UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

PETITION OF PETER J. MACKEY, AS TITLED OWNER OF 2004 BLACK THUNDER 430GT, COAST GUARD CERT NO. 1208389, VESSEL IDENTIFICATION NO. DON 43VL1K304 ITS ENGINES, TACKLE AND APPURTENANCES

Case No. 8:24-cv-309-SDM-NHA

Petitioner.
_____/

REPORT AND RECOMMENDATION

I recommend that Petitioner Peter Mackey's Motion for Judgment on the Pleadings as to Claimants Freedom Marine Sales, LLC and Freedom Boat Club LLC's (together, "Freedom") claims for contribution and indemnification (Doc. 62) be granted in part and denied in part. Specifically, I recommend that Freedom's claims for contribution and indemnification be dismissed, because Freedom's claims fail to meet federal pleading standards, but that Freedom be permitted to re-file the claims.

I. Limitation of Liability Actions

"Admiralty and maritime law includes a host of special rights, duties, rules, and procedures." *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 446 (2001). Among them is the Shipowner's Limitation of Liability Act, 46 U.S.C.

§§ 30501, et seq., which allows a vessel owner to seek exoneration from liability or to limit his liability, for damage or injury that occurs without his privity or knowledge, to the value of the vessel or the owner's interest in the vessel. 46 U.S.C. § 30529; *Orion Marine Constr., Inc. v. Carroll*, 918 F.3d 1323, 1325 (11th Cir. 2019). The procedures for seeking exoneration from, or limitation of, liability are governed by both the Limitation of Liability Act, 46 U.S.C. §§ 30501, et seq., and Supplemental Rule F of the Supplemental Rules for certain Admiralty and Maritime claims.

Under Supplemental Rule F(1), "Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court . . . for limitation of liability pursuant to statute." Suppl. R. F(1). Supplemental Rule F(1) also requires the vessel owner to deposit with the court "a sum equal to the amount or value of the owner's interest in the vessel and pending freight, or approved security therefor," as well as "security for costs and, if [it] elects to give security, for interest at the rate of 6 percent per annum from the date of the security." *Id*.

Once a vessel owner, that is, the petitioner in a Limitation of Liability action, complies with Supplemental Rule F(1) by timely filing the complaint and making the deposit with the court, the Limitation of Liability Act and the Supplemental Rules require a court to take two actions. First, a court must "issue a notice to all persons asserting claims with respect to which the

complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice." Supp. R. F(4). This notice is also known as a monition. Second, the court must issue a stay in all other claims and proceedings against the owner that are related to the incident involving the vessel at issue in the Limitation of Liability action. *Offshore of the Palm Beaches, Inc. v. Lynch*, 741 F.3d 1251, 1257 (11th Cir. 2014) (citing 46 U.S.C. § 30511). "A pause in other litigation about the incident is necessary to protect the limitation fund—after all, the plaintiffs' combined damages may well exceed the value of the vessel and its cargo." *Skanska USA Civ. Se. Inc. v. Bagelheads, Inc.*, 75 F.4th 1290, 1305 (11th Cir. 2023).

Once the claims deadline has passed and the claimants are established, the court turns to the questions of exoneration from and limitation of liability. First, to answer the exoneration question, the court determines what acts of negligence, if any, caused the accident. *Beiswenger Enterprises Corp. v. Carletta*, 86 F.3d 1032, 1036 (11th Cir. 1996) (citing *Hercules Carriers, Inc. v. Claimant State of Florida*, 768 F.2d 1558, 1563–64 (11th Cir. 1985)). Liability is established only where the negligent acts were "a contributory and proximate cause of the accident." *Hercules Carriers*, 768 F.2d at 1566 (citing *Board of Commissioners of the Port of New Orleans v. M/V Farmsum*, 574 F.2d 289, 297 (5th Cir. 1978)). If the vessel owner is free from any contributory fault,

he is exonerated from all liability. *See American Dredging Co. v. Lambert*, 81 F.3d 127, 129 (11th Cir. 1996).

