

ENTERED

August 25, 2025

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN THE MATTER OF THE	§	
COMPLAINT OF RIVER	§	
CONSTRUCTION INC., AS	§	
OWNER AND OPERATOR OF	§	CIVIL ACTION NO. 4:22-cv-2413
THE RC-100 FOR	§	
EXONERATION FROM OR	§	
LIMITATION OF LIABILITY	§	

MEMORANDUM AND RECOMMENDATION

Pending before the Court¹ is Petitioner-in-Limitation River Construction Inc.'s ("River") *Ex Parte* Motion for Order Noting Default. (ECF No. 101). Based on a review of the motion, arguments, and relevant law, the Court **RECOMMENDS** River's *Ex Parte* Motion for Order Noting Default be **GRANTED IN PART AND DENIED IN PART**.

I. Background

On July 20, 2022, River filed a Verified Complaint for Exoneration from or Limitation of Liability ("Complaint"). (ECF No. 1). This suit is related to a case commenced in state court, where Russell Marine, LLC ("Russell") filed suit against Contanda Terminals, LLC ("Contanda")² in Civil Action No. 2020-65752 in the 295th Judicial District Court of Harris County, Texas ("State

¹ On April 30, 2024, this case was referred to the Undersigned for all purposes pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Federal Rule of Civil Procedure 72. (ECF No. 88).

² The Court notes Contanda is now known as BWC Terminals LLC.

Court Action”). (*Id.* at ¶¶ 7, 8; ECF No. 1-2). Russell’s claims arose from a construction contract between Russell and Contanda (“Russell-Contanda Contract”), in which Russell was contracted to perform dredging and construction at Contanda’s dock facilities, located at 16335 Peninsula Street, Houston, Texas 77015, at the Houston Ship Channel (the “Project”). (ECF No. 1 at ¶¶ 8, 17). According to River, Russell, through its dredging operations on the Project and failure to ensure safety of surrounding structures, caused a section of the dock to collapse and sheet wall buckled on or about January 23, 2020 (the “Incident”). (*Id.* at ¶ 9).

River claims it entered into a construction agreement (“River-Contanda Contract”) with Contanda on March 20, 2020, in which it was tasked with repairing the original wall that collapsed during the Project. (*Id.* at ¶ 19). River alleges it worked on the Project from approximately April 7, 2020 to August 13, 2020. (*Id.* at ¶ 18). While performing work on the Project, River utilized its crane barge, the RC 100 (“RC 100”). (*Id.*). The allegations against River are that River negligently performed work from the RC 100 in repairing the original wall, resulting in another wall failure and other damages. (*Id.*) River alleges the Incident or any damages thereto was “not caused or contributed to by any fault, negligence, or lack of care on the part of [River], its owners or officers, or the RC 100[.]” (*Id.* at ¶ 22).

On October 14, 2020, Russell brought suit in the State Court Action against Contanda, “asserting claims for breach of contract, quantum meruit, declaratory judgment, and attorney’s fees.” (*Id.* at ¶ 10; ECF No. 1-2). On November 23, 2020, Contanda asserted a general denial, affirmative defenses, and counterclaims. (ECF No. 1 at ¶ 11; ECF No. 1-3). On January 20, 2022, River was sued as a Third-Party Defendant, in which Russell alleges defective work by River and others caused the Incident. (ECF No. 1 at ¶¶ 7, 13; ECF No. 1-4). River filed responsive pleadings to Russell’s Third-Party Demand, denying allegations of negligence regarding the Incident. (ECF No. 1 at ¶ 16; ECF No. 1-7).

On July 20, 2022, River filed a complaint in the instant action. (ECF No. 1). On July 26, 2022, an Order Approving Petitioner’s Ad Interim Stipulation for Value and Directing Issuance of Notice and Restraining Prosecution of Claims was issued, stating:

A notice shall be issued by the Clerk of Court to all persons asserting claims with respect to which the Complaint seeks exoneration or limitation, admonishing them to file their respective claims with the Clerk of Court in writing, and to serve on counsel for Petitioner, a copy thereof on or before the **9th day of September, 2022, or be defaulted**, and that if any Claimant desires to contest either the right to exoneration from or the right to limitation of liability, he shall file and serve on counsel for Complainant, an answer to the Complaint on or before the said date, unless his claim had included an answer to the Complaint, so designated, or be defaulted.

(ECF No. 4 at 2 (emphasis added)). The order also required River provide notice in accordance with Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims. (*Id.*). A Notice to Claimants of Complaint for Exoneration from or Limitation of Liability was issued on July 27, 2022 (ECF No. 5) and River provided proof of notice published in the newspaper in Harris County for four consecutