

1 claimed her right to entitlement to the limitation fund. Claimant Esther Yang filed an answer to
2 the petition on June 14, 2013 and also claimed her right to entitlement to the limitation fund.

3 On October 1, 2013, the parties stipulated to allow the late claim² filed by Esther Yang.
4 In the stipulation, the parties agreed that Petitioner's consent to allow a late claim was not a
5 waiver of any of its defenses to the claim or "any argument made or yet to be made in support of
6 Petitioner's motion to continue trial."

7 On October 30, 2013, the parties agreed to submit this matter for trial on documents and
8 exhibits which the parties agreed to in lieu of the presentation of live testimony. The stipulation
9 also required the court not to consider any other matter not previously agreed to by the parties.
10 The court thereafter approved the stipulation.

11 The trial was therefore to move forward with the court based upon the agreed-to written
12 submissions alone, and no others.

13 The trial occurred herein on November 18, 2013 and concluded on the same date.

14 On February 12, 2014, Petitioner filed its Motion to Compel Arbitration or in the
15 alternative for Summary Judgment against Claimant Esther Yang. On February 26, Claimant
16 Yang moved to strike the motion. On March 10, Petitioner opposed the motion to strike.

17 On April 1, 2014, the court denied the motion to strike and ordered Yang to file an
18 opposition to the motion. By agreement of the parties, Yang filed her opposition³ on April 22.
19 Petitioner requested the court additional time to respond to the opposition and thus it filed its
20 reply on May 21, 2014. The court heard oral arguments on May 28, 2014.

21 DISCUSSION

22 Petitioner's motion to compel Yang to arbitrate this matter and alternatively for
23 Summary Judgment are based upon the following facts:

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25 ²At a prior hearing, the court had observed that Yang had filed a late claim and did not
26 allow her to participate in that proceeding. The court noted that Claimant Yang needed to file a
27 motion to allow the filing of a late claim or in the alternative to obtain a stipulation from
28 Petitioner.

³Yang was granted leave to file up to 45 pages in her response brief from the 20-page
memoranda limit set forth in Local Rule 7.1(g).

1 1. Chang Yang entered into an employment contract with Majestic Blue on March 23,
2 2010 to work on board the vessel as its Chief Engineer. The employment contract had an
3 arbitration agreement. Yang died during the course of his employment when the Majestic Blue
4 sank in the Pacific Ocean on June 10, 2010.

5 2. On July 23, 2010, Claimant Esther Yang entered into a Settlement Agreement with
6 Majestic Blue in which she received 230,846,227 Korean Won for the death of her husband.

7 3. The Settlement Agreement included a provision that the family will not file any civil
8 or criminal suit as a result of the accident. The family also agreed not to disclose any details of
9 the agreement.

10 4. On June 14, 2013, Esther Yang filed a claim in this action for the death of her
11 husband.

12 It is Petitioner's contention that Yang's claims herein are subject to resolution by
13 arbitration. This is premised upon Paragraph 8 of its employment agreement with Yang which
14 contained a mandatory binding arbitration clause. All claims that conceivably could be
15 arbitrated including claims for death were included in Paragraph 8.

16 As an alternative, Petitioner requests the court to dismiss Yang's claim for entitlement
17 with respect to the Limitation Fund based upon her execution of a Settlement Agreement with
18 Petitioner in which she received 230,846,227 Korean Won.

19 In her opposition, Yang asserts that Petitioner waived its right to arbitration by availing
20 itself of the special limitation of liability proceeding and by its failure to give notice to Yang
21 that she and her children might have certain rights, including arbitration, against Petitioner and
22 by its failure to provide her with notice of this limitation action as required by Supp. R. F (4).
23 Yang also challenges the validity of the employment contract her husband executed and asserts
24 that the arbitration provision is void as a matter of public policy.

25 With regard to the Settlement Agreement, Yang argues that Petitioner failed to meet its
26 heavy burden in showing that the Settlement Agreement was executed freely, without deception
27 and coercion, and with a full understanding of her rights.

28 When asked by the court whether its motion was timely made, Petitioner responded that

1 it had not waived any defenses it had against Yang by its agreement to allow her late filing. It
2 appears to the court that Petitioner did reserve its right to file upcoming dispositive motions in
3 which it could raise its defenses against Yang since the deadline previously set by the court for
4 filing dispositive motions had already passed. Thus, Petitioner was not bound or held to any
5 deadline for filing motions in relation to its defenses to Yang's claim other than those set forth
6 in the Federal Rules of Civil Procedure.