But if negligence was at least partly what produced the accident, the court proceeds to the second step, limitation of liability, and determines whether the vessel owner had knowledge of, or was in privity with, the acts of negligence. *Beiswenger Enterprises*, 86 F.3d at 1036. And "consistent with the statutory purpose to protect innocent investors, 'privity or knowledge' generally refers to the vessel owner's personal participation in, or actual knowledge of, the specific acts of negligence or conditions of unseaworthiness which caused or contributed to the accident." *Suzuki of Orange Park, Inc. v. Shubert*, 86 F.3d 1060, 1064 (11th Cir. 1996). In other words, the Act limits the liability of vessel owners who were not in some sense responsible for the specific negligent acts or conditions of unseaworthiness that caused the accident. *Id.* If the vessel owner successfully shows a lack of privity or knowledge, he is entitled to limitation, meaning his liability is limited to the post-accident value of the vessel and its pending freight. 46 U.S.C. § 30523(a); *Tug Allie–B, Inc. v. United States*, 273 F.3d 936, 942 (11th Cir. 2001).

Finally, the Act recognizes that multiple would-be plaintiffs might need to share in these limited funds, so it provides that—if the funds are insufficient to pay all claims—injured parties will be "paid in proportion to their respective losses." 46 U.S.C. § 30525(1).

II. Background

On July 30, 2023, a 2004 Black Thunder 430GT (the "Vessel") owned and operated by Mr. Mackey collided with a 2023 Crownline E235XS owned by Freedom and operated by John Cornell. Am. Petition (Doc. 39).

On January 31, 2024, Mr. Mackey filed this admiralty action, seeking exoneration from, or limitation of, liability for the accident. Doc. 2. In response, Freedom filed an answer, affirmative defense, and claims against Mr. Mackey for common law indemnification, contribution, and negligence. Doc. 27. Mr. Mackey answered those claims. Doc. 34.

Then, on July 26, 2024, Mr. Mackey filed an Amended Petition, this time seeking only exoneration from (not limitation of) liability for the accident. Doc. 39. In response, Freedom filed an answer and affirmative defenses, as well as claims against Mr. Mackey identical to those Freedom previously filed. Doc. 40. But, rather than answer Freedom's claims this time, Mr. Mackey moved, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss them. Doc. 42. The Court denied the motion to dismiss, finding that Mr. Mackey had waived his right to move for dismissal under Rule 12(b)(6), given that he had answered a substantially similar Complaint. Doc. 60 (adopting Doc. 51). Mr. Mackey then answered the Complaint (Doc. 61) and filed a motion for judgment on the pleadings pursuant to Rule 12(c) (Doc. 62).

In his motion for judgment on the pleadings, Mr. Mackey argues that: (1) the factual allegations supporting Freedom's contribution and indemnification claims fall short of the pleading requirements in Rule 8 of the Federal Rules of Civil Procedure; (2) Freedom's contribution and indemnification claims are premature given that no judgment has been entered against, or settlement paid by, Freedom. 12(c) Motion (Doc. 62) at pp. 2–4.

Freedom opposes the motion, arguing that (1) the claims were sufficiently pleaded and (2) in a Limitation of Liability Act case, a party need not wait until it has paid damages to seek indemnity or contribution.[1] Response (Doc. 63).

III. Legal Standard for Rule 12(c) Motions

A Rule 12(c) motion for judgment on the pleadings challenges the legal sufficiency of the allegations supporting a claim, and a court analyzes the challenge as it would a challenge under Rule 12(b)(6). *Horsley v. Feldt*, 304

[1] Mr. Mackey also filed a reply. Doc. 66. In addition to addressing Freedom's response, Mr. Mackey argues in the reply, for the first time, that Freedom cannot bring claims for contribution and indemnification in a Limitation of Liability Act action that seeks only exoneration. But arguments raised for the first time in a reply brief are not properly before the reviewing court. *See, e.g., Herring v. Sec'y, Dep't of Corr.*, 397 F.3d 1338, 1342 (11th Cir. 2005); *United States v. Whitesell*, 314 F.3d 1251, 1256 (11th Cir. 2002) (per curiam) (Court need not address issue raised for first time in reply brief); *United States v. Dicter*, 198 F.3d 1284, 1289 (11th Cir. 1999) (issue raised for first time in reply brief was waived).

F.3d 1125, 1134 (11th Cir. 2002). "While a complaint attacked by a Rule 12[(c)] motion does not need detailed factual allegations, [it] requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). The "complaint must contain sufficient factual allegations, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). If the complaint's factual allegations are insufficient to state a claim, judgment on the pleadings is proper. *See Hawthorne v. Mac Adjust., Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998).

When reviewing a motion for judgment on the pleadings, the court accepts the facts in the complaint as true and views them in the light most favorable to the non-moving party. *Ortega*, 85 F.3d at 1524–25. A judgment on the pleadings is limited to consideration of "the substance of the pleadings and any judicially noticed facts." *Bankers Ins. Co. v. Fla. Residential Prop. & Cas. Joint Underwriting Ass'n*, 137 F.3d 1293, 1295 (11th Cir. 1998). "If upon reviewing the pleadings it is clear that the plaintiff would not be entitled to relief under any set of facts that could be proved consistent with the allegations, the court should dismiss the complaint." *Horsley*, 292 F.3d 695, 700 (11th Cir. 2002).

IV. Analysis

a. Freedom Has Not Pleaded Facts Sufficient to Support Two of its Claims.

Mr. Mackey argues that Freedom fails to allege facts sufficient to state a claim for (1) contribution, because Freedom does not allege that Mr. Mackey owed a duty to Freedom,[2] what that duty was, how Mr. Mackey breached that duty, or that Freedom has settled with an injured party; and (2) indemnification, because Freedom has not pleaded facts showing that it has paid damages based on its vicarious liability. Doc. 62 at p. 3. Freedom responds, without further detail, that its claims "state viable causes of action for indemnification and contribution under general maritime law." Doc. 63 at p. 4.

To the extent Mr. Mackey's failure-to-state-a-claim arguments overlap with his arguments as to the maturity of Freedom's claims (i.e., his arguments that Freedom fails to state a claim because it does not allege it has *already* paid or settled), I address those arguments in the next section. Here, I examine his other arguments.

[2] Although Mr. Mackey argues that the claim is deficient because Freedom did not allege that Mr. Mackey owed Freedom a duty, as discussed below, Freedom was required to plead that Mr. Mackey owed a duty to the injured parties, not to Freedom (the contribution-plaintiff).

i. Freedom's Contribution Claim (Doc. 40 at pp. 10-11)

"The law of contribution is meant to apportion the responsibility to pay innocent injured third parties between or among those causing the injury." *Horowitz v. Laske*, 855 So.2d 169, 174 (Fla. 5th DCA 2003). To state a claim for contribution, the contribution-plaintiff must allege that it shares with the contribution-defendant "a common liability to the injured party." *Id*. The common liability may arise from the contribution-defendant owing an "'obligation' or duty to the injured party," which would show that he could be liable under a negligence theory. *Columbus-McKinnon Corp. v. Ocean Prods. Rsch., Inc.*, 792 F. Supp. 786, 789 (M.D. Fla. 1992) (citing *Simeon v. T. Smith & Son*, 852 F.2d 1421, 1434 (5th Cir. 1988)).

In *All Underwriters Subscribing to Leed Yacht Policy of Ins. No. B080120869M18 v. Fishing Headquarters, Inc.*, No. 19-63077-CIV, 2020 WL 10055364 (S.D. Fla. Sept. 18, 2020), the defendant/contribution-plaintiff's vessel drifted into and damaged the plaintiff/injured party's boat at a berth designed by the third-party contribution-defendant during a boat show. *Id.* at *1. The defendant/contribution-plaintiff brought a contribution claim against a third-party contribution-defendant, alleging that the defendant/contribution-plaintiff and the third-party contribution-defendant "might share common legal liability to [the plaintiff/injured party]" because the

[third-party contribution-]defendant "owed a duty to . . . [the plaintiff/injured party] . . . to safely operate and manage the [boat show]" and "to comply with all Federal, State, and Local laws including those related to obstructing and impeding navigation on navigable waters." *Id.* at *5. The third-party contribution-defendant moved to dismiss the contribution claim on the grounds that the defendant/contribution-plaintiff failed to state a claim. *Id*. The district court denied the motion, finding that the defendant/contribution-plaintiff sufficiently stated a claim for contribution because it alleged both a "common legal liability" and the third-party contribution-defendant's duty to the injured plaintiff. *Id.*

Here, Freedom's contribution claim alleges only "a vessel owned and operated by Peter Mackey struck [Freedom's] Vessel, allegedly injuring its occupants" (Claim (Doc. 40), ¶ 8), "[the injuries] were actually and proximately caused by Peter Mackey's acts and/or omissions" (*id*. at ¶ 18), and "should [Freedom] be held liable to any potential claimants or any other claimants relating to this matter for their alleged injuries and damages, whether in whole or in part, [Freedom is] entitled to contribution from Peter Mackey" (*id*. at ¶ 19).

