

Carnival Kickback Suit Headed To 11th Circ. After Dismissal

By [Sarah Martinson](#)

Law360 (April 1, 2019, 6:39 PM EDT) -- A Florida federal judge has dismissed a suit by a group of consumers accusing Carnival Cruises of concealing kickbacks it reaped from travel insurance purchases, opening the door for the consumers to appeal her earlier arbitration order to the Eleventh Circuit.

In a four-page order issued Friday, U.S. District Judge Kathleen M. Williams said she agreed with the consumers that their case needed to be dismissed for them to appeal her arbitration order because the appellate court would not review the case if it remained stayed.

Judge Williams said that by allowing the consumers to appeal her order, the Eleventh Circuit would have an opportunity to instruct federal courts on how to determine if a claim is covered by an arbitration clause.

"Further, [consumers] claim that lifting the stay is in the public interest because it will allow the Eleventh Circuit to clarify the proper test for determining whether a claim falls within the scope of a broad arbitration provision, which is unsettled in this circuit. The court agrees," the judge said in the order.

The consumers told Judge Williams in their Jan. 30 [motion to lift her previous stay](#) and dismiss the case that the Eleventh Circuit had explained in a 2014 decision in *Martinez v. Carnival Corp.* that it doesn't have jurisdiction over an order compelling arbitration unless that order is final, which couldn't happen if the case remained stayed.

"Based on *Martinez*, the fact that the court stayed the case may prevent the Eleventh Circuit from reviewing the arbitration order as a final order and thus may cause the Eleventh Circuit to require additional briefing on the jurisdiction issue, which will only delay this case," the consumers argued in their motion.

In the company's Feb. 8 response to the consumers' motion to lift the stay, Carnival [opposed their argument](#), countering that allowing an appeal on an arbitration order undermines the Federal Arbitration Act.

"Lifting the stay and dismissing the case frustrates the purpose of the FAA," Carnival said in its court filing. "An order compelling arbitration and staying the case is not appealable."

The consumers [filed their complaint](#) in August alleging that the cruise line received kickbacks from the sale of travel insurance policies and deceptively marketed a scheme that unfairly passed on the cost of inflated premiums to consumers.

They sought to certify a nationwide class of consumers who purchased Carnival travel insurance policies as part of a vacation package bundle and asked for injunctive relief, damages, attorney fees and pre- and post-judgment interest.

In their complaint, they brought claims under Florida's Deceptive and Unfair Trade Practices Act and the New Jersey Consumer Fraud Act.

Adam M. Moskowitz, the founding partner of The Moskowitz Law Firm and the lead counsel for the consumers, said in an email that they are pleased to be able to present their case to the Eleventh Circuit.

"We are extremely glad that Judge Williams agreed with us and granted our motion to lift the stay and dismiss the case, a motion that was strenuously opposed by Carnival, so that we can have the Eleventh Circuit Court of Appeal decide if all tens of thousands of proposed class members are required to bring individual arbitrations and/or individual small claim court actions, or instead can proceed with just this one national class action, that alleges the exact same issues for each and every passenger," Moskowitz said.

Counsel for Carnival declined to comment.

The consumers are represented by [Adam M. Moskowitz](#), [Howard M. Bushman](#), [Adam A. Schwartzbaum](#), and [Joseph M. Kaye](#) of [The Moskowitz Law Firm PLLC](#), [Andrew S. Friedman](#) and [Francis J. Balint Jr.](#) of [Bonnett Fairbourn Friedman & Balint PC](#), [Kimberly Lambert Adams](#) of [Levin Papantonio Thomas Mitchell Rafferty Proctor PA](#), and [William F. "Chip" Merlin Jr.](#) of [Merlin Law Group](#).

Carnival is represented by [Stuart H. Singer](#) and [Evan M. Ezray](#) of [Boies Schiller Flexner LLP](#).

The case is [James Wolfe et al. v. Carnival Corp.](#), case number [1:18-cv-23463](#), in the U.S. District Court for the Southern District of Florida.

--Additional reporting by [Joyce Hanson](#) and [Sophia Morris](#). Editing by [Jack Karp](#).