

## ADMIRALTY LAW

## Expert Analysis

# Bermuda Triangle: Trick or Trap?

Admiralty law recognizes that seafaring is a dangerous occupation, and thus creates legal obligations of shipowners to safeguard the lives of seamen. Pursuant to the doctrine of “seaworthiness,” “[a] shipowner has a duty, at the commencement of a voyage, to furnish his employees with a vessel that is seaworthy in itself, and seaworthy as respects its appurtenances and appliances.”<sup>1</sup> To be “seaworthy,” a vessel must not only be fit for the intended voyage, but also be properly equipped and under the control of a competent master.

Admiralty law also recognizes the mysteries of the sea and that ships may be lost with no evidentiary trace. As a result, maritime law has developed a rule that if a vessel is lost in calm seas it is presumed to be unseaworthy.<sup>2</sup> But can a vessel be found “unseaworthy” if it sinks under mysterious circumstances and is never found?

JAMES E. MERCANTE is a partner at Rubin, Fiorella & Friedman and is president of the Board of Commissioners of Pilots of the State of New York. JOSEPH R. FEDERICI, an associate with the firm, contributed to the article.

By  
**James E.  
Mercante**



Perhaps no seafaring route has produced more theory, speculation and mystery than the Bermuda Triangle, a triangle shaped by a line drawn from Bermuda to Miami to Puerto Rico, considered a haunted part of the sea claiming ships without a trace. In admiralty law, the Bermuda Triangle legend of unexplained happenings resulting in the loss or disappearance of vessels would be a potential defense for a shipowner. But, no court of law has yet to be convinced—likely because no seaworthy legal argument can be made without admissible evidence of aliens or sea monsters.

One of the most recent losses in the triangle was that of the cargo ship the EL FARO, which sank as it encountered Hurricane Joaquin en route from Florida to Puerto Rico, one year ago this month. Instead of being gone forever, ships that go down in the Bermuda

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Triangle are not forgotten. Federal court, in admiralty, is where the mysterious disappearances and sinkings surface to eerily re-create the voyage and the cause of loss.

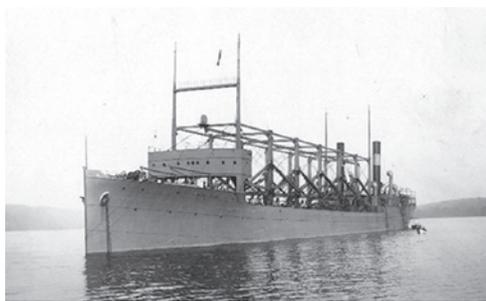
### Haunted History

The Bermuda Triangle (also known as the “Devil’s Triangle”) has been the subject of mystery since Columbus first sailed through the area, noting in his logbook on Sept. 17, 1492, that “compass variation” terrified the crew. Since then, stories about unexplained disappearances of ships (and planes) are found throughout the centuries.

One of the earliest noted events occurred in 1880, when the H.M.S. ATALANTA, with 250 Royal Navy trainees on board, set sail from Bermuda and was never seen again. (Vincent

H. Gaddis, "The Deadly Bermuda Triangle," *Argosy*, February 1964). Over the ensuing decades, vessels were continually lost in the region. Some were even found totally abandoned within the Bermuda Triangle—with no sign of their crew. In 1881, the schooner ELLEN AUSTIN came upon an abandoned vessel in the Triangle, and placed a crew onboard to salvage her. The two vessels became separated in a squall, and the mystery vessel with her salvage crew were never found or heard from again. (Vincent H. Gaddis, "The Deadly Bermuda Triangle," *Argosy*, February 1964).