But Freedom does not plead facts (nor does it even assert conclusions) demonstrating that Mr. Mackey owed a duty to the injured parties such that he might be found jointly liable with Freedom for the injuries, nor are there

sufficient facts pleaded within the claim to demonstrate that Mr. Mackey could be jointly liable with Freedom for the injuries based on some other (i.e. non-negligence) theory. Accordingly, I recommend the Court grant the motion for judgment on the pleadings as to Mr. Mackey's argument that Freedom fails to state a claim for contribution. Because Freedom requests leave to amend and because such leave should be freely given, *Foman v. Davis*, 371 U.S. 178, 182 (1962), I recommend the District Court allow Freedom to amend its contribution claim within 21 days.

ii. Freedom's Indemnity Claim (Doc. 40 at pp. 9-10)

Generally, indemnity shifts the entire loss from a party who is without fault but who has paid a third party based on vicarious, constructive, or derivative liability, to the party who actually committed the wrongful act. *Houdaille Indus., Inc. v. Edwards*, 374 So. 2d 490, 493 (Fla. 1979).

Indemnity under maritime law is limited. *See In United States v. Reliable Transfer Co.*, 421 U.S. 397 (1975) (abandoning the concept of tort indemnity and replacing it with the doctrine of comparative fault). Only three theories of indemnity are available under maritime law. *Hardy v. Gulf Oil Corp.*, 949 F.2d 826, 833–34 (5th Cir. 1992). These are: (1) contractual indemnity; (2) Ryan doctrine indemnity named after *Ryan Stevedoring Co. v. Pan–Atlantic Steamship Corp.*, 350 U.S. 124 (1956), available to a shipowner who entrusts his vessel to a contractor who renders the vessel unseaworthy

but where the owner did not directly contribute to the unseaworthy condition; and (3) non-negligent or vicariously liable tortfeasor indemnity. *Hardy*, 949 F.2d at 833. Here, Freedom had no contract with Mr. Mackey, so its indemnity claim is not based on contract. Further, Freedom did not entrust its vessel to Mr. Mackey, so it does not appear that Freedom seeks indemnity under the *Ryan* doctrine (associated with entrustment to a contractor who causes a vessel to be unseaworthy). Thus, the question is whether Freedom states a claim for indemnity under the "non-negligent or vicariously liable tortfeasor indemnity" theory.

A vicariously liable "non-negligent tortfeasor" is one on whom *the law* imposes responsibility for negligent acts of others even though the actor itself committed no negligent acts. *Hardy v. Gulf Oil Corp.*, 949 F.2d 826, 833–834 (5th Cir. 1992) (interpreting *Marathon Pipe Line Co. v. Drilling Rig ROWAN/ODESSA,* 761 F.2d 229, 236 (5th Cir. 1985)). For example, a non-negligent tortfeasor who may be held strictly liable for a defective product manufactured by the third-party defendants may bring an indemnity claim against the third-party defendants. *See, e.g., Fish Tale Sales & Serv., Inc. v. Nice*, 106 So. 3d 57, 62 (Fla. 2d DCA 2013). A non-negligent party may seek indemnification from the negligent party when the non-negligent party paid damages based on this type of vicarious liability. *See Sol v. City of Miami*, 776 F. Supp. 2d 1375, 1379 (S.D. Fla. 2011).

Thus, to show it is entitled to indemnification, Freedom must plead facts showing that, because of some special relationship or law, Freedom could be held legally responsible for Mr. Mackey's negligence. It is unclear, based on the pleaded facts, how the Limitation of Liability Act would permit a finding that Freedom is legally responsible for Mr. Mackey's negligence.[3]

Accordingly, I recommend the District Court dismiss the indemnification claim without prejudice, because Freedom has not pleaded facts sufficient to support the claim.

b. Freedom's Claims Need Not Be Dismissed as Premature

Mr. Mackey argues that Freedom's claims for indemnification and contribution are not yet ripe because Freedom has not yet paid or been found to owe damages. Doc. 62. Freedom does not challenge Mr. Mackey's argument that, as a general rule, claims for indemnification and contribution do not ripen until the claimant has incurred damages, but Freedom makes two arguments as to why an exception to this general rule lies in Limitation of Liability Act cases. Doc. 63.

[3] Freedom's statements, such as "To the extent [Freedom] is determined to be liable for any claims brought against them by any potential claimants, or any other future claims relating to this matter, such liability they vehemently denies, their liability is only vicarious, constructive, derivative, or technical and results solely from Peter Mackey's negligence" (Claim (Doc. 40), at ¶ 14) and "by virtue of a special relationship, [Freedom is] entitled to indemnification from Peter Mackey" (*id.* at ¶ 16) are conclusions rather than factual pleadings.

