FEDERATED STATES OF MICRONESIA
SUPREME COURT TRIAL DIVISION
Cite as Moses v MV Sea Chase, 10 FSM Intrm. 45 (Chk. 2001)

CARLOS MOSES and UMAN MUNICIPAL GOVERNMENT,
Plaintiffs,

vs.

THE M.V. SEA CHASE, HER CAPTAIN and CREWS, OYANG CORPORATION, THE KOREA SHIPOWNERS' MUTUAL PROTECTION & INDEMNITY ASSOCIATION and JOHN DOES 1-24,
Defendants.

CIVIL ACTION NO. 2000-1034

ORDER DISPOSING OF MOTIONS

Richard H. Benson
Associate Justice

Decided: February 15, 2001

APPEARANCES:

For the Plaintiffs:
Joses Gallen, Esq.
P.O. Box 255
Kolonia, Pohnpei FM 96941

For the Defendants:
Craig D. Reffner, Esq.
Law Offices of Fredrick L. Ramp
P.O. Box 1480
Kolonia, Pohnpei FM 96941

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HEADNOTES

Civil Procedure - Dismissal; Civil Procedure - Joinder, Misjoinder and Severance
A motion to dismiss for failure to join necessary parties may be denied without prejudice when it is at too early a stage of the proceedings to determine whether complete relief among the parties cannot be obtained without the joinder of others. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 49 (Chk. 2001).

Civil Procedure - Dismissal; Civil Procedure - Joinder, Misjoinder and Severance

A Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 49 (Chk. 2001).

Civil Procedure - Pleadings

In the complaint the title of the action shall include the names of all the parties. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 49 (Chk. 2001).

Civil Procedure

When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Civil Procedure Rule and the FSM Supreme Court has not previously construed the FSM Rule, it may look to the U.S. federal practice for guidance in interpreting the rule. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 49 n.1 (Chk. 2001).

Civil Procedure - Parties

Because the use of John Doe plaintiffs is limited to those rare cases where for privacy concerns of a highly personal and sensitive nature the plaintiff's identity is kept secret, when no such privacy considerations are present and the defendants ask the court to add fictitious plaintiffs that are unknown and quite probably nonexistent, joinder of John Does as party plaintiffs will be denied. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 49 (Chk. 2001).

Civil Procedure - Pleadings

Motions to strike redundant matter under Rule 12(f) are viewed with disfavor and are infrequently granted because the mere presence of redundant matter is not usually a sufficient ground and because a motion to strike for redundancy ought not to be granted in the absence of a clear showing of prejudice to the movant. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 50 (Chk. 2001).

Torts - Damages

Compensatory damages are just that - compensation to make the victim whole again. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery. Only the injury itself is compensated. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 50 (Chk. 2001).

Civil Procedure - Dismissal; Civil Procedure - Summary Judgment

A motion, styled a motion to strike (under Rule 12(f)), that may more accurately be characterized as one to dismiss for failure to state a claim upon which relief can be granted (under Rule 12(b)(6)), shall, when matter outside the pleading is presented to and not excluded by the court, be treated as one for summary judgment and disposed of as provided in Rule 56. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 50 (Chk. 2001).

Civil Procedure - Summary Judgment

A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 50 (Chk.

2001).

Environmental Protection; Statutes - Construction

A savings clause that merely states that private parties who could previously seek civil remedies for what are now violations of the Chuuk State Environmental Protection Act still retain that right even if the Chuuk Environmental Protection Agency decides to act, does not create any new rights for those persons. Nor does it entitle them to collect any of the penalties created which may be asserted only by the Chuuk Environmental Protection Agency and only to its credit. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001).

Constitutional Law - Case or Dispute - Standing

Because the court must have a case or dispute before it in order to exercise jurisdiction, if a plaintiff lacks standing to bring a suit there is then no case or dispute to adjudicate. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001).

Admiralty; Civil Procedure - Dismissal; Civil Procedure - Pleadings; Jurisdiction - In Rem

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001).

Admiralty; Civil Procedure - Parties; Jurisdiction - In Rem

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel for damage done by that vessel. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001).

Admiralty; Jurisdiction - In Rem

In order for a court to exercise *in rem* jurisdiction, the thing (such as a vessel) over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001).

Admiralty; Civil Procedure - Dismissal; Jurisdiction - In Rem

When a vessel was never seized and brought under the court's jurisdiction and is no longer present in the jurisdiction, a court cannot exercise *in rem* jurisdiction over it and all such claims against the vessel will be dismissed without prejudice. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52 (Chk. 2001).

