IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION – STATE OF YAP

THE PEOPLE OF THE MUNICIPALITY OF EAURIPIK, YAP, by and through SANTUS SARONGELFEG, JOHN HAGLELGAM, and MOSES MOGLIG, Plaintiffs, v. F/V TERAKA NO. 168, F/V YUH YOW 127, their engines, masts, bowsprits, boats, anchors, chains, cables, rigging, apparel, furniture, and all necessaries thereunto pertaining, In Rem Defendants, YUH YOW FISHERY COMPANY, LTD., MARIN MARAWA, LTD., MASANAGA SHIMAZU, MALAYAN TOWAGE AND SALVAGE CORPORATION, HSIN HORNG FISHERY COMPANY, LTD., EDGAR R. PELEAZ, and CITY PRO MANAGEMENT, LTD., In Personam Defendants.	CIVIL ACTION NO. 2011-3002 ORDER REGARDING FUND AMOUNT
FEDERATED STATES OF MICRONESIA, Plaintiff in Intervention, v. F/V TERAKA NO. 168, its engines, masts, bowsprits, boats, anchors, chains, cables, rigging, apparel, furniture, and all necessaries thereunto pertaining, In Rem Defendant, YUH YOW FISHERY COMPANY, LTD., MARIN MARAWA, LTD., and MASANAGA SHIMAZU, In Personam Defendants.	

The court's January 22, 2013 Memorandum and Order Denying Summary Judgment ruled that amount of any limitation of liability fund would be calculated

using the [1976 London] Limitation of Liability Convention ("Liability Convention") and the [1969] Tonnage Convention method and allowed the plaintiffs to challenge or correct the calculation of the Limitation of Liability Fund amount made by Marin Marawa, Ltd. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM Intrm. ____, ____, ____ slip op. at 9, 12-13 (Yap 2013). On February 18, 2013, the People of Eauripik filed Plaintiffs' Brief Regarding Limitation of Liability Fund and, on February 20, 2013, the plaintiff in intervention filed FSM Plaintiff's Reply Addressing Calculation of Limitation of Liability Fund Amount in Response to Court Order of January 22, 2013. Marin Marawa, Ltd. filed its response, with supporting affidavit, on March 6, 2013.

I. PRELIMINARY CHALLENGES

The plaintiffs (the People of Eauripik joined by the FSM) reiterate that the FSM Secretary of the Department of Transportation and Communications was to promulgate regulations under 19 F.S.M.C. 1107(1) to implement Title 19, chapter 11, "taking into account the provisions of the [1976 London] Limitation of Liability Convention and the [1969] Tonnage Convention," but the Secretary never has. The plaintiffs read this as the Secretary's decision not to adopt those standards. The court concludes that in the absence of Secretarial regulations that the court must apply the statute as closely to Congress's intent as possible. The court notes that regulations, even if promulgated by the Secretary, must not exceed or limit the statute's reach. Braiel v. National Election Dir., 9 FSM Intrm. 133, 138 (App. 1999); Continental Micronesia, Inc. v. Chuuk, 17 FSM Intrm. 526, 533 (Chk. 2011); Klavasru v. Kosrae, 7 FSM Intrm. 86, 91 (Kos. 1995). Thus, any promulgated regulation would have taken "into account the provisions of the [1976 London] Limitation of Liability Convention and the [1969] Tonnage Convention." The court will do likewise.

The plaintiffs further contend that, under international law, the rights of indigenous people, such as the Eauripik people, to their own culture must be protected, and that, in the plaintiffs' view, Congress must have intended that this aspect of international law be a factor in the calculation of a limitation of liability fund amount. The plaintiffs, however, do not point to any statutory language that could be interpreted to require or encourage the inclusion of cultural damages in the limitation of liability fund calculation.

II. SALVAGE REWARDS OR RENDERING STRANDED VESSEL HARMLESS DAMAGES

The plaintiffs also contend that salvage damages are specifically excluded from the limitation of liability regime and that therefore $750,000 should be added to the limitation of liability fund to cover the FSM's estimated salvage costs.

Congress did specifically exempt salvage claims from the statutory limitation of liability. 19 F.S.M.C. 1105(1). The statute also exempts from the limitation of liability "claims in respect of the raising, removal, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel." 19 F.S.M.C. 1105(6). This seems a more accurate description (than mere salvage) of the supposed purpose of the requested $750,000. The plaintiffs also correctly point out that the Liability Convention specifically excludes salvage claims from its coverage. Liability Convention art. 3(a). And the IMO, International Convention on Salvage, 1989[1] ("Salvage Convention") specifically notes that salvage operations controlled by public authorities are governed by national law, not the international conventions.

---

[1]The IMO, International Convention on Salvage, 1989 appears to be applicable or enforceable in the FSM. *See* 19 F.S.M.C. 106(31); 19 F.S.M.C. 917(4) ("The Receiver may promulgate regulations relating to salvage, taking into account the provisions of the Salvage Convention."). It is instructive on what the general principles of international salvage law may be. Furthermore, the FSM Code, Title 19, chapter 9 contains many similar provisions.

