare
20 minimum due diligence for continuity of care such as confirming that the hospital could provide care
21 and treatment for a stroke patient, that it had a functioning CT scan, that it had a neurosurgery
22 department, that it had neurological specialists, or even whether the local airport for medivac flight
23 was opened or closed
24

25 45. Instead of being air evacuated to Miami or Fort Lauderdale, where acute
26 comprehensive stroke care could be timely provided, Mrs. Gale was taken off the ship and put on a
27 tug-boat towards shore, arriving at Rand Memorial Hospital at 12:06 a.m. on March 22, 2018.
28

1 Instead of arriving at a hospital with a comprehensive stroke center, Mrs. Gale was taken to a hospital
2 without a functioning CT scan, without a neurosurgery department, without neurological specialists,
3 and without an open and operational local airport for a prompt medivac flight.
4

5 46. Upon arrival at Rand Memorial Hospital it was clear that they were not capable of
6 adequately treating Mrs. Gale. In the absence of a neurosurgery consult, the attending physician
7 made the appropriate decision to transfer Mrs. Gale to Broward Health Medical Center, a
8 comprehensive stroke center— decision that should have been made by Dr. Socrates Lopez hours
9 earlier. However, by the time Mrs. Gale arrived at the Bahamian hospital, the airport was already
10 shut down for the night. She was forced to wait until the next morning to be flown via an air
11 ambulance from the Bahamas to Fort Lauderdale, Florida, while the bleeding and pressure in her
12 brain continued to worsen, killing more and more brain tissue with each passing hour.
13

14 47. As a direct result of the failure to air evacuate Mrs. Gale from the ship, she did not
15 arrive at Broward Health Medical Center, a facility more than capable of appropriately and timely
16 treating her, until more than fifteen (15) hours after the onset of her stroke symptoms.
17

18 48. Due to the decision of Defendants and Defendants' agents not to order an emergency
19 air evacuation, divert or speed the vessel's return to port, or otherwise ensure that Mrs. Gale was
20 promptly transported to a medical facility capable of treating her, there was an unreasonably
21 excessive delay in obtaining the necessary medical care that she urgently needed.
22

23 49. At Broward General Medical center Mrs. Gale was diagnosed with a major
24 intracerebral hemorrhage. She was taken into surgery where she underwent a right parietal
25 craniotomy and evacuation of the hemorrhage. However, because of the Defendants unreasonable
26 delay and failure to timely air evacuate her off the ship her condition worsened to the point where the
27 damage was irreversible.
28

1 50. Defendants owed a non-delegable duty to provide competent, non-negligent medical
2 care and treatment to Mrs. Gale. Defendants' non-delegable duty arises as a result of the contract for
3 payments for medical treatment charged to passengers including Mrs. Gale, as well as Defendants'
4 undertaking of the operation of a medical center onboard its vessel.
5

6 51. As a direct and proximate result of Defendants' negligence, Mrs. Gale has been left
7 with permanent devastating physical, cognitive and neurological deficits. An excessive amount of
8 her brain tissue died and will never function again due to the unreasonable delay in receiving
9 competent treatment. She now requires intensive medical care and treatment around the clock. She
10 was rendered comatose for many weeks and was put on a ventilator to stay alive. She suffered and
11 continues to suffer from paralysis and loss of mobility. Her muscles have atrophied and wasted away
12 due to her limitations. She has lost basic mental abilities such as memory, concentration, perception
13 and understanding. Her ability to speak has been greatly impaired. She has difficulty with simple
14 tasks such as telling time as her brain cannot make sense of what her eyes see. She has severe
15 problems with spatial reasoning and basic object recognition. She cannot walk and barely has
16 movement of the hands. Her creative abilities and ability for imagination have been decimated. She
17 will never be the same and will require care and treatment for the remainder of her life. She has
18 sustained damages that include, but are not limited to, pain and suffering, physical injuries, disability,
19 significant disfigurement, embarrassment, mental anguish, loss of capacity for the enjoyment of life,
20 expenses of hospitalization, medical and nursing care treatment expenses, loss of earnings, loss of the
21 ability to earn money in the future, and a shortened life span. Her recovery has been a grueling and
22 tragic course. Because of Defendants' negligence she must endure this painful existence until she
23 perishes.
24
25
26
27
28

