IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MEGHAN DELONG et al.,	:	
Plaintiffs,	:	
	:	
v.	:	**Civ. No. 19-2766**
	:	
AMERICAN HOME FURNISHINGS	:	
ALLIANCE, et al.,	:	
Defendants.	:	

ORDER

Meghan DeLong alleges that non-profits American Home Furnishings Alliance, Inc. and the American Society for Testing and Materials negligently issued and promoted voluntary furniture safety standards, thus causing her son to perish when an IKEA dresser meeting those standards tipped onto him. (Compl. at 4, Doc. No. 6-1.) In moving to dismiss, Defendants argue that they have no legal duty to furniture users. Doc. Nos. 9, 10; Fed. R. Civ. P. 12(b)(6). I will grant their Motions.

I. PROCEDURAL HISTORY

Plaintiff initiated this matter in May, 2019, filing her Complaint in the Montgomery County Common Pleas Court. (See Doc. No. 6.) Invoking diversity jurisdiction, ASTM removed to this Court in June, 2019. (Doc. Nos. 1, 24); 28 U.S.C. § 1332. It is undisputed that the Parties are diverse. Because Plaintiff seeks "[m]ore than $50,000,000" in damages, the jurisdictional threshold is met. 28 U.S.C. § 1332. Both Defendants have moved to dismiss for failure to state a claim upon which relief may be granted. (Doc. Nos. 9, 10); Fed. R. Civ. P. 12(b)(6). The matter has been fully briefed. (Doc. Nos. 9, 10, 26, 27, 28, 30, 35, 36, 37.)

II. LEGAL STANDARDS

I must conduct a two-part analysis. Fowler v. PMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009). First, I will accept Plaintiff's factual allegations and disregard legal conclusions or mere

recitations of the elements. Id. I must then determine whether the facts alleged make out a "plausible" claim for relief. Id. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Defendants must show that Plaintiff has failed to allege facts sufficient to "raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); Phillips v. Cnty. of Allegheny, 515 F.3d 224, 234 (3d Cir. 2008).

III. BACKGROUND

A Florida resident, Ms. Delong is the mother and survivor of two-year old Conner Delong, who was asphyxiated when an Ikea "Hemnes" bedroom dresser fell onto him. (Compl. at 5, 10.) She proceeds in her individual capacity and as the personal representative of her son's estate. (Id. at 4.) She does not sue Ikea, which designed, manufactured, and distributed the dresser.

ASTM, a non-profit, is organized under the law of Pennsylvania, where it has its principal place of business. (See id.) It promulgates voluntary industry safety standards for products and materials, including furniture. (Id. at 4–5.) AHFA is a non-profit organized under the law of North Carolina, where it has its principal place of business. (See id. at 4.) AHFA "is the voice of the residential furniture industry." (Id. at 5.) Plaintiff alleges that to forestall government regulation, AHFA encourages manufacturers to adopt and comply with ASTM's voluntary industry standards. (Id. at 7–10.) As alleged, these standards are considered baseline safety 'best practices.' (Id.)

ASTM standard F2057 sets out extensive dresser stability requirements, including the following: (1) the dresser must not tip over when all drawers are fully extended; and (2) it must not tip over when any single drawer is fully extended and a 50-pound weight is hung from the drawer. (Id. at 6.) Plaintiff alleges the "Hemnes" dresser met these requirements, that Ikea relied

on F2057 "in designing and manufacturing the [Hemnes] dresser," and that ASTM and AHFA knew that products designed to that standard would be used in homes with small children. (Id. at 5–7.) Plaintiff further alleges that ASTM and AHFA knew that compliance with F2057 could not prevent injuries to young children who often climb dressers "like a ladder." (Id.) Finally, she alleges that both Defendants ignored calls from independent consumer groups to implement more rigorous stability standards. (Id. at 5–7.)

