

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION**

CASE NO. 17-CV-10050-JLK

THE MATTER OF:
THE COMPLAINT OF HORIZON DIVE
ADVENTURES, INC., as owner of the
M/V Pisces, Hull ID FVL31002F707, its
engines, tackle, appurtenances, equipment,
etc., in a cause for exoneration from or
limitation of liability,

Petitioner,

v.

PETER SOTIS and SANDRA STEWART, as
personal representative of the estate of Robert
Stewart,

Respondents/Claimants.

ORDER STAYING LIMITATION ACTION

THIS MATTER comes before the Court upon Claimant Sandra Stewart's Renewed Motion to Stay Limitation Action (DE 127), filed December 11, 2018.¹

I. BACKGROUND

This limitation of liability action arises out the January 31, 2017 death of Robert Stewart (whose estate is a claimant here) after he was deep-water SCUBA diving off of Petitioner's boat to film underwater for a documentary. Petitioner filed its Complaint in this action, in admiralty, on January 31, 2017 (DE 1), and both claimants appeared in the action by August 18, 2017 (DE 12; DE 14). On April 24, 2018, Claimant Stewart filed her first Motion to Stay Limitation

¹ Petitioner Horizon Dive Adventures filed a Response in Opposition (DE 131) on December 26, 2018, to which Stewart filed a Reply (DE 135) on January 9, 2019. Accordingly, this matter is ripe for disposition. The Court has also considered Claimant Peter Sotis's Response in Opposition (DE 136), filed January 9, 2018.

Action and Stay Entry of Injunction Against State Court Action (DE 35), having initiated an action at law against Horizon Dive Adventures, Inc. (Petitioner here), Peter Sotis (a claimant here), and other entities in the Seventeenth Judicial Circuit in and for Broward County, Florida (Case Number CACE-17-005915). On May 11, 2018, Claimant Peter Sotis filed an Amended Claim (DE 46), asserting claims for contribution and emotional distress. On June 12, 2018, the Court held a hearing (DE 60) on Stewart's motion, and denied the motion (DE 67, at 51:16-22).

On June 22, 2018, Sotis filed a Second Amended Claim, Count I of which claimed emotional distress against Petitioner and Count II claimed indemnification and contribution against both Petitioner and Claimant Stewart (DE 68). On July 12, 2018, Stewart moved to dismiss Count I of Sotis's claim (DE 78), and on December 13, 2018, the Court adopted Magistrate Judge Simonton's November 28, 2018 Report & Recommendation in granting Stewart's motion to dismiss holding that Sotis's allegations do not support a claim for emotional distress under Florida law (DE 128).

With her instant Motion to Stay Limitation Action (DE 127), Stewart offers to stipulate that "she will not seek to enforce *any* judgment or make *any* claim for damages against the Limitation Fund regardless of the outcome of this limitation proceeding and regardless of any judgment obtained in state court" (*id.* at 9) (emphasis added), and lists fifteen other proposed stipulations consistent with this stance, including one added in her Reply to Petitioner's Response in Opposition (*see id.* at 9–12; DE 135, at 4–5).

II. DISCUSSION

A. Legal Standard for Staying a Limitation Action

Federal courts have exclusive jurisdiction pursuant to 28 U.S.C. § 1331(1) to determine whether a vessel owner is entitled to limited liability. *Lewis v. Lewis & Clark Marine, Inc.*, 531

U.S. 438, 442 (2001). However, the same statutory provision “sav[es] to suitors in all cases all other remedies to which they are entitled.” 28 U.S.C. § 1331(1). This tension between exclusive federal admiralty jurisdiction and the “saving to suitors” clause “embodies a presumption in favor of jury trials and common law remedies in the forum of the claimant’s choice.” *Beiswenger Enters. Corp. v. Carletta*, 86 F.3d 1032, 1037 (11th Cir. 1996) (citations omitted).

Courts have “identif[ied] two sets of circumstances under which the damage claimants *must* be allowed to try liability and damages issues in a forum of their own choosing”: (1) where the limitation fund exceeds the amount of all possible claims, and (2) where there is a single claimant. *Id.* (emphasis added). In a single claimant case, the district court may exercise its discretion to stay the limitation action and allow an action in another forum to proceed. *Offshore of the Palm Beaches, Inc. v. Lynch*, 741 F.3d 1251, 1258 (11th Cir. 2014) (noting that “[t]his bifurcated procedure is far from novel” and “the single claimant exception has been applied for over a century”). In support of such a stay, the single claimant may file stipulations that “protect the [vessel owner’s] right to have the admiralty court ultimately adjudicate its claim to limited liability. *Beiswenger*, 86 F.3d at 1038. The stipulations should (1) protect the vessel owner’s right to litigate its claim in federal court, including by waiving preclusion defenses, (2) protect the vessel owner from paying damages exceeding the limitation fund “unless and until the admiralty court denies limited liability,” and (3) “protect the vessel owner from litigation by the damages claimants in *any* forum outside the limitation proceeding.” *Id.* at 1044.

B. This Limitation Action Should Be Stayed

Stewart argues that, where Claimant Sotis’s only remaining claim is a prospective claim for contribution, her Stipulation to seek no damages from the Limitation Fund renders this a

single claimant action.² The Court has reviewed Claimant Stewart's Stipulation (DE 127, at 9–12; DE 135, at 4–5), and concludes that it appropriately protects Petitioner's right to seek exoneration from and limitation of liability in this Court, and from exposure in excess of the Limitation Fund. Therefore, Petitioner's above-captioned case in admiralty is now effectively a single claimant action, which should be stayed to allow Stewart to prosecute her claims whosoever she chooses. *See Beiswenger*, 86 F.3d at 1037–38. This action in admiralty should remain open so that Petitioner's limitation of liability may be duly adjudicated upon the conclusion Stewart's related action at law.

The Court further finds that Stewart has not, as Petitioner claims, “engaged in a pattern of delay” (DE 131, at 4), but rather that Claimant Sotis unnecessarily delayed these proceedings by attempting without adequate basis to assert a viable claim in this action after Stewart filed her first Motion to Stay Limitation Action (DE 35) on April 24, 2018.

III. CONCLUSION

Therefore, as Sandra Stewart is correct that this limitation action has effectively become a single claimant proceeding by virtue of her stipulations to not seek damages from the Limitation Fund, this case should be stayed to allow Stewart to prosecute her personal injury claim in state court. Accordingly, it is **ORDERED, ADJUDGED, and DECREED** as follows:

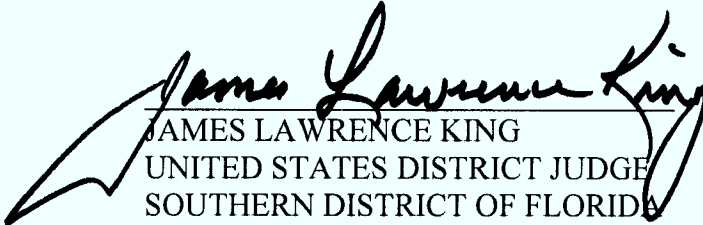
1. Claimant Sandra Stewart's Renewed Motion to Stay Limitation Action (**DE 127**) is hereby **GRANTED**, as limited by the Stipulation;³

² Despite Petitioner's argument to the contrary (DE 131, at 13–14), Stewart still has standing in this action to assert this argument, because she still seeks damages from Petitioner.

³ The Stipulation constitutes the fifteen stipulations from Stewart's Renewed Motion to Stay Limitation Action (DE 127, at 9–12) together with the sixteenth stipulation in her Reply (DE 135, at 4–5).

2. This action is hereby **STAYED** pending the conclusion of Sandra Stewart's related action in the Seventeenth Judicial Circuit in and for Broward County, Florida (Case Number CACE-17-005915);
3. Entry of any injunction by the Court against Stewart from prosecuting her claims in state court is likewise hereby **STAYED**; and
4. The parties are directed to promptly notify the Court upon resolution of the state court action.

DONE and ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse in Miami, Florida, on this 11th day of January, 2019.


JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: All Counsel of Record