

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**CASE NO: 1:22-cv-22962-AHS**

**GRACE ANGELO and KERSTIN THOMPSON,  
on behalf of the NCLC 401(k) Plan,  
themselves and all others similarly situated,**

**Plaintiffs,**

**v.**

**NCL CORPORATION LTD, and  
NCL (BAHAMAS) LTD., A BERMUDA  
COMPANY,**

**Defendants.**

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**DECLARATION OF AMANDA E. HEYSTEK**

I, Amanda E. Heystek, declare under penalty of perjury as follows:

1. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I understand that this declaration under oath may be filed in the above captioned action.

2. I am an attorney at Wenzel Fenton & Cabassa, P.A., and counsel in the above-styled case.

3. I have been a member of the Florida Bar since June of 2000. I have a J.D. from Southern Illinois University School of Law, and two Bachelor's degrees from Southern Illinois University.

4. I've practiced law as an Assistant Public Defender at the Sixth Circuit Public Defenders Office and as a solo practitioner from my own firm specializing in family law in Jacksonville, Florida. I later joined the non-profit Disability Rights Florida, Inc., where I practiced

exclusively in the field of civil rights for people with disabilities for the next decade, focusing on securing injunctive relief for clients on an individual and systemic basis. The substantive work I provided at Disability Rights Florida, Inc., involved multi-plaintiff litigation specifically seeking injunctive relief.

5. In September 2019, I joined the law firm of Wenzel Fenton Cabassa, P.A., and have provided legal support to Brandon J. Hill and Luis A. Cabassa in their class action work.

6. I am admitted in the United States District Courts for the Northern, Middle, and Southern District Courts of Florida, and the United States Court of Appeals for the Eleventh Circuit.

7. I have represented employees in all stages of litigation in federal and state courts throughout Florida. In the federal districts of Florida alone I have served as co-counsel or lead counsel in 100+ federal cases.

8. I possess the requisite experience necessary to serve as class counsel in this case.

9. I have been retained by Plaintiff, Kristin Thompson, as counsel in the instant case along with lead counsel, Brandon J. Hill, and attorney Luis A. Cabassa. The case was litigated thoroughly and the decision to settle was well-informed.

10. Before filing this case, Plaintiff's counsel conducted a significant, in-depth analysis into Plaintiff's claims and Defendants' Plan.

11. By way of specific example, on July 19, 2022, Plaintiff's counsel sent a letter addressed to NCL "Plan Administrator" which requested certain Plan documents and submitted an administrative claim pursuant to the Plan's mandatory administrative claims review process.

12. On August 25, 2022, NCL acknowledged receipt of the claim notice, notified Plaintiff's counsel that the claim notice had been forwarded to the NCL Investment Committee

(“Committee”) for review, and produced documents in response to Plaintiff’s document requests. On October 14, 2022, the Committee notified Plaintiff of its decision to deny the administrative claim, and the reasons for its decision.

13. Plaintiff’s counsel submitted an appeal on November 7, 2022, and the Committee denied the appeal on December 29, 2022.

14. During the course of the administrative process, NCL produced over 3,800 pages of documents relevant to Plaintiff’s claims, including (1) the Plan’s governing documents and trust agreements, (2) the Plan’s mandatory fee-related disclosures, (3) a full set of the Committee’s minutes dating back to 2016, along with presentations and reports shared with the Committee at those meetings, (4) the Plan’s contracts with Prudential, (5) all versions of the Plan’s Investment Policy Statement during the putative class period, (6) documents relating to the Plan’s recordkeeper requests for proposal in 2018 and 2022, and (7) Plaintiff’s quarterly account statement.

15. On August 25, 2022, Defendants’ Plan Administrator responded to Plaintiff’s counsel’s 29 U.S.C. § 1024(b)(4) request for information by providing approximately 3,800 pages of Plan-related documents. Those documents, in turn, assisted Plaintiff’s counsel with their analysis of the claims in this case, and the ERISA violations that formed the basis of this lawsuit.

16. On September 16, 2022, the Original Named Plaintiff, Grace Angelo, filed a Complaint in the United States District Court for the Southern District of Florida, Case No. 1:22-cv-22962-AHS. (ECF No. 1.) She brought this action under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. (“ERISA”), alleging that Defendants breached their fiduciary duties relating to the management, operation, and administration of the Plan, and

seeking to recover all alleged losses resulting from each breach of duty under 29 U.S.C. § 1109(a), and other equitable relief. (*See* ECF No. 1.)

17. On January 9, 2023, Defendants moved to dismiss the Complaint for failure to state a claim under Rule 12(b)(6) and for lack of standing, pursuant Rule 12(b)(1). (ECF No. 9.) Defendants argued, among other things, that the Complaint failed to allege plausibly that Defendants breached their duty of loyalty, that the Plan paid excessive administrative/recordkeeping fees, or that the Defendants' process for evaluating investment options was deficient. (*Id.*) Plaintiff filed her Opposition on January 23, 2023 (ECF No. 17), along with supporting documentation. Additionally, Plaintiff filed a Motion to Strike Extrinsic Evidence Attached to Defendants' Motion to Dismiss. (ECF No. 18). The Defendants filed a Reply in support of its Motion to Dismiss (ECF No. 19) on January 30, 2023. (ECF No. 19).

18. Next, on February 7, 2023, the Parties filed a Joint Motion to Stay All Deadlines and Proceedings Pending Completion of Class-Wide Mediation. (ECF No. 22). That Motion was granted by Order dated February 7, 2023. (ECF No. 23). At that point, the case was stayed to allow the Parties sufficient time to mediate this case on a class basis.

19. On April 3, 2023, the Parties and their respective counsel engaged in a full-day videoconference mediation with Robert Meyer, Esq. of JAMS, who has extensive experience handling ERISA fiduciary-breach lawsuits similar to this one. After extensive arms-length negotiations—which lasted into evening—the parties reached a Settlement, the terms of which are memorialized in the Settlement Agreement attached hereto for the Court's review.

20. In advance of the mediation, the parties submitted mediation briefs—which included damage analyses conducted by Plaintiff's expert—along with and settlement proposals.

21. The parties also held a pre-mediation telephone conference with Bob Meyer of JAMS, during which the parties exchanged additional information that helped ensure mediation would be productive. The mediation was successful, resulting in the Parties reaching agreement on the principal terms of the settlement, memorialized in a fully-executed term sheet, which was finalized during the evening April 3, 2023.

22. During the months that followed, the parties negotiated the detailed terms of the Settlement Agreement and exhibits thereto, which are provided to the Court in support of this Motion.

23. As required by Prohibited Transaction Class Exemption 2003-39, 68 FR 75632 (Dec. 31, 2003), as amended 75 FR 33830 (June 15, 2010), the Settlement Agreement required that Parties select an Independent Fiduciary to review the Settlement and provide, if the Independent Fiduciary concludes that it is appropriate, the authorization required by that Exemption on behalf of the Plan.

24. The Plan's sponsor, NCL (Bahamas) Ltd. ("NCL"), engaged Gallagher Fiduciary Advisors, LLC ("Gallagher"), to serve in this capacity, a nationally-respected independent fiduciary. Following a thorough and objective review to ensure the Settlement's fairness to the proposed Settlement Class, Gallagher made the following determination: "[a]fter a thorough review of the pleadings and interviews with the parties' counsel and the mediator, Gallagher has concluded that an arm's-length Settlement was achieved after hard-fought negotiations between the parties and is reasonable given the uncertainties of a larger recovery for the Class at trial and the value of claims foregone." Gallagher also concluded that the attorneys' fees sought by Plaintiffs' counsel is "reasonable in light of the effort expended by Plaintiffs' counsel in the litigation."

25. In my opinion, the \$615,000.00 recovery falls well within the range of reasonableness in this case, as it is a substantial percentage of the estimated recovery Plaintiffs' counsel estimated could be recovered if successful in litigating the case through trial.

26. I support the settlement reached by the Parties in this case as fair, reasonable, and adequate, and ask that the Court approve it.

27. Additionally, my firm has expended a total of \$10,365.00 litigating this case, including \$402 in filing fees; \$25.50 in postage; \$200 paid for McKay pro hac vice motion; \$4,737.50 WFC firm portion of mediation invoice; and \$5,000 for expert witness fees.

*Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.*

Dated this 18<sup>th</sup> day of December, 2023.

/s/ Amanda E. Heystek  
**AMANDA E. HEYSTEK**