1 IV. COUNT I – NEGLIGENCE

2 Plaintiff re-alleges and incorporates by reference paragraphs 1 – 51 of this Complaint.

3 52. In light of Defendants' experience and familiarity with the demographics of the
4 passengers on its cruises, the onboard and offshore recreational activities taking place on its cruises,
5 the foreign destinations visited on its cruises, and the illnesses and emergencies experienced by past
6 cruise passengers, it was reasonably foreseeable to Defendants that the MS *Zuiderdam* would have
7 passengers similar in age to Plaintiff, and passengers with common illnesses and emergencies such as
8 Plaintiff's condition. Likewise, it was reasonably foreseeable that such passengers would require
9 proper examination, evaluation, treatment, and evacuation.
10

11 53. Defendants owed Plaintiff the duty of exercising reasonable care under the
12 circumstances. In particular, as Plaintiff suffered a stroke onboard the MS *Zuiderdam* and was taken
13 to the ship's medical center, Defendants owed Plaintiff the duty of protecting her from injury relating
14 to her emergent condition, and of exercising reasonable care to furnish such aid and assistance as
15 ordinarily prudent persons would render under similar circumstances.
16

17 54. Defendants breached its duty of protecting Plaintiff from injury relating to her
18 emergent condition, and of exercising reasonable care to furnish such aid and assistance as ordinarily
19 prudent persons would render under similar circumstances. Defendants breached its duty in one or
20 more of the following ways:
21

- 22 a. Defendants failed to properly assess the condition of Mrs. Gale;
- 23 b. Defendants failed to timely diagnose Mrs. Gale;
- 24 c. Defendants failed to properly treat Mrs. Gale;
- 25 d. Defendants failed to perform or arrange for appropriate diagnostics
- 26 testing given Mrs. Gale's condition;
- 27 e. Defendants failed to obtain consultations with appropriate specialists;
- 28

- 1 f. Defendants failed to properly monitor Mrs. Gale;
- 2 g. Defendants failed to air-evacuate Mrs. Gale from the ship so that
- 3 she could promptly receive treatment;
- 4 h. Defendants failed to timely divert the ship back to port in the United
- 5 States so that Mrs. Gale could promptly receive treatment;
- 6 i. Defendants failed to evacuate Mrs. Gale by speed boat back to the
- 7 United States;
- 8 j. Defendants failed to contact the United States Coast Guard
- 9 regarding the need for an air evacuation;
- 10 k. Defendants failed to properly consult qualified shore-based personnel
- 11 regarding Mrs. Gale's condition;
- 12 l. Defendants failed to obtain a proper medical opinion regarding Mrs.
- 13 Gale's condition;
- 14 m. Defendants failed to utilize "Telemedicine" and other resources on the
- 15 vessel to properly assess Mrs. Gale's condition;
- 16 n. Defendants failed to develop and institute adequate procedures and
- 17 policies to address Mrs. Gale's medical situation;
- 18 o. Defendants provided medical opinions and/or advice when they were
- 19 not properly qualified and lacked proper licenses;
- 20 p. Defendants failed to determine if Rand Memorial Hospital was capable
- 21 of treating Mrs. Gale;
- 22 q. Defendants failed to determine or inquire if Rand Memorial Hospital
- 23 was equipped with functioning CT Scan machine to properly diagnose
- 24 Mrs. Gale;
- 25 r. Defendants failed to determine or inquire if Rand Memorial Hospital
- 26 had proper medical specialists, such as neurosurgeons, capable of
- 27 treating Mrs. Gale;
- 28 s. Defendants failed by sending Mrs. Gale to a geographically farther
- t. Defendants failed to ascertain, inquire, or ensure that Mrs. Gale could
- be transferred from the Bahamas to the United States expeditiously

1 should she be unable to be treated at Rand Memorial Hospital;

2 u. Defendants failed to ascertain, inquire, or plan for the event that the
3 airport in the Bahamas would be closed overnight, resulting in further
4 excess and unreasonable delay to Mrs. Gale;

5 v. Defendants failed to appreciate the severity of Mrs. Gale's worsening
6 condition;

7 w. Defendants failed to perform any procedure to Mrs. Gale's medical
8 benefit;

9 x. Defendants failed to properly advise Mrs. Gale's family of her urgent
10 condition;

11 y. Defendants failed to properly advise Mrs. Gale's family of her transfer
12 options;

13 z. Defendants failed to properly advise Mrs. Gale's family of her medical
14 disembarkation options;

15 aa. Defendants failed to receive informed consent to transfer Mrs. Gale to
16 Rand rather than a comprehensive stroke center;

17 bb. Defendants failed to properly ascertain sufficient information to
18 determine where Mrs. Gale should be transferred;

19 cc. Defendants deviated from the standard of care for treating patients in
20 Plaintiff's condition.

