

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD O. KLING, M.D., BRENDA
SUTTON, SHIRLEY MORTON, KENYA
TUCKER, HAROLD WIMBUSH, SIMON
ALLISON, PATRICIA HULL, Individually
and On Behalf of All Others Similarly
Situating,

Plaintiffs,

- against -

THE WORLD HEALTH ORGANIZATION,

Defendant.
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OPINION & ORDER

No. 20-CV-3124 (CS)

Appearances:

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Counsel for Plaintiffs

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Seibel, J.

Before the Court is Defendant's Motion to Dismiss all claims in Plaintiffs' Second Amended Complaint. For the following reasons, the motion is GRANTED.

I. BACKGROUND

For purposes of this motion, I accept as true the facts, but not the conclusions, set forth in Plaintiffs' Second Amended Complaint. (Doc. 31 ("SAC").)

A. Facts

Plaintiffs commenced this action against Defendant World Health Organization (the "WHO"), alleging negligence in responding to the COVID-19 pandemic. The WHO "is a specialized agency of the United Nations responsible for international public health." (SAC ¶ 12.) It acts within the United Nations system to promote human health and well-being, monitor public health risks, and coordinate responses to health emergencies. (*Id.* ¶¶ 32, 33.) The United States is a member nation of the WHO, providing financial and technical support and participating in the WHO's governance structure. (*Id.* ¶¶ 44, 95.) The WHO maintains regional and country offices throughout the world, including one at the United Nations headquarters in Manhattan. (*See id.* ¶¶ 14, 58, 125.)

In December 2019, the first patients exhibiting symptoms of COVID-19 were hospitalized in Wuhan, China. (*See id.* ¶ 48.) According to one study, "laboratory testing was being done on patients" who exhibited these symptoms in mid-to-late December. (*Id.* ¶ 52.) As early as December 27, 2019, "a Guangzhou-based genomics company had sequenced most of the virus," and it was similar to the deadly SARS coronavirus that caused nearly 800 deaths between 2002 and 2003. (*Id.* ¶ 53.) The Wuhan Municipal Health Commission ("WMHC") released a notice about the virus to medical institutions on December 30, 2019. (*Id.* ¶ 55.)

The WHO claims it received its first notice of COVID-19's existence on December 31, 2019, when its country office in China picked up on a media statement on the WMHC website. (*Id.* ¶ 57.) The WHO China country office then notified the International Health Regulations

(“IHR”) focal point in the WHO Western Pacific Regional Office. (*Id.* ¶ 58.) On December 31, 2019, the WMHC declared that investigations had not, thus far, “found any obvious human-to-human transmission and no medical staff infection.” (*Id.* ¶ 60.) Plaintiffs allege that this declaration from the Wuhan health authorities was contrary to “the belief of the doctors working on patients in Wuhan.” (*Id.*)

On January 2, 2020, the Wuhan Institute of Virology completed a map of the virus’s genome. (*Id.* ¶ 68.) The next day, China’s National Health Commission (“NHC”) “ordered institutions not to publish any information” related to the virus and “ordered labs to transfer any samples they had to designated testing institutions, or to destroy them.” (*Id.* ¶ 69.) Despite these orders, sources in China notified the U.S. government about the virus on January 3. (*Id.* ¶ 70.)

The WHO “released a statement on its website” on January 5, stating that, “[b]ased on the preliminary information from the Chinese investigation team, no evidence of significant human-to-human transmission and no health care worker infections have been reported.” (*Id.* ¶ 71.) Plaintiffs allege that the “WHO had actual or constructive notice that China was wrongfully denying or downplaying the risk of human-to-human transmission in the critical weeks while the virus was first spreading.” (*Id.* ¶ 63.) Plaintiffs state, without elaboration, that such knowledge came from “warnings from Taiwan and Hong Kong about the risk of human-to-human transmission.” (*Id.* ¶ 64.) On January 6, the U.S. Centers for Disease Control (“CDC”) asked to study COVID-19 within China “but was barred by the Chinese Government from entering the country until mid-February,” and “[the] WHO did not intervene.” (*Id.* ¶ 72.)

