UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-CV-22867-WILLIAMS/TORRES

ELIZABETH ANN ARNOLD, as
Personal Representative of the Estate
of ROBERT HUGH ARNOLD, JR.,

Plaintiff,

v.

CARNIVAL CORPORATION, a
Panamanian Corporation,

Defendant.

_____/

REPORT AND RECOMMENDATION ON
CARNIVAL'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Carnival Corporation's ("Defendant" or "Carnival") motion for summary judgment against Elizabeth Ann Arnold, as Personal Representative of the Estate of Robert Hugh Arnold, Jr. ("Plaintiff"). [D.E. 23]. Plaintiff responded to Defendant's motion on September 2, 2021. [D.E. 30]. Defendant replied on September 16, 2021. [D.E. 33]. Therefore, Defendant's motion is now ripe for disposition. After careful consideration of the motion, response, reply, and relevant authority, and for the reasons discussed below, Defendant's motion for summary judgment should be **GRANTED** in part and **DENIED** in part.[1]

[1] On July 30, 2021, the Honorable Kathleen Williams referred this motion to the undersigned Magistrate Judge for a Report and Recommendation. [D.E. 26].

I. BACKGROUND

Plaintiff and her husband, Robert Hugh Arnold, Jr. ("Decedent"), boarded the Carnival *Breeze* in Port Canaveral, Florida on October 13, 2018. Shortly after 9:00 a.m. on October 17, while the ship was docked in San Juan, Puerto Rico, Decedent suddenly began to feel unwell at breakfast and indicated to Plaintiff that he was going to the ship's infirmary. Decedent lost consciousness en route to the infirmary, and so he was ultimately escorted there by a Carnival crew member.

Upon arriving in the infirmary, Decedent was examined by the ship's senior physician, Dr. Adrian Nan. Decedent was diaphoretic and evidently anxious, so much so that, at one point, he attempted to remove the medical equipment attached to his body and leave the infirmary. It appears that, during his moment of agitation, Decedent's blood oxygen level dipped below the normal range. Accordingly, it is unclear whether the dip in Decedent's low blood oxygen level was truly present or merely the result of an inaccurate reading from the relevant medical device, which was evidently designed to be used on calm patients.

Decedent told Dr. Nan that he was not experiencing any shortness of breath or chest pain, however, and his vital signs appeared to stabilize after he calmed down and was given supplemental oxygen. After checking Decedent's blood sugar levels and being informed by Plaintiff that Decedent previously suffered from panic attacks, Dr. Nan diagnosed Decedent with high blood sugar, diabetes, and anxiety. Decedent received intravenous fluids and remained in the infirmary for about two hours before

being discharged with instructions to return periodically to have his blood sugar levels checked.

After leaving the infirmary under his own power, Decedent and Plaintiff rested in their stateroom and then joined Plaintiff's sister and brother-in-law for lunch in one of the ship's restaurants. Plaintiff testified that, after lunch, Decedent was feeling better and was not showing any of the symptoms he exhibited that morning. Accordingly, Decedent spent the afternoon playing cards and enjoying the company of his family aboard the *Breeze*.

Around 4:00 p.m., the ship departed from Puerto Rico. Decedent returned to the infirmary before and after dinner to have his blood sugar levels checked, as instructed by Dr. Nan. According to Plaintiff, Decedent seemed "fine" during dinner and during the couple's post-dinner card games with Plaintiff's sister and brother-in-law. After roughly two hours of card games, Decedent and his brother-in-law decided to "call it an evening" and returned to their respective staterooms. But Decedent did not remain in his stateroom for very long. Soon after their return to their staterooms, Decedent's brother-in-law heard a knock at the door and found Decedent, drenched in sweat, standing in the hallway and communicating his need to go to the infirmary. Accordingly, Decedent was escorted by his brother-in-law to the infirmary shortly before 10:00 p.m.

Decedent suffered a cardiac arrest when he arrived at the infirmary. Resuscitation attempts were made; however, Decedent was pronounced dead at 10:52 p.m. At the time of Decedent's cardiac arrest and subsequent death, the ship was on

the high seas and more than twelve nautical miles from Puerto Rico. According to the Brevard County Medical Examiner, Decedent's death was caused by a pulmonary thromboembolism due to deep vein thrombosis of the left leg.