21 55. Defendants knew or reasonably should have known about these conditions and
22 failures, but failed to correct them prior to the incident that injured Plaintiff. These conditions and
23 failures were longstanding and obvious to Defendants. Defendants are aware that passengers may
24 suffer from life threatening conditions such as stroke, and are aware of the urgent need to air evacuate
25 such patients to competent medical centers capable of providing treatment.

26 56. As a direct and proximate result of Defendants breaching its duty to Mrs. Gale, she has
27 been left with permanent devastating cognitive and neurological deficits. If Mrs. Gale had received
28 the appropriate care and treatment by being timely evacuated from the ship, she would not have

1 suffered such devastating injuries to her brain and body.

2 57. Defendants are liable for punitive damages because they breached their duty to Mrs.
3 Gale by conducting themselves in a wanton, willful and/or outrageous manner. Mrs. Gale's
4 devastating, irreversible injury could have been prevented by timely and appropriate action. Instead,
5 she was delayed by Defendants in obtaining the prompt medical care and treatment that she
6 desperately needed.

8 WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment against the
9 Defendants for compensatory damages, punitive damages, interest, court costs, and all other relief
10 recoverable under law or as this Court deems just and proper.

12 V. COUNT II – NEGLIGENCE OF NON-MEDICAL PERSONNEL

13 (Vicarious Liability Based Upon Actual Agency / *Respondeat Superior*)

14 Plaintiff re-alleges and incorporates by reference paragraphs 1 – 51 of this Complaint.

15 58. In light of Defendants' experience and familiarity with the demographics of the
16 passengers on its cruises, the onboard and offshore recreational activities taking place on its cruises,
17 the foreign destinations visited on its cruises, and the illnesses and emergencies experienced by past
18 cruise passengers, it was reasonably foreseeable to Defendants that the MS *Zuiderdam* would have
19 passengers similar in age to Plaintiff, and passengers with common illnesses and emergencies such as
20 Plaintiff's condition. Likewise, it was reasonably foreseeable that such passengers would require
21 proper examination, evaluation, treatment, and evacuation.

24 59. Defendants, through its non-medical personnel, including its officers, directors,
25 employees, agents, servants and/or persons otherwise authorized to act on behalf of Defendants, both
26 on board the MS *Zuiderdam* and located at Defendants' shore-side offices, owed Plaintiff the duty of
27 exercising reasonable care under the circumstances. In particular, as Plaintiff suffered a stroke
28

1 onboard the MS *Zuiderdam* and was taken to the ship's medical center, Defendants owed Plaintiff the
 2 duty of protecting her from injury relating to her emergent condition, and of exercising reasonable
 3 care to furnish such aid and assistance as ordinarily prudent persons would render under similar
 4 circumstances.
 5

6 60. Defendants, through the negligence of its non-medical personnel, breached its duty to
 7 Plaintiff to exercise reasonable care to furnish such aid and assistance as ordinarily prudent persons
 8 would render under similar circumstances. Defendants breached its duty in one or more of the
 9 following ways:
 10

- 11 a. Defendants failed to properly assess the condition of Mrs. Gale;
- 12 b. Defendants failed to timely diagnose Mrs. Gale;
- 13 c. Defendants failed to properly treat Mrs. Gale;
- 14 d. Defendants failed to perform or arrange for appropriate diagnostics
- 15 testing given Mrs. Gale's condition;
- 16 e. Defendants failed to obtain consultations with appropriate specialists;
- 17 f. Defendants failed to properly monitor Mrs. Gale;
- 18 g. Defendants failed to air-evacuate Mrs. Gale from the ship so that
- 19 she could promptly receive treatment;
- 20 h. Defendants failed to timely divert the ship back to port in the United
- 21 States so that Mrs. Gale could promptly receive treatment;
- 22 i. Defendants failed to evacuate Mrs. Gale by speed boat back to the
- 23 United States;
- 24 j. Defendants failed to contact the United States Coast Guard regarding
- 25 the need for an air evacuation;
- 26 k. Defendants failed to properly consult qualified shore-based personnel
- 27 regarding Mrs. Gale's condition;
- 28 l. Defendants failed to obtain a proper medical opinion regarding Mrs.
 Gale's condition;

