**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

**IN ADMIRALTY**

| | |
|---|---|
| **In the Matter of The Complaint**<br><br>**of**<br><br>**Sea Star Line, LLC, d/b/a TOTE Maritime Puerto Rico, as Owners; and TOTE Services, Inc., as Owner *pro hac vice* of the S.S. EL FARO for Exoneration from or Limitation of Liability** | **Case No. 3:15-cv-1297-HES-MCR** |

**ORDER**

**THIS CAUSE** is before the Court on Claimants' "Motion for Partial Summary Judgment on the Issue of Unseaworthiness" (Dkt. 323, filed April 13, 2016); and Petitioners', Tote Maritime Puerto Rico, LLC f/k/a Sea Star Line, LLC, and Tote Services, Inc. (hereinafter referred to collectively as "Petitioners"), Response in opposition thereto (Dkt. 360, filed May 2, 2016). Upon review of the parties' filings and the relevant case law, the Court determines the following.

## I. BACKGROUND

This matter involves the sinking of the cargo ship *S.S. El Faro* ("*El Faro*"), which was lost at sea near the Bahamas on October 1, 2015. Unfortunately, all persons aboard the ship during its final voyage—twenty-eight crew members and five Polish nationals—were also lost at sea. The vessel's remnants were later discovered on the ocean floor, but despite extensive search efforts, no survivors were ever found. Thereafter, Petitioners—the shipowners—initiated this Limitation of Liability proceeding ("the Limitation Action") pursuant to the Limitation Act, 46 U.S.C. §§

30501–30512 (2006). Dozens of wrongful death and cargo claims have been filed against Petitioners in the Limitation Action.

The movants consist of the following: Tinisha Renee Thomas, as Personal Representative for the Estate of Anthony Shawn Thomas; Mildred Solar-Cortes, individually and as Personal Representative for the Estate of German Solar-Cortes; Terri Hargrove, individually and as Personal Representative for the Estate of Joe Hargrove; and Patrick John Smith (hereinafter referred to collectively as "Claimants"). Claimants each assert a negligence claim against Petitioners under the Jones Act, 46 U.S.C. § 30104, and under general maritime law. (Dkt. 39 at 16; Dkt. 38 at 15; Dkt. 56 at 15; Dkt. 40 at 15). Claimants filed the present motion requesting the Court grant partial summary judgment on the issue of the *El Faro's* alleged unseaworthiness. In their motion, Claimants' primary argument is that the *El Faro's* loss of propulsion during the voyage is sufficient to render the vessel unseaworthy as a matter of law. (Dkt. 323 at 4). As an additional justification, they argue that a grant of summary judgment will "streamline" the Limitation Action proceedings. (*Id.* at 5–6).

Petitioners respond that summary judgment is premature and improper as discovery between the parties has been substantially limited. (Dkt. 360 at 5–6; *see also* Dkt. 309-1, Dkt. 471-1). More importantly, Petitioners argue, a number of issues remain to be tried—specifically, what caused the *El Faro* to lose propulsion. (*Id.*).

## II. STANDARD OF REVIEW

Summary judgment is proper if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "The moving party bears the initial burden of demonstrating the absence of a genuine dispute of material fact." *FindWhat Inv'r Grp. v. FindWhat.com*, 658 F.3d 1282, 1307, (11th Cir. 2011) (citing *Celotex Corp. v.*

*Catrett*, 477 U.S. 317, 323 (1986)). A "material" fact is one that "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

In other words, the entry of summary judgment is appropriate "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. In making this determination, the Federal Rules of Civil Procedure require "the court [] examine any pleadings, depositions, answers to interrogatories, admissions, and affidavits in a light that is most favorable to the non-moving party." *Hillburn v. Murata Elec. N. Am., Inc.*, 181 F.3d 1220, 1225 (11th Cir. 1999) (citing Fed. R. Civ. P. 56(c)).

The reviewing court must "view all of the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor." *Findwhat*, 658 F.3d at 1307. Thus, a court "may not weigh conflicting evidence or make credibility determinations of its own." *Id.* "[Where] the record presents factual issues, the court must not decide them; it must deny the motion and proceed to trial." *Tullius v. Albright*, 240 F.3d 1317, 1320 (11th Cir. 2001) (quoting *Clemons v. Dougherty Cty.*, 684 F.2d 1365, 1369 (11th Cir. 1982)).

**III. ANALYSIS**

Claimants' argument on the seaworthiness issue is remarkably straightforward: The *El Faro* lost propulsion due to an engineering problem. (Dkt. 323 at 4). Why it lost propulsion does not matter. (*Id.*). The fact that the vessel lost propulsion is sufficient on its own to render the *El Faro* unseaworthy as a matter of law. (*Id.*). Moreover, the vessel sank. (*Id.*). "If a vessel that

does not float is not considered unseaworthy, then the term 'unseaworthiness' has no meaning." (*Id.*). This is the extent of the argument upon which Claimants rely to "demonstrat[e] the absence of a genuine dispute of material fact." *Findwhat*, 658 F.3d at 1307 (citations omitted). The Court finds that Claimants have not carried their burden.

General maritime law imposes an absolute duty on the shipowner to furnish a seaworthy ship. *Johnson v. Bryant*, 621 F.2d 1276, 1279 (11th Cir. 1982); *Caldwell v. Manhattan Tankers Corp.*, 618 F.2d 361, 363 (5th Cir. 1980). This does not mean that the shipowner is obligated to furnish an accident-free vessel. *Johnson*, 621 F.2d at 1279 (citing *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 550 (1960). Whether the shipowner has discharged this duty is determined when the vessel begins its voyage. *Horn v. Cia de Navegacion Fruco*, 404 F.2d 422 (5th Cir. 1968).[1]

The question of a vessel's seaworthiness is ordinarily one to be answered by the trier of fact. *Johnson*, 621 F.2d at 1279; *see also Luckenbach v. W.J. McCahan Sugar Ref. Co.*, 248 U.S. 139, 145 (1918) (issue of seaworthiness is a question of fact). Only in rare cases will the issue be resolved for or against the shipowner as a matter of law. *Johnson,* 621 F.2d at 1279 (citing *Jefferson v. Taiyo Katun, K. K.*, 310 F.2d 582, 583 (5th Cir. 1962)).

However, a rebuttable presumption of unseaworthiness arises where a showing is made that the "vessel sank in clam weather and seas." *Kilpatrick Marine Piling v. Fireman's Fund Ins. Co.*, 795 F.2d 940, 944 (11th Cir. 1986); *see also Derby Co. v. A. L. Mechling Barge Lines, Inc.*, 258 F. Supp. 206, 211 (E.D. La. 1966), *aff'd*, 399 F.2d 304 (5th Cir. 1968) (unseaworthiness presumed where vessel sinks under normal conditions). The presumption also applies in circumstances where the vessel's equipment breaks under normal use. *Villers Seafood Co., Inc.*

[1] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding all Fifth Circuit precedent prior to October 1, 1981.

*v. Vest*, 813 F.2d 339, 342 (11th Cir. 1987); *see also Florida Marine Transporters, Inc. v. Sanford*, 255 F. App'x 885, 890 (5th Cir. 2007) (presumption applies where ship's equipment breaks in the ordinary course of business). Even so, "there is no presumption that a ship is unseaworthy merely because an accident has occurred on it." *Villers Seafood Co.*, 813 F.2d at 342.

First, Claimants are not entitled to any presumption of unseaworthiness. Claimants have not presented any evidence, or even suggested, that the *El Faro* sank in calm waters. Having failed to make the necessary showing, Claimants are not entitled to a presumption of unseaworthiness on mere grounds that the vessel sank. *Kilpatrick Marine Piling*, 795 F.2d at 944; *see also Darien Bank v. Travelers Indem. Co.*, 654 F.2d 1015, 1021 (5th Cir. 1981) ("In the absence of evidence of the existence of calm seas and weather, th[e] presumption [of unseaworthiness] cannot be asserted. . . ."). As to the *El Faro's* loss of propulsion, the Claimants assume—again without advancing any argument or evidence—that the vessel's loss of motive power was not related to or the result of the extraordinary conditions the *El Faro* faced on October 1 of last year. (*See* Dkt. 323 at 4–5). That is, Claimants have made no showing that the loss of propulsion occurred while in *normal use*. *Villers Seafood Co.*, 813 F.2d at 342; *Florida Marine Transporters*, 255 F. App'x at 890. Hence, no presumption applies.

Second, Petitioners have submitted affidavits which state that the *El Faro* "was in all ways fit for its intended purpose" before embarking on its voyage (Dkt. 158-2 ¶ 9); that the cause of the vessel's loss is currently unknown (*Id.* ¶ 15); that the loss of propulsion was unforeseeable (*Id.*); and that the intensity of the weather conditions the *El Faro* faced at the time of the distress call are presently uncertain (Dkt. 158-2 ¶ 14). This suffices to show a genuine dispute of material fact exists regarding the seaworthiness of the *El Faro*.

Third, entry of summary judgment is not appropriate unless "the party opposing the motion has had an adequate opportunity for discovery." *Snook v. Trust Co. of Georgia Bank of Savannah, N.A.*, 859 F.2d 865, 870 (11th Cir. 1988). "Once [the district court] is convinced that discovery is inadequate, [it] should deny summary judgment." *Blumel v. Mylander*, 919 F. Supp. 423, 428 (M.D. Fla. 1996). The National Transportation Safety Board's litigation hold on certain classes of discoverable information is currently still in force. (*See* Dkt. 309-1; Dkt. 471-1). Thus, Claimants' motion must also be denied as premature on the ground that Petitioners have not yet been afforded a meaningful opportunity for discovery. *Snook*, 859 F.2d at 870.

Accordingly, it is hereby **ORDERED**:

Claimants' "Motion for Partial Summary Judgment on the Issue of Unseaworthiness" (Dkt. 323, filed April 13, 2016) is **DENIED.**

**DONE AND ORDERED** at Jacksonville, Florida, this 23rd day of September, 2016.

**HARVEY E. SCHLESINGER**
UNITED STATES DISTRICT JUDGE

**Copies to:**
Chester Hooper, Esq.
George D. Gabel, Jr., Esq.
Jennifer L. Kifer, Esq.
Jerry Dean Hamilton, Esq.
Lawrence Joseph Hamilton, II, Esq.
Michael A. Delulis, Esq.
Suzanne M. Judas, Esq.
Michael M. Gropper, Esq.
Timothy J. Conner, Esq.
Vincent J. Foley, Esq.
Allan R. Kelley, Esq.
Karina Mabel Cerda-Collazo, Esq.
Cory D. Itkin, Esq.
Jason A. Itkin, Esq.
Michael P. Hamaway, Esq.
Thomas Albert Boyd, Jr., Esq.
Allen K. Von Spiegelfeld, Esq.
Joseph Frank Rich, Esq.
G.J. Rod Sullivan, Jr., Esq.
David L. Mazaroli, Esq.
William E. Cassidy, Esq.
Lawrence C. Glynn, Esq.
Martin Hayes Sitler, Esq.
Brian T. Scarry, Esq.
Thomas M. Eagan, Esq.
Paul Anthony Giordano, Esq.
Catherine Popham Decunto, Esq.
Matthew Edward Auger, Esq.

Stephen H. Durant, Esq.
Jason Robert Margulies, Esq.
Lawrence J. Roberts, Esq.
John H. Hickey, Esq.
Brett Douglas Sager, Esq.
Thomas K. Equels, Esq.
Judson H. Orrick, Esq.
Stephen J. Pajcic, Esq.
Thomas Fitzpatrick Slater, Esq.
Benjamin Edward Richard, Esq.
Michael Sather Pajcic, Esq.
Lloyd Johnson Sarber, III, Esq.
Daniel O. Rose, Esq.
Robert F. Spohrer, Esq.
Ralph Joseph Mellusi, Esq.
Raymond John Rotella, Esq.
David T. Maloof, Esq.
Patricia M. O'Neill, Esq.
Elizabeth P. Kagan, Esq.
Scott A. Wagner, Esq.
Lindsey C. Brock, III, Esq.
Marlin Kareem Green, Esq.
Willie Edward Gary, Esq.
Christoph M. Wahner, Esq.
Marc Alan Rubin, Esq.
Matthew D. Shaffer, Esq.
Jacob J. Munch, Esq.
Dennis Michael Campbell, Esq.
Michelle F. Zaltsberg, Esq.
Brian Mark Pederson, Esq.
Linda Marie Hester, Esq.
Wade Douglas Childs, Esq.
Christopher Charles Hazelip, Esq.
Robert E. Warren, Esq.
James F. Sweeney, Esq.
Robert A. Craven, Esq.
Mark A. Boyle, Sr., Esq.
Justin M. Thomas, Esq.
Mitchel E. Woodlief, Esq.
Daniel W. Matlow, Esq.
David Alexander Villarreal, Esq.
Richard E. Berman, Esq.
William R. Bennett, III, Esq.
Martin F. Casey, Esq.
Christopher E. Cotter, Esq.
Ronald J. Cullenberg, Esq.
Michelle Bedoya Barnett, Esq.
Craig Liszt, Esq.
David Harlen Sump, Esq.
Stephanie S. Penninger, Esq.
Robert W. Phelan, Esq.
Carole A.R. Rouffet, Esq.
Joseph W. Janssen, III, Esq.
Michael W. Leonard, Esq.
David Y. Loh, Esq.
Nathan T. Williams, Esq.
Gustavo Adolfo Martinez-Tristani, Esq.
Raul J. Chacon, Jr., Esq.
Joseph A. Parrish, Jr, Esq.
Ben Bireley, Esq.
Deborah R. Reid, Esq.
William S. Burns, Jr., Esq.
Jason Ari Smith, Esq.
David Weese Marston, Jr., Esq.
Christopher Kimbrough Smith, Esq.
Ruben Aquino, *pro se*