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# Legal ferment expected to follow sinking of El Faro

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## TOTE Maritime calls on pair of law firms after loss of US-flag ro-ro

A raft of cargo claims and potential wrongful death claims are expected to follow the sinking of TOTE Maritime's El Faro, with the diverse cargo mix on the ro-ro with container capacity likely to lead to a complex case, experts say.

The US owner is understood to have tapped litigators at law firms Burke & Parsons and Holland & Knight after the 5,330-lane-metre El Faro (built 1975) sank late last month off the Bahamas after losing propulsion and facing Hurricane Joaquin.

TOTE is widely expected to file a limitation of liability action in the US federal court, which would serve to corral any claims into the same case.

"They don't want to be defending this matter all over the United States, so the limitation proceeding will give them one place for all the claims to be filed," said Squire Patton Boggs partner Brian Starer, an experienced casualty litigator.

With a six-month deadline to launch a limitation case, it is not seen as likely that the company will move to file such a case early, despite media reports to the contrary. Even lawsuits filed against the company now can be drawn back into a limitation proceeding.

"Our focus has been on supporting and caring for the family members, loved ones and friends of those aboard the El Faro," said TOTE chief executive Anthony Chiarello last week.

### Too early to seek cause

At this stage, it is too early to speculate on a cause of the incident but legal experts point to a variety of considerations that may emerge in a legal fight: the vessel's stability, maintenance, container stowage and lashing of the rolling cargo, and the decision-making regarding venturing out into what would become Hurricane Joaquin.

"We want to know what the conversations were — if any — between the captain of the bridge and the company about that decision and whether this has anything to do with the sinking," said Brian Beckcom, a lawyer at VB Attorneys who specialises in maritime personal injury cases. "These ships can withstand hurricanes. This indicates to me that it was something more than bad weather, that there were some issues with this ship."

The lawyer also raised questions about the work a riding crew is said to have been carrying out on the vessel during the journey.

TOTE has said that the ship has passed US Coast Guard (USCG) and classification society inspections, as well as internal audits.

US liability limits for cargo claims are based on the value of the vessel plus pending freight in casualties. But in this case, since the vessel sank, there is no value.

Limits related to the loss of crew, however, are more generous to claimants, at \$420 times the gross tonnage of the ship. With El Faro's 31,500 gross tons (gt), according to Equasis, that would come out to a \$13.2m liability cap.

The ship had insurance from Steamship Mutual, according to Equasis.

Meanwhile, the National Transportation Safety Board (NTSB) is expected to take 12 to 18 months to finish its report on the incident, although vice-chairman Bella Dinh-Zarr recently said that the agency will come out with safety notifications earlier if those are needed.

As the lead investigative agency on the collision, the NTSB has carried out interviews on scene in Jacksonville and went aboard the El Yunque (built 1976), El Faro's sistership.

US-flag El Faro was inspected by the USCG and classification society American Bureau of Shipping (ABS) in March. USCG records show it was not cited for any deficiencies during the inspection, which took place at San Juan, Puerto Rico.

In fact, the ship has not been cited for a deficiency in a flag-state inspection since December 2013, and it was in layup at the time, USCG records show.

The El Yunque, however, was cited for deficiencies after an ABS inspector identified wastage in parts of a lifeboat davit in June, according to inspection records. But the davits passed weight tests and the vessel was allowed to continue sailing while repairs were made.

The ship ultimately passed the inspection. A former port-state-control officer shown the USCG data said that from the information currently publicly available, it does not appear to have been a significant deficiency.

BY ERIC MARTIN STAMFORD NIKOLAS ROUMPIS LONDON 16 October 2015, 00:00 GMT