- m. Defendants failed to utilize “Telemedicine” and other resources on the vessel to properly assess Mrs. Gale’s condition;
- n. Defendants failed to develop and institute adequate procedures and policies to address Mrs. Gale’s medical situation;
- o. Defendants provided medical opinions and/or advice when they were not properly qualified and lacked proper licenses;
- p. Defendants failed to determine if Rand Memorial Hospital was capable of treating Mrs. Gale;
- q. Defendants failed to determine or inquire if Rand Memorial Hospital was equipped with functioning CT Scan machine to properly diagnose Mrs. Gale;
- r. Defendants failed to determine or inquire if Rand Memorial Hospital had proper medical specialists, such as neurosurgeons, capable of treating Mrs. Gale;
- s. Defendants failed by sending Mrs. Gale to a geographically farther location than the vessel from a medical center capable and equipped to treat her;
- t. Defendants failed to ascertain, inquire, or ensure that Mrs. Gale could be transferred from the Bahamas to the United States expeditiously should she be unable to be treated at Rand Memorial Hospital;
- u. Defendants failed to ascertain, inquire, or plan for the event that the airport in the Bahamas would be closed overnight, resulting in further excess and unreasonable delay to Mrs. Gale;
- v. Defendants failed to appreciate the severity of Mrs. Gale’s worsening condition;
- w. Defendants failed to perform any procedure to Mrs. Gale’s medical benefit;
- x. Defendants failed to properly advise Mrs. Gale’s family of her urgent condition;
- y. Defendants failed to properly advise Mrs. Gale’s family of her transfer options;

- z. Defendants failed to properly advise Mrs. Gale's family of her medical disembarkation options;
- aa. Defendants failed to receive informed consent to transfer Mrs. Gale to Rand rather than a comprehensive stroke center;
- bb. Defendants failed to properly ascertain sufficient information to determine where Mrs. Gale should be transferred;
- cc. Defendants deviated from the standard of care for treating patients in Plaintiff's condition.

61. Defendants, through its non-medical personnel, knew or reasonably should have known about these conditions and failures, but failed to correct them prior to the incident that injured Plaintiff. These conditions and failures were longstanding and obvious to Defendants.

62. As a direct and proximate result of Defendants breaching its duty to Mrs. Gale, she has been left with permanent devastating cognitive and neurological deficits. If Mrs. Gale had received the appropriate care and treatment by being timely evacuated from the ship, she would not have suffered such devastating injuries to her brain and body.

63. Defendants are liable for punitive damages because they breached their duty to Mrs. Gale by conducting themselves in a wanton, willful and/or outrageous manner. Mrs. Gale's devastating, irreversible injury could have been prevented by timely and appropriate action. Instead, she was delayed by Defendants in obtaining the prompt medical care and treatment that she desperately needed.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment against the Defendants for compensatory damages, punitive damages, interest, court costs, and all other relief recoverable under law or as this Court deems just and proper.

VI. COUNT III – NEGLIGENCE OF MEDICAL PERSONNEL
(Vicarious Liability Based Upon Actual Agency / *Respondeat Superior*)

1 Plaintiff re-alleges and incorporates by reference paragraphs 1 – 51 of this Complaint.

2 64. Defendants' medical personnel, including the doctors and nurses on board the MS
3 *Zuiderdam*, were the employees, agents, servants and/or persons otherwise authorized to act on
4 behalf of Defendants. Thus, Defendants is vicariously liable for the acts and/or omissions of its
5 medical personnel.
6

7 65. Defendants acknowledged that its medical personnel, including the doctors and nurses
8 onboard the MS *Zuiderdam*, would act for it, and the medical personnel manifested an acceptance of
9 the undertaking. For example: (1) Defendants directly paid the medical personnel for their work in
10 the medical center onboard the MS *Zuiderdam*; (2) the medical center on board the MS *Zuiderdam*
11 was created, owned and operated by Defendants; (3) the medical personnel on board the MS
12 *Zuiderdam* worked at what Defendants describes in its advertising as Defendants' medical center; and
13 (4) Defendants knowingly provided, and the medical personnel on board the MS *Zuiderdam*
14 knowingly wore, uniforms bearing Defendants' name and logo; the ship physician on the MS
15 *Zuiderdam* is considered and titled an officer of Defendants' cruise line.
16
17

18 66. Defendants' medical personnel, including the doctors and nurses on board the MS
19 *Zuiderdam*, were subject to the right of control by Defendants, and were acting within the scope of
20 their employment or agency. For example: (1) the medical personnel were employed by Defendants;
21 (2) the medical personnel were hired to work in a medical center on board the MS *Zuiderdam* that
22 was created, owned and operated by Defendants; (3) the medical personnel were paid salaries and/or
23 other employment related benefits directly by Defendants; (4) the medical personnel on board the MS
24 *Zuiderdam* were considered to be members of the ship's crew; (5) the medical personnel were
25 required to wear uniforms or other insignia furnished by Defendants; (6) Defendants put the medical
26 personnel on board the MS *Zuiderdam* under the command of the ship's superior officers, and they
27
28

