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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MICHAEL SCHLADETZKY,

11 Plaintiff,

12 v.

13 JOHN DOE, et al.,

14 Defendants.

CASE NO. C19-0493JLR

ORDER GRANTING  
CLAIMANTS DOUGLAS  
MCKENZIE AND JEFFREY  
BIGSBY'S MOTION FOR  
SUMMARY JUDGMENT

15 **I. INTRODUCTION**

16 Before the court is Claimants Douglas McKenzie and Jeffrey Bigsby's  
17 (collectively, "Claimants") second motion for summary judgment.<sup>1</sup> (2d MSJ (Dkt. # 33);  
18 *see also* 2d MSJ Mem. (Dkt. # 34).) Neither Plaintiff Michael Schladetzky, nor any other  
19 party, filed an opposition to the motion. (*See generally* Dkt.) The court has reviewed the

20  
21 <sup>1</sup> Another claimant, Craig Reedy, has also appeared in this action. (*See* Reedy Claim  
22 (Dkt. # 16).) However, this motion seeks only summary judgment on the claims of Mr.  
McKenzie and Mr. Bigsby. (*See* 2d MSJ.) Accordingly, the court does not consider Mr.  
Reedy's claim in this motion.

1 motion, all submissions filed in support of the motion, the relevant portions of the record,  
2 and the applicable law. Being fully advised,<sup>2</sup> the court GRANTS the motion.

## 3 II. BACKGROUND

### 4 A. Factual Background<sup>3</sup>

5 During 2017 and 2018, Mr. Schladetzky and Mr. McKenzie kept their respective  
6 boats in berths next to each other at the Port of Everett Marina. (McKenzie Decl.  
7 (Dkt. # 30) at 2.) Mr. McKenzie is a heating, ventilation and air conditioning (“HVAC”)   
8 technician who “regularly install[s], repair[s] and maintain[s] HVAC systems. (*Id.* at 1.)  
9 He has worked with both marine and shore HVAC installations since 1985. (*Id.*) His  
10 work includes commercial, industrial, and domestic applications on marine HVAC  
11 systems ranging from pleasure boats to fishing vessels to cruise ships. (*Id.* at 1-2.) Mr.  
12 McKenzie has also worked on Dickinson diesel furnaces over the years and is familiar  
13 with their operation, maintenance, and repairs. (*Id.* at 2.)

14 While his boat was docked next to Mr. Schladetzky, Mr. McKenzie spent time on  
15 and around Mr. Schladetzky’s boat. (*Id.*) Mr. McKenzie noticed that the Dickinson  
16 diesel furnace on Mr. Schladetzky’s boat blew out thick black smoke and smelled of raw  
17 diesel fuel. (*Id.* at 2-3.) Based on his experience, Mr. McKenzie recognized that Mr.

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19 <sup>2</sup> Claimants do not seek oral argument (*see* 2d MSJ at 1), and the court does not consider  
20 oral argument to be helpful in its disposition of this motion, *see* Local Rules W.D. Wash. LCR  
7(b)(4).

21 <sup>3</sup> The court relies on the factual record established by Claimants in support of their  
22 motion, as Mr. Schladetzky has not submitted any evidence in opposition and cannot rely on the  
allegations of his complaint. (*See generally* Dkt.); *Moran v. Selig*, 447 F.3d 748, 759 (9th Cir.  
2006) (holding that the complaint may not be relied on at summary judgment stage).

1 Schladetzky's diesel furnace needed repairs and maintenance for safe and proper  
2 operation. (*Id.* at 3.) He also recognized that Mr. Schladetzky's furnace created a safety  
3 and fire hazard due to the pooling of fuel and the heat of the furnace. (*Id.*) Mr.  
4 McKenzie discussed the need for maintenance and repairs with Mr. Schladetzky on  
5 several occasions. (*Id.*) Mr. Schladetzky acknowledged the need for maintenance and  
6 repairs, but Mr. McKenzie did not observe that Mr. Schladetzky make any such repairs.  
7 (*See id.*)

