



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SUSAN ARNONE

Plaintiff,

REPORT AND
RECOMMENDATION

v.

DAVID KNAB,

1:21-CV-00072 LJV (MJR)

Defendant.

and

IN THE MATTER OF THE COMPLAINT

1:21-CV-00703 LJV (MJR)

-of-

DAVID KNAB, as the owner of a 2000, 38-
foot boat for Exoneration from or Limitation
of Liability,

Petitioner.

The above cases have been referred to this Court by the presiding District Judge, the Honorable Lawrence J. Vilardo, pursuant to 28 U.S.C. § 636(b)(1), to handle all pre-trial matters and to make a recommendation as to all dispositive motions. *See Arnone v. Knab*, 1:21-CV-72 (hereinafter the "Negligence Action"), Dkt. 6; *In re Knab*, 1:21-CV-703 (hereinafter the "Limitation Action"), Dkt. No. 36. Before the Court are plaintiff/respondent Susan Arnone's (1) motion to lift the stay on the Negligence Action; (2) motion to remand the Negligence Action to state court; and (3) motion to stay the Limitation Action. (21-CV-72, Dkt. Nos. 27, 30; 21-CV-703, Dkt. Nos. 30, 33) For the following reasons, it is

recommended that Arnone's motions be granted, that the stay currently in place on the Negligence Action be lifted, that the Negligence Action be remanded to state court, and that the Limitation Action be stayed while the Negligence Action proceeds in state court.

FACTS AND BACKGROUND

The Negligence Action was initially commenced in Erie County Supreme Court by Susan Arnone on December 17, 2020. (21-CV-72, Dkt. 1) Arnone alleged therein that, on September 5, 2020, David Knab, the owner and operator of a 2000 Powerquest Cruiser, caused her, an invited passenger on the boat, to fall and suffer serious injuries when he operated the boat at a high rate of speed and in an unsafe manner. (*Id.*) On January 15, 2021, Knab removed the Negligence Action to the Western District of New York pursuant to 28 U.S.C. § 1333, which provides a federal court, in certain instances, with admiralty jurisdiction over claims arising from incidents occurring on navigable waters of the United States. (*Id.* at Dkt. Nos. 1, 2) Knab answered the complaint on January 22, 2021. (*Id.* at Dkt. No. 5) A Case Management Order was entered, discovery commenced, and Arnone filed interrogatories and requests for documents. (*Id.* at Dkt. Nos. 9, 18, 19)

On June 3, 2021, Knab filed, in the Western District of New York, a Complaint for Exoneration from or Limitation of Liability, pursuant to 46 U.S.C. §§ 30501, *et seq.* (21-CV-703, Dkt. No. 1) In the Limitation Action, Knab asserted that he is the owner of a 38-foot recreational boat (a 2000 Powerquest Cruiser) and that Arnone claims she was injured while onboard the boat on September 5, 2020. (*Id.*) Knab alleged that any injuries suffered by Arnone were not caused by his negligence and instead occurred without his privity or knowledge. (*Id.*) He alleged that the amount of Arnone's alleged personal injury claims may exceed the value of the boat at the time of the incident. (*Id.*) Knab alleged

that he is entitled to exoneration from liability for any claims arising from the September 5, 2020 incident and that, in the alternative, he is entitled to a judgment of limitation of liability in an amount not to exceed the value of the boat at the time of the incident. (*Id.*) Knab offered an *Ad Interim* Stipulation for Value of the boat on September 5, 2020, in the amount of \$110,000. (*Id.* at Dkt. Nos. 1-1, 1-2)

