

**ENTERED**

June 04, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN THE MATTER OF THE COMPLAINT OF §  
D & S MARINE SERVICE, L.L.C., AS §  
OWNER AND OPERATOR OF THE M/V § CIVIL ACTION No. 4:24-CV-03575  
BRIANNA ELIZABETH, PETITIONING FOR §  
EXONERATION FROM OR LIMITATION OF §  
LIABILITY §

**MEMORANDUM AND ORDER**

Before the Court is Claimant Javen Lott's Second Motion to Dissolve the Limitation Injunction.<sup>1</sup> ECF 44. After considering the parties' arguments and the applicable law, the Court ORDERS that Lott's Motion (ECF 44) is GRANTED.<sup>2</sup>

**I. Factual and Procedural Background.**

Claimant Javen Lott suffered a serious injury to his leg while working as a crewmember aboard the M/V BRIANNA ELIZABETH (the "Vessel"). ECF 1. On August 21, 2024, Lott filed a Jones Act personal injury suit in state court in Harris County, Texas against D&S Marine Service, LLC ("DMS") and D&S Marine Management, LLC ("DMM") (together "Petitioners"). ECF 23-1 at 2. Both DMS and DMM filed Answers in the state court suit. ECF 23-2; ECF 23-3. DMS and

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<sup>1</sup> The District Judge referred this case to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure 72. ECF 11.

<sup>2</sup> Motions to lift injunctions are non-dispositive and appropriate for resolution through issuance of an order. *Matter of Great Lakes Dredge & Dock Co., L.L.C.*, No. 4:23-CV-4200, 2025 WL 373257, at \*1 n.1 (S.D. Tex. Feb. 3, 2025); *Matter of Weeks Marine, Inc.*, No. 4:24-CV-00088, 2024 WL 3243486, at \*1 n.1 (S.D. Tex. June 26, 2024).

DMM, as Limitation Petitioners, filed their Original Complaint for Exoneration or Limitation of Liability on September 23, 2024. ECF 1. On October 14, 2024, Lott filed two sets of Answers and Claims, but neither set named DMS and both named DMM as the petitioner. ECF 8, 9. When Lott filed his Answer and Claims, he filed two identical pleadings against DMM. *Id.* On October 31, the Court entered a Limitations Injunction (ECF 14, 15), putting all potential claimants on notice that the deadline to file claims against the Petitioners was December 30, 2024. Additionally, the Limitations Injunction stayed Lott's state court suit. ECF 14, 15. At the time the Court set the December 30, 2024, claim deadline, Lott believed he had already filed a claim against DMM and DMS. On November 12, 2024, DMM answered both of Lott's Claims, noting in a footnote that Lott had filed two identical claims against DMM. ECF 16, 17. On January 2, 2025, Lott sought leave to file a late claim against DMS, or, in the alternative amend his claim. ECF 23.

On February 24, 2025, the Court granted Lott's Motion for Leave to File a Late Claim (ECF 41) and on February 25, 2025, granted DMS' Motion for Default (ECF 45). DMS filed objections to both Orders. ECF 51. While DMS' objections were pending, Lott filed his Second Motion to Dissolve the Limitation Injunction. ECF 44. Petitioners filed a Response in opposition (ECF 52), to which Lott replied (ECF 53).

## II. Legal Standards.

A “shipowner's right to limit liability is not . . . boundless. *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152 (1957). Congress created the Limitation of Liability Act “for the primary purpose of apportioning the limitation fund among the claimants where that fund was inadequate to pay the claims in full, but it reserved to such suitors their common-law remedies.” *Id.* at 153. Therefore, the Fifth Circuit has held that claims may proceed outside the limitation action “(1) if they total less than the value of the vessel, or (2) if the claimants stipulate that the federal court has exclusive jurisdiction over the limitation of liability proceeding and that they will not seek to enforce a greater damage award until the limitation action has been heard by the federal court.” *Odeco Oil & Gas Co., Drilling Div. v. Bonnette*, 4 F.3d 401, 405 (5th Cir. 1993); *see also Texaco, Inc. v. Williams*, 47 F.3d 765, 767 (5th Cir. 1995) (holding that “with proper stipulations, claimants may proceed outside the limitation action”).

Indeed, the district court “must accede” to a claimant’s choice to proceed in state court if the claimant provides a stipulation “fully protecting [owner/operator’s] right to limit liability and agreeing to abide by an admiralty court determination of the right to limit.” *Id.*; *see also In re Tetra Applied Techs. L P*, 362 F.3d 338, 343 (5th Cir. 2004) (holding it was an abuse of discretion for the district court to deny

claimant's choice to proceed in state court where "the proffered stipulations were sufficient to protect the rights of the shipowner to limitation").

### **III. Analysis.**

#### **A. Lott's stipulations are adequate to dissolve the limitation injunction.**

Lott stipulates to the following:

1. Petitioners are entitled to and have the right to litigate all issues relating to limitation of liability in this Court. Yet, Claimant specifically reserves the right to deny and contest in this Court all assertions and allegations made by Petitioners in their Complaint for Exoneration From or Limitation of Liability;
2. Claimant will not seek any judgment or ruling on the issue of Petitioners' right to limitation of liability in any other federal or state courts;
3. Claimant waives any claim of *res judicata* relevant to the issue of limitation of liability based on any judgment that may be rendered in any other federal or state court;
4. Claimant will not seek to enforce any judgment in excess of the value of the limitation fund pending the adjudication of the Complaint for Exoneration From or Limitation of Liability in this Court; and
5. This Court has exclusive jurisdiction over the Limitation issues.

