

FSM SUPREME COURT TRIAL DIVISION

PEOPLE OF THE MUNICIPALITY OF EAURIPIK,)	CIVIL ACTION NO. 2011-3002
YAP, by and through SANTUS SARONGELFEG,)	
JOHN HAGLELGAM, and MOSES MOGLIG,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
F/V TERAHA NO. 168, its engines, masts,)	
bowsprits, boats, anchors, chains, cables, rigging,)	
apparel, furniture, and all necessities thereunto)	
pertaining,)	
)	
In Rem Defendant,)	
)	
YUH YOW FISHERY COMPANY, LTD., MARIN)	
MARAWA, LTD., MASANAGA SHIMAZU,)	
MALAYAN TOWAGE AND SALVAGE)	
CORPORATION, HSIN HORNG FISHERY)	
COMPANY, LTD., and EDGAR R. PELEAZ,)	
)	
In Personam Defendants.)	
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FEDERATED STATES OF MICRONESIA,)	
)	
Plaintiff in Intervention,)	
)	
vs.)	
)	
F/V TERAHA NO. 168, its engines, masts,)	
bowsprits, boats, anchors, chains, cables, rigging,)	
apparel, furniture, and all necessities thereunto)	
pertaining,)	
)	
In Rem Defendant,)	
)	
YUH YOW FISHERY COMPANY, LTD., MARIN)	
MARAWA, LTD., and MASANAGA SHIMAZU,)	
)	
In Personam Defendants.)	
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ORDER ALLOWING PROPOSED AMENDMENT OF COMPLAINT IN PART

Martin G. Yinug
Chief Justice

Decided: August 6, 2013

APPEARANCES:

For the Plaintiffs:	Daniel J. Berman, Esq. Berman O'Connor & Mann 111 Chalan Santo Papa, Suite 503 Hagatna, Guam 96910
For the Defendants:	Helkei Hemminger, Esq. (pro hac vice) Cabot Mantanona LLP 929 South Marine Corps Drive Tamuning, Guam 96913

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HEADNOTES

Civil Procedure – Pleadings – Amendment

Civil Procedure Rule 15(a) provides that leave to amend the complaint "shall be freely given when justice so requires." The rule's purpose is to allow maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 92 (Yap 2013).

Civil Procedure – Pleadings – Amendment

In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rule requires, be "freely given." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 92 (Yap 2013).

Civil Procedure – Pleadings – Amendment

A showing of undue delay, for example, does not mean that a court should deny leave to amend. Delay in seeking amendment is alone not sufficient to show bad faith when there is no evidence of a motive to harass or of bad faith and no motive for the movant to delay was shown or appears. Prejudice to the opposing party, not the moving party's diligence, is the crucial factor in determining whether to grant leave to amend the complaint. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

Civil Procedure – Pleadings – Amendment

In order to determine if the threat of prejudice is sufficient to deny leave to amend, the court will consider both parties' positions and the effect the request will have on them. This entails an inquiry into the hardship to the moving party if leave to amend is denied, the reasons for the moving party failing to include in the original pleading the material to be added, and the resulting injustice to the opposing party if leave to amend is granted. If the court is persuaded that no prejudice will accrue, the amendment should be allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

Civil Procedure – Pleadings – Amendment

Although a court should liberally allow amended pleadings, it must deny a motion to amend a complaint if it is futile. Whether an amendment to a complaint would be futile is determined by whether the proposed amendment states a claim on which the FSM Supreme Court could grant relief. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

Civil Procedure – Pleadings – Amendment

A proposed amended complaint that narrows the possible reasons why a defendant failed to refloat a vessel should not prejudice the defendant because it narrows the scope of relevant discovery and the possible grounds for liability. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93 (Yap 2013).

Civil Procedure – Pleadings – Amendment

When the only dilatory motive that the defendants suggest is that the 9% prejudgment interest on any future judgment in this case will continue to accrue to the defendants' detriment but since a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest; when alter ego theories have been a part of this case since at least the second amended complaint, if not the first; and when the hardship to the plaintiffs if the corporate defendants are unable to pay a judgment is considerable, the court will, since amendment ought to be freely given, allow amendment to add the corporations' owners as defendants with conditions limiting discovery so as to mitigate any potential prejudicial delay to the existing defendants. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 93-94 (Yap 2013).