Authorities in China publicly confirmed that the outbreak originated from a novel coronavirus on January 9, 2020. (*Id.* ¶ 73.) On January 12, “Chinese authorities and the WHO shared the genetic sequence of COVID-19 with the international community.” (*Id.* ¶ 76.) Two

days later, the WHO stated on Twitter that “[p]reliminary investigations conducted by the Chinese authorities have found no clear evidence of human-to-human transmission of the novel coronavirus (2019-nCoV) identified in Wuhan, China.” (*Id.* ¶ 78.)

On January 20 and 21, 2020, a WHO delegation “conducted a field visit to Wuhan to learn about the response to 2019 novel coronavirus.” (*Id.* ¶ 80.) The WHO issued a statement on January 22 that “there was evidence of human-to-human transmission in Wuhan, but more investigation was needed to understand the full extent of transmission.” (*Id.* ¶ 81.) From January 22 through 23, the WHO convened an Emergency Committee to “assess whether the outbreak constituted a public health emergency of international concern,” but did not reach a consensus based on the evidence available. (*Id.* ¶ 82.)

A WHO delegation traveled to Beijing on January 28 to “learn more about China’s response, and to offer any technical assistance.” (*Id.* ¶ 83.) The next day, WHO’s Director-General addressed journalists at a press conference in Geneva, thanking “the Chinese government for the extraordinary steps it had taken to prevent the spread of the new coronavirus.” (*Id.* ¶ 84.) Plaintiffs describe these statements as part of a pattern of “praise heaped on the [Chinese Communist Party]’s handling of the pandemic, reveal[ing] a disturbing willingness to ignore science and alternative credible sources.” (*Id.* ¶ 65.) On January 30, the WHO declared that COVID-19 “constituted a Public Health Emergency of International Concern,” but “did not recommend any travel or trade restriction.” (*Id.* ¶ 85.) After the United States imposed travel restrictions on January 31, 2020, the WHO opined that widespread restrictions were not needed and could increase “fear and stigma, with little public health benefit.” (*Id.* ¶ 93.)

On March 11, 2020, the WHO concluded that “COVID-19 can be characterized as a pandemic.” (*Id.* ¶ 88.)

Plaintiffs allege that the WHO’s response to the pandemic between December 2019 and March 2020 as described above was negligent and reckless. (*Id.* ¶ 89.) Specifically, they assert that the WHO negligently failed to (1) “timely declare [COVID-19] a public health emergency of international concern,” (2) “properly monitor the response to the Coronavirus pandemic in China,” (3) “timely promulgate the correct treatment guidelines to its members,” (4) “timely and properly issue appropriate guidance to its members on how they should respond to the Coronavirus pandemic emergency,” and (5) “act as a global coordinator.” (*Id.* ¶ 1.) As a result, Plaintiffs allege that the WHO “proximately caused injury and incalculable harm to Plaintiffs and Class Members.” (*Id.* ¶ 4.) Plaintiffs are residents of Westchester County, New York, and bring this action on behalf of “[a]ll adult persons in the County of Westchester, State of New York who have suffered injury, damage and loss related to the outbreak of the [*sic*] COVID-19,” as well as “[a]ll adult persons in the County of Westchester, State of New York who have been diagnosed with, treated for and/or died from COVID-19.” (*Id.* ¶ 103.)

B. Procedural History

Plaintiffs filed their Complaint on April 20, 2020, (Doc. 1), and their First Amended Complaint on May 4, 2020, (Doc. 7). On August 14, Defendant submitted a letter requesting a pre-motion conference concerning its anticipated motion to dismiss on grounds of immunity, (Doc. 20), and Plaintiffs submitted a letter in opposition to Defendant’s request, arguing that the Court should not hear the motion until after discovery, during which Plaintiffs could gather facts necessary for their opposition. (Doc. 21).

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