3RD CASE of Level 1 printed in FULL format.

IN THE MATTER OF AN ARBITRATION BETWEEN THE WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION (LUXEMBOURG) AND AMERICAN MARINE CORPORATION, ET AL

CIVIL ACTION NO. 91-3645 C/W 91-3798 SECTION "D" (5)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

1992 U.S. Dist. LEXIS 1868

February 14, 1992, Decided
February 18, 1992, Filed and Entered

JUDGES: [*1] McNamara

OPINIONBY: A. J. McNAMARA

OPINION: Before the court are the following Motions:

1. Motion of Plaintiffs, American Marine Corporation, American Marine Holding Company, Oil Transport Company, Inc., Louisiana Materials Co., Inc., Cajun Crane Company, Aggregate Barges, Inc., Bayou Fleet, Inc., Frere Company, Modern Barge Company, Leslie B. Durant, Grand Marine, Seneca Barge Company, Inc. Oiseau Brothers, Audubon Company, Durow Corporation, Dumur Corporation, Noe Barge Company, and Sea Drilling Corporation, ("OIL TRANSPORT GROUP"), to Remand

2. Motion of OIL TRANSPORT GROUP to Vacate Order of Consolidation

3. Motion of West of England Shipowners Mutual Insurance Association (Luxembourg) ("THE ASSOCIATION") for Order Compelling Arbitration Pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

4. Motion of OIL TRANSPORT GROUP to Dismiss for Lack of Jurisdiction Civil Action No. 91-3645

5. Motion of OIL TRANSPORT GROUP to Enjoin the West of England Ship Owners Mutual Insurance Association (Luxembourg) from Prosecution of the English Suit

Plaintiffs, OIL TRANSPORT GROUP, have filed opposition to THE ASSOCIATION's Motion for Order Compelling Arbitration. Defendant, [*2] THE ASSOCIATION, has filed opposition to OIL TRANSPORT GROUP's Motion to Remand, Motion to Dismiss for Lack of Jurisdiction, and Motion to Enjoin Prosecution of the English Suit. These Motions are before the court on briefs, without oral argument.

BACKGROUND

The OIL TRANSPORT GROUP was a member of THE ASSOCIATION for insurance of protection and indemnity risks for various vessels owned and/or operated by the OIL TRANSPORT GROUP. n1 Participants in THE ASSOCIATION were governed by the rules of THE ASSOCIATION. n2 A dispute arose between the OIL TRANSPORT GROUP and THE ASSOCIATION over the OIL TRANSPORT GROUP's alleged failure to pay for additional premiums. On July 22, 1991, THE ASSOCIATION served "Notice [illegible]

Concur in an Appointment of Arbitrator Pursuant to Association Rule 62 and Section 10 of the Arbitration Act 1950" on the OIL TRANSPORT GROUP. n3 On September 20, 1991, the OIL TRANSPORT GROUP filed suit in Civil District Court, Parish of Orleans, against THE ASSOCIATION, The West of England Ship Owners' Insurance Services Limited, ("INSURANCE SERVICES"), Turnaboat Services, Inc., ("TURNABOAT"), and Peter Wiswell, ("WISWELL"), seeking declaratory judgment regarding [*3] the purported arbitration agreement and adoption of British law. n4 THE ASSOCIATION filed the above captioned suit to compel arbitration on September 30, 1991. The state court suit was removed on October 10, 1991, by all Defendants. On October 21, 1991, the removed suit was consolidated with the above captioned suit. n5 On November 8, 1991, THE ASSOCIATION commenced an action in the High Court of Justice, Queen's Bench Division, Commercial Court in London, England, to appoint an arbitrator. n6

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n1 THE ASSOCIATION's Memorandum in Support of Motion for Order Compelling Arbitration, at p.1.

n2 Id. at 2.

n3 Id. at 3.

n4 This state court suit was 91-17709 "F", and removed became USDC 91-3798.

n5 OIL TRANSPORT GROUP's Memorandum in Support of its Motion to Remand, at p. 3-4.

n6 OIL TRANSPORT GROUP's Memorandum in Support of its Motion to Enjoin, at p.3.

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MOTIONS PENDING BEFORE THIS COURT

The five Motions and related Memoranda in Opposition and Reply Memoranda pending before this court address, [*4] in some form, the question of the enforceability of the contract provisions requiring arbitration. While nonetheless providing a ruling on each individual Motion, this Minute Entry will address collectively the issues raised by all the pending Motions.