7 In determining whether Petitioner's motion was timely filed, the court takes notice of the
8 provisions of Rule 12(h) of the Federal Rules of Civil Procedure. Under Rule 12 (h)(2), a party
9 must raise a failure to state a claim upon which relief can be granted or any legal defense to a
10 claim no later than at trial. In *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 126 S. Ct. 1235 (2006),
11 the U.S. Supreme Court stated that an objection that a complaint fails to state a claim for relief
12 may not be asserted post-trial. Such an objection endured only up to trial on the merits of the
13 case and not beyond. "A defense of failure to state a claim upon which relief can be
14 granted...may be made in any pleading...or by motion for judgment on the pleadings, or at trial
15 on the merits. Cf. *Kontrick*, 540 U.S., at 459, 124 S. Ct. 906."

16 Plaintiff Jenifer Arbaugh filed claims of sex discrimination against Defendant Y & H
17 Corporation under Title VII of the Civil Rights Act of 1964 and Louisiana law in the Eastern
18 District of Louisiana on November 18, 2001. The matter was tried before a jury on October 28
19 and 29, 2002. The jury rendered a verdict for Arbaugh and judgment was entered accordingly.
20 On November 9, 2002, Y & H Corporation filed a motion to dismiss the action contending that
21 it did not qualify as an employer under the Act since it did not employ fifteen or more
22 employees in either 2000 or 2001. The trial court granted Y & H's motion concluding it had no
23 subject-matter jurisdiction. The Court of Appeals for the Fifth Circuit affirmed. The U.S.
24 Supreme Court reversed and held that the employee-numerosity requirement for establishing the
25 employer's status was an element of Arbaugh's claim for relief, whose satisfaction was
26 conceded when Y & H Corporation did not challenge it prior to the trial on the merits.

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1 The motion⁴ brought by Petitioner is one that does not challenges the subject-matter
2 jurisdiction of this court. The motion relates to the ability of Claimant Yang to obtain the relief
3 which she seeks in her claim, i.e., the ability to contest the petition for exoneration and
4 limitation of liability and her right to participate in the limitation fund. Issues that encompass
5 the arbitration agreement signed by her deceased husband and the Settlement Agreement which
6 she executed relate to her ability to seek the relief which she claims herein. Under *Arbaugh*,
7 *supra*, those defenses must be raised by Petitioner at trial and not afterwards.

8 The court finds that Petitioner did not raise these issues at trial. The trial concluded on
9 November 18, 2013 and Petitioner did not file the present motion until February 12, 2014,
10 almost three months after its conclusion.

11 Petitioner, however, did file on November 13, 2013, a Notice of Intent to file a Summary
12 Judgment motion or alternatively to compel Claimant Yang to arbitrate her claims herein.
13 Pursuant to Rule 12(h)(2), the motion had to be filed on or before November 18, 2013 because
14 the defenses raised therein relate to the ability of Claimant Yang to obtain the relief which she
15 seeks herein.

16 As the court has noted above, Petitioner's motion is one that does not seek a dismissal of
17 this action because the court lacks subject-matter jurisdiction. Defenses that relate to subject-
18 matter jurisdiction may be raised at any time. It may be raised for the first time through a post-
19 trial motion or on appeal.

20 Clearly, this court has subject-matter jurisdiction of this action under the Limitation of
21 Shipowners' Liability Act (46 U.S.C. § 30505). The action was brought in this court by
22 Petitioner to limit its liability with regard to the loss of its vessel, the *Majestic Blue*. In filing
23 the action, Petitioner recognized that this court had subject-matter jurisdiction.

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26 ⁴Petitioner's Motion to Compel Arbitration and alternative Motion for Summary
27 Judgment also requires the court to look at submissions not agreed to by the parties for use by the
28 court for the purpose of making its decision herein. Consideration by the court of the said
submission would be in violation of the stipulation entered into between the parties.

1 CONCLUSION

2 The court finds that Petitioner’s Motion to Compel Arbitration or alternatively for
3 Summary Judgment is one that does not relate to its subject-matter jurisdiction. It relates to the
4 ability of Claimant Yang to pursue the relief which she seeks in her claim filed herein. Under
5 Federal Rule of Civil Procedure 12(h)(2), defenses that relate to a failure to state a claim upon
6 which relief can be granted must be raised at trial. Petitioner did not bring its Motion to Compel
7 Arbitration and alternatively for Summary Judgment at trial or prior to the November 18, 2013
8 trial date. Petitioner filed its motion on February 12, 2014. As a result, the court finds that
9 Petitioner has waived its defenses against Claimant Esther Yang with regard to the limitation of
10 liability action herein.

11 The court, thus, finds it unnecessary to address the other arguments made by Claimant
12 Yang in her opposition to above motion.

13 Petitioner’s Motion to Compel Arbitration and alternatively for Summary Judgment is
14 hereby denied.



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16 /s/ **Joaquin V.E. Manibusan, Jr.**
17 **U.S. Magistrate Judge**
18 **Dated: Jun 11, 2014**
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