Admiralty – Ships – Liability; Judgments – Interest

When a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest because as a general rule, once the funds are paid into court, the only interest that the prevailing party is entitled to is the interest earned by the money in the court's depository institution. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

Civil Procedure – Pleadings – Amendment

In the absence of any ground to include or reinstate a defendant whose earlier dismissal the plaintiffs had acquiesced to, the court cannot allow the plaintiffs to file an amended complaint reinstating the earlier dismissed defendant. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

Admiralty – Ships; Jurisdiction – In Rem

The court can exercise jurisdiction only over vessels that are present in the FSM and that have been brought into the court's jurisdiction by arrest or over vessels for which an adequate substitute has been provided. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

Civil Procedure – Pleadings – Amendment

When no undue prejudice to the already appearing defendants is apparent, the court may allow the plaintiffs to amend its complaint to name a new defendant on the condition that the discovery sought from that defendant is limited. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

Torts – Negligence – Negligence per se

The FSM Supreme Court has never adopted the principle that the violation of a statute constitutes negligence per se giving rise to strict liability, but the court has held that negligence per se in the FSM means that the violation of a statute creates a rebuttable presumption of negligence. Even then, violations of statutory standards may form the basis of a claim of negligence per se only if the plaintiff is within the class of persons whom the statute was intended to protect and if the harm was of the type the enactment was intended to prevent. People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 95 (Yap 2013).

Torts – Negligence – Negligence per se

The statutory basis for a negligence *per se* claim need not provide for a private right of action. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 95 (Yap 2013).

Admiralty

The statutory fines in 19 F.S.M.C. 908(2); 19 F.S.M.C. 912, do not state a claim for which private parties can be granted relief because those fines are payable only to the FSM national government and then only if imposed as part of a sentence after a conviction in a criminal case. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

Admiralty – Salvage

Salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred because the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result. Salvage operations undertaken within the FSM which have had a useful result shall create the right to reward, and the criteria for fixing a salvage reward amount includes the measure of success obtained by the salvor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

Admiralty – Salvage; Civil Procedure – Pleadings – Amendment

When the plaintiff does not allege to have conducted any salvage operations or obtained any useful result, it would be futile for the plaintiff to amend its complaint to include a salvage claim because it would not state a claim for which the court could grant it relief. Futile amendments are not allowed. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

Civil Procedure – Discovery

Since the discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention, the parties may be instructed to consult and submit a joint plan for the completion of discovery, and, if the parties cannot agree on a joint plan, they must submit separate proposals and the court will set the discovery and motion deadlines. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 96 (Yap 2013).

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COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This comes before the court on (1) the Plaintiffs' Motion for Leave to Amend Complaint, with supporting exhibits, filed June 19, 2013, by the class plaintiffs, the People of the Municipality of Eauripik ("Eauripik"); (2) Defendants' Opposition to Plaintiffs' Motion to Amend Complaint, filed on June 28, 2013; (3) Plaintiffs' Reply Memorandum in Support of Motion for Leave to Amend Complaint, filed July 8, 2013; and (4) Defendants' Surreply to Plaintiffs' Motion for Leave to Amend Complaint, filed July 15, 2013. Eauripik seeks leave of court to file a third amended complaint that would add four natural persons as new defendants and additional facts and new theories of recovery. The appearing defendants, Yuh Yow Fishery Company, Ltd., Marin Marawa, Ltd., Malayan Towage and Salvage Corporation, Hsin Horng Fishery Company, Ltd., and Edgar R. Peleaz, oppose the motion while the plaintiff in intervention, the FSM, favors it. The motion is granted in part. The reasons follow.

