JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHRISTOPHER STRANYAK, Executor of the ESTATE OF JULIE ANN MOORE, minors E.M. and P.M., by their Guardian Christopher Stranyak, and STEVEN COLE, Plaintiffs,	:	
vs.	:	
WHITE WATER ADVENTURERS, INC., COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, THE PENNSYLVANIA STATE UNIVERSITY, CDR MAGUIRE, INC., FAREHARBOR HOLDINGS, LLC, and FAREHARBOR, B.V., Defendants.	:	No. 1946 of 2024, G.D. Honorable Nancy D. Vernon

OPINION AND ORDER

VERNON, J. March 23, 2026

Before the Court are Preliminary Objections filed by all Defendants to the Amended Complaint of Plaintiff, Christopher Stranyak, Executor of the Estate of Julie Ann Moore, minors E.M. and P.M., by their Guardian Christopher Stranyak, and Steven Cole.

This action arises out of the death of Julie Ann Moore while white water rafting at the point known as Dimple Rock on the Youghiogheny River at Ohiopyle State Park on August 13, 2022. In the Amended Complaint, Plaintiffs allege that Julie Moore, an Ohio resident, was especially cautious following the unexpected 2018 death of her husband, Eric Moore, who was the father of their twin daughters, E.M. and P.M., now aged seventeen. See, Amended Complaint ¶22-31.

Around July 2022, Julie Moore and her paramour Steven Cole began planning a trip to Ohiopyle where she searched on the internet for rafting opportunities on the Youghiogheny River, the plaintiffs all being novice white water rafters. Id. at ¶32-37. The first website that appeared belonged to Defendant White Water Adventurers, Inc., ("WWA") which had been optimized to appear first in search results and advertised "Lower Yough" tours appropriate for "beginners" aged "12+." Id. at ¶37-39. WWA's website stated, "Class IV rapids of the Lower Yough invite everyone from the novice rafter to the veteran river-runner to see what lays beyond the next bend." Id. at ¶40. WWA offered "Guide Escorted" and "Fully Guided" excursions. The "Guide Escorted" trip had no guides in the rafts, but would be escorted by a guide in their own kayaks. Id. at ¶42-45. On July 21, 2022, Julie Moore booked a Guide Escorted Lower Yough trip for four people, including herself, E.M. and P.M., and Steven Cole, and executed a

waiver. Id. at ¶47. The waiver was dated August 14, 2022, when the trip was actually reserved for August 13, 2022. Id. at ¶50. Plaintiffs allege that Julie Moore selected this trip because "as she understood it based on WWA's affirmative representations and lack of warning information, it was a safe, beginner-friendly, family-friendly, easy trip." Id. at ¶51. Text messages recovered from Julie Moore's phone include her describing the excursion to friends as "a beginner friendly white water raft trip"; "to do an easy level white water family raft beginner level"; and "an easy beginner white water rafting trip." Id. at ¶52. Plaintiffs allege Julie Moore's "expectation and anticipation were misplaced, because the Defendants had failed to warn her, and other customers like her, of the specific risks associated with the Lower Yough – in particular, a highly dangerous feature on the Lower Yough known as 'Dimple Rock' that had been the site of numerous fatalities due to its dangerous features […]." Id. at ¶53.

Plaintiffs detail the characteristics of Dimple Rock in their Amended Complaint explaining that it is a "large, triangular rock feature on the Lower Yough, which by its shape, coupled with the flow of the river into it, creates a churning wave or 'pillow' of whitewater along its front sides." Id. at ¶54-63. Plaintiffs allege the precise turn maneuver required to successfully pass Dimple Rock poses great difficulty for rafters, especially novices, and the characteristics including rock crevasses, undercut rocks, punch points, and hydraulic systems can cause rafters to be tossed from their boats resulting in Dimple Rock's wave trapping or pinning the rafter under the water. Id. at ¶55-59. Plaintiffs allege Dimple Rock is "among the most lethal whitewater features in the United States." Id. at ¶63.

Plaintiffs further allege at least ten fatalities have been caused by Dimple Rock. Id. at ¶64. Three fatalities occurred in the year 2000 prompting Fayette County Coroner Phillip E. Reilly, M.D. to hold an inquest before a six-person jury panel in an effort to improve safety and to address what could be done to render Dimple Rock harmless or less dangerous. Id. at ¶67-68. The coroner's jury recommended that "(i) an informational video should be shown at the park to emphasize the potential for capsizing; (ii) danger signs should be posted before major rapids, with a 'strong warning' to be placed at Dimple Rapids stating how many lives the site had claimed; and (iii) that research should be done as to whether the shape of Dimple Rock could be altered (such as filling in the undercut) to make it safer." Id. at ¶69. Plaintiffs allege that several jury recommendations were implemented including warning signs, distribution of waterproof maps, additional training for rescue staff, and creation of a 500-foot portage around Dimple Rapid. Id. at ¶70. Following these remediation efforts, another death occurred in 2003 resulting in Coroner Reilly convening another inquest. Id. at ¶71-72. Additional remediation measures were recommended and Plaintiffs allege Coroner Reilly recommended temporary and reversible alterations to Dimple Rock to see if it would improve safety. Id. at ¶73-74.

On July 8, 2004, Defendant Commonwealth of Pennsylvania Department of Conservation and Natural Resources ("DCNR") issued a "Project Request Sheet" to "determine existing conditions at, and in the vicinity of, Dimple Rock and to develop and evaluate possible alternatives to increase user safety at this location." Id. at ¶75-76. DCNR retained engineering firm Defendant CDR Maguire, Inc. ("Maguire"). Id. at ¶77-78. Plaintiffs allege Maguire was not experienced in the field of white water rafting and other engineering firms would have been more qualified. Id. at ¶78. DCNR served a "Notice to Proceed with [Maguire's] proposal submitted August 4, 2004 for engineering and related services for the Dimple Rock Study at Ohiopyle State Park." Id. at ¶79 and Exhibit A.

By "Agreement Between Engineer and Consultant for Professional Services" dated April 6, 2005, Maguire contracted Defendant The Pennsylvania State University's Department of Civil and Environmental Engineering ("Penn State") to perform the modeling and analysis pursuant to DCNR's Project Request Sheet. Id. at ¶82. Penn State created a scaled "rigid bed" model which Plaintiff alleges was deficient in many respects. Id. at ¶83-90. The findings of the study were submitted to DCNR on June 22, 2005, by Maguire in a report titled, "Dimple Rock Study at Ohiopyle State Park" which included an engineering report authored by Penn State's Department of Civil and Environmental Engineering dated April 14, 2005, titled, "Ohiopyle State Park Youghiogheny River, Dimple Rock Study." Id. at ¶91.

