

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

IN ADMIRALTY

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In the Matter of The Complaint	:	
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	:	
of	:	
	:	Case No. 3:15-cv-1297-HES-MCR
Sea Star Line, LLC, d/b/a TOTE Maritime	:	
Puerto Rico, as Owners; and TOTE Services,	:	
Inc., as Owner <i>pro hac vice</i> of the S.S. EL	:	
FARO for Exoneration from or Limitation of	:	
Liability	:	
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**PETITIONERS' SECOND MOTION FOR ENLARGEMENT OF TIME TO CONDUCT
CASE MANAGEMENT CONFERENCE AND TO FILE
CASE MANAGEMENT REPORT**

Petitioners, TOTE Maritime Puerto Rico, LLC f/k/a Sea Star Line, LLC, and TOTE Services, Inc., (“Petitioners”), respectfully seek a second enlargement of time for the parties to conduct the case management conference and to file case management report, and in support thereof, state as follows:

I. Introduction and Relief Requested

This is a unique admiralty proceeding arising from the tragic loss of the *S.S. El Faro* and its 33 crewmembers on October 1, 2015. To date, Petitioners have reached amicable settlements with 14 families on their wrongful death claims. At the time of filing the instant motion, Petitioners are scheduled to mediate with seven (7) additional crewmember families on various dates during the months of March, April and May 2016. Petitioners are in the process of scheduling another three (3) mediations between now and May 2016. Petitioners are also engaged in active and productive settlement discussions with an additional crewmember family

in an effort to reach an amicable resolution of the family's wrongful death claim without mediation. If afforded additional time by this Honorable Court, Petitioners are hopeful to engage in early and meaningful settlements discussions, either via formal mediation or informal discussions, beyond these 25 crewmember families.

As discussed in detail herein, the United States Coast Guard ("USCG") Marine Board of Investigation ("MBI") continues with its comprehensive investigation surrounding the *S.S. El Faro's* sinking. The USCG convened a first hearing session that ran from February 16, 2016 through February 26, 2016. This first hearing session addressed issues pertaining to the regulatory compliance record of the *S.S. El Faro*, crewmember duties and qualifications, past vessel operations and USCG search and rescue operations. The hearing session consisted of witness testimony as well as review of certain documents provided by the Petitioners at the request of the USCG and the National Transportation Safety Board ("NTSB"). The USCG will convene a second hearing session to address issues pertaining to the subject voyage, which will include investigation into cargo loading, weather conditions and navigation. The USCG has informally advised that the second hearing session will take place in either May 2016, if the NTSB is not able to locate and retrieve the *S.S. El Faro's* S-VDR, or in June 2016 if the S-VDR is located and retrieved.

Through these public hearings, the USCG's ongoing investigation will assist in narrowing discovery in the Limitation of Liability proceeding. The instant case has been designated as a Track Three case. An additional extension of time to allow the parties to explore mediation and have the USCG conduct its second round of public hearings on the sinking of the *S.S. El Faro* would benefit all parties and would provide a more efficient, expedient and just resolution of the instant case. The requested extension would not cause any undue prejudice to

any party¹. To the contrary, it would afford the remaining Wrongful Death (and Cargo) Claimants with an opportunity to explore settlement just as 14 crewmember families have already done.

Due to the demands for production of voluminous documents and witnesses by the USCG, Petitioners further submit that they will not be in a position, by April 19, 2016, to exchange documents and begin coordinating depositions. For all these reasons, Petitioners respectfully request a second extension of time of an additional ninety (90) days from April 19, 2016, or until July 18, 2016, to conduct the case management conference. Petitioners also request a second extension of time to file the parties' case management report.

II. Facts Supporting Requested Relief

1. This matter involves the sinking of the *S.S. El Faro* on October 1, 2015 during its voyage from Jacksonville, Florida to San Juan, Puerto Rico. [D.E. 1] There were 33 crewmembers aboard the *S.S. El Faro* at the time Hurricane Joaquin unexpectedly altered its projected track and appears to have enveloped the vessel. [D.E. 5 at para. 1] According to the USCG, Hurricane Joaquin “just kind of circled the area [surrounding the ship] and made a loop of about 100 miles or so ... It went down and circled around it, and now its going back out almost the same way it came in. It’s kind of unbelievable.” *Washington Post*, 10/10/2015 (quoting U.S. Coast Guard spokesman Chief Petty Officer Ryan Doss).