I. PARTIES' POSITIONS

The movants contend that a third amended complaint is necessary because the court's March

27, 2013 Order Regarding Fund Amount, People of Eauripik *ex rel.* Sarongelfeg v. F/V Teraka No. 168, 18 FSM Intrm. 623 (Yap 2013), changed the nature and requirements of the litigation necessary for them to obtain the relief they seek and because of new information obtained in discovery. They seek to add as defendants Chen-Jin Tyan, Chen-Chao Ting, and Chen-Chao You, the alleged owners of Yuh Yow Fishery Company, Ltd. ("Yuh Yow"), Marin Marawa, Ltd. ("Marin Marawa"), and Hsin Horng Fishery Company, Ltd. ("Hsin Horng"), and Chen Jia Yen, the captain of the F/V *Fu Kuan No. 606*. Eauripik seeks to add the companies' owners as those companies' alter egos because Eauripik claims that those companies are undercapitalized and are shell corporations without enough assets to satisfy the judgments that might be entered against them.

Eauripik proposes to add allegations that defendant Malayan Towage and Salvage Corporation ("Malayan Towage") was unsuccessful in pulling the F/V *Teraka No. 168* off the reef because it failed to adequately assess and complete a salvage plan and because the M/Tug *Trabajador-I* was underpowered for the task. Eauripik also proposes to add negligence per se claims that the F/V *Teraka No. 168* was not properly flagged in Kiribati when it set sail from Singapore, and that because of the defendants' violations of various FSM maritime statutes, Eauripik is a salvor of the stranded and abandoned F/V *Teraka No. 168* and therefore asks that the defendants be required to post adequate security for Eauripik's salvage claims.

The appearing defendants oppose any amendment. Malayan Towage contends that it will be unfairly prejudiced if the amendment is allowed because it will require further discovery. Yuh Yow, Marin Marawa, Hsin Horng, and Malayan Towage all contend that the delay in adding four more defendants will prejudice them because Eauripik knew those persons' identity a year ago and could have included them in the second amended complaint and because discovery is almost complete and if a third amended complaint is allowed more discovery will be needed causing further delay which, because 9% prejudgment interest will be added to any judgment, will further prejudice the defendants. The defendants further claim prejudice because Eauripik has included in its proposed third amended complaint a defendant, the F/V *Fu Kuan 606*, that has already been dismissed as well as adding its captain as a new defendant.¹ They also assert that the inclusion of new negligence per se claims based on the F/V *Teraka No. 168*'s alleged improper flagging and the FSM Maritime Code is prejudicial because they involve new theories and further discovery delay.

Alternatively, the defendants ask that the court, if it allows any amendments to Eauripik's complaint, impose conditions to mitigate the prejudice to the appearing defendants. Lastly, the defendants ask that, if the parties cannot agree on a discovery plan and schedule, that the court impose deadlines after the parties have separately proposed their own schedules.

II. STANDARD FOR AMENDING PLEADINGS

Civil Procedure Rule 15(a) provides that leave to amend the complaint "shall be freely given when justice so requires." The rule's purpose is to allow maximum opportunity for each claim to be decided on the merits rather than on procedural technicalities. Arthur v. FSM Dev. Bank, 14 FSM Intrm. 390, 394 (App. 2006). In the absence of any apparent or declared reason, such as undue delay, bad faith or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the amendment's allowance, or futility of amendment, leave to amend should, as the rule requires, be "freely given." Primo v. Pohnpei Transp.

¹ The proposed third amended complaint also names the F/V *Yuh Yow No. 127* and its owner, City Pro Management Ltd. as defendants. Since those defendants have since settled with Eauripik and have now been dismissed, they should not be named as defendants in any future amended complaint.

Auth., 9 FSM Intrm. 407, 413 (App. 2000).

