

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

CHARLES C. WALKER,

Petitioner,

v.

Case No: 6:13-cv-1894-Orl-36GJK

**LONNY A. MEAD and ALL PERSONS
AND ENTITIES THAT DID NOT FILE
A CLAIM OR ANSWER,**

Respondents.

ORDER

This cause comes before the Court on the Report and Recommendation of Magistrate Judge Gregory J. Kelly, filed on June 2, 2014 (Doc. 39). In the Report and Recommendation, Magistrate Judge Kelly recommends that the Court grant in part and deny in part Petitioner Charles C. Walker's ("Walker") Motion to Dismiss Claim of Respondent Lonny A. Mead ("Mead") or in the Alternative Motion for a More Definite Statement/Motion to Strike Jury Trial Demand/Motion to Strike Certain Affirmative Defenses/Motion to Strike Attorney's Fee Claim ("Motion") (Doc. 23). Doc. 39 at 12. No party has objected to the Report and Recommendation and the time to do so has expired.

The Court is in agreement with the Magistrate Judge that Mead's negligence claim should be dismissed, with leave to amend, for failure to state a claim upon which relief can be granted. *See id.* at 3–6. The Court also agrees that Mead's unseaworthiness claim should be dismissed, with prejudice, for failure to state a claim. *See id.* at 6–7; *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1335 (11th Cir. 1984) (explaining that the doctrine of seaworthiness does not apply

to passengers).¹ Next, the Court agrees that Mead's Sixth Affirmative Defense should be stricken, and that his remaining Affirmative Defenses should stand. *See* Doc. 39 at 8–9. The Court also agrees that Walker has failed to establish that Mead's request for a jury trial should be stricken at this time. *See id.* at 9–11. Finally, the Court agrees that Mead's request for attorney's fees and costs should be stricken. *See id.* at 11. Therefore, after careful consideration of the Report and Recommendation of the Magistrate Judge, in conjunction with an independent examination of the court file, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be adopted, confirmed, and approved in all respects.

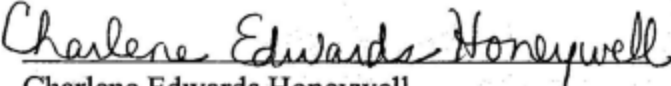
Accordingly, it is hereby **ORDERED**:

1. The Report and Recommendation of the Magistrate Judge (Doc. 39) is adopted, confirmed, and approved in all respects and is made a part of this Order for all purposes, including appellate review.
2. Petitioner Charles C. Walker's Motion (Doc. 23) is **GRANTED in part and DENIED in part** as follows:
 - a. Mead's negligence claim is **DISMISSED without prejudice**.
 - b. Mead's unseaworthiness claim is **DISMISSED with prejudice**.
 - c. Mead's Sixth Affirmative Defense is **STRICKEN**.
 - d. Mead's request in his Answer for attorney's fees and costs is **STRICKEN**.
 - e. The Motion is **DENIED** in all other respects.
3. The Court notes that Mead has already filed an Amended Claim. *See* Doc. 48. Therefore, there is no reason to give Mead leave to file an amended claim. The

¹ Because the Court is dismissing Mead's claims, the Court agrees with the Magistrate Judge that Walker's request in the alternative for a more definite statement should be denied as moot. *See* Doc. 39 at 7–8.

Court accepts Mead's Amended Claim as the claim filed in response to the Report and Recommendation.

DONE and **ORDERED** in Orlando, Florida on June 30, 2014.


Charlene Edwards Honeywell
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties
United States Magistrate Judge Gregory J. Kelly