UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-21589-CIV-ALTONAGA/Simonton

WILLIAM C. SKYE,

Plaintiff,

vs.

MAERSK LINE LIMITED CORPORATION,

Defendant.
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ORDER

THIS CAUSE came before the Court upon Defendant, Maersk Line Limited Corporation's ("Maersk['s]") Motion for Summary Judgment ("Motion") [ECF No. 52], filed January 27, 2012. The Court has carefully reviewed the parties' written submissions and applicable law.

I. BACKGROUND[1]

Plaintiff, William C. Skye ("Skye"), worked as a Chief Mate onboard the ship, *Sealand Pride* ("Vessel"), from October 2000 to May 2008. (*See* Mot. ¶ 1).[2] From 2000 to August 2004, United States Ship Management, Inc. ("USSM") operated the Vessel "to the benefit of Maersk," the Vessel's charterer. (Resp. ¶ 2p).[3] From August 2004 through the last day of Skye's

[1] Unless otherwise noted, the facts are undisputed.

[2] The parties' statements of undisputed facts were filed in the same documents as their briefing. (*See* Mot.; Resp. [ECF No. 70]). The Court's references to these statements will employ paragraph pincites, whereas citations to the parties' arguments will use page pincites.

[3] Paragraphs within Skye's own statement of undisputed facts will be noted with a "p" (e.g., (Resp. ¶ 2p)), whereas Skye's responses to Maersk's statements will not have such a notation (e.g., (Resp. ¶ 2)). Notably, in its Reply, Maersk is silent as to Skye's Undisputed Facts. (*See* Reply). Thus, to the extent

employment, the *Sealand Pride* was operated and managed by Maersk. (*See* Mot. ¶ 3; Resp. ¶ 3p).

Skye filed this maritime personal injury action against Maersk on May 5, 2011 (*see* Compl. [ECF No. 1]), and remaining at issue are his claims under the Jones Act and for unseaworthiness. Maersk and Skye dispute the nature of Skye's injury and when that injury occurred.

Skye asserts that he suffered physical injury — physical changes to his heart, including left ventricular hypertrophy and torn mitral valve chordae — as a result of Maersk's failure to comply, and lack of effort to ensure compliance, with federal law prescribing when, how long, and under what conditions mariners may work.[4] (*See* Resp. ¶ 6).[5] Dr. Joseph Wachspress, Skye's treating cardiologist, opines that "within a reasonable degree of medical certainty . . . the working conditions onboard Defendant's vessel caused physical changes and a physical injury to William Skye's heart." (Wachspress Aff. ¶ 6 [ECF No. 73-1]). Additionally, Dr. Wachspress asserts: "It is my considered professional opinion as a cardiologist, that the overwhelming physical stress of his Chief Mate's position has negatively impacted his long term health and forced him to seek other employment." (Wachspress Rep. 1 [ECF No. 70-2]). It was not until June 10, 2008 that an echocardiogram revealed Skye's physical injury, namely, "moderate concentric LVH [left ventricular hypertrophy]," ([ECF No. 52-2], at 9), which developed after July 2000. (*See* Wachspress Rep. 1 (noting that in July 2000, Skye suffered only from a "benign

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those facts are supported by the record, the Court considers such facts undisputed for purposes of the Motion. *See* FED. R. CIV. P. 56(e)(2).

[4] *See* 46 U.S.C. § 8104; 46 C.F.R. § 15.1111.

[5] Skye also asserts in Paragraph 6 that he suffers from "labile hypertension . . . left ventricle diastolic dysfunction, mild aortic root dilation, and aortic sclerosis;" however, the Court could not locate where these additional injuries are identified in the evidence ([ECF No. 52-2], at 9), cited to by Skye.

arrhythmia and no physical injuries”)).

Maersk contends that Skye’s injury is not a physical one, but rather, is attributed to stress; i.e., Skye’s heart complications are manifestations of his perception of a stressful work environment. (*See* Mot. ¶¶ 5, 6). Maersk points to numerous treatment records that note Skye’s symptoms were due to “stress” or “pressure” endured while working aboard the Vessel. (*See, e.g.*, *id.* ¶¶ 11, 12, 15, 17, 18, 21, 22). Maersk adds that because Skye sought treatment for heart symptoms in 2000, and because the physician who examined him at that time attributed those symptoms to work-related stress (*see id.* ¶¶ 11, 12), any physical injury suffered by Skye due to work-related conditions was discovered in 2000; medical records show that Skye subsequently had “no new medical problems.” (*See id.* ¶¶ 15, 19).