A showing of undue delay, for example, does not mean that a court should deny leave to amend. Arthur, 14 FSM Intrm. at 395. Delay in seeking amendment is alone not sufficient to show bad faith when there was no evidence of a motive to harass or of bad faith and no motive for the movant to delay was shown or appears. *Id.* Prejudice to the opposing party, not the moving party's diligence, is the crucial factor in determining whether to grant leave to amend the complaint. *Id.* In order to determine if the threat of prejudice is sufficient to deny leave to amend, the court will consider both parties' positions and the effect the request will have on them. 6 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 1487, at 621 (2d ed. 1990). This entails an inquiry into the hardship to the moving party if leave to amend is denied, the reasons for the moving party failing to include in the original pleading the material to be added, and the resulting injustice to the opposing party if leave to amend is granted. *Id.* at 621-23. If the court is persuaded that no prejudice will accrue, the amendment should be allowed. Arthur, 14 FSM Intrm. at 395.

Although a court should liberally allow amended pleadings, it must deny a motion to amend a complaint if it is futile. Tom v. Pohnpei Utilities Corp., 9 FSM Intrm. 82, 87 (App. 1999). Whether an amendment to a complaint would be futile is determined by whether the proposed amendment states a claim on which the FSM Supreme Court could grant relief. See Primo, 9 FSM Intrm. at 413.

III. ANALYSIS

A. *Allegations about Malayan Towage*

Malayan Towage objects to Eauripik adding allegations that Malayan Towage failed to properly assess and complete a salvage plan and that if it had it would have been obvious that the M/Tug *Trabajador-I* was grossly underpowered for the task and that therefore there was no chance that it would successfully remove the F/V *Teraka No. 168* from Eauripik reef. Malayan Towage asserts that it is prejudiced by this added allegation because Eauripik was in possession of the information regarding Malayan Towage's salvage plan over a year ago when Edgar R. Peleaz, the M/Tug *Trabajador-I*'s captain, was deposited.

Although Eauripik may have unduly delayed in seeking to add this allegation, the court cannot see how Malayan Towage would be prejudiced by it. Eauripik has always alleged that Malayan Towage failed to get the F/V *Teraka No. 168* off Eauripik reef and that it managed to move the stranded vessel only about 40 centimeters. Since this proposed amendment narrows the possible reasons why Malayan Towage failed to refloat the F/V *Teraka No. 168*, it should not prejudice Malayan Towage. It narrows the scope of relevant discovery and the possible grounds for liability. The court will therefore allow Eauripik to amend its complaint to include these allegations.

B. *Adding Alleged Owners*

The appearing defendants contend that adding four new defendants after the close of discovery is wholly prejudicial to them since it will cause further undue delay because Eauripik will next seek to reopen all fact discovery, subjecting the appearing defendants to duplicative discovery. The defendants contend that this is unfair because it will further delay the ultimate trial date. They contend that if Eauripik proves that the foreign corporate defendants are somehow inadequate, Eauripik can, after trial, ask the court to conform the pleadings to the evidence and impose alter ego liability then. The only dilatory motive that the defendants suggest is that the 9% prejudgement interest on any future judgment in this case will continue to accrue to the defendants' detriment.

Since a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest because as a general rule, once the funds are paid into court, the only interest that the prevailing party is entitled to is the interest earned by the money in the court's depository institution. See Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 670-71 (App. 1996); People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM Intrm. 501, 504 (Yap 2006); In re Engichy, 11 FSM Intrm. 520, 534 (Chk. 2003); Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 517 (Chk. 2003). These days, that interest rate is much lower than 9%.

Alter ego theories have been a part of this case since at least the second amended complaint, if not the first. See People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM Intrm. 297, 300-02 (Yap 2012). Although this is a close case, the hardship to the Eauripik plaintiffs if the corporate defendants are unable to pay a judgment is considerable. Therefore, since amendment ought to be freely given, the court will allow Eauripik to add the corporations' owners, Chen Jin Tyan, Chen Chao Ting, and Chen Chao You, as defendants. However, to mitigate any potential prejudicial delay to the existing defendants, the court will limit any discovery (and thus lessen the time for additional discovery) sought from or about Chen Jin Tyan, Chen Chao Ting, and Chen Chao You only to material that is relevant to the alter ego claims and that has not already been produced.

The court will therefore allow Eauripik to amend its complaint to name Chen Jin Tyan, Chen Chao Ting, and Chen Chao You as defendants against whom an alter ego theory is pled on the condition that discovery sought from them or about them is limited only to information relevant to the alter ego claims and that is not duplicative of discovery already obtained.