Admiralty; Civil Procedure - Dismissal

Dismissal of an *in rem* suit against a vessel does not act to dismiss the suit against its captain and crew as that is an action *in personam*, not *in rem*. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52 (Chk. 2001).

Civil Procedure - Dismissal

A motion to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of the claim. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52 (Chk. 2001).

Civil Procedure - Joinder, Misjoinder and Severance; Insurance
In the absence of a contractual or statutory provision authorizing a direct action against or the joinder of a liability insurer, an injured person, for lack of privity between himself and the insurer, has no right of action at law against the insurer and cannot join the insured and the liability insurer as parties defendant. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52 (Chk. 2001).

Civil Procedure - Joinder, Misjoinder and Severance; Insurance
An insurance company that has no contractual obligation to persons other than its insured until a court determines its insured's liability, cannot be joined as a party to a lawsuit to determine that liability. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52 (Chk. 2001).

Civil Procedure - Dismissal; Insurance
When no national or state statute or contractual provision authorizes a third party's suit against or joinder of an insurer, an injured party's causes of action against and joinder of an insurer will be dismissed. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52-53 (Chk. 2001).

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COURT'S OPINION

RICHARD H. BENSON, Associate Justice:

On August 10, 2000, the M.V. *Sea Chase* ran aground on the reef of Kuop Atoll, outside Truk Lagoon, Chuuk. The vessel was later salvaged and is no longer on the reef. This suit arises from that incident. The plaintiffs, Carlos Moses and the Uman Municipal Government, claim that the M.V. *Sea Chase* ran aground on Kuop as the result of negligent navigation, damaging the reef and spilling petroleum products. Plaintiff Carlos Moses, claiming an ownership interest in the reef, and plaintiff Uman municipal government, claiming Kuop as a part of its municipality, seek compensatory and punitive damages for the injury to the reef systems.

I. Defendants' Pending Motions and Results

Three motions, all filed by defendants on January 15, 2001, are pending before the court. The plaintiffs filed their opposition on January 26, 2001, and the defendants' reply was filed on January 31, 2001.

The M.V. *Sea Chase*, Oyang Corporation, and the Korea Shipowners' Mutual Protection & Indemnity Association filed a Motion to Dismiss or in the Alternative to Strike Three Redundant Causes of Action and to Also Dismiss One Cause of Action Based upon the Plaintiffs' Lack of Standing. The motion to dismiss (and its alternative

for joinder) is denied without prejudice except for the alternative to join John Does 1-10 as party-plaintiffs, which is denied. The alternative motion to strike is denied. The alternative motion to dismiss a cause of action is granted. The M.V. *Sea Chase* filed a Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted. That motion is granted. The Korea Shipowners' Mutual Protection & Indemnity Association filed a Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted. That motion is granted.

II. Motion to Dismiss or Alternatively to Strike Causes of Action

Defendants the M.V. *Sea Chase*, Oyang Corporation, and the Korea Shipowners' Mutual Protection & Indemnity Association ("the defendants") have moved for dismissal of the entire case for the plaintiffs' failure to join those that the defendants consider necessary parties. In the alternative, the defendants move that the court join those necessary parties, strike three of the causes of action as redundant, and strike one further cause of action as one which the plaintiffs lack standing to assert.

A. *Motion to Dismiss*

The defendants claim that Wiseman Moses and KM Moses (both brothers of Carlos Moses) and the State of Chuuk have asserted an ownership interest in Kuop, although the state's claim is uncertain in whether it is in its own right or through some involvement with Uman municipality. The defendants contend that these are indispensable parties and that since they were not joined the case should be dismissed in its entirety, or in the alternative, that the court should order joinder of these other parties. There is nothing in the record that shows that these might be indispensable parties other than the defendants' bald assertion that they claim some ownership interest in Kuop. The nature of their claimed interest, and whether those interests conflict with the plaintiffs' asserted interests in Kuop is not described. It is too early to determine at this stage of the proceedings whether complete relief among the parties cannot be obtained without the joinder of others.

Furthermore, a Rule 12(b)(7) motion to dismiss for failure to join an indispensable party under Rule 19 is a defense that is, by rule, specifically preserved and may be raised as late in the proceedings as at the trial on the merits. FSM Civ. R. 12(h)(2). The motion to dismiss for failure to join necessary parties is accordingly denied without prejudice. The motion may be renewed if the circumstances warrant.