II. LEGAL STANDARD

Summary judgment shall be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. *See* FED. R. CIV. P. 56(a), (c). “[T]he court must view all evidence and make all reasonable inferences in favor of the party opposing summary judgment.” *Chapman v. AI Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000) (en banc) (quoting *Haves v. City of Miami*, 52 F.3d 918, 921 (11th Cir. 1995)). “An issue of fact is material if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case.” *Burgos v. Chertoff*, 274 F. App’x 839, 841 (11th Cir. 2008) (quoting *Allen v. Tyson Foods Inc.*, 121 F.3d 642, 646 (11th Cir. 1997) (internal quotation marks omitted)). “A factual dispute is genuine ‘if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’” *Channa Imps., Inc. v. Hybur, Ltd.*, No. 07-21516-CIV, 2008 WL 2914977, at *2 (S.D. Fla. Jul. 25, 2008) (quoting *Anderson v. Liberty Lobby, Inc.*,

477 U.S. 242, 248 (1986)).

The movant's initial burden on a motion for summary judgment "consists of a responsibility to inform the court of the basis for its motion and to identify those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993) (internal quotation marks and alterations in original omitted) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

III. ANALYSIS

Maersk's arguments why Skye's allegations are not actionable hinge on three points. First, because Skye's injury is a manifestation of work-related stress and is not a physical injury, relief cannot be had under the Jones Act nor under the doctrine of unseaworthiness. (*See* Mot. 6–15). Second, Skye's claim is time-barred because he failed to file suit within three years of the date his cause of action accrued, which was in 2000. (*See id.* 15–18). Third, any claims raised by Skye for conduct between 2000–2004 fail because Maersk did not operate the vessel during that time frame. (*See id.* 18–19).

As to Maersk's first point, "although plaintiff alleges that he suffered a physical injury, the court must look to the 'substance of [plaintiff's] injury and the nature of [defendant's] conduct' to determine whether plaintiff must comply with *Gottshall*[6]." *Duet v. Crosby Tugs*, Civil Action No: 06-1825 Section: R(4), 2008 U.S. Dist. LEXIS 83607, at * 8 (E.D. La. 2008) (quoting *Smith v. Union Pac. R.R. Co.*, 236 F.3d 1168, 1171 (10th Cir. 2000)). *Gottshall* holds that claims based on emotional injury are actionable only if the plaintiff can satisfy one of three major limiting tests: the "physical impact" test, "zone of danger" test, or the "relative by-stander" test. *Gottshall*, 512 U.S. at 546–48. Maersk contends that *Gottshall* applies and that Skye does

6 *Consol. Rail Corp. v. Gottshall*, 512 U.S. 532 (1994).

not satisfy any relevant limiting tests.

It is evident that there remains a genuine issue of material fact that renders summary judgment inappropriate on this issue because the Court cannot conclude as a matter of law whether *Gottshall* limits Plaintiff's action. While the Court is cognizant that injuries to the heart, such as heart attacks and Skye's injury, "affect a person physically[,] . . . they may be the result of stress, over-work, an abusive work environment, or other emotional injuries," i.e., non-physical stress, which is subject to *Gottshall*'s requirements and may not be actionable. *Duet*, 2008 U.S. Dist. LEXIS 83607, at * 8–9 (citing *Smith*, 236 F.3d at 1171); *see also id.* at *10–11 (surveying case law and concluding that a heart injury caused by "a form of physical stress" such as benzene contamination or poor air quality may be actionable, but that an injury due to "non-physical stress such as overwork and anxiety" is not). However, "a case of total sleep deprivation might blur the line between what constitutes physical versus non-physical stress." *Id.* at *11. The *Duet* court concluded that the stress imposed on plaintiff, who was required to work for three days straight on little sleep, did not amount to a physical stress. *Id.*

Here, Skye's treating physician opined that Skye's injury is a physical injury caused by the working conditions onboard the Vessel, particularly that Skye was subject to "overwhelming physical stress." (Wachspress Rep. 1; *see* Wachspress Aff. ¶ 6). Admittedly, this action does not concern the total sleep deprivation the *Duet* court contemplated may be actionable without applying *Gottshall*. Nonetheless, evidence showing the chronic sleep deprivation endured by Skye over several years and not merely three days, (*see Sealand Pride*'s Record of Watchkeeping and Rest Periods [ECF No. 70-5]),[7] allegedly beyond the parameters permitted under federal law, coupled with Dr. Wachspress's opinions, sufficiently render "the line between

[7] Maersk suggests that these logs are inaccurate for a number of reasons and therefore are not "competent" evidence under *Celotex*, 477 U.S. 317. What Maersk in fact raises, however, is a credibility question, which remains the province of the jury.

what constitutes physical versus non-physical stress" in this matter a question for the finder-of-fact. Therefore, on this record, as there appears to be evidence that the nature of Maersk's conduct constitutes a physical stress that is not limited by *Gottshall*, summary judgment is inappropriate on this issue.