C. *Fu Kuan 606 and Addition of its Captain*

Eauripik seeks to add Chen Jia Yen, the F/V *Fu Kuan 606*'s captain, as a new defendant, and Eauripik also asserts that the F/V *Fu Kuan 606* is a defendant. Party defendant F/V *Fu Kuan 606* was dismissed without prejudice by the court's December 20, 2012 order since Eauripik did not oppose the F/V *Fu Kuan 606*'s dismissal but only sought to stay the F/V *Yuh Yow No. 127*'s dismissal for lack of service until the start of trial. Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM Intrm. 461, 465 (Yap 2012).

Eauripik has not given any reasons why the F/V *Fu Kuan 606*, having been dismissed with Eauripik's acquiescence, is either still a defendant or should be reinstated as a defendant. Unlike the F/V *Yuh Yow No. 127*, Eauripik does not contend that it is likely that the F/V *Fu Kuan 606* will return to FSM waters and that, since it might return before trial, it should not be dismissed until then. In the absence of any ground to include or reinstate the F/V *Fu Kuan 606* as a defendant, the court cannot allow Eauripik to file an amended complaint reinstating it as a named defendant. The court can exercise jurisdiction only over vessels that are present in the FSM and that have been brought into the court's jurisdiction by arrest or over vessels for which an adequate substitute has been provided. See, e.g., People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM Intrm. 81, 84 (Yap 2010); People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM Intrm. 403, 414 (Yap 2006). Eauripik does not assert that either event is probable.

The court is mystified why Eauripik would acquiesce to the F/V *Fu Kuan 606*'s dismissal and now seek to include it as a defendant and to add its captain as well. Eauripik apparently knew that Chen Jia Yen was the F/V *Fu Kuan 606*'s captain when it acquiesced to the F/V *Fu Kuan 606*'s dismissal. Nevertheless, since no undue prejudice to the already appearing defendants is apparent, the court will allow Eauripik to amend its complaint to name Captain Chen Jia Yen as a defendant on the condition that the discovery sought from him is limited to one deposition, one set of interrogatories; and one request for the production of documents.

D. Negligence Per Se Allegations

Eauripik seeks to add an allegation that the F/V *Teraka No. 168* left Singapore "without a duly approved Flag of the Nation of Kiribati," Proposed Third Amended Compl. ¶ 71, as negligence per se claim giving rise to liability to Eauripik. Eauripik also alleges that numerous undisputed violations of the FSM Maritime Code (Title 19) constitute negligence per se giving rise to liability to Eauripik.

The defendants contend that they are prejudiced by the negligence per se flagging allegation because to defend against an allegation that the violation of Singapore or Kiribati law gives rise to negligence per se liability would require further discovery and possible depositions of foreign law experts. The defendants further argue that the FSM Maritime Code has always been there and Eauripik could have raised it at any time, but neglected to and should not be allowed to plead it now as a new theory of recovery.

From the start, Eauripik has pled negligence as a theory of recovery. Eauripik now seeks to add negligence per se. The court has never adopted the principle that the violation of a statute constitutes negligence per se giving rise to strict liability. *Cf. Amor v. Pohnpei*, 3 FSM Intrm. 519, 534 (Pon. 1988) (medical malpractice). The court has previously held that negligence per se in the FSM means that the "[v]iolation of a statute creates a rebuttable presumption of negligence." *Glocke v. Pohnpei*, 8 FSM Intrm. 60, 61 (Pon. 1997) (traffic laws). Even then, "[v]iolations of statutory standards may form the basis of a claim of negligence *per se* [only] if the plaintiff is within the class of persons whom the statute was intended to protect and if the harm was of the type the enactment was intended to prevent." *Coastline Terminals of Conn., Inc. v. USX Corp.*, 156 F. Supp. 2d 203, 210 (D. Conn. 2001).