1 were subject to the ship's discipline and the master's orders; (7) Defendants had the right to fire its
 2 medical personnel; (8) Defendants directly billed the Plaintiff and other passengers onboard the MS
 3 *Zuiderdam* for services rendered by its medical personnel and/or use of the onboard medical center,
 4 medical equipment and medical supplies; and (9) the medical personnel on board the MS *Zuiderdam*
 5 were subject to the control of Defendants' shore-side medical department located in Seattle,
 6 Washington at Fleet Medical Operations.
 7

8 67. Defendants, through its medical personnel, owed Mrs. Gale the duty of exercising
 9 reasonable care under the circumstances. In particular, as Mrs. Gale suffered a stroke on board the
 10 MS *Zuiderdam* and was taken to the ship's medical center, Defendants owed Mrs. Gale the duty of
 11 protecting her from injury relating to her emergent condition, and of exercising reasonable care to
 12 furnish such aid and assistance as ordinarily prudent persons would render under similar
 13 circumstances.
 14
 15

16 68. Defendants, through its medical personnel, breached its duty of protecting Mrs. Gale
 17 from injury relating to her emergent condition, and of exercising reasonable care to furnish such
 18 aid and assistance as ordinarily prudent persons would render under similar circumstances.
 19 Defendants, through its medical personnel, breached its duty in one or more of the following ways:
 20

- 21 a. Defendants failed to properly assess the condition of Mrs. Gale;
- 22 b. Defendants failed to timely diagnose Mrs. Gale;
- 23 c. Defendants failed to properly treat Mrs. Gale;
- 24 d. Defendants failed to perform or arrange for appropriate diagnostics
- 25 testing given Mrs. Gale's condition;
- 26 e. Defendants failed to obtain consultations with appropriate specialists;
- 27 f. Defendants failed to properly monitor Mrs. Gale;
- 28 g. Defendants failed to air-evacuate Mrs. Gale from the ship so that

she could promptly receive treatment;

h. Defendants failed to timely divert the ship back to port in the United States so that Mrs. Gale could promptly receive treatment;

i. Defendants failed to evacuate Mrs. Gale by speed boat back to the United States;

j. Defendants failed to contact the United States Coast Guard regarding the need for an air evacuation;

k. Defendants failed to properly consult qualified shore-based personnel regarding Mrs. Gale's condition;

l. Defendants failed to obtain a proper medical opinion regarding Mrs. Gale's condition;

m. Defendants failed to utilize "Telemedicine" and other resources on the vessel to properly assess Mrs. Gale's condition;

n. Defendants failed to develop and institute adequate procedures and policies to address Mrs. Gale's medical situation;

o. Defendants provided medical opinions and/or advice when they were not properly qualified and lacked proper licenses;

p. Defendants failed to determine if Rand Memorial Hospital was capable of treating Mrs. Gale;

q. Defendants failed to determine or inquire if Rand Memorial Hospital was equipped with functioning CT Scan machine to properly diagnose Mrs. Gale;

r. Defendants failed to determine or inquire if Rand Memorial Hospital had proper medical specialists, such as neurosurgeons, capable of treating Mrs. Gale;

s. Defendants failed by sending Mrs. Gale to a geographically farther location than the vessel from a medical center capable and equipped to treat her;

t. Defendants failed to ascertain, inquire, or ensure that Mrs. Gale could be transferred from the Bahamas to the United States expeditiously should she be unable to be treated at Rand Memorial Hospital;

u. Defendants failed to ascertain, inquire, or plan for the event that the

airport in the Bahamas would be closed overnight, resulting in further excess and unreasonable delay to Mrs. Gale;

v. Defendants failed to appreciate the severity of Mrs. Gale's worsening condition;

w. Defendants failed to perform any procedure to Mrs. Gale's medical benefit;

x. Defendants failed to properly advise Mrs. Gale's family of her urgent condition;

y. Defendants failed to properly advise Mrs. Gale's family of her transfer options;

z. Defendants failed to properly advise Mrs. Gale's family of her medical disembarkation options;

aa. Defendants failed to receive informed consent to transfer Mrs. Gale to Rand rather than a comprehensive stroke center;

bb. Defendants failed to properly ascertain sufficient information to determine where Mrs. Gale should be transferred;

cc. Defendants deviated from the standard of care for treating patients in Plaintiff's condition.

69. As a direct Defendants, through its medical personnel, knew or reasonably should have known about these conditions and failures, but failed to correct them prior to the incident that injured Plaintiff. These conditions and failures were longstanding and obvious to Defendants.

70. As a direct and proximate result of Defendants breaching its duty to Mrs. Gale, she has been left with permanent devastating cognitive and neurological deficits. If Mrs. Gale had received the appropriate care and treatment by being timely air evacuated from the ship, she would not have suffered such devastating injuries to her brain and body.

71. Defendants are liable for punitive damages because they breached their duty to Mrs. Gale by conducting themselves in a wanton, willful and/or outrageous manner. Mrs. Gale's devastating, irreversible injury could have been prevented by timely and appropriate action. Instead,

1 she was delayed by Defendants in obtaining the prompt medical care and treatment that she
 2 desperately needed.

3 WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment against the
 4 Defendants for compensatory damages, punitive damages, interest, court costs, and all other relief
 5 recoverable under law or as this Court deems just and proper.
 6

7 **COUNT IV – NEGLIGENCE OF MEDICAL PERSONNEL**

8 **(Vicarious Liability Based Upon Apparent Agency)**

9 Plaintiff re-alleges and incorporates by reference paragraphs 1 – 51 of this Complaint.
 10

11 72. Defendants' medical personnel, including the doctors and nurses on board the MS
 12 *Zuiderdam*, were the apparent employees, agents, servants and/or persons otherwise authorized to act
 13 on behalf of Defendants. Thus, Defendants is vicariously liable for the acts and/or omissions of its
 14 medical personnel.
 15

16 73. Defendants made representations to the Plaintiff and other passengers onboard the MS
 17 *Zuiderdam* that the ship's medical personnel were the employees, agents, servants and/or persons
 18 otherwise authorized to act for Defendants' benefit. For example: (1) Defendants promoted the
 19 medical personnel on board the MS *Zuiderdam* and represented them as being Defendants employees
 20 through brochures, internet advertising and/or signs, documents, and uniforms on the ship; (2)
 21 Defendants promoted the medical center on board the MS *Zuiderdam* and described it in proprietary
 22 language; (3) the medical personnel on board the MS *Zuiderdam* worked in the medical center that
 23 Defendants promoted and described in proprietary language; (4) Defendants directly bill the Plaintiff
 24 and other passengers onboard the MS *Zuiderdam* for services rendered by the onboard medical
 25 personnel and/or use of the onboard medical center, medical equipment and medical supplies; (5) the
 26 medical personnel on board the MS *Zuiderdam* were required to wear uniforms or other insignia
 27
 28

1 furnished by Defendants; (6) Defendants held out the medical personnel on board the MS *Zuiderdam*
2 as members of the ship's crew; and (7) the medical personnel on board the MS *Zuiderdam* spoke and
3 acted as though they were employed by Defendants. Defendants had knowledge of such
4 representations but never took any action to indicate otherwise.
5

6 74. Defendants' representations to the Plaintiff and other passengers onboard the MS
7 *Zuiderdam* caused them to reasonably believe that the ship's medical personnel were the employees,
8 agents, servants and/or persons otherwise authorized to act for Defendants' benefit. Indeed,
9 Defendants actually intended that the Plaintiff and other passengers onboard the MS *Zuiderdam* have
10 such perception or belief because it is a marketing tool to induce passengers such as the Plaintiff to
11 purchase cruises on Defendants' ships in the first place, to feel secure while on board Defendants'
12 ships and/or to be a repeat customer.
13

14 75. Defendants' representations to the Plaintiff and other passengers onboard the MS
15 *Zuiderdam* induced their detrimental, justifiable reliance upon the appearance of agency. For
16 example, Mrs. Gale justifiably relied upon Defendants' representations in deciding to purchase a
17 cruise on the MS *Zuiderdam*.
18

19 76. Defendants, through its medical personnel, owed Mrs. Gale the duty of exercising
20 reasonable care under the circumstances. In particular, as Ms. Gale suffered a stroke onboard the MS
21 *Zuiderdam* and was taken to the ship's medical center, Defendants owed Mrs. Gale the duty of
22 protecting her from injury relating to her emergent condition, and of exercising reasonable care to
23 furnish such aid and assistance as ordinarily prudent persons would render under similar
24 circumstances.
25
26

27 77. Defendants, through its medical personnel, breached its duty of protecting Plaintiff
28 from injury relating to her emergent condition, and of exercising reasonable care to furnish such aid

