IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE INTRACOASTAL TUG AND BARGE COMPANY LLC, AS OWNER OF THE T/V DMO READY, FOR EXONERATION FROM OR LIMITATION FROM LIABILITY	§ § § § § §	**NO. 4:20-cv-3152**

ORDER

Before the Magistrate Judge in this case that has been referred for all pretrial proceedings is Claimant David Rutledge's Motion to Bifurcate (Document No. 12), in which Claimant seeks to bifurcate this limitation of liability action to allow him to prosecute his personal injury claims in state court pursuant to the Savings to Suitors clause in 28 U.S.C. § 1333(1). Having considered the motion, Petitioner's Response, the additional briefing, and the applicable law, including FED. R. CIV. P. 42(b), it is ORDERED, for the reasons set forth below, that Claimant's Motion to Bifurcate (Document No. 12) is GRANTED.

I. INTRODUCTION

This is a limitation of liability action filed by Petitioner Intercoastal Tug and Barge Company LLC, as owner of the T/M DMO READY, seeking to limit its liability for the events of March 10, 2020, to the value of the T/M DMO READY. Two claimants filed claims in this limitation action: David Rutledge, who claims to have sustained personal injuries when a portion of the dock he was working on collapsed after disembarking from the T/M DMO READY; and Ascend Performance Materials Texas, Inc., the entity that owned the dock which collapsed. Rutledge, with his Motion to Bifurcate, seeks to bifurcate the claims and issues that can be decided by a jury in state court from the limitation claims and issues that should be decided by the Court in this limitation action.

According to Rutledge, such a bifurcation will allow the Court in this limitation action to "determine whether Petitioner was negligent (or whether their vessel was unseaworthy)," and also "determine whether Petitioner's negligence/unseaworthiness occurred within Petitioner's 'privity or knowledge,'" and reserve "all remaining issues (i.e. other parties' fault, apportionment of liability, and damages) to a state court jury" if Rutledge so wishes. Petitioner Intercoastal Tug and Barge Company LLC ("IntraTug"), in response to the Motion to Bifurcate, argues that because there is more than one Claimant and because the alleged value of the two Claimant's claims exceed the value of the vessel, all of Rutledge's claims should, for purposes of economy and efficiency, be decided in this limitation action.

II. APPLICABLE LAW

Pursuant to FED. R. CIV. P. 42(b), "[f]or convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial." Courts have broad discretion under Rule 42(b) to order separate trials. *Fid. & Cas. Co. v. Mills*, 319 F.2d 63, 63 (5th Cir. 1963); *Rosales v. Honda Motor Co.*, 726 F.2d 259, 261 n.3 (5th Cir. 1984); *Chi., R. I. & P. R. Co. v. Williams*, 245 F.2d 397, 404 (8th Cir. 1957). In the context of a limitation of liability action, Rule 42(b) has been used, as urged by Rutledge, to bifurcate limitations issues from tort liability and damages issues. *In re Orion Marine Constr., Inc.*, 2021 U.S. Dist. LEXIS 124168 *1, *14 (S.D. Tex. 2021); *Odfell Chemical Tankers AS v. Herrera,* 471 F. Supp 30 790, 796 (S.D. Tex. 2020); *In re Savage Inland Marine*, 2020 WL 10355875 (E.D. Tex. Dec. 16, 2020).

A *Limitation Act* case allows shipowners to limit their liability of damages to the value of the vessel and freight, if the negligent actions occurred without the shipowner's privity or

knowledge with the limitation of liability issues to be decided at a federal bench trial. *Id.* at *5-*6. Suits brought under the *Limitation Act* fall *exclusively* under the admiralty jurisdiction of federal courts, *Odfell Chemical Tankers,* 471 F. Supp 30 at 793, and, as such, the limitation issues must be decided in federal court. Claims and issues beyond those provided for in the *Limitation Act* can be pursued in a state court forum under the Savings to Suitors Clause. But, there is no automatic right for such claims to be litigated in a state court forum. Instead, because the claims could be considered in a limitations action, albeit separate from the limitations issues, it is for the Court to determine, under Rule 42(b), whether such claims should all proceed in the same limitations case. In making that determination the Court must consider whether the requested bifurcation will further the interests of convenience, avoid prejudice, and either expedite or economize the judicial process.

III. DISCUSSION

Here, Rutledge asks that the case be bifurcated to preserve IntraTug's right to a federal bench trial on the limitation issues, while allowing him to preserve his right to a state court jury trial on any remaining issues. (Doc. 21). As set forth above, the *Limitation Act* provides shipowners with the opportunity to limit liability of damages if negligent action occurred without the shipowner's privity or knowledge. *In re Savage Island,* 2020 WL 10355875 at *2. Such limitation issues, including whether Petitioner was negligent and/or whether the vessel was unseaworthy, and whether Petitioner's negligence/unseaworthiness was within Petitioner's privity or knowledge, must be determined by the federal court in a bench trial. *Id.* Neither side disputes this. What is in dispute is whether any remaining issues and claims should be resolved in state court or in this same federal limitation action.

In reaching the conclusion that bifurcation is warranted, it must first be noted that IntraTug's initial opposition to the proposed bifurcation rests on an inaccurate premise – that Rutledge is seeking a bifurcation that would allow this limitation action and the state court proceeding to proceed simultaneously. Rutledge's motion did not ask for a bifurcation so that the state court proceeding could proceed at the same time as this limitation action; instead, Rutledge's motion made it reasonably clear that he sought bifurcation of the limitation issues, which he sought to have decided first, prior to a resumption of the state court action. As such, any argument by IntraTug that bifurcation is not warranted because there are multiple claimants, and there are no *Odeco* value stipulations, has no bearing on the resolution of Rutledge's motion to bifurcate.[1]

That leaves IntraTug's Rule 42 arguments that bifurcation would not be economical or beneficial insofar as much of the evidence to be considered in this limitation action would also be considered in the state court proceeding. The undersigned finds those arguments unavailing, particularly in light of the compelling analysis undertaken by the Court in *Archer Daniels Midland Co. v. M/T Am. Liberty,* 2020 WL 1889123 (E.D. La. 2020).

In *Archer Daniels,* the Court held that bifurcating a limitations action met the purposes of Rule 42(b). *Id.* In *Archer Daniels*, the M/T AMERICAN LIBERTY, an oil/chemical tanker owned by American Petroleum Tankers X, LLC, was assisted in travelling by the tugboat M/V JOSEPHINE ANNE, owned by Bisso Offshore, LLC. *Id.* The AMERICAN LIBERTY allegedly lost control and/or engine power. The AMERICAN LIBERTY collided with the M/V AFRICAN GRIFFON that was moored at the Cargill grain facility. The AMERICAN LIBERTY also collided with two barges moored alongside the AFRICAN GRIFFON, a hopper barge and a crane barge called the DON D. The collision allegedly caused injury to workers on another vessel, the DON

[1] In order for a state court proceeding to occur simultaneously with a federal court proceeding, all claimants must enter stipulations to protect the rights of the shipowner under the *Limitation Act*. *Odeco,* 74 F.3d at 675.

D, during the collision and caused the DON D to break free and travel down river out of control. The Archer Daniels Midland Company's grain elevator facility and the M/V EVER GRAVE, which was loading at the facility, were also impacted by the collisions, and allegedly suffered damage. There was a last collision between the vessels and a fleet of stationary barges owned by American River Transportation Co., LLC. Claimants Clement Bell, Ryheme Knighten, and Robert Sayles filed personal injuries in state court due to the accident involving the AMERICAN LIBERTY. The owners of three of the ships involved, the AMERICAN LIBERTY, the JOSEPH ANNE, and the DON D, all filed actions for limitation of liability. The three claimants later filed a motion to bifurcate the proceedings.