Genuine issues of material fact also remain as to Maersk's other contentions. Skye lodged this action on May 5, 2011 (*see* Compl.), and therefore, the causes of action upon which he seeks relief must have accrued within three years of that date. *See* 45 U.S.C. § 56 ("No action shall be maintained under [the Jones Act] [45 U.S.C. §§ 51 *et seq.*] unless commenced within three years from the day the cause of action accrued."); 46 U.S.C. § 30106 ("Except as otherwise provided by law, a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose."). The physical injury Skye complains of includes left ventricular hypertrophy, which was not detected until June 2008 (*see* [ECF No. 52-2], at 9), despite earlier doctors' visits. (*See, e.g.*, Mot. ¶¶ 8 (July 25, 2000 visit to Dr. Bear), 12 (September 5, 2000 visit to Dr. Wachspress), 13 (2003 visit to Dr. Wachspress); *see also* Wachspress Rep. 1 (noting that Skye's physical injury did not exist in 2000)).

Thus, it appears that there is some record evidence supporting Skye's assertion that the physical injury of which he was first informed in June 2008 is a separate injury from — and not a mere continuation or aggravation of — the symptoms he complained of in 2000. *See Fonseca v. Consol. Rail Corp.*, 246 F.3d 585, 589 (6th Cir. 2001) (discussing the distinction made in *Aparicio v. Norfolk & W. Ry. Co.*, 84 F.3d 803 (6th Cir. 1996), *abrogated on other grounds*, *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000), between the claims raised by plaintiff in 1993 — one that was time-barred because it was based on an injury that occurred in 1987, and another that proceeded because the plaintiff "created a disputed issue of fact as to

whether his 1992 injuries were a separate injury or a continuation of his 1987 injury"). On this record, there is a genuine dispute as to when Skye's cause of action accrued — whether within or without the applicable three-year statutory period. Summary judgment on this issue is denied.

Further, Maersk does not dispute that it was the Vessel's charterer from 2000–2004, meaning that Maersk may be held liable for Skye's claim for unseaworthiness. *See Wai v. Rainbow Holdings,* 350 F. Supp. 2d 1019, 1029 (S.D. Fla. 2004) ("If a seaman is injured by a vessel's unseaworthiness, he may sue its owner or bareboat charterer." (citing *Baker v. Raymond Int'l, Inc.*, 656 F.2d 173, 184 (5th Cir. Unit. A 1981))). Additionally, the Jones Act "'permits the injured worker to recover from the company that was actually directing his work.'" *Id.* at 1025 (quoting *Baker*, 656 F.2d at 178). Maersk's corporate representative stated that from 2000–2004, USSM had "operated [the Vessel] to [Maersk's] benefit . . . as charterer." (Dep. of Jerry Elker 24:25–25:2 [ECF No. 67-3]). Thus, although Maersk identifies statements in Skye's deposition testimony indicating that he dealt with two entities (USSM and Maersk) in 2004,[8] that Maersk was the charterer of the Vessel and that USSM operated the Vessel "to Maersk's benefit" puts in dispute whether Maersk "directed" Skye's work between the years 2000 and 2004.[9] Therefore, summary judgment on Skye's Jones Act and unseaworthiness claims relating to Maersk's negligent operation between 2000–2004 is inappropriate.

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[8] Maersk also asserts that it "exercised no operational control over the *Sealand Pride* from 2000–2004." (*See* Reply 9; *see also* Mot. 1 ("Defendant is entitled to judgment in its favor on all allegations of negligent operation that took place from 2000–2004, when it did not operate the subject vessel.")). In support of the statement, Maersk cites to one exhibit, namely eight pages of excerpts from Jerry Elker's deposition (*see* Reply 9 (citing to D.E. 86-9)), without directing the Court to any particular lines of testimony. The Court has nonetheless reviewed the entire document, and based on that review finds that the deposition testimony supports the fact that USSM had operational control of the Vessel; however, nothing in the deposition shows that the control was exclusive or that Maersk lacked control over the Vessel. (*See* [ECF No. 86-9]).

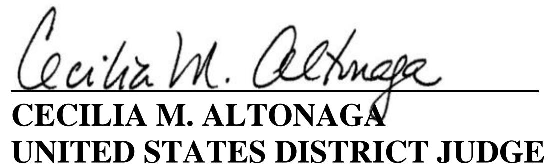
[9] Indeed, case law suggests that Maersk is deemed Skye's employer for purposes of the Jones Act claim. *See, e.g.*, *Blanco v. United States*, 775 F.2d 53, 58 (2d Cir. 1985) ("The demise charterer . . . is deemed to be the crew's 'employer' for purposes of Jones Act liability." (citing *Massey v. Williams-McWilliams, Inc.*, 414 F.2d 675, 676 n.1 (5th Cir. 1969), *cert. denied*, 396 U.S. 1037 (1970))).

IV. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Defendant, Maersk Line Limited Corporation's Motion **[ECF No. 52]** is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 28th day of March, 2012.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record