

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARION HILL ASSOCIATES, INC.,	)	
	)	CIVIL ACTION No. 20-379
	)	
Plaintiff,	)	
	)	
vs.	)	District Judge Robert J. Colville
	)	Magistrate Judge Lisa Pupo Lenihan
	)	
JOHN PUSHAK, III,	)	
	)	
	)	<a href="#">ECF No. 22</a>
Defendant.	)	
	)	

**REPORT AND RECOMMENDATION  
ON CLAIMANT PUSHAK’S MOTION TO STAY THIS ACTION AND LIFT  
INJUNCTION AGAINST PROSECUTION OF HIS STATE COURT SUIT**

**I. RECOMMENDATION**

It is respectfully recommended that the Motion to Stay and Lift Injunction to Prosecute State Court Suit (ECF No. 22) be granted in part and denied in part as set forth below.

**II. REPORT**

Pending before the Court is a Motion to Stay this federal court action and allow the Claimant, John Pushak III to pursue his personal injury case in state court while stipulating to the vessel owner’s right to subsequently litigate the issue of limitation of liability in federal court pursuant to the Vessel Owners’ Limitation of Liability Act, 46 U.S.C. § 30501, *et seq.* (“the Act”). The dispute among the parties concerns the language of the proposed stipulations that must accompany the Stay Order.

**A. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

This lawsuit stems from an alleged injury to John Pushak III (“Pushak”) while working

on a barge under the employ of Marion Hill Associates (“Marion Hill”). Mr. Pushak alleged significant injuries in a lawsuit he filed in the Court of Common Pleas of Allegheny County, Pennsylvania, at docket number GD 19-011959. He asserts a claim pursuant to the Jones Act, 46 U.S.C. § 30104. Marion Hill filed this federal lawsuit to assert a claim for exoneration from and/or limitation of liability for any and all losses arising from this accident pursuant to the limitation of liability provisions set forth at 46 U.S.C. §§ 30501 -30512, specifically §30511. ECF No. 1, ¶ 26. It requested an approval by this Court for the Ad Interim Stipulation for Value, Stipulation for Costs and Letter of Understanding as well as the Issuance of Required Notice and an Injunction. ECF No. 3. The Court granted that Motion on March 17, 2020. ECF No. 8.

Pushak is now requesting that this case be stayed and the injunction lifted so that he can try his case in state court. ECF No. 22. He has filed Stipulations in Support of the Motion as required by the Act, as well as a Brief. ECF Nos. 22-1 and 23. On June 22, 2020 the undersigned held a conference to discuss this Motion. It was determined at that time that Marion Hill had some issues with the proposed Stipulations. Counsel were instructed by the Court to try to reach a resolution and, if none could be reached, then Marion Hill would file its Response in Opposition. ECF No. 26. While the parties reached agreement on some issues, they could not resolve all, and the Response in Opposition was filed on July 7, 2020. ECF No. 28. Claimant filed a Reply on July 21, 2020. ECF No. 30. The Motion is now ripe for disposition.

## **B. LEGAL STANDARD**

The Vessel Owners’ Limitation of Liability Act, 46 U.S.C. § 30501, *et seq.*, provides in Section 30505, entitled “General limit of liability”:

(a) In General.- Except as provide in section 30506 of this title, the liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the

proportionate share of the liability of any one owner shall not exceed that owner's proportionate interest in the vessel and pending freight.

(b) Claims Subject to Limitation.- Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.

In conflict with this is the "Savings to Suitors" clause, 46 U.S.C. § 1333(1), which states:

The district courts shall have original jurisdiction, exclusive of the Courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving To suitors in all cases all other remedies to which they are otherwise entitled.

The Supreme Court resolved the conflict by holding that it is within the discretion of the district court to permit a seaman to continue his suit in state court against the vessel owner after the owner has filed suit under the Act, provided that the seaman files stipulations that protect the vessel owner's rights under the Act. *Langnes v. Green*, 282 U.S. 531, 543-44 (1931) and *Ex parte Green*, 286 U.S. 437, 438-39 (1932), *see also*, *Lewis v. Lewis & Clark Marine, Inc.* 531 U.S. 438, 454 (2001).

The Third Circuit has held that in a single claimant, inadequate fund situation, a federal district court must lift its injunction as to the state court action against the shipowner if proper protective stipulations are filed by the claimant. *Gorman v. Cerasia*, 2 F.3d 519, 524 (3d Cir. 1994) ("district court must lift the stay provided that the claimant stipulates that the admiralty court has exclusive jurisdiction to determine all issues concerning the owner's limitation of liability under the Act."). *Gorman* set forth the following two required stipulations: 1. Claimant must waive any claim of res judicata regarding the issue of limited liability based on the state court judgment and 2. Claimant must concede the shipowner's right to litigate all of the issues

regarding limitation of liability in the federal court. *Id.*

### C. ANALYSIS

There is no dispute that this case involves a single claimant. Claimant alleges that his injuries and wage loss will exceed the limitation fund value of \$240,000. ECF No. 23, p. 4. Marion Hill does not concede that damages will exceed the limitation fund value but does not need to do so for purposes of this Motion. Marion Hill's objections are that the proposed stipulations accompanying the Motion do not adequately protect its rights under the Act. ECF No. 28, p. 1. Its issues are each identified and discussed below.<sup>1</sup>

#### 1. Is Claimant's Stipulation Overbroad and Premature Regarding His Maintenance and Cure Claim?

Claimant stipulated that Marion Hill is entitled to litigate all issues regarding limitation of liability in federal court **except** issues concerning his claim for general maritime law maintenance and cure. ECF No. 22-1, ¶1. Claimant's position is that Marion Hill's obligation for maintenance and cure is a personal contract and not subject to the protections of the Act. Marion Hill argues that this issue has not been decided in this circuit. It further argues that even if said claim does fall outside of the Act, the federal court must be able to determine what portion, if any, of the state court award against it includes amounts which are the substantial equivalent of cure, citing *Brister v. A.W.I., Inc.*, 946 F.2d 350, 361 (5<sup>th</sup> Cir. 1991)( A seaman can only receive one recovery for his medical expenses regardless if it is characterized as maintenance and cure or negligence). Later in its brief, Marion Hill states that it "is not contesting the fact that a maintenance and cure claim is not subject to the protections of the Act." ECF No. 28, p. 5.

Although *Brister* is not binding upon this Court, it appears to be an equitable

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<sup>1</sup> The Court is not reviewing all of the stipulations, only those with which Marion Hill takes issue.

conclusion that Marion Hill should not be required to pay twice for the same damage element and Claimant does not argue this. Claimant does argue, however, that the federal court should not have the power to reexamine the state court award for duplication of damages. At this point, the Third Circuit has not ruled on the issue and it does not seem to be necessary to include in the stipulations proposed to the Court that the maintenance and cure claim is definitely outside the purview of the Court. The Court therefore recommends that the portion of Paragraph 1 of the proposed stipulations be amended to delete the language regarding the maintenance and cure claim.

## 2. Do Claimant's Stipulations Adequately Waive Res Judicata?

Claimant's second stipulation states that he "waives any claim of *res judicata* relevant to the issue of limitation of liability pursuant to the provisions of the Act based on any jury or non-jury trial decision or judgment he may obtain against MHA in state court." ECF No. 22-1 ¶2. Marion Hill states that, in addition to his state court lawsuit, Mr. Pushak has also filed an administrative claim under the Longshore and Harbor Workers' Act, 33 U.S.C. § 901, *et seq.* In addition to being the owner of the vessel involved, Marion Hill is also Mr. Pushak's employer; therefore, any administrative claim filed by him would also be against it. Marion Hill requests that the stipulation in question be amended to include the administrative claim.

In addition, Marion Hill argues that when a limitations action is filed in federal court all claims and proceedings against the vessel owner must cease. 46 U.S.C. § 30511(c). It seems to be requesting that the administrative claim be stayed (although this is not entirely clear) and, in addition, that Claimant's Stipulation 6 also be amended to include the federal court's continuing jurisdiction over the administrative claim.

Claimant responds that the administrative claim was only filed prophylactically, as Marion Hill has argued that Pushak did not qualify as a Jones Act seaman. Claimant points out that there is no case law for Marion Hill's position that it is entitled to file a federal limitation action under the Act in response to a Longshore and Harbor Workers' claim. Indeed, Marion Hill cites no case but refers to language in the Act referencing "all claims and proceedings." 46 U.S.C. § 30511(c). Finally, without further elaboration, Claimant argues that the stipulations Marion Hill is asking for are far broader than what the Third Circuit required in *Gorman v. Cerasia*, 2 F.3d 519 (3d Cir. 1994).

*Gorman* did not involve an injury claim by a seaman. It was a personal injury action arising out of a boating accident so there was no administrative claim. The issue in that case involved a question of limitation over third party claims for indemnification or contribution against the vessel owner and whether that would constitute a multiple claims case or a single claim case. The court stated that "as long as the priority stipulations filed in the district court ensure that the shipowner will not be exposed to competing claims to the limited fund representing more than the value of his or her vessel, the district court may authorize the parties to proceed with the state court action." *Id.* at 526. In *Gorman* the claims were filed by different claimants. Here, we have multiple claims filed by the same claimant. Regardless, the Court finds that the same theory applies. That is, under the Act, the vessel owner should not be exposed to claims that exceed the value of the vessel. The Act states that "all claims and proceedings against the owner related to the matter in question shall cease." 46 U.S.C. § 30511(c). The administrative claim filed by Pushak is a claim against the owner relating to the matter in question.

Therefore, the Court agrees with Marion Hill and recommends that any stipulation

concerning waiver of res judicata should include a decision or judgment in any proceeding or forum. The Court further recommends that Stipulation 6 also be amended to provide for continuing jurisdiction of this Court over any other proceedings filed by Pushak against Marion Hill in any forum.

### 3. Is Claimant's Proposed Order Overly Broad?

Marion Hill argues that the proposed stipulations contain superfluous language which, if incorporated into the Order as requested, would constitute both legal conclusions and advance rulings that would be inappropriate. Marion Hill circles back to the maintenance and cure claim, arguing that the Stipulations should not state definitively that the maintenance and cure claim is not subject to the protections of the Act, as that is not the definitive law of this circuit. Basically, it is arguing that such a stipulation simply should not be included in any Order lifting the stay. That issue was ruled upon above.

Marion Hill then argues that the issue of whether exoneration from liability should be litigated in the federal court also remains an open issue in the Third Circuit. Claimant's proposed stipulation is that he "neither stipulates nor agrees that MHA is entitled to litigate the issue of *exoneration* from liability in this court, as he is not required to so stipulate under applicable law." ECF No. 22-1 ¶3. Marion Hill argues that the Stipulation should not state definitively that an exoneration stipulation is **not** required, and any such stipulation would be both premature and unnecessary to lift the stay.

Claimant responds that the Third Circuit has not stated that an exoneration stipulation is required, and argues that it has strongly implied that such a stipulation is specifically not required. *Complaint of Consolidation Coal Co.*, 123 F.3d 126, 133-34 (3d Cir. 1997), *cert. denied*, 523 U.S. 1054 (1998). Marion Hill should therefore not be

permitted to retain any right to litigate its exoneration from liability in this Court within the stipulations.

The Court notes that Marion Hill has agreed that it does not intend to re-litigate the issue of exoneration in this Court if the state court finds it to be liable. ECF No. 28, p. 5. The Court agrees with Claimant that the court in *Consolidation Coal* did state that it has “serious doubts” that a Claimant in a limitation action must waive res judicata for both limitation and exoneration to proceed in state court. *Id.* However, the circuit made no definitive ruling in that matter and has not done so since. Similar to the issue of maintenance and cure referred to above, as the Third Circuit has not definitively ruled on the issue of exoneration, the Court finds that it is not appropriate to include a definitive statement about exoneration in the stipulations adopted by the Court. This stipulation is not necessary in order to lift the stay.

#### **D. CONCLUSION**

It is respectfully recommended that the Motion to Stay and Lift Injunction to Prosecute State Court Suit (ECF No. 22) be granted in part and denied in part as set forth above. Specifically, the Court recommends that the Motion to Stay be granted and that the stipulations be amended as follows: 1) the portion of Paragraph 1 of the proposed stipulations be amended to delete the language regarding the maintenance and cure claim; 2) any stipulation concerning waiver of res judicata should include a decision or judgment in any proceeding or forum; 3) Stipulation 6 should be amended to provide for continuing jurisdiction of this Court over any other proceedings filed by Pushak against Marion Hill in any forum; and 4) no definitive statement about exoneration be included in the stipulations adopted by the Court.



The Court further recommends that, if this Recommendation is adopted by the District Court, the parties be instructed to file proposed joint stipulations that comport with the Recommendation.

In accordance with the Magistrate Judges Act, [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) and (C), and Rule 72.D.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of service of a copy of this Report and Recommendation to file objections. Any party opposing the objections shall have fourteen (14) days from the date of service of objections to respond thereto. Failure to file timely objections will constitute a waiver of any appellate rights.

Dated: July 23, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read 'L. P. Lenihan', written over a horizontal line.

LISA PUPO LENIHAN  
United States Magistrate Judge