UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-22439-Civ-SCOLA/TORRES

WILLIAM CHRISTIE,

Plaintiff,

v.

ROYAL CARIBBEAN CRUISES, LTD., JEFFERSON INSURANCE COMPANY, AGA SERVICE COMPANY, d/b/a ALLIANZ GLOBAL ASSISTANCE,

Defendants.

_____/

ORDER ON PLAINTIFF'S MOTION TO STRIKE

This matter is before the Court on William Christie's ("Plaintiff") motion to strike several affirmative defenses. [D.E. 40]. Jefferson Insurance Company ("Jefferson") and AGA Service Company d/b/a Allianz Global Assistance ("AGA") (collectively, "Defendants") responded to Plaintiff's motion on December 10, 2020 [D.E. 41] to which Plaintiff replied on December 17, 2020. [D.E. 42]. Therefore, Plaintiff's motion to strike is now ripe for disposition. After careful consideration of the motion, response, reply, relevant authority, and for the reasons discussed below, Plaintiff's motion to strike is **GRANTED**.[1]

[1] On January 6, 2021, the Honorable Robert N. Scola referred Plaintiff's motion to strike to the undersigned Magistrate Judge for disposition. [D.E. 43].

I. APPLICABLE PRINCIPLES AND LAW

A party may move to strike pursuant to Rule 12(f) of the Federal Rules "an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "An affirmative defense is one that admits to the complaint, but avoids liability, wholly or partly, by new allegations of excuse, justification or other negating matter." *Royal Palm Sav. Ass'n v. Pine Trace Corp.,* 716 F. Supp. 1416, 1420 (M.D. Fla. 1989) (quoting *Fla. East Coast Railway Co. v. Peters,* 72 Fla. 311, 73 So. 151 (Fla. 1916)). Thus, affirmative defenses are pleadings, and as a result, must comply with all the same pleading requirements applicable to complaints. *See Home Management Solutions, Inc. v. Prescient, Inc.,* 2007 WL 2412834, at *1 (S.D. Fla. Aug. 27, 2007). Affirmative defenses must also follow the general pleading standard of Fed. R. Civ. P. 8(a), which requires a "short and plain statement" of the asserted defense. *See Morrison v. Executive Aircraft Refinishing, Inc.*, 434 F. Supp. 2d 1314, 1318 (S.D. Fla. 2005). A defendant must admit the essential facts of the complaint and bring forth other facts in justification or avoidance to establish an affirmative defense. *See id.*

"The striking of an affirmative defense is a 'drastic remedy' generally disfavored by courts." *Katz v. Chevaldina*, 2013 WL 2147156, at *2 (S.D. Fla. May 15, 2013) (citations omitted); *see also Blount v. Blue Cross & Blue Shield of Florida, Inc.*, 2011 WL 672450, at *1 (M.D. Fla. Feb. 17, 2011) ("Striking a defense . . . is disfavored by the courts."); *Pandora Jewelers 1995, Inc. v. Pandora Jewelry, LLC*, 2010 WL 5393265, at *1 (S.D. Fla. Dec. 21, 2010) ("Motions to strike are generally

disfavored and are usually denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties") (internal quotations omitted) (quoting another source).

But, a "defendant must allege some additional facts supporting the affirmative defense." *Cano v. South Florida Donuts, Inc.,* 2010 WL 326052, at *1 (S.D. Fla. Jan. 21, 2010). Affirmative defenses will be stricken if they fail to recite more than bare-bones conclusory allegations. *See Merrill Lynch Bus. Fin. Serv. v. Performance Mach. Sys.*, 2005 WL 975773, at *11 (S.D. Fla. March 4, 2005) (citing *Microsoft Corp. v. Jesse's Computers & Repair, Inc.*, 211 F.R.D. 681, 684 (M.D. Fla. 2002)). "An affirmative defense may also be stricken as insufficient if: '(1) on the face of the pleadings, it is patently frivolous, or (2) it is clearly invalid as a matter of law.'" *Katz*, 2013 WL 2147156, at *1 (citing *Blount v. Blue Cross and Blue Shield of Fla., Inc.,* 2011 WL 672450 (M.D. Fla. Feb.17, 2011)).

