

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:19-cv-25281-KMM

DEBRA ROBERTS,

Plaintiff,

v.

CARNIVAL CORPORATION,

Defendant.

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ORDER

THIS CAUSE came before the Court upon Defendant Carnival Corporation's ("Defendant") Motion to Dismiss ("Mot.") (ECF No. 33).¹ Plaintiff Debra Roberts ("Plaintiff") filed a response ("Resp.") (ECF No. 34). Defendant filed a reply. ("Reply") (ECF No. 39). The Motion is now ripe for review.

I. BACKGROUND²

This is a maritime personal injury action brought by Plaintiff against Defendant for damages sustained by Plaintiff while she was a passenger on the *Carnival Vista* in or around June of 2019. Am. Compl. ¶ 11. Specifically, Plaintiff seeks damages for injuries suffered when

¹ In the Motion, Defendant challenges Plaintiff's "claim" for punitive damages. *See generally* Mot. However, punitive damages are not a stand-alone claim subject to dismissal, rather it is a form of relief that plaintiffs may be entitled if they prevail on their claims. *See Doe v. Royal Caribbean Cruises, Ltd.*, No. 11-23323-CIV, 2012 WL 920675, at *2 (S.D. Fla. Mar. 19, 2012). And, Rule 12(b)(6) only tests the sufficiency of a plaintiff's claims, not the relief that the plaintiff may seek if they succeed in proving their claim. Thus, the appropriate mechanism for challenging a request for punitive damages is a motion to strike pursuant to Rule 12(f). *Id.* at *2-6. Accordingly, the Court construes Defendant's Motion as a motion to strike pursuant to Rule 12(f).

² The background facts are taken from the Amended Complaint ("Am. Compl.") (ECF No. 30) and accepted as true for purposes of ruling on this Motion. *Fernandez v. Tricam Indus., Inc.*, No. 09-22089-CIV-MOORE/SIMONTON, 2009 WL 10668267, at *1 (S.D. Fla. Oct. 21, 2009).

Plaintiff tripped and fell on a threshold that ran across the floor in a hallway. *Id.* ¶ 12. Further, Plaintiff's injuries were exacerbated because Plaintiff did not receive adequate medical care from Defendant's medical center. *Id.* As pertinent here, Plaintiff alleges that Defendant's conduct was willful, wanton, reckless or intentional. *Id.* ¶¶ 33–38. Specifically, Plaintiff alleges that Defendant's conduct was reckless or intentional because (1) Defendant knew the threshold was dangerous because of prior accidents and failed to implement adequate remedies, and (2) Defendant intentionally concealed the defect. *Id.*

In the Amended Complaint, Plaintiff brings one count of negligence and one count of strict products liability. *Id.* ¶¶ 23–56. Now, Defendant moves to strike Plaintiff's request for punitive damages. *See generally* Mot.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(f) states: “the Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “A motion to strike is a drastic remedy[,]’ which is disfavored by the courts.” *Thompson v. Kindred Nursing Ctrs. E., LLC*, 211 F. Supp. 2d 1345, 1348 (M.D. Fla. 2002) (quoting *Augustus v. Bd. of Pub. Instruction of Escambia Cnty., Fla.*, 306 F.2d 862, 868 (5th Cir. 1962)). A motion to strike is often denied “unless the matter sought to be omitted has no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party.” *Bank of Am., N.A. v. GREC Homes IX, LLC*, No. 13-21718, 2014 WL 351962, at *4 (S.D. Fla. Jan. 23, 2014) (internal quotations and citations omitted). However, “[a] request for punitive damages must be stricken from the complaint if the allegations therein do not present a factual basis supporting the recovery of punitive damages, in other words, factual allegations showing wanton, willful or outrageous conduct.” *Doe v. Royal Caribbean Cruises, Ltd.*, No. 11-23321-Civ-SCOLA, 2012 WL 4479084,

at *2 (S.D. Fla. Sept. 28, 2012).

III. DISCUSSION

Defendant moves to strike Plaintiff's request for punitive damages because (1) punitive damages are unavailable in a personal injury action brought pursuant to maritime law as a matter of law, and (2) Plaintiff fails to allege sufficient facts to support a request for punitive damages. *See generally* Mot. In response, Plaintiff argues that (1) punitive damages are available under maritime law, and (2) the Amended Complaint sufficiently pleads a claim for punitive damages. *See generally* Resp.