If dismissal is not granted, the defendants ask, in the alternative, that the court order that Wiseman Moses, KM Moses, the State of Chuuk, Uman Municipality, and John Does 1-10 be made party-plaintiffs to this action. As discussed above, it is too early to tell if Wiseman Moses, KM Moses, and the State of Chuuk are indispensable parties. It is unclear why the defendants seek joinder of Uman Municipality when the Uman municipal government is already a party-plaintiff. There is no reason given why the municipal government does not adequately represent the municipality's interests. Joinder of these parties is denied without prejudice.

Finally, no authority is given for the court's ability to add the "John Doe" plaintiffs. The rules make no provision for anonymous plaintiffs. The rules require that "[i]n the

complaint the title of the action shall include the names of all the parties . . . ." FSM Civ. R. 10(a). FSM Rule 10(a) is identical to the U.S. federal civil procedure rule of the same number. In the United States,1 the use of John Doe plaintiffs is limited to those rare cases where for privacy concerns of a highly personal and sensitive nature the plaintiff's identity is kept secret. Coe v. United States Dist. Court, 676 F.2d 411, 415-17 (10th Cir. 1982); Southern Methodist Univ. Ass'n v. Wynne & Jaffe, 599 F.2d 707, 712 (5th Cir. 1979); *see generally* Annotation, Francis M. Dougherty, *Propriety and Effect of Use of Fictitious Name of Plaintiff in Federal Court*, 97 A.L.R. Fed. 369 (1990). The FSM Supreme Court has sanctioned the use of a plaintiff pseudonym in only one reported case, and that was also where privacy concerns were involved. In re Property of Doe, 6 FSM Intrm. 606, 607 (Pon. 1994) (anonymity imposed to avoid unwanted and unwarranted public attention directed towards a minor, which would do little to aid in her mental and physical recovery, while doing much to impede her recovery). No such privacy considerations appear to be present in this case. Instead the defendants ask the court to add fictitious plaintiffs that are unknown and quite probably nonexistent. Joinder of John Does 1-10 as party plaintiffs is therefore denied.

B. *Alternative Motion to Strike Redundant Causes of Action*

The defendants ask the court to strike three causes of action as redundant. The plaintiffs' first cause of action is for "willful negligence per se in grounding the vessel M.V. Sea Chase on the reef areas of Kuop Atoll." Complaint para. 12. The second cause of action is for "willful negligence and failure to restore the damaged areas of the reef system." The third is for negligence in allowing spillage of harmful petroleum products onto the reef area, and the fourth is for causing and allowing the damaged reef to further deteriorate.

While the plaintiffs' first four causes of action overlap a great deal and might easily have been combined into one cause of action the plaintiffs chose not to. The second, third, and fourth causes of action do contain some allegations not mentioned in the first. They are not completely repetitive. The defendants' motion is brought under Civil Procedure Rule 12(f). "[M]otions under Rule 12(f) are viewed with disfavor and are infrequently granted." 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1380, at 647-49 (2d ed. 1990) (footnote omitted). The mere presence of redundant matter is not usually sufficient ground to strike matter as redundant. Id. § 1382, at 704-05. Furthermore, "a motion to strike for redundancy ought not to be granted in the absence of a clear showing of prejudice to the movant." Id. at 706.

The defendants do claim prejudice. The reason they give for striking these three causes is that they believe that the plaintiffs are seeking to quadruple their compensation by repeating their cause of action four times. But compensatory

[1] When an FSM Civil Procedure Rule is nearly identical to a U.S. Federal Civil Procedure Rule and the FSM Supreme Court has not previously construed the FSM Rule, it may look to the U.S. federal practice for guidance in interpreting the rule. Senda v. Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 444 (App. 1994); Andohn v. FSM, 1 FSM Intrm. 433, 441 (App. 1984).

damages are just that - compensation to make the victim whole again. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery. Only the injury itself is compensated. *See, e.g.*, Atesom v. Kukkun, 10 FSM Intrm. 19, 23 (Chk. 2001) (additional recovery for battery not given when civil rights recovery fully compensated victim); Elymore v. Walter, 9 FSM Intrm. 450, 457 (Pon. 2000) (an award for loss of car's use well in excess of car's original price and current value and given in addition to award for the car's repair would result in a windfall and is not appropriate). The presence of these three causes of action is thus not prejudicial to the defendants. The motion to strike causes of action two through four is denied.