First, Freedom argues that Federal Rule of Civil Procedure 14(c) expressly allows it to bring contribution and indemnification claims before it has been found liable or settled with an injured party. *Id*. at pp. 4–5. Rule 14(c) states:

> If a plaintiff asserts an admiralty or maritime claim under Rule 9(h), the defendant or a person who asserts a right under Supplemental Rule C(6)(a)(i) may, as a third-party plaintiff, bring in a third-party defendant who may be wholly or partly liable—either to the plaintiff or to the third-party plaintiff— for remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences.

Fed. R. Civ. P. 14(c)(1).

The purpose of Rule 14(c) is to ensure that all relevant persons or entities are represented in a lawsuit, so that the Court can adjudicate—in a single proceeding—the rights of all persons concerned in the controversy, preventing the need to try several related claims in different lawsuits. *Gruner + Jahr USA Publ'g v. Publishers Communications Sys.*, Inc., 2006 WL 8432269, at *2 (S.D. Fla. Aug. 3, 2006).

Here, Freedom asserts a claim against Mr. Mackey, the Petitioner in the case, rather than a claim against a new party. Thus, neither Rule 14(c) nor the rationale for allowing early contribution and indemnity claims (i.e., to ensure the presence of all potentially responsible parties) applies here.

Freedom advances the second argument that, in Limitation of Liability Act cases, a claimant must assert *all* claims, including those for indemnity and

contribution before the claims deadline provided in the notice the Petitioner must circulate to the public. Doc. 63 at pp. 4–5. Supplemental Rule F states: the petitioner in a Limitation of Liability Act action must give notice to "all persons asserting claims with respect to which the complaint seeks limitation"; claimants must file those claims before the deadline provided by notice; "[e]ach claim shall . . . specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued." Supp. Rule F(4), (5). The language of the law suggests that *all* claims should be filed, although Freedom does not cite—and the Court has not located—any cases holding that a claimant who appears and raises a claim waives any other potential claims by failing to assert them.

But, I need not decide whether Freedom was *required* to assert its indemnification and contribution claims before any finding had been made that Freedom must pay an injured party. I need only determine whether Freedom was *allowed* to bring the claims before such a finding.

In the Eleventh Circuit, there is no bright-line test for when a party may bring claims for indemnification and contribution. *See generally Armstrong v. Alabama Power Co.*, 667 F.2d 1385, 1388 (11th Cir. 1982) ("Whether an indemnification issue is ripe for adjudication depends on the facts and circumstances of the case under consideration."). In *Matter of Greenley*, No. 17-14410-CIV, 2018 WL 4410999 (S.D. Fla. June 29, 2018), the court faced a

situation like the one here. The *Greenley* Court was tasked with deciding whether to dismiss a claim for contribution against the petitioner in a Limitation of Liability Act case, when the claimant had not yet made any liability payment. *Id.* at *2 *report and recommendation adopted sub nom. In re Greenley*, No. 2:17-CV-14410-RLR, 2018 WL 4462212 (S.D. Fla. July 17, 2018). The *Greenley* Court found that the contribution claims, while not yet mature, were nonetheless permissible. *Id.* In denying the motion to dismiss the contribution claim, the *Greenley* Court explained:

> This Court sees no practical reason to dismiss the contribution claim even if it is technically premature at this point in time. This Court finds the more practical course of action would be to allow it to stand, even if just a placeholder, given the possibility that it may become ripe and may be litigated within the scope of this lawsuit.

Id.

Particularly in light of Supplemental Rule F's admonition that claimants bring all claims stemming from the accident against the petitioner before the claims deadline in the notice, I agree with the *Greenley* Court. I find that properly pleaded contribution and indemnification claims should be allowed to stand, even at this phase in the proceedings. These claims are not prejudicial to Mr. Mackey and put Mr. Mackey on notice of Freedom's intent to pursue these claims if they become available.

Therefore, I recommend that Mr. Mackey's motion for judgment on the pleadings be denied as to his argument that the indemnification and contribution claims are premature.

V. Conclusion

I respectfully RECOMMEND that the District Court grant in part, and deny in part, Mr. Mackey's Motion for Judgment on the Pleadings (Doc. 62). Specifically, I recommend that the District Court GRANT the motion by finding that Freedom fails to state claims for contribution and indemnification and dismiss those claims without prejudice, with leave to refile within 21 days. I recommend that the District Court otherwise DENY the motion.

Submitted for the District Court's consideration on April 17, 2025.

Natalie Hirt Adams
NATALIE HIRT ADAMS
United States Magistrate Judge

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1. To expedite resolution, parties may file a joint notice waiving the 14-day objection period.