8 On October 8, 2018, Mr. Schladetzky's boat burned at its slip, resulting in a total  
9 loss of the vessel and damage to the boathouse, including to Mr. McKenzie's slip and  
10 other adjoining slips. (*Id.*) Personal property of Mr. Bigsby, stored in Mr. McKenzie's  
11 boathouse, was also damaged. (2d MSJ Mem. at 2; *see also* Bigsby Claim (Dkt. # 14).)  
12 Earlier in October 2018, Mr. McKenzie observed black smoke and soot coming from Mr.  
13 Schladetzky's furnace along with "a raw fuel smell." (McKenzie Decl. at 3.) Mr.  
14 McKenzie opines, based on his "HVAC experience" and his observations of Mr.  
15 Schladetzky's operation of his Dickinson diesel furnace, that Mr. Schladetzky "was  
16 negligent in the maintenance and operation of his Dickinson diesel furnace causing the  
17 fire." (*Id.*)

18 Claimants submit the testimony of Kurt Serwold as an expert in marine fires and  
19 their causes. (*See* Serwold Decl. (Dkt. # 35).) Mr. Serwold has been the head of the  
20 Kitsap County District 18 Fire Department's marine fire detachment for 18 years and has  
21 20 years' experience responding to fires on pleasure boats and commercial vessels in the  
22 Puget Sound region. (*Id.* at 1-2.) Mr. Serwold has also received specialized training in

1 the causes of marine fires and how to prevent them, including a course at a national  
2 training center and regular U.S. Coast Guard briefings on vessel fires and safety. (*Id.* at  
3 2.) Based on his experience and training, Mr. Serwold opines that it is more probable  
4 than not that, “this fire was caused by the poor condition of the diesel furnace and the  
5 lack of maintenance.” (*Id.* at 3.) Mr. Serwold reaches his conclusion based a review of  
6 witness reports, photos of the fire and subsequent damage, and interviews with  
7 Claimants. (*Id.*)

## 8 **B. Procedural Background**

9 On April 30, 2019, Mr. Schladetzky filed a complaint, in admiralty and maritime  
10 jurisdiction, for exoneration from or limitation of liability under 46 U.S.C.  
11 §§ 30501-30511, related to the October 8, 2018 fire. (*See* Compl. (Dkt. # 1).) On May  
12 23, 2019, Claimants filed claims for damages against Mr. Schladetzky, alleging that he  
13 negligently caused the fire, which in turn caused damage to their property at the marina.  
14 (*See* Bigsby Claim; McKenzie Claim (Dkt. # 15).) Mr. Bigsby claims he lost \$12,537.75  
15 worth of personal property (Bigsby Claim at 4-5), and Mr. McKenzie claims he lost  
16 \$23,360.00 worth of personal property (McKenzie Claim at 4-5).

17 Mr. Schladetzky’s attorney withdrew from the case on September 6, 2019, and Mr.  
18 Schladetzky is currently *pro se*. (*See* Mot. to Withdraw (Dkt. # 18); 9/6/20 Order  
19 (Dkt. # 21).) On June 11, 2020, Claimants filed their first motion for summary judgment.  
20 (*See* 1st MSJ (Dkt. # 28); 1st MSJ Mem. (Dkt. # 29).) Mr. Schladetzky did not respond  
21 to Claimants’ motion. (*See generally* Dkt.) The court denied the motion, finding that  
22 Claimants had failed to prove causation. (10/5/20 Order (Dkt. # 32) at 6.) The court

1 concluded that Mr. McKenzie's opinion regarding Mr. Schladetzky's furnace was  
2 admissible as expert testimony and accepted it as true for the purposes of summary  
3 judgment. (*Id.*) However, the court found that Mr. McKenzie's opinion testimony  
4 concerning the cause of the fire was inadmissible because it was an opinion outside the  
5 scope of his expertise. (*Id.*) Accordingly, the court found that Claimants had failed to  
6 establish proximate cause as required for their negligence claim. (*Id.* at 7.)

7 Claimants filed a second motion for summary judgment on January 21, 2021. (*See*  
8 2d MSJ.) To prove causation, Claimants submitted Mr. Serwold's declaration, as  
9 described above. (*See Serwold Decl.*) The court now considers Claimants' motion.

