Oliver et al v. M/V Barbary Coast et al Doc. 248

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

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,	:	**CA 11-0223-KD-C**
MIDSOUTH BANK, N.A.,		**IN ADMIRALTY**
Plaintiff/Counter-Defendant	:	***In Personam and In Rem***
vs.	:	
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,	:	
vs.	:	
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.	:	

ORDER

This matter is before the Court on Third-Party Defendant Point Clear Insurance Services, Inc.'s two (2) motions to dismiss the third amended third-party complaint (Docs. 216, 217); Atchafalaya Marine, LLC and Rodd Cairns' responses and motion for leave to amend (Docs. 219, 225); and Point Clear Insurance Services, Inc.'s replies (Docs. 231, 232).

After due and proper consideration of all portions of this file deemed relevant to the issues

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raised, and a *de novo* determination of those portions of the recommendation to which objection is made, the recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(l)(B) and dated June 13, 2012 is **ADOPTED AS MODIFIED** as the opinion of this Court as follows:

> 1) As to the Section Title portion of the Recommendation located at **Section III** on page 6, the phrase "both time-barred and" is **STRICKEN.** (Doc. 237 at 6).
>
> 2) That portion of the Recommendation located at **Section III.A.** and entitled **"Statute of Limitations,"** which is located at the bottom of page 6 and which continues to the top of page 9 concluding with the case reference "*See, e.g., Casassa,* 949 F. Supp. at 832", is **STRICKEN.** (Doc. 237 at 6-9).

It is **ORDERED** that that Third-Party Defendant Point Clear Insurance Services, Inc.'s 12(b)(1) motion (Doc. 216) is **DENIED AS MOOT** and Atchafalaya and Cairns' motion for leave to amend (Doc. 219) is **DENIED AS FUTILE.** Additionally, it is **ORDERED** that Third-Party Defendant Point Clear Insurance Services, Inc.'s 12(b)(6) motion (Doc. 217), construed solely as a motion to dismiss, is **GRANTED** and that all claims against Point Clear Insurance Services, Inc. are **DISMISSED WITH PREJUDICE**. It is further **ORDERED** that the claims against Eagle River Towing, L.L.C. are **DISMISSED WITHOUT PREJUDICE**.

DONE and **ORDERED** this the **13th** day of **July 2012.**

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