Ms. Delong's Complaint is not a model of clarity. Although she charges "negligence" as to both AHFA and ASTM, she appears to raise two theories of liability: (1) Defendants negligently breached their duty of care to end-users in promulgating F2057 (Id. at 11); and (2) Defendants undertook a third-party duty that they negligently failed to carry out. (Id.) There is a difference between these theories. As to the first, the law imposes a duty of care on the defendant. As to the second, the defendant assumes a duty of care. Pursuant to the second, Plaintiff thus alleges that AHFA and ASTM "undertook, gratuitously or for consideration, to promulgate, implement, or amend—or substantially participate in the promulgation, implementation, or amendment of—furniture stability safety standards, including but not limited to F2057[]," and were negligent in doing so. (Id. at 11, 15.) As each Defendant notes in its Motion to Dismiss, this language mirrors "Good Samaritan" liability set out in Section 324A of the Restatement (Second) of Torts. (Doc. Nos. 9, 10.)

Ms. Delong apparently alludes to other possible claims, which Defendants address in seeking dismissal. In responding to Defendant's Motions, however, she either does not mention them or explicitly disclaims them. (Pl. Sur-reply at 1 n.1, Doc. No. 30 ("Contrary to Defendants' arguments, Plaintiff is not suing them under a theory of negligent or intentional misrepresentation.").) She thus limits her claims as follows: the trade organizations were negligent

in promulgating and promoting ASTM F2057, and assumed responsibility for setting criteria for designing and testing furniture but did so negligently ("Good Samaritan" liability).

IV. DISCUSSION

Defendants argue that Ms. Delong: (1) lacks capacity to sue; and (2) has failed to allege that Defendants breached any cognizable legal duty to her. I agree with the second contention.

A. Capacity to Sue

Although neither side has addressed choice of law, I will apply the law of Florida. Specialty Surfaces Intern., Inc. v. Continental Cas. Co., 609 F.3d 223, 229–36 (3d Cir. 2010). A claim of wrongful death is created by Florida statute. Capone v. Philip Morris USA, Inc., 116 So. 3d 363, 374 (Fla. 2013); Fla. Stat. §§ 768.20 et seq. A wrongful death action must be brought by the decedent's personal representative. Fla. Stat. § 768.20.

Plaintiff has alleged she is "or in the near future will be" appointed her as son's personal representative. (Compl. at 4.) In opposing Defendants' Motions, she notes that she has in fact been so appointed. I will consider this as a supplement to Plaintiff's Complaint, thus satisfying Florida law. Fed. R. Civ. P. 15(d).

B. Defendants' Direct Duty to Furniture Consumers

More difficult is the question of whether the law imposes (or likely would impose) on voluntary standards-issuing organizations a duty to a product's consumer or user. This is purely a legal determination. Limones v. Sch. Dist. of Lee Cty., 161 So. 3d 384, 389 (Fla. 2015). Once again, I am bound to apply Florida law. Covington v. Cont'l Gen. Tire, Inc., 381 F.3d 216, 218 (3d Cir. 2004). If there is no controlling statute or decision from Florida's highest court, I must give significant weight to intermediate appellate court decisions. Id. If there are none, I may also consider decisions from other jurisdictions, secondary sources, and treatises. Id.; see also

Jaworowski v. Ciasulli, 490 F.3d 331, 335 (3d Cir. 2007) ("[w]hen a state's highest court has yet to speak on a particular issue it becomes the role of the federal court to 'predict how [the state's highest court] would decide the issue…'") (citation omitted).

There is no governing Florida statute. Because Florida Courts have not addressed the issue, I must predict how they would rule. I conclude they would hold that the law does not impose on a trade association issuing voluntary industry standards a duty to the end users of products manufactured in accordance with the standards.

The argument that the law imposes such a duty on standard-setting organizations has had very limited success in decisions that are largely inapposite here. For example, the New Jersey Supreme Court has ruled that the American Association of Blood Banks was liable for negligently promulgating transfusion standards intended to protect recipients from contracting HIV/AIDS. Snyder v. Am. Ass'n of Blood Banks, 676 A.2d 1036, 1048 (N.J. 1996). Because of the AABB's unique degree of authority, Snyder is minimally useful here. The Court emphasized that the "[AABB] has dominated the establishment of standards for the blood-banking industry," and so "was more than a trade association. It was the governing body of a significantly self-regulated industry." Id. at 1050. Indeed, a blood bank could not operate in New Jersey unless it was a member of the AABB and followed the Association's mandatory safety procedures. Id.

Typical of most standards-setting organizations, Defendants here "govern" nothing. As alleged, to the extent furniture manufacturers or designers adopt Defendants' standards, they do so voluntarily. (E.g. Compl. at 9 ("AHFA has long *encouraged* the furniture industry to comply with [F2057]") (emphasis added)). Indeed, the AABB's unique authority likely explains why Plaintiff can offer only a single decision where Snyder was followed directly. Weigand v. Univ. Hosp. of New York Univ. Med. Ctr., 172 Misc. 2d 716, 718 (Sup. Ct. 1997). Like Snyder itself,

however, the trial court's decision in Weigand to impose liability on the AABB and a member blood bank is inapposite.

Most courts addressing the liability issue have declined to follow Snyder. Indeed, the California Superior Court has held that the AABB *did not* owe any duty to the recipients of blood transfusions. N.N.V. v. Am. Assn. of Blood Banks, 75 Cal. App. 4th 1358 (1999); see also Sizemore v. Hardwood Plywood & Veneer Ass'n, 114 F.3d 1177 (Table) (4th Cir. 1997) (no liability for trade association that promulgated model building code adopted by municipalities); Bailey v. Edward Hines Lumber Co., 719 N.E.2d 178, 180 (Ill. 1999) (trade association owed no duty of care to carpenters who were injured while following association's installation instructions); see also Beasock v. Dioguardi Enterprises, Inc., 494 N.Y.S.2d 974, 978 (Sup. Ct. 1985) (trade association that "endorsed and promulgated" a defective tire rim design owed no duty of care to individual killed by a defective rim); cf. Gunn v. Big Dog Treestands, Inc. No. 2:15-CV-9-KS-MTP, 2015 WL 6393869, at *2 (S.D. Miss. Oct. 21, 2015) ("[T]he majority rule… is that there is no cause of action against non-profit trade associations [for negligently promulgating safety standards].").

Even in New Jersey, Snyder apparently has not disturbed an earlier intermediate appellate holding that liability does not usually attach to a trade association. Meyers v. Donnatacci, 531A.2d 398, 401 (N.J. Sup. Ct. 1987). New Jersey has not revisited Meyers in the twenty-four years since Snyder was decided.

This authority suggests that Florida Courts would not impose liability on Defendants. That suggestion is strengthened by the practice of Florida Courts, in determining whether a legal duty exists, to look to whether "the defendant's conduct foreseeably *created* a broader 'zone of risk' that poses a general threat of harm to others." McCain v. Fla. Power Corp., 593 So. 2d 500, 502

(Fla. 1992) (emphasis added). Defendants here have "created" no new risk. At most, they have urged inadequate measures to reduce the risk already posed by household furniture. (Compl. at 9.) As the most recent Restatement provides, "[a]n actor whose conduct has not created a risk of physical or emotional harm to another has no duty of care to the other unless a court determines that [an affirmative duty] is applicable." Restatement (Third) of Torts: Phys. & Emot. Harm § 37 (2012).

In these circumstances, I conclude that Florida Courts will not impose liability on trade associations—such as AFSA and ASTM—a duty to product users.

C. Good Samaritan Liability

Plaintiff next argues that Defendants *assumed* the duty to promulgate and encourage adoption of adequate safety standards. (Compl. at 12.) As I have described, her language mirrors Restatement (Second) of Torts § 324A:

> 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 for 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 the reliance of the other or the third person upon the undertaking.

Ms. Delong argues that Ikea relied on the F2057 safety standard by designing its dresser to conform to that standard. (Compl. at 10.) She thus argues that she satisfies subsection (c) of §324A. I conclude that Florida would not impose Good Samaritan liability in the circumstances presented here.

Florida Courts have construed § 324A narrowly—typically where the defendant has *directly* increased the risk of harm to a particular person or group. The duty imposed is thus limited. For instance, in 2009, the Florida Supreme Court applied § 324A in a suit against the

Marion County Sheriff's Office. Wallace v. Dean, 3 So.3d 1035, 1040 (Fla. 2009). There, when deputies conducted the "safety check" of a woman who was non-responsive, they repeatedly failed to revive her. When a neighbor sought to phone emergency services, the deputies directed her not to do so, declined to do so themselves, and left the scene. Id. at 1043. In imposing § 324A liability, the Court reasoned that the deputies "both increased the risk of harm to decedent and induced third parties—who would have otherwise rendered further aid—to forebear from doing so." Id. at 1052. The Florida Supreme Court emphasized that "[the deputies] affirmatively sought to provide a service (a 911 safety check) to a specific individual," and that they were "in a position of authority" and used that authority to prevent additional assistance. Id. at 1049, 1052. Plaintiff was thus able to demonstrate that §324A(a) and (c) applied: Deputies increased the risk of harm to the decedent by turning away other potential rescuers, and third parties relied on deputies' assurances that the decedent was not in danger. Id. at 1043.

In Union Park Mem'l Chapel v. Hutt, a funeral director organized and led a vehicular funeral procession, during which a participant ran a red light and was injured. 670 So. 2d 64, 65 (Fla. 1996). Because the funeral director controlled and planned the route of the procession, the Court held that under § 324A(c) he owed a duty to members of the procession, because participants relied on the director to ensure there were adequate safety precautions along the route. Id.

Conversely, Florida Courts have rejected the suggestion that § 324A may be used to establish a broad duty to the public. In Pollock v. Fla. Dep't of Highway Patrol, the Florida Supreme Court declined to hold under § 324A that the police owed the public a duty to clear an accident from a state highway. 882 So. 2d 928, 931 (Fla. 2004). See also Brown v. Department of Health and Rehabilitative Services, 690 So. 2d 641, 643, 645 (Fla. 1997) (DHRS owed no duty to the general public to vet day care workers).

The Florida Appellate Court's decision Johnson ex rel. Johnson v. Badger Acquisition Of Tampa LLC, 983 So. 2d 1175, 1186–87 (Fla. Dist. Ct. App. 2008) is also instructive. There, a "consulting pharmacist" contracted with a nursing home to review the resident physician's charts and medical records to spot medication contraindications, determine if medications were effective, and identify any adverse patient reactions. After a patient died from improper medication, his representative sued the pharmacist under § 324A. Id. at 1179. The Court declined to hold that the pharmacist was liable for "fail[ing] to recommend a different treatment for Mrs. Johnson." Id. Rather, the Court concluded "[a]ny risk to Mrs. Johnson from a pharmaceutical regime was created by the physician who prescribed the medication or the nursing staff that delivered it to Mrs. Johnson." Id. at 1186.

The situation here is analogous. Ikea designed, manufactured, and distributed the Hemnes dresser with all its attendant flaws. (Compl. at 7.) As in Johnson—imposing liability on the more culpable physician—the Florida Courts would likely impose liability for Connor's tragic death on Ikea, the entity primarily responsible for the harm its dresser may have caused. That reasoning compels the conclusion that Florida Courts would not impose § 324A liability on Defendants here.

Courts in other jurisdictions have also rejected § 324A liability in analogous circumstances. See, e.g., Lockman v. S.R. Smith, LLC, 405 F. App'x 471, 474 (11th Cir. 2010) (under Georgia law, swimming pool trade association did not assume the duty to warn consumers by promulgating safety standards); Friedman v. F.E. Myers Co., 706 F. Supp. 376, 383 (E.D. Pa. 1989) (under Pennsylvania law, water pump manufacturers trade association owed no duty to consumers injured by exposure to PCBs); Gunsalus v. Celotex Corp., 674 F. Supp. 1149, 1157 (E.D. Pa. 1987) (under Pennsylvania law, tobacco trade association assumed no duty to smokers by undertaking research about tobacco-related health risks and disseminating information to the public).

Scholars confirm that, to avoid discouraging beneficial activities, many courts have limited the scope of so-called "undertaker," or "Good Samaritan" liability. Dan B. Dobbs, Paul T. Hayden and Ellen M. Bublick, The Law of Torts § 410 (2d ed.) (2011). Professors Dobbs, Hayden and Bublick note:

> Courts sometimes seem to believe that the defendant undertakes only what he actually does, which would mean that the defendant could never be liable for he would always have fulfilled his undertaking. A moderate position determines the scope of the defendant's assumed duty by considering the plaintiff's reasonable expectations of care induced by the defendant's actions.

Id. Even under this "moderate view," Good Samaritan liability cannot attach here because there is no allegation that Plaintiff relied upon, or was even aware of, Defendants' recommended safety standards.

Finally, the other state court decisions Plaintiff offers do not convince me that Florida Courts would abandon their restrictive application of § 324A. See King v. Nat'l Spa & Pool Inst., Inc., 570 So. 2d 612, 618 (Ala. 1990) (swimming pool trade association liable for unsafe pool); Meneely v. S.R. Smith. Inc., 5 P.3d 49, 51 (Wash. App. 2000) (Court applies "voluntary rescue doctrine"); FNS Mortgage Service Corp. v. Pacific General Corp., Inc., 24 Cal. App. 4th 1564 (1994).

The Courts in King and Meneely focused primarily on the foreseeability of harm to the plaintiff. King, 570 So. 2d at 615–16; Meneely, 5 P.3d at 57. The King Court thus emphasized that it was "foreseeable that harm might result to the consumer if [the trade association] did not exercise due care[]" because the safety standards at issue were intended to benefit the public. King, 570 So. 2d at 616. As in King, Plaintiff here does not allege that she relied on Defendants' safety standards in purchasing the Ikea dresser. Indeed, citing King, Plaintiff argues that her "actual knowledge" of the standard "is not required for a duty to exist." (Pl. Sur-reply at 5.) Yet the

standard set out in King clearly exceeds the "moderate view" I have discussed. Such a standard would permit recovery even if the plaintiff has no reasonable expectation or care, or indeed is even aware of the challenged standard or action. King, 570 So. 2d at 615–18.

Moreover, the Alabama Supreme Court ignored issues that Florida Courts and others have emphasized, including the policy considerations of recognizing such a broad duty to the public, the equity of imposing liability where another party is more directly responsible for the plaintiff's injuries, or even the level of control over the design process that a trade association must exert to trigger liability. I thus doubt that Florida Courts would give great weight to King. Indeed, no other state high court has followed King in the thirty years since it was decided. The intermediate appellate decision in Meenely is very similar to King, and is similarly unpersuasive. 5 P.3d at 57. Finally, in FNS Mortgage Service Corp., the defendant inspected and certified the product that injured plaintiff. 24 Cal. App. 4th at 1567. This has little bearing on whether liability can arise from the promulgation of safety standards alone.

In sum, because I conclude that because Florida Courts would not impose § 324A liability on Defendants, I will grant Defendants' Motions to Dismiss Plaintiff's negligence claim.

D. Other Issues

In light of my decision, I need not address Defendants' remaining contentions.

V. CONCLUSION

Neither ASTM nor AHFA caused Connor Delong's tragic death. Because neither Defendant owed Plaintiff a duty of care under the standards urged, her negligence claim fails. I will thus grant Defendants Motions to Dismiss with prejudice.

An appropriate Judgment follows.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

June 2, 2020 Paul S. Diamond, J.