UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:23-cv-23384-KMM

ELIZABETH RITCEY,

Plaintiff,

v.

NCL (BAHAMAS) LTD.,

Defendant.
_____ /

ORDER

THIS CAUSE came before the Court upon Plaintiff Elizabeth Ritcey's Motion for Partial Summary Judgment ("Plaintiff's Motion" or "Plaintiff's Mot.") (ECF No. 40) and Defendant NCL (Bahamas) Ltd.'s Motion for Partial Summary Judgment ("Defendant's Motion" or "Defendant's Mot." and together, the "Motions") (ECF No. 42). Filed in connection with Plaintiff's Motion were Plaintiff's accompanying Statement of Material Facts ("Plaintiff's Statement") (ECF No. 41), Defendant's Response to Plaintiff's Statement of Material Facts ("Defendant's Response Statement") (ECF No. 45), Defendant's Response in Opposition to Plaintiff's Motion for Partial Summary Judgment ("Defendant's Response" or "Defendant's Resp.") (ECF No. 46), Plaintiff's Reply Statement of Material Facts ("Plaintiff's Reply Statement") (ECF No. 52), Plaintiff's Reply in Support of her Motion ("Plaintiff's Reply") (ECF No. 51), and Defendant's Sur-Reply in Opposition to Plaintiff's Motion for Partial Summary Judgment ("Defendant's Sur-Reply") (ECF No. 59). Filed in connection with Defendant's Motion were Defendant's accompanying Statement of Material Facts ("Defendant's Statement") (ECF No. 39), Plaintiff's Response in Opposition to Defendant's Motion for Partial Summary Judgment ("Plaintiff's Response" or "Plaintiff's Resp.")

(ECF No. 47), Plaintiff's Response to Defendant's Statement of Material Facts ("Plaintiff's Response Statement") (ECF No. 48), Defendant's Reply Statement of Material Facts ("Defendant's Reply Statement") (ECF No. 53), and Defendant's Reply in Support of its Motion ("Defendant's Reply") (ECF No. 54). The Motions are now ripe for review. As set forth below, Plaintiff's Motion is DENIED and Defendant's Motion is GRANTED.

I. BACKGROUND[1]

This is a maritime personal injury action for injuries Plaintiff alleges she sustained as a result of a slip-and-fall accident while aboard Defendant's cruise ship, the Norwegian *Gem*, which was scheduled to depart from and return to Italy with stops throughout the Mediterranean Sea. *See generally* Compl. Plaintiff alleges that on or about September 18, 2022, she boarded the ship in Venice, Italy and later that day tripped and fell on a change in level of her stateroom's flooring surface, which she alleges was unmarked and hidden. *See id.* ¶ 9; Plaintiff's Statement ¶¶ 3–5; Defendant's Statement ¶¶ 1–2. Plaintiff was medically evacuated from the ship and claims that as a result of the fall, she "suffered a fractured femur and a shattered knee prosthesis and underwent surgery for both," and that ever since she "has been primarily bedridden, has not walked, and is unlikely to ever walk again." Compl. ¶¶ 5–6; Plaintiff's Statement ¶¶ 6–9. Plaintiff commenced this Action against Defendant on September 5, 2023, asserting claims for: (1) negligent failure to warn; (2) negligent failure to maintain; and (3) general negligence. *See generally* Compl.

The instant Motions, however, seek partial summary judgment not on Plaintiff's claims but rather on certain of Defendant's affirmative defenses. Plaintiff seeks partial summary judgment

[1] The following facts are taken from Plaintiff's Complaint ("Compl.") (ECF No. 1), Plaintiff's Statement (ECF No. 41), Defendant's Response Statement (ECF No. 45), Plaintiff's Reply Statement (ECF No. 52), Defendant's Statement (ECF No. 39), Plaintiff's Response Statement (ECF No. 48), Defendant's Reply Statement (ECF No. 53), and a review of the corresponding record citations and exhibits.

in her favor on Defendant's Twelfth Affirmative Defense, and Defendant seeks partial summary judgment in its favor on its Eleventh Affirmative Defense and Twelfth Affirmative Defense as stated in Defendant's Amended Answer and Affirmative Defenses to Plaintiff's Complaint. *See* (ECF No. 14) at 4–5. Both Motions center around whether Defendant's liability may be properly limited by applying the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (the "Athens Convention") as incorporated in the ticket contract (the "Guest Ticket Contract") into which Plaintiff entered in purchasing her ticket to board the Norwegian *Gem*. *See generally* Plaintiff's Mot.; Defendant's Mot.

II. LEGAL STANDARD

A. United States Maritime Law

"Maritime law governs actions arising from alleged torts committed aboard a ship sailing in navigable waters." *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019) (citing *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1320–21 (11th Cir. 1989)). The rules of general maritime law are "developed by the federal courts." *Keefe*, 867 F.2d at 1320–21 (collecting cases). General federal maritime law also governs cruise line passage contracts. *Wajnstat v. Oceania Cruises, Inc.*, No. 09-21850-Civ, 2011 WL 13099034, at *2 (S.D. Fla. July 12, 2011). The Parties do not dispute that maritime law applies. *See* Plaintiff's Resp. at 7; Defendant's Mot. at 2–3.

B. Summary Judgment

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). "For factual issues to be considered

genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (citation omitted). Speculation cannot create a genuine issue of material fact sufficient to defeat a well-supported motion for summary judgment. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, a court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001). Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to present evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); Fed. R. Civ. P. 56(e). "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) (citation omitted). But if the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

III. DISCUSSION

Plaintiff argues that she is entitled to summary judgment on Defendant's Eleventh Affirmative Defense because: (1) the Athens Convention's limitations violate public policy; and (2) those limitations were not reasonably communicated to Plaintiff. *See generally* Plaintiff's Mot. Defendant argues it is entitled to summary judgment on its Eleventh and Twelfth Affirmative Defenses because: (1) the Athens Convention's limitations may be enforced as a contract term;

(2) the limitation provision was reasonably communicated to Plaintiff. *See generally* Defendant's Mot. Plaintiff and Defendant make these same arguments in their Responses. *See generally* Plaintiff's Resp.; Defendant's Resp. The Court addresses each argument in turn.

A. Applicability of the Athens Convention

Plaintiff argues that applying the Athens Convention to limit Defendant's liability violates public policy because the clause here limits direct negligence, and although the Athens Convention applies to ships with a foreign itinerary, Defendant is headquartered in Miami and therefore should not be able to limit its liability through the Convention. Plaintiff's Mot. at 7–10. Defendant argues that the Athens Convention can be properly applied here because the Guest Ticket Contract incorporated it by reference, and the Norwegian *Gem* had a fully foreign itinerary. Defendant's Mot. at 4–5.

The Athens Convention has not been ratified by the United States and therefore "carries no force of law on its own," but "a contract provision that incorporates the Athens Convention to limit carrier liability for personal injury may be enforceable as a term of a valid contract." *Wajnstat*, 2011 WL 13099034, at *3. That said, such limitation of liability provisions may only be enforced "when a cruise ship embarks from and disembarks in a foreign port with an entirely foreign itinerary." *Id.* (citation omitted). In assessing this requirement, the operative inquiry is the "itinerary included in the contract for voyage" of the particular voyage in question. *Henson v. Seabourn Cruise Line Ltd. Inc.*, 410 F. Supp. 2d 1246, 1248 (S.D. Fla. 2005) (finding Athens Convention not enforceable where "ticket contract was for a voyage including United States ports" even where injury occurred before entering United States port).

Here, the Court finds that the Athens Convention could properly apply to this case. Courts in this District have consistently held that a contract provision incorporating the Athens Convention may be enforceable. *See, e.g.*, *Wajnstat*, 2011 WL 13099034, at *3; *Lalusis v. NCL*

(Bahamas) Ltd., No. 24-cv-21354, 2024 WL 3183238, at *4 (S.D. Fla. June 26, 2024) (collecting cases). Although Plaintiff makes much of the statutory history and policy considerations underlying 46 U.S.C. § 30527, formerly 46 U.S.C. § 30509, as she concedes that statute will only apply to a cruise voyage that touches a U.S. port. *See* Plaintiff's Mot. at 7–10. That courts have "consistently deemed provisions limiting cruise lines' liability unenforceable for more than a century" is inapposite to the applicability of the Athens Convention, which concerns non-U.S. voyages and Congress did not intend to categorically preempt. *Id.* at 7; *Henson v. Seabourn Cruise Line Ltd. Inc.*, 410 F. Supp. 2d 1246, 1248 (S.D. Fla. 2005) (distinguishing case that "involved a vessel that never entered a United States port" and therefore predecessor of 46 U.S.C. § 30527 "did not apply"). *Wajnstat*, on which Plaintiff relies heavily throughout, reaches the same conclusion on the applicability of the Athens Convention. 2011 WL 13099034, at *3 ("The parties agree that the *Nautica* never embarked from, nor disembarked in, a U.S. port, nor did its itinerary ever include a U.S. port. Thus, as an initial proposition, the limitation of liability provision may be enforceable as a contract term in [Defendant's] Terms and Conditions."). It is undisputed that Plaintiff's cruise, which was intended to begin and end in Italy, never touched a U.S. port. *See generally* Motions. Therefore, the clause incorporating the Athens Convention may be enforceable as a contract term in this case.

B. Reasonable Communication of the Athens Convention Contract Term

Having found that the Athens Convention could be enforceable in this case, the Court next turns to whether the Guest Ticket Contract provisions were reasonably communicated so as to be binding on Plaintiff. Plaintiff argues that the Guest Ticket Contract references foreign treaties and U.S. statutes that are not comprehensible to the average passenger, especially as to the meaning and conversion rates of a Special Drawing Right ("SDR," the unit used in the Athens Convention in stating the liability limitation), and that she would have had to research on

her own to determine the liability limitation to which she agreed. Plaintiff's Mot. at 13. Defendant argues the contract provisions were reasonably communicated because it was clearly written, unambiguous as to the limitations, and Plaintiff had opportunity to gain this knowledge and review her particular Guest Ticket Contract prior to boarding. Defendant's Mot. at 10–13.

A limitation of liability clause will be enforced where it "reasonably communicates to the passenger the existence therein of important terms and conditions which affects legal rights." *Wajnstat*, 2011 WL 13099034, at *3 (citation omitted). Reasonable communication "is a question of law for the court to decide." *Id.* (citing *Nash v. Kloster Cruise A/S*, 901 F.2d 1565, 1567 (11th Cir. 1990)). To determine reasonable communication of a non-negotiated contract clause, the Eleventh Circuit has promulgated a two-part test that assesses: (1) "the clause's physical characteristics"; and (2) whether a plaintiff "had the ability to become meaningfully informed of the clause and to reject its terms." *Krenkel v. Kerzner Int'l Hotels Ltd.*, 579 F.3d 1279, 1281 (11th Cir. 2009). The first prong assesses objective characteristics including the size, placement, font, and readability of a clause, whether customers were alerted to the importance of the clause, and whether the form of the clause required an acknowledgement or agreement from the customer. *Williams v. Carnival Corp.*, 576 F. Supp. 3d 1112, 1119–20 (S.D. Fla. 2021) (citations omitted). The second prong assesses whether a passenger had a reasonable *opportunity* to be apprised of any limitation, as whether they "chose to avail themselves of the notices and to read the terms and conditions is not relevant to the reasonable communicativeness inquiry." *McCluskey El v. Celebrity Cruises, Inc.*, No. 21-14129, 2023 WL 3035216, at *2 (11th Cir. Apr. 21, 2023). Under this prong, a court considers "factors outside of the contract itself" including when the ticket was made available, the incentive to analyze the ticket and familiarity with the same, and any other facts that would weigh on the adequacy of notice. *Williams*, 576 F. Supp.

3d at 1122; *Roberts v. Carnival Corp.*, 824 F. App'x 825, 828–29 (11th Cir. 2020); *Wajnstat*, 2011 WL 13099034, at *4.

1. The Clause's Physical Characteristics

As to the first prong, Defendant argues that the physical characteristics of the Guest Ticket Contract were sufficient, specifically that the top of the first page of the Guest Ticket Contract states **IMPORTANT NOTICE** in bold, capital letters and directs passengers to Section 6 (Limitations and Disclaimers of Liability) and all other liability limitations clauses as well as to Defendant's website. Defendant's Mot. at 6–9.[2] Plaintiff does not rebut that argument. Plaintiff's Mot. at 12 n.4 ("The Plaintiff maintains that this Honorable Court need not even consider the physical characteristics of the contract (i.e., the first prong of the test) because the contractual term fails the second prong of the test."). Plaintiff has therefore waived this argument by not addressing it on the merits. *See Singh v. Royal Caribbean Cruises Ltd.*, 576 F. Supp. 3d 1166, 1192 (S.D. Fla. 2021) ("Generally, when a party fails to respond to an argument or otherwise address a claim, the Court deems such an argument or claim abandoned." (citation omitted)). As Defendant has made a persuasive showing regarding the appearance of the subject clause, the Court finds that the physical characteristics of the Guest Ticket Contract reasonably communicated the terms of the clause incorporating the Athens Convention to Plaintiff.

2. Ability to Become Meaningfully Informed of the Clause

The heavily disputed second prong relates to whether Plaintiff had a meaningful opportunity to be informed of Defendant's incorporation of the Athens Convention into the

[2] There was some dispute as to which was the correct liability limitation provision relating to the Athens Convention but by the conclusion of briefing on the Motions, the Parties agreed that paragraph 6(c) was the operative clause. *See* Plaintiff's Reply at 1–2. The Court cites to Plaintiff's Reply where practicable to reflect Plaintiff's arguments regarding the correct clause, with the understanding that the applicable portions of Plaintiff's Motion are also incorporated by reference.

Guest Ticket Contract and the resulting limitation of liability. Plaintiff primarily points to the fact that she did not have an opportunity to become informed about the Athens Convention prior to the cruise, "would have had to look up all of the different foreign treaties referenced in the provision to understand the ticket contract" and does not have the legal knowledge to do so, one of the links in the ticket was not accurate when retyped into a browser, and not all of the information in the Athens Convention including the 2002 amendment thereto was reflected in the Guest Ticket Contract. *See* Plaintiff's Reply at 7–8.[3] Defendant contends that the full terms of the Guest Ticket Contract were available to Plaintiff on the website, that she accepted those terms and conditions about a month after her ticket was purchased and twelve days before the cruise began, and that because Plaintiff had already been on 24 cruises she is familiar "with the process of accepting the terms of cruise ticket contracts prior to embarkation." Defendant's Mot. at 10–11. As to the language of the subject clause, Defendant states that the clause satisfies the second prong because it explains the Athens Convention and when and how it applies. *Id.* at 12.

The crux of the Parties' dispute boils down to whether the language included in the Guest Ticket Contract required additional knowledge and expertise to understand such that the inclusion of that language in and of itself was insufficient to have reasonably communicated the

[3] In her Affidavit, Plaintiff states that in addition to the foregoing reasons that the terms were not reasonably communicated, she "was never given an opportunity to reject the Athens Convention limitations before boarding the cruise." (ECF No. 41-2) ¶ 14. This argument does not appear in Plaintiff's papers that cite to this Affidavit. *See* Plaintiff's Mot. at 13–14; Plaintiff's Response at 14–16; Plaintiff's Reply at 9. However, to the extent that Plaintiff is indeed making this assertion, the Court rejects the same as belied by the evidence of Plaintiff having voluntarily accepted the terms and conditions of the Guest Ticket Contract twelve days prior to the cruise. *See* (ECF No. 39-2), Declaration of Talaya R. Camp ¶ 5. Plaintiff's assertion that she "did not have an opportunity to research all of the different foreign treaties referenced in the provision" is similarly unavailing as whether or not she did so, she did have the opportunity to click on the links provided and conduct any other desired research when she received the Guest Ticket Contract. (ECF No. 41-2) ¶ 11.

Athens Convention limitations. Plaintiff focuses on the fact that she "would have had to look up all of the different foreign treaties referenced in the provision to understand the ticket contract," relying on *Wajnstat* where the subject provision was held to not have been reasonably communicated for this reason. 2011 WL 13099034, at *5; Plaintiff's Mot. at 12; Plaintiff's Reply at 6–7. The *Wajnstat* court found that the provision there, which referenced the entirety of multiple treaty instruments from different years without explanation as to how each instrument impacted the liability limitation as well as vague references to U.S. federal statutes, was insufficient. 2011 WL 13099034, at *6. Specifically, the court enumerated the following reasons the provision was not reasonably communicated:

> The provision does not inform the passenger whether this [additionally referenced treaty] will further limit the [defendant's] liability in cases of death or personal injury, or whether that treaty applies in some other circumstance . . . . To understand this provision, a passenger would have to look up the [additionally referenced treaty], as well as any other revisions, protocols, and amendments to determine whether, or how, the treaty might further limit [defendant's] liability in case of personal injury or death. Moreover, the passenger would have to review the entire treaty because the provision does not specify any applicable section or article of [either treaty]. The passenger would then have to review each of the ten U.S. statutes the provision cites to determine whether any of them apply in cases of personal injury or death on foreign voyages.

Id. The court went on to explain that there was "little incentive" for an average passenger to jump through such complex hoops, and even if they were to try, they may not "meaningfully understand" the practical impact of the limitations without legal sophistication. *Id.*

The Guest Ticket Contract provision at issue in the present case does not suffer from the same deficiencies as that in *Wajnstat.* The provision provides an approximate currency value of the SDR amount, unlike in *Wallis v. Princess Cruises, Inc.* 306 F.3d 827, 837 (9th Cir. 2002) (faulting provision in question for requiring extensive research for passenger to "have any sense of the estimated limitation" on liability); *see also Wajnstat*, 2011 WL 13099034, at *5 (finding otherwise deficient provision "contain[ed] an approximate currency value for SDRs—thus curing

the deficiencies present in *Wallis*"). There are no unidentified U.S. statutes that may or may not be at play. While the provision includes multiple links to regulations, some of them are just further explanations of the Athens Convention limitation claimed, and the others are regarding affirmative rights under E.U. Regulation 1177/2010 that passengers may be afforded. Defendant's Statement ¶ 10. The only regulation that the Guest Ticket Contract purports to include as a liability limitation is the Athens Convention, and there is no contention that Defendant is attempting to impose any other limitations. The provision also explains how the limitation applies only to non-U.S. voyages, specifies the different bases of liability that could lead to different recoveries, and clarifies remedies that are not available. *Id.* Accordingly, the Court finds that the Guest Ticket Contract reasonably communicated the liability limitations of the Athens Convention so as to make those limitations enforceable against Plaintiff.

Plaintiff raises several other arguments not addressed above that she contends militate against this conclusion, which the Court now briefly addresses. First, Plaintiff takes issue with the link included for E.U. Regulation 1177/2010. *See* Plaintiff's Reply at 7. Plaintiff initially represented the link was not accurate at all, but as reflected in Defendant's Sur-Reply now limits this contention to the fact that multiple people in her counsel's office were unable to access the link when retyped into a browser as opposed to clicking on the link as it appears in the ticket. *See generally* Defendant's Sur-Reply. The Court finds that as long as the original link as it appeared in the ticket worked when clicked, which is undisputed, then that is a sufficient basis to find that Defendant provided an accurate way to access the relevant website.

Second, Plaintiff argues that the information included in the Guest Ticket Contract differs as to SDR amounts from what the Athens Convention states. Plaintiff's Reply at 8. Although Plaintiff does not explain what differs from what was provided to her, the Court finds that the

Guest Ticket Contract included the pertinent terms of the Athens Convention, including that liability for the carrier's fault or neglect is capped at 400,000 SDRs other than for shipping incidents, which are explicitly defined. Defendant's Statement ¶ 10. Plaintiff notes that Guest Ticket Contract does not state that the limitation is 250,000 SDRs, and that the 400,000 SDR limit is only if the loss exceeds the original limitation and the carrier cannot prove the incident occurred without its fault or neglect. Plaintiff's Reply at 8. The Court agrees that the inclusion of both numbers would be clearer, but ultimately fails to understand how this difference would affect Plaintiff's rights. Plaintiff is bringing claims under various theories of negligence, which she presumably expects to prove. *See generally* (ECF No. 1). Thus, if her loss exceeds the threshold of 250,000 SDRs due to Defendant's negligence then her recovery will indeed be capped at 400,000 SDRs as indicated in the Guest Ticket Contract, and nothing therein would affect her ability to recover for a loss less than the equivalent of 250,000 SDRs.

Plaintiff points to several other provisions of the Athens Convention that she argues did not appear in the Guest Ticket Contract, including that a state party to the Convention may opt out of liability limitation for personal injury or death, that "the carrier is strictly liable for passenger injury or death caused by a shipping incident, or by fault or neglect of carrier not caused by a shipping incident," and that ships require a certificate of insurance or other financial security to cover strict liability. Plaintiff's Reply at 8. As an initial matter, as discussed above the fact that Defendant could be liable for fault or negligence in non-shipping incidents is clearly communicated in the Guest Ticket Contract. As to the other provisions raised, there is no contention that Defendant is seeking to enforce any of those provisions in this case to limit its liability. The Court cannot fault Defendant for the omission of those aspects where they do not

appear relevant to the instant dispute, which is a case of fault or negligence in a non-shipping incident to which Defendant seeks to apply the relevant SDR limitations.

Third, Plaintiff argues that it is problematic that she had to consult an outside source to determine the value of an SDR, relying on *Dinklage v. Holland America Line-Westours Inc.* which was decided in the Western District of Washington. No. 06-0018, 2007 WL 951844 (W.D. Wash. Mar. 27, 2007); Plaintiff's Reply at 9–10. That court analogized to *Wallis*, finding that the subject provision there had numerous issues, one of which was that it required "the passenger to consult an outside financial resource . . . to calculate the current value" of an SDR. *Dinklage*, 2007 WL 951844, at *5. None of the other four issues that court recognized are present in the Guest Ticket Contract. *Id.* Further, no approximate currency value or method for determining that value were included in the provision in *Dinklage*, unlike here. *See* Defendant's Statement ¶ 10 (providing dollar amount and informing passengers that the amount depends on the "daily exchange rate as published in the *Wall Street Journal*"). The fact that Plaintiff would have had to consult the *Wall Street Journal*, on its own, is not sufficient to defeat otherwise reasonable communication.

Plaintiff then pivots to note that "[i]ncidentally, the value of the SDR is already much less than what is stated in the ticket contract." Plaintiff's Reply at 10. Plaintiff shows a screenshot of the value of 400,000 SDRs as of February 26, 2025, totaling $524,942.44, arguing that that amount is much less than $570,000 indicated in the Guest Ticket Contract. *Id.*; *id.* Ex. 1. Because this is an amount that fluctuates day-to-day, that the amount was less than $570,000 in February does not mean it could not be more than that amount at the time of the adjudication of this action. Further, the fluctuation appears to be in a relatively narrow range. Therefore, the statement in the Guest Ticket Contract that the limit was worth approximately $570,000 would

not be so misleading as to render the entire provision not communicated, and Plaintiff provides no authority for the proposition that this level of fluctuation should have such a dispositive effect. Ultimately, the Court is not persuaded that any of the foregoing three grounds change its conclusion that Defendant reasonably communicated the Athens Convention limitations.

There are many ways that the Guest Ticket Contract might have been expanded or differently formulated, but ultimately the two prongs of the "reasonable communicativeness test [do] not impose on the cruise line the duty to design the 'best' ticket, or to give an 'ideal' warning." *Wajnstat*, 2011 WL 13099034, at *3 (quoting *Euland v. M/V Dolphin IV*, 685 F. Supp. 942, 946 (D.S.C. 1988)). Only reasonableness is required. Plaintiff's assertion that she does "not have the legal knowledge necessary to understand whether or how any of [the treaties] would be applicable" is thus ultimately unavailing where the Guest Ticket Contract specifically explained that the Athens Convention would apply and that there would be a resulting limitation of liability at specified amounts. (ECF No. 41-2) ¶ 12. No incentive was needed for Plaintiff to research the relevant treaty provisions, as she would have been able to understand the limits on her recovery from the unambiguous text of the Guest Ticket Contract.

As stated above, whether a contractual provision has been reasonably communicated "is a question of law for the court to decide." *Wajnstat*, 2011 WL 13099034, at *3 (citation omitted). Based on the evidence presented that is undisputed or regarding which there is no genuine issue of material fact, the Court finds that the Guest Ticket Contract's incorporation of the Athens Convention was enforceable and reasonably communicated, and is therefore binding on Plaintiff. On this basis, Defendant is entitled to partial summary judgment on its Eleventh Affirmative Defense and Twelfth Affirmative Defense. *See* (ECF No. 14) at 4–5.

IV. CONCLUSION

Accordingly, UPON CONSIDERATION of the Motions, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion for Partial Summary Judgment (ECF No. 42) is GRANTED. Plaintiff's Motion for Partial Summary Judgment (ECF No. 40) is DENIED. As the Court has now ruled on the instant Motions, the previous stay of discovery and pretrial deadlines (ECF No. 38) is lifted and the Clerk of Court is INSTRUCTED to REOPEN this case.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th day of August, 2025.

K. M. Moore

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record