1. Status of Punitive Damages Under General Maritime Law

First, Defendant argues that punitive damages are precluded as a matter of law for negligence claims brought under general maritime law. Mot. at 4. Specifically, Defendant argues that two recent decisions—*Eslinger v. Celebrity Cruises, Inc.*, 772 F. App'x 872 (11th Cir. 2019), and *The Dutra Group v. Batterton*, 139 S. Ct. 2275, 2287 (2019)—unequivocally stand for the proposition that punitive damages are unavailable as a matter of law for personal injuries under general maritime law. *Id.* In Response, Plaintiff argues that punitive damages are available for personal injury claims under general maritime law pursuant to Supreme Court and Eleventh Circuit precedent. Resp. at 3.

In *In re Amtrak "Sunset limited" Train Crash*, the Eleventh Circuit addressed the availability of punitive damages for personal injury claimants under general maritime law. 121 F.3d 1421, 1429 (11th Cir. 1997). First, the Eleventh Circuit noted that it was unaware of any Supreme Court decisions authorizing punitive damages for personal injury claimants. *Id.* Then, the Eleventh Circuit held that

Unless or until the United States Supreme Court should decide to add state remedies to the admiralty remedies for personal injury,

personal injury claimants have no claim for nonpecuniary damages such as loss of society, loss of consortium or punitive damages, except in exceptional circumstances such as willful failure to furnish maintenance and cure to a seaman, intentional denial of a vessel owner to furnish a seaworthy vessel to a seaman and in those very rare situations of intentional wrongdoing.

Id.

Subsequently, the Supreme Court addressed the traditional availability of punitive damages under general maritime law. First, in *Atlantic Sounding Company v. Townsend*, the Supreme Court addressed the availability of punitive damages for maintenance and cure, a traditional maritime claim concerning the vessel owner's obligation to provide food, lodging, and medical services to a seamen injured while serving the ship. 557 U.S. 404, 407 (2009). In *Atlantic Sounding*, the Supreme Court emphasized that punitive damages were traditionally available under general maritime law. *See id.* at 411 (“The general rule that punitive damages were available at common law extended to claims arising under federal maritime law.”) (citation omitted); *Lake Shore & Michigan Southern R. Co. v. Prentice*, 147 U.S. 101, 108 (1893) (“[C]ourts of admiralty . . . proceed, in cases of tort, upon the same principles as courts of common law, in allowing exemplary damages[.]”). Next, the Supreme Court found that punitive damages were historically available for maintenance and cure. *Atlantic Sounding*, 557 U.S. at 415–16, 418.

Finally, the Supreme Court considered whether Congress had enacted legislation which overruled the common law rule. The Supreme Court rejected the argument that “recovery in maritime cases involving death or personal injury [is limited] to the remedies available under the Jones Act [46 U.S.C. § 30104] and the Death on the High Seas Act (DOHSA), 46 U.S.C. §§ 30301–30306.” *Id.* at 418–19. Specifically, the Supreme Court held that the Jones Act and DOHSA displaced a general maritime rule that denied any recovery for wrongful death, effectively creating a remedy that did not exist at common law. *Id.* Accordingly, the Supreme Court held

that where Congress enacts legislation providing for remedies that were not available under general maritime law, then Congress' limitation of the remedies must control the availability of remedies for the same causes of action that are brought under general maritime law. *Id.* at 419. However, the Supreme Court noted that it did not cast doubt on its prior holdings that courts "should look primarily to . . . legislative enactments for policy guidance" when exercising its inherent common-law authority over maritime and admiralty cases. *See Batteron*, 139 S. Ct. at 2278. Nevertheless, with respect to maintenance and cure, the Court noted that the availability for punitive damages for maintenance and cure preceded the Jones Act and it did not find that the Jones Act required a deviation from the traditional common law. *Atlantic Sounding*, 557 U.S. at 419.

Next, in *Batteron*, one of the decisions to which Defendant relies upon, the Supreme Court found punitive damages were unavailable for unseaworthiness claims. *See* 139 S. Ct. at 2287. Critical to the Supreme Court's decision was its finding that, unlike claims for maintenance and cure, there was no historical justification for awarding punitive damages for claims of unseaworthiness. *Id.* at 2283–85. In light of the lack of historical basis, the Supreme Court concluded it could not "sanction a novel remedy . . . unless it is required to maintain uniformity with Congress's clearly expressed policies." *Id.* at 2284. And, looking to the remedies typically recognized for Jones Act claims, the Supreme Court concluded punitive damages would not be consistent with Congress' policies. *Id.* at 2285.