The Bermuda Triangle's mysterious and dangerous reputation continued during the 20th century. With the advent of ship radio communications, ships



**USS Cyclops on the Hudson River in 1911. The ship was lost in the Bermuda Triangle in 1918 with 309 sailors aboard.**

heading toward the Bermuda Triangle and was never seen again. ("Hunt For Tanker Yields No Clues: Coast Guard Will Resume Sulphur Queen Inquiry," *The New York Times*, April 1, 1963). In 1975, the cargo ship IMBROS and its 18 crew members issued an S.O.S. signal and then disappeared in normal conditions somewhere within the Bermuda Triangle. (*Morewitz v. W. of Eng.*

In the EL FARO case, the court stated that the claimants could not presume that the loss of power was not related to Hurricane Joaquin. Allowing the case to continue, the court ruled that there still exists a genuine issue of fact in dispute regarding the seaworthiness of the EL FARO.

were not supposed to disappear, but even the U.S. Navy was not immune. In 1918, the Navy supply ship CYCLOPS, with 309 sailors onboard, disappeared without so much as a "Mayday" call. No adverse weather conditions were noted. ("Collier Overdue A Month; Missing U.S. Naval Collier Cyclops," *The New York Times*, April 15, 1918). The next year, the schooner CAROL A. DEERING was found abandoned off North Carolina in the Triangle. ("Mysteries Of The Sea," *The New York Times*, June 22, 1921).

Over the next few decades, the pace of disappearances of commercial vessels increased. In 1963, the 265-foot tanker MARINE SULPHUR QUEEN, with 29 seamen onboard, was last detected

*Ship Owners Mut. Prot. & Indem. Ass'n (Lux.)*, 62 F.3d 1356 (11th Cir. 1995)). In 1981, the German cargo ship ELMA TRES sank in heavy seas off Bermuda, leaving just one survivor. ("Around the Nation: Survivor Unable to Tell about Sinking of Ship," *The New York Times*, Nov. 29, 1981).

The abundance of inexplicable disappearances has given rise to wild theories such as magnetic anomalies, freak storms and even supernatural causes. Eventually, the government weighed in on the matter. The National Oceanic and Atmospheric Administration (NOAA) claims that unexplained disappearances in this region may be due to tropical storms and the Gulf

Stream, which "can cause rapid, sometimes violent changes in weather."<sup>3</sup> Indeed, many named hurricanes (such as Sandy in 2012 and Joaquin in 2015) traveled directly through the Bermuda Triangle.

But it may not just be storms that are causing the disappearances. NOAA confirmed the existence of magnetic issues (giving credence to the observations of Columbus) stating "the Bermuda Triangle is a place where a 'magnetic' compass sometimes points to 'true' north, as opposed to 'magnetic' north." The U.S. Coast Guard flatly denies the existence of a "mythical geological area," stating "[n]o extraordinary factors have ever been identified."<sup>4</sup>

The families of lost crew members may never find the truth as to why their loved ones were lost at sea. But they often seek to hold the ship owner and operator accountable. Over the past 50 years, families of lost crewmembers of the MARINE SULPHUR QUEEN, the IMBROS, and most recently the EL FARO filed lawsuits for "wrongful death" and "survival" claims against the owners and operators of the vessels. The suits naturally do not blame mysterious or supernatural causes (as there is no recovery potential there)—but rather the "unseaworthiness" of the ships that were lost.

### Seaworthiness

As mentioned above, maritime law has developed a rule that if a vessel is lost in calm seas it is presumed to be unseaworthy. The presumption may be rebutted by a showing that the vessel was fit in all respects for the journey (including the hull and the crew) or that it was lost as a result of extraordinary (weather) circumstances (Act of God defense).

In admiralty, the concept of vessel seaworthiness applies to many different claims such as seaman's personal injury, cargo loss, sinkings, collision and marine insurance disputes.

After the MARINE SULPHUR QUEEN disappeared in 1963, families of the lost crewmembers filed claims against the vessel owner in the Southern District of New York. The court analyzed the design of the vessel, its cargo (molten sulfur) and the sea conditions at the approximate time of the sinking. The court determined that the vessel was improperly designed and constructed, was overloaded, and may have been unable to cope with the racking stress caused by heavy seas.

The U.S. Court of Appeals for the Second Circuit held, "It is settled that when a vessel disappears in expectable weather under otherwise unknown circumstances, proof by the plaintiffs of some element of unseaworthiness will permit the trier of fact to infer that the unseaworthiness was the proximate cause of the loss."<sup>5</sup>

Under this same doctrine, a court decided in 1980 that the vanished ship IMBROS was "unseaworthy," and ruled against the vessel owner.<sup>6</sup>

In 2015, the EL FARO was en route to Puerto Rico, on its weekly transit carrying cargo from Jacksonville, Fla. The U.S. Coast Guard reported on Oct. 5 that the EL FARO lost engine power while in the eye of the hurricane with over 40-foot waves, eventually resulting in the loss of the ship and all 33 crew onboard.

The owner of the EL FARO filed a petition in admiralty court seeking to insulate itself from or limit its liability.<sup>7</sup> The families of the deceased seafarers asserted claims against the vessel owner and thereafter moved

for summary judgment, asking the court to declare that the EL FARO was unseaworthy because the vessel reportedly lost propulsion and sank. The ship was later discovered resting 15,000 feet below the surface.

Knowing that the vessel did not go down in calm seas, the claimants created the novel theory that every ship that sinks must be unseaworthy, arguing, "[i]f a vessel that does not float is not considered unseaworthy, then the term 'unseaworthiness' has no meaning." In response to the motion, the vessel owner submitted proof that the EL FARO "was in all ways fit for its intended voyage," that the loss of propulsion was unforeseeable and the intensity of the weather was uncertain.

On Sept. 26, 2016, the Florida district court denied the motion, stating, "Claimants have not presented any evidence, or even suggested that the EL FARO sank in calm waters. Having failed to make the necessary showing, Claimants are not entitled to a presumption of unseaworthiness on mere grounds that the vessel sank." As to the vessel's reported loss of propulsion, the court stated that the claimants could not presume that the loss of power was not related to Hurricane Joaquin. Allowing the case to continue, the court ruled that there still exists a genuine issue of fact in dispute regarding the seaworthiness of the EL FARO.<sup>8</sup>

Because of the intensity of Hurricane Joaquin, the EL FARO was not "presumed" to be unseaworthy when it sank; yet some proof of unseaworthiness of the vessel may allow an inference that it was the proximate cause of the sinking, pursuant to the MARINE SULPHUR QUEEN rationale. The EL

FARO's data recorder has since been recovered, but it remains a mystery as to why the vessel lost propulsion and sank. With this mystery unsolved, the EL FARO is just the latest in a long list of unexplained sinkings within the Bermuda Triangle.

## Conclusion

In a horror movie, the villain is often presumed to be long gone until suddenly surfacing out of nowhere to haunt the viewer. This is no horror movie, however, and the Bermuda Triangle once again takes center stage. We will have to await the ending (of the lawsuit) to determine if the EL FARO was unseaworthy or if the "Devil's Triangle" is back.

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1. *Mormino v. Leon Hess*, 1954 AMC 249 (S.D.N.Y. 1953).
2. *Commercial Molasses Corporation v. New York Tank Barge Corporation*, 1941 AMC 1697 (U.S. Supreme Court, 1941).
3. What is the Bermuda Triangle?, NOAA, Jan. 4, 2010 (<http://oceanservice.noaa.gov/facts/bermudatri.html>).
4. Does the Bermuda Triangle really exist? U.S.C.G. Frequently Asked Questions (<https://www.uscg.mil/history/faqs/triangle.asp>).
5. *In Re Marine Sulphur Queen*, 460 F.2d 89, 1972 AMC 1122 (2d Cir. 1972).
6. *Morewitz v. W. of Eng. Ship Owners Mut. Prot. & Indem. Ass'n (Lux.)*, 62 F.3d 1356, (11th Cir. 1995).
7. The legal action filed by the owner of EL FARO is explained in detail by author James E. Mercante, "Admiralty's Arsenal: Limitation of Liability," NYLJ Feb. 24, 2016.
8. *In Re Sea Star Line, LLC*, U.S. Dist. Ct., M.D. Fl., 15 cv 1297, Sept. 23, 2016, Schlesinger, J.