It is undisputed that Plaintiff and Decedent were subject to the terms and conditions associated with their tickets for this particular voyage (the "Ticket Contract"), which provides in relevant part:

> Carnival shall not be liable for any claims whatsoever for personal injury, illness or death of the Guest, unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event, illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of the injury, event, illness or death, and unless served on Carnival within 120 days after filing. Guest expressly waives all other potentially applicable state or federal limitations periods.

[D.E. 24, Ex. 5 at 25]. Accordingly, prior to her appointment as personal representative of Decedent's estate, Plaintiff provided written notice to Carnival regarding the underlying claims in this lawsuit on March 31, 2019, less than 185 days after Decedent's death. But Plaintiff was not appointed personal representative of Decedent's estate until December 4, 2019; accordingly, she provided a second written notice to Carnival on May 8, 2020, less than 185 days from the date of her appointment, informing Carnival of her recent appointment and reiterating the substance her of claims against the cruise line. Plaintiff then filed this lawsuit on July 13, 2020, less than one year after her appointment as personal representative for Decedent's estate. She served Carnival the following day.

II. APPLICABLE PRINCIPLES AND LAW

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or (B) showing that materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). "On summary judgment the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 597 (1986) (quoting another source).

In opposing a motion for summary judgment, the nonmoving party may not rely solely on the pleadings, but must show by affidavits, depositions, answers to interrogatories, and admissions that specific facts exist demonstrating a genuine issue for trial. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). The existence of a mere "scintilla" of evidence in support of the nonmovant's position is insufficient; there must be evidence on which the jury could reasonably find for the nonmovant. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). "A court need not permit a case to go to a jury . . . when the inferences that are drawn from the evidence, or upon which the non-movant relies, are 'implausible.'" *Mize v.*

Jefferson City Bd. Of Educ., 93 F.3d 739, 743 (11th Cir. 1996) (citing *Matsushita*, 475 U.S. at 592-94).

At the summary judgment stage, the Court's function is not to "weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. In making this determination, the Court must decide which issues are material. A material fact is one that might affect the outcome of the case. *See id.* at 248 ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted."). "Summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

III. ANALYSIS

Defendant moves for summary judgment on the basis that Plaintiff's cause of action is time-barred pursuant to the Ticket Contract and 46 U.S.C. § 30508. In the event the Court denies its motion for summary judgment, Defendant alternatively asks the Court to hold that this action of governed by the Death on the High Seas Act, 46 U.S.C. § 30301, *et seq* ("DOHSA").

A. Plaintiff's Complaint was timely filed.

Defendant argues that Plaintiff's Complaint, which was filed in this Court on July 13, 2020, was filed after the applicable limitations period and is, therefore, time barred. Plaintiff disagrees, arguing instead that 46 U.S.C. 30508(d) tolled the

applicable limitations period such that her deadline for bringing this action expired in December 2020. For the reasons explained below, the Court agrees with Plaintiff and holds that her Complaint was timely filed.

1. The limitation periods imposed by Plaintiff's Ticket Contract were tolled until December 4, 2019, pursuant to 46 U.S.C. § 30508(d).

The parties do not dispute that the limitations provisions in Plaintiff's Ticket Contract govern this case. Rather, their dispute concerns the tolling of those limitations provisions under 46 U.S.C. § 30508(d).

The Ticket Contract's limitation periods associated with Plaintiff's notice obligation (185 days from death) and the filing of her lawsuit (one year from death) are not random; rather, these limitations were written to comply with federal law:

> The owner, master, manager, or agent of a vessel transporting passengers or property between ports in the United States, or between a port in the United States and a port in a foreign country, may not limit by regulation, contract, or otherwise the period for – (1) giving notice of, or filing a claim for, personal injury or death to less than 6 months after the date of the injury or death; or (2) bringing a civil action for personal injury or death to less than one year after the date of the injury or death.

46 U.S.C. § 30508(b). But the limitations periods provided by the Ticket Contract are not set in stone because a different subsection of the same federal statute includes a tolling provision:

> If a claimant is a minor or mental incompetent, or if a claim is for wrongful death, any period provided by a contract *for giving notice of the claim* is tolled until the earlier of – (1) the date the legal representative is appointed for the minor, incompetent, or decedent's estate; or (2) 3 years after the injury or death.