Plaintiffs highlight that Maguire conducted a survey of "50 different outfitting companies at 25 different rivers with Class IV rapids across the country" and that "an overwhelming majority did not offer unguided tours, an all expressed grave concern at the prospect." Id. at ¶92. According to Plaintiff, Maguire did not include a recommendation that guides be required on commercial raft trips down the Lower Yough. Id. at ¶93. The Report stated that the "purpose of the present study is to explore the feasibility of various options to modify the Dimple Rock section of the river to prevent further death and injury from occurring at Dimple Rock based on laboratory observations." Id. at ¶97. The Report provided "pros and cons" of six options, with Plaintiffs alleging that Maguire and Penn State "tacitly endorsed the 'do nothing' approach to Dimple Rock." Id. at ¶98-99. Plaintiffs allege in great detail the Report provided by Maguire and Penn State to DCNR in June 2005 was fatally and negligently deficient in its drafting, creating a tacit recommendation to pursue the one option that was guaranteed to have no effect on preventing further death and injury from occurring, and rejecting all other options due to the "cons" that were mostly speculative and for which no causative analysis was ever performed and that the Report offered no reasonable alternative. Id. at ¶100-117.

Plaintiff alleges DCNR had no intention of making major changes to Dimple Rock and its hiring of Maguire evidences that intent as Maguire had no experience in the field of whitewater engineering. Id. at ¶118-119. Plaintiff alleges DCNR had an obligation to make changes to enhance safety, even without a definitive recommendation from Maguire and Penn State, and that DCNR announced on April 4, 2006, that "it was going to do nothing of a physical nature to Dimple Rock" but promised increased focus on safety education, warnings, and alternatives to boaters who wish to avoid Dimple Rock's dangers. Id. at ¶120-122. Plaintiffs allege DCNR was negligent and irresponsible when it made the decision to avoid the chance that, rather than solve the problem, they might instead create new hazards and that such conclusion derived from the Maguire and Penn State reports were flawed. Id. at ¶123. DCNR stated it would continue to work to make sure boaters are aware of the risk and would undertake efforts to work with river outfitters to increase safety measures in the mid-2000s. Id. at ¶124-125.

"Concessionaires" are outfitters permitted by DCNR to operate whitewater rafting companies in Ohiopyle State Park, which is a Pennsylvania State Park operated by DCNR's Bureau of State Parks. Id. at ¶126. Four outfitters are licensed as concessionaires to operate at Ohiopyle. Id. at ¶127.

The other three outfitters, excepting WWA, include a link to a map of the Lower Yough that contains warnings of an entrapment hazard at Dimple Rock and warning on their websites that "guide escorted rafting" is not suitable for novices or first-timers on the Lower Yough. Id. at ¶127-131. Plaintiffs allege that several months prior to Julie Moore booking the trip that WWA removed all references to Dimple Rock from its website. Id. at ¶134. Plaintiffs allege, "WWA's failure to market to, inform, and warn its

customers accurately was done on DCNR's watch and with DCNR's negligent approval, tacit or otherwise, and was contrary to DCNR's stated policy about encouraging safety at Dimple Rock through requiring training, information about the risks of Dimple Rock, and its environs, and affirmative warning efforts." Id. at ¶135. Plaintiffs allege WWA was grossly negligent removing reference to Dimple Rock from its website as the decision was made on the concern that WWA would lose business if prospective customers were informed about the actual danger of Dimple Rock. Id. at ¶136.

Turning to WWA's website, Plaintiffs allege the removal of all reference to Dimple Rock was done with the knowledge of, in consultation with, and/or with the assistance of Defendants FareHarbor Holdings, LLC and FareHarbor, B.V. ("FareHarbor Entities"), which entities managed, designed, and optimized the WWA website since 2018. Id. at ¶137-140. Plaintiffs allege that FareHarbor "had substantial control over the presentation of WWA's website, and were incentivized, in conjunction with WWA, to understate the risks associated with rafting on the Lower Yough, in part because WWA and the FareHarbor entities shared in the proceeds from the sales of trips, such that they were in a joint venture type arrangement, and are mutually responsible for any harm that comes to any of the customers, caused by the conduct of WWA or the FareHarbor Entities, in their grossly negligent and reckless failure to warn and other such actions or failures to act." Id. at ¶141. Plaintiffs still further allege that FareHarbor Entities "were aware of, encouraged, and/or participated in eliminating mention of Dimple Rock or the dangers associated with [it …]." Id. at ¶142.

The Terms of Service between FareHarbor and WWA recites that FareHarbor retains the right to "remove information or direct [WWA] to remove information that FareHarbor deems to be inappropriate or unlawful" and that "[a]ll of the content featured or displayed on the [website], including without limitation, text, graphics, photographs, images, sound, and illustrations ('Content') is owned by FareHarbor." Id. at ¶143. Plaintiffs allege details regarding the business relationship between WWA and FareHarbor and the alleged deficiencies in WWA's website design and maintenance which relate to its failure to warn of the dangers of Dimple Rock. Id. at ¶143-169.

As to WWA's liability, in their Amended Complaint, Plaintiffs allege the deficiencies leading to Julie Moore's death at Dimple Rock include WWA's failures and inadequacies in their performance as an outfitter including no calm-water training, no professional guide in the raft, no mention of Dimple Rock, no safety training, no radios or whistles, no hand gestures, no maps or other materials prepared by DCNR for Dimple Rock, and no orientation or safety videos. Id. at ¶170-177. Plaintiffs allege until the group "reached Dimple Rock, they had still never heard mention of its name, let alone its lethal history." Id. Plaintiffs were not told by WWA about the existence of a portage option around Dimple and instead were told it was "a little tricky." Id. at ¶182-184. Julie Moore, her children, and Steven Cole occupied the first raft to go through Dimple Rapids which struck Dimple Rock, capsized the raft, and ejected the four into the Yough River. Id. at ¶186-187.

Steven Cole and E.M. were temporarily stuck under the raft. Steven Cole was swept downstream resulting in bruising, lacerations, and bleeding. Id. at ¶188-192. Julie Moore and P.M. were able to grab a rope with Julie telling her daughter to lie on her back with her feet up. The two were witnessed in that physical position in the water when the guide holding the rope released his hold resulting in Julie and P.M. being washed downstream. Id. at ¶194-195. The guide jumped in the water to retrieve the rope rather than watching the direction of Julie or P.M. Id. at ¶196. Julie, P.M., and E.M. exchanged a few words near "Fedak's Rock" when a wave swept Julie off the rock and

she became submerged in the water. Id. at ¶197. P.M. witnessed her mother going underwater and neither daughter saw their mother's body emerge. Id. at ¶198. Separate kayak escorts retrieved E.M. and P.M. from the river. Id. at ¶199. Plaintiffs allege that E.M. and P.M. "begged" escorts to go in the water to retrieve their mother, but the escorts responded their mother would be further downstream and would meet up later. Id. at ¶200-201. Plaintiffs still further allege that WWA failed to perform a headcount, made no rescue efforts, and instead expedited the other rafts into Dimple Rock to continue their whitewater rafting excursion. Id. at ¶201-205. Witnesses described the scene as "chaos." Id. at ¶206.