C. *Alternative Motion to Strike for Lack of Standing*

The defendants contend that the plaintiffs' fifth cause of action should be dismissed on the ground that they lack standing to bring such an action. The fifth cause of action seeks "punitive damages" of $100,000 a day from the date of the grounding to the date of judgment for the defendants' alleged violation of the state's environmental protection laws. The defendants contend that the plaintiffs lack standing under the Chuuk State Environmental Protection Act to seek such damages. The plaintiffs contend that the statute authorizes their claim and attach a copy of the statute to their opposition.

Although styled a motion to strike (under Rule 12(f)), this motion may more accurately be characterized as one to dismiss the fifth count for failure to state a claim upon which relief can be granted (under Rule 12(b)(6)), and because a matter outside the pleading (a copy of the statute) is presented to and not excluded by the court, the motion shall be treated as one for summary judgment on the fifth count and disposed of as provided in Rule 56. FSM Civ. R. 12(b). A court, viewing the facts presented and inferences made in the light most favorable to the nonmoving party, must deny a motion for summary judgment unless it finds there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Adams v. Etscheit, 6 FSM Intrm. 580, 582 (App. 1994).

The plaintiffs assert that the statute authorizes this claim and rely upon sections 8(1) and 8(5) of the Chuuk State Environmental Protection Act, Chk. S.L. No. 2-94-01, §§ 8(1), 8(5), for this position. Section 8 of the Act provides the Chuuk State Environmental Protection Agency with enforcement powers and mechanisms. Subsection (1) provides for:

> The imposition of a civil penalty up to $100,000.00 for each day of the violation. Penalty collected hereunder shall be paid to the Treasury of Chuuk State for credit to the Chuuk Environmental Protection Agency. The Agency shall provide by regulation minimum due process requirements to apply before it exercises the powers pursuant to this subsection.

Chk. S.L. No. 2-94-01, § 8(1). Subsection (5) reads: "A person who is affected by any violation of this Act retains the right to seek civil remedies in the appropriate court irrespective of whether any claim or suit has been instituted pursuant to the other provisions of this section." Id. § 8(5).

Subsection 8(1) creates a right of action by the Chuuk Environmental Protection Agency, and no other, with any penalties collected to be for its credit and no one else's. Subsection 8(5) is a savings clause that merely states that private parties who could previously seek civil remedies for what are now violations of the Chuuk State Environmental Protection Act still retain that right even if the Chuuk Environmental Protection Agency decides to act. It does not create any new rights for those persons. Nor does it entitle them to collect any of the penalties created in subsection 8(1), which may be asserted only by the Chuuk Environmental Protection Agency and only to its credit.

The plaintiffs' fifth cause of action therefore fails to state a claim upon which relief may be granted. Alternatively, the defendants' motion could be considered as a motion to dismiss for lack of subject-matter jurisdiction, FSM Civ. R. 12(b)(1), because the court must have a case or dispute before it in order to exercise jurisdiction, FSM Const. art. XI, § 6, and if a plaintiff lacks standing to bring a suit there is then no case or dispute to adjudicate. Under either analysis the result is the same. The defendants' motion to dismiss this cause of action is granted.

III. Motion to Dismiss the M.V. *Sea Chase*

The M.V. *Sea Chase* moves for its dismissal on the ground that only persons, including corporations, and government entities can be parties to litigation and that the *Sea Chase* is a fishing vessel and so cannot be a party to this action. The *Sea Chase* also asserts that this is not an action *in rem*, the only type of proceeding in which a vessel could be a party, because the complaint's caption does not style it as an *in rem* action and because the proceeding had not been properly pursued as an *in rem* action. The plaintiffs assert that the claim against defendant M.V. *Sea Chase* is *in rem*. The M.V. *Sea Chase* asserts that there is no statutory basis for the plaintiffs to proceed *in rem* against a vessel.

The plaintiffs' failure to style their action against the M.V. *Sea Chase* as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. *See* Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 9 (Chk. 2001) (caption amended at party's request to conform to pleadings); Aurora Shores Homeowners Ass'n v. Federal Deposit Ins. Corp., 2 F. Supp. 2d 975, 981 (N.D. Ohio 1998) (new party defendant added in amended complaint but not identified in case caption, dismissal denied); Spring Water Dairy, Inc. v. Federal Intermediate Credit Bank, 625 F. Supp. 713, 721 n.5 (D. Minn. 1986) (failure to name party as defendant in the caption does not mean action cannot be maintained against him when complaint makes a number of explicit references to him and he was served); 5 Wright & Miller, *supra*, § 1321, at 728-30. Paragraph 8 of the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction. Therefore the lack of an *in rem* designation in the caption is not a ground for dismissal of the suit against the M.V. *Sea Chase*.