### 10 III. ANALYSIS

11 The court first addresses whether Mr. Serwold's testimony regarding the cause of  
12 the fire is admissible as an expert opinion under Federal Rule of Evidence 702. It then  
13 turns to the questions of whether Claimants are entitled to summary judgment on their  
14 negligence claim and whether Mr. Schladetzky is entitled to limit his liability.

#### 15 A. Mr. Serwold's Expert Testimony

16 The court finds that Mr. Serwold's expert opinion is admissible. For expert  
17 testimony to be admissible under Federal Rule of Evidence 702, it must satisfy three  
18 basic requirements: (1) the expert witness must be qualified; (2) the testimony must be  
19 reliable; and (3) the testimony must be relevant. *Daubert v. Merrell Dow Pharm., Inc.*,  
20 509 U.S. 579, 589-91 (1993); Fed. R. Evid. 702.

21 A court considering the admissibility of expert testimony under Rule 702 acts as a  
22 gatekeeper and must ensure that the testimony is both reliable and relevant. *Daubert*, 509

1 U.S. at 589. *Daubert* requires that the court make “a preliminary assessment of whether  
2 the reasoning or methodology underlying the testimony is scientifically valid,” and  
3 “whether that reasoning or methodology properly can be applied to the facts in issue.”  
4 *Id.* at 592-93. Reliability “requires that the expert's testimony have ‘a reliable basis in the  
5 knowledge and experience of the relevant discipline.’” *United States v.*  
6 *Ruvalcaba-Garcia*, 923 F.3d 1183, 1188-89 (9th Cir. 2019) (quoting *Kumho Tire Co. v.*  
7 *Carmichael*, 526 U.S. 137, 149 (1999)). For evidence or testimony to be relevant, it must  
8 assist the trier of fact in determining a fact in issue or understanding the evidence.  
9 *Daubert*, 509 U.S. at 591. Whether to admit expert testimony is within the court’s  
10 discretion. *Kumho*, 526 U.S. at 152.

11 As a preliminary matter, the court finds that Mr. Serwold is qualified as an expert  
12 in marine fires and their causes. Under Rule 702, an expert may be qualified by  
13 extensive or specialized experience. Fed. R. Evid. 702; *Kumho*, 526 U.S. at 156. Mr.  
14 Serwold is a fire fighter with over 20 years’ experience, 18 of which he served as chief of  
15 the Kitsap County Fire Department’s marine division. (Serwold Decl. at 1). During his  
16 time in the marine detachment, Mr. Serwold has received specialized training in the  
17 causes of marine fires and how to prevent them. (*Id.* at 1-2). Because of his considerable  
18 experience and specialized training, the court finds that Mr. Serwold is qualified to offer  
19 expert testimony on marine fires and their causes.

20 Mr. Serwold’s testimony is also reliable and relevant. Mr. Serwold based his  
21 opinion on an interview of Mr. McKenzie, Mr. McKenzie’s declaration, an interview of  
22 Mr. Bigsby, witness reports, and photos of the fire damage taken both during and after

1 the fire. (*Id.* at 2-3.) An expert may properly base his or her opinion on the facts of the  
2 case, whether or not he or she personally observed them. *See* Fed. R. Evid. 703;  
3 *Sementilli v. Trinidad Corp.*, 155 F.3d 1130, 1134 (9th Cir. 1998) (citing *Daubert*, 509  
4 U.S. at 592). Based on his review of this material, Mr. Serwold concluded that “this fire  
5 was caused by the poor condition of the diesel furnace and the lack of maintenance” by  
6 Mr. Schladetzky. (Serwold Decl. at 2.) Mr. Serwold’s methods for assessing fire  
7 causation are accepted by the U.S. Coast Guard and the Kitsap County Fire Department.  
8 (*Id.*) Based on his considerable experience with fires of this nature and thorough review  
9 of the facts underlying this case, the court determines his testimony is reliable. (*See id.*)  
10 As to relevancy, Claimants supplied Mr. Serwold’s declaration to prove causation, a  
11 required element of their claim. (*See generally id.*) This testimony is relevant to a fact in  
12 issue, namely the cause of the fire. *See Daubert*, 509 U.S. at 591. Therefore, the court  
13 finds Mr. Serwold’s testimony to be both reliable and relevant and concludes that it is  
14 admissible. *See Ruvalcaba-Garcia*, 923 F.3d at 1188.