2. Within two (2) weeks of the *S.S. El Faro's* sinking, individual lawsuits against Petitioners began to be filed in Florida state and federal courts.²

¹ The Code of Federal Regulations restricts the flow and dissemination of information gathered during a pending government investigation. *See*, 49 CFR 831.13 (restricting the release of information concerning an active investigation and requiring certain approvals before such information can in fact be released to non-party representatives).

² **The following five (5) lawsuits were filed before Petitioners' filing in this Court on October 30, 2015:**

3. Due to the filings in multiple venues and the additional forthcoming lawsuits, Petitioners were forced to file their Verified Complaint seeking Exoneration from or Limitation of Liability in connection with the loss of the *S.S. El Faro* and her crew. [D.E. 1]

4. Since the loss of the *S.S. El Faro*, Petitioners have focused every possible effort on supporting the families of the 33 crewmembers aboard the vessel. In this regard and to date, Petitioners have reached swift and fair settlements with 14 families. Many of these settlements were reached through a respectful and equitable mediation process. [D.E. 152 Notice of Settlement with 10 families, including the family of the vessel's Captain, Michael Davidson]; [D.E. 258 Second Notice of Settlement]

5. In addition to extending their support to the families of the crewmembers, Petitioners have been fully cooperating with the NTSB and the USCG in the agencies' concurrent and ongoing investigation into the cause of the sinking. *See*, the National Transportation Safety Board Website at <http://www.nts.gov> at Accident Dockets (last accessed March 1, 2016) and the USCG Website Media Advisories

(a) October 14, 2015 State Court Filing in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, styled *Joanna Johnson, as Personal Representative of the Estate of Lonnie Jordan v. Tote Services, Inc.*, Case Number 16-2015-CA-006542;

(b) October 19, 2015 State Court Filing in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, styled *Tina Riehm, as Personal Representative of the Estate of Jeremie H. Riehm v. Sea Star Line, LLC, et al.*, Case Number 16-2015-CA-006626;

(c) October 22, 2015 Federal Court Filing in the United States District Court, Middle District, styled *Addreisha Shirliea Jones as Personal Representative of the Estate of Jackie Jones, Jr., deceased and in Addreisha Shirliea Jones' capacity as an individual v. Sea Star Line, LLC, et al.*, Case Number 3:15-cv-01266-HES-PDB;

(d) October 28, 2015 State Court Filing in the Circuit Court for the Seventeenth Judicial Circuit, in and for Broward County, Florida, styled *Tinisha Renee Thomas, individually, as Personal Representative, and on behalf of the Estate of Anthony Shawn Thomas v. Sea Star Line, LLC et al.*, Case Number CACE15-019209; and

(e) October 30, 2015, 2015 State Court Filing in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, styled *Jennifer Mathias as Personal Representative of the Estate of Jeffrey Mathias v. Sea Star Line, LLC et al.*, Case Number 16-2015-CA-006915.

Two (2) additional lawsuits were filed immediately after Petitioners' filing in this Court on October 30, 2015:

(a) November 3, 2015 State Court Filing in the Seventeenth Judicial Circuit, in and for Broward County, Florida, styled *Patrick John Smith v. Sea Star Line, LLC, et al.*, Case Number CACE-15-019558 (**son of Howard Schoenly**);

(b) November 4, 2015 State Court Filing in in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, styled *Dena Ann Lightfoot as Personal Representative of the Estate of Roan Ronald Lightfoot v. Sea Star Line, LLC, et al.*, Case Number 16-2015-CA-007020.

at <http://www.uscgnews.com/go/doc/4007/2778590/#sthash.uiM5Y9S9.dpuf> (last accessed March 1, 2016).

6. Petitioners have produced thousands of documents in response to unlimited requests by the NTSB and the USCG, they have produced witnesses for interviews by the NTSB and the USCG and they just produced witnesses at the public hearings convened by the USCG from February 16, 2016 through February 26, 2016. *Id.*

7. The USCG will be conducting a second round of public hearings to further investigate the subject “voyage, including cargo loading, weather conditions and navigation.” *Id.*

8. The NTSB’s initial findings include the following:

(a) On February 13, 2015, the *S.S. El Faro* successfully completed the American Bureau of Shipping (“ABS”) class and statutory surveys, meeting all rules and regulations as applicable. All deficiencies identified were rectified prior to completion of the surveys. None of the deficiencies were associated with the vessel’s main propulsion systems.

(b) On March 6, 2015, the USCG completed its annual inspection of the *S.S. El Faro* in San Juan, Puerto.

(c) In June 2015, a qualified ABS surveyor examined and tested the main, auxiliary and emergency systems as part of the continuous machinery survey program and found them to be satisfactory.

(d) Onboard safety drills were consistently conducted on a weekly basis.

(e) The *S.S. El Faro* met stability criteria when it left Jacksonville, Florida on its last voyage.

See, NTSB Archived Press Releases at <http://www.nts.gov/news/press-releases/Pages/default.aspx>.

9. The USCG public hearings have consumed Petitioners' time and resources in addition to continuing with their regular operations. The lengthy and comprehensive scope of the USCG investigation, however, will streamline the scope, burden and expense of discovery in this civil matter.

10. In addition to facilitating the most expedient and just resolution of this matter, Petitioners submit that an additional extension of time to conduct the case management conference and submit the parties' case management report would be in the best interests of all parties, especially the remaining death Claimants.

11. Based upon the success of mediations to date, as reflected in the Petitioners' Notices of Settlement, an additional extension as requested herein would also afford the parties with additional time to participate in Mediation as provided for by Local Rule 9.01. The settlements achieved at mediations to date confirm that the setting of early mediations with the remaining Claimants would be an effective alternative mechanism for the resolution of this civil dispute.

III. Memorandum of Legal Authority in Support of Request

Local Rule 3.05 Case Management provides in pertinent part as follows:

RULE 3.05 CASE MANAGEMENT

...

(b) Cases shall be designated by the Clerk to their appropriate tracks as follows:

...

(3) *Track Three Cases shall include those cases involving class action or antitrust claims, securities litigation, mass disaster or other complex tort cases, or those actions presenting factual or legal issues arising from the presence of multiple parties or multiple claims portending extensive discovery procedures* or numerous legal issues such that the management techniques recommended in the current edition of the Manual For Complex Litigation should be considered and applied as appropriate to the

circumstances of the case...

(c) The following procedures shall apply depending upon the Track to which a case has been designated:

...

(3) Track Three Cases - -

(A) The provisions of subsections (c)(2)(A),(B) and (c)(I)-(vii) of this rule shall apply to all Track Three Cases.

...

(D) *It is the goal of the court that a trial will be conducted in all Track Three Cases within three years after the filing of the complaint, and that most such cases will be tried within two (2) years after the filing of the complaint or on an acutely accelerated schedule if the public interest requires. A motion to amend any pleading or to continue any pretrial conference, hearing or trial is severely disfavored because, in light of the need for special judicial attention, counsel should prosecute or defend a Track Three Case only if able to accommodate the scheduling demands.*

An additional 90-day extension to conduct the case management conference and submit the parties' proposed case management report would not delay the prosecution of this Track Three case. As noted above, the Verified Complaint in this matter was filed on October 30, 2015. Trial could be set as early as October 30, 2017, over a year and a half from now or as late as October 30, 2018, two and a half years from now. Allowing the USCG to narrow discovery through these public hearings will undoubtedly shorten the amount and time for discovery in this matter and will advance and assist the ultimate determination to be conducted by this Court. Proceeding in this manner is on all fours with the scope and purpose of the Federal Rules of Civil Procedure as well as the Local Rules. *See*, FED.R.CIV.P. 1 (2015) ("Scope and Purpose: These rules govern the procedure in all civil actions and proceedings in the United States district courts ... They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."); Local Rule 1.01(b) (2015) ("SCOPE AND CONSTRUCTION OF RULES ... (b) [these rules] shall be employed to provide fairness and simplicity in procedure, to avoid technical and unjustified

delay, and to secure just, expeditious and inexpensive determination of all proceedings.”).

Additionally, Petitioners submit there is good cause for the Court to extend the April 19, 2016 deadline for the parties to conduct the case management conference and for the submission of the case management report. *See*, FED.R.CIV.P. 6(b) (2015); *see also Ashmore v. Secretary, Dep’t of Transp.*, 503 Fed.Appx. 683 (2013)(“under Rule 6(b), when an act must be done within a specified time, the court may extend that time period for good cause. Fed.R.Civ.P. 6(b)(1)(A)”). The additional time provides a benefit to all parties as the scope, burden and expense of discovery will have been narrowed. This will in turn assist the parties in their retention of experts, i.e., types of experts needed, etc. Moreover and despite Petitioners’ due diligence, Petitioners will be unable to exchange documents and begin coordinating depositions starting April 19, 2016. Petitioners submit that this provides additional good cause to grant the requested extension of time. *See, Oravec v. Sunny Isles Luxury Ventures, L.C.*, 527 F.3d 1218, 1232 (11th Cir. 2008)(to establish good cause, the party seeking the extension must establish that the schedule could not be met despite the party’s diligence); *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998) (good cause requires the moving party to show that the current schedule cannot “be met despite the diligence of the party seeking the extension.”).

Petitioners recognize that the Court has broad discretion “in deciding how best to manage the cases before [it].” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1366 (11th Cir.1997). In this regard, Petitioners seek this additional extension in the best interests of all parties concerned and with the sole goal to efficiently and justly manage this civil litigation. As noted above, Petitioners have been able to reach fair settlements with 14 families. The requested extension would allow more time to reach additional settlements with the families that so choose, resulting in less claimants and less burden on the parties’ and Court’s resources.

Last, under regulations promulgated by the NTSB, parties to its investigations are governed by regulations and policies regarding the party's participation in the NTSB accident investigation. TOTE, Inc. has been designated by the NTSB as a party to its investigation. Pursuant to 49 C.F.R. § 831.13(b), without the prior approval of the NTSB Investigator-in-Charge, a party to the investigation may not disclose information related to the accident to a person who is not participating as a party to the investigation before release of such information by the NTSB. The NTSB has released practically none of the extensive records Petitioners have provided to this Federal agency, and the Investigator-in-Charge has not, and is not expected, to approve release of such records to non-parties for months, via discovery or otherwise. Thus, the requested enlargement of time would also better accommodate the ongoing NTSB investigation and the restrictions the NTSB imposes on all parties to that investigation.

IV. Conclusion

As noted herein, the requested extension will promote and conserve judicial resources. It will narrow and streamline the scope of discovery and ultimately expedite this Track Three case. There is no prejudice to any party, only a benefit for all parties concerned.

WHEREFORE, Petitioners respectfully request a second extension of time of an additional ninety (90) days from April 19, 2016, or until July 18, 2016, to conduct the case management conference. Petitioners also request a second extension of time to file the parties' case management report.

Local Rule 3.01(g) Certification

Petitioners³ certify that they have conferred with opposing counsel for the 18 non-settled

³ Petitioners will file a separate certification advising on the position of the respective remaining cargo claimants.

wrongful death claims. Counsel for non-settling wrongful death claimants **Davis, Hargrove, Hatch, Jackson, Kuflik, Quammie, Riehm, Schultz, Solar-Cortes, Smith, Thomas** have advised they oppose the relief sought in the instant motion. At the time of the filing of the instant motion, counsel for **Champa, Clark, Crawford, Jordan, Mathias, Porter (Marlena), Porter (Trivonda), Rivera, Wright** have not provided their respective positions. The Estate of Captain Michael Davidson, Third-Party Defendant, does not oppose the relief sought in the instant motion.

Respectfully Submitted,

/s/ Jerry D. Hamilton

/s/ George D. Gabel

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, service of the foregoing was perfected on all counsel of record and interested parties through this system. I further certify that a copy of the foregoing document has been mailed to all non-CM/ECF participating parties.

/s/ Jerry D. Hamilton

Jerry D. Hamilton, Esq.