Salvage Convention art. 5(3).

While these international conventions are instructive, the FSM statute is sufficient authority for the court to rule that salvage claims or claims for raising, removing, destroying, or rendering the vessel harmless are exempt from the statutory limitation of liability defense. Since it is an exempt claim, it is a claim that is not included in the limitation of liability fund and the claim is not payable out of the limitation of liability fund. 19 F.S.M.C. 1108(3) ("Any fund constituted under this chapter shall be available only for the payment of claims in respect of which limitation of liability can be invoked."). Since any salvage reward or award for removing or rendering the vessel harmless is exempt from the limitation of liability and will be determined separately, the court cannot include an estimate of the salvage claims in the fund amount.

Additionally, there is no evidence before the court about the cost of an operation to salvage or to render harmless the stranded and abandoned the F/V *Teraka No. 168*. That amount could be determined with accuracy only after a salvage or render harmless operation has been completed and the exact cost known as well as any revenue derived from the operation (from the sale of the salvaged property) that will be offset against the costs. How the plaintiffs arrived at the $750,000 is unexplained. Generally, salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred. In this case, what useful salvage operations that have occurred have been efforts by one or more of the defendants — they successfully removed most, if not all, of the fuel oil and some other equipment from the stranded vessel. Neither the People of Eauripik nor the FSM has attempted to salvage or render harmless or remove the F/V *Teraka No. 168* from Eauripik reef since it grounded there on August 28, 2011.

The FSM can make a claim for salvage damages, since its Secretary of Transportation is the Receiver of Wreck and is thus the person statutorily empowered to remove or destroy the wrecked vessel, 19 F.S.M.C. 911(1)(b). But the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. "Salvage operations undertaken within the Federated States of Micronesia which have had a useful result shall create the right to reward,"19 F.S.M.C. 918(1), and the criteria for fixing a salvage reward amount includes "the measure of success obtained by the salvor," 19 F.S.M.C. 919(1)(c).[2] The FSM has not had any measure of success.

Under the National Maritime Act, 1997, when a wrecked vessel is an "obstruction or danger" to commerce or shipping, the Receiver of Wreck "may require any owner to raise, remove or destroy the vessel," 19 F.S.M.C. 911(1)(a), and

> [i]f the owner does not comply forthwith, the Receiver may raise, remove, destroy, sell, or otherwise deal with the wrecked vessel and any recovered property in such manner as he or she thinks fit. The Receiver shall deduct any and all expenses incurred from the sale of the wreck and pay the proceeds to the persons entitled to them.

19 F.S.M.C. 911(1)(b). The Act further provides that:

> In the event of a forced sale of the stranded or sunken vessel following its removal by the Receiver in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the vessel.

19 F.S.M.C. 911(2).[3] If the forced sale proceeds are inadequate, then "[t]he Receiver may recover from any owner of a wrecked vessel any and all expenses incurred in guarding, lighting, buoying, raising, removing, or destroying the vessel, which are

---

[2]The Salvage Convention has almost identical provisions. *See* Salvage Convention art. 12(1) and art. 13(1)(c).

[3]This statutory provision seems to most accurately describe what the plaintiffs seek — that the stranded F/V *Teraka No. 168* be removed from Eauripik reef in order to protect the marine environment.

not recovered from the proceeds of sale." 19 F.S.M.C. 911(4). As should be apparent from a plain reading of the statute, in order for the Receiver of Wreck, and thus the FSM, to recover salvage or rendering harmless damages, the FSM must have actually incurred those expenses. The FSM has not alleged that it has incurred expenses related to the F/V *Teraka No. 168*'s removal, especially since that vessel is still stranded on the reef at Eauripik and has not actually been removed. The damages that the FSM is entitled to because its Secretary of Transportation is the Receiver of Wreck are for results obtained after the Receiver has taken charge of a wreck. The Receiver has not yet obtained any results and does not seem to have sought to or incurred any expenses in respect of raising, removing, destroying, or rendering the F/V *Teraka No. 168* harmless.

The statute's purpose is apparent — to reward those whose efforts preserve property or protect the marine environment or both. The Receiver, and thus the FSM, will be paid and reimbursed only for expenses incurred in removing hazards to navigation or in protecting the marine environment. The FSM will not be paid damages in the hope that it might later use the money to remove navigation hazards or to protect the marine environment, if and when Congress decides to appropriate it for that purpose. The Act does not allow that. The Act does provide that, upon a salvor's request, a person liable for salvage payment (for instance, an owner) must provide satisfactory security for the claim. 19 F.S.M.C. 924(1). But it cannot be said that the Receiver or the FSM has attained the status of salvor since it has not yet salvaged anything or tried to salvage anything. A salvor is a "person who saves a vessel and its cargo from danger or loss; a person entitled to salvage." BLACK'S LAW DICTIONARY 1457 (9th ed. 2009). Salvage, in this sense, is the "[c]ompensation allowed to a person who, having no duty to do so, helps save a ship or its cargo." *Id.*

Accordingly, the court will not order that the requested $750,000 be added

to the limitation of liability fund. If and when the Receiver and the FSM have incurred expenses in salvaging, removing, destroying, or rendering the stranded F/V *Teraka No. 168* harmless those expenses will be awarded in addition to the limitation of liability fund if other claims take up the entire liability fund amount.