#### 15 **B. Claimants’ Motion for Summary Judgment**

16 Having determined what evidence is properly before it, the court now turns to  
17 Claimants’ motion for summary judgment. Claimants argue that Mr. Schladetzky’s  
18 negligence entitles them to damages and that Mr. Schladetzky is not entitled to limitation  
19 of liability. (2d MSJ at 4-5.) The court first outlines the standard applicable to  
20 unopposed motions for summary judgment before considering Claimants’ arguments.  
21 The court then determines that Claimants are entitled to summary judgment on their  
22 negligence claim and that Mr. Schladetzky is not entitled to limit his liability.

1                   1. Legal Standard

2                   Although Claimants’ motion for summary judgment is unopposed, a party’s  
3 failure to respond to a motion for summary judgment does not permit the court to grant  
4 the motion automatically. *See Heinemann*, 731 F.3d at 916 (“[A] motion for summary  
5 judgment may not be granted based on a failure to file an opposition to the motion.”).  
6 Rather, the court may only “grant summary judgment if the motion and supporting  
7 materials—including the facts considered undisputed—show that the movant is entitled  
8 to it.” Fed. R. Civ. P. 56(e)(3); *see Heinemann*, 731 F.3d at 917. Where facts asserted by  
9 the moving party in an unopposed motion are concerned, the court may “consider the fact  
10 undisputed for purposes of the motion.” Fed. R. Civ. P. 56(e)(2); *see Heinemann*, 731  
11 F.3d at 917. For purposes of this motion, the court accepts the undisputed testimony of  
12 Mr. McKenzie and Mr. Serwold as true. *See e.g., James v. FPI Mgmt.*, No. C18-  
13 0998RSM, 2019 WL 6468552 (W.D. Wash. Dec. 12, 2019); *Wong v. Navient Solutions,*  
14 *LLC*, No. C19-1233JLR, 2020 WL 978520 (W.D. Wash. Feb. 28, 2020). The existence  
15 of a scintilla of evidence in support of the non-moving party’s position is insufficient to  
16 allow the non-movant to survive summary judgment. *Anderson v. Liberty Lobby*, 477  
17 U.S. 242, 252 (1986). Rather, “there must be evidence on which the jury could  
18 reasonably find for the [non-moving party].” *Id.*

19                   2. Claimants’ Negligence Claim

20                   In maritime jurisdiction, claims are determined under general principles of  
21 maritime negligence rather than common law. *See Prince v. Thomas*, 25 F. Supp. 2d  
22 1045, 1047 (N.D. Cal. 1997); *Pope and Talbot v. Hawn*, 346 U.S. 406, 409 (1953)).



1 However, the elements of a maritime negligence cause of action are similar to those of  
2 common law negligence: a duty, a breach of the duty, proximate cause, and damages.

3 *Id.*

4 The court concludes that Claimants are entitled to summary judgment on their  
5 negligence claim. In its previous order, the court accepted as true Mr. McKenzie's  
6 undisputed expert testimony that Mr. Schladetzky was negligent in the maintenance and  
7 operation of his diesel furnace. (10/5/20 Order at 6; McKenzie Decl. at 3.) The court  
8 however, found that Mr. McKenzie was not qualified to opine that this negligence was  
9 the cause of the fire and accordingly denied Claimants' motion. (10/5/20 Order at 6.) As  
10 explained above, Claimants have provided admissible expert testimony, in the form of  
11 Mr. Serwold's declaration, upon which a jury could reasonably find that Mr.  
12 Schladetzky's operation of the furnace was the cause of the fire. (*See* Serwold Decl. at  
13 3.) Mr. Serwold's testimony is undisputed, and the court accepts it as true for purposes  
14 of this motion. Mr. Serwold notes that heaters and furnaces on boats are the most  
15 common causes of fires on vessels. (*Id.*) Further, based on the smell of raw fuel and the  
16 billowing black smoke coming from Mr. Schladetzky's furnace, Mr. Serwold opines that  
17 the negligently maintained furnace more likely than not caused this particular fire. (*Id.*)  
18 Based on this undisputed opinion, the court finds that Claimants have established  
19 proximate causation.

20 The court also finds that Claimants have established damages. Claimants outline  
21 in detail their personal property that was destroyed in the fire. (*See* McKenzie Claim at  
22 4-5 (claiming \$23,360.00 in damages); Bigsby Claim at 4-5 (claiming \$12,537.75 in

1 damages.) These details and their corresponding values are undisputed (*see generally*  
2 Dkt.), and the court accepts them as true. The court therefore concludes that Claimants  
3 were damaged by Mr. Schladetzky's negligence. Based on the foregoing, the court  
4 concludes that Claimants are entitled to summary judgment on their negligence claim.

### 5 3. Limitation of Liability

6 Mr. Schladetzky's complaint requests that his liability be limited under 46 U.S.C.  
7 § 30505(a). (Compl. ¶ 7.) Under the statute, owners may limit their liability to the value  
8 of their vessel and any pending freight. *See* 46 U.S.C. § 30505(a). However, owners  
9 may not limit their liability for maritime negligence that occurs within their "privity or  
10 knowledge." *Waterman S.S. Corp. v. Gay Cottons*, 414 F.2d 724, 728 (9th Cir. 1969); 46  
11 U.S.C. § 30505(b). "Privity or knowledge" may be actual or constructive. *Wash. State*  
12 *Dep't of Transp. v. Sea Coast Towing Inc.*, 148 Fed. App'x 612, 613 (9th Cir. 2005).  
13 Therefore, "privity or knowledge" may be established even if the owner has not availed  
14 himself of whatever "means of knowledge are reasonably necessary to prevent conditions  
15 likely to cause losses." *Id.* at 613-14 (quoting *Waterman*, 414 F.2d at 732) (internal  
16 quotation marks omitted).

17 Mr. Schladetzky knew that his diesel furnace required maintenance and was a  
18 potential fire hazard because Mr. McKenzie told him so. (McKenzie Decl. at 3.) Mr.  
19 McKenzie states that he regularly spent time around Mr. Schladetzky's boat, noticed the  
20 condition of the furnace, and informed Mr. Schladetzky on "a number of occasions" that  
21 the furnace required maintenance or repair. (*Id.*) Mr. Schladetzky also acknowledged the  
22 issues with his furnace, informing Mr. McKenzie that he would address the problem.

1 (*Id.*) However, Mr. McKenzie never observed that any repairs or maintenance on the  
2 furnace took place, nor did he observe the condition of the furnace improve prior to the  
3 fire. (*Id.*) It is therefore undisputed that Mr. Schladetzky had actual knowledge of the  
4 danger posed by his furnace and knew that it required maintenance. Because Mr.  
5 Schladetzky had actual knowledge of his furnace's dangerous condition, the court finds  
6 that his negligence occurred within his "privity or knowledge." *See, e.g., Shaver Transp.*  
7 *Co. v. Chamberlain*, 399 F.2d 893, 895 (9th Cir. 1968) (denying limitation where  
8 testimony showed managers had actual knowledge of improperly guarded drive shaft);  
9 *Joia v. Jo-Ja Serv. Corp.*, 817 F.2d 908, 913 (1st Cir. 1987) (denying limitation where  
10 ship manager knew deck was slippery with oil and told crewman to clean the deck).  
11 Thus, Mr. Schladetzky is not entitled to limit his liability under 46 U.S.C. § 30505(a),  
12 and Claimants are entitled to judgment in the amount of their claims.

#### 13 IV. CONCLUSION

14 Based on the foregoing analysis, the court GRANTS Claimants' motion for  
15 summary judgment (Dkt. # 33). Claimants are entitled to judgment in the amount of their  
16 claims. (*See* Bigsby Claim; McKenzie Claim.) Because another claimant remains, the

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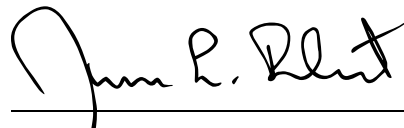
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1 court declines to issue final judgment at this time. *See* Fed. R. Civ. P. 54(b); (Reedy  
2 Claim).

3 Dated this 18th day of March, 2021.

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6 JAMES L. ROBART  
7 United States District Judge  
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