RULES OF THE ASSOCIATION

The issues raised in the pending Motions focus on two pertinent rules of THE ASSOCIATION. First, rule 1.6, which provides "these Rules and all contracts between a Member and the Association relating to the insurance afforded by the Association or otherwise shall be governed by English law."

Second, rule 62, entitled Arbitration, which provides

If any difference or dispute shall arise between a member or former member or any other person claiming under these Rules and the Association out of or in connection with these Rules or any bye law made thereunder or arising out of any contract between the Member or former Member and the Association [illegible] rights or obligations of the Association or the Member or former Member

thereunder or in connection therewith or as to any other matter whatsoever, such difference or dispute shall be referred to the Arbitration in London of a sole legal Arbitrator. Such Arbitrator [*5] shall be a practising Queen's Counsel of the Commercial Bar and if unavailable any other practising Queen's Counsel and a submission to arbitration in all the proceedings therein shall be subject to the provisions of the Arbitration Act 1950 and any Statutory modification or re-enactment thereof. In any such Arbitration any matter decided or stated in any Judgment or Arbitration Award (or in any reasons given by an Arbitrator or Umpire for making Award) relating to proceedings between the Member or former Member and any third party, shall be admissible in evidence.

No Member or former Member may bring or maintain any action, suit or other legal proceedings against the Association in connection with any such difference or dispute unless he has first obtained Arbitration Award in accordance with this Rule.

PRESUMPTION OF ARBITRATION

The United States Supreme Court has expressed a strong presumption favoring the enforcement of arbitration provisions whenever possible. "Section 2 [of the Arbitration Act] is a congressional declaration of a liberal federal policy favoring arbitration agreements." Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 103 S. Ct. 927, 941 (1983). [*6] n7 Further, "the Courts of Appeals have since consistently concluded that questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration. We agree. The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. . ." Id. at 941.

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n7 The dispute in this case involved a construction contract containing an arbitration clause.

- -End Footnotes- - - - - - - - - - - - - - - - - -

Citing its decision in Moses H. Cone, the Supreme Court explained that its liberal policy favoring arbitration agreements supports its policy guaranteeing the enforcement of private contractual arrangements. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 105 S. Ct. 3346, 3353 (1985) n8 (citation omitted). More specifically, the Court "concluded that concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of the international commercial [*7] system for predictability in the resolution of disputes require that we enforce the parties' agreement, even assuming that a contrary result would be forthcoming in a domestic context." Id. at 3355. (emphasis added).

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n8 The dispute in this case involved a sales agreement containing an arbitration clause.

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Enforcing an arbitration clause in a dispute over certain contract modifications, our own Fifth Circuit acknowledged that "[a] presumption of arbitrability exists requiring that whenever the scope of an arbitration clause is fairly debatable or reasonably in doubt, the court should decide the question of construction in favor of arbitration." Mar-Len of Louisiana, Inc. v. Parsons-Gilbane, 773 F.2d 633, 635 (5th Cir. 1985) (citation omitted).

Further, in a 1988 opinion involving West of England Ship Owners Mutual Protection and Indemnity Association as the Defendant, the Eastern District enforced an arbitration agreement under the Rules of the Association. Seafort Shipping Corp. v. The West of England Ship Owners Mut. Protection and Indem. Ass'n, 1988 U.S. Dist. LEXIS 14294 (E.D. La. 1988). [*8] In Seafort, Judge Sear explained that

where a contract contains an arbitration clause, 'there exists a strong presumption that arbitration should not be denied "unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation which would cover the dispute at issue"'. Phillips Petroleum Co. v. Marathon Oil Co., 794 F.2d 1080 (5th Cir. 1986) (quoting Houston General Insurance Co. v. Realex Group, N.V., 776 F.2d 514 (5th Cir 1985)). The Fifth Circuit has gone so far as to hold that even when a contract containing an arbitration clause was void from its inception, the arbitration clause would still be enforceable. (see Lawrence v. Comprehensive Business Serv. Co., 833 F.2d 1159 (5th Cir. 1987)).

Id. at *14-15.

Clearly, in the case before this court, controlling jurisprudence requires the enforcement of the arbitration agreement between THE ASSOCIATION and the OIL TRANSPORT GROUP. THE ASSOCIATION and the OIL TRANSPORT GROUP entered an agreement that provides for disputes to be resolved through arbitration, subject to English law. This court is unpersuaded by arguments [*9] that the unique facts of this case require a different result.

REJECTION OF THE "DIVERSITY" ANALOGY IN FAVOR OF APPLICATION OF THE CONVENTION

The OIL TRANSPORT GROUP argues that the Convention n9 is inapplicable because both parties to this suit are citizens of the United States, therefore the order consolidating the pending suits should be vacated and the removed suit should be remanded. Specifically, the OIL TRANSPORT GROUP argues that (1) the Convention restricts the application of arbitration agreements to citizens of different countries; and (2) THE ASSOCIATION is an unincorporated association and should therefore take the citizenship of its individual members, largely United States citizens. n10 Without citing any law, the OIL TRANSPORT GROUP urges this court to apply the rules of diversity by analogy, therefore finding jurisdiction in this court absent.

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n9 The Fifth Circuit explained the history of the Convention in McDermott Int'l, Inc. v. Lloyds Underwriters of London, 944 F.2d 1199, 1207-08 (5th Cir. 1991), as follows:
In 1970, Congress ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) to secure for United States citizens predictable enforcement by foreign governments of certain arbitral contracts

and awards made in this and other signatory nations. . . . Congress had to guarantee enforcement of arbitral contracts and awards made pursuant to the Convention in United States courts. . . . So Congress promulgated the Convention Act . . . The Federal Arbitration Act is the approximate domestic equivalent of the Convention . . . The Convention Act incorporates the FAA except where the FAA conflicts with the Convention Act's few specific provisions. [*10]

n10 OIL TRANSPORT GROUP's Memorandum in Support of its Motion to Remand, at p. 7, and Memorandum in Support of its Motion to Vacate Order of Consolidation, at p. 7.

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THE ASSOCIATION is organized under the laws of Luxembourg as a mutual insurance association, and as such is in the form required to do business as an insurance company under the laws of Luxembourg. When weighed against the strong presumption in favor of arbitration, especially in an international context, the court is unpersuaded by the OIL TRANSPORT GROUP's argument that THE ASSOCIATION should be subject to the rules of diversity by analogy. Accordingly, the court finds that removal was proper, consolidation was valid, and that it properly has jurisdiction over the consolidated suits pending before it. n11

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n11 In its Memorandum in Support of its Motion to Dismiss for Lack of Jurisdiction, the OIL TRANSPORT GROUP argues that "this matter (No. 91-3645) is neither within the jurisdiction of the Arbitration Convention implementing legislation, nor within the admiralty jurisdiction . . ." at p. 12. Because the court finds jurisdiction under the Convention, it declines to address at this time the question of admiralty jurisdiction.

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[*11]

CONTRACT IS VALID AND ENFORCEABLE UNDER THE CONVENTION

The OIL TRANSPORT GROUP argues that the Convention exempts from enforcement an arbitration agreement that is "null and void, inoperative or incapable of being performed." n12 To utilize this provision, they further urge the application of Louisiana law, which they argue would render the arbitration agreement null and void.

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n12 OIL TRANSPORT GROUP'S Memorandum in Support of its Motion to Remand, p.14.

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However, in keeping with the strong policy of favoring enforcement of arbitration agreements, the courts have created a body of federal substantive arbitration law applicable in both federal and state courts. Southland Corp. v. Keating, 104 S. Ct. 852, 859 (1984) (citation omitted). Examining the legislative history, the Court noted that Congress "contemplated a broad reach of the [Arbitration] Act, unencumbered by state-law constraints [illegible]. Citing Metro Indus. Painting Corp. v. Terminal Constr. Co., 287 F.2d 382, 387

(2nd Cir. 1961), [*12] the Court found that "'the purpose of the act was to assure those who desired arbitration and whose contracts related to interstate commerce that their expectations would not be undermined by federal judges, or . . . by state courts or legislatures.'" Id.

Accordingly, this court rejects the application of Louisiana law in favor of applying federal arbitration law.

LOUISIANA STATUTORY LAW IS INAPPLICABLE

The OIL TRANSPORT GROUP raises a two-part argument urging that arbitration is inappropriate. First they argue that to order arbitration in this matter would be contrary to the McCarran-Ferguson Act n13 which "codified Congress's intent to leave the regulation of the business of insurance to the several states." n14 Second, they argue for application of Louisiana insurance law to this dispute, specifically R.S. 22:629(A)(2), n15 which the OIL TRANSPORT GROUP interprets as prohibiting arbitration agreements in the context of insurance.

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n13 15 U.S.C. § 1011, et. seq.

n14 OIL TRANSPORT GROUP's Memorandum in Support of its Motion to Remand, at p.19, citing 15 USC § 1011 (1971) and Wilburn Boat Co. v. Firemen's Fund Ins. Co., 75 S. Ct. 368 (1955). [*13]

n15 R.S. 22:629 states in pertinent part
A. No insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state . . . regardless of where made or delivered shall contain any condition, stipulation, or agreement . . . (2) Depriving the courts of this state of the jurisdiction of action against the insurer. . . .

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Because the McCarran-Ferguson Act is inapplicable here, this argument fails on both levels. The McCarran-Ferguson Act does not apply to contracts made under the Convention, as it was intended to apply only to interstate commerce, not to foreign commerce. n16 Likewise, the Convention makes clear that it does not apply to purely interstate disputes. n17

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n16 see Triton Lines, Inc. v. Steamship Mut. Underwriting Assoc., 707 F. Supp. 277, 278-79 (S.D. Tex. 1989), which provides:
Triton urges that the Federal Arbitration Act does not apply to this contest since another federal statute [the McCarran-Ferguson Act] abandons the field of regulation of the business of insurance to the states. . . . A disputed claim is not the business of insurance. . . . The McCarran Act has never been held to have abrogated federal procedural practices in federal court cases. . . . The anti-arbitration provision of the Texas Insurance Code, therefore, is countermanded by the Federal Arbitration Act. (See Life of America Ins. Co. v. Aetna Life Ins. Co., 744 F. 2d 409 (5th Cir. 1984). [*14]

n17 9 U.S.C. § 202. ("An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention. . .).

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Jurisprudence is clear that when state laws conflict with the Convention, the Supremacy Clause mandates the application of the Convention. In Southland Corp., the Supreme Court addressed a state law provision that directly conflicted with the Federal Arbitration Act. Southland Corp., 104 S. Ct. at 853. Finding that the conflicting state law provision violated the Supremacy Clause, the Court strongly stated "in creating a substantive rule applicable in state as well as federal courts, Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements." Id. at 861. (referring to the Arbitration Act).

Ruling in accordance with the Supreme Court, the Fifth Circuit, citing Southland Corp., stated

"In enacting § 2 of the federal Act, Congress declared a national policy favoring arbitration and withdrew the power of the [*15] states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." . . . Thus, the Court held that the Arbitration Act preempted a state law that purported to withdraw the power to enforce arbitration agreements. . . . In a case involving actual conflict between state and federal regulation, "[a] holding of federal exclusion of state law is inescapable . . . when compliance with both . . . is an impossibility". . . Rather, federal preemption is, in such a case, automatic.

Commerce Park at DFW Freeport v. Mardian Construction Co., 729 F.2d 334, 338-340 (5th Cir. 1984) (citation omitted).

Accordingly, this court finds that federal arbitration law, not Louisiana statutory law is applicable to this case. To the extent that Louisiana law prohibits agreements to arbitrate in the context of insurance agreements, federal law favoring arbitration preempts it.

ACTION STAYED AS TO THREE PARTIES NOT PRIVY TO CONTRACT

The OIL TRANSPORT GROUP correctly asserts that Defendants INSURANCE SERVICES, TURNABOAT AND WISWELL are not subject to arbitration because they are not parties to the arbitration agreement between [*16] THE ASSOCIATION and OIL TRANSPORT GROUP. However, OIL TRANSPORT GROUP is incorrect in its argument that removal pursuant to the Convention was therefore improper.

The United States Supreme Court plainly stated that "under the Arbitration Act, an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement." Moses H. Cone Memorial Hosp., 103 S. Ct. at 939. The Fifth Circuit, enforcing an arbitration clause in a charter party agreement, quoted this passage verbatim in Sedco. Inc. v. Petroleos Mexicanos Mexican Nat'l Oil Co., 767 F.2d 1140, 1148 (5th Cir. 1985).

In a case upholding a district court's order staying a portion of litigation pending arbitration, the Fifth Circuit ruled that the district court had

discretion to include in its stay order claims of litigants not party to the contract containing the arbitration clause. Sam Reisfeld & Son Import Co. v. S.A. Eteco, 530 F.2d 679, 681 (5th Cir. 1976). (see also Seafort Shipping Corp., 1988 U.S. Dist. LEXIS 14294 at *15 - holding that the district court [*17] has discretion to stay the litigation of claims that are not within the scope of the arbitration agreement. Note that the issue addressed here was claims, not parties, that did not fall under the arbitration agreement.)

Therefore, this court finds that removal was proper, and exercises its discretion to stay the action as to INSURANCE SERVICES, TURNABOAT AND WISWELL, pending the result of arbitration.

NO PRIMA FACIE CASE OF ERROR OR DURESS IN THE INDUCEMENT

The OIL TRANSPORT GROUP alleges that the underlying contract in this dispute was procured through error, therefore pursuant to Civil Code art. 1949 the contract should be rescinded. The error complained of involves THE ASSOCIATION's alleged representation that the supplemental calls would not exceed thirty percent of the initial calls. n18

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n18 OIL TRANSPORT GROUP's Memorandum in Opposition to THE ASSOCIATION's Motion to Compel Arbitration, at p.21.

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Civil Code art. 1949 provides that "error vitiates consent only when it concerns a cause without which the obligation [*18] would not have been incurred and that cause was known or should have been known to the other party." The OIL TRANSPORT GROUP asserts that THE ASSOCIATION is presumed to know that it would not have enrolled nor continued its membership in THE ASSOCIATION had it known that supplemental future calls would exceed this thirty percent. The OIL TRANSPORT GROUP provides no evidence nor affidavit testimony supporting this allegation. The court is unpersuaded by this argument, and finds that article 1949 is inapplicable here.

Further, the affidavit of Robin Durant n19 suggests an argument that the contract is null due to error or duress in the inducement. The affidavit states that Durant, who apparently negotiated the insurance coverage, was unaware that "Rules" of THE ASSOCIATION existed, including the rule compelling arbitration. According to Durant, he learned of these rules only after a major collision involving a large claim, and was therefore at a disadvantage to obtain favorable coverage elsewhere.

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n19 The affidavit of Robin Durant is attached as exhibit A to OIL TRANSPORT GROUP's Opposition to THE ASSOCIATION's Motion to Compel Arbitration.

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[*19]

The court finds that this affidavit is insufficient to set up a prima facie case of error or duress in the inducement. There is no evidence that Durant or

the OIL TRANSPORT GROUP attempted to contest the arbitration clause, or has even in the five years prior to this litigation n20 expressed displeasure over its inclusion in the Rules.

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n20 In his affidavit, attached as exhibit A to OIL TRANSPORT GROUP's Opposition to THE ASSOCIATION's Motion to Compel Arbitration, Robin Durant states that he negotiated coverage in 1986. OIL TRANSPORT GROUP first filed suit in this matter on September 25, 1991.

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Finally, the OIL TRANSPORT GROUP argues that this court should allow a jury to resolve factual issues concerning the alleged illegality of the underlying contract, the arbitration provisions, and the choice of law provisions before submitting the matter to arbitration. n21 They argue potential due process violations, based on their assumption that under British Law, "these issues will not be considered by the arbitrators." n22 [*20] However, the Affidavit of Iain Milligan, Q.C. submitted on this point suggests that the law is far from clear, as the OIL TRANSPORT GROUP suggests. Milligan states

In my opinion, under English law, Rule 62 is wide enough to include a dispute as to whether the contract of insurance had been, or could be, avoided for non-disclosure or misrepresentation or whether damages were recoverable either under section 2(2) of the Misrepresentation Act 1967 in lieu of rescission for misrepresentation or for negligent mis-statement . . . However, the question remains whether an arbitrator appointed under Rule 62 would have power to determine finally whether the contract of insurance had been, or could be, avoided. In my opinion he probably would have that power, but the answer is far from clear.

The court is unconvinced that an arbitrator would be unable to resolve issues involving the alleged invalidity of the contract. Additionally, the court finds that the OIL TRANSPORT GROUP has not stated a prima facie case of error or duress in the inducement.

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n21 OIL TRANSPORT GROUP's Memorandum in Opposition to THE ASSOCIATION's Motion to Compel Arbitration, at p.27. [*21]

n22 Id. at 30.

