UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 24-21213-CIV-WILLIAMS/GOODMAN

JAMES SMITH

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.
_____/

REPORT AND RECOMMENDATIONS ON DEFENDANT CARNIVAL'S SUMMARY JUDGMENT MOTION

At times, resolving a summary judgment motion can be complex and detail-focused. In fact, that approach is common. But it does not have to be. In fact, analyzing a summary judgment motion can sometimes be a laser-focused, straightforward process.

That's the approach we will use here.

To be sure, the Undersigned will rely on fundamental legal rules. In other words, this ruling will follow applicable law.

But it will also be informed by a cut-to-the-chase approach, as reflected in the principles outlined below:

"Life is really simple, but we insist on making it complicated."
- Confucius (Chinese philosopher, 551 – 479, BCE)

"Keep it simple, stupid."
- Kelly Johnson (lead Lockheed engineer, 1910 – 1990)

"A child of five could understand this. Send someone to fetch a child of five."
- Groucho Marx (American comedian, actor, and writer, 1890 – 1977)

The art of art, the glory of expression and the sunshine of the light of letters, is simplicity."
- Walt Whitman (poet, journalist, essayist, and novelist, 1819 – 1892)

"I like simplicity. I don't need luxury."
- Francis Ford Coppola (American filmmaker, 1939 –).

This is a maritime personal injury case filed by a cruise ship passenger who now (after other theories were asserted in earlier versions of his Complaint), alleges medical negligence against the cruise ship operator, Defendant Carnival Corporation ("Carnival" or "Defendant"). Carnival filed [ECF No. 134] a summary judgment motion. Plaintiff James Smith ("Smith" or "Plaintiff") filed an opposition response and Carnival filed a reply. [ECF Nos. 140; 146]. United States District Judge Kathleen M. Williams referred [ECF No. 138] the summary judgment motion [ECF No. 134] to me.

Carnival's motion is based solely on its argument that Smith cannot prove causation because his causation evidence, which is required for a successful medical malpractice claim, is from a doctor whose opinion is based on impermissible speculation and assumptions. If Carnival is correct, then summary judgment in its favor is appropriate.

But Carnival also filed [ECF No. 136] a motion *in limine* to exclude the opinion testimony of Smith's expert, Dr. Nicholas Suite. In fact, Carnival filed its *in limine* motion on the same day it filed the instant summary judgment motion, and Judge Williams referred that motion to me, as well. [ECF No. 138]. Because the ruling on the *in limine* motion would impact the ruling on the summary judgment motion, the Undersigned decided to tackle the *in limine* motion first with an Order. [ECF No. 165].

And that ruling **denied** Carnival's effort to exclude Dr. Suite's opinion testimony (and permits Plaintiff to introduce his causation opinion at trial). *Id*. The Order noted that certain circumstances undermined and weakened Dr. Suite's approach and that his approach was less than perfect. *Id.* at 22. It also pointed out that Carnival would likely have "substantial ammunition" to cross-examine him with at trial. *Id.* at 20. But, significantly, the Order concluded that Carnival's challenge went to the weight of Dr. Suite's causation opinion, not its threshold *admissibility. Id.* at 25.

So the consequence is now obvious (and simple): a recommendation that Judge Williams **deny** Carnival's summary judgment motion because the Undersigned *already* rejected its attempt to exclude Dr. Suite's causation opinion. A jury will determine how much weight, if any, to give Dr. Suite's causation opinion.

General Factual Background

Smith's claim began as a complaint alleging that Carnival and another party (Scootaround, Inc.) were negligent in causing Plaintiff's motorized scooter to fall over,

injuring him. [ECF No. 1].[1] There have been five (5) amended complaints since. *See* [ECF Nos. 15; 29; 38; 84; 97]. Plaintiff's Fifth Amended Complaint, the current operative complaint, alleges three claims against Carnival: Count I – Vicarious Liability for the Negligence of the Ship's Medical Staff; Count II – Apparent Agency for the Acts of the Ship's Medical Staff; and Count III – Assumption of Duty for the Negligence of the Ship's Medical Staff. [ECF No. 97].

In his Fifth Amended Complaint, Plaintiff now contends that the medical staff aboard the *Glory* deviated from acceptable care standards in their treatment of the "neck and spinal cord injury" he sustained during the subject voyage. *Id.* at ¶ 15. Specifically, Plaintiff contends that the ship's medical staffers committed medical malpractice and caused him to become a quadriplegic when they removed his cervical collar in the medical center before "more definitive diagnostic testing" could be performed on his spine at a shoreside facility. *Id.*

Plaintiff's only medical causation witness is Dr. Suite. Carnival claims his opinions are unreliably speculative. That argument, of course, is the same one it advanced in its *in limine* motion, which has already been denied.

[1] Plaintiff later resolved his claims against Scootaround, Inc., the scooter rental company. [ECF No. 103].

Applicable Legal Principles and Analysis

"Succeeding on a medical malpractice claim under federal maritime law requires establishing that: (1) the defendant had a duty to protect the plaintiff from a specific injury; (2) defendant breached that duty; (3) the breach was the **actual and proximate cause** of the plaintiff's injury; and (4) the plaintiff suffered damages." *Landivar v. Celebrity Cruises, Inc.*, 584 F. Supp. 3d 1150, 1159 (S.D. Fla. 2022) (emphasis added) (citing *Law v. Carnival Corp.*, No. 20-21105-Civ, 2021 U.S. Dist. LEXIS 137433, at *5 (S.D. Fla. July 23, 2021)); *see also Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1018 (Fla. 1984) (Under Florida law "[a] mere possibility of causation is not enough[.]").

Carnival's summary judgment motion is based on the third required element: that the alleged breach was the actual and proximate cause of the plaintiff's injury.

This Court has reasoned that "[s]ummary judgment is appropriate where expert medical causation is required and lacking." *Phillips v. Delta Air Lines*, No. 21-80413-CV, 2021 WL 5584193, at *3 (S.D. Fla. Nov. 30, 2021), *aff'd sub nom. Phillips v. Delta Air Lines, Inc.*, No. 21-14335, 2022 WL 3571029 (11th Cir. Aug. 19, 2022); *see also Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1322 (11th Cir. 1999) (affirming a grant of summary judgment on a negligence claim when expert testimony on causation was required and no admissible expert testimony existed).

Federal Rule of Civil Procedure 56 provides, "summary judgment is appropriate where there 'is no genuine issue as to any material fact' and the moving party is 'entitled

to judgment as a matter of law.'" *See Alabama v. N. Carolina*, 130 S. Ct. 2295, 2308 (2010) (quoting Fed. R. Civ. P. 56(a)).

The moving party has the burden of showing the absence of a genuine issue as to any material fact, and in deciding whether the movant has met this burden, the court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the nonmoving party. *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997); *see also Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1247 (11th Cir. 2013) (noting that a court resolves all doubts in favor of the nonmoving party).

"If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir. 1992).

Even if the parties do not dispute the actual facts, disputes over the inferences that should be drawn from the facts can still preclude summary judgment. *Jeffrey v. Sarasota White Sox, Inc.*, 64 F.3d 590, 594 (11th Cir. 1995) (summary judgment is improper "if a reasonable fact finder evaluating evidence could draw more than one inference from the facts, and if that inference introduces a genuine issue of material fact").

The Undersigned's Order denying Carnival's *in limine* motion concerning Dr. Suite held that a jury, not the Court, should determine the credibility of Dr. Suite's opinion testimony and the reliability of his methodology. [ECF No. 165, p. 25]. Therefore, Carnival has already failed to prevail in its effort to prevent this case from going to a jury on its

challenge to Dr. Suite's opinions. Given this reality, the Undersigned recommends that Judge Williams **deny** Carnival's summary judgment motion.

"Credibility issues are for the jury to determine, and [the cruise ship operator] will have the opportunity to cross-examine [the expert] at trial." *Geyer v. NCL (Bahamas) Ltd.*, 203 F. Supp. 3d 1212, 1217–18 (S.D. Fla. 2016) (Altonaga, C.J.) (citing *Daubert*, 509 U.S. at 596) (denying cruise ship operator's motion challenging the plaintiff's medical expert -- who never examined the plaintiff -- and seeking to exclude his opinions on causation in their entirety); *see also LaRocco v. Royal Caribbean Cruises, Ltd.*, No. 23-CV-20777, 2024 WL 2292814, at *4 (S.D. Fla. Mar. 4, 2024) (denying motion to exclude doctor's expert opinion on causation as unreliable and noting that "[c]ase law has made it clear that an expert medical witness may provide an opinion even if they rely solely on medical records." (citing *Geyer*, 203 F. Supp. 3d at 1217)).[2]

To be sure, Carnival's summary judgment motion references the opinions of *its* medical experts, who opine that Plaintiff's eventual paralysis was the result of his initial

[2] *See also Wallace v. Carnival Corp.*, No. 23-CIV-24382, 2024 WL 4635127, at*4 (S.D. Fla. Sept. 20, 2024) ("At bottom, Defendant's request to exclude Dr. Yu's causation opinion is misplaced because the objections are better suited for cross examination. Its criticisms over Dr. Yu's review of [the] [p]laintiff's medical history go to the weight of his opinion, not its admissibility. *Hersh v. Cavache, Inc.*, No. 17-14212-CIV, 2018 WL 6978638, at *2 (S.D. Fla. Aug. 23, 2018), *report and recommendation adopted sub nom. Hersh v. United States*, No. 17-14212-CIV, 2018 WL 6978628 (S.D. Fla. Dec. 7, 2018) (rejecting exclusion argument even though the expert reports were possibly 'based on incomplete or wrong information')"). *See generally Price v. Carnival Cruise Lines*, No. 20-cv-20621, 2022 WL 951318 (S.D. Fla. Mar. 30, 2022) (denying cruise ship operator's motion to exclude testimony of the plaintiff's medical causation expert).

fall. More specifically, they opine that the cause of Smith's paralysis is "a hematoma that formed as a result of his fall out of his scooter, which occurred hours before the cervical collar was removed in the medical center and was caused by the fracture that occurred in the fall from the motorized scooter. That hematoma gradually and progressively compressed his spinal cord, causing his eventual paralysis." [ECF No. 134, p. 11].

But this conflict of opinions about medical causation between experts generates a credibility contest -- "which is the stuff of which jury trials are made." *Copeland v. Georgia Dep't of Corrs.*, 97 F.4th 766, 779 (11th Cir. 2024) (vacating in part summary judgment for the defendant and citing *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1253 (11th Cir. 2013) (district court violated rule that it "may not take sides in a 'swearing match' between the parties")).

Conclusion

The Undersigned **respectfully recommends** that the Court **deny** Carnival's summary judgment motion. An earlier Order already rejected the only ground asserted in Carnival's summary judgment motion, which consequently resolves the instant motion.[3]

[3] In the words of Isaac Newton (physicist and mathematician, 1643 – 1727), "Nature is pleased with simplicity. And nature is no dummy."

Objections

The parties will have 14 days from the date of being served with a copy of this Report and Recommendations within which to file written objections, if any, with the District Judge. Each party may file a response to the other party's objection within 14 days of the objection. Failure to timely file objections shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY RECOMMENDED in Chambers, in Miami, Florida, July 7, 2025.

Jonathan Goodman
CHIEF UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
The Honorable Kathleen M. Williams
All Counsel of Record