

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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| In the Matter of | : | |
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| VICTORY 83, LLC, and DENNIS | : | C.A. No. 20-244JJM |
| WILLIAMS, as Owners of a 1983 65' | : | |
| 12-meter S/V "VICTORY 83," for | : | |
| Exoneration from or Limitation of Liability, | : | |
| Petitioners. | : | |

REPORT AND RECOMMENDATION

PATRICIA A. SULLIVAN, United States Magistrate Judge.

Before the Court is the verified¹ Complaint for Exoneration from or Limitation of Liability (ECF No. 1) filed by Petitioners VICTORY 83, LLC, and Dennis Williams, as Owners of a 1983 65' 12-meter S/V "VICTORY 83" pursuant to 46 U.S.C. § 30501, *et seq.*, and Fed. R. Civ. P. Supp. F, as well as Local Admiralty Rule F(1). Petitioners seek exoneration from or limitation of liability for any claims arising from an incident onboard the S/V VICTORY 83 ("the vessel") during a sailboat regatta on the waters of Narragansett Bay on July 21, 2019, as well as any other claims that have been or may hereafter be made; Petitioners aver that they have valid defenses on the facts and law. ECF No. 1 at 1 ¶ 3, 2 ¶ 10. Petitioners' verified complaint asserts that the post-casualty value of the vessel is \$375,000, based on the certification of market valuation completed by a marine consultant; Petitioners also filed an *Ad Interim* Security for Value for that amount plus \$1,000 in costs for the total amount of \$376,000 in compliance with Local Admiralty Rule F(1). ECF No. 1-1, 1-2. Based on these submissions, Petitioners request

¹ On June 18, 2020, a Declaration by Petitioner Dennis Williams verifying the complaint was filed. ECF No. 7.

the issuance of an Order Restraining Suits, Approving Petitioners' Security, and Directing Issue of Notice and the Filing of Claims.

The complaint has been referred to me; I address it by report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). See In re Weiss, C.A. No. 16-529S, 2016 WL 7383778, at *1 (D.R.I. Oct. 18, 2016), adopted, C.A. No. 16-529 S, 2016 WL 7378894 (D.R.I. Dec. 20, 2016); Seldon v. Lehman Bros., Inc., No. 09-13162, 2010 WL 2351492, at *1 (E.D. Mich. May 20, 2010) ("Pursuant to 28 U.S.C. § 636(b)(1), a magistrate judge may only issue a report and recommendation regarding a request for injunctive relief."). For the reasons that follow, I recommend that the relief sought by Petitioners in the complaint be granted and that the Court enter the requested injunctive order.

I. BACKGROUND

Petitioners are the owners of the vessel. On July 21, 2019, the vessel was a participant in a sailboat regatta on the waters of Narragansett Bay that began and ended in Newport, Rhode Island. Mid-bowman Anthony Pearce ("Mr. Pearce") was participating in the regatta onboard the vessel and was allegedly injured by the vessel's jib sheet during a tacking maneuver that Petitioners state is a standard sailing procedure by participants in an offshore race. Mr. Pearce claims that Petitioners caused his injury by certain acts or omissions during the race. Petitioners deny that any negligent acts caused or contributed to Mr. Pearce's alleged injury and that all tacking and other maneuvers were performed with reasonable care under the circumstances. Petitioners maintain that any claims, injuries, losses, damages or expenses arising from the casualty were not due to any fault, neglect, or want of care of Petitioners and occurred without Petitioners' privity or knowledge.

II. LAW AND ANALYSIS

Under the Limitation Act, the owner of a vessel may limit his liability to the value of the vessel and pending freight for “any loss, damage, or injury by collision . . . done, occasioned, or incurred, without the privity or knowledge of the owner.” 46 U.S.C. § 30505(b). The procedural requirements for bringing such action are found in the Fed. R. Civ. P. Supp. F for Admiralty or Maritime Claims. See Lewis v. Lewis & Clark Marine, Inc., 531 U.S. 438, 448 (2001). When the action is filed, the owner of the vessel

shall . . . deposit with the court, for the benefit of claimants - (A) an amount equal to the value of the owner’s interest in the vessel and pending freight, or approved security; and (B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter [46 U.S.C. §§ 30501 et seq.].

Id. § 30511(b)(1). In addition to this security requirement, pursuant to Fed. R. Civ. P. Supp. F(1), the plaintiff “shall also give security for costs and, if the plaintiff elects to give security, for interest at the rate of 6 percent per annum from the date of the security.” Fed. R. Civ. P. Supp. F(1). Local Admiralty Rule F(1) for the District of Rhode Island requires that “[t]he amount of security for costs under Supplemental Rule F(1) shall be \$1,000, and security for costs may be combined with security for value and interest unless otherwise ordered.” LAR F(1). If a claimant wishes to challenge the sufficiency of the security “on the ground that [it is] less than the value of the plaintiff’s interest in the vessel and pending freight,” such claimant may, upon motion, demand that the deposited funds be increased. Fed. R. Civ. P. Supp. F(7).