On July 26, 2021, the District Court signed an Order approving the *Ad Interim* Stipulation for Value in the Limitation Action. (*Id.* at Dkt. No. 4) The Order also directed the Clerk of the Court to issue notice to all persons or entities having any potential claim or suit against Knab or his boat resulting from the September 5, 2020 incident, instructing them to file their respective claims with the Clerk and Knab's attorney on or before September 3, 2021, and that failure to do so would result in the default of their claims.¹ (*Id.*) The Order also stated that "the further prosecution of any and all [lawsuits] already commenced and the commencement or prosecution hereafter of any and all [lawsuits] of any nature...in any Court of any jurisdiction...against [Knab]...except this action, with respect to the aforesaid alleged [September 5, 2020] incident...are restrained, stayed or enjoined until the hearing and determination of this [Limitation Action]." (*Id.*) Notice was issued by the Clerk of the Court on July 27, 2021. (*Id.* at Dkt. No. 5) On August 30, 2021, Arnone filed an answer to the complaint in the Limitation Action. (*Id.* at Dkt. No. 6)

On August 30, 2022, Arnone filed a motion to remand the Negligence Action back to New York state court based on lack of federal subject matter jurisdiction. (21-CV-72, Dkt. Nos. 27, 30) On September 9, 2022, Knab filed a response to the remand motion,

¹ It was ordered that the notice to prospective claimants be published in a newspaper with general circulation, once a week for four weeks, before the return date of the notice, and that copies of the notice be mailed by Knab to every person known to have a claim against him or the vessel. (21-CV-703, Dkt. No. 4)

arguing that because the District Court's Order in the Limitation Action effectively stayed the prosecution of any other actions, in any court, arising from the September 5, 2020 boating accident, the Negligence Lawsuit was stayed or enjoined and therefore could not be remanded. (*Id.* at Dkt. No. 28)

On August 31, 2022, Arnone filed a motion to lift the stay imposed on the Negligence Action so that it may proceed in state court. (21-CV-703, Dkt. Nos. 30, 33) She further moved for a stay to be imposed on the Limitation Action. (*Id.*) Arnone submits that if the Court lifts the stay in the Negligence Action, institutes a stay in the Limitation Action, and remands the Negligence Action so that it may proceed in state court, Arnone will agree to the following: (1) that Knab has the right to litigate the Limitation Action exclusively in federal court, and that the federal court has exclusive jurisdiction to determine the limitation of liability issues raised therein; (2) that Knab has the exclusive right to have the federal court determine the value of the boat at the time of the incident; (3) that Arnone will not seek a determination as to the issues described in (1) and (2) in any other court, and will consent to waive *res judicata* or issue preclusion effect with regard to any decisions, rulings or judgments that any other court may render on those issues; and (4) that Arnone will not seek to enforce any judgment rendered in any other court that would expose Knab to liability in excess of either \$110,000, or such amount as the federal court ultimately determines is the value of the boat at the time of the accident, until such time as the federal court has adjudicated Knab's right to limitation of liability in the Limitation Action. (21-CV-703, Dkt. No. 30, pgs. 4-5)

DISCUSSION

Subject Matter Jurisdiction as to the Negligence Action

“Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987); 28 U.S.C. § 1441(a). In general, this means a case is removeable only if a federal question exists on the face of plaintiff’s well-pleaded complaint or complete diversity of citizenship exists. *Id.* at 392. The defendant typically bears the burden of proving that removal was proper. *See Bounds v. Pine Belt Mental Health Care Res.*, 593 F.3d 209, 215 (2d Cir. 2010). Federal courts construe the removal statute narrowly and resolve any doubts against removability. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Goel v. Ramachandran*, 823 F. Supp. 2d 206-09 (S.D.N.Y. 2011).