The court concludes that any amendment alleging violation of a foreign statute about the F/V *Teraka No. 168*'s flagging would be prejudicial because of the foreign investigation needed, especially since it would likely also be futile. Eauripik persons would not be those within the class of persons whom such a foreign flagging statute was designed to protect nor would the F/V *Teraka No. 168*'s stranding on Eauripik reef be a harm of the type laws about flagging vessels were intended to prevent. This amendment cannot be allowed.

Many of the FSM statutory provisions in chapter 9 of Title 19 are intended to protect the Receiver of Wreck (the FSM national government), or the vessel's owner, or the salvors, and not those persons with economic interests in FSM reefs. These statutes cannot be used for a negligence per se claim. Eauripik, however, is free to allege that violation of an FSM Maritime Code provision that was intended to protect them and that was intended to prevent the harm that occurred, creates a rebuttable presumption of negligence. Negligence per se may be alleged based only on violation of the maritime statutory provisions that meet those criteria. This, however, does not mean that Eauripik will be permitted to amend its complaint to allege a cause of action under the FSM Maritime Code since "[t]he statutory basis for a negligence *per se* claim need not provide for a private right of action." *Coastline Terminals of Conn.*, 156 F. Supp. 2d at 210.

E. FSM Maritime Code and Salvage Claims

Eauripik, claiming to be salvors of the stranded and now abandoned F/V *Teraka No. 168*, seeks to add (as the seventh cause of action) salvage claims under the FSM Maritime Code (Title 19) and further asks that the defendants be required to post security, under 19 F.S.M.C. 924, for Eauripik's salvage claims. Eauripik also alleges that fines of up to \$100,000 can be levied on the defendants per incident for the F/V *Teraka No. 168* grounding and related incidents.

The allegation about statutory fines, 19 F.S.M.C. 908(2); 19 F.S.M.C. 912, does not state a claim for which Eauripik can be granted relief because those fines are payable only to the FSM national government and then only if imposed as part of a sentence after a conviction in a criminal case. This is not a criminal case and Eauripik is not the national government.

Eauripik does not allege that they have actually salvaged the vessel, or engaged in a rendering-the-vessel-harmless operation, or that they have incurred salvage costs. As the court has previously stated, "salvage damages cannot be awarded when there has been no salvage or rendering harmless operation and when no salvage costs have been incurred . . . [because] the right to payment for salvage operations presumes that salvage operations have been conducted to a beneficial result." People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM Intrm. 623, 628 (Yap 2013). "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). 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).

Since Eauripik does not allege to have conducted any salvage operations or obtained any useful result, it would be futile for Eauripik to amend its complaint to include a salvage claim because it would not state a claim for which the court could grant it relief. Amendment to include a salvage claim would thus be futile. Futile amendments are not allowed. Tom, 9 FSM Intrm. at 87.

IV. DISCOVERY PLAN AND SCHEDULE

The discovery rules encourage the parties to conduct discovery with a minimum of court involvement or intervention. FSM Dev. Bank v. Adams, 14 FSM Intrm. 234, 248 (App. 2006); Mori v. Haseguchi, 18 FSM Intrm. 188, 190 (Chk. 2012); People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM Intrm. 64, 68 (Yap 2010). The parties are therefore instructed to consult. The parties therefore shall submit, no later than August 19, 2013, their joint plan for the completion of discovery and their proposal for further proceedings. If the parties cannot agree on a joint plan, they shall submit separate proposals and the court will set the discovery and motion deadlines.

V. CONCLUSION

Accordingly, the court will not allow Eauripik to amend its complaint to include what it calls its seventh cause of action based on Eauripik's claim to be a salvor; or to include negligence per se claims based on foreign law or on FSM statutes that do not include persons who hold interests in a reef within the class of persons to be protected or reef damage as the harm to be prevented; or to include the F/V *Fu Kuan 606* as a defendant. The court will allow the amendment about the alleged reasons that Malayan Towage failed to float the F/V *Teraka No. 168* off Eauripik reef. The court will also allow the addition of the four new natural person defendants on the condition that the discovery required of them or about them be limited as described above. Eauripik may, no later than August 15, 2013, file a third amended complaint that conforms to this order.

* * * *