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COMPULSORY COUNTER CLAIM ARGUMENT REJECTED

While the claims urged by THE ASSOCIATION in this case may have been raised as counter claims in the state court suit filed by the OIL TRANSPORT GROUP, the court finds that THE ASSOCIATION's failure to do so is not fatal to their pleadings. The state court suit was properly removed and consolidated with this suit filed by THE ASSOCIATION, and the failure of THE ASSOCIATION to plead their claims in the state court suit is of no significance.

CHOICE OF FORUM AND LAW PROVISIONS ENFORCED

The OIL TRANSPORT GROUP argues that "even if allowed, arbitration could be ordered only in the Eastern District of Louisiana." n23 However, rule 62 of the rules of THE ASSOCIATION provides

any difference or dispute . . . between a member or former member . . . arising out of any contract between the Member or former Member and the Association . . . shall be referred to the Arbitration in London of a sole legal Arbitrator. . . . Such Arbitrator shall be a practising Queen's Counsel of the Commercial Bar and if unavailable any other practising [*22] Queen's Counsel and a submission to arbitration in all the proceedings therein shall be subject to the provisions of the Arbitration Act 1950 and any Statutory modification or re-enactment thereof.

(emphasis added). Further, rule 1.6 of the rules of THE ASSOCIATION provides "these Rules and all contracts . . . shall be governed by English law." Clearly, the parties agreed that all disputes arising from their contractual relationship would be submitted to arbitration in London and governed by English law.

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n23 OIL TRANSPORT GROUP's Supplemental Memorandum in Support of its Motion to Dismiss for Lack of Jurisdiction, at p.2.

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In Sedco, Inc., the Fifth Circuit explained

The Convention was negotiated pursuant to the Constitution's Treaty power. Congress then adopted enabling legislation to make the Convention the highest law of the land. . . . Congress' implementing legislation for the Convention is found as part of the Arbitration Act. . . . passed long ago to overcome American courts . . . hostility to the arbitration [*23] of disputes. . . . In substance, the Convention replicates the Federal Arbitration Act. . . . but . . . its reach is broader. . . . Both provide that the district court "shall make an order directing the parties to proceed to arbitration" when the site for arbitration is within the district. But § 206 of the enabling legislation for the Convention also authorizes district courts to order parties to proceed with a Convention arbitration even outside the United States.

Sedco, Inc., 767 F.2d at 1145-46. (emphasis added).

In a Texas district court decision, plaintiff Triton, party to a contract containing a choice of English law and an arbitration provision, refused to submit to arbitration. Triton Lines, Inc. v. Steamship Mut. Underwriting Assoc., 707 F. Supp.277, 278 (S.D. Tex. 1989). Triton argued that it was not bound to the rules because some of the corporation's officers were unaware of the disputed provisions. Id. The court stayed the action and ruled that the parties must submit to arbitration. Id.

Likewise, this court finds that the OIL TRANSPORT GROUP and THE ASSOCIATION are bound by the rules of THE ASSOCIATION, including the choice of [*24] forum and law provisions. In ordering the parties to submit to arbitration, the court stays the action as to the three parties not subject to the contract

provisions.

ENJOINING LONDON SUIT INAPPROPRIATE

In light of the court's decision to submit this matter to arbitration pursuant to the rules of THE ASSOCIATION, it would be inappropriate to restrain THE ASSOCIATION from prosecuting its action pending in the High Court of Justice in London.

CONCLUSION

IT IS ORDERED that the OIL TRANSPORT GROUP and THE ASSOCIATION must submit to arbitration pursuant to the rules of THE ASSOCIATION. IT IS FURTHER ORDERED that this action is stayed as to INSURANCE SERVICES, TURNABOAT and WISWELL pending the resolution of arbitration. Accordingly;

The following Motion is GRANTED:

3. Motion of THE ASSOCIATION for Order Compelling Arbitration Pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The following Motions are DENIED:

1. Motion of OIL TRANSPORT GROUP to Remand;

2. Motion of OIL TRANSPORT GROUP to Vacate Order of Consolidation;

4. Motion of OIL TRANSPORT GROUP to Dismiss for Lack of Jurisdiction Civil Action No. 91-3645; [*25] and

5. Motion of OIL TRANSPORT GROUP to Enjoin THE ASSOCIATION from Prosecution of the English Suit.

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