UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 1:20-cv-20013-JLK

TIMOTHY KEISER, Individually, and as Named Independent Executor of the Estate of SANDRA ANN CORBIN KEISER, et al.,

Plaintiffs,

v.

CARNIVAL CORPORATION and CARNIVAL CORPORATION d/b/a CARNIVAL CRUISE LINE,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT

THIS CAUSE is before the Court on Defendants Carnival Corporation and Carnival Corporation d/b/a Carnival Cruise Line's ("Carnival") Motion to Dismiss Plaintiffs' Amended Complaint, filed March 9, 2020 (ECF No. 12) (the "Motion"). The Court has also considered Plaintiffs' Response in Opposition, filed March 23, 2020 (ECF No. 13), and Carnival's Reply, filed May 14, 2020 (ECF No. 18).

I. BACKGROUND[1]

Plaintiffs bring this maritime wrongful death action against Carnival asserting claims for negligence based upon (1) an alleged failure to hire competent and skilled medical providers and (2) failure to warn. *See* Am. Compl., ECF No. 8. As alleged in the Amended Complaint, on or about September 14, 2019, Plaintiff Timothy Keiser and his wife Sandra Keiser boarded the *Carnival Vista* for a cruise vacation. *Id.* ¶ 4.1. The second port of call on the cruise was Belize,

[1] **At the motion to dismiss stage, the Court accepts the factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997).**

where Sandra Keiser participated in a snorkeling excursion booked through Carnival. *Id.* ¶ 4.3. "While on the excursion Sandra Keiser ingested water," and asked to be taken ashore. *Id.* ¶ 4.4. Once on shore, she began coughing up blood, foaming at the mouth, and ultimately collapsed onto the ground, and Plaintiffs allege that "none of the Carnival personnel or representatives who were present attempted to offer any aid." *Id.* ¶ 4.5. Plaintiffs allege that Ms. Keiser was taken to a hospital in Belize, where she ultimately died after having suffered severe pre-death mental anguish. *See id.* Plaintiffs then filed this action against Carnival seeking to recover damages on behalf of the Estate of Sandra Keiser, including mental anguish, medical expenses, and loss of earning capacity; and on behalf of Sandra Keiser's family members (Plaintiffs Timothy Keiser, Angela Marin, and Caryn Martinez), seeking damages for loss of companionship and guidance, mental anguish, loss of earning capacity, among others. *See id.* ¶¶ 6.2–6.5. Carnival now moves to dismiss the Amended Complaint for failure to state a claim. *See* Mot., ECF No. 12.

II. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To meet this standard, a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. A complaint must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555.

III. DISCUSSION

A. Nonpecuniary Damages Under DOHSA

Carnival first argues that this action is governed by the Death on the High Seas Act, 46 U.S.C. §§ 30301 *et seq.* ("DOHSA"), which bars recovery of nonpecuniary damages such as pain and suffering, mental anguish, and loss of companionship. *See* Mot. 3–7. In response, Plaintiffs argue that DOHSA is inapplicable because Ms. Keiser's death did not occur "on the high seas,"

but rather, the "death inducing injury occurred on land, i.e. *after* the snorkeling excursion." *See* Pls.' Resp. 7, ECF No. 13.

DOHSA was enacted to provide "a uniform and effective wrongful death remedy for survivors of persons killed on the high seas." *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 214 (1986). The Act applies "[w]hen the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States." 46 U.S.C. § 30302. "The Eleventh Circuit has consistently interpreted DOHSA as applying to maritime incidents occurring within the territorial waters of foreign states." *Ridley v. NCL (Bahamas) Ltd.*, 824 F. Supp. 2d 1355, 1359 (S.D. Fla. 2010) (King, J.) (listing cases). When DOHSA applies, the statute "limits a plaintiff's recovery to pecuniary damages only." *Id.* (citing *Dooley v. Korean Air Lines Co.*, 524 U.S. 116, 124 (1998)).

Here, the Court finds that, even in the light most favorable to Plaintiffs, the allegations show that Ms. Keiser's injury occurred during the snorkeling excursion in the territorial waters of Belize, thus falling within DOHSA's ambit. Indeed, the Amended Complaint specifically alleges that Ms. Keiser ingested water "while on the excursion," which Plaintiffs describe as "a common occurrence for individuals who are snorkeling." Am. Compl. ¶ 4.4. Although Plaintiffs argue that the "death inducing injury" occurred on land, the law is "clear that a cause of action under DOHSA accrues at the time and place where an allegedly wrongful act or omission was consummated in an actual injury, not at the point where previous or subsequent negligence actually occurred." *Moyer v. Rederi*, 645 F. Supp. 620, 627 (S.D. Fla. 1986) (Marcus, J.) (internal quotation marks omitted); *see also Motts v. M/V Green Wave,* 210 F.3d 565, 567 (5th Cir. 2000) ("DOHSA applies where the decedent is injured on the high seas, even if a party's negligence is entirely land-based and begins subsequent to that injury."); *Kennedy v. Carnival Corp.*, 385 F. Supp. 3d 1302, 1316 (S.D. Fla. 2019) ("Here, the injury that led to the Decedent's death occurred in the water. . . . That triggers admiralty jurisdiction, as limited by DOHSA, even

though the Decedent may have ultimately succumbed on land at the Mexican shore."). Thus, the Court will dismiss Plaintiffs' claims for nonpecuniary damages, including pre-death pain and suffering, mental anguish, and loss of companionship. *See* Am. Compl. ¶¶ 6.2–6.5.

B. Negligence Claims

Carnival also argues that the Amended Complaint fails to state a claim for negligence because Plaintiffs (1) attempt to impose "heightened duties of care" that are unsupported under general maritime law (*see* Mot. 7–11); and (2) fail to allege facts showing that Carnival had notice of any specific dangerous condition regarding the excursion or that Carnival engaged in any conduct that might support a negligence claim (*id.* at 11–16). In response, Plaintiffs argue that (1) maritime law imposes a duty to hire competent workers to provide adequate medical care on shore excursions (*see* Pls.' Resp. 8–9); and (2) that they adequately allege that Carnival had actual knowledge of the dangerous condition, which they describe as "the inexperience, and lack of policies and procedures to govern the provision of CPR and medical assistance onshore," and that they otherwise plead sufficient facts to support a claim for negligence (*id.* at 10–11).

After careful consideration, the Court finds that Plaintiffs fail to state a claim for negligence. First, the Court agrees with Carnival that the negligence claim alleging a failure to hire competent and skilled medical providers to provide medical care on shore in Belize would improperly raise a ship owner's duty of care to a higher level than supported by general maritime law. *See Thompson v. Carnival Corp.*, 174 F. Supp. 3d 1327, 1340 (S.D. Fla. 2016) (Moore, C.J.) ("Once the passenger leaves the ship, a cruise ship operator 'only owes its passengers a duty to warn of known dangers in places where passengers are invited or reasonably expected to visit.'"). Plaintiffs broadly allege that Carnival had a duty to "operat[e] safe excursions" and "insur[e] that excursions booked by Carnival were [] safe and would provide adequate medical response, care and treatment . . . should the need arise." *See* Am. Compl. ¶ 5.4. But this would "effectively render cruise line operators . . . the all-purpose insurers of their passengers' safety."

Thompson, 174 F. Supp. 3d at 1340; *see also Joseph v. Carnival Corp.*, No. 11-20221-CIV, 2011 WL 3022555, at *5 (S.D. Fla. July 22, 2011) ("A cruise ship owner or operator, such as Carnival, is not an insurer of its passengers' safety.").

The Court also finds that Plaintiffs fail to allege facts showing that Carnival had notice of any dangerous condition regarding the medical care provided on the excursion in Belize or that Carnival engaged in any negligent conduct after Ms. Keiser was taken ashore. Under federal maritime law, the duty of care owed by a cruise operator is ordinary reasonable care under the circumstances, "which requires, as a prerequisite to imposing liability, that the carrier have actual or constructive notice of the risk-creating condition." *See Keefe v. Bahama Cruise Line, Inc.,* 867 F.2d 1318, 1322 (11th Cir. 1989). "To premise a negligence claim on a breach of the duty to warn, [the plaintiff] must set forth factual allegations showing that the cruise line knew or should have known of any dangerous condition relating to the excursion that would give rise to a duty to warn." *Thompson*, 174 F. Supp. 3d at 1341 (internal quotation marks omitted). Here, however, Plaintiffs merely allege in general terms that it was "reasonably foreseeable to Carnival that Sandra Keiser could require medical treatment on shore" based on "Carnival's experience and familiarity with the demographics of the passengers on its cruises, the onboard and offshore recreational activities taking place on its cruises, the foreign destinations visited on its cruises, and the illnesses and injuries experienced by past cruise passengers while onboard and on shore-side excursions." Am. Compl. ¶ 5.4; *see id.* ¶ 4.6 (citing "years of experience related to the need for medical treatment on shore[] and the lack of sufficient capabilities"). Similarly, Plaintiffs allege that "Carnival personnel failed or refused to provide any medical assistance," without providing any facts or information describing Carnival's involvement in the incident. *Id.* ¶ 4.5. The Court finds these general, conclusory allegations insufficient to state a claim for relief.

IV. CONCLUSION

Accordingly, it is **ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion to Dismiss Amended Complaint **(ECF No. 12)** be and the same is hereby **GRANTED**; and Plaintiffs' Amended Complaint **(ECF No. 8)** be and the same is hereby **DISMISSED**.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida this 1st day of June, 2020.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: All counsel of record