1 and assistance as ordinarily prudent persons would render under similar circumstances. Defendants,
2 through its medical personnel, breached its duty in one or more of the following ways:

- 3 a. Defendants failed to properly assess the condition of Mrs. Gale;
- 4 b. Defendants failed to timely diagnose Mrs. Gale;
- 5 c. Defendants failed to properly treat Mrs. Gale;
- 6 d. Defendants failed to perform or arrange for appropriate diagnostics
- 7 testing given Mrs. Gale's condition;
- 8 e. Defendants failed to obtain consultations with appropriate specialists;
- 9 f. Defendants failed to properly monitor Mrs. Gale;
- 10 g. Defendants failed to air-evacuate Mrs. Gale from the ship so that
- 11 she could promptly receive treatment;
- 12 h. Defendants failed to timely divert the ship back to port in the United
- 13 States so that Mrs. Gale could promptly receive treatment;
- 14 i. Defendants failed to evacuate Mrs. Gale by speed boat back to the
- 15 United States;
- 16 j. Defendants failed to contact the United States Coast Guard
- 17 regarding the need for an air evacuation;
- 18 k. Defendants failed to properly consult qualified shore-based personnel
- 19 regarding Mrs. Gale's condition;
- 20 l. Defendants failed to obtain a proper medical opinion regarding Mrs.
- 21 Gale's condition;
- 22 m. Defendants failed to utilize "Telemedicine" and other resources on the
- 23 vessel to properly assess Mrs. Gale's condition;
- 24 n. Defendants failed to develop and institute adequate procedures and
- 25 policies to address Mrs. Gale's medical situation;
- 26 o. Defendants provided medical opinions and/or advice when they were
- 27 not properly qualified and lacked proper licenses;
- 28 p. Defendants failed to determine if Rand Memorial Hospital was capable
- of treating Mrs. Gale;

- 1 q. Defendants failed to determine or inquire if Rand Memorial Hospital
- 2 was equipped with functioning CT Scan machine to properly diagnose
- 3 Mrs. Gale;
- 4 r. Defendants failed to determine or inquire if Rand Memorial Hospital
- 5 had proper medical specialists, such as neurosurgeons, capable of
- 6 treating Mrs. Gale;
- 7 s. Defendants failed by sending Mrs. Gale to a geographically farther
- 8 location than the vessel from a medical center capable and equipped to
- 9 treat her;
- 10 t. Defendants failed to ascertain, inquire, or ensure that Mrs. Gale could
- 11 be transferred from the Bahamas to the United States expeditiously
- 12 should she be unable to be treated at Rand Memorial Hospital;
- 13 u. Defendants failed to ascertain, inquire, or plan for the event that the
- 14 airport in the Bahamas would be closed overnight, resulting in further
- 15 excess and unreasonable delay to Mrs. Gale;
- 16 v. Defendants failed to appreciate the severity of Mrs. Gale's worsening
- 17 condition;
- 18 w. Defendants failed to perform any procedure to Mrs. Gale's medical
- 19 benefit;
- 20 x. Defendants failed to properly advise Mrs. Gale's family of her urgent
- 21 condition;
- 22 y. Defendants failed to properly advise Mrs. Gale's family of her transfer
- 23 options;
- 24 z. Defendants failed to properly advise Mrs. Gale's family of her medical
- 25 disembarkation options;
- 26 aa. Defendants failed to receive informed consent to transfer Mrs. Gale to
- 27 Rand rather than a comprehensive stroke center;
- 28 bb. Defendants failed to properly ascertain sufficient information to
- cc. Defendants deviated from the standard of care for treating patients in
- Plaintiff's condition.

78. As a direct Defendants, through its medical personnel, knew or reasonably should

1 have known about these conditions and failures, but failed to correct them prior to the incident that
 2 injured Plaintiff. These conditions and failures were longstanding and obvious to Defendants.

3 79. As a direct and proximate result of Defendants breaching its duty to Mrs. Gale, she has
 4 been left with permanent devastating cognitive and neurological deficits. If Mrs. Gale had received
 5 the appropriate care and treatment by being timely air evacuated from the ship, she would not have
 6 suffered such devastating injuries to her brain and body.

8 80. Defendants are liable for punitive damages because they breached their duty to Mrs.
 9 Gale by conducting themselves in a wanton, willful and/or outrageous manner. Mrs. Gale's
 10 devastating, irreversible injury could have been prevented by timely and appropriate action. Instead,
 11 she was delayed by Defendants in obtaining the prompt medical care and treatment that she
 12 desperately needed.