Federal district courts retain 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.*” 28 U.S.C. § 1333(1) (emphasis added). The Supreme Court has interpreted the “saving to suitors” clause of Section 1333(1) to preserve the historical role of state courts in administering common law remedies, such as jury trials, in admiralty cases. *Romero v. Int’l Terminal Operating Co.*, 358 U.S. 354, 362 (1959). To that end, the Supreme Court has held that admiralty claims do not arise under federal law for purposes of federal question jurisdiction and therefore are not freely removeable. *Forde v. Hornblower N.Y., LLC*, 243 F. Supp. 3d 461 (S.D.N.Y. Mar. 2017); *accord Romero*, 358 U.S. at 362 (holding that admiralty cases do not present a federal question and noting that making admiralty cases freely removeable would undermine the “savings to suitors” clause of Section 1333(1)). Accordingly, the traditional rule for admiralty cases is that

removal is improper unless a separate basis of jurisdiction exists, such as diversity of citizenship or if the plaintiff has also brought another federal claim such that supplemental jurisdiction could be extended over the admiralty claim. *Forde*, 243 F. Supp. 3d at 465. *See also Pierpoint v. Barnes*, 94 F.3d 813 (2d Cir. 1996) (holding, *in dicta*, that admiralty cases are not removeable without diversity jurisdiction because to remove them would otherwise undermine the “saving to suitors” clause.)

In the removal paperwork for the Negligence Action, Knab indicated that the nature of the suit is a marine tort and that the basis for removal is federal question jurisdiction. (21-CV-72, Dkt. No. 2) As the case law above clearly holds, maritime or admiralty claims do not independently present a federal question. Moreover, this case involves only common law negligence claims arising from the September 5, 2020 boating accident and therefore does not raise any additional federal question or claim.² Finally, it is undisputed that there is no diversity of citizenship between the parties.

Indeed, courts in this Circuit have repeatedly remanded negligence cases, like this one, which were removed from state court as admiralty actions but lacked some additional basis for federal jurisdiction. *See In re Nagler*, 246 F. Supp. 3d 648 (E.D.N.Y. 2017) (remanding to state court a negligence action arising from fall into an uncovered hatch on a fishing vessel because there was no diversity of citizenship and the only cause of action

² Arnone’s filing of the federal Limitation Action does confer subject matter jurisdiction on the Negligence Action. *See Orellana v. Grando*, 19-CV-3868, 2019 U.S. Dist. LEXIS 238349 (E.D.N.Y. Dec. 10, 2019) (remanding maritime lawsuit with underlying negligence action to state court for lack of subject matter jurisdiction and noting that the fact that defendants recently filed a limitation of liability claim in federal court arising from the same incident “did not cure the jurisdictional defect in the [negligence case.]”); *In re Germain*, 824 F.3d 258 (2d Cir. 2016) (“Although the Limitation of Liability Act provides a federal cause of action for a vessel owner seeking exoneration or limitation, it does not provide an independent foundation for federal admiralty jurisdiction.”) (internal citations and quotations omitted).

was for common-law negligence); *Nassau Cty. Bridge Auth. v. Olsen*, 130 F. Supp. 3d 753, 760 (E.D.N.Y. 2015) (remanding case to state court because "the [p]laintiff's claim, although sounding in admiralty, is not removable under § 1441, without an independent basis of federal jurisdiction"); *Speranza v. Leonard*, 925 F. Supp. 2d 266, 269-70 (D. Conn. 2013) (remanding case to state court for lack of jurisdiction because it involved four state-law maritime claims and one claim under the Death on the High Seas Act); *Forde*, 243 F. Supp. 3d at 461 (S.D.N.Y. Mar. 20, 2017) (remanding negligence and wrongful death case arising from accident after "booze cruise" to state court because "an admiralty case may be moved to federal court only if another basis of jurisdiction exists" and explaining that defendants' argument in favor of removal contradicted the "saving to suitors" clause, as interpreted by the Supreme Court and the Second Circuit).

