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

ANTONIO IBARRA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-20-4227
	§	
PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, et al.,	§	
	§	
	§	
Defendants.	§	

ORDER OF REMAND

Plaintiff, Antonio Ibarra ("Plaintiff"), initiated this action on August 21, 2019, by filing Plaintiff's Original Petition ("Plaintiff's Original Petition") in the 152nd District Court of Harris County, Texas, Cause No. 2019-58342, against defendant, the Port of Houston Authority of Harris County, Texas ("POHA"), asserting claims under the Texas Tort Claims Act ("TTCA"), Texas Civil Practice & Remedies Code, Chapter 101.[1] On August 21, 2020, Plaintiff filed an Amended Petition, adding claims for negligence and gross negligence against defendants Peter Döhle Schiffahrts-KG ("Döhle"), Hapag-Lloyd AG ("Hapag-Lloyd"), Konecranes Inc., and Konecranes Finland OY f/k/a Konecranes VLC Corporation ("Konecranes Finland").[2] On December 11, 2020, Döhle filed a Notice of Removal

[1]Plaintiff's Original Petition, Exhibit C-II to Notice of Removal, Docket Entry No. 1-6, pp. 1-7. All page numbers for docket entries in the record refer to the pagination inserted at the top of the page by the court's electronic filing system, CM/ECF.

[2]Plaintiff's Amended Original Petition ("Plaintiff's Amended Petition"), Exhibit C-II to Notice of Removal, Docket Entry No. 1-6, pp. 37-54.

(Docket Entry No. 1) asserting that "Plaintiff's claims are maritime tort claims within the admiralty and maritime jurisdiction of this Court under 28 U.S.C. § 1333 and Rule 9(h) of the Federal Rules of Civil Procedure."[3] Pending before the court is Plaintiff's Motion to Remand and Memorandum in Support ("Plaintiff's Motion to Remand") (Docket Entry No. 12) in which plaintiff seeks not only an order remanding this action to the 152nd District Court of Harris County, Texas, but also seeks costs and attorney's fees incurred as a result of the removal. For the reasons explained below, Plaintiff's Motion to Remand will be granted, but plaintiff's request for costs and attorney's fees will be denied.

I. Factual and Procedural Background

Asserting that he is an individual residing in Harris County, Texas, and that defendant POHA is a political subdivision of the State of Texas doing business in Harris County, Plaintiff filed his Original Petition in state court on August 21, 2019.[4] Plaintiff's Original Petition asserts jurisdiction under the Texas Civil Practices and Remedies Code § 101.021[5] and requests a jury trial.[6]

---

[3]Notice of Removal, Docket Entry No. 1, pp. 1-2 ¶ 4.

[4]Plaintiff's Original Petition, p. 1, Exhibit C-II to Notice of Removal, Docket Entry No. 1-6, p. 1.

[5]Id. at 2 ¶ 4.1.

[6]Id. at 3 ¶ 6.1.

Plaintiff's Original Petition alleges that on or about August 23, 2017, he suffered personal injuries while working as a longshoreman in the course and scope of his employment with Cooper/Ports America at the C-2 warf located at the Barbour's Cut Terminal in the Port of Houston.[7] Plaintiff alleges that while standing aboard the docked container vessel, M/V ALLEGORIA, he reached over the side of the vessel to grab rain jackets placed inside a box located on a spreader bar attached to a crane that was owned and operated by defendant POHA. Plaintiff alleges that as he reached to grab the box, he was electrocuted and thrown backwards, causing him to strike his back and head on the deck of the vessel, and that as a result, he sustained neurological and orthopedic injuries.[8]

On August 21, 2020, Plaintiff filed Plaintiff's Amended Petition in state court adding claims against defendants Döhle, Hapag-Lloyd, Konecranes Inc., and Konecranes Finland for negligence and gross negligence. Plaintiff's Amended Petition alleges that on the date he suffered injury the M/V ALLEGORIA was owned by Döhle and operated by Hapag-Lloyd, that the crane was manufactured by Konecranes Finland, distributed by Konecranes, and operated by the POHA.[9] Plaintiff's Amended Petition asserts jurisdiction over the

---

[7] Id. at 3 ¶¶ 7.1-7.3.

[8] Id. ¶¶ 7.2-7.3.

[9] Plaintiff's Amended Petition, Exhibit C-II to Notice of Removal, Docket Entry No. 1-6, pp. 42-43 ¶¶ 6.4-6.8.

POHA under the Texas Civil Practices and Remedies Code § 101.021,[10] and alleges that

> [t]his action is further brought against Defendants DÖHLE and HAPAG "at law" pursuant to the savings to suitors clause set forth in 28 U.S.C. § 1333(1), general maritime law, and 33 U.S.C. §§ 905(b) and 933 of the Longshore and Harbor Workers' Compensation Act.[11]

Like Plaintiff's Original Petition, Plaintiff's Amended Petition requests a jury trial.[12]

On December 11, 2020, Döhle filed a Notice of Removal that removed Plaintiff's state court action to this court. Under the heading "Jurisdictional Basis for Removal," Döhle states that

> 4. Plaintiff was employed as a longshoreman by Cooper/Ports America and alleges he was working aboard Döhle's vessel the M/V ALLEGORIA. Plaintiff's claims are maritime tort claims within the admiralty and maritime jurisdiction of this Court under 28 U.S.C. § 1333 and Rule 9(h) of the Federal Rules of Civil Procedure.
>
> 5. Because Plaintiff asserts claims aris[ing] under the General Maritime Law, this Notice of Removal is filed on the basis of jurisdiction conferred by 28 U.S.C. §§ 1333 and 1441(a).
> 6. A federal court's authority to hear cases in admiralty flows initially from the Constitution, which "extend[s]" federal juridical power "to all cases of admiralty and maritime jurisdiction."
>
> 7. 28 U.S.C. § 1441 provides as follows: "Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the

---

[10] Id. at 40-41 ¶¶ 3.1-3.2.

[11] Id. at 41 ¶ 3.3.

[12] Id. ¶ 5.1.

> defendants, to the district court of the United States for the district and division embracing the place where such action is pending." A suit within the admiralty jurisdiction is a "civil action . . . of which the district courts of the United States have original jurisdiction," and no Act of Congress expressly prohibits removal of such action. Accordingly, a case within the admiralty jurisdiction may be properly removed to federal court. Exxon Mobil Corp. v. Starr Indemnity & Liability Insurance Co., [181 F. Supp. 3d 347, 361] (S.D. Tex. 2015) (Hittner, J.) [("the Court finds because it has original admiralty jurisdiction and § 1441(b)'s plain language no longer bars removal, the Savings to Suitors clause in § 1333 does not require remand where all defendants have consented to a jury trial")]; Exxon Mobil Corp. v. Starr Indemnity & Liability Co., [Civil Action No. H-14-1147, 2014 WL 2739309, *2] (S.D. Tex. June 17, 2014) (Atlas, J.) [("after the 2011 amendment to § 1441, general maritime cases are removable")]; Carrigan v. M/V AMC AMBASSADOR, Civil Action No. 13-03208, [2014 WL 358353, *2] (S.D. Tex. January 31, 2014) (Werlein, J.) [("for the reasons well explained in Ryan [v. Hercules Offshore, Inc., 945 F. Supp. 2d 772 (S.D. Tex. 2013) (Miller, J.)], Plaintiff's maritime claims are removable")].
>
> 8. To the extent that Plaintiff would have been entitled to a jury trial in state court, Döhle consents to a jury trial in federal court.
>
> 9. Pursuant to 28 U.S.C. §§ 1333 and 1441(a), and without prejudice to any defense Döhle may have to Plaintiff's claims, Döhle removes this action from the 152nd District Court of Harris County, Texas to the United States District Court for the Southern District of Texas — Houston Division.[13]

On January 8, 2021, Plaintiff filed Plaintiff's Motion to Remand seeking remand to state court as well as costs and expenses, including attorney's fees, as provided for in 28 U.S.C. § 1447(c).[14]

---

[13]Notice of Removal, Docket Entry No. 1, pp. 1-3 ¶¶ 4-9.

[14]Plaintiff's Motion to Remand, Docket Entry No. 12, p. 6 ¶ 18.

Döhle responded with the Memorandum of Defendant Peter Döhle Schiffahrts-KG in Opposition to Plaintiff's Motion to Remand ("Döhle's Memorandum in Opposition") (Docket Entry No. 16). Subsequently, Plaintiff filed Plaintiff's Reply in Support of His Motion to Remand ("Plaintiff's Reply") (Docket Entry No. 22), and Döhle filed Defendant Peter Döhle Schiffahrts-KG's Sur-Reply Memorandum in Opposition to Plaintiff's Motion to Remand ("Döhle's Sur-Reply in Opposition") (Docket Entry No. 23).

II. Plaintiff's Motion to Remand

A. Standard of Review

Except as otherwise expressly provided by Act of Congress, a defendant or defendants in a civil action brought in state court may remove the action to federal court if the action is one over which the district courts of the United States have original jurisdiction. 28 U.S.C. § 1441. Motions for remand are governed by 28 U.S.C. § 1447(c), which states in pertinent part that

> [a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.

"The removing party bears the burden of showing that federal jurisdiction exists and that removal was proper." Manguno v. Prudential Property & Casualty Insurance Co., 276 F.3d 720, 723

(5th Cir. 2002). Because removal jurisdiction raises significant federalism concerns, the removal statute is strictly construed, "and any doubt about the propriety of removal must be resolved in favor of remand." Gasch v. Hartford Accident & Indemnity Co., 491 F.3d 278, 281-82 (5th Cir. 2007). "An order remanding a removed case to state court 'may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal.'" Martin v. Franklin Capital Corp., 126 S. Ct. 704, 707 (2005) (quoting 28 U.S.C. § 1447(c)).

B. Analysis

Asserting that "Defendant Döhle removed this lawsuit without a valid legal basis,"[15] Plaintiff argues that

> [r]emoval is therefore defective, and this case should be remanded to state court for further proceedings. In its Notice of Removal, Döhle states that it removed Mr. Ibarra's state-court case "pursuant to 28 U.S.C. § 1333 and 28 U.S.C. § 1441(a)." Although [§] 1333 provides district courts with original jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction," it does so while "saving to suitors in all cases all other remedies to which they are otherwise entitled." Courts, including this one, have interpreted the latter clause, the so-called "Saving to Suitors Clause," to mean that maritime cases in which the plaintiff asserts only state-law claims may not be removed to federal court solely on the basis of admiralty or maritime jurisdiction."[16]

Plaintiff also seeks costs and expenses, including attorney's fees, incurred as a result of Döhle's removal under 28 U.S.C. § 1447(c).[17]

---

[15]Plaintiff's Motion to Remand, Docket Entry No. 12, p. 1.

[16]Id. at 1 ¶ 1.

[17]Id. at 6 ¶ 18.

Citing, inter alia, Baris v. Sulpicio Lines, Inc., 932 F.2d 1540 (5th Cir.), cert. denied sub nom. Baris v. Caltex Petroleum, Inc., 112 S. Ct. 430 (1991), Döhle responds that by failing to raise any procedural defect in his Motion to Remand, Plaintiff has waived any argument that the saving-to-suitors clause is a procedural defect that precludes removal. Asserting that the saving-to-suitors clause does not expressly prohibit removal of admiralty cases, and that admiralty cases were traditionally non-removable because there was no statutory basis for removal, Döhle argues that the saving-to-suitors clause is not a procedural bar to removal, and that language in cases holding to the contrary is dicta. Döhle also argues that any complaint based on Plaintiff's right to a jury trial is moot because defendants have consented to trial by jury.[18]

Plaintiff replies that he has properly moved to remand because "[t]he Saving to Suitors Clause, as Courts have recognized in the well-established jurisprudence interpreting it, is an exception to the Court's original jurisdiction over maritime and admiralty claims."[19] Plaintiff argues the Döhle's reliance on Baris and other cases is inapt because those case are all distinguishable.[20]

---

[18]Döhle's Memorandum in Opposition, Docket Entry No. 16, p. 26.

[19]Plaintiff's Reply, Docket Entry No. 22, p. 1.

[20]Id.

1. Plaintiff Has Not Waived Any Argument that the Saving-to-Suitors Clause is a Procedural Defect Precluding Removal

Asserting that "Plaintiff only raises the issue of subject matter jurisdiction in his Motion to Remand,"[21] and that "[t]he Motion to Remand does not contain a single sentence that would suggest that he contends that there were any procedural defects that would preclude removal,"[22] Döhle argues that "Plaintiff's failure to move to remand based on any procedural defects constitutes a waiver of any such defects."[23] Citing Denman by & through Denman, Jr. v. Snapper Division, 131 F.3d 546, 548 (5th Cir. 1998); Baris, 932 F.2d at 1540; and Lu Junhong v. Boeing Co., 792 F.3d 805 (7th Cir. 2015), and asserting that

> [u]nder § 1447(c), procedural defects must be raised within 30 days of removal, and, like the plaintiffs in Denman, Baris and Lu Junhong v. Boeing Co., if Plaintiff wanted to argue that the saving-to-suitors clause is a procedural bar to removal, he had to raise it within 30 days of the filing of the notice of removal.[24]

Döhle argues that "[n]ot having raised . . . any . . . procedural defect, Plaintiff has waived the right to make this argument."[25]

Section 1447(c) states that "[a] motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the

---

[21]Döhle's Memorandum in Opposition, Docket Entry No. 16, p. 12.

[22]Id. at 13.

[23]Id.

[24]Döhle's Memorandum in Opposition, Docket Entry No. 16, p. 14.

[25]Id.

notice or removal under section 1446(a)." 28 U.S.C. § 1447(c). As the Fifth Circuit has stated, "[o]n its face, [§] 1447(c)'s 30-day requirement governs the timeliness of the filing of a motion to remand, not the time limit for raising removal defects." BEPCO, L.P. v. Santa Fe Minerals, Inc., 675 F.3d 466, 471 (5th Cir. 2012) (citing Schexnayder v. Entergy Louisiana, Inc., 394 F.3d 280, 284 (5th Cir. 2004) ("By its own terms, § 1447(c) is limited to motions, not issues.")). In BEPCO the Fifth Circuit held that

> [g]iven the unambiguous statutory language, we reject any suggestion that the timing of the presentation of a removal defect – rather than the submission of the remand motion – is what matters for a timeliness analysis under [§] 1447(c). . . . Thus, we hold that for a timeliness analysis under [§] 1447(c), the central inquiry is whether the remand motion satisfies the 30-day requirement.

Id.

Döhle filed its Notice of Removal on December 11, 2020, and Plaintiff filed his Motion to Remand on January 8, 2021, less than 30 days later. Plaintiff therefore filed his Motion to Remand within the 30-day period that § 1447(c) prescribes for seeking remand "on the basis of any defect other than lack of subject matter jurisdiction." Moreover, Plaintiff's Motion to Remand asserts that "Defendant Döhle removed this lawsuit without a valid legal basis,"[26] and that "[r]emoval is therefore defective, and this case should be remanded to state court for further proceedings."[27] In support of his Motion to Remand Plaintiff argues that

---

[26]Plaintiff's Motion to Remand, Docket Entry No. 12, p. 1.

[27]Id.

> [i]n its Notice of Removal, Döhle states that it removed Mr. Ibarra's state-court case "pursuant to 28 U.S.C. § 1333 and 28 U.S.C. § 1441(a)." Although [§] 1333 provides district courts with original jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction," it does so while "saving to suitors in all cases all other remedies to which they are otherwise entitled." Courts, including this one, have interpreted the latter clause, the so-called "Saving to Suitors Clause," to mean that maritime cases in which the plaintiff asserts only state-law claims may not be removed to federal court solely on the basis of admiralty or maritime jurisdiction.[28]

The court therefore concludes that Plaintiff has not only timely moved to remand based on a procedural defect, but has also timely argued that the removal was improper because of the saving-to-suitors clause.

The cases that Döhle cites in support of its argument that Plaintiff waived his ability to seek remand based on the saving-to-suitors clause by failing to characterize the alleged defect as procedural, instead of jurisdictional, do not support Döhle's argument. In Denman the defendants removed the case based on diversity of citizenship. One of the defendants, Andrews, was a resident of the state where suit was filed. The plaintiff, Hunter, moved to remand, arguing that the court lacked subject matter jurisdiction because of the presence of a non-diverse defendant. The district court held that there was complete diversity and declined to address whether removal was improper because of the presence of an in-state defendant, concluding that the plaintiff

---

[28] Id. at 1 ¶ 1.

had waived that objection by failing to raise it in his motion to remand. The Fifth Circuit affirmed, holding that

> Hunter failed to make the proper objection to removal. Had Hunter moved to remand on the ground that removal was improper because Andrews was an in-state defendant, remand would have been required. Because he did not, the district court did not err in denying the motion to remand.

Denman, 131 F.3d at 548 (citing Williams v. AC Spark Plugs Division of GM Corp., 985 F.2d 783, 786 (5th Cir. 1993), and In re Digicon Marine, Inc., 966 F.2d 158, 160 (5th Cir. 1992) (both explaining that any defects other than lack of subject matter jurisdiction are waivable procedural defects)). Denman is inapposite because unlike the motion to remand at issue there, which did not raise the procedural ground for removal, i.e., the presence of an in-state defendant, Plaintiff's motion to remand is based on the saving-to-suitors clause, which Döhle argues raises a procedural — as opposed to a jurisdictional — defect.

In Baris suit was filed in state court under the saving-to-suitors clause. There was no diversity of citizenship. The defendants removed, and the plaintiffs did not timely move to remand. On appeal following the district court's grant of defendants' motion for summary judgment, an issue arose whether the federal court had jurisdiction over an action that had been improperly removed but was otherwise within the court's original jurisdiction. The Fifth Circuit concluded that the case was within the court's original jurisdiction and that the removal was

procedurally, but not substantively, defective. Stating that procedural defects, unlike substantive defects, are waivable, the Fifth Circuit concluded that the district court had jurisdiction, even if the removal was procedurally defective. 932 F.3d at 1546. Baris is inapposite because unlike the plaintiffs there, who failed to file a timely motion to remand, Plaintiff timely moved to remand within the 30-day period that § 1447(c) prescribed for seeking remand "on the basis of any defect other than lack of subject matter jurisdiction."

Döhle cites Lu Junhong for its statement that

> [p]erhaps it would be possible to argue that the saving-to-suitors clause itself forbids removal, without regard to any language in § 1441. But plaintiffs, who have not mentioned the saving-to-suitors clause, do no make such an argument. We do not think that it is the sort of contention about subject-matter jurisdiction that a federal court must resolve even if the parties disregard it. Our conclusion that § 1333(1) supplies admiralty jurisdiction shows that subject-matter jurisdiction exists. Plaintiffs thus could have filed the[ir] suits directly in federal court (as many victims of this crash did). If the saving-to-suitors clause allows them to stay in state court even after the 2011 amendment, they are free to waive or forfeit that right — which given the scope of § 1333(1) concerns venue rather than subject-matter jurisdiction. Boeing therefore was entitled to remove these suits to federal court.

792 F.3d at 818. As with Denman and Baris, Döhle's reliance on Lu Junhong is misplaced because unlike the Lu Junhong plaintiffs, who failed to raise the saving-to-suitors clause as a basis for their motion to remand, Plaintiff here has raised the saving-to-suitors clause as the basis for his pending motion to remand.

Because Plaintiff timely filed his Motion to Remand within the 30-day period prescribed by § 1447(c) for seeking remand on the basis of any defect other than lack of subject matter jurisdiction, and because Plaintiff's Motion to Remand is based on his argument that the saving-to-suitors clause precludes removal, the court concludes that Plaintiff has not waived his ability to make that argument by failing to characterize it as procedural as opposed to jurisdictional.

2. Döhle's Removal is Barred by the Saving-to-Suitors Clause

Asserting that the saving-to-suitors clause does not expressly prohibit removal of admiralty cases, and that language in opinions holding that admiralty cases are non-removable is dicta based on the former lack of a statutory basis for removal of such cases, Döhle argues that the saving-to-suitors clause was once — but is no longer — a procedural bar to removal.[29] Asserting that Plaintiff has waived his right to a jury trial, Döhle also argues that any complaint in this regard is moot since defendants have consented to a trial by jury.[30]

(a) The Saving-to-Suitors Clause is a Procedural Bar to Removal of Admiralty and General Maritime Claims

The federal removal statute generally permits a defendant to remove any civil action to federal court that falls within the

---

[29]Döhle's Memorandum in Opposition, Docket Entry No. 16, pp. 15-25.

[30]Id. at 25-27.

original jurisdiction of the district courts. See 28 U.S.C. § 1441(a). Under 28 U.S.C. § 1333(1), federal district courts "have original jurisdiction, exclusive of the courts of the States, of any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(1). See also U.S. Const. art. III, § 2 cl. 1 ("The judicial power [of the United States] shall extend . . . to all cases of admiralty and maritime jurisdiction."). "Under 28 U.S.C. § 1333(1), a plaintiff may elect to bring admiralty and maritime claims in state rather than federal court." In re Eckstein Marine Service, L.L.C., 672 F.3d 310, 315 (5th Cir. 2012) (citing Baris, 932 F.3d at 1542-43). However, because general maritime-law claims do not "arise under" the laws of the United States, see American Insurance Co. v. 356 Bales of Cotton, 26 U.S. 511, 1828 WL 2951, *1 (1828), the longstanding rule in this and other circuits has been that admiralty and general maritime claims filed in state court are removable only in the presence of diversity of citizenship or a federal question other than the maritime nature of the claims. See, e.g., Barker v. Hercules Offshore, Inc., 713 F.3d 208, 219-20 (5th Cir. 2013) (citing Romero v. International Terminal Operating Co., 79 S. Ct. 468, 482-84 (1959)). See also In re Eckstein Marine, 672 F.3d at 315-16 (recognizing that admiralty and maritime claims filed in state court "'cannot be removed in the absence of diversity' unless 'there exists some basis for jurisdiction other than admiralty'")

(quoting Baris, 932 F.3d at 1542-43, and Poirrier v. Nicklos Drilling Co., 648 F.2d 1063, 1066 (5th Cir., Unit A June 1981)).

Acknowledging that "[t]here is a long tradition that admiralty cases could not be removed,"[31] Döhle argues that the "tradition derived from the fact that until 1948, the removal statute only provided for removal based upon diversity or federal question jurisdiction,"[32] but that following amendment of the removal statute in 1948 to provide for removal of "any civil action," and following unification of the Admiralty Rules and the Federal Rules of Civil Procedure in 1966 "suits in admiralty" became just another form of "civil action" subject to removal under 28 U.S.C. § 1441.[33] Döhle argues that

> there were certain aspects of pre-unification admiralty practice that were preserved, and the drafters of the new Federal Rules of Civil Procedure took great care to specify those areas where admiralty cases were to be treated differently than other civil actions. Rule 14(c) was added to continue the traditional admiralty practice of tendering a third party defendant directly to the plaintiff; Rule 38(e) expressly provided that there was no right to a jury trial in admiralty cases; and Rule 82 provided for different venue rules in admiralty cases. The drafters of the unified Federal Rules of Civil Procedure presumably intended for admiralty cases to be treated as civil actions for all other purposes, and were presumably aware that § 1441(a) provided for removal of "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." Accordingly, had the drafters of the unified Federal Rules intended to treat cases based on admiralty jurisdiction differently from other civil

---

[31] Id. at 19.

[32] Id.

[33] Id. at 19-22.

> actions for purposes of removal, presumably Fed. R. Civ. P. 2 would have included a statement to the effect that "A case over which the district courts would have original jurisdiction based on 28 U.S.C. § 1333 shall not be considered a civil action for purposes of 28 U.S.C. § 1441." The only logical conclusion to draw from this omission is that the promulgators of the unified Federal Rules of Civil Procedure intended for admiralty cases to be treated like any other "civil action" and could be removed in accordance with the plain language of § 1441.[34]

Döhle also argues that it

> has been unable to find a single post-unification Fifth Circuit case that has actually **held** that § 1441(a) does not mean what it says, namely, that a maritime case is a "civil action . . . of which the district courts of the United States have original jurisdiction [that] may be removed" or that the saving-to-suitors clause expressly prohibits removal.[35]

Recognizing that whether admiralty and general maritime claims are removable absent an independent basis of federal jurisdiction is an open question in this circuit, Döhle acknowledges that "the absence of any Fifth Circuit authority on this point was recently confirmed by the Fifth Circuit itself in Sangha v. Navig8 Shipmanagement Private Ltd., 882 F.3d 96 (5th Cir. 2018)."[36] Döhle explains that

> In Sangha, the defendant removed the case based on admiralty jurisdiction. The district court denied the motion to remand, and dismissed the case for lack of personal jurisdiction. The Fifth Circuit was presented the opportunity to rule on the issue of whether the case had been properly removed, but affirmed the judgment of the district court dismissing the case based on a lack of

---

[34] Id. at 22.

[35] Id. at 24.

[36] Id.

personal jurisdiction. In doing so, however, the court confirmed that this is an open issue in the Fifth Circuit:

> [D]espite Cpt. Sangha's claims to the contrary, the question of subject-matter jurisdiction presented in this case — whether the saving-to-suitors clause of the federal maritime statute prohibits removal of general maritime claims absent an independent basis for federal jurisdiction in light of Congress's December 2011 amendment to the federal removal statute — is not clear. The vast majority of district courts considering this question have maintained that such lawsuits are not removable. See Langlois v. Kirby Inland Marine, LP, 139 F. Supp. 3d 804, 809-10 (M.D. La. 2015) (collecting cases). However, because there is no binding precedent from this circuit, see Riverside Construction Co., Inc. v. Entergy Mississippi, Inc., 626 F. App'x 443, 447 (5th Cir. 2015) [(per curiam)] (noting that "[t]he Fifth Circuit has not yet spoken directly on this issue"), there remains a consequential number of district courts that have held to the contrary. See, e.g., Ryan v. Hercules Offshore, Inc., 945 F. Supp. 2d 772 (S.D. Tex. 2013); see also Langlois, 139 F. Supp. 3d at 809 (collecting cases). This disagreement, lopsided as it might be, highlights the conceptual difficulty of and uncertainty surrounding this issue.

Id. at 100. Döhle would point out that the cases collected in Langlois [holding] that removal is impermissible, invariably fail to discuss Baris or the effect of the unification of the rules in 1966, and rely instead on the long tradition of non-removability stemming from the absence of a statutory basis for removal of admiralty cases and the dictum in Romero.[37]

In 2011 Congress amended the removal statute, 28 U.S.C. § 1441. The spilt of authority mentioned in Sangha refers to the disagreement among some courts in this circuit about the

[37] Id. at 24-25.

amendment's impact on the removability of general maritime-law claims brought under the saving-to-suitors clause. In Ryan, 945 F. Supp. 2d at 772, Judge Miller held that the 2011 amendments to § 1441 made general maritime-law claims removable on their own, without an independent jurisdictional basis. After Ryan several courts addressing the issue adopted its reasoning. See, e.g., Wells v. Abe's Boat Rentals Inc., Civil Action No. H-13-1112, 2013 WL 3110322, at *2-*3 (S.D. Tex. June 18, 2013) (Rosenthal, J.); Carrigan v. M/V AMC AMBASSADOR, Civil Action No. H-13-03208, 2014 WL 358353, at *2 (S.D. Tex. Jan. 31, 2014) (Werlein, J.); Exxon Mobil Corp. v. Starr Indemnity & Liability Co., No. H-14-1147, 2014 WL 2739309, at *2 (S.D. Tex. June 17, 2014) (Atlas, J.). Nevertheless, the majority of district courts considering this question — including this court — have rejected the Ryan court's reasoning and reaffirmed that general maritime claims are not removable absent some other independent basis for federal jurisdiction. See Perio v. Titan Maritime, LLC, Civil Action No. H-13-1754, 2013 WL 5563711, at *10-*15 (S.D. Tex. Oct. 8, 2013) (Lake, J.); and Clear Lake Marine Center, Inc. v. Leidolf, Civil Action No. H-14-3567, 2015 WL 1876338, at *1-*2 (S.D. Tex. April 22, 2015) (Lake, J.).

In Leidolf the court found persuasive several cases holding that the saving-to-suitors clause operates independently of the removal statute to exclude from original federal jurisdiction general maritime claims brought by plaintiffs in state court. 2015

WL 1876338, at * 2 (citing Parker v. U.S. Environmental Services, LLC, Civil Action No. G-14-292, 2014 WL 7338850, at *3-*6 (S.D. Tex. Dec. 22, 2014) (Ellison, J.); and Figueroa v. Marine Inspection Services, LLC, 28 F. Supp. 3d 677, 680-82 (S.D. Tex. 2014) (Ramos, J.)). The court found similarly persuasive the related argument that because saving clause cases filed in state court are necessarily brought at law, not in admiralty, and because § 1333 does not grant district courts subject matter jurisdiction over maritime claims brought on the "law side" of the court, it follows that absent diversity or a federal question such claims do not fall within the court's original jurisdiction as required for removal under § 1441. Id. (citing, inter alia, Coronel v. AK Victory, 1 F. Supp. 3d 1175, 1187 (W.D. Wash. 2014)). Courts rejecting Ryan argue that the 2011 amendment to § 1441 did not change this well-established rule.

Before the 2011 amendment, § 1441 stated that

> (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending . . .
>
> (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. § 1441(a) & (b) (West 2006). The current version of subsection (a) as it pertains to the removability of claims within the original jurisdiction of the district courts is unchanged. However, subsection (b) now states

> **Removal based on diversity of citizenship. —**
>
> **(1)** In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.
>
> **(2)** A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. § 1441(b). See Ryan, 945 F. Supp. 2d at 774-775 (quoting the current and former versions of § 1441). Because the 2011 amendment eliminated the first sentence of the former § 1441(b), "the Ryan opinion concluded that the amendment of § 1441(b) . . . eliminated the requirement of a separate jurisdictional trigger for maritime cases." Figueroa, 28 F. Supp. 3d at 680. In other words, the Ryan court concluded that, after the amendment, admiralty claims were removable, even in the absence of diversity of citizenship or some other federal question, because the amendment removed the § 1441(b) language, which stated that an independent basis for federal jurisdiction must exist, if diversity was absent, before removal would be allowed. Ryan, 945 F. Supp. 2d at 774-78. See also Rutherford v. Breathwite Marine Contractors, Ltd., 59 F.

Supp. 3d 809, 813 (S.D. Tex. 2014) ("[T]he [Ryan] court noted that the amendment removed language in § 1441(b) limiting removal without regard to diversity to claims brought under the Constitution, treaties or laws of the United States. Therefore, the court found that admiralty claims could be removed to federal court pursuant to 28 U.S.C. § 1441(a)") (citations omitted).

Courts rejecting Ryan have concluded that if Congress had wanted to enact such a sweeping change in the law, it would have made this intent clear. In Leidolf the court explained that

> Congress does not appear to have intended such a sweeping expansion of district courts' removal jurisdiction, and the Fifth Circuit has not overruled its prior holdings. Absent controlling precedent to the contrary, the court is not inclined to infer that such a "revolutionary procedural change ha[s] undesignedly come to pass." See Romero, 79 S. Ct. at 478. To the extent that there is any doubt in the matter, however, the court must resolve it against the exercise of federal jurisdiction.