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel

for damage done by that vessel. 19 F.S.M.C. 1303(9). In order for a court to exercise *in rem* jurisdiction, the thing (in this case, the M.V. *Sea Chase*) over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 370 (Kos. 2000); In re Kuang Hsing No. 127, 7 FSM Intrm. 81, 82 (Chk. 1995). Since the M.V. *Sea Chase* was never seized and brought under the court's jurisdiction and is no longer present in the jurisdiction, the court cannot exercise *in rem* jurisdiction over it. All such claims against the vessel are hereby dismissed without prejudice.

Dismissal of the suit against the M.V. *Sea Chase* does not, however, act to dismiss the suit against its captain and crew as that is an action *in personam*, not *in rem*. They, however, seem not to have yet made an appearance in this case.

IV. Motion to Dismiss the Korea Shipowners' Mutual Protection & Indemnity Association

Defendant Korea Shipowners' Mutual Protection & Indemnity Association moves for its dismissal on the ground that the complaint fails to state a claim against it upon which relief could be granted because the sole basis that the plaintiffs assert for its liability is that it provided the defendants' liability insurance coverage for the M.V. *Sea Chase*. The plaintiffs' opposition merely states that they believe that this defendant is an insurance company that provided full coverage for the other defendants' damages and liabilities.

A motion to dismiss for failure to state a claim may be granted only if it appears to a certainty that no relief could be granted under any state of facts which could be proven in support of the claim. Damarlane v. FSM, 8 FSM Intrm. 119, 121 (Pon. 1997); Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM Intrm. 111, 114 (Chk. 1997).

It is undisputed that Korea Shipowners' Mutual Protection & Indemnity Association presence in this action is only as an insurer. An insurer generally has no liability to third parties, at least until after its insured's liability is determined.

> It is generally held that, in the absence of a contractual or statutory provision authorizing a direct action against or the joinder of a liability insurer, an injured person, for lack of privity between himself and the insurer, has no right of action at law against the insurer and cannot join the insured and the liability insurer as parties defendant.

Olokele Sugar Co. v. McCabe, Hamilton & Renny Co., 487 P.2d 769, 770 (Haw. 1971); *see also* Caldwell Trucking PRP Group v. Spaulding Composites Co., 890 F. Supp. 1247, 1253 (D.N.J. 1995) ("As a general rule, the common law prohibits actions by a third party against an insurer absent some statutory or contractual provision."); 44 Am. Jur. 2d *Insurance* § 1445, at 392-93 (rev. ed. 1982) ("the injured person has no right of action at law against the insurer and therefore cannot join the insured and the liability insurer as parties defendant") (footnote omitted). The FSM

Supreme Court, in deciding a somewhat narrower question, has held that an insurance company that has no contractual obligation to persons other than its insured until a court determines its insured's liability, cannot be joined as a party to a lawsuit to determine that liability. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM Intrm. 411, 413 (Pon. 1996).

No provision in the FSM Code, particularly in the chapter concerning admiralty and maritime administrative and legal procedures, 19 F.S.M.C. 1301-1316, appears to authorize an injured party's suit against or joinder of an insurer. Title 19 (the FSM admiralty statute) also does not specifically prohibit an injured party's suit against or joinder of an insurer. In the United States "[f]ederal admiralty law neither authorizes nor forecloses a third party's right to directly sue an insurance company," but a state may create such a right when that state right is not in conflict with any federal admiralty law or principle. Morewitz v. West of England Ship Owners Mut. Protection & Indem. Ass'n, 62 F.3d 1356, 1362 (11th Cir. 1995). If the same principle is applied here then a Chuuk state law might be able to authorize such a suit. No such statute has been brought to the court's attention.

The plaintiffs' claims against Korea Shipowners' Mutual Protection & Indemnity Association are therefore dismissed without prejudice. Should discovery reveal that the insurance contract authorizes an injured party's action against the insurer, or should a statute authorizing an injured party's direct action against an insurer come to light, the plaintiffs may move to join the Korea Shipowners' Mutual Protection & Indemnity Association as a party defendant.

IV. Conclusion

Defendants Korea Shipowners' Mutual Protection & Indemnity Association and the M.V. *Sea Chase* are dismissed without prejudice and their names are to be deleted from future captions. The alternative motion to dismiss the fifth cause of action is granted. The alternative motion to add John Does 1-10 as party-plaintiffs is denied. The rest of the motion to dismiss, and its alternatives, is denied without prejudice.