The Court in *Archer Daniels* looked to Rule 42(b) to analyze whether bifurcation would either economize and expedite the proceedings or help to avoid prejudice. In concluding that bifurcation was appropriate, the Court in *Archer Daniels* wrote:

> The limitation proceedings require the Court to determine first whether shipowner liability exists, and second, whether the shipowner had privity or knowledge of relevant acts of negligence or unseaworthiness. *See Cupit v. McClanahan Contractors, Inc.*, 1 F.3d 346, 348 (5th Cir. 1993); *see also* 46 U.S.C. § 30505 (permitting vessel owners without "privity or knowledge" to limit liability to "the value of the vessel and pending freight"). These questions require the Court to engage in a more limited inquiry than it would in a trial that also included quantification of multiple parties' damages claims. Furthermore, liability issues will overlap across the three limitation proceedings, and the Court can coordinate discovery on liability and privity and knowledge issues to promote an expedited pretrial schedule and trial. Damages issues, on the other hand, will involve separate and potentially complicated questions, such as the economic complexities of large property-loss claims. Indeed, more than one party argued that discovery and the determination of economic losses would be especially protracted because high water conditions will complicate their ability to make repairs and quantify their losses.[36] Resolving the limitation issues first will enable the Court to decide the core issues driving the litigation expeditiously, and may eliminate the need for a trial of some or all damages issues as a result of settlements or rulings on the merits.
>
> Bifurcation will also help to avoid prejudice by preserving the claimants' ability to seek a jury trial on damages if limitation is denied. *See Pershing Auto Rentals, Inc. v. Gaffney*, 279 F.2d 546, 552 (5th Cir. 1960) (noting claimants' "apprehension that ... [they] will be irrevocably denied their right to jury trials," but stating that "the admiralty court in its decree denying the right to limitation can make certain that

> [claimants] are free to pursue the petitioner in any other forum having requisite jurisdiction"). Indeed, the Fifth Circuit has recognized the " 'recurring and inherent conflict' between the exclusive jurisdiction vested in admiralty courts by the Limitation of Liability Act and the common law remedies embodied in the saving to suitors clause of 28 U.S.C. § 1333." *Texaco, Inc. v. Williams*, 47 F.3d 765, 767 (5th Cir. 1995) (citations omitted) (quoting *In re Dammers & Vanderheide & Scheepvaart Maats Christina B.V.*, 836 F.2d 750, 754 (2d Cir. 1988)). But "[b]ifurcation has proved to be an effective tool to help ease the conflict" and accommodate "the presumption in favor of jury trials ... embodied in the 'savings to suitors' clause." *In re Suard Barge Serv., Inc.*, No. 96-3185, 1997 WL 358128, at *2 (E.D. La. June 26, 1997) (quoting *In re Bergeron Marine Serv., Inc.*, No. 93-1845, 1994 WL 236374, at *1 (E.D. La. May 24, 1994)).

Id. at *3.

Here, like *Archer Daniels*, allowing bifurcation would allow the liability of the parties to be determined before a jury trial on damages occurs. The elimination of a need for a jury trial serves to expedite and economize the judicial process. Should there be no liability found, Rutledge would be left with the choice of whether to pursue his claim before a jury in state court. This choice could eliminate the need for a jury trial and, at the same time, preserve Rutledge's right to a jury trial, albeit one in state court. Because Rutledge's motion for bifurcation will further the interests of economy and convenience, it should be granted. Accordingly, it is

ORDERED that Claimant's Motion to Bifurcate (Document No. 21) is GRANTED. Pursuant thereto, the Court shall preside over a liability trial which will determine: (1) whether the vessel owner was negligent and if so (2) whether privity or knowledge exists. If the limitation is denied, the Court will dissolve the limitation injunction and permit the parties to proceed in state court.

Signed at Houston, Texas, this _____11/2/2021.

Frances H. Stacy

FRANCES H. STACY
UNITED STATES MAGISTRATE JUDGE