2015 WL 1876338, at *2. The majority of courts within this district have found a growing number of flaws with the Ryan holding, and even the author of the Ryan opinion has reconsidered and rejected its conclusion that the 2011 amendment to § 1441 made admiralty claims removable absent an independent basis for federal jurisdiction. See Sanders v. Cambrian Consultants (CC) America, Inc., 132 F. Supp. 3d 853, 858 (S.D. Tex. 2015). In Sanders the court explained that

> Sanders has presented a sophisticated argument that was not raised in the Ryan case. When the court was considering Ryan, there had been no development of caselaw or legal commentary on how the amendment to the

> removal statute impacted admiralty claims in light of historical precedent and the Savings to Suitors clause. While the Fifth Circuit has not had the opportunity to address the amended statute since the Ryan case, numerous legal scholars have considered the issue. The best example of scholarly work on the issue, in the court's opinion, can be found in Gregoire v. Enterprise Marine Services, LLC, 38 F. Supp. 3d 749 (E.D. La. 2014) (Duval, J.). While Gregoire is an opinion, not a law review article, it thoroughly explores the history of the law as it relates to admiralty jurisdiction and removal of admiralty cases. It then provides a convincing argument why the amendments to the removal statute do not impact the historical bar on removal of maritime claims filed at law in state court. Specifically, when a maritime claim is filed in state court under the Savings to Suitors Clause, it is transformed into a case at law, as opposed to admiralty. The federal district courts thus do not have original jurisdiction under the Savings to Suitors Clause, which provides original jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

Id. at 858 (quoting 28 U.S.C. § 1333 (emphasis added); and citing Gregoire, 38 F. Supp. 3d at 759-62).

None of the arguments advanced by Döhle in opposition to Plaintiff's Motion to Remand persuade the court to deviate from its prior conclusion that admiralty and general maritime claims are not removable absent some other independent basis for federal jurisdiction. See Perio, 2013 WL 5563711, at *10-*15; Leidolf, 2015 WL 1876338, at *1-*2. Neither Döhle's arguments regarding the unification of the Admiralty Rules and the Federal Rules of Civil Procedure, nor comparison of the plain language of the current and former versions of § 1441 reveals a clear intent on the part of Congress to change the law, or override existing precedent. Adopting Döhle's arguments would require the court to accept a

novel argument that changes more than 200 years of precedent interpreting the grant of admiralty jurisdiction in 28 U.S.C. § 1333(1). See Gregoire, 38 F. Supp. 3d at 754 (citing Coronel, 1 F. Supp. 3d at 1178). Because the federal removal statute must be "strictly construed, and any doubt about the propriety of removal must be resolved in favor of remand," Gasch, 491 F.3d at 281-82, absent an unambiguous directive from Congress, the Supreme Court, or the Fifth Circuit, the court declines to adopt such a novel argument and, instead, concludes that the saving-to-suitors clause is a procedural bar to removal of admiralty and general maritime claims that are initially filed in state court. As stated in Coronel:

> At the end of the day, this court's role is to adhere to the precedent before it. In this order, the court seeks to give effect to not only the judiciary's long-standing interpretation of the savings clause of [§] 1333, but also the considerations expressed in Romero and echoed in later cases precluding removal of savings clause claims. In doing so, the court does not comment on the continued viability of these considerations or the expediency of the end result.
>
> Rather, the court remains mindful that at the core of the federal judicial system is the principle that the federal courts are courts of limited jurisdiction. . . As such, statutes extending federal jurisdiction . . . are narrowly construed . . ., and federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance. In light of these principles, the court concludes that federal jurisdiction over Plaintiff's general maritime claims does not lie.

1 F. Supp. 3d at 1189 (citations omitted).

While pursuant to § 1333(a) this court would have original jurisdiction over this action had Plaintiff filed it here,

"'original jurisdiction' evaporated when he filed his action in state court, making [this case] nonremovable on the basis of admiralty jurisdiction." Figueroa, 28 F. Supp. 3d at 682.

(b) Plaintiff Has Not Waived His Right to a Jury Trial

Asserting that Plaintiff has waived his right to a jury trial, Döhle argues that any complaint in this regard is moot because defendants have consented to a trial by jury.[38] Döhle's argument that Plaintiff has waived his right to a jury trial is based on its argument that Plaintiff "waived his right to object to any procedural defects by not raising them in his Motion to Remand."[39] Because for the reasons stated in § II.B.1, above, the court has already concluded that plaintiff has not waived his ability to object to procedural defects by failing to raise any such defect in his Motion to Remand, the court is not persuaded that Plaintiff has waived his right to a jury trial. Nor is the court persuaded that any objection Plaintiff might have to removal based on his jury demand is moot because defendants have consented to a jury trial.

The Fifth Circuit has held that when a plaintiff pleads a claim under admiralty jurisdiction, the plaintiff invokes "those historical procedures traditionally attached to actions in admiralty." Durden v. Exxon Corp., 803 F.2d 845, 849 n.10 (5th

---

[38]Döhle's Memorandum in Opposition, Docket Entry No. 16, pp. 25-27.

[39]Id. at 26.

