

ENTERED

April 22, 2025

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: THE COMPLAINT AND	§	
PETITION OF HOUSTON	§	
FLEETING SERVICES LLC, AS	§	Case No. 4:24-CV-02705 c/w 4:24-
OWNER OF THE VESSEL, M/V	§	CV-2855; 4:24-CV-02739; and 4:24-
MISS PEGGY, ITS ENGINE,	§	CV-02759
TACKLES, ETC., IN THE CAUSE	§	
OF EXONERATION FROM OR	§	
LIMITATION OF LIABILITY	§	

**JUDGE DENA PALERMO'S
REPORT AND RECOMMENDATION¹**

This case concerns a fatal maritime collision on the Houston Ship Channel. Before the Court is Petitioner Houston Fleeting Service's ("HFS") motion to dismiss, in which it requests dismissal of Karribian Scott's ("Scott"), as personal representative for the decedent's estate, claims for future lost earnings. ECF No. 82. HFS argues that these claims are barred by the Jones Act because the estate is only entitled to claims accrued during the decedent's lifetime. Based on the briefing² and the relevant authority, the Court finds that the motion to dismiss should be granted.

I. BACKGROUND

As a result of the July 19, 2024 collision in the Houston Ship Channel between two vessels, the M/V YANGZE 7 and the M/V MISS PEGGY, Aquarius Lowman

¹ The district judge to whom this case is assigned referred this case for all pretrial proceedings. Order of Referral, ECF No. 16.

² Scott filed a response, ECF No. 90, and HFS filed a reply, ECF No. 97.

(the “decendent”), a seaman working on the M/V MISS PEGGY, died. Karribian Scott, as personal representative of decedent Aquarius Lowman’s (the “decendent”) estate, now brings claims of negligence and unseaworthiness for personal-injury and wrongful death under the Jones Act and general maritime law, seeking amongst other relief, damages of future lost earnings. ECF Nos. 55 ¶ 30; 56, ¶ 30.

II. LEGAL STANDARD

A court may dismiss a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, a complaint “does not need detailed factual allegations,” but it must “raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). 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 *Twombly*, 550 U.S. at 570). Courts must construe all well-pleaded “facts in the light most favorable to the nonmoving party, ‘as a motion to dismiss under 12(b)(6) is viewed with disfavor and is rarely granted.’” *IberiaBank Corp. v. Illinois Union Ins. Co.*, 953 F.3d 339, 345 (5th Cir. 2020) (quotation omitted). Legal conclusions, however, are not entitled to the same assumption of truth. *Iqbal*, 556 U.S. at 678-79. Thus, a pleading must set forth “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555. A claim has facial plausibility “when the plaintiff pleads

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. The standard for plausibility “is not akin to a ‘probability requirement,’” though it does require more than a “sheer possibility” that a defendant has acted unlawfully. *Id.*

When ruling on a Rule 12(b)(6) motion, a court must exclude all “matters outside the pleadings,” or else convert the motion into one for summary judgment. Fed. R. Civ. P. 12(d). A court may therefore consider the contents of the pleadings, including attachments thereto, as well as any documents attached to the motion to dismiss, if they are referenced in the plaintiff’s complaint and are central to the claims. *Boudreaux v. Axiall Corp.*, 564 F. Supp. 3d 488, 498 (W.D. La. 2021).

III. THE MOTION TO DISMISS SHOULD BE GRANTED.

As an initial matter, Scott argues that HFS cannot seek dismissal of a certain kind of damages—rather, Rule 12(b)(6) is reserved for claims dismissal. ECF No. 90 at 2. Although a motion to strike may be more appropriate procedurally, other courts have granted motions to dismiss impermissible damages. *See Comeaux v. Atos Origin It Services, Inc.*, No. CV 17-11273, 2018 WL 6331810, at *5 (E.D. La. Dec. 3, 2018) (the court granted a motion to dismiss, finding that “Plaintiff is precluded from recovering non-pecuniary or punitive damages against HESI under the Jones Act or general maritime law if Decedent is found to be a Jones Act seaman”); *Wiltz v. M-I, LLC*, 356 F. Supp. 3d 591, 598 (E.D. La. 2018) (in granting a motion to

dismiss, “the Court [found] that Plaintiff is precluded from recovering non-pecuniary damages . . . under general maritime law”).

Citing *Miles v. Apex Marine, Inc.*, 498 U.S. 19, 32, 36 (1990), HFS argues that Scott’s claims for lost future earnings must be dismissed “because they are barred by the Jones Act and general maritime law.” ECF No. 82 at 3. HFS argues that under the Jones Act and general maritime law, the decedent’s estate is only entitled to losses suffered during the decedent’s lifetime. *Id.* Scott responds that when he “included a reference to ‘lost earning capacity’ as part of the damages [] sought, it was merely another way of saying that the damages sought include lost support due to [decedent’s] wrongful death, and the recoverable ‘loss of support’ includes and accounts for [decedent’s] expected future income,” which “is proper under direct Supreme Court authority.” ECF No. 90 at 3.

Scott, as personal representative of decedent’s estate,³ pled that he “is entitled to recover all damages due to and owing from the described [] negligence . . . including, but not limited to . . . loss of past and future earning capacity.” ECF No. 55 ¶ 30. However, a decedent’s estate cannot recover lost future income or lost future earnings under the Jones Act or general maritime law. *Miles*, 498 U.S. at 36.

Scott responds that his mention of “loss of future earning capacity” is an

³ In pleadings separate from his pleading on behalf of decedent’s estate which is the focus of the motion to dismiss, Scott, filed claims as next friend of A.L. and K.L., decedent’s children. ECF Nos. 43, 44.

appropriate means of establishing his recovery for “loss of support”—but, the estate cannot recover for loss of support, only dependents are entitled to that relief. *See Miles*, 498 U.S. at 35. As the Supreme Court found, “[r]ecovery of lost future income in a survival suit will, in many instances, be *duplicative of recovery by dependents for loss of support* in a wrongful death action; the support dependents lose as a result of a seaman’s death would have come from the seaman’s future earnings.” *Id.* (emphasis added); *see also Matter of Rene Marine Offshore, Inc.*, No. CV H-05-1559, 2006 WL 8446234, at *4 (S.D. Tex. May 18, 2006) (“loss of support” requires dependents to establish actual dependence) (citing *Sea-Land Servs., Inc. v. Gaudet*, 94 S. Ct. 806, 814-15 (1974), *impliedly overruled on other grounds by Miles*, 498 U.S. 19).⁴ Scott, on behalf of decedent’s estate, is not entitled to loss of support or lost future earnings. Accordingly, the motion to dismiss should be granted.

⁴ Scott’s cases are both non-binding and do not support Scott’s argument that the estate is entitled to recover loss of future earnings or loss of support. *See In re Moran Towing Corp.*, 984 F. Supp. 2d 150, 182 (S.D.N.Y. 2013), *amended*, 996 F. Supp. 2d 221 (S.D.N.Y. 2014), *aff’d sub nom. Moran Towing Corp. v. Young*, 597 F. App’x 33 (2d Cir. 2015) and *aff’d in part, vacated in part, remanded sub nom. Moran Towing Corp. v. Young*, 597 F. App’x 33 (2d Cir. 2015) (finding dependent estate beneficiaries could recover loss of support from past and future earnings) (citing *De Centeno v. Gulf Fleet Crews, Inc.*, 798 F.2d 138, 141 (5th Cir. 1986) (addressing decedent’s survivor’s damages)); *Brantuas v. Odette Therese Fishing Corp.*, 5 F.3d 535 (9th Cir. 1993) (the court distinguished between an impermissible award of damages for loss of future earnings and a permissible award to a decedent’s wife for loss of support, noting that “*Miles*, however, did not find that Congress had displaced the general maritime cause of action for wrongful death which allows dependents to recover for *their* loss of support. . . . loss of support and loss of earnings are two distinct forms of damages that result from two distinct causes of action.”) (emphasis in original) (internal citations omitted).

IV. CONCLUSION

Therefore, the Court **RECOMMENDS** that HFS's motion to dismiss, ECF No. 82, be **GRANTED**. Insofar as Karribian Scott, as personal representative of decedent Aquarius Lowman's estate, seeks to recover lost future earnings or loss of support, those claims for those damages should be dismissed as the estate is not entitled to such relief. *See Miles* 498 U.S. at 36 (“[t]he Jones Act survival provision limits recovery to losses suffered during the decedent's lifetime.”) (citing 45 U.S.C. § 59)).

The Parties have fourteen days from service of this Report and Recommendation to file written objections. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b). Failure to file timely objections will preclude review of factual findings or legal conclusions, except for plain error. *Quinn v. Guerrero*, 863 F.3d 353, 358 (5th Cir. 2017).

Signed at Houston, Texas, on April 22, 2025.



Dena Hanovice Palermo
United States Magistrate Judge