"Furthermore, a court must not tolerate shotgun pleading of affirmative defenses, and should strike vague and ambiguous defenses which do not respond to any particular count, allegation or legal basis of a complaint." *Morrison v. Exec. Aircraft Refinishing, Inc.,* 434 F. Supp. 2d 1314, 1318 (S.D. Fla. 2005). An affirmative defense should only be stricken with prejudice when it is insufficient as a matter of law. *See Kaiser Aluminum & Chemical Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1057 (5th Cir. 1982) (citing *Anchor Hocking Corp. v. Jacksonville Elec. Auth.*, 419 F. Supp. 992, 1000 (M.D. Fla. 1976)). Otherwise, district courts may strike the technically deficient affirmative defense without

prejudice and grant the defendant leave to amend the defense. *Microsoft Corp.*, 211 F.R.D. at 684.

II. ANALYSIS

Plaintiff took a cruise on June 29, 2019 with his family onboard the Royal Caribbean's *Symphony of the Seas*. Prior to that cruise, he purchased Jefferson's travel insurance policy – with AGA as Jefferson's agent – so that the company could coordinate and supervise any emergency medical care that might arise during the cruise. [D.E. 1 at ¶ 21]. Shortly after boarding the cruise, Plaintiff experienced lower back pain and visited the ship's medical facility to seek treatment. The medical staff referred him to a shore side hospital in Puerto Rico for a lumbar spine MRI and Plaintiff contacted Defendants to coordinate his emergency medical care. However, Plaintiff alleges that Defendants failed to comply with their obligations and, after an unreasonable delay, Plaintiff arranged for his own emergency air ambulance to return him to Florida for medical care. *Id.* at ¶ 27. Plaintiff claims that Defendants' negligence caused him to suffer significant and permanent injury, including paralysis. He subsequently filed this action on July 23, 2020 with two claims for breach of contract and negligent failure to coordinate medical care against AGA and Jefferson.

Plaintiff now seeks to strike several affirmative defenses – specifically numbers 7, 10, 11, 12, and 13 – because they each seek to reduce liability pursuant to the doctrine of comparative fault. Plaintiff argues that each of these defenses must be stricken because "it is erroneous to apportion fault between a party and a

non-party in a federal maritime action[.]" *Wiegand v. Royal Caribbean Cruises Ltd.*, 473 F. Supp. 3d 1348, 1351 (S.D. Fla. 2020). Therefore, Plaintiff asks that the Court strike several affirmative defenses because none of them are allowed in a maritime action.

Defendants argue that the motion should be denied because Plaintiff's claims are "likely governed" under Florida law. [D.E. 41 at 2]. Defendants claim that the underlying contract was consummated in Florida, that Plaintiff is a Florida citizen, and that the alleged failure to coordinate emergency medical services stems from a failure to comply with certain obligations under Florida law. Defendants try to distinguish this case from a maritime tort action because – unlike those matters – this case is based on a Florida contract where "the law of the jurisdiction where the contract was executed governs the rights and liabilities of the parties in determining an issue of insurance coverage." *State Farm Mut. Auto. Ins. Co. v. Roach*, 945 So. 2d 1160, 1163 (Fla. 2006) (citing *Sturiano v. Brooks,* 523 So.2d 1126, 1129 (Fla. 1988)). And that, Defendants reason, points exclusively to Florida. Defendants further assert that the claims against them are governed under Florida law because the policy language of the contract refers to any "trip" "within, and/or from a location at least 100 miles from your primary residence," [D.E. 1-5 at 11] meaning the only reason Plaintiff tries to invoke general maritime law is because he "simply happened to be on a cruise." [D.E. 41 at 4]. So, given that the policy was consummated in Florida and fails to contain any specific terms or conditions with a

connection to maritime law, Defendants reason that the affirmative defenses based on comparative fault should stand.