Cir. 1986). One of the historical procedures unique to admiralty is that suits in admiralty do not carry the right to a jury trial. Id. at 849-50. See also Figueroa, 28 F. Supp. 3d at 680-81 n.3 (citing Waring v. Clarke, 46 U.S. 441, 460, 1847 WL 5991, *17 (1847), and Becker v. Tidewater, Inc., 405 F.3d 257, 259 (5th Cir. 2005)). Consequently, allowing defendants to remove admiralty and general maritime claims absent an independent basis for federal jurisdiction would permit defendants to unilaterally eliminate a plaintiff's right to a jury trial by choosing to file their claims in state court under the saving-to-suitors clause. Id. at 680. Recognizing that "[w]hile as a general rule there is no right to a jury trial in admiralty cases," Döhle argues that

> under Rule 39(c)(2), even where an action is not triable of right by a jury, the court "may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial."[40]

Asserting that "[a]ll the defendants in this case have consented to a jury trial," Döhle argues that "all the remedies 'saved' by the saving-to-suitors clause are adequately preserved."[41]

Plaintiff argues that if this action is not remanded to state court, defendants will remain "free to revoke their consent, leaving Plaintiff without that remedy."[42] Because "there is no

---

[40]Id. at 27.

[41]Id.

[42]Plaintiff's Reply, Docket Entry No. 22, p. 3 ¶ 8.

restraint in the text of Rule 39 on the ability of a party to withdraw its consent to a jury trial that is not of right," Kramer v. Banc of America Securities, LLC, 355 F.3d 961, 968 (7th Cir.), cert. denied, 124 S. Ct. 2876 (2004), and because Döhle cites no authority for the proposition that consent cannot be withdrawn before trial, the court agrees with Plaintiff that absent remand, defendants will remain free to revoke their consent to a jury trial.

III. Plaintiff's Request for Costs and Expenses

Citing 28 U.S.C. ¶ 1447(c), Plaintiff seeks an award of costs and expenses, including attorney's fees, reasonably incurred as a result of Döhle's improper removal.[43] An award of costs and reasonable expenses, including attorney's fees, incurred as a result of improper removal is a matter of the court's discretion. Garcia v. Amfels, Inc., 254 F.3d 585, 587 (5th Cir. 2001). The Supreme Court has explained that

> the standard for awarding fees should turn on the reasonableness of the removal. Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied. . . . In applying this rule, district courts retain discretion to consider whether unusual circumstances warrant a departure from the rule in a given case.

Martin, 126 S. Ct. at 711 (citations omitted).

---

[43]Plaintiff's Motion to Remand, Docket Entry No. 12, p. 6 ¶ 11.

Plaintiff argues that

> [i]f there was a time that a party would be excused in arguing that something changed as a result of the 2011 amendment to 28 U.S.C. § 1441 allowing a Defendant to seek removal, that ship has long since sailed. There is now widespread agreement that the Saving to Suitors clause prohibits removal of cases on the basis relied on by Defendant. Defendant is represented by competent counsel that is very well versed in maritime law and knows about the history of the relevant caselaw. It is inappropriate, at this point, to continue to waste the Court's time, the parties resources, and to delay Plaintiff's claim on the basis of arguments that have been soundly rejected dozens of times. Without some action by a Court, defendants will continue to remove cases like this one and delay injured individuals' ability to recover on serious claims such as the one presented in this case.[44]

As recognized by the Fifth Circuit in Sangha, 882 F.3d at 100, "whether the saving-to-suitors clause of the federal maritime statute prohibits removal of general maritime claims absent an independent basis for federal jurisdiction . . . is not clear," and "there is no binding precedent from this circuit, see Riverside Construction Co., Inc. v. Entergy Mississippi, Inc., 626 F. App'x 443, 447 (5th Cir. 2015) (noting that '[t]he Fifth Circuit has not yet spoken directly on this issue')." Because district courts in this circuit are split on this issue, and because Döhle has raised novel arguments based on the unification of the Admiralty Rules and the Federal Rules of Civil Procedure that have not been addressed by the Fifth Circuit or by other district courts, the court is not persuaded that Döhle lacked an objectively reasonable basis for seeking removal. Moreover, Plaintiff has not argued that unusual

---

[44]Plaintiff's Reply, Docket Entry No. 22, p. 4 ¶ 10.

circumstances justify an award of costs and expenses in this case. Accordingly, Plaintiff's request for costs and expenses, including attorney's fees, will be denied. See Riverside Construction, 626 F. App'x at 447 (district court did not err by declining to award attorney's fees where uncertainty existed regarding whether general maritime claims are removable absent an independent basis for jurisdiction).

IV. Conclusions and Order of Remand

For the reasons stated in § II, above, the court concludes that this action was improperly removed and should be remanded to the 152nd District Court of Harris County, Texas.

For the reasons stated in § III, above, the court concludes that Plaintiff is not entitled to payment of costs and expenses, including attorney's fees, incurred as a result of the improper removal.

Accordingly, Plaintiff's Motion to Remand (Docket Entry No. 12) is **GRANTED in PART and DENIED in PART.**

This action is **REMANDED** to the 152nd District Court of Harris County, Texas.

The Clerk of the Court will provide a copy of this Order of Remand to the District Clerk of Harris County, Texas.

SIGNED at Houston, Texas, on this the 17th day of March, 2021.

SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE