

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN THE MATTER OF THE COMPLAINT OF SEA GALAXY MARINE, S.A., AS OWNER OF THE M/V SUMMER WIND PETITIONING FOR EXONERATION FROM OR LIMITATION OF LIABILITY	§ § § § §	C.A. NO. 4:14-cv-907 ADMIRALTY RULE 9(H) JUDGE HOYT
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**CLAIMANTS' MOTION AND MEMORANDUM TO TRANSFER
LIMITATION ACTION TO THE GALVESTON DIVISION**

Claimants file this memorandum in support of its motion to transfer Petitioner's suit, as authorized by 28 U.S.C. §1404(a).

A. INTRODUCTION

1. Petitioner is SEA GALAXY MARINE, S.A., as owner of the M/V SUMMER WIND. Claimants are RICHARD GILMORE, STEVEN RUSHING, BILL BEAZLEY, LECCEL KIMBALL, LAM HUYNH, HONG HUYNH, DIEM HUYNH, MAI HUYNH, BRIAN MCDANIEL, MINH HUYNH, TRUC CAO, DAN NGUYEN, WILLIAM PRAKER and KEVIN BALLANTYNE.

2. After several cases were filed in the Galveston Division, Petitioner filed a Verified Complaint and Petition for Exoneration From or Limitation of Liability in the United States District Court for the Southern District of Texas, Houston Division on April 7, 2014.

3. Venue is inconvenient for the Claimants in the Houston Division, and is more convenient in the Galveston Division, because: a). The vessel collision occurred in the Galveston Division. See Exhibit A; b). The coast lines damaged are in the Galveston

Division, including Matagorda and Galveston counties. See Exhibit B; c) The first filed case, and in fact all filed cases—other than this Limitation—were filed in the Galveston Division. See Exhibits C, D and E; and d) the vessel was Ordered to be Seized by the Honorable John Froeschner, of the Galveston, Division. See Exhibit B. All of the relevant factors point to venue being most convenient in the Galveston Division of the Southern District of Texas. Therefore, this Honorable Court should this Limitation Proceeding to United States District Court for the Southern District of Texas, Galveston Division.

B. BACKGROUND FACTS

4. On or about March 22, 2014, a collision occurred at an area known as the “Texas City Y,” where the Intracoastal Waterway and shipping lanes from Texas City intersect with the channel to the Gulf of Mexico between a fuel oil barge being pushed by the M/V MISS SUSAN and a 585-foot bulk carrier cargo ship, the M/V SUMMER WIND. See Exhibits A, B and F, Petitioner’s Verified Complaint and Petition for Exoneration From or Limitation of Liability, p.3. The collision caused the breach of the barge's hull and tank resulting in a large spill of heavy, black tar-like fuel oil in the Galveston Bay. It is unknown the specific amount of oil released into Galveston Bay, but the spill had a large and devastating effect on the Galveston coast of the Gulf of Mexico, caused the shutdown of fishing in Galveston and the cities surrounding the coast, including everyone involved in the marine industry. The collision also caused injury to six (6) crew members.

C. ARGUMENT

5. This is a limitation of liability proceeding brought pursuant to Supplemental Rule F. Supplemental Rule F(9) provides: “For the convenience of parties and witnesses, in the interest of justice, the court may transfer the action to any district; if venue is wrongly laid the court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought.” 28 U.S.C. §1404(a). In the interest of justice, and for the convenience of the parties and witnesses, Claimants seek transfer to the Galveston Division.

6. The court should grant Claimants’ motion to transfer for the following reasons:

- a. **The vessel collision happened in the Galveston Division.** Thus, the Houston Division does not have any meaningful ties to this controversy. *Reed v. Fina Oil & Chem Co.*, 995 F. Supp. 705, 714 (E.D.Tex. 1998). Specifically, the collision and resulting oil spill occurred in Galveston Bay, between Texas City and Galveston. Both cities are located in Galveston County and a majority of claimants, witnesses, responders and others with factual testimony reside in Galveston, Texas. Further, as of this time, the damage that has been caused to the coast line has occurred in Galveston, and Mustang Island, Matagorda County—both areas are in the Galveston Division. These facts strongly favor transfer to the Galveston Division.
- b. **Transfer is more convenient for the Claimants—that is, those who have suffered due to the oil spill are, for the most part, in the Galveston Division.** Claimants have filed suit in the Galveston Division, and are not

residents of Houston Division. Since Claimants live and work in the Galveston Division, it is much more convenient for them to litigate this case in the Galveston Division. This factor strongly supports transfer.

c. **Petitioner Sea Galaxy is not located within the Houston Division.**

Indeed, Petitioner is an entity organized and existing under the law of Liberia with an address of 80 Broad Street, Monrovia, Liberia and will not be inconvenienced by the transfer to Galveston Division. *Abecassis v. Wyatt*, 669 F.Supp.2d 130, 132-33 (D.D.C. 2009). This supports transfer to the Galveston Division.

d. **Cases are already ongoing in the Galveston Division.** The first case that was filed as a result of the accident and spill, and indeed all other suits that have been filed, are currently pending in the Galveston Division. Currently pending are the following lawsuits in Galveston which predate the filing of the Verified Complaint and Petition for Exoneration From or Limitation of Liability: *William John Patton, et al v. Cleopatra Shipping Agency LTD, et al* 3:14 –CV-00113; *3G Fishing Charters, LLC, et al v. Kirby Inland Marine, LP, et al*, 3:14-CV-107; and *Richard Gilmore, et al v. Kirby Inland Marine, LP, et al*, 3:14-CV-118. Exhibits C, D, and E. Further, the Galveston Division Magistrate Judge Froeschner ordered the seizure of the vessel in question—from the Galveston Division. The fact that at least three cases have been filed in the Galveston Division, that the vessel seizure was ordered in Galveston Division, and that the Court has already taken some action in those cases, supports transfer to the Galveston Division.

- e. **Most of the relevant witnesses will be in the Galveston Division.** A transfer to another district will be more convenient for the Claimants' material witnesses. 28 U.S.C. §1404(a); *Mohamed v. Mazda Motor Corp.*, 90 F.Supp.2d 757, 774-75 (E.D. Tex. 2000); *Laumann Mfg. Corp. v. Castings USA, Inc.*, 913 F.Supp. 712, 720 (E.D. N.Y. 1996). Specifically, the following witnesses will be called at trial: Claimants, responders, and other material fact witnesses. There can be no doubt that Petitioner will have employees who are not located in the Galveston Division; but, they are not located in the Houston Division either. Due to the fact that the overwhelming majority of claims arising from the accident will be those injured by the oil spill, the great majority of witnesses will be Galveston Division residents. This factor supports transfer.

- e. **Practical considerations make the trial of this case more efficient and less expensive in Galveston, Texas.** This is an oil spill case. Most of the claimants are suffering losses because they live and work in the Galveston Division. It makes sense that this Galveston accident is litigated in the Galveston Division. Further, litigating the case in the Houston Division would force citizens in a community with little to no connection to the litigation to serve on the jury, and would cause claimants who suffered injury in the Galveston Division to leave Galveston to seek remedy in Houston. This again supports transfer.

D. CONCLUSION

7. All relevant factors favor transfer to the Galveston Division. This Honorable Court should thus transfer this case to the Galveston Division of the Southern District of Texas.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been duly served on all known counsel of record and pro se parties in accordance with the Federal Rules of Civil Procedure on April 8, 2014.

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