Steven Cole, E.M., and P.M., waited downstream while the remainder of the seventeen rafts passed down the river without Julie Moore on any of them. Id. at ¶207. The girls were "visibly and audibly distressed" when an escort approached to ask what was wrong, not realizing that Julie Moore was still missing. Id. at ¶209-211. Plaintiffs estimate it was fifteen minutes from their raft flipping before Steven Cole was reunited with the girls and twenty to thirty minutes before anyone even started to look for Julie Moore. Id. at ¶212-213. WWA focused its efforts downstream instead of in the area where E.M. and P.M. told them she went missing. Id. at ¶215. Ohiopyle State Park Rangers located Julie Moore's body within arm's reach of the water's edge where her daughters had indicated. Id. at ¶215-217. Plaintiffs allege if the escorts had heeded the pleas of E.M. and P.M. that Julie Moore could have been rescued alive. Id. at ¶218-220, 225. Steven Cole, E.M., and P.M. looked on as Julie Moore's body was hauled on a gurney from the river. Id. at ¶222.

Due to the alleged negligent, grossly negligent, and reckless failures, as described, Plaintiffs allege that each of the Defendants, in their respective capacities, failed to warn about Dimple Rock, to take steps to prevent further death and injury from occurring due to Dimple Rock, to provide and navigate safe commercial trips through Dimple Rapids, and to attempt to locate and save Julie Moore upon hearing multiple urgent witness reports of her going underwater, Julie Moore perished, after experiencing physical and emotional pain and suffering while she fought alone for her life under the waters of the Youghiogheny River at Dimple Rapids, allegedly for several minutes before she became unconscious and then ultimately succumbed. Id. at ¶226.

Plaintiffs allege that E.M. and P.M. sustained physical injuries and suffered extreme fear and emotional distress and allege that Steven Cole also suffered physical and emotional injuries as detailed in the Amended Complaint. Id. at ¶227-242.

The Amended Complaint alleges the following causes of action, at Count One, Plaintiff the Estate of Julie Moore alleges Negligence/Gross Negligence/Recklessness (Survival) as to all Defendants. Id. at ¶244-307. At Count Two, E.M. and P.M. allege Negligence/Gross Negligence/Recklessness (Wrongful Death) as to all Defendants. Id. at ¶308-313. At Count Three, E.M. and P.M., and Steven Cole allege Negligence/Gross Negligence/Recklessness (Infliction of Emotional Distress) as to all Defendants. Id. at ¶314-323. At Count Four, E.M. and P.M., and Steven Cole allege Negligence/Gross Negligence/Recklessness (Physical Injuries) as to all Defendants. Id. at ¶324-328. All Defendants filed Preliminary Objections.

Defendant White Water Adventurers, Inc.'s Preliminary Objections

In its first objection, WWA seeks this Court to strike scandalous and impertinent matters including the alleged unrelated death of E.M. and P.M.'s father and that emotional impact; details of Steven Cole and Julie Moore's romantic relationship; Julie Moore's communications with friends about her trip and her research for the plans; the

historical deaths at Dimple Rock and "decades-old studies"; the safety and informational procedures of other rafting outfitters; WWA's website and "imagined" contractual relationship with its webhost provider; subsequent remedial measures relating to revisions to its website and amended tour offerings; and reference to the Fayette County Coroner's inquest into the death of Julie Moore and the suggested remedial measures thereafter. At its second objection, WWA seeks this Court to dismiss Steven Cole's claim at Count III for Emotional Distress. The third preliminary objection objected to the venue in Allegheny County, for which the Allegheny County Court of Common Pleas had sustained the objection and transferred venue to this Court.

Pennsylvania Rule of Civil Procedure 1028(a)(2) authorizes preliminary objections for "failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter." For allegations to be properly stricken as scandalous or impertinent, "the allegation must be immaterial and inappropriate to the proof of the cause of action." Breslin v. Mountain View Nursing Home, Inc., 171 A.3d 818 (Pa. Super. 2017). "The right of a court to strike impertinent matter should be sparingly exercised and only when a party can affirmatively show prejudice." Commonwealth Department of Environmental Resources v. Hartford Acc. & Indem. Co., 396 A.2d 885, 888 (Pa. Cmwlth. 1979). Even when matters may be impertinent, courts have authority to treat it as "mere surplusage" and ignore it rather than striking it from the pleading. Id.

WWA's objections are decided as follows:

a. Plaintiff's Amended Complaint details the unrelated death of E.M.'s and P.M.'s father in 2018 and the emotional impact the same had upon the two minor plaintiffs (Am. Compl. ¶¶ 23-26, 30).

This is classic "take the plaintiff as you find them." The longstanding "eggshell skull" concept requires defendants to accept victims in their actual condition, including any heightened susceptibility to injury. Meyer v. Union R. Co., 865 A.2d 857, 863 (Pa. Super. 2004). Plaintiffs allege that E.M. and P.M. had endured the unexpected death of their father, and that their prior loss shaped their emotional dependency on their mother. The father's death intensified the trauma they allegedly suffered when they witnessed their mother's death and the alleged failures of Defendant WWA to rescue her. These allegations explain the magnitude and character of the damages claimed, including grief, fear, emotional distress, and long-term psychological injury. The Amended Complaint has no details regarding the father's death except to say it was unexpected and as the result of a medical incident and such inclusion in the Amended Complaint is not scandalous or impertinent.

b. The Amended Complaint further details Plaintiff Cole's and Ms. Moore's romantic relationship before the subject accident (Am. Compl. ¶¶27-29).

Paragraph 27 merely explains the relationship Plaintiff Steven Cole had to the decedent, Julie Moore. Paragraphs 28 and 29 refer to marriage discussions between Steven Cole and Julie Moore and prior trips with E.M. and P.M. These allegations may be used to establish the emotional distress claims and will not be stricken.

c. The Complaint contains averments regarding Ms. Moore's communications with family members and friends about the trip, as well as regarding her research and plans for

the family trip on the Youghiogheny River (Am. Compl. ¶¶32, 35-47, 51-53, 134-136, 161, 162, 164-167).

Plaintiffs have alleged WWA and FareHarbor intentionally omitted reference to or warning of the dangers of Dimple Rock. In Julie Moore's communications with her family, she described her trip to be "easy," "beginner-friendly," and "family-friendly" and the message are probative to establish her reliance on Defendants' representations that the trip was for beginner skilled rafters. These allegations are relevant to foreseeability in that if Plaintiffs prove that WWA and/or FareHarbor Entities marketed the trip for novice rafters, it would be foreseeable that customers would rely on those representations in deciding which trip to book.

d. The Amended Complaint contains numerous averments describing Dimple Rock, historical deaths at Dimple Rock, and decades-old studies of the section of the Youghiogheny River where Dimple Rock is situated (Am. Compl. ¶¶54-125).

Evidence of prior accidents or occurrences is generally relevant to show the existence of a defect or dangerous condition or to demonstrate knowledge on the part of the defendant that the hazard existed. Vernon v. Stash, 532 A.2d 441, 446 (Pa. Super. 1987). Plaintiffs allege that Dimple Rock had been the site of at least ten fatalities prior to Ms. Moore's demise, that those deaths prompted formal coroner's inquests, and that specific safety recommendations were issued. These allegations bear directly on whether Defendants had actual knowledge of the risk, whether continued failures to warn or remediate could be deemed unreasonable, and whether Defendants consciously disregarded a known danger.

e. The Amended Complaint alleges facts regarding the safety and informational procedures of other rafting outfitters operating on the Youghiogheny River, whose conduct is not at issue (Am. Compl. ¶¶128-133, 163).

Evidence of industry custom and practice is admissible as circumstantial evidence of what risks were foreseeable and what precautions were reasonable under the circumstances.

f. The Amended Complaint contains numerous allegations regarding the WWA website and the imagined contractual relationship between WWA and its webhost provider, and the manner in which the same influenced Ms. Moore's booking choices prior to the subject trip (Am. Compl. ¶¶137-160).

Plaintiffs allege that WWA's website was the primary marketing and booking mechanism for the company, that it was optimized to attract "novice" rafters, and that relevant safety information was removed in an effort to not dissuade potential customers from booking. The allegations surrounding FareHarbor's contractual authority over the website content and its financial interest in bookings are relevant to determining whether warnings were omitted, whether such omissions were intentional or negligent, and how responsibility may be apportioned among Defendants.

g. The Amended Complaint also contains numerous allegations regarding WWA's subsequent remedial measures relating to revisions to its website and amended tour offer-

ings (Am. Compl. ¶¶134-137).

Pennsylvania Rule of Evidence 407 governs the admissibility of subsequent remedial measures at trial but does not impose a pleading restriction. "[E]vidence of the subsequent measures is not admissible against that party to prove negligence; culpable conduct; a defect in a product or its design; or a need for a warning or instruction. But the court may admit this evidence for another purpose such [as …] the feasibility of precautionary measures." Questions of admissibility are premature at the preliminary objections stage and are more appropriately addressed through motions in limine.

h. The Amended Complaint contains an averment regarding the Fayette County Coroner's improper inquest into the death of Ms. Moore and the provision of suggested remedial measures thereafter (Am. Compl. ¶243).

This preliminary objection must be sustained and Paragraph 243 stricken as the Coroner's inquest does not bear on any element of Plaintiffs' claims.

At its second preliminary objection, WWA request this Court to dismiss Steven Cole's claim at Count III for Negligent Infliction of Emotional Distress. A cause of action for NIED may arise in any of four scenarios: (1) situations where the defendant had a contractual or fiduciary duty to the plaintiff; (2) the plaintiff was subjected to a physical impact; (3) the plaintiff was in a zone of danger; or (4) the plaintiff observed a tortious injury to a close relative. Toney v. Chester County Hospital, 961 A.2d 192, 197-98 (Pa.Super. 2008), affirmed by evenly divided court, 36 A.3d 83 (Pa. 2011). Plaintiffs proffer that Steven Cole was subjected to the first three scenarios: contractual duty from WWA, physical injury from the raft capsizing and being thrown into the river, and that he was within the zone of danger.

At the preliminary objections stage, however, the court must accept all well-pleaded facts as true and may sustain a demurrer only where it is clear and free from doubt that the plaintiff cannot establish a legally cognizable claim. As such, the Court must overrule this objection.

Defendants FareHarbor Holdings, LLC and FareHarbor, B.V.'s Preliminary Objections

At their first objection, FareHarbor B.V. argues this Court lacks personal jurisdiction as it is a limited private corporation organized under Dutch law, with its principal place of business in the Netherlands and FareHarbor Holdings, LLC is a limited liability company organized under Delaware law, with its principal place of business in Colorado. In their second objections, the FareHarbor Entitties demurrer alleging that (1) the action is barred by Section 230 of the Communications Decency Act, 47 U.S.C. § 230 (c)(1); (2) the claims are barred by FareHarbor's Customer Terms of Service; and (3) Plaintiffs failed to state a negligence claim against FareHarbor.

Plaintiffs respond arguing that this Court has personal jurisdiction over the FareHarbor Entities as these defendants purposefully availed themselves of the privilege of conducting business within Pennsylvania, the forum state, and established sufficient minimum contacts. As to FareHarbor's second objection, Plaintiffs deny Section 230 or FareHarbor's Customer Terms of Service preclude their claims and allege they have stated a claim of negligence.

Pennsylvania Rule of Civil Procedure 1028(a)(1) authorizes preliminary objections based on "lack of jurisdiction over the subject matter of the action or the person of the defendant." The burden of proof initially rests upon the party contesting jurisdiction, and once that party has provided proof, the burden then shifts to the non-moving party to adduce evidence demonstrating there is a basis for asserting jurisdiction over the moving party. Delta Health Technologies, LLC v. Companions and Homemakers, Inc., 218 A.3d 432 (2019). When preliminary objections challenging personal jurisdiction, if sustained, would result in dismissal of an action, the court must consider the evidence in the light most favorable to the nonmoving party. Dumond, Inc. v. Galgano, 345 A.3d 741 (2025).

Under Pennsylvania's long-arm statute, courts are permitted to exercise personal jurisdiction over a nonresident defendant "to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa.C.S.A. § 5322(b). Pennsylvania law recognizes two bases for the exercise of in personam jurisdiction over a corporation: general jurisdiction and specific jurisdiction. In either case, the court's authority must comport with Pennsylvania's long-arm statute and the Due Process Clause. The United States Supreme Court has held that general personal jurisdiction cannot be exercised over defendants when the corporate defendant is not incorporated in the state and does not have its principal place of business in the state, even if its sales in that state are "sizeable." Daimler AG v. Bauman, 571 U.S. 117 (2014). The FareHarbor Entities are not incorporated in Pennsylvania and do not have a principal place of business in the Commonwealth. Further, general jurisdiction can only extend beyond that in the "exceptional case." Id. Plaintiffs have not alleged that such an exceptional case is present, nor does one exist.

Where general jurisdiction is lacking, a court may exercise specific jurisdiction only if the plaintiff's claims arise out of or relate to the defendant's contacts with Pennsylvania. In order for a state court to exercise specific jurisdiction, the suit must arise out of or relate to the defendant's contact with the forum. Bristol-Myers Squibb Co. v. Superior Court, 582 U.S. 255 (2017). Specific jurisdiction depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation. Mendel v. Williams, 53 A.3d 810, 817 (Pa. Super. 2012). The specific jurisdiction inquiry focuses on the defendant's own purposeful conduct directed at the forum and the relationship between that conduct and the underlying controversy. It requires an affiliation between Pennsylvania and the events giving rise to the claim, namely, activity occurring in, or purposefully directed toward, the Commonwealth such that the defendant could reasonably anticipate being haled into a Pennsylvania court. Specific jurisdiction therefore exists only to the extent the cause of action arises from the defendant's transaction of business or other deliberate forum-directed conduct within Pennsylvania.

> "[P]ersonal jurisdiction issues are more complicated when a defendant's contact with the forum state is primarily done through internet contacts." R.Q.C. Ltd. v. JKM Enterprises, Inc., No. 13–307, 2014 WL 4792148, at *3 (W.D.Pa. Sept. 23, 2014) (internal quotation marks omitted). In Zippo Manufacturing Co. v. Zippo Dot Com, Inc., 952 F.Supp. 1119, 1124 (W.D.Pa.1997), the court established a "sliding scale" analytical framework for internet-based personal jurisdiction cases based upon the "level of interactivity and commercial nature of the exchange of information that occurs on the Web site." The court explained:

> [T]he likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. This sliding scale is consistent with well developed personal jurisdiction principles. At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.
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> Id. (internal citations omitted).

Our Court of Appeals endorsed this general framework in Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446 (3d Cir. 2003), but explained that mere Internet presence is insufficient to establish personal jurisdiction. Rather, Internet presence must be coupled with something else that demonstrates purposeful availment:

> As Zippo and the Courts of Appeals decisions indicate, the mere operation of a commercially interactive web site should not subject the operator to jurisdiction anywhere in the world. Rather, there must be evidence that the defendant "purposefully availed" itself of conducting activity in the forum state, by directly targeting its web site to the state, knowingly interacting with residents of the forum state via its web site, or through sufficient other related contacts.
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> Id. at 454.

Executive Wings, Inc. v. Dolby, 131 F. Supp. 3d 404, 411–12 (W.D. Pa. 2015).

The mere presence of a website without more, however, is not sufficient to subject a business to specific jurisdiction. The internet website must target users of the forum state, and the use of the internet website must engage the party in such a way that the underlying transaction that gives rise to the claim occurs as a result of using the website.

Haas v. Four Seasons Campground, Inc., 952 A.2d 688, 693 (Pa. Super. 2008).

In assessing personal jurisdiction over out-of-state corporate defendants, three requirements must be met for a forum to exercise specific jurisdiction:

(1) Did the plaintiff's cause of action arise out of or relate to the out-of-state defendant's forum-related contacts?

(2) Did the defendant purposely direct its activities, particularly as they relate to the plaintiff's cause of action, toward the forum state or did the defendant purposely avail itself of the privilege of conducting activities therein?

(3) [W]ould the exercise of personal jurisdiction over the nonresident defendant in the forum state satisfy the requirement that it be reasonable and fair?

Hammons v. Ethicon, Inc., 240 A.3d 537, 556 (Pa. 2020).

Applying these principles, this Court concludes that Plaintiffs have established a prima facie basis for the exercise of specific personal jurisdiction over the FareHarbor Entities.

First, Plaintiffs have sufficiently alleged that their causes of action arise out of or relate to FareHarbor's forum-related contacts. The Amended Complaint alleges that FareHarbor actively designed, managed, optimized, and controlled the commercial website through which WWA marketed and sold whitewater rafting trips occurring exclusively within Pennsylvania. Plaintiffs further allege that FareHarbor processed customer bookings and payments for those trips, retained a percentage-based fee from each transaction, and thus directly profited from recreational activity conducted in a Pennsylvania state park.

Plaintiffs allege that FareHarbor retained contractual ownership of all content displayed on WWA's website and reserved the right to remove or direct the removal of information. According to the Amended Complaint, FareHarbor knowingly participated in, encouraged, or approved the removal of warnings regarding Dimple Rock which is a uniquely dangerous feature of the Lower Youghiogheny River located within Ohiopyle State Park. This alleged omission of safety information concerning a known Pennsylvania hazard is directly connected to the injuries and death that occurred in this Pennsylvania accident and which forms the basis of Plaintiffs' negligence claims. Upon these allegations, which are accepted as true, Plaintiffs' causes of action arise from FareHarbor's forum-related contact.

Second, Plaintiffs have sufficiently alleged that FareHarbor purposefully directed its activities toward Pennsylvania and purposefully availed itself of the privilege of conducting activities within the Commonwealth. Plaintiffs allege that FareHarbor has maintained commercial relationships with WWA, a Pennsylvania businesses, since at least 2018. In support of this allegation, Plaintiffs have produced Exhibit 34 reflecting that FareHarbor operates or manages at least 215 websites for Pennsylvania-based businesses. These contacts are not random or fortuitous and reflect deliberate engagement in the Pennsylvania marketplace.

For jurisdictional purposes we apply "a 'sliding scale' analysis ... 'based largely on the degree and type of interactivity' on the site." Moyer v. Teledyne Cont'l Motors, Inc., 979 A.2d 336, 349 (Pa. Super. 2009). If the site merely "make[s] ... information available to those who are interested in it," it is a "passive" site and cannot justify specific jurisdiction. Id. at 350. However, under the Zippo sliding-scale framework, the WWA website at issue is a fully interactive commercial platform through which customers select, book, and pay for services occurring in Pennsylvania. Plaintiffs allege that FareHarbor exercised editorial and operational control over website content, integrated payment processing, and derived revenue from Pennsylvania-based transactions. Accepting as true Plaintiff's allegations, FareHarbor's alleged role extends beyond that of a pas-

sive website host. Where a defendant knowingly operates interactive commercial platforms for a substantial number of in-forum businesses and derives economic benefit from transactions tied to the forum, purposeful availment is established. Accord, Toys "R" Us, supra.

Plaintiffs allege FareHarbor omitted safety information about Dimple Rock and instead made the rafting trip seem beginner friendly. FareHarbor's alleged removal of warnings for Dimple Rock were a well-documented hazard located within a Pennsylvania state park and the removal was allegedly performed for the economic benefit of WWA and the FareHarbor Entities. Accepting these allegations as true, FareHarbor could reasonably anticipate being haled into a Pennsylvania court.

Third, the exercise of personal jurisdiction over FareHarbor comports with traditional notions of fair play and substantial justice. Pennsylvania has a substantial interest in adjudicating claims arising from alleged wrongful conduct that results in death and injury within its state parks and involves activities regulated by the Commonwealth through DCNR. Plaintiffs have a strong interest in obtaining relief in the forum where the injury occurred, where relevant witnesses and evidence are located, and where the alleged dangerous condition exists.

While FareHarbor is headquartered outside Pennsylvania, any burden associated with litigating in this forum is substantially mitigated by its alleged long-standing, profit-driven commercial engagement with Pennsylvania businesses. Given the foreseeability of harm arising from the alleged removal of safety warnings related to a known Pennsylvania hazard, the exercise of jurisdiction is reasonable and fair.

Viewing the allegations and supporting exhibits in the light most favorable to Plaintiffs, as required at the preliminary objections stage, the FareHarbor Entities, as the nonresident defendants, have purposefully established minimum contacts with the forum state, such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice, "i.e., the defendant has conducted itself in a manner indicating that it has availed itself of the forum's privileges and benefits and, therefore, should be subjected to the forums state's law and regulations." Delta Health Technologies, LLC v. Companions and Homemakers, Inc., 218 A.3d 432, 438 (Pa. Super. 2019).

Accordingly, the Preliminary Objections of Defendants FareHarbor Holdings, LLC and FareHarbor, B.V. asserting lack of personal jurisdiction are overruled.

Section 230 of the Communications Decency Act of 1996 (47 U.S.C. § 230) protects online platforms, websites, and users from liability for content posted by third parties. Section 230(c)(1) provides immunity to a provider or user of an "interactive computer service" from being treated as the publisher or speaker of information provided by another information content provider. 47 U.S.C. § 230(c)(1). However, immunity does not apply to an "information content provider," which is defined to mean an entity that is "responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3).

Here, the Amended Complaint alleges that the FareHarbor Entities exercised ownership and control over the website content, retained contractual authority to remove or direct the removal of information, actively designed and optimized the website, and knowingly participated in or encouraged the omission of safety warnings regarding Dimple Rock. Plaintiffs further allege that FareHarbor's conduct was motivated, at least in part, by financial motives shared with WWA tied to trip bookings.

Accepting these allegations as true, as the Court must at this stage, Plaintiffs have pled that FareHarbor was responsible, at least in part, for the development of the alleg-

edly deficient content. FareHarbor's demurrer based on Section 230 is overruled.

Turning to the Customer Terms of Service, FareHarbor Entities argue that Julie Moore affirmatively waived any claims against it for injuries sustained on WWA's tours when she agreed to the Customer Terms of Service at the time of booking.

An exculpatory agreement is "subject to close scrutiny, strictly construed against the party seeking [its] protection, and enforced only ... if it 'does not contravene public policy, is between parties relating entirely to their private affairs, and where each party is a free bargaining agent so that the contract is not one of adhesion."' Degliomini v. ESM Prods., Inc., 253 A.3d 226, 239 (Pa. 2021). "[P]re-injury exculpatory clauses releasing a party from ordinary negligence generally are not against public policy, […] however, […] pre-injury exculpatory releases immunizing parties from liability for their reckless or grossly negligent conduct firmly violate public policy — and are therefore not enforceable — because 'such releases would jeopardize the health, safety, and welfare of the people by removing any incentive for parties to adhere to minimal standards of safe conduct.'" Id.

As to Plaintiffs' ordinary negligence claims, a liability waiver constitutes an express assumption of risk. Feleccia v. Lackawanna College, 156 A.3d 1200 (Pa. Super. 2017). When a participant executes a liability waiver "in a knowing, intelligent, and voluntary manner," the waiver is deemed valid and "shifts the risk of loss away from the defendant and onto" the signatory. Valentino v. Philadelphia Triathlon, LLC, 150 A.3d 483 (Pa. Super. 2016). Accepting the allegations of Plaintiffs' Amended Complaint as true, WWA and the FareHarbor Entities intentionally omitted reference to Dimple Rock and the dangers of the trip, instead advertising it for "novice rafters." Without full knowledge of the inherent dangers of this whitewater raftering trip, it is possible that Plaintiffs can prove that Julie Moore did not execute the liability waiver "in a knowing, intelligent, and voluntary manner."

The enforceability and scope of the Customer Terms of Service present a fact-intensive questions not amenable to FareHarbor's demurrer. Plaintiffs' claims for negligence, gross negligence, and recklessness must be permitted as FareHarbor's reliance on its Customer Terms of Service does not warrant dismissal at the preliminary objections stage.

Defendant Commonwealth of Pennsylvania Department of Conservation and Natural Resources' Preliminary Objections

DCNR first objected to venue in Allegheny County, which has since been granted and transferred to Fayette County. In its second objection, DCNR demurrers to any claims for recklessness or gross negligence as the sovereign immunity act, by its terms, only allow claims founded in negligence. At its third objection, DCNR joins the objection of WWA seeking to strike scandalous and impertinent matters. In its fourth objection, DCNR joins the objection of WWA seeking to strike Steven Cole's claim for emotional distress.

DCNR demurrers as to Plaintiffs' claims of gross negligence and recklessness pursuant to sovereign immunity. Immunity is properly asserted in preliminary objections where it is applicable on the face of the complaint that a cause of action is made against a governmental body and it is apparent on the face of the pleading that the cause of action does not fall within any of the exceptions to governmental immunity. Chester Upland School District v. Yesavage, 653 A.2d 1319, 1327 (Pa. Cmwlth. 1994). "The defense of governmental immunity is an absolute unwaivable defense, not subject to any

procedural device that could render the governmental agency liable beyond exceptions granted by the legislature." Id. Exceptions to sovereign immunity are to be strictly construed. Dean v. Commonwealth, Department of Transport, 751 A.2d 1130, 1132 (Pa. 2000).

The legislature waived immunity for certain negligent acts for which damages otherwise are recoverable under common law. 42 Pa.C.S. ¶ 8522. The Act provides specific exceptions where sovereign immunity is waived, but gross negligence or recklessness is not enumerated among them. This Court's thorough review of Pennsylvania case law can find no support for waiving sovereign immunity for claims of gross negligence or recklessness against a Commonwealth agency, nor did Plaintiffs cite any.

Plaintiffs incorrectly cite Holland v. Commonwealth, Norristown State Hospital, 584 A.2d 1056, 1059 (Pa. Cmwlth. 1990), for the proposition that "there have been cases against Commonwealth agencies where the Court has specifically stated that proving gross negligence is required for the plaintiff to prevail." See, Plaintiff's Brief in Opposition at 5. Plaintiffs' reliance on Holland is misplaced. In Holland, the Commonwealth Court analyzed sovereign immunity within the specific statutory framework of the Mental Health Procedures Act, which expressly conditions liability on a showing of willful misconduct or gross negligence. That statutory scheme is not implicated here, and Holland therefore offers no support for Plaintiffs' attempt to expand the limited waiver of sovereign immunity applicable in this case.

Similarly, DCNR incorrectly cites Faust v. Commonwealth Department of Revenue, 592 A.2d 835 (Pa. Cmwlth. 1991) claiming it held, "Claims for gross negligence and/or reckless conduct against a Commonwealth party are barred under Pennsylvania law." See, DCNR's Brief in Opposition at ¶22. Faust did not analyze either gross negligence or recklessness in the context of sovereign immunity, holding instead, "intentional tort claims […] are not within the narrow exceptions set forth in 42 Pa.C.S. § 8522(b)." Faust at 839. Although gross negligence and recklessness are not intentional torts under Pennsylvania law, the Sovereign Immunity Act waives immunity only for negligent acts. The enumerated exceptions to sovereign immunity must be narrowly interpreted in the light of the express legislative intent to insulate the Commonwealth and its agencies from tort liability. Mosley v. Southeastern Pennsylvania Transportation Authority, 842 A.2d 473, 475 (Pa. Cmwlth. 2003). Allegations sounding in recklessness or gross negligence therefore fall outside the statutory waiver and this Court finds are barred by sovereign immunity.