For these reasons, the Court finds that it lacks subject matter over the Negligence Action and that the Negligence Action should be returned to New York state court.³

³ During oral argument, the Court asked Knab's counsel why they removed the Negligence Action, since it appears clear from the case law that there was no federal question or diversity to support the removal in the first place. Counsel responded that improper removal is a "waivable defect" and that Arnone never objected to the removal. The Court rejects this explanation. Regardless of whether the defect in removal was "waivable", the initial removal was improper on its face. Moreover, the Court has an "independent obligation to examine [its] own jurisdiction", *Joseph v. Leavitt*, 465 F.3d 87, 89 (2d Cir. 2006), and, therefore, if jurisdiction is lacking in a case, "the [c]ourt must remand the case, notwithstanding [p]laintiff's failure to raise the argument." *Forde*, 243 F. Supp. 3d at 464 ("Subject matter jurisdiction cannot be waived.") See also 28 U.S.C. § 1447(c); Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action."). Arnone requests attorney's fees as a result of Knab's improper removal of the Negligence Action. See 28 U.S.C. § 1447(c) (noting that a court may, in a remand order, require the payment of costs and attorney's fees). The Court declines to award costs and fees in this instance. See *Morgan Guaranty Trust Co. v. Republic of Palau*, 971 F.2d 917 (2d Cir. 1992) (award of attorney's fees under Section 1447(c) is discretionary).

The Limitation Action and Stay of other Lawsuits

Under the Limitation Act, “the liability of the owner of a vessel for any claim, debt, or liability...shall not exceed the value of the vessel and pending freight,” provided that such liabilities “aris[e] from any...act, matter, or thing, loss, damage, or forfeiture, done...without the privity or knowledge of the owner.” See 46 U.S.C. § 30523(a)-(b). Stated another way, the Limitation Act provides for a cause of action which is “peculiar to the admiralty or maritime context” and allows “the owner of a vessel to file a petition in federal court seeking total exoneration or limitation of liability for damages caused by the negligence of his captain or crew.” *In re Petition of Germain*, 824 F.3d 258, 263 (2d Cir. 2016). Thus, “instead of being vicariously liable for the full extent of any [damages] caused by the negligence of the captain or crew employed to operate the ship, the owner’s liability is limited to the value of the ship unless the owner himself has ‘privity of knowledge’ of the negligent acts.” *Otal Investments Ltd. v. M/V CLARY*, 673 F.3d 108, 115 (2d Cir. 2012); quoting *In re City of New York*, 522 F.3d 279, 283 (2d Cir. 2008).

To assert the right to limit liability, the owner of the vessel must bring a civil action in federal district court under the Limitation Act within six months of receiving written notice of a claim. See 46 U.S.C. §30526(b)(1). If a shipowner facing potential liability for a maritime accident files a complaint seeking protection under the Limitation Act, the district court is authorized to stay all other proceedings against the owner. See 48 U.S.C. app. § 185; Fed. R. Civ. P. Supplemental Rule F(3); 46 U.S.C. § 30511(c). See also *Tandon v. Captain’s Cove Marina of Bridgeport, Inc.*, 752 F.3d 239, 243-44 (2d Cir. 2014) (“[O]nce the owner files a petition for limitation, all other claims and proceedings against the owner related to the matter in question shall cease.”) The district court must also issue

notice to all potential claimants directing them to file their claims against the shipowner in the district court within a specified time. *Germain*, 824 F.3d at 264; Fed. R. Civ. P. Supplemental Rule F(4); 46 U.S.C. § 30511(c).

Here, Knab timely filed the federal Limitation Action within six months after Arnone filed the Negligence Action against him in New York state court. “Indeed, where, as here, the plaintiff in a maritime action has elected to file a common law claim in state court, it is not uncommon for a separate limitation-of-liability action to be brought in federal court by the owner of the vessel.” See *Orellana v. Grando*, 19-CV-3868, 2019 U.S. Dist. LEXIS 238349 (E.D.N.Y. Dec. 10, 2019).; *Germain*, 824 F.3d at 263 (“[a]dmiralty cases involving petitions for limitation of liability may proceed on dual tracks in state and federal court.”).⁴ After the filing of the complaint and the *Ad Interim* Stipulation for value, the District Court issued an Order, in accordance with the rules stated above, staying the Negligence Action as well as any other potential claims, lawsuits or proceedings against Knab resulting from the September 5, 2020 boating accident.

For the reasons just stated, the Limitation Action is properly pending before the Court and the stay was issued according to the federal rules governing maritime actions.

⁴ During oral argument, the Court indicated that the record here suggests that the September 5, 2020 accident is not the type of the factual scenario meant to be addressed by the Limitation Act. Indeed, the Limitation Act applies to situations where the owner of the boat or vessel is not at fault for a claimant’s injuries and the injuries occurred “without [the boat owner’s] knowledge or privity.” The facts pled in the Negligence Action complaint as well as the facts proffered by Arnone’s counsel during oral argument indicate that Knab is the owner of the boat and that Knab was operating the boat at the time of Arnone’s alleged injury. Indeed, counsel for Knab did not dispute, during oral argument, that Knab was driving the boat at the time of the accident. Thus, this does not seem to be a case where limitation of liability would apply. However, the complaint in the Limitation Act appears to properly plead the necessary elements of a claim for limitation, and the merits of the Limitation Action are not presently before the Court. Moreover, courts have held that the Limitation Act can extend to injuries on pleasure boats. *Abadi v. Garvey*, 07 Civ. 9575, 2008 U.S. Dist. LEXIS 58451 (S.D.N.Y. Aug. 1, 2008). See also *Matter of Guglielmo*, 897 F.2d 58, 59 (2d Cir. 1990) (holding that pleasure boats are subject to the Act’s limitation on liability).

However, for the following reasons, the Court finds that, in this instance, the District Court should now lift the stay on other cases, including the Negligence Action, which was imposed in the Limitation Action. The Court further finds that the Negligence Action should be remanded to state court and that the Limitation Action should be stayed while the Negligence Action proceeds in state court.

Circuit courts have recognized that although “federal courts have exclusive jurisdiction [over limitation of liability] lawsuits brought under the [Limitation] Act,” *Magnolia Marine Transport Co. v. Laplace Towing Corp.*, 964 F.2d 1571, 1575 (5th Cir. 1992), this jurisdictional mandate creates a tension with the “savings to suitors” clause of Section 1333(1) which, as explained previously, preserves the right to a state jury trial for plaintiffs in maritime lawsuits involving common-law negligence. *Gorman v. Cerasia*, 2 F.3d 519, 524 (3rd Cir. 1993); *In re Dammers & Vanderheide & Scheepvaart Maats Christina B.V.*, 836 F.2d 750, 755 (2d Cir. 1998). In reconciling the “recurring and inherent” conflict between these two statutory mandates, *Dammers*, 836 F.2d at 755, courts have created two exceptions to the federal court’s exclusive jurisdiction over limitation proceedings. *Gorman*, 2 F.3d at 519. One of these exceptions occurs when a single claimant brings an action against the shipowner seeking damages in excess of the vessel involved in the accident.⁵ *Id.* Under the single claimant exception, the district court must lift the stay on the state negligence proceedings provided the claimant stipulates that the federal court has exclusive jurisdiction to determine all issues concerning the

⁵ The other exception, which does not apply here, arises if the value of the vessel and its cargo exceeds the aggregate of the total number of claims filed against the shipowner. *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 152 (1957). See *Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 444 (2001) (To that end, plaintiffs are generally permitted to proceed with their maritime negligence claims in state court where there is only a single claimant...or where the total claims do not exceed the value of the limitations fund.)

vessel owner's limitation of liability under the Limitation Act. *Id.*; accord *Ex Parte Green*, 286 U.S. 437, 438-40 (1932). Specifically, the claimant must waive any claim of *res judicata* as to any limitation of liability determination made in state court and stipulate to the shipowner's right to litigate all issues relating to limitation of liability in the federal limitation proceeding. *Gorman*, 2 F.3d at 524. The Supreme Court has endorsed this practice:

The district courts have jurisdiction over actions arising under the Limitation Act, and they have discretion to stay or dismiss Limitation Act proceedings to allow a suitor to pursue his claims in state court...so long as the vessel owner's right to seek limitation of liability is protected. ...Specifically, the claimant must waive any claims of *res judicata* relevant to the issue of limited liability based on any judgment obtained in the state court, and concede the shipowner's right to litigate all issues relating to limitation in the federal proceeding.

Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 451-52 (2001)

The Court finds that the single claimant exception applies here. Indeed, the boating accident occurred on September 5, 2020 and, under New York law, negligence claims are subject to a three-year statute of limitations. See N.Y. CPLR § 214. Thus, there is a possibility that other individuals injured in the September 5, 2020 accident may still attempt to pursue a negligence claim against Arnone. However, the record before the Court and the representations made by the parties indicate that this scenario is very unlikely. First, during oral argument of the instant motions, counsel for Arnone indicated that the only four individuals onboard the boat at the time of the accident were Knab (the defendant/owner of the boat); Arnone (the plaintiff/injured party); Knab's friend; and Knab's girlfriend.⁶ According to Arnone, neither Knab's friend nor Knab's girlfriend were

⁶ Arnone's counsel indicated that Knab's girlfriend is also Arnone's sister.

injured in the accident.⁷ Even more importantly, the District Court's Order in the Limitation Action provided for notice, by the Clerk of the Court Clerk through publication in a newspaper with general circulation, to any individuals with potential claims arising from the September 5, 2020 accident. The Order indicated that any claims against Arnone with respect to the September 5, 2020 boating accident were to be filed on or before September 3, 2021, and, if not filed by that deadline, the claims were to be deemed defaulted. No claims were filed by the September 3, 2021 deadline nor have any claims been filed in the one year and seven months that has elapsed since the District Court's filing deadline expired. Based on this record, the representations made by the parties during oral argument, and District Court's Order, the Court finds that any other individuals with potential claims against Arnone resulting from the September 5, 2020 boating accident are in default, and that this is a single claimant action.⁸

Moreover, Arnone has agreed to enter certain stipulations which protect Knab's right to have his limitation of liability claim adjudicated exclusively in federal court after the Negligence Action has been litigated in state court. Specifically, Arnone has promised to allow the federal court to determine all issues with respect to limitation of liability, including the value of the boat. She has also agreed to waive any *res judicata* or claim preclusion arguments with respect to any state court determination related to limitation of

⁷ Counsel for Knab did not dispute these representations during the oral argument or in any of the submissions made with regard to the instant motions.

⁸ During oral argument, counsel for Knab did not dispute that, based on the District Court's Order, any other potential claimants are in default. Counsel for Knab further offered to file a motion for default as to any other potential claimants, but also indicated that there is no specific procedural rule governing such a filing. Upon further discussion of this issue, counsel for both Knab and Arnone agreed that, based on the record before the Court and the District Court's prior Order, this Court could independently issue a finding that any other individuals with potential claims involving the September 5, 2020 accident are in default.

liability, and she has agreed not to attempt to enforce any judgment in excess of the stipulated value of the boat before the federal court adjudicates the Limitation Action.⁹ Based on these stipulations, this Court can ensure that Knab will retain the ability to have the claims asserted in his Limitation Action determined exclusively by the federal court, and therefore the Court “must take all steps necessary to assure that [Arnone is] allowed to pursue [her] common law remedies in accordance with the ‘savings to suitors’ clause.” *In re Dammers*, 836 F.2d at 758.

For these reasons, the Court finds that Arnone should be permitted to return to state court to litigate her Negligence Action and that the Limitation Action should be stayed during that time. If necessary, Knab may return to federal court at the conclusion of the state proceedings to adjudicate his limitation of liability claim. See *Lewis*, 531 U.S. at 438 (the District Court properly exercised its discretion in dissolving the injunction that prevented plaintiff from pursuing his claims in state court and noted that defendant’s rights were protected by plaintiff’s stipulation that his claim did not exceed the limitation fund, plaintiff’s waiver of any defense of *res judicata* with respect to limitation of liability, and the district court’s decision to stay the limitation action pending the state court

⁹ It is noted that the motion papers drafted by Arnone’s counsel indicate that Arnone will stipulate to these conditions, but no formal stipulation or affidavit has been filed by Arnone. Thus, it is recommended that the District Court instruct Arnone to submit a signed stipulation or affidavit agreeing to the terms set forth in her motion papers (Dkt. No. 30, pgs. 4-5) and repeated herein.

proceedings).¹⁰

CONCLUSION

For the foregoing reasons, it is recommended that Arnone's motions be granted (21-CV-72, Dkt. Nos. 27, 30; 21-CV-703, Dkt. Nos. 30, 33) and specifically that (1) the stay imposed in the Limitation Action on all other actions, including the Negligence Action, be lifted; (2) the Negligence Action be remanded to state court; and (3) the Limitation Action be stayed while the Negligence Action proceeds in state court. It is further recommended that the District Court instruct Arnone to execute a signed stipulation or affidavit in accordance with Footnote 9 of the Report and Recommendation.¹¹

Pursuant to 28 U.S.C. §636(b)(1), it is hereby **ORDERED** that this Report and Recommendation be filed with the Clerk of Court.

Unless otherwise ordered by Judge Vilardo, any objections to this Report and Recommendation must be filed with the Clerk of Court within fourteen days of service of this Report and Recommendation in accordance with the above statute, Rules 72(b), 6(a),

¹⁰ During oral argument, the Court asked counsel for both parties why a stay should be put in place as to the Limitation Action rather than allowing the Negligence Action and the Limitation Action to proceed at the same time, on dual tracks, in state and federal court respectively. Counsel for Knab indicated that a limitation action involves a two-step proceeding whereby a claimant must first prove that their injury occurred as a result of negligence. *Hercules Carriers, Inc. v. Claimant State of Florida, Dep't of Transp.*, 768 F.2d 1558 (11th Cir. 1985). Here, the initial negligence determination would be made by the state court and, if negligence is found, it is only then that the parties would return to federal court for a determination as to whether Knab had privity or knowledge of the negligence. *Id.* For these reasons, counsel for both parties appeared to agree that the Negligence Action should be fully litigated in state court before the Limitation Action is addressed by the federal court. Both parties also seemed to agree that the resolution of the tort claim in state court would likely result in a resolution of the dispute in its entirety, and that, following the state proceeding, the parties will likely dismiss the federal Limitation Action as moot.

¹¹ Because the Court is recommending that the Negligence Action be remanded to state court and that the Limitation Action be stayed, the pending motions for extensions of the discovery deadlines in both cases are denied, without prejudice, as moot. (21-CV-72, Dkt. Nos. 32, 33; 21-CV-703, Dkt. No. 35)

and 6(d) of the Federal Rules of Civil Procedure, and W.D.N.Y. L. R. Civ. P. 72. Any requests for an extension of this deadline must be made to Judge Vilardo.

Failure to file objections, or to request an extension of time to file objections, within fourteen days of service of this Report and Recommendation WAIVES THE RIGHT TO APPEAL THE DISTRICT COURT'S ORDER. See *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15 (2d Cir. 1989).

The District Court will ordinarily refuse to consider *de novo* arguments, case law and/or evidentiary material which could have been, but were not, presented to the Magistrate Judge in the first instance. See *Paterson–Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985, 990-91 (1st Cir. 1988).

*Finally, the parties are reminded that, pursuant to W.D.N.Y. L.R.Civ.P. 72(b), written objections “shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for each objection, and shall be supported by legal authority.” **Failure to comply with these provisions may result in the District Court's refusal to consider the objection.***

SO ORDERED.

DATED: April 24, 2023
Buffalo, New York


HONORABLE MICHAEL J. ROEMER
United States Magistrate Judge

