IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-60105-CIV-HUCK/TURNOFF

LESLIE HOLMES,

Plaintiff,
v.

WESTPORT SHIPYARDS, INC. d/b/a WESTPORT YACHT SALES, a Florida corporation, *in personam*, and the M/V "SUPER SERVANT 3", her boilers, engines, tackle, equipment, freight, appliances, appurtenances, etc., *in rem*,

Defendants.
_____/

REPORT AND RECOMMENDATION

THIS CAUSE comes before the Court on Defendant Dockwise B.V.'s ("Dockwise") Renewed Motion to Dismiss, or in the Alternative, Motion to Compel Arbitration, or Motion for Summary Judgment ("Dockwise's Renewed Motion"). On April 12, 2004, the Honorable Paul C. Huck referred this motion to the undersigned insofar as it seeks to compel arbitration [DE # 127]. For the reasons set forth below, it is recommended that the motion be granted and that this case be referred to arbitration.

I. BACKGROUND

In this admiralty action, Plaintiff Leslie Holmes ("Holmes") seeks damages for injuries sustained in an accident on January 21, 2001, while he was on board the M/V Super Servant 3, ("Super Servant") a cargo ship owned by Dockwise. At the time of the accident,

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the Super Servant was transporting the yacht M/Y Dulcinea V ("Dulcinea"), to Florida on behalf of Defendant Westport Shipyards, Inc. d/b/a Westport Yacht Sales ("Westport"). This action is against both the Super Servant *in rem* and Westport *in personam*. Plaintiff did not sue Dockwise, the owner of the Super Servant. Dockwise, however, entered an appearance restricted to the defense of the claims *in rem* against the Super Servant [DE # 16].

The First Amended Complaint ("the Complaint") alleges that Plaintiff is a professional seafarer actively engaged in maritime employment onboard vessels. Plaintiff alleges that on January 18, 2001, he was employed by Westport as captain of the Dulcinea, on a voyage commencing in Seattle, Washington and scheduled to terminate at Westport's place of business in Ft. Lauderdale, Florida. On January 21, 2001, the Dulcinea made port in Vancouver, B.C. and was loaded aboard the Super Servant for continued transport to Florida. Plaintiff alleges that, at this time, he joined the crew of the Super Servant and assisted with loading operations. While performing these duties, it is alleged that an unsecured and defective ladder provided by the Super Servant collapsed, causing Plaintiff to sustain serious injuries when he fell to the deck.

Prior to the Dulcinea being loaded as cargo on the Super Servant, the owners of both vessels executed a Booking Note. The Booking Note states, in pertinent part, that Westport (as the owner of the Dulcinea) was permitted to have a "Rider" aboard the Super Servant to accompany the Dulcinea during the period of transportation, so long as Westport and the Rider each signed the Indemnification Form attached to the Booking Note [DE # 42, Exhibit

7]. There is no dispute that Holmes is the Rider referred to in the Booking Note. The Booking Note also provides that the:

> Yacht Owner [Westport] shall be liable for . . . any claims arising as a result of death or injury of . . . any of the Yacht Owner's employees, servants, agents or subcontractors and their employees, [and that the] Yacht Owner shall defend, indemnify and hold harmless the Carrier [Dockwise] from and against any and all claims . . . .

Id. (Material inside brackets not in the original, but inserted for ease of reference.) The Booking Note also states that disputes that cannot be amicably settled will be referred exclusively to arbitration in Rotterdam, The Netherlands. *Id.*

There is no dispute that Plaintiff signed the Indemnification Form attached to the Booking Note. That Form, comprised of four paragraphs on a single sheet of paper, states, in pertinent part, that the Yacht Owner (Westport) and the Rider (Holmes):

> . . . undertake to make no claims of any nature whatsoever against the Carrier, its servants/crewmembers, agents or subcontractors . . . .

[DE # 42, Exhibit 7](first paragraph of the Indemnification Form). The Form identifies the "Carrier" as "Dockwise N.V.". *Id.*[1] and further provides:

> . . . *any and all disputes arising in connection with this document shall be referred exclusively to arbitration in Rotterdam, The Netherlands.*

Id. (emphasis added)(fourth paragraph of the Indemnification Form).

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[1]The Affidavit of Richard de Vliegh [DE # 115, Exh. 4] explains that following a corporate restructuring Dockwise B.V., the entity that filed the Claim of Owner for the Super Servant, became the successor in interest to Dockwise N.V., the entity referred to in the Booking Note and Indemnification Form.

The essential question raised by Dockwise's Renewed Motion is whether the language in the Indemnification Form italicized above, signed by Plaintiff, requires Plaintiff to bring his claim in arbitration, rather than in this Court.

Dockwise previously raised this question to this Court in its March 7, 2003, Motion to Dismiss or, in the Alternative, Motion to Compel Arbitration [DE # 36]. The Motion was referred to Magistrate Judge Snow, who on September 30, 2003, issued a Report and Recommendation denying Dockwise's Motion, without prejudice to file a subsequent motion to dismiss or for summary judgment on jurisdictional grounds [DE # 70]. Judge Snow recommended that the parties be permitted "an initial period of discovery limited to the issue of whether the booking note and indemnification form are binding on the parties" [DE # 70, p. 12-13].

On October 16, 2003, Judge Huck entered an order affirming Judge Snow's Report and Recommendation [DE # 72]. After considering Dockwise's Written Objections to Report and Recommendation [DE # 75], on December 1, 2003, Judge Huck entered a second order affirming Judge Snow's Report and Recommendation [DE # 94]. In that Order the District Court Judge directed that "the parties may conduct discovery regarding the issue of whether the booking note and indemnification form are binding and enforceable." *Id.* The parties undertook such discovery, which was followed by the Renewed Motion.[2]

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[2] In its Renewed Motion, Claimant Dockwise incorporates by reference its previous Motion to Dismiss or, in the Alternative, Motion to Compel Arbitration and Memorandum of Law [DE # 36] and Reply brief in support of that motion [DE # 51]. Plaintiff Holmes likewise incorporates by reference his earlier Response brief [DE # 126, 42].

In its Renewed Motion, Claimant Dockwise argues that this Court lacks subject matter jurisdiction over this action because, pursuant to the Indemnification Form signed by Plaintiff, this case must be referred to arbitration in Rotterdam, The Netherlands. Dockwise relies upon the limited discovery taken so far to assert that Plaintiff read, understood, and consented to the arbitration clause contained within the Indemnification Form and, as a result, the clause is valid and enforceable. Accordingly, Dockwise urges that this Court must give meaning to the federal presumption favoring arbitration and compel arbitration of this matter.

Plaintiff seeks to avoid application of the arbitration clause by arguing that it encompasses only *in personam* claims against Dockwise, and he has not asserted such a claim. Rather, Plaintiff sues the Super Servant *in rem*, which claim he argues falls outside the disputed arbitration clause. Also, Plaintiff asserts that the arbitration clause is unenforceable because it is a contract of adhesion. Finally, Plaintiff argues that the Jones Act, 46 U.S.C. §688 and the Longshore and Harbor Worker's Compensation Act, 33 U.S.C. § 901 et seq. bar reference of this dispute to arbitration. The Court has considered each of these arguments and, for the reasons stated below, recommends that Dockwise's Renewed Motion be granted and this case be referred to arbitration.[3]

[3] Plaintiff briefly mentions several other grounds for denial of Dockwise's Renewed Motion, all of which this Court finds to be without merit.

II. ANALYSIS

A. The legal standard on a motion to compel arbitration.

It is undisputed that this case falls within the Federal Arbitration Act, ("FAA"), 9 U.S.C. §1 *et seq.*, which provides that a written agreement to arbitrate "in any maritime transaction or a contract evidencing a transaction involving commerce . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. §2.

The FAA implemented a "strong national policy favoring arbitration." *Investors Capital Corp., v. Brown*, 145 F. Supp. 2d 1302, 1304 (M.D. Fla. 2001); *see also Dean Witter Reynolds, Inc. V. Byrd*, 470 U.S. 213, 218 (1985); *Moses H. Cone Memorial Hosp., v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983). However, a court may not order arbitration "until it is satisfied that a valid arbitration agreement exists." *Miller v. Drexel Burnham Lambert, Inc.*, 791 F.2d 850, 854 (11th Cir. 1986); *Aronson v. Dean Witter Reynolds, Inc.*, 675 F. Supp. 1324, 1325 (S.D. Fla. 1987); *Investors Capital, supra*. As the Supreme Court has stated: "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration [in] any dispute which he has not agreed so to submit." *Investors Capital, supra, citing AT&T Technologies v. Communications Workers of America*, 475 U.S. 643, 648 (1986). In sum, the threshold issue for this Court is whether an agreement to arbitrate exists. "The presumption in favor of arbitration arises *after* the court determines that the parties reached some agreement to arbitrate." *Investors Capital, supra*, at 1305.

In resolving this threshold issue, the Court must focus on the arbitration agreement itself, and not the contract as a whole. The Eleventh Circuit explained this distinction as follows:

> Any claim of fraud, duress or unconscionability in the formation of the arbitration agreement is a matter for judicial consideration. *See Prima Paint Corp., v. Flood & Conklin Mfg. Co.,* 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967). Allegations of unconscionability in the contract as a whole, however, are matters to be resolved in arbitration. *See id.; Merrill Lynch, Pierce, Fenner & Smith v. Haydu,* 637 F.2d 391 (5th Cir. Unit B 1981). Thus, [movant's] claim bars arbitration only if it goes to the arbitration clause itself and not the whole contract.

Miller, 791 F.2d at 854; *see also Coleman v. Prudential Bache Securities, Inc.*, 802 F. 2d 1350, 1352 (11th Cir. 1986); *Chrysler Financial Corp., v. Murphy*, No. Civ.A.97-JEO-2391-S, 1998 WL 34023394, at *7 (N.D. Ala. 1998)). Accordingly, here, the Court's inquiry must focus on the arbitration clause signed by Plaintiff, and not the Indemnification Form as a whole.

Finally, it bears noting that in defending against Dockwise's Renewed Motion, Plaintiff bears an initial burden of proof:

> The party opposing arbitration bears the initial responsibility of informing the court of the basis for its opposition. This burden is not unlike that of a party seeking summary judgment. *Celotex Corp., v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 2553, 91 L.Ed. 2d 265 (1986). . . . [T]he party opposing the Motion To Compel Arbitration, has the affirmative duty of coming forward by way of affidavit or allegation of fact to show cause why the court should not compel arbitration.

Aronson, 675 F. Supp. at 1325.

B. The arbitration clause is not a contract of adhesion.

Plaintiff argues that the Indemnification Form, which contains the arbitration clause, is not enforceable because it is a contract of adhesion. According to Plaintiff, not only did he did not understand the Form, but had he refused to sign it, he would have been out of a job. Plaintiff also argues in his memorandum that the circumstances surrounding his signing of the Form should preclude its enforcement, as he was forced to sign it "in a blowing miserable rain" while the Dulcinea was being loaded aboard the Super Servant.

Notably, Plaintiff's argument is directed to the entire Indemnification Form; it is not specific to the arbitration clause contained therein. This alone, is sufficient reason to reject Plaintiff's argument.

As stated above, Plaintiff's claim of unconscionability "bars arbitration only if it goes to the arbitration clause itself and not the whole contract." *Miller*, 791 F.2d at 854. Again, this Court only has jurisdiction to determine whether the parties entered into an agreement to arbitrate. Thus, if the arbitration clause itself were void due to unconscionability or other defect in the formation of that agreement, there would be an absence of an enforceable agreement to arbitrate, and Dockwise's Renewed Motion would have to be denied. *Chrysler Financial Corp,* 1998 WL 34023394, at *7 (where a party presents "well-supported claims that the agreement to arbitrate resulted from the sort of fraud or overwhelming economic power that would provide grounds for the revocation of any contract, the court may refuse to recognize the arbitration agreement." (citations omitted)). By contrast, Plaintiff's

argument that the entire Indemnification Form is void as a contract of adhesion is one that can be addressed at arbitration, assuming this Court finds the parties reached an enforceable agreement to arbitrate.

Having said this, even if this Court were to construe Plaintiff's contract of adhesion argument as focused on the disputed arbitration clause, the argument would not carry the day.

To establish that the arbitration clause is an unenforceable contract of adhesion, Plaintiff must demonstrate that it is both procedurally and substantively unconscionable. *Golden v. Mobil Oil Corp.*, 882 F.2d 490, 493 (11th Cir. 1989); *In re Managed Care Litigation*, 132 F. Supp.2d 989, 1000 (S.D. Fla. 2000); *aff'd, In re Humana Inc. Managed Care Litigation*, 285 F.3d 971 (11th Cir. 2002).[4] "Substantive unconscionability exists when the terms of the contractual provision are unreasonable and unfair." *Golden*, 882 F.2d at 493. As the Eleventh Circuit has made clear, however, "[t]here is nothing inherently unfair or oppressive about arbitration clauses," *Coleman v. Prudential Bache Securities, Inc.*, 802 F.2d 1350, 1352 (11th Cir. 1986); *In re Managed Care Litigation*, 132 F. Supp. at 1000, and Plaintiff has presented no evidence to suggest that this particular arbitration provision was unconscionable.

The lack of substantive unconscionability, alone, is sufficient basis to find in favor of Dockwise on this issue. *In re Managed Care Litigation*, 132 F. Supp. at 1000. It bears

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[4] Those contract defenses that are generally applicable under state law, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening the FAA. *Doctor's Associates, Inc. v. Caarotto,* 517 U.S. 681, 687 (1996).

noting that Plaintiff has also failed to satisfy the Court that the arbitration clause is procedurally unconscionable. "Procedural unconscionability exists when the individualized circumstances surrounding the transaction reveal that there was no 'real and voluntary meeting of the minds' of the contracting parties." *Golden v. Mobil Oil Corp.*, 882 F.2d at 493 (citation omitted). The manner in which the contract was entered into, such as the relative bargaining power of the parties and their ability to understand the contract terms, bear upon procedural unconscionability. *Orkin Exterminating Co., Inc. v. Petsch*, No. 2D02-5494, 2004 WL 221065 at *5 (Fla. Dist. Ct. App. 2004). As an example, a contract could be procedurally unconscionable if important terms are "hidden in a maze of fine print." *Id., quoting Powertel, Inc. V. Bexley*, 743 So.2d 570, 574 (Fla. Dist. Ct. App. 1999). The same would be true if there is the absence of any meaningful choice on the part of the consumer. *Id. at 6.* Courts, however, will not "relieve a party of his obligations under a contract because he has made a bad bargain containing contractual terms which are unreasonable or impose an onerous hardship on him." *Steinhardt v. Rudolph*, 422 So.2d 884, 890 (Fla. Dist. Ct. App. 1982). Rather, the terms must display a "profound sense of injustice" for a court to intervene. *Id., quoting,* 14 S. Williston, A Treatise on the Law of Contracts §1632 at 51-52 (3d ed. Jaeger 1972).

Holmes testified at his deposition that he signed the same Indemnification Form on a prior occasion when he worked for Westport as a "Rider" in 2000 on another Dockwise vessel. [DE # 115, Holmes Depo. pp. 109-16]. Holmes was asked whether he read the

Indemnification Form and the other documents he was required to sign "word for word." Plaintiff responded, "Did I read every word? I guess you could say that I read them, you know, at that point on the catwalk, yes." [DE # 115, Holmes Depo., p. 112]. When questioned specifically about reading the Indemnification Form "word for word," Plaintiff again testified that he had "at one point" read the document and thinks that he had some discussion about it. *Id.* at pp. 113-14.

Holmes also testified that he signed what he assumed to be the same documents on the 2001 voyage in question. *Id.* at 118. When asked whether he read the Indemnification Form at this point prior to signing it, he stated, "I probably did, yes." *Id.* at 140. Although Plaintiff testified that he did not remember receiving or signing the Indemnification Form prior to the date of the accident, January 21, 2001, his signature appears on a January 11, 2001 faxed copy of the Form. *Id.* at 138-139. *See also*, DE # 115, Exh. 2 (Indemnification Form).

Holmes' argument that he had no choice but to sign the Indemnification Form is unpersuasive as it is not supported by evidence.

Moreover, Holmes' argument that the arbitration clause is unenforceable because it is inconspicuous is not persuasive here where the entire Indemnification Form is one page consisting of only four paragraphs. *See, e.g., Orkin Exterminating Co.*, 2004 WL 221065, at *6 ("[H]ere, the arbitration provision was contained in the original contract between the parties. It was in large type on the first page of the agreement, not buried in a maze of fine

print" and was not a contract of adhesion.). As noted above, Holmes acknowledged having read the arbitration clause before signing the document. Further, considering Holmes' testimony that he signed an identical Indemnity Form prior to a voyage with Dockwise one year earlier, this Court concludes that Holmes entered into the arbitration agreement of his own free will and had sufficient opportunity to seek clarification of its terms in the event he did not fully understand them, prior to embarking on the January 21, 2001 journey.

3. The arbitration clause applies to this *in rem* action.

Plaintiff also seeks to avoid arbitration by arguing that the arbitration clause in the Indemnification Form does not govern actions *in rem*. Plaintiff emphasizes that the Indemnification Form references Dockwise as the "Carrier", but makes no reference to the Super Servant or to the "vessel." Accordingly, Plaintiff argues that the arbitration language that "*[a]ny and all disputes arising in connection with this document* shall be referred exclusively to arbitration in Rotterdam, The Netherlands . . ." only refers to disputes with Dockwise, and not with the vessel. For these reasons, Plaintiff argues that his claim against the vessel is not encompassed in the agreement to arbitrate.

The FAA does not confer a right to compel arbitration of any dispute at any time; it confers only the right to obtain an order directing that "arbitration proceed *in the manner provided for in the [parties'] agreement.*" *Volt Information Sciences, Inc. V. Board of Trustees,* 489 U.S. 468, 475 (1989) *citing* 9 U.S.C. § 4. *See also AT&T Technologies, Inc. V. Communications Workers of America*, 475 U.S. 643, 648 (1986)("arbitrators derive their

authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration."). On this reasoning, before this Court can compel the parties to arbitrate Plaintiff's claims, it must first find that the parties' agreement to arbitrate reasonably included Plaintiff's claims against the vessel.

In this regard, it must be remembered that the *in rem* liability of a ship is a "legal fiction" created to relieve the claimant who succeeds in attaching the vessel against which the claim is directed from having to "circle the globe in efforts to sue and collect from the owner." *Cargill B.V. v. S/S. "Ocean Traveller," 726 F. Supp. 56, 61 (S.D.N.Y. 1989).* This legal fiction should not be used as a means of "distorting fundamental contract rights." *Id.* Here, as in *Cargill*, the real dispute is between the parties who agreed to arbitrate their differences--Dockwise and Holmes. Holmes can not avoid their agreement by employing the legal fiction of *in rem* action against Dockwise's vessel to avoid suing Dockwise *in personam*. *See also Nicaragua Line Co. V. M/V Barbel,* No. 02-20460-CIV, 2002 WL 31962193 (S.D. Fla. 2002); *Newport Petroleum, Inc. V. Tug Justine Foss*, No. C97-966C, 1997 WL 876955 (W.D. Wash. 1997). *Cf. Ivax Corp.*, 286 F.3d at 1318 ("parties to an arbitration agreement may not 'evade arbitration through artful pleading'")(citations omitted).

Plaintiff argues that the opinions in *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180 (1959), and *Loomis v. SS Santa Rosa*, 447 F.2d 105 (9th Cir. 1971) *cert. denied,* 404 U.S. 1038 (1972), dictate a ruling here that the arbitration clause does not apply to actions

in rem. This Court disagrees. In both *Monrosa* and *Loomis,* other portions of the agreements at issue made the distinction between suits *in rem* and *in personam.* Thus both courts in *Monrosa* and *Loomis* reasoned that the parties did not intend to include *in rem* suits in the provisions under review. That is not the case here. Neither the Indemnification Form nor Booking Note distinguish between actions against persons and those against vessels. In this regard, the Indemnification Form in this case is similar not only to the contract language at issue in *Cargill, supra,* but also to the forum selection clause at issue in *Sembawang Shipyard, Ltd. v. Charger, Inc.*, 955 F.2d 983, 986 (5th Cir. 1992), which made no distinction between actions against persons and those against things.

For these reasons, this Court concludes that the arbitration agreement includes within its scope Plaintiff's claims against the Super Servant.

4. **Arbitration in this case is not prohibited by the Jones Act or the Longshore and Harbor Workers' Compensation Act.**

Holmes argues that both the Jones Act, 46 U.S.C. §688, and the Longshore and Harbor Worker's Compensation Act ("LHWCA"), 33 U.S.C. § 901 et seq., preclude arbitration in this matter. The Jones Act provides a cause of action for a seaman injured in the course of his employment by the negligence of his employer, the ship's master, or fellow crew members. Similarly, the LHWCA provides longshoremen and harbor workers a cause of action for damages for injuries or death that arise from their employers' negligence. These statutes however are not applicable to Holmes, because he was not an employee of Dockwise.

Both the Jones Act and the LHWCA only permit recovery where an employer-

employee relationship is established. *See Eckert v. U.S.*, 232 F. Supp.2d 1312, 1316 (S.D. Fla. 2002) ("The cases clearly indicate that recover[y] under the Jones Act is predicated upon establishing an employer-employee relationship") (citation omitted); *McAleer v. Smith*, 57 F.3d 109, 115 (1st Cir. 1995) ("The Jones Act remedy is available only against the seaman's employer."); *Oilfield Saftey and Machine Specialities, Inc. v. Harman Unlimited., Inc.*, 625 F.2d 1248, 1252-53 (5th Cir. 1980) (discusses standard for determining employment relationship under the LHWCA).

The evidence shows that Holmes was not an employee of Dockwise on the day of his injuries. According to Holmes, he was hired by Defendant Westport to accompany the yacht Dulcinea from Seattle to Ft. Lauderdale via Vancouver [DE # 115, Holmes Depo. pp. 68-74]. In Vancouver, he was to accompany the Dulcinea on board the Super Servant vessel on behalf of Westport as a "Rider." Clause 15, Section 1 of the Booking Note between Westport and Dockwise provides, in pertinent part: "[T]he Yacht Owner [i.e., Westport] may nominate one person ("Rider") to accompany the Yacht during the transportation of the Yacht . . *The Rider will be an employee of the Yacht Owner, not of the Carrier [i.e., Dockwise*]." (emphasis added) [DE # 42, Exh. 7]. Moreover, Holmes testified at his deposition that he never received a check from Dockwise and had never been employed by Dockwise. [DE # 115, Holmes Depo. p. 55].[5] Finally, there is no evidence that Dockwise

[5] In contrast, the evidence indicates that Holmes was paid by Westport from March 2000 to November 2002 for captain services aboard its vessels. [DE # 123, Exh. 5; DE # 115, Holmes Depo. 65-72].

had the right to exercise any employment-related decisions vis-a-vis Holmes, such as hiring or firing.

In sum, Plaintiff's argument that the Jones Act and LHWCA preclude arbitration is without support in the record.[6]

III. CONCLUSION

For the foregoing reasons, it is RECOMMENDED that:

Defendant Dockwise's Motion to Compel Arbitration [DE 114] be GRANTED and this case be referred to arbitration in Rotterdam, The Netherlands.

The parties will have ten (10) days from the date of being served with a copy of this Report and Recommendation within which to file written objections, if any, with the Honorable Paul C. Huck, United States District Judge.

DONE AND SUBMITTED in Miami, Florida, this 14th day of June, 2004.

CHRIS McALILEY
UNITED STATES MAGISTRATE JUDGE

Copies to:
Honorable Paul C. Huck
Michael McLeod, Esq., Attorney for the Plaintiff
John Pennekamp, Esq., Attorney for Defendant Super Servant and Claimant Dockwise
Timothy Burr, Esq., Attorney for Defendant Westport

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[6] The arbitration agreement here is subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, U.S.C. §§ 201-208, an international agreement that gives effect to written arbitration agreements formed by member nations. Therefore, even if Plaintiff were an employee of Dockwise and could pursue a Jones Act claim against Dockwise, his claim would nevertheless be subject to arbitration. *See Acosta v. Norwegian Cruise Line, LTD.*, 303 F. Supp.2d 1327, 1331 (S.D. Fla. 2003).