46 U.S.C. § 30508(d) (emphasis added).

Based on the plain text of the foregoing statutory language, Defendant argues that the only limitations provision tolled by 46 U.S.C. § 30508(d) is the 185-day notice requirement imposed by Plaintiff's Ticket Contract. Accordingly, Defendant argues that Plaintiff's Complaint needed to be filed within one year of Decedent's death in order to comply with the Ticket Contract's relevant limitations provision. Plaintiff disagrees, arguing instead that 46 U.S.C. § 30508(d) effectively tolls both the time to give notice and the time to bring a lawsuit against Defendant. Plaintiff is correct. To understand why, a review of the statute's history and an identification of the correct canon of statutory interpretation are in order.

2. The evolution of the tolling provision in 46 U.S.C. § 30508.

In its prior incarnation, the applicable tolling provision was located at 46 U.S.C § 183b(c) and provided that:

> If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, **any** lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: *Provided, however*, That such appointment be made within three years after the date of such death or injury.

See, e.g., Doe (A.H.) v. Carnival Corp., 167 F. App'x 126, 127 (11th Cir. 2006) (emphasis added); *Boehnen v. Carnival Cruise Lines, Inc.*, 778 So. 2d 1084, 1085 (Fla. 3d DCA 2001).

Relying on the statute's use of the word "any," courts held that the statute tolled the full array of relevant limitations provisions within cruise line ticket contracts. *See Doe (A.H.)*, 167 F. App'x at 128; *Boehnen*, 778 So. 2d at 1085. Put

differently, under the plain text of 46 U.S.C. § 183b(c), the 185-day and one-year clocks in Plaintiff's Ticket Contract would not begin to count down until Plaintiff was appointed as the legal representative for Decedent's estate, or until three years from Decedent's death, whichever came first.

In 2006, however, Congress engaged in a re-codification of Title 46 of the United States Code and, in doing so, made two decisions that guide the Court's analysis here: (1) Congress changed the language and location of 46 U.S.C. § 183b(c), moving the provision to 46 U.S.C. § 30508(d); and (2) Congress expressly stated that its intent in effecting the change was to conform to "the understood policy, intent, and purpose of the Congress in the original enactments" such that the restatement of the law was "not intended . . . to lead to changes in result . . . [or] impair the precedent value of earlier judicial decisions or other interpretations." H.R. REP. 109-170, 23, 2006 U.S.C.C.A.N. 972, 976.

Defendant correctly recognizes that "[a]s with any question of statutory interpretation, we begin by examining the text of the statute to determine whether its meaning is clear." *See Silva-Hernandez v. U.S. Bureau of Citizenship & Immigr. Services*, 701 F.3d 356, 361 (11th Cir. 2012). Accordingly, we generally presume that "Congress said what it meant and meant what it said." *See id*. Therefore, Defendant argues that Congress, through its 2006 re-codification, meant to narrow the scope of the tolling provision now found at 46 U.S.C. § 30508(d) because "when the legislature deletes certain language as it amends a statute, it generally indicates an intent to

change the meaning of the statute." *U.S. ex rel. Williams v. NEC Corp.*, 931 F.2d 1493, 1502 (11th Cir. 1991) (cleaned up).

But Defendant's argument is misplaced because Congress went a step further in expressing the intent behind its re-codification of Title 46 when it incorporated a list of case law into the legislative history that it deemed "relevant to an interpretation of the general intent of codification legislation[.]" H.R. REP. 109-170, 23, 2006 U.S.C.C.A.N. at 976. Thus, not only did Congress clearly express its intent to reorganize but not change the substance of Title 46, but it also provided the courts with its desired canon of statutory interpretation. *See id.*

The first Supreme Court case the drafters of the revised statute deemed relevant in the legislative history was *Finley v. United States*, 490 U.S. 545, 553-555 (1989). *Id.* In *Finley*, Justice Scalia articulated that "[u]nder established canons of statutory construction, it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed." *Finley*, 490 U.S. at 554 (cleaned up). Moreover, Justice Scalia continued, "no changes in law or policy are to be presumed from changes of language in the revision unless an intent to make such changes is clearly expressed." *Id.* (quoting *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 227 (1957)).

Following the guidance of *Finley* and the drafters who revised Title 46, the Court must inquire as to whether the legislative history behind 46 U.S.C. § 30508(d) indicates a clear expression by Congress to change the substance of the tolling statute by altering its language and location within Title 46. *See id.* But no such expression

can be found. By contrast, and consistent with Congress' general intent behind enacting the re-codification, the specific intent behind the changes present in the relevant tolling provision is limited to the desire to increase "clarity" and eliminate certain "unnecessary words" – none of which relate to the types of time limitations that may be tolled under the statute. *See* H.R. REP. 109-170, 46, 2006 U.S.C.C.A.N. at 993. Accordingly, even though the text of the tolling provision no longer expressly applies to "any" lawful limitation of time in an applicable ticket contract, nothing in the legislative history clearly expresses Congress' intent to narrow the scope of the tolling provision. Put differently, when 46 U.S.C. § 30508(d) refers to "giving notice of the claim," it is referring to all forms of notice, including the filing of a lawsuit, because that was the effect of the tolling provision before re-codification. Thus, under the canon of statutory interpretation selected by Congress and outlined in *Finley*, the Court concludes that the current iteration of 46 U.S.C. § 30508(d) applies to both Plaintiff's 185-day notice requirement as well as the one-year limitation on her ability to timely bring a lawsuit against Defendant.

3. Plaintiff's Complaint was timely filed.

We are not the first to determine that the 2006 codification of Title 46 resulted in no substantive change to the tolling provision at issue in this case. Chief Judge Altonaga previously concluded that 46 U.S.C. § 30508(d) tolled the time in which the legal representative for a minor passenger could bring a lawsuit against the cruise line, holding that the one-year limitations period began to run on the date of the appointment of the minor's legal representative. *Doe v. Carnival Corp.*, 37 F. Supp.

3d 1254, 1256-57 (S.D. Fla. 2012); *cf. United States v. Miranda*, 780 F.3d 1185, 1196 (D.C. Cir. 2015) (discussing Congress' intent to not make substantive changes with regard to a different provision from the reorganized version of Title 46).

Here, it is undisputed that Plaintiff was appointed as the legal representative for Decedent's estate on December 4, 2019. Pursuant to 46 U.S.C. § 30508(d) and her Ticket Contract, therefore, she had one year from that date to timely file this lawsuit against Defendant. Because this lawsuit was filed on July 13, 2020, less than one year from Plaintiff's appointment, the lawsuit was timely filed. Accordingly, the Court should deny Defendant's motion for summary judgment.

B. The Death on the High Seas Act governs Plaintiff's claims.

DOHSA generally governs wrongful death actions occurring at least twelve nautical miles from the United States coastline.[2] *See* 46 U.S.C. § 30302. DOHSA requires that a personal representative bring the cause of action, and that personal representative can bring a claim only on behalf of the decedent's spouse, parent, child, or dependent relative. *See id*. Recovery under DOHSA, if it applies, is expressly limited to pecuniary losses; claims for non-pecuniary losses (e.g., emotional injury) and for punitive damages are barred. *LaCourse v. PAE Worldwide Inc.*, 980 F.3d 1350, 1355 (11th Cir. 2020). It is also well-settled that DOHSA preempts conflicting state wrongful death statutes and makes itself the exclusive remedy. *See Ford v. Wooten*, 681 F.2d 712, 716 (11th Cir. 1982) ("Where a cause of action exists for

[2] In 1988, President Ronald Reagan issued Proclamation No. 5928. The Proclamation moved the starting point of DOHSA from three to twelve nautical miles offshore.

wrongful death under DOHSA, no additional action exists under general maritime law for wrongful death."); *Offshore Logistics, Inc., v. Tallentire*, 477 U.S. 207 (1986) (after examining the legislative history and text of DOHSA, held that damages provided in DOHSA could not be supplemented under state law).

Defendant has moved for partial summary judgment with regard to DOHSA's application to this case. For the reasons discussed below, the Court finds that DOHSA applies and, therefore, partial summary judgment on this issue should be granted to Defendant.

1. The applicability of the Death on the High Seas Act depends upon where the injury occurred.

By its plain terms, DOHSA limits its application to instances in which the "wrongful act, neglect, or default occur[ed] on the high seas," regardless of where the injury resulting in death occurred. *See* 46 U.S.C. § 30302. But mounds of binding precedent have "whistled past the text's unmistakable focus on the location of the alleged negligence as the decisive factor for determining DOHSA's applicability." *See LaCourse*, 980 F.3d at 1363 (Newsom, J. concurring) (collecting cases). Instead, as the Eleventh Circuit recently affirmed, it is the location of the "actual injury" that controls whether DOHSA applies. *See id*. at 1364 (Newsom, J. concurring).

The reason for this legal nuance traces back to more than a century and is premised on an aspect of admiralty law known as the "consummation of the injury" theory. *See In re Dearborn Marine Serv., Inc.*, 499 F.2d 263, 274 (5th Cir. 1974) ("Historically maritime jurisdiction has been measured by the locality of the wrong with the locality defined as where the 'substance and consummation of the injury'

took place.") (citing *The Plymouth*, 70 U.S. (3 Wall.) 20, 33 (1886)) (footnote omitted). Thus, if a claim is premised on a negligence theory, the underlying negligence is not complete until it is "consummated in an actual injury." *LaCourse*, 980 F. 3d at 1364 (Newsom, J. concurring) (quoting *Lasky v. Royal Caribbean Cruises, Ltd.*, 850 F. Supp. 2d 1309, 1312 (S.D. Fla. 2012)). Thus, a wrongful death claim based on negligence – as we have here – accrues at the time and place where the allegedly wrongful act culminates in an actual injury, not when and where the wrongful act occurred. *See id.* On this much, the parties agree.

The parties dispute, however, where the "actual injury" occurred in this case. Therefore, they also dispute the applicability of DOHSA to Plaintiff's claims. Plaintiff posits that Dr. Nan's diagnosis on the morning of October 17 was incorrect and, as a result, Decedent suffered an almost immediate injury because his pulmonary thromboembolism was able to progress without the benefit of medical care from a nearby Puerto Rican hospital. Accordingly, Plaintiff argues that Decedent was injured for DOHSA purposes while the *Breeze* was still in Puerto Rican waters; thus, in Plaintiff's view, DOHSA should not apply. Defendant identifies the injury as Decedent's cardiac arrest, which indisputably occurred while the *Breeze* was on the high seas and more than twelve nautical miles from Puerto Rico; thus, in Defendant's view, DOHSA should apply. The Court agrees with Defendant.

2. Decedent sustained an "actual injury" from his alleged misdiagnosis at the time of his cardiac arrest.

In *LaCourse*, the decedent – a retired Air Force Lieutenant Colonel employed as a civilian pilot by the Department of Defense – departed Tyndall Air Force Base

on an Air Force F-16 fighter jet. *LaCourse*, 980 F.3d at 1353. The plan was for the pilot to fly the jet out over the Gulf of Mexico, perform a series of training maneuvers, and then return to the base. *Id*. But the pilot did not return. *Id*. During the flight, for reasons the parties disputed, the F-16 crashed into the water more than twelve nautical miles offshore. *Id*. Accordingly, the pilot's widow, as personal representative, filed a wrongful death suit against the company responsible for maintaining the F-16 at Tyndall Air Force Base, alleging negligence with regard to the maintenance of the F-16's hydraulic systems. *Id*. at 1354. The district court determined, at summary judgment, that DOHSA applied to the widow's claim. *Id*. And even though the alleged negligent maintenance indisputably occurred on land, the Eleventh Circuit affirmed DOHSA's applicability because the wrongful act on shore did not culminate in an actual injury until the F-16 crashed into the high seas. *Id* at 1355-56.

Here, similar to *LaCourse*, it is undisputed that the alleged wrongful act – Dr. Nan's misdiagnosis of Decedent's pulmonary thromboembolism – occurred in a Puerto Rican port, which, for DOHSA purposes, is the functional equivalent of American soil. But, as *LaCourse* and decades of precedent make clear, it is not the location of the wrongful act that matters for DOHSA purposes; rather, it is the location where that wrongful act culminates in an actual injury. Defendant posits that the pivotal injury is Decedent's undisputed cardiac arrest on the high seas, and the Court concludes that, based on the record before us, no reasonable juror could find otherwise.

Plaintiff argues that Dr. Nan's alleged misdiagnosis injured Decedent before the *Breeze* left Puerto Rican waters because that error allowed Decedent's pulmonary

thromboembolism to develop for several hours without treatment from a shoreside hospital. But the record before us indicates that, in the time between the alleged misdiagnosis and the ship's departure from Puerto Rican waters, Decedent was merely at a greater risk of death. And that increased risk is simply not enough to qualify as an "injury" for DOHSA purposes. Holding otherwise would be tantamount to finding that DOHSA should not have applied in *LaCourse* because, as soon as the F-16 took off from Tyndall Air Force Base, the pilot was at a greater risk of crashing due to the company's negligent maintenance and, therefore, the company's negligence had culminated in an actual injury. But that is not the correct result under our precedents because at takeoff, even assuming that the company was deficient in maintaining the F-16, there was still the possibility that the fighter jet could be operated properly and landed safely. Put differently, the pilot in *LaCourse* was not injured by the increased risk at takeoff, he was injured by the crash into the high seas; thus, DOHSA applied to his widow's wrongful death suit.

Here, Decedent may have been at an increased risk of death after the alleged misdiagnosis because it is undisputed that a pulmonary thromboembolism *can* be fatal. But the Court cannot glean from the record any moment in time prior to Decedent's cardiac arrest that the alleged misdiagnosis culminated in an actual injury. Indeed, Plaintiff concedes that, "[i]n any event, the cardiac arrest is merely the culmination of the injury inflicted" by Dr. Nan's alleged misdiagnosis. [D.E. 30 at 10]. And it is the *culmination* in injury that the law concerns itself with when determining DOHSA's applicability. *See LaCourse*, 980 F.3d at 1364 (Newsom, J.

concurring); *see also Kennedy v. Carnival Corp.*, 385 F. Supp. 3d 1302, 1316 (S.D. Fla. 2019) (finding DOHSA applied where decedent dove into shallow waters off the coast of Mexico, sustained blunt force trauma, and later died on the shore); *Moyer v. Rederi*, 645 F. Supp. 620, 627 (S.D. Fla. 1986) (finding DOHSA applied where the decedent's heart attack began on the high seas and he later died on land); *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 the injury."); *Public Administrator of the County of New York v. Angela Compania Naviera, S.A.*, 592 F.2d 58 (2d Cir. 1979) (finding DOHSA applied where seaman died in an Athens hospital eight months after becoming ill and receiving allegedly inadequate medical treatment onboard a freighter); *Chute v. United States*, 466 F. Supp. 61, 63 (D. Mass. 1978) (finding DOHSA applied where decedent died in a Massachusetts hospital after being injured on a sinking yacht in Nantucket Sound). Accordingly, DOHSA governs Plaintiff's claims.

IV. CONCLUSION

For the foregoing reasons, Carnival's motion for summary judgment [D.E. 23] should **GRANTED** in part and **DENIED** in part. The case is not time barred, but Plaintiff's damages should be subject to the limitations found in DOHSA.

Pursuant to Local Magistrate Rule 4(b) and Fed. R. Civ. P. 73, the parties have fourteen (14) days from service of this Report and Recommendation within which to file written objections, if any, with the District Judge. Failure to timely file objections shall bar the parties from *de novo* determination by the District Judge of any factual

or legal issue covered in the Report *and* shall bar the parties from challenging on appeal the District Judge's Order based on any unobjected-to factual or legal conclusions included in the Report. 28 U.S.C. § 636(b)(1); 11th Cir. Rule 3-1; *see, e.g., Patton v. Rowell,* 2017 WL 443634 (11th Cir. Feb. 2, 2017); *Cooley v. Commissioner of Social Security,* 2016 WL 7321208 (11th Cir. Dec. 16, 2016).

DONE AND ORDERED in Chambers at Miami, Florida, this 2d day of December, 2021.

/s/ *Edwin G. Torres*
EDWIN G. TORRES
United States Magistrate Judge