14 WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment against the
 15 Defendants for compensatory damages, punitive damages, interest, court costs, and all other relief
 16 recoverable under law or as this Court deems just and proper.

18 COUNT V – NEGLIGENCE / HIRING AND RETENTION

19 Plaintiff re-alleges and incorporates by reference paragraphs 1 – 51 of this Complaint.

20 81. In light of Defendants' experience and familiarity with the demographics of the
 21 passengers on its cruises, the onboard and offshore recreational activities taking place on its cruises,
 22 the foreign destinations visited on its cruises, and the illnesses and emergencies experienced by past
 23 cruise passengers, it was reasonably foreseeable to Defendants that the MS *Zuiderdam* would have
 24 passengers similar in age to the Plaintiff, and passengers with common illnesses and emergencies
 25 such as the Plaintiff's condition. Likewise, it was reasonably foreseeable that such passengers would
 26 require proper examination, evaluation, treatment, and evacuation.
 27
 28

1 82. Defendants owed Plaintiff the duty of exercising reasonable care to employ competent
2 and fit medical personnel, including competent and fit doctors and nurses on board the MS
3 *Zuiderdam*. However, Defendants' medical personnel, including the doctors and nurses on board the
4 MS *Zuiderdam*, were incompetent or unfit to perform the requisite examination, evaluation and
5 treatment for passengers like the Mrs. Gale, and Defendants knew or reasonably should have known
6 that they were incompetent or unfit to do so.
7

8 83. Defendants breached its duty by hiring incompetent and unfit medical personnel. For
9 example, Defendants failed to conduct an appropriate background investigation to determine if they
10 were qualified by training and/or experience, and if they were capable of conducting an appropriate
11 examination and/or evaluation for purposes of treatment or referral for appropriate treatment to a
12 shore side facility. An appropriate investigation by Defendants would have revealed the
13 incompetence or unfitness of its medical personnel to examine, evaluate, treat or refer to an
14 appropriate shore side facility or physician to treat conditions such as those Mrs. Gale suffered from.
15

16 84. Defendants breached its duty by hiring and then retaining incompetent and unfit
17 medical personnel. For example, Defendants became aware or should have become aware of
18 problems with its medical personnel indicating incompetence and unfitness, but Defendants failed to
19 take appropriate action such as investigating the problems with its medical personnel, discharging its
20 medical personnel or otherwise remedying the problems by providing appropriate training and other
21 resources. It was unreasonable for Defendants to hire and retain its medical personnel in light of the
22 information it knew or should have known.
23

24 85. As a direct and proximate result of the incompetence or unfitness of Defendants'
25 medical personnel, Mrs. Gale suffered severe injuries resulting in her wrongful death. If the medical
26 personnel had been competent and fit, Mrs. Gale would have received appropriate care and treatment
27
28

1 or been timely evacuated from the ship so that she would not have suffered such devastating,
2 irreversible injuries to her brain and body.

3 86. Defendants are liable for punitive damages because they breached their duty to Mrs.
4 Gale by conducting themselves in a wanton, willful and/or outrageous manner. Mrs. Gale's
5 devastating, irreversible injury could have been prevented by timely and appropriate action. Instead,
6 she was delayed by Defendants in obtaining the prompt medical care and treatment that she
7 desperately needed.
8

9 WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment against the
10 Defendants for compensatory damages, punitive damages, interest, court costs, and all other relief
11 recoverable under law or as this Court deems just and proper.
12

13 DEMAND FOR JURY TRIAL

14 Plaintiff demands a trial by jury on all claims set forth herein.
15

16 RESPECTFULLY SUBMITTED this 29 day of January, 2019.
17

18 By: /s/ Edwin S. Budge
19 Edwin S. Budge (WSBA # 24182)
20 ed@budgeandheipt.com
21 **BUDGE and HEIPT, PLLC**
22 705 Second Ave., Suite 910
23 Seattle, WA 98104
24 Telephone: 206.624.3060
25 Facsimile: 206-621-7323

26 **LEESFIELD SCOLARO, P.A.**
27 Thomas Scolaro (FBN 178276)
28 scolaro@leesfield.com
(Pro Hac Vice Admission Request Pending)
Thomas D. Graham (FBN 89043)
graham@leesfield.com
(Pro Hac Vice Admission Request Pending)

2350 South Dixie Highway
Miami, Florida 33133
Telephone: (305) 854-4900
Facsimile: (305) 854-8266

Attorneys for Plaintiffs

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