Once an owner has complied with Fed. R. Civ. P. Supp. F(1) and has deposited the appropriate security with the Court, “all claims and proceedings against the owner or the owner’s property with respect to the matter in question shall cease.” Fed. R. Civ. P. Supp. F(3); 46 U.S.C. § 30511(c). Fed. R. Civ. P. Supp. F(3) provides that the Court shall, upon motion by the owner seeking limitation, “enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff’s property with respect to any claim subject to limitation in the action.”

Fed. R. Civ. P. Supp. F(3). See In re Paradise Holdings, Inc., 795 F.2d 756, 761 (9th Cir. 1986) (district court has broad discretion in issuance of injunction under Fed. R. Civ. P. Supp. F(3)). Supplemental Rule F(4) provides that the Court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their claims with the clerk and to serve them on the attorneys for the plaintiff on or before a bar date to be named in a notice, which shall be published in such newspaper as the Court may direct once a week for four successive weeks prior to the date fixed for the filing of claims. In addition, not later than the day of second publication, the plaintiff must mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. After proper notice has been given, “the court, sitting without a jury, adjudicates the claims,” and “[t]he court then determines whether the owner may limit liability.” Id.

In this case, Petitioners’ verified complaint complies with the requirements of the Limitation of Liability Act and Fed. R. Civ. P. Supplemental Rule F. They have asserted facts that demonstrate their lack of “privity or knowledge” of any claims, injuries, losses, damages or expenses arising from the casualty, asserting a total lack of responsibility. ECF No. 1 ¶ 4; see In re Middlesex, 132 F. Supp. 3d 233, 238 (D. Mass. 2015). They have proffered evidence that the vessel has a post-casualty value of \$375,000, and, therefore, have provided security for that value, plus security for costs based on the court-approved amount set by the local rule, in the total amount of \$376,000 with interest at a rate of six percent, pursuant to Fed. R. Civ. P. Supplemental Rule F(1) and Local Admiralty Rule F(1).

Based on the foregoing, I recommend that the Court order that all lawsuits, causes of action, and claims against Petitioners and their property arising or resulting from the July 21,

2019, incident shall cease pursuant to 46 U.S.C. § 30511(c) and Fed. R. Civ. P. Supp. F(3). In addition, pursuant to Fed. R. Civ. P. Supp. F(4), I recommend that the Court direct issuance of notice to all persons asserting claims with respect to the July 21, 2019, incident.

III. CONCLUSION

Based on the foregoing, I recommend that the Court order as follows:

- That this Court forthwith issue an Order Restraining Suits, Approving Petitioners' Security, and Directing Issue of Notice and the Filing of Claims, which shall be based on the form appended to Petitioners' verified complaint (ECF No. 1-3), provided that the bar date to be included on page 2 of the said Order shall be set by the Court by incorporating the date that is sixty days following the Court's adoption of this report and recommendation.
- That this Court approves the *Ad Interim* Security for value and costs in the total amount of \$376,000 plus six percent interest per annum, which represents (a) the \$375,000 value of Petitioners' interest in the vessel post-casualty, and (b) Petitioners' obligation to provide costs, in compliance with Fed. R. Civ. P. Supplemental Rule F(1) and Local Admiralty Rule F(1);
- That, pursuant to Fed. R. Civ. P. Supplemental Rule F(3), any and all lawsuits, causes of action, and claims against Petitioners and their property arising out of the July 21, 2019, casualty on their vessel, except in this civil action, shall cease and be enjoined;
- That, pursuant to Fed. R. Civ. P. Supplemental Rule F(4) of the Federal Rules of Civil Procedure, notice shall issue to all persons asserting claims with respect to this incident admonishing them that they will be defaulted unless they file their respective claims on or before a date that is sixty days following this Court's adoption of this report and recommendation;² such claims shall be timely filed with the Clerk of the United States District Court for the District of Rhode Island, with a copy of such claims served on Petitioners' attorneys, Frederick Lovejoy, LOVEJOY & ASSOCIATES, 1536 Westminster St., Providence, RI 02902 (email: lovejoyadm@aol.com);
- That, pursuant to Fed. R. Civ. P. Supplemental Rule F(4), the notice shall be published in the Newport Daily News once a week for four successive weeks prior to the date fixed for filing claims, and Petitioners shall mail a copy of the notice, by the day of the second publication, to every person known to have made

² Pursuant to Fed. R. Civ. P. Supplemental Rule F(4), the specific bar date is to be set by the District Court upon adoption of this report and recommendation.

any claims against the vessel or Petitioners arising out of the casualty on July 21, 2019.

Any objection to this report and recommendation must be specific and must be served and filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b)(2); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district judge and the right to appeal the Court's decision. See United States v. Lugo Guerrero, 524 F.3d 5, 14 (1st Cir. 2008); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
June 19, 2020