III. FUND AMOUNT UNDER LIMITATION OF LIABILITY CONVENTION

The plaintiffs also contend that Marin Marawa, Ltd.'s calculation of the limitation of liability fund amount is too low because it does not take into account all the amendments to the 1976 Liability Convention.

The Liability Convention provisions are adopted in the FSM by reference in a statute, 19 F.S.M.C. 1107(1). Under the principles of statutory construction, when a statute adopts a provision by reference, it adopts that provision as it was at the time of adoption and any later changes to the referred provision will have no effect on the statute unless the statute specifically so provides or strongly implies.[4] Anton v. Cornelius, 12 FSM Intrm. 280, 285 n.1 (App. 2003) (citing C. DALLAS SANDS, SUTHERLAND STATUTORY CONSTRUCTION § 51.08 (rev. 4th ed. 1984)). The FSM statute specifically defines the "Limitation of Liability Convention" as "the Convention on Limitation of Liability for Maritime Claims done at London on November 19, 1976 as modified by its protocols and as amended from time to time." 19 F.S.M.C. 106(11). The statute thus specifically provides that later changes to the Liability Convention will be part of FSM law without further action by Congress.

A 1996 protocol raised the limitation amount to 1,000,000 units of account

---

[4]Thus, a statutory provision adopted by reference cannot be altered except by further action of the adopting legislature. That is because once the legislature has adopted a provision by reference, it makes that referenced provision its own law just as if it had entirely enacted the provision itself and because no other rule would furnish any certainty as to what is the law. Anton v. Cornelius, 12 FSM Intrm. 280, 285 n.1 (App. 2003) (citing *In re* Heath, 144 U.S. 93, 94-95, 12 S. Ct. 615, 616, 36 L. Ed. 358, 359 (1891)).

for vessels under 2,000 gross tons. Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims of 19 November 1976 art. 3(b)(1). The F/V *Teraka No. 168* is claimed to be less than 2,000 gross tons.[5] A unit of account is "the Special Drawing Right as defined by the International Monetary Fund." Liability Convention art. 8(1). The value of a special drawing right fluctuates daily, but is currently worth a little over $1.50 in U.S. dollars, the FSM national currency. This was the basis used by Marin Marawa, Ltd. for its limitation of liability fund calculation when it suggested, and the court, in its January 22, 2013 order, adopted, the $1,529,129.15 figure plus 9% interest from August 28, 2011, the date the F/V *Teraka No. 168* ran aground on Eauripik atoll, to whenever the liability fund was constituted. People of Eauripik, 18 FSM Intrm. at ____, slip op. at 9.

The plaintiffs contend that this is still too low because the Liability Convention was further amended on April 19, 2012. On that day, the Legal Committee of the International Maritime Organization adopted an amendment to raise the amount for vessels under 2,000 gross tons to 1,510,000 units of account. Adoption of Amendments to 1996 Protocol to Convention on Limitation of Liability for Maritime Claims.[6] However, these "new limits are expected to enter into force 36 months from the date of notification of the adoption, under the tacit acceptance procedure. This is expected to be on 8 June 2015." *Id.* Since the 1.51 million units of account provision has not yet entered into force, the court cannot use it to set the

---

[5]Marin Marawa, Ltd. asserts that the F/V *Teraka No. 168* is under 2,000 gross tons. The plaintiffs have not provided any documentation to the contrary although they must have had access, through discovery or access to the vessel's wheelhouse, to the ship's papers that should have positively stated the vessel's gross tonnage.

[6]Available at http://www.imo.org/MediaCentre/PressBriefings/Pages12-LLMC-Prot-limits.aspx.

limitation of liability fund amount in this case. The 1996 Protocol remains the applicable calculation. The court will not order the fund increased.

IV. CONCLUSION

Accordingly, the limitation of liability fund amount will remain undisturbed at $1,529,129.15 figure plus 9% interest from August 28, 2011, the date of the F/V *Teraka No. 168* on Eauripik atoll, until the date the liability fund is or was constituted. Any damages for expenses incurred in raising, removing, destroying, or rendering the stranded F/V *Teraka No. 168* harmless will be assessed separately.

So ordered the 27 th day of March, 2013.

Martin G. Yinug
Chief Justice

Entered this 27th day of March, 2013.

Georgia Rungun
Assistant Clerk of Court