

WILHELM H. ROSER, III VERSUS BELLE OF NEW ORLEANS, L.L.C. d/b/a BALLY'S CASINO LAKESHORE RESORT

CIVIL ACTION NO. 03-1248 SECTION "N" (2)

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

2003 U.S. Dist. LEXIS 16465

September 12, 2003, Decided

September 12, 2003, Filed; September 15, 2003, Entered

DISPOSITION: [*1] Motion to remand was denied.

CORE TERMS: removal, third party, removable, joined, Jones Act, nonremovable, indemnity, jurisdiction conferred, insurance policy, arbitration agreement, Convention Act, arbitration clause, claim asserted, entire action, arbitration, authorize, original jurisdiction, contractual indemnity, compel arbitration, cause of action, federal claim, entire case, state law, removability, predominates, cross-claim, signatory, premised, falling, insured

COUNSEL: For WILHELM H ROSER, III, plaintiff: Gothard J. Reck, Hugh C. Uhalt, Uhalt & Reck, New Orleans, LA.

For RIVERBOAT SERVICES, INCORPORATED, defendant: Joseph Patrick Tynan, Montgomery, Barnett, Brown, Read, Hammond & Mintz, New Orleans, LA.

For BELLE OF ORLEANS LLC, incorrectly referred to as Belle of New Orleans, LLC dba - Bally's Casino Lakeshore Resort, defendant: Godfrey Bruce Parkerson, Stephen Michael Cooper, Plauché, Maselli, Landry & Parkerson, LLP, New Orleans, LA.

For RIVERBOAT SERVICES, INCORPORATED, third-party plaintiff: Joseph Patrick Tynan, Montgomery, Barnett, Brown, Read, Hammond & Mintz, New Orleans, LA.

For SPHERE DEAKE INSURANCE, PLC, third-party defendant: Peter Brooks Sloss, Robert Edward Guidry, Murphy, Rogers & Sloss, New Orleans, LA.

For ZURICH INSURANCE COMPANY aka Zurich American Insurance Company, third-party defendant: Thomas Livingston Gaudry, Jr., Michael Don Peytavin, Winshurst, Gaudry, Ranson, Higgins & Gremillion, LLC, Gretna, LA.

JUDGES: KURT D. ENGELHARDT, UNITED STATES DISTRICT JUDGE.

OPINIONBY: KURT D. ENGELHARDT

OPINION:

ORDER AND REASONS

Before the Court [*2] is the Motion for Remand, Attorney's Fees, and Cost Pursuant to 28 U.S.C.A. § 1447 filed by Plaintiff on May 27, 2003 (Rec. Doc. No. 3). For the reasons explained herein, Plaintiff's motion is DENIED.

Background

Plaintiff, Wilhelm H. Roser, III, alleges that he was injured on or about August 30, 1997, while employed as a seaman and member of the crew of the M/V BELLE OF ORLEANS, a casino gaming vessel owned by Belle of Orleans, L.L.C., d/b/a Bally's Casino Lakeshore Resort ("Belle"). At the time of Plaintiff's accident, Riverboat Services, Inc. ("Riverboat Services") provided marine management services for the M/V BELLE OF ORLEANS pursuant to a contract, the Marine Management Service Agreement (hereinafter, the "MMSA"), with Belle.

In May 2000, Plaintiff filed suit in Orleans Parish Civil District Court against Belle, alleging claims under the Jones Act, 46 U.S.C. § 504, general maritime law, the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 905(b), and Louisiana Civil Code article 2317. Plaintiff added Riverboat Services as a defendant in June 2000. The defendants asserted cross-claims [*3] for indemnity and/or contribution against one another based on the MMSA. Belle also has sought to recover its defense costs from Riverboat Services.

Relying on Belle's alleged obligation under the MMSA to obtain various insurance policies, and to name Riverboat Services as an additional insured on those policies, Riverboat Services filed third party claims, seeking indemnity and defense, against Belle's insurers, Zurich Insurance Company and Sphere Drake Insurance Company, on September 30, 2002, and April 3, 2003, respectively. On May 2, 2003, Sphere Drake removed the action to this Court. Plaintiff filed the motion to remand presently before the Court on May 27, 2003.

Plaintiff argues that the "well-pleaded complaint" rule and, because his claims include a Jones Act claim, 28 U.S.C. § 1445(a) preclude removal of this action. Citing the arbitration clause in its marine protection and indemnity insurance policy, 46 U.S.C. §§ 203 and 205, and 28 U.S.C. §§ 1331 and 1441(c), Sphere Drake counters that the "well pleaded complaint" rule is inapplicable here, and that the third party claim against it allows removal of the [*4] entire case. In reply, Plaintiff contends that the third party claim, which is premised on the MMSA and the insurance policy issued to Belle, is not "separate and independent," as § 1441(c) requires, from his claims against the defendants. Accordingly, Plaintiff asks that the entire action be remanded to state court. Alternatively, because his claims against the defendants were pending in state court for three years prior to removal, Plaintiff asks that those claims be remanded. Maintaining that all work completed while in state court can likewise be used in federal court, Sphere Drake objects to a remand of any portion of this action.

Law and Analysis

"Federal courts are courts of limited jurisdiction ... [and] must presume that a suit lies outside this limited jurisdiction." *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir.), cert. denied, 534 U.S. 993, 122 S. Ct. 459, 151 L. Ed. 2d 377 (2001). In addition, "the burden of establishing federal jurisdiction rests on the party seeking the federal forum." *Id.* Thus, as the removing party, the third-party defendant, Sphere Drake, bears the burden of demonstrating this Court's [*5] jurisdiction and that removal was proper. See *Manguno v. Prudential Prop. and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002).

I. Removal

Both parties acknowledge that § 1445(a) generally precludes removal of civil actions arising under the Jones Act. ⁿ¹ See 28 U.S.C. § 1445(a) (a civil action arising under the Federal Employer's Liability Act (FELA), 45 U.S.C. § 51 et seq., may not be removed); see also *Fields v. Pool Offshore, Inc.*, 182 F.3d 353, 356 (5th Cir. 1999) (Jones Act incorporates the general provisions of FELA, including the bar to removal found in § 1445(a)), cert. denied, 528 U.S. 1155, 120 S. Ct. 1161, 145 L. Ed. 2d 1073 (2000). Notwithstanding the presence of a Jones Act claim, Sphere Drake argues that § 1441(c) - which addresses the removability of cases in which a separate and independent, removable federal claim is joined with an otherwise nonremovable claim - authorizes removal of this entire action. That statute provides:

Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 [*6] of [Title 28] is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

See 28 U.S.C. § 1441(c). Given the specific circumstances of this case, the Court agrees, for the following reasons, that this action was properly removed pursuant to § 1441(c).

----- Footnotes -----

ⁿ¹ See May 27, 2003 Memorandum in Support of Motion to Remand (Rec. Doc. No. 3) at 3 & 8; June 3, 2003 Opposition to Motion to Remand (Rec. Doc. No. 5) at 8.

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

As a preliminary matter, the Court recognizes that uncertainty exists as to whether § 1441(c) can authorize a removal that § 1445(a) prohibits. Indeed, the Fifth Circuit, in *Gamble v. Central of Georgia Railway Company*, 486 F.2d 781 (5th Cir. 1973), concluded that § 1445(a) divests federal courts of subject matter jurisdiction, thereby precluding removal, notwithstanding [*7] the applicability of § 1441(c). For a number of reasons, however, the Court does not find that *Gamble* forecloses removal in this case.

First, *Gamble* has been overruled to the extent that it construed the nonremovability provision of § 1445(a) in strict jurisdictional terms. See *Lifette v. N.L. Sperry*, 820 F.2d 116, 117-18 (5th Cir. 1987) (en banc) (holding that § 1445(a) could be waived because it is not jurisdictional). Second, numerous cases from this circuit, subsequent to the *Gamble* decision, have suggested that an unanswered question exists regarding the removability, pursuant to § 1441(c), of a claim that is subject to § 1445(a). See *Albarado v. Southern Pacific Transp. Co.*, 199 F.3d 762, 765 (5th Cir. 1999) (stating, in dicta, "a FELA claim ... may not be removed unless it is joined with separate and independent claims over which the federal courts exercise exclusive jurisdiction"); *Hopkins v. Dolphin Titan Int'l, Inc.*, 976 F.2d 924, 926 n. 14 (5th Cir. 1992) (pretermittting consideration of the potential conflict between § 1445(a) and § 1441(c) because the court was without appellate jurisdiction); *In re Dutile*, 935 F.2d 61, 62 (5th Cir. 1991) [*8]

(concluding the court "need not resolve the potential conflict between § 1445(a) and § 1441(c) because of lack of jurisdiction"); *Addison v. Gulf Coast Contracting Servs.*, 744 F.2d 494, 498-501 (5th Cir. 1984) (summary calendar) (suggesting that some claims joined with a Jones Act claim may be sufficiently "separate and independent" to warrant removal under § 1441(c)); *Pouchie v. Black Hawk Shipping Enters.*, 1995 U.S. Dist. LEXIS 12749, 1995 WL 520044, * 1 (E.D. La.) (a "Jones Act claim might be removable when joined with a separate and independent claim" under § 1441(c)); *Iwag v. Geisel Compania Maritima, S.A.*, 882 F. Supp. 597, 604-05 (S.D. Tex. 1995) (joinder of nonremovable claim, such as a Jones Act claim, with a removable federal claim subjects entire action to removal under § 1441(c)). n2

----- Footnotes -----

n2 The Court notes that these cases arguably are distinguishable in that they apparently contemplated removal of claims joined by the plaintiff, whereas removal in *Gamble* was predicated on a third party claim. The Fifth Circuit, however, unlike many courts, has repeatedly confirmed that third party defendants may remove entire cases pursuant to § 1441(c). See *State of Texas v. Walker*, 142 F.3d 813, 816 (5th Cir. 1998), cert. denied, 525 U.S. 1102, 119 S. Ct. 865 (1999); *Jones v. Petty-Ray Geophysical Geosource, Inc.*, 954 F.2d 1061, 1066 (5th Cir.), cert. denied, 506 U.S. 867, 113 S. Ct. 193, 121 L. Ed. 2d 136 (1992); *In re Wilson Industries, Inc.*, 886 F.2d 93, 95-96 (5th Cir. 1989); *Carl Heck Engineers, Inc. v. Maryland Cas. Co.*, 622 F.2d 133 (5th Cir. 1980) (removal may be premised on separate and independent third party claim that would be removable if sued upon alone). Given this precedent, the Court does not find that this distinction alone warrants a different result.

----- End Footnotes----- [*9]

Third, the statutory language of § 1441(c), which expressly refers to "non-removable claims," does not distinguish between claims outside the federal courts' original jurisdiction and claims rendered nonremovable by statutes such as § 1445. Finally, unlike § 1441(a), § 1441(c) does not contain the preliminary language "except as otherwise expressly provided by statute." Thus, for these reasons, the Court concludes that, if the prerequisites to § 1441(c)'s application are met, § 1445(a) did not bar removal of this action. n3

----- Footnotes -----

n1 Courts in other circuits have determined that § 1441(c) allows a defendant to remove a case in which a claim rendered nonremovable by § 1445 has been joined by the plaintiff with a removable claim. See, e.g., *Gonzales v. Amoco Shipping Co.*, 733 F.2d 1020, 1022-23 (2nd Cir. 1984) (concluding that § 1441(c) applies to claims made nonremovable by explicit statutory prohibition); *Newton v. Coca-Cola Bottling Co.*, 958 F. Supp. 248, 250-51 (W.D. N.C. 1997) (noting split authority and concluding that § 1441(c) applies to claim rendered nonremovable by § 1445(d)); cf. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1197 (9th Cir. 1988) (an action in which a claim rendered nonremovable by the Securities Act of 1933 is joined with a separate and independent RICO claim can be removed).

A. "A Removable Claim or Cause of Action Within The Jurisdiction Conferred by 28 U.S.C. § 1331"

Sphere Drake contends that legislation enacted to enforce the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (hereinafter, the "Convention"), 9 U.S.C. § 201 et seq., renders the third party claim asserted against it a "removable claim or cause of action within the jurisdiction conferred by 28 U.S.C. § 1331" for purposes of removal pursuant to § 1441(c). The Court agrees.

The Fifth Circuit's decision in *McDermott International, Inc. v. Lloyds Underwriters of London*, 944 F.2d 1199 (5th Cir. 1991), provides helpful background information regarding the Convention. It explains:

In 1970, Congress ratified 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 ... To gain rights under the Convention, though, Congress had to guarantee enforcement of arbitral contracts and awards made pursuant to the Convention in [*11] United States Courts ... So Congress promulgated the Convention Act in 1970 to establish procedures for our courts to implement the Convention. 9 U.S.C. § 201, et seq.

McDermott, 944 F.2d at 1207-08. In *McDermott*, the Fifth Circuit concluded that, as with the Federal Sovereign Immunities Act (FSIA), the purpose of the Convention Act "would be best served by the development of a uniform body of [Convention Act] law, and that uniformity is best served by trying all [Convention Act] cases in federal court unless the parties unequivocally choose otherwise." *Id.* at 1212 (internal quotations and citations omitted). In fact, the Fifth Circuit emphasized that, with the Convention Act, "Congress created special removal rights to channel cases into federal court." *Id.* at 1213.

The Convention applies to an arbitration agreement if: (1) there is a written agreement to arbitrate the dispute; n4 (2) the agreement provides for arbitration in the territory of a signatory to the Convention; (3) the agreement arises out of a commercial legal relationship; and (4) the agreement is not solely between citizens [*12] of the United States. See *In re Sedco, Inc.*, 757 F.2d 1140, 1144-45 (5th Cir. 1985); *Gavino v. Eurochem Italia*, 2001 U.S. Dist. LEXIS 17221, 2001 WL 845456, *2 (E.D. La.); see also 9 U.S.C. § 202. The written arbitration agreement in question here, which is found in the Sphere Drake insurance policy, states:

Any difference or dispute between [Sphere Drake] and either the Assured or any other Person arising out of or in connection with the Policy of Insurance shall be referred to arbitration in London ...

Neither the Assured nor any other Person making a claim under the Policy of Insurance shall be entitled to maintain any action, suit, or other legal proceedings against [Sphere Drake] except by way of arbitration as specified in clause 53 ... n5

- - - - - Footnotes - - - - -

n4 When evaluating this factor for purposes of deciding whether to compel arbitration, the court is to consider whether the arbitration clause is "broad" or "narrow." If the clause is broad, the court should compel arbitration and permit the arbitrator to decide whether the dispute falls within the clause. If the clause is narrow, the court should not compel arbitration unless it determines that the dispute falls within the clause. See *In re Sedco, Inc.*, 767 F.2d 1140, 1144-45 & n. 10 (5th Cir. 1985). In *Sedco*, the Fifth Circuit agreed that "it is difficult to imagine broader general language than ... 'any dispute.'" *Id.* at 1145 (internal quotations and citations omitted). [*13]

n5 See Certificate of Insurance Number 96SBABZ00760, Sphere Drake Smallcraft Policy Form, SD351/96, p. A20, PP 53-54, attached as Exhibit B to May 2, 2003 Notice of Removal; see also May 2, 2003 Notice of Removal at PP III-V.

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

The third party claim against Sphere Drake, which seeks indemnity and defense, and is based on Riverboat Services' alleged status as an additional insured under Belle's Sphere Drake policy, plainly constitutes a "difference or dispute between [Sphere Drake] and ... a Person arising out of or in connection with the Policy of Insurance." Further, the arbitration provision requires arbitration in England, which is a signatory to the Convention, and is part of a commercial legal relationship -- a marine protection and indemnity insurance agreement with Belle. Finally, because Sphere Drake is a London insurer, the arbitration agreement is not between two citizens of the United States. Thus, for purposes of evaluating Plaintiff's motion to remand, the Court finds that the Convention applies to Riverboat Services' third party claim against Sphere Drake. Cf. *Continental Ins. Co. v. Jantran, Inc.*, 906 F. Supp. 362, 365-67 (S.D. La. 1995) [*14] (compelling arbitration of cross-claim filed by Sphere Drake insured based on similar arbitration provision in Sphere Drake insurance policy).

Regarding § 1441(c)'s requirement of federal question jurisdiction conferred by 28 U.S.C. § 1331, Section 203 of Title 9 provides: "An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States ... shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy." See 9 U.S.C. § 203. Given this language, the Court finds that the third party claim asserted against Sphere Drake is one within the jurisdiction conferred by § 1331. See 28 U.S.C. § 1331 (providing federal district courts with "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States"); see also *Sembawang Shipyard, Ltd. v. Charger, Inc.*, 955 F.2d 983, 987 (5th Cir. 1992) (9 U.S.C. § 203 confers federal question jurisdiction on district courts).

With respect to [*15] the removability of Riverboat Services' claim against Sphere Drake, if sued upon alone, Section 205 of the Convention's

enforcement legislation specifically authorizes removal "where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention." See 9 U.S.C. § 205. Providing an exception to the "well-pleaded complaint" rule, § 205 further states that the "ground for removal ... need not appear on the face of the complaint." *Id.* Rather, "it may be shown in the petition for removal." *Id.*

In *Beiser v. Weyler*, 284 F.3d 665, 669 (5th Cir. 2002), the Fifth Circuit explained that "relates to" means "having a 'connection with' or 'reference to.'" As long as the contention that an arbitration clause falling under the Convention provides a defense to a claim is not "completely absurd or impossible," moreover, the "low bar of 'relates to'" is satisfied. *Id.* at 669. Given this liberal standard, and the Convention's policy favoring removal, the Court finds that the third party claim asserted by Riverboat Services, when considered in light of the [*16] arbitration agreement in the Sphere Drake policy and the notice of removal filed by Sphere Drake, satisfies Section 205's removal provision.

B. "Separate and Independent"

The parties also disagree as to whether the "separate and independent" requirement of § 1441(c) is met here. The Fifth Circuit has explained that "a federal claim is separate and independent if it involves an obligation distinct from the nonremovable claims in the case." *State of Texas v. Walker*, 142 F.3d 813, 817 (5th Cir. 1998), cert. denied, 525 U.S. 1102, 119 S. Ct. 865 (1999). By their very nature, third party indemnity claims necessarily are dependent on liability being established on the underlying claim. Although this fact might seem to suggest that third party indemnity claims never can be "separate and independent" for purposes of § 1441(c), see, e.g., *Moore v. United Servs. Auto. Ass'n.*, 828 F.2d 101, 104 (5th Cir. 1987) (bad faith claim was not "independent" because it was contingent on establishing liability under the insurance policy), the Fifth Circuit has confirmed the contrary to be true. Rather, in this circuit, third party indemnity [*17] claims are not "separate and independent" when they are premised on an allegation that the third party defendant's conduct caused the plaintiff's injuries. See *In re Wilson Industries, Inc.*, 886 F.2d 93, 96 (5th Cir. 1989). On the other hand, a third party claim that seeks indemnity based on a separate obligation owed to the defendant, such as a contractual indemnity obligation, is a separate and independent claim. *Id.* at 96.

Riverboat Services' third party claim against Sphere Drake under the insurance policy issued to Belle undeniably is one for "contractual indemnity." See, e.g., *Davis v. Life Ins. Co. of Miss.*, 700 F. Supp. 323, 326 (N.D. Miss. 1988) (indemnity action based on insurance policy was separate and independent); *Marsh Inv. Corp. v. Langford*, 494 F. Supp. 344, 350 (E.D. La. 1980) (same), *aff'd per curiam*, 652 F.2d 583 (5th Cir. 1981). Plaintiff contends, however, that the third party claim nonetheless is not "separate and independent," because Riverboat Services' claim arises from the same contract, i.e. the MMSA, that establishes Riverboat Services' connection to the M/V BELLE [*18] OF ORLEANS, for purposes of Plaintiff's claims against Belle and Riverboat Services.

In the context of a third party claim, the proper comparison with respect to § 1441(c)'s "separate and independent" requirement is between the third party claim and the plaintiff's claims against the original defendant. See *Walker*, 142 F.3d at 817. n6 In this case, litigation of Plaintiff's personal

injury claims against Belle and Riverboat Services may require consideration of certain aspects of the MMSA. It does not appear, and Plaintiff has not shown, however, that resolution of Plaintiff's claims likewise will require determination of the various insurance obligations, found in other sections of the MMSA, that form the basis of the third party claim against Sphere Drake. In other words, just because a single contract conceivably may have some bearing on two different claims does not mean that those claims necessarily cannot be separate and independent for purposes of § 1441(c).

- - - - - Footnotes - - - - -

n6 The Court notes that Plaintiff has not attempted to assert claims directly against Zurich or Sphere Drake.

- - - - - End Footnotes - - - - - [*19]

Here, the third party claim against Sphere Drake arises from a distinct contractual obligation allegedly owed to Riverboat Services, and does not, in any way, suggest that Sphere Drake's conduct was a cause of Plaintiff's injuries. Accordingly, based on the showing made, the Court finds that, consistent with *Wilson Industries*, Riverboat Services' third party contractual indemnity claim against Sphere Drake is "separate and independent" of Plaintiff's claims against the defendants. Thus, because the third party claim against Sphere Drake also is a removable claim within the jurisdiction conferred by § 1331, by virtue of the Convention's enforcement legislation, removal of this action, pursuant to § 1441(c), was proper. n7

- - - - - Footnotes - - - - -

n7 The Court emphasizes that its ruling on Plaintiff's motion to remand is based on the application of the Convention's enforcement legislation and 28 U.S.C. § 1441(c). Cf. *Acme Brick Co. v. Agrupacion Exportadora De Maquinaria Ceramica*, 855 F. Supp. 163, 165-66 (N.D. Tex. 1994) (allowing defendants to remove based on cross-claim for indemnity pursuant to 9 U.S.C. §§ 203 and 205, and 28 U.S.C. 1441 § (c)), but remanding state law claims not being arbitrated). The Court does not decide whether a third party defendant may remove an entire action relying solely on the removal provision found in 9 U.S.C. § 205. Other district courts in this circuit have taken varying positions on that issue, depending on the particular circumstances before them. See *Caringal v. Karteria Shipping, Ltd.*, 108 F. Supp. 2d 651, 654-56 (E.D. La. 2000) (emphasizing the use of the words "defendant or defendants" in 9 U.S.C. § 205, court ruled that a third party defendant could not remove an action where 28 U.S.C. § 1441(c) did not apply); *Acosta v. Master Maint. & Constr., Inc.*, 52 F. Supp. 2d 699 (M.D. La. 1999) (emphasizing the plaintiff's claims against the insurer defendants pursuant to the Louisiana Direct Action statute, in allowing those defendants to remove the entire case, pursuant to 9 U.S.C. § 205, based on coverage dispute with another defendant, and refusing to sever and remand the plaintiff's state law claims).

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

[*20]

II. Remand of Plaintiff's Claims

In the event that the Court determines that removal of this action was proper, as it has, Plaintiff urges that his claims against the defendants be severed and remanded to state court. Section § 1441(c), however, authorizes remand only of "matters in which State law predominates." See 28 U.S.C. § 1441(c). The Court does not find, and Plaintiff has not demonstrated, that State law predominates with respect to his claims asserted under the Jones Act, the LHWCA, and general maritime law. Although Plaintiff has asserted one claim under Louisiana state law, specifically Article 2317 of the Louisiana Civil Code, the Court, in its discretion, does not find that remand of this single claim to be an appropriate or efficient use of the resources of the judiciary or of the parties. Accordingly, the Court will retain jurisdiction over all of the claims asserted in this action.

Conclusion

The arbitration clause in the Sphere Drake Insurance Company policy issued to Defendant Belle of Orleans, L.L.C., d/b/a Bally's Casino Lakeshore Resort, renders the third party claim asserted against Sphere Drake subject [*21] to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, and removable pursuant to 9 U.S.C. § 205. The remaining claims in this action became removable, pursuant to 28 U.S.C. § 1441(c), when the third party claim against Sphere Drake was joined with them. Accordingly, for the reasons stated herein, **IT IS ORDERED** that the motion to remand filed by the plaintiff, Wilhelm H. Roser, III, is **DENIED**.

New Orleans, Louisiana, this 12th day of September 2003.

KURT D. ENGELHARDT

UNITED STATES DISTRICT JUDGE