The Amended Complaint repeatedly characterizes DCNR's conduct as "reckless," "grossly negligent," and reflecting a conscious disregard of known dangers associated with Dimple Rock. While such allegations are relevant to the non-Commonwealth defendants, Plaintiffs have not overcome the clear statutory limitation on the waiver of sovereign immunity. The Commonwealth's liability, if any, must be grounded in ordinary negligence and fit within a statutory exception. Accordingly, DCNR's preliminary objection is sustained as to Plaintiffs' claims for gross negligence and recklessness, and those claims are dismissed with prejudice.

The Court has already ruled on DCNR's joinder in WWA's preliminary objections regarding scandalous and impertinent matters and Steven Cole's claim for emotional distress.

Defendant CDR Maguire, Inc.'s Preliminary Objections

Maguire also first objected to Allegheny County's venue. In its second objection,

Maguire alleges that it did not owe a duty of care to the public, future rafters, or Plaintiffs in performing its contractual services for DCNR. In its third objection, Maguire argues that even if it did owe a duty of care, it did not violate any duty because it performed the exact services required by the Subcontract with DCNR. At its fourth objection, Maguire argues the Gist of the Action Doctrine bars Plaintiffs' claims against Maguire. In its fifth objection, Maguire alleges that its services provided seventeen years before the accident did not proximately cause Plaintiffs' injuries. It is sixth objection, should the Court not dismiss Maguire, it joins WWA's objection regarding the inclusion of scandalous and impertinent matter and Steven Cole's failure to state a claim for emotional distress.

To state a claim for negligence, a plaintiff must establish that (1) the defendant owed a duty of care to the plaintiff; (2) that duty was breached; (3) the breach was the proximate cause of the plaintiff's injury; and (4) the plaintiff suffered actual loss or damages. Brown v. Department of Transportation, 11 A.3d 1054, 1056 (Pa.Cmwlth.2011). Maguire argues that it had no duty to these Plaintiffs, to the public, or to future rafters and it should be dismissed from this case. The Court disagrees.

The first element of negligence requires establishing that the defendant owed a legal duty of care to the plaintiff. Weckel v. Carbondale Housing Authority, 20 A.3d 1245 (Pa. Cmwlth. 2011). This duty must be "recognized by law" and requires "an actor to conform his actions to a standard of conduct for the protection of others against unreasonable risks." Rauch v. Mike-Mayer, 783 A.2d 815 (Pa. Super. 2001). The existence of a duty is a question of law for the court to decide. Straw v. Fair, 187 A.3d 966, 983 (Pa. Super. 2018).

The Pennsylvania Supreme Court has held that Sections 323 and 324A of the Second Restatement of Torts correctly state the law of this Commonwealth. Section 323 provides:

> § 323 Negligent Performance of Undertaking to Render Services
>
> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
> (a) his failure to exercise such care increases the risk of such harm, or
> (b) the harm is suffered because of the other's reliance upon the undertaking.

Restatement (Second) of Torts § 323; Feld v. Merriam, 506 Pa. 383, 485 A.2d 742, 746 (1984) (recognizing that the Supreme Court has "adopted [Restatement (Second) of Torts § 323] as an accurate statement of the law in this Commonwealth").

Section 323 imposes liability "where a party assumes a duty, whether gratuitously or for consideration, and so negligently performs that duty that another suffers damage." Feld, 485 A.2d at 746. It applies:

> to any undertaking to render services to another which the defendant should recognize as necessary for the protection of the other's person or things. It applies whether the harm to another or his things results from the defendant's negligent conduct in the manner of his performance of the undertaking, or from

> his failure to exercise reasonable care to complete it or to protect the other when he discontinues it.

Id., quoting Restatement (Second) of Torts § 323 cmt. a.

The rule stated in Section 324A "parallels the one stated in § 323, as to the liability of the actor to the one to whom he has undertaken to render services. [Section 324A, however,] deals with the liability to third persons." Restatement (Second) of Torts § 324A cmt. a. Section 324A declares:

§ 324A Liability to Third Person for Negligent Performance of Undertaking

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if
>
> > (a) his failure to exercise reasonable care increases the risk of such harm, or
> > (b) he has undertaken to perform a duty owed by the other to the third person, or
> > (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Restatement (Second) of Torts § 324A; Cantwell v. Allegheny County, 506 Pa. 35, 483 A.2d 1350, 1353 (1984) (recognizing that "the essential provisions of [Restatement (Second) of Torts § 324A] have been the law in Pennsylvania for many years").

As the comments to the rule state:

> [Section 324A] applies to any undertaking to render services to another, where the actor's negligent conduct in the manner of performance of his undertaking, or his failure to exercise reasonable care to complete it, or to protect the third person when he discontinues it, results in physical harm to the third person or his things. It applies both to undertakings for consideration, and to those which are gratuitous.

Restatement (Second) of Torts § 324A cmt. b.

Straw v. Fair, 187 A.3d 966, 983-984 (Pa. Super. 2018).

Restatement Section 324A governs liability to third persons for the negligent performance of an undertaking. Plaintiffs allege that Maquire "assumed a duty by the very nature of its contractual undertaking with Penn State and DCNR." See, Plaintiffs' Brief in Opposition at 5. Plaintiffs then argue, "It is not the contract per se which creates the duty; it is the law which imposes the duty because of the nature of the undertaking in the contract." Id. Plaintiffs allege it was Maguire's negligent performance of the contract, that members of the public, including the decedent Julie Moore, could suffer the

same tragic fate as others who had been injured or perished at Dimple Rapids, which establishes that Maguire had an affirmative duty of care. Id.

Accepting Plaintiffs' allegations as true, they have sufficiently pled a claim under Section 324A to survive preliminary objections.

First, Plaintiffs allege that Maguire undertook to perform a comprehensive engineering and safety study of Dimple Rock for DCNR, a known hazardous feature of a public waterway, for the express purpose of evaluating methods to reduce death and injury. Such an undertaking implicates the safety of third-party users of the river, including white water rafters like Plaintiffs.

Second, Plaintiffs allege that Maguire's performance of that undertaking was negligent in that it failed to properly analyze available safety measures, dismissed viable alternatives without adequate support, and effectively endorsed a "do nothing" approach despite known fatalities and risks. At this stage, these allegations are sufficient to support a claim that Maguire's conduct increased the risk of harm or, at minimum, failed to mitigate a known danger which allegedly perpetuated the hazard.

Third, Plaintiffs have sufficiently alleged reliance for purposes of Section 324A(c). While Plaintiffs do not allege direct reliance by Julie Moore upon Maguire's report, they allege that DCNR relied upon the report in determining how to address the dangers of Dimple Rock. Plaintiffs further alleged that DCNR adopted a course of action that instituted no physical modification of the river and instead relied on warning and educational measures. At the preliminary objections stage, such allegations are sufficient to support a theory that Plaintiffs' injuries resulted, at least in part, from DCNR's reliance on Maguire's undertaking.

Further, Plaintiffs allege that the danger posed by Dimple Rock was well known and the subject of prior fatalities and coroner inquests. Given the nature of the undertaking and the known risk, it is foreseeable that negligent performance of a safety study could result in harm to future rafters. The passage of time between the study and the incident does not, as a matter of law, negate duty at the preliminary objection stage as Plaintiffs allege that the hazardous condition remained unchanged as a result of the breach of Maguire's duties. DCNR's public safety decision allegedly resulted from its reliance on Maguire and Penn State's recommendations to the detriment of future rafters and accordingly, Maguire's preliminary objection regarding duty must be overruled.

Maguire's remaining arguments regarding breach, causation, and the scope of its contractual obligations are fact-issues not ripe for resolution on preliminary objections. Whether Maguire exercised reasonable care in performing the Dimple Rock study, whether any alleged deficiencies in that study contributed to DCNR's decision to make no physical changes to the river, and whether such conduct was a substantial factor in causing Plaintiffs' injuries all require development of a factual record. These determinations depend upon factual evidence concerning the content of the study, the reasonableness of the methodologies used, the alternatives rejected, and the extent to which DCNR relied upon or adopted Maguire's conclusions. This inquiry must be allowed to develop during discovery and, if appropriate, disposed of through summary judgment or trial.

Similarly, Maguire's reliance on the gist of the action doctrine is premature. The gist of the action doctrine operates to preclude a tort claim only where the duty alleged to have been breached is created by the contract itself. Here, Plaintiffs allege independent tort causes of action that Maguire negligently undertook to render services that it should have recognized were for the protection of third persons and that it failed to exercise reasonable care in the performance of that duty. These allegations would arise independently under tort law, including under Sections 323 and 324A of the Restate-

ment (Second) of Torts, and are not restricted to the terms of the contract. At the preliminary objection stage, the Court cannot conclude, as a matter of law, that Plaintiffs' claims are grounded solely in contract. Accordingly, the gist of the action doctrine preliminary objection must also be overruled.

Defendant The Pennsylvania State University's Preliminary Objections

Penn State first objects that it did not owe a duty of care to the public, future rafters, or Plaintiffs in performing contractual services for Maguire. Penn State then objects that even if it did owe a duty of care to Plaintiffs, it did not violate any duty because it performed the exact services required by the Subcontract. In its third objection, Penn State argues its services did not proximately cause Plaintiffs' injuries. In its fourth objection, Penn State seeks dismissal of the claims pursuant to the Gist of the Action Doctrine. Penn State lastly seeks to strike scandalous or impertinent matters that it failed to warn as no claim was made against Penn State that it failed to warn and it joins WWA's objection regarding the inclusion of scandalous and impertinent matter and Steven Cole's failure to state a claim for emotional distress.

Plaintiffs allege in the Amended Complaint that Penn State's role was to create the model and perform the engineering analysis underlying the Dimple Rock study commissioned by DCNR contracted to Maguire. Plaintiffs further allege that Penn State's work was critical upon which DCNR relied in making no physical changes to Dimple Rock. For the same reasons set forth in the Court's analysis of Maguire's preliminary objections, Plaintiffs have sufficiently alleged a duty under Section 324A of the Restatement (Second) of Torts.

Accepting Plaintiffs' allegations as true, Penn State undertook, for consideration, to perform an engineering analysis directly related to a known hazardous condition which posed risks of serious injury and death to members of the public. Such an undertaking is one which Penn State should reasonably have recognized as necessary for the protection of third persons, including recreational users of the river.

Plaintiffs further allege that Penn State's modeling was deficient, failed to accurately reflect real-world conditions, and contributed to conclusions that undermined potential safety modifications by recommending that nothing be done. These allegations are sufficient, at the preliminary objection stage, to support a claim that Penn State failed to exercise reasonable care in performing its undertaking.

As with Maguire, Plaintiffs have adequately alleged reliance through DCNR's adoption of the study's conclusions in determining how to address the dangers of Dimple Rock. Whether such reliance occurred, and whether it was a proximate cause of Plaintiffs' injuries, are factual questions not suitable for disposition at the preliminary objections stage.

Penn State's arguments that it lacked direct contact with Plaintiffs or control over rafting operations do not preclude liability under Section 324A, which expressly contemplates liability to third persons arising from an undertaking performed for another. Lastly, issues of causation, the adequacy of the engineering analysis, and the extent to which Penn State's work influenced DCNR's decisions present questions of fact not amenable to disposition at preliminary objections.

Accordingly, viewing the allegations in the light most favorable to Plaintiffs, the Court cannot conclude that Plaintiffs have failed to state a claim as a matter of law. Penn State's preliminary objections are therefore overruled.

WHEREFORE, we will enter the following Order.

ORDER

AND NOW, this 23rd day of March, 2026, upon consideration of the Preliminary Objections filed by all Defendants to the Amended Complaint of Plaintiff, Christopher Stranyak, Executor of the Estate of Julie Ann Moore, minors E.M. and P.M., by their Guardian Christopher Stranyak, and Steven Cole, and in accordance with the foregoing Opinion, it is hereby ORDERED and DECREED that:

Defendant White Water Adventurers, Inc.'s Preliminary Objections 1(a), 1(b), 1(c), 1 (d), 1(e), 1(f), 1(g), and 2 are OVERRULED. Defendant White Water Adventurers, Inc.'s Objection 1(h) is SUSTAINED and Amended Complaint ¶243 containing an averment regarding the Fayette County Coroner's improper inquest into the death of Ms. Moore and the provision of suggested remedial measures thereafter is STRICKEN.

Defendants FareHarbor Holdings, LLC and FareHarbor, B.V.'s Preliminary Objections are OVERRULED.

Defendant Commonwealth of Pennsylvania Department of Conservation and Natural Resources Preliminary Objections in the nature of a demurrer to claims for recklessness or gross negligence and to strike the Fayette County Coroner's inquest into the death of Julie Moore are SUSTAINED and stricken from the Amended Complaint. DCNR's remaining Preliminary Objections seeking to strike scandalous and impertinent matters and to strike Steven Cole's claim for emotional distress are OVERRULED.

Defendant CDR Maguire, Inc. and Defendant The Pennsylvania State University's preliminary objections are OVERRULED except as to their joinder in WWA's scandalous and impertinent matter objections which SUSTAIN the objection as to Fayette County Coroner's improper inquest into the death of Ms. Moore and the provision of suggested remedial measures thereafter.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Prothonotary