

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

<p>MARC E. OLIVER, d/b/a GULF COAST ENVIRONMENTAL AND RECOVERY, and T.M. JEMISON CONSTRUCTION CO. INC. d/b/a JEMISON MARINE, INC., Plaintiffs,</p>	<p>: : :</p>	<p>CA 11-0223-KD-C</p>
<p>MIDSOUTH BANK, N.A., Plaintiff/Counter-Defendant</p>	<p>: :</p>	<p>IN ADMIRALTY <i>In Personam and In Rem</i></p>
<p>vs.</p>	<p>: :</p>	
<p>M/V BARBARY COAST, her engines, tackle, furniture, and appurtenances, etc., In Rem, and RODD CAIRNS, an individual, and ATCHAFALAYA MARINE, LLC, In personam, Defendants/Counter-Plaintiffs/ Third-Party Plaintiffs,</p>	<p>: : : : : :</p>	
<p>vs.</p>	<p>: :</p>	
<p>EAGLE RIVER TOWING, L.L.C., p/k/a or a/k/a EAGLE INLAND TOWING, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, LOUISIANA LIMESTONE & LOGISTICS, L.L.C., and CURTIS BUFORD, Third-Party Defendants.</p>	<p>: : : : : :</p>	

ORDER¹

This matter is before the Court on Third-Party Plaintiffs Rodd Cairns and Atchafalaya Marine, LLC’s Motion to Reinstate the Jury Demand (Doc. 291) and Third-Party Defendant National Union Fire Insurance Company of Pittsburgh, PA’s Response thereto (Doc. 293).

On September 19, 2012, a hearing was held (in part) regarding the pending motion. At that time, the Court explained that the reasons for previously striking the jury demand in the

¹ This Order amends the Scheduling Orders previously entered in this case.

Second Amended Third-Party Complaint (Doc. 180) do not exist because the original plaintiffs – who opted under Rule 9(h) to proceed under maritime law -- are no longer in the case. Atchafalaya/Cairns are the only remaining plaintiffs (Third-Party Plaintiffs) and thus, there is no longer an interrelationship with the original plaintiffs' Rule 9(h) election. Moreover, Atchafalaya/Cairns' claims (Counts V-VIII) against National Union are asserted solely on the basis of diversity jurisdiction. (Doc. 60 at 2 at ¶1). Further, under the circumstances of this case, case law supports the Court's discretionary decision to proceed with this matter as a jury trial. See, e.g., Luera v. M/V Alberta, 635 F.3d 181, 189 (5th Cir. 2011) (providing that Rule 9(h) applies to claims and not to entire cases). See also e.g., Murphy v. Florida Keys Elec. Co-op. Ass'n, Inc., 329 F.3d 1311, 1319-1320 (11th Cir. 2003); U.S. v. One Parcel of Property Located at 867 County Road 227, Clanton, Chilton County, 2009 WL 5184401, *1 (M.D. Ala. Dec. 23, 2009); Harris v. Flow Intern. Corp., 2007 WL 3011267, *1 (M.D. Fla. Oct. 12, 2007). As such, and for those reasons stated on the record at the hearing, it is **ORDERED** that Atchafalaya/Cairns' Motion to Reinstate the Jury Demand (Doc. 291) is **GRANTED**.

It is further **ORDERED** that for those reasons discussed at the September 19, 2012 hearing, the following amended schedule is set and shall govern this case:²

- a) Final Pretrial Conference: This action is **RESCHEDULED** for a Final Pretrial Conference on **November 13, 2012 at 12:00 p.m. (noon)**, in the undersigned's chambers, Room 508 of the United States District Court, 113 St. Joseph St., Mobile, Alabama, 36602.
- b) Proposed Pretrial Order. The parties shall file an Amended Proposed Pretrial Document on or before **November 6, 2012** (amended in the manner instructed at the September 19, 2012 hearing).

² A copy of this Court's Standing Order governing Final Pretrial Conference is attached hereto.

c) Jury Selection:³ This action is set for a **JURY TRIAL** with **Jury Selection** on **December 4, 2012 at 8:45 a.m.**, in Courtroom 5A, of the United States District Court, 113 St. Joseph St., Mobile, Alabama, 36602.

d) Trial: This action is set for a **five (5) day trial** to begin on **December 10, 2012, at 8:30 a.m.** in Courtroom 5A, and to conclude on **December 14, 2012.**

DONE and ORDERED this the **26th** day of **September 2012.**

/s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE

³ The parties will consent to Jury Selection by a Magistrate Judge. The parties shall file such written consent on or before **November 6, 2012.**