Subsequently, courts within this district noted that the Supreme Court's finding that "punitive damages have long been an accepted remedy under general maritime law[.]" may call into question the continued validity of *In re Amtrak* and other cases limiting punitive damages and other nonpecuniary remedies in general maritime claims. *See, e.g., Crusan v. Carnival Corp.*, No. 13-cv-20592, 2015 WL 13743473, at *6–7 (S.D. Fla. Feb. 24, 2015). However, courts concluded

that these decisions are indeed consistent with each other because (1) *In re Amtrak* did not preclude punitive damages for personal injury claims entirely, but held that punitive damages are only available upon a showing of intentional misconduct; and (2) the Supreme Court in *Atlantic Sounding* addressed a narrower question—whether punitive damages were available for maintenance and cure. *See id.* Thus, courts concluded that *Atlantic Sounding* did not undermine *In re Amtrak* and punitive damages remain available upon a showing of intentional misconduct. *See id.*

Similarly, the Eleventh Circuit has held that *Atlantic Sounding* does not cast doubt on *In re Amtrak*. In *Peterson v. NCL (Bahamas) Limited*, the Eleventh Circuit rejected the contention that *Atlantic Sounding* abrogated *In re Amtrak* vis-à-vis loss of consortium claims, and affirmed summary judgment in favor of defendant on plaintiff's loss of consortium claim because there were “no exceptional circumstances in this case and no allegations of intentional conduct.” 748 F. App'x 246, 251–52 (11th Cir. 2018).

Here, in light of the foregoing, the Court finds that Defendant has not met its burden establishing that punitive damages are precluded *as a matter of law* such that the Court should strike Plaintiff's request for punitive damages. As an initial matter, Defendant does not argue that permitting punitive damage awards for negligence claims would be inconsistent with parallel statutory schemes. *See generally* Mot. Rather, Defendant only argues that *Batteron* and *Eslinger* foreclose such damage awards for negligence claims. *See generally id.*

First, Defendant's argument that *Batteron* stands for the unequivocal proposition that punitive damages are barred as a matter of law is misplaced. The Supreme Court has emphasized that “remedies for negligence, unseaworthiness, and maintenance and cure have different origins and may on occasion call for application of slightly different principles and procedures.” *Atlantic*

Sounding, 557 U.S. at 423 (citation omitted). The Supreme Court’s decision in *Batteron* turns on the unique context surrounding the development of seaworthiness in admiralty jurisprudence—that punitive damages were traditionally unavailable for this specific cause of action. *See* 139 S. Ct. at 2287. Accordingly, *Batteron* does not squarely control the availability of punitive damages for negligence claims.

And, Defendant fails to establish, as a matter of law, that the Eleventh Circuit has held punitive damage awards are unavailable for personal injury claimants. Although the Eleventh Circuit in *Eslinger* stated that nonpecuniary damages were unavailable for personal injury claimants, the court was only addressing whether loss of consortium was available under general maritime law, a remedy that was not traditionally available in admiralty law. *See* 772 F. App’x at 872–73; *see also Lolli v. Brown Marine Srv., Inc.*, 995 F.2d 1565, 1565 (11th Cir. 1993). (“[N]either the Jones Act nor general maritime law authorizes recovery for loss of society or consortium in personal injury cases.”). Further, the Eleventh Circuit in *Eslinger* did not disclaim, nor cast doubt upon, its prior holding in *In re Amtrak* that exceptional circumstances *may* warrant the imposition of punitive damages. *See* 772 F. App’x at 872–73; *Peterson*, 748 F. App’x at 251–52; *see also United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) (noting that a panel of the Eleventh Circuit is bound by the opinion of a prior panel “unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this Court sitting *en banc*”).

Indeed, courts in this district have, at least on a motion to dismiss or motion to strike, consistently held that punitive damages are not precluded *as a matter of law*. *See, e.g., Doe v. Carnival Corp.*, No. 1:20-cv-20737-UU, — F, Supp.3d—, 2020 WL 3772102, at *5–6 (citations omitted) (“[P]unitive damages may still be available, but only upon a showing of defendant’s intentional misconduct.”); *Incardone v. Royal Caribbean Cruise, Ltd.*, 2020 WL 2950684, at *6–

7 (S.D. Fla. Jan. 8, 2020) (“The Eleventh Circuit has made clear that punitive damages are precluded in maritime personal injury claims except in exceptional circumstances and upon a showing of intentional conduct.”). Accordingly, the Court finds that, at least for purposes of a motion to strike, Defendant has not sufficiently established that punitive damages are unavailable for all personal injury claimants as a matter of law.

2. Whether Plaintiff Has Pled Allegations of Intentional Misconduct

Second, Defendant argues that Plaintiff fails to plead sufficient factual allegations supporting her request for punitive damages. Mot. at 4–5. In response, Plaintiff argues that she has sufficiently pled intentional conduct to support her request for punitive damages. Resp. at 8–9.

As noted above, if punitive damages are available under maritime law, it is only where there are allegations of intentional misconduct. *See In re Amtrak*, 121 F.3d at 1429. To demonstrate intentional misconduct for the purposes of recovering punitive damages, plaintiffs must show that “the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.” *Mee Indus. v. Dow Chem. Co.*, 608 F.3d 1202, 1220 (11th Cir. 2010) (citation omitted). Additionally, “punitive damages may be awarded in maritime tort actions where defendant’s actions were intentional, deliberate or so wanton and reckless as to demonstrate a conscious disregard of the rights of others.” *Markham v. Carnival Corp.*, No. 12-23270-CV-ALTONAGA/Simonton, 2012 WL 12866787, at *5 (S.D. Fla. Dec. 3, 2012) (citation omitted).

Here, Plaintiff fails to plead sufficient factual allegations to support her request for punitive damages. Specifically, Plaintiff alleges that (1) Defendant knew that the threshold was dangerous

and failed to remedy the harm and (2) Defendant intentionally concealed the defect. Am. Compl. ¶¶ 33–38. However, Plaintiff does not provide any factual allegations supporting an inference that Defendant *intentionally* concealed the defect or *intentionally* failed to remedy the defect. *Id.* First, Plaintiff only summarily alleges that Defendant intentionally concealed the defect and does not provide any factual allegations supporting an inference that Defendant took any action to intentionally conceal the defect. *Id.* ¶ 37; *see Kennedy v. Carnival Corp.*, 385 F. Supp. 3d 1302, 1329–30 (S.D. Fla. 2019) (striking punitive damages claim where plaintiff only added the word “intentionally” to a straightforward negligence claim).

Second, Plaintiff’s allegation that Defendant knowingly failed to remedy the defect is insufficient to support a request for punitive damages. Plaintiff alleges that Defendant knew that the corrective measures it implemented were insufficient because accidents continued to happen. *Id.* ¶ 36. However, to justify punitive damages, Plaintiff must allege that Defendant knew the measures were inadequate and implemented them anyway. *See Mee Indus.*, 608 F.3d at 1220 (citation omitted). Accordingly, this allegation does not support a request for punitive damages.

Second, Plaintiff’s allegation that Defendant *knew* the defect was dangerous and failed to implement appropriate corrective measures is merely a traditional negligence claim, summarily alleged to have been done intentionally. *See Kennedy*, 385 F. Supp. 3d at 1329–30 (striking punitive damages claim where plaintiff only added the word “intentionally” to a straightforward negligence claim). Because Plaintiff does not provide any factual allegations tending to show that Defendant’s conduct was intentional, rather than merely negligent, Plaintiff’s request for punitive damages must be stricken from the Amended Complaint. *See Doe*, 2012 WL 4479084, at *2 (“A request for punitive damages must be stricken from the complaint if the allegations therein do not present a factual basis supporting the recovery of punitive damages, in other words, factual

allegations showing wanton, willful or outrageous conduct.”).

IV. CONCLUSION

UPON CONSIDERATION of the Motion, the Response, the Reply, pertinent portions of the record, and being otherwise fully advised in the premises, is hereby ORDERED AND ADJUDGED that Defendant’s Motion (ECF No. 33) is GRANTED. It is hereby ORDERED that Paragraph 34 in the Amended Complaint (ECF No. 30) is hereby STRICKEN.

DONE AND ORDERED in Chambers at Miami, Florida, this 19th day of October, 2020.

A handwritten signature in blue ink, appearing to read "K. Michael Moore", is written over a horizontal line.

K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: All counsel of record