ECF 44 at 3–4.

The Fifth Circuit has found similar stipulations sufficient to protect the vessel owner's rights. *See, e.g., In re Tetra Applied Techs. L P*, 362 F.3d at 339 (finding sufficient stipulation that (1) conceded owner's right to litigate limitation of liability in federal court; (2) included claimant's agreement not to seek any judgment in any other court regarding the limitation of liability; (3) consented to waive any claim of

res judicata as to the issue of limitation of liability; (4) included claimant's agreement not to enforce any judgment in excess of the stipulated value pending the adjudication of the Complaint for limitation of liability).

Petitioners make four arguments in opposition to dissolving the limitation injunction. First, Petitioners argue that the Motion to dissolve the limitation injunction as to DMS is premature because of the pending objections with the District Court Judge. Second, Petitioners argue that dissolving the limitation injunction as to DMM is premature in light of DMM's pending Motion to Dismiss (ECF 26). Third, Petitioners argue that judicial economy and efficiency suggest that the Court should wait to dissolve the limitation injunction until DMS' objections and DMM's Motion to Dismiss are no longer pending. These three arguments are no longer valid because: on June 3, 2025, United States District Judge Alfred Bennett overruled DMS' objections (ECF 56), and; DMM's Motion to Dismiss is no longer pending because on June 4, 2025, the Court issued a Memorandum and Recommendation that DMM's Motion to Dismiss be denied (ECF 57).

Fourth, Petitioners argue that Lott's stipulations are insufficient solely because Lott did not personally sign them. Petitioners cite to *Odeco II* for the proposition that stipulations signed through counsel are inadequate to dissolve the limitation injunction. Petitioners take the position that *Odeco II* requires claimants, not through their attorneys, to personally sign to the stipulations. Petitioners offer a

distorted reading of *Odeco II*. The issue in *Odeco II* was whether “*all claimants*” signed the stipulation adequately protecting the rights of the shipowner. *Odeco Oil & Gas Co., Drilling Div. v. Bonnette*, 74 F.3d 671, 675 (5th Cir. 1996) (emphasis in original). The court vacated and remanded the case, holding “that the district court abused its discretion in allowing the state court action to proceed in the absence of a stipulation, *agreed to* by all claimants, protecting Odeco’s right to limitation.” *Id.* at 675 (emphasis added). *Odeco II* stands for the proposition that all claimants must sign the stipulation so to demonstrate that all claimants *agree* to the stipulation. The issue of whether a claimant must himself, physically sign the stipulation or whether he may do so through counsel did not appear in *Odeco II*.<sup>3</sup> Moreover, courts have found stipulations signed by counsel to be adequate to dissolve the limitation injunction. *See Matter of Bouchard Transportation Co., Inc.*, No. 2:17-CV-363, 2018 WL 4290460, at \*2 (S.D. Tex. Aug. 23, 2018), report and recommendation adopted sub nom. *Bouchard Transportation Co Inc v. Texas Gen. Land Off.*, No. 2:17-CV-00363, 2018 WL 4283126 (S.D. Tex. Sept. 7, 2018) (“Further, all of the Claimants, through counsel, have agreed to be bound by the stipulations.”).

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<sup>3</sup> Petitioners’ reliance on *Gutierrez v. F. Miller Const., LLC*, is misplaced for the same reasons. No. CIV.A. H-11-1996, 2012 WL 5361037, at \*4 n.12 (S.D. Tex. Oct. 30, 2012).

Nevertheless, Lott attached to his Reply a copy of the stipulations, as they appear above, with Lott's signature. ECF 53-1. Petitioners' fourth argument is also moot and Lott's stipulations are sufficient to dissolve the limitation injunction.

**B. This case should be stayed pending the conclusion of the state court action.**

The Limitation of Liability Act provides that a vessel owner is not liable for "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." 46 U.S.C.A. § 30523. Therefore, if the state court suit results in a judgment that Petitioners' alleged negligent acts or unseaworthy conditions injured Lott, the inquiry before this Court when determining whether Petitioners are entitled to limitation will be limited to whether the conditions that caused the injury were within Petitioners' "privity or knowledge." *See In re Signal Int'l, LLC*, 579 F.3d 478, 496 (5th Cir. 2009) (holding that "[o]nce a claimant proves that negligence or unseaworthiness caused an accident, an owner seeking limitation must show it lacked privity or knowledge of the condition"). For this reason, the state court proceeding will narrow the issues this Court must decide. Petitioners do not address this argument, other than to say that dissolving the injunction is premature. Therefore, abatement of this case and issuance of a stay is appropriate.

**IV. Conclusion and Order.**

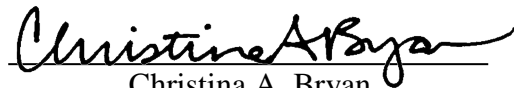
For the reasons stated above, it is

ORDERED that Claimant Lott's Second Motion to Dissolve Limitation Injunction (ECF 44) is GRANTED. It is further

ORDERED that Claimant Lott's action pending in the 80th Judicial District Court of Harris County, Texas may proceed. It is further

ORDERED that this case is STAYED pending the conclusion of the state court action. Claimant Lott must promptly notify the Court when the state court action concludes.

Signed on June 04, 2025, at Houston, Texas.

A handwritten signature in black ink, reading "Christina A. Bryan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Christina A. Bryan  
United States Magistrate Judge