In addition, Defendants contend that, while general maritime law "probably applies to Plaintiff's claims against Royal Caribbean," (and therefore would be subject to a motion to strike if the cruise line had presented the same affirmative defenses) the issue is unclear with respect to AGA or Jefferson. *Id.* at 6. And even if Defendants are incorrect on this point and maritime law governs, they reason that the motion should still be denied because this is a fact-intensive inquiry that cannot be decided at this stage of the case. *See Prime Ins. Syndicate, Inc. v. B.J. Handley Trucking, Inc.*, 363 F.3d 1089, 1092–93 (11th Cir. 2004) ("The determination of where a contract was executed is fact-intensive, and requires a determination of "where the last act necessary to complete the contract [wa]s done.") (citing *Pastor v. Union Cent. Life Ins. Co.,* 184 F. Supp. 2d 1301, 1305 (S.D. Fla. 2002)). Defendants therefore propose, in the alternative, that the Court should resolve this issue at a later date and with the benefit of a more developed factual record. *See AXA Pac. Ins. Co. v. Piper Aircraft Corp. Irrevocable Tr.*, 2017 WL 1439936, *1 (S.D. Fla. Jan. 25, 2017) ("Given the fact-intensive inquiry required to determine the applicable law, a choice-of-law analysis would be better reserved for summary judgment, where the Court would have the benefit of a proper and more-thoroughly developed record.") (citing cases). As such, Defendants conclude that, although there is no authority that resolves the issue presented, Florida law

principles show that they should be allowed to apportion damages (at least for now) where the underlying contract has no connection to general maritime law.

"The traditional common law rule in the United States is joint and several liability, whereby each defendant found liable could be required to pay for one-hundred percent of the plaintiff's injury at the plaintiff's election, provided that the plaintiff could never recover more than the full amount of his or her damages." *Estate of Miller ex rel. Miller v. Thrifty Rent-A-Car Sys., Inc.*, 609 F. Supp. 2d 1235, 1239 (M.D. Fla. 2009) (citing *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993); Black's Law Dictionary 933 (8th ed. 2004)). The Florida Supreme Court abrogated the common law rule in *Fabre* when it created an affirmative defense that allows named defendants to apportion liability to non-parties. *See Fabre*, 623 So. 2d at 1185-87 ("[S]ection 768.81 [of the Florida Statutes] was enacted to replace joint and several liability with a system that requires each party to pay for non-economic damages only in proportion to the percentage of fault by which that defendant contributed to the accident."). The *Fabre* defense is what Defendants rely upon as the basis for their affirmative defenses.

The parties agree that, in maritime actions, the Florida comparative fault rule cannot apply and by extension that includes *Fabre* affirmative defenses. That agreement is well founded because "general maritime law does not recognize the concept of a *Fabre* defendant, whereby apportionment of fault is not limited to participants in a lawsuit, and 'the only means of determining a party's percentage of fault is to compare the party's percentage of fault to all of the other entities who

contributed to the accident, regardless of whether they have been or could have been joined as defendants." *Barrios v. Carnival Corp.*, 2019 WL 1876792, at *3 (S.D. Fla. Apr. 26, 2019). Instead, under general maritime law, the doctrine of joint and several liability applies where a "plaintiff may obtain judgment for the full amount from any and all tortfeasors." *Groff v. Chandris, Inc.*, 835 F. Supp. 1408, 1409 (S.D. Fla. 1993); *see also Barrios*, 2019 WL 1876792, at *3 ("[B]ecause defense seven is predicated on diminishing Defendant's fault by shifting it to others, the defense runs afoul of maritime law."). The Eleventh Circuit made this point clear almost forty years ago, in the context of a Jones Act case, when it found that "'a plaintiff may 'sue . . . all the wrongdoers, or any of them, at his election; and . . . if he did not contribute to the disaster . . . to judgment in either case for the full amount of his loss.'" *Ebanks v. Great Lakes Dredge & Dock Co.*, 688 F.2d 716, 718-19 (11th Cir. 1982) (quoting *The Atlas*, 93 U.S. 302, 314 (1876)). Accordingly, we agree with the parties that, in a maritime action, affirmative defenses based on Florida comparative fault principles law cannot stand.

Defendants say that this case is materially different because, although general maritime law "probably applies" to Plaintiff's claims against Royal Caribbean, AGA and Jefferson should be treated differently given the underlying contract has no connection to maritime law. In determining whether this argument has merit, the first question is whether admiralty jurisdiction exists and, if so, whether maritime law applies to AGA and Jefferson.

It is well-established that, if a district court "has admiralty jurisdiction with respect to a particular defendant, it has admiralty jurisdiction over an entire case[.]" *Belik v. Carlson Travel Grp., Inc.*, 26 F. Supp. 3d 1258, 1265 (S.D. Fla. 2012). That means admiralty jurisdiction applies "even when non-maritime claims – which arise from the same operative facts, as is the case here – are brought in the same suit." *Id.* (citing *Roco Carriers, Ltd. v. M/V Nurnberg Express,* 899 F.2d 1292, 1296–97 (2d Cir. 1990) ("[A]dmiralty jurisdiction extends to an entire case, including non-admiralty claims against a second defendant.") (citing *Teledyne, Inc. v. Kone Corp.,* 892 F.2d 1404, 1409 (9th Cir. 1989); *Osborn v. Bank of U.S.*, 22 U.S. 738, 822-23 (1824)); *see also Ortega v. Schramm,* 922 F.2d 684, 693 n.9 (11th Cir. 1991) (recognizing that pendent party jurisdiction is allowed in admiralty cases under the language of 28 U.S.C. § 1333(1) (citing *Roco Carriers, Ltd. v. M/V Nurnberg Exp.*, 899 F.2d 1292, 1295 (2d Cir. 1990)). So, if admiralty jurisdiction exists against Royal Caribbean then it also exists over AGA and Jefferson, even if the causes of action presented against the latter are based on non-maritime claims. *See Belik*, 26 F. Supp. 3d at 1265–66 ("[E]ven if Plaintiff's claims against the Señor Frog's Defendants are not maritime claims, the Court properly has admiralty jurisdiction over these defendants."); *Casino Cruises Inv. Co., L.C. v. Ravens Mfg. Co.,* 60 F. Supp. 2d 1285, 1288 (M.D. Fla. 1999) ("It is well-established that a noncontractual indemnity or contribution action, such as the one in this case, is within the scope of the federal court's admiralty jurisdiction where the action is derived from an underlying maritime tort.").

"[A] party seeking to invoke federal admiralty jurisdiction pursuant to 28 U.S.C. § 1333(1) over a tort claim must satisfy conditions both of location and of connection with marine activity." *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.,* 513 U.S. 527, 534 (1995). Plaintiff meets both of these requirements against Royal Caribbean because he alleges that the cruise line was negligent while he was a passenger onboard a vessel and while sailing in navigable waters. The reason admiralty jurisdiction exists is because "[p]ersonal-injury claims by cruise ship passengers, complaining of injuries suffered at sea, are within the admiralty jurisdiction of the district courts." *Caron v. NCL (Bahamas), Ltd.*, 910 F.3d 1359, 1365 (11th Cir. 2018) (citing *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 587-88 (1991) (exercising admiralty jurisdiction in a case alleging personal injury suffered aboard a cruise ship at sea)). And because admiralty jurisdiction exists over Royal Caribbean, the Court has admiralty jurisdiction over the entire case. *See Belik*, 26 F. Supp. 3d at 1265.

Having established that admiralty jurisdiction applies to the entire case, the next question is whether general maritime law applies.[2] AGA and Jefferson say no because "[w]hile the court must have admiralty jurisdiction to apply maritime law, it does not have to apply maritime law if it has admiralty jurisdiction." [D.E. 41 at 7]; *see also Doe v. Celebrity Cruises, Inc.*, 394 F.3d 891, 899 (11th Cir. 2004) ("[F]or

[2] "[T]he 'general maritime law' is drawn from both state and federal sources and is an 'amalgam of traditional common-law rules, modifications of those rules, and newly created rules' which includes a 'body of maritime tort principles.'" *Brockington v. Certified Elec., Inc.,* 903 F.2d 1523, 1530 (11th Cir. 1990) (quoting *E. River S.S. Corp. v. Transamerica Delaval, Inc.,* 476 U.S. 858, 864 (1986)).

this Court to apply admiralty law, this Court *must* have admiralty jurisdiction.") (emphasis in original) (citing *Norfolk Southern Railway Co. v. Kirby*, 543 U.S. 14, 23 (2004)). There is some support for this assertion because – where admiralty jurisdiction exists – a court is *not* always compelled to apply general maritime law. Instead, courts are sometimes left with a choice to choose one or the other. *See, e.g.*, *Balaschak v. Royal Caribbean Cruises, Ltd.*, 2009 WL 8659594, at *5 (S.D. Fla. Sept. 14, 2009) ("Because both the location and connection requirements are met, admiralty jurisdiction over Balaschak's action exists, and the Court *may* apply maritime law. But that does not preclude the use of state law.") (emphasis added).

The problem here is that neither party referenced a case that directly answers the question presented. [D.E. 41 at 7 ("Jefferson Insurance Company and AGA Service Company appreciate that there is not a case directly on point on these issues")]. And in circumstances where "neither statutory nor judicially created maritime principles provide an answer to a specific legal question, courts may apply state law provided that the application of state law does not frustrate national interests in having uniformity in admiralty law." *Coastal Fuels Mktg., Inc. v. Fla. Express Shipping Co.,* 207 F.3d 1247, 1251 (11th Cir. 2000). In making such a determination, the Eleventh Circuit has offered some guiding principles:

> One must identify the state law involved and determine whether there is an admiralty principle with which the state law conflicts, and, if there is no such admiralty principle, consideration must be given to whether such an admiralty rule should be fashioned. If none is to be fashioned, the state rule should be followed. If there is an admiralty-state law conflict, the comparative interests must be considered—they

> may be such that admiralty shall prevail, as in *Kossick,* or if the policy underlying the admiralty rule is not strong and the effect on admiralty is minimal, the state law may be given effect, as in *Olympic Towing*.

Steelmet, Inc. v. Caribe Towing Corp., 779 F.2d 1485, 1488 (11th Cir. 1986).

The Court is not required to undergo such an analysis because – while Defendants ask that we determine if the underlying agreement was a maritime contract and whether it conflicts with Florida state law – Plaintiff has already alleged an independent maritime tort against AGA and Jefferson.[3] Defendants noticeably overlook this part of Plaintiff's complaint in trying to rebut the application of maritime law. But, in the disposition of the motion to dismiss, the Court called attention to these allegations when it held that Plaintiff presented an independent tort based on the undertaker doctrine. [D.E. 33 at 7-8]. Plaintiff specifically alleged that, after he suffered his back injury, Defendants undertook the coordination of his medical care so that he could leave the cruise ship and receive the appropriate treatment. Defendants were negligent because they sent Plaintiff to a hospital without a working or available MIR machine. [D.E. 1 at ¶ 137]; *see also id*. at ¶ 133 (alleging that Defendants "actually participated in coordinating emergency medical care for the Plaintiff by participating in selecting Centro Medico de Puerto Rico as the hospital to provide emergency care for Plaintiff.")]. And when

[3] Defendants rely on Florida's choice of law principles, but that cannot be correct because where a "case lies in admiralty, federal maritime conflict of laws control." *Cooper v. Meridian Yachts, Ltd.*, 575 F.3d 1151, 1161–62 (11th Cir. 2009) (citing *F.W.F., Inc. v. Detroit Diesel Corp.,* 494 F. Supp. 2d 1342, 1352 (S.D. Fla. 2007) ("[A] federal court sitting in admiralty must apply federal maritime choice-of-law rules.") (quoting *Aqua–Marine Constructors, Inc. v. Banks,* 110 F.3d 663, 670 (9th Cir. 1997)).

Defendants learned that the hospital fell short in this respect, Defendants failed to transport Plaintiff to another suitable medical facility.[4]

Given these allegations, nothing more is required to trigger general maritime law because an independent tort occurred while Plaintiff was still on the vessel in navigable waters. That is, after Plaintiff suffered his back injury, he entrusted Defendants to coordinate his medical care so that he could leave the vessel and go to a hospital to treat his back pain. Defendants doubled down on that failure because – when Plaintiff arrived at the first medical facility and Defendants learned that it was inadequate – they left him to fend for himself. These allegations show that, regardless of the breach of contract claim, maritime law applies because this action arose out of an independent tort that occurred while Plaintiff was still on a cruise ship and, by extension, the same negligent acts continued onto land. *See Everett v. Carnival Cruise Lines,* 912 F.2d 1355, 1358 (11th Cir. 1990) ("[I]f the injury occurred on navigable waters, federal maritime law governs the substantive issues in the case"); *see also Kermarec v. Compagnie Generale Transatlantique,* 358 U.S.

[4] *See United States v. Gavagan*, 280 F.2d 319, 328 (5th Cir. 1960) (holding the United States liable for a maritime tort after the Coast Guard undertook a rescue effort to save the crew of a fishing vessel and acted negligently); *see also Stolinas v. Palmer*, 2019 WL 827697, at *3 (M.D. Fla. Jan. 28, 2019), *Report and Recommendation adopted*, 2019 WL 764021 (M.D. Fla. Feb. 21, 2019) (finding that a maritime tort exists where "the alleged injury," has "the potential to disrupt maritime commerce despite there being no actual disruption."); *Craddock v. M/Y The Golden Rule*, 110 F. Supp. 3d 1267, 1275 (S.D. Fla. 2015) ("The Court finds that the incident [involving a collision between a boat and a diver] . . . had a potentially disruptive impact on maritime commerce," because "[s]uch an accident might require emergency measures, such as a rescue effort, or an investigation of some sort, which could restrain commercial traffic through the area."); *Mink v. Genmar Indus., Inc.,* 29 F.3d 1543, 1545–46 (11th Cir. 1994) ("Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance.") (quoting *The Plymouth,* 70 U.S. 20, 36 (1866)).

625, 628 (1959) (finding that legal rights and liabilities arising from conduct allegedly causing injury aboard a ship on navigable waters is "within the full reach of the admiralty jurisdiction and measurable by the standards of maritime law"). And because maritime law controls and a maritime action "does not recognize the concept of a *Fabre* defendant," the affirmative defenses based on the doctrine of Florida comparative fault principles must be stricken. *Barrios*, 2019 WL 1876792, at *3; *see also Farley v. Magnum Marine Corp., N.V.*, 1995 WL 795711, at *6 (S.D. Fla. June 9, 1995) ("Because federal maritime law requires the court to apply principles of joint and several liability, it would be error to allocate fault between defendant and nonparties in accordance with the relevant Florida rule.") (citing *Ebanks,* 688 F.2d at 718-19). For these reasons, Plaintiff's motion to strike is **GRANTED**.[5]

III. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that Plaintiff's motion to strike [D.E. 40] is **GRANTED**. Any amended answer shall be filed within fourteen (14) days from the date of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 9th day of January, 2021.

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

[5] If the maritime tort claim is dropped prior to trial, the matter may be revisited through a supplemental answer.