

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE FLORIDA

IN ADMIRALTY

TINA RIEHM, as Personal Representative
of the Estate of JEREMIE H. RIEHM,
deceased,

Plaintiff,

Case No.: 3:15-CV-1296-J-25MCR

v.

SEA STAR LINE, LLC d/b/a "TOTE
Maritime" and also d/b/a "TOTE
Maritime Puerto Rico", a foreign limited
liability company, and TOTE SERVICES,
INC., a foreign for profit corporation,

Defendants.

_____ /

DEFENDANTS' NOTICE OF REMOVAL

Defendants, Sea Star Line, LLC ("Sea Star") and Tote Services, Inc. ("Tote"), pursuant to 28 U.S.C. § 1441 and § 1446, Local Rule 4.02, and Local Admiralty Rule 7.01, hereby remove the above-captioned action to the United States District Court, Middle District of Florida, Jacksonville Division, and in support hereof state as follows:

1. This admiralty action arises out of the disappearance of the SS EL FARO, a U.S. flagged cargo vessel, and the thirty-three (33) mariners on board at the time.
2. On or about October 1, 2015, the SS EL FARO tragically disappeared on the high seas, during its voyage from Jacksonville, Florida to San Juan, Puerto Rico, when Hurricane Joaquin unforeseeably changed its course and enveloped the vessel.

3. Plaintiff, as the personal representative of one of the vessel's crew members, has sued Sea Star and Tote, alleging three (3) causes of action, to wit: (1) Survival Action for Negligence for Pre-Death Pain and Suffering under the Jones Act (Count I); (2) Negligence Causing Wrongful Death under the Jones Act (Count II); and (3) Claim for Wrongful Death under Death on the High Seas Act (Count III). Counts I and II are brought only against Tote and Count III is brought only against Sea Star. As expressly stated in paragraph 3 of the Complaint, the claims are also based upon "General Maritime Law."

4. This action is removed to the United States District Court, Middle District of Florida, Jacksonville Division, on the basis that this Court has original jurisdiction of this action based upon admiralty jurisdiction, pursuant to 28 U.S.C. § 1333(1).

5. The Death on the High Seas Act explicitly provides as follows: "[w]hen the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible." 46 U.S.C. § 30302 (emphasis added); Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207, 218 (1986) ("Here, admiralty jurisdiction is expressly provided under DOHSA because the accidental deaths occurred beyond a marine league from shore."); In re Dearborn Marine Serv., Inc., 499 F.2d 263, 272 n.17 (5th Cir. 1974) ("DOHSA has been construed to confer admiralty jurisdiction . . .");¹ Argandona v. Lloyd's Registry of Shipping, 804 F. Supp. 326, 327 (S.D. Fla. 1992) ("The words 'in admiralty' clearly indicate that DOHSA invokes a district court's admiralty jurisdiction.").

¹ In Bonner v. City of Prichard, Alabama, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

6. After the passage of the Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125 Stat. 758 (2011), 28 U.S.C. § 1441(a) now states: “[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). Thus, Federal district courts have original jurisdiction over claims brought under the Death on the High Seas as well as claims based upon General Maritime Law. See 46 U.S.C. §§ 30104, 30302; 28 U.S.C. § 1333(1).

7. Accordingly, admiralty claims, such as claims brought under the Death on the High Seas Act and General Maritime Law, are removable under the 2011 revisions to 28 U.S.C. § 1441. Ryan v. Hercules Offshore, Inc., 945 F. Supp. 2d 772, 778 (S.D. Tex. 2013) (“Since DOHSA claims sound in admiralty and are not federal questions, they, like admiralty claims in general, would not have been removable under the former version of section 1441, but are removable under the plain language of the current version.”); see Exxon Mobil Corp. v. Starr Indem. & Liab. Co., No. CIV.A. H-14-1147, 2014 WL 2739309, at *2 (S.D. Tex. June 17, 2014) (“As a result, after the 2011 amendment to § 1441, general maritime cases are removable.”), remanded on other grounds on reconsideration, No. CIV.A. H-14-1147, 2014 WL 4167807 (S.D. Tex. Aug. 20, 2014); Carrigan v. M/V AMC AMBASSADOR, No. CIV.A. H-13-03208, 2014 WL 358353, at *2 (S.D. Tex. Jan. 31, 2014) (“Accordingly, for the reasons well explained in Ryan, Plaintiff’s maritime claims are removable, and Plaintiff’s Motion to Remand is denied.”); Provost v. Offshore Serv. Vessels, LLC, No. CIV.A. 14-89-SDD-SCR, 2014 WL 2515412, at *3 (M.D. La. June 4, 2014) (“A review of the applicable statutes and cases supports finding that the current version § 1441 permits the removal of general maritime claims without requiring an additional source of federal

jurisdiction.”); see also Bridges v. Phillips 66 Co., No. CIV.A. 13-477-JJB, 2013 WL 6092803, at *5 (M.D. La. Nov. 19, 2013) (“Defendants have demonstrated that current version of § 1441(b) does not prohibit the removal of general maritime claims under § 1333. Therefore, removal of this action was proper.”).

8. This action was originally filed on October 19, 2015 in the Circuit Court for the Fourth Judicial Circuit, in and for Duval County Florida, and styled Tina Riehm, as Personal Representative of the Estate of Jeremie H. Riehm, deceased v. Sea Star Line, LLC and Tote Services, Inc., Case No. 16-2015-CA-6626 (the “State Court Action”). The United States District Court, Middle District of Florida, Jacksonville Division is the district court of the United States for the district and division embracing the place where the action is pending. M.D. Fla. R. 1.02(b)(1).

9. None of the Defendants have been served with process. As such, under 28 U.S.C. § 1446(b), this removal is timely. Defendants are not required to await service of process to remove this action. Id. (“The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading” (emphasis added)); see North v. Precision Airmotive Corp., 600 F. Supp. 2d 1263, 1270 (M.D. Fla. 2009) (“... an unserved defendant in receipt of the complaint may remove prior to service under Section 1446(b).”); Goodyear Tire & Rubber Co. v. Fuji Photo Film Co., 645 F. Supp. 37, 39 n.2 (S.D. Fla. 1986) (“It is axiomatic that a defendant who receives a copy of the complaint prior to legal service upon him may file his petition for removal then.”).

10. Because Defendants have not yet been served with process, there have been no process, pleadings, or orders served upon the Defendants. Nevertheless, pursuant to Local Rule

4.02(b), attached hereto as Exhibit A is a copy of the Complaint filed in state court, as well as the state court's docket sheet.

11. All Defendants join in and consent to this removal.

12. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly give written notice of this removal to all adverse parties and will file a copy of this Notice of Removal with the clerk of the state court.

WHEREFORE, Defendants, Sea Star Line, LLC and Tote Services, Inc. pray that the state court action under Case No. 16-2015-CA-6626 now pending in the Fourth Judicial Circuit, in and for Duval County, Florida be removed to this Court for all further proceedings.

Respectfully Submitted this 30th day of October, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Thomas F. Slater, Esq., PAJCIC & PAJCIC, P.A., One Independent Drive, Suite 1900, Jacksonville, FL 32202 by electronic mail, this 30th day of October, 2015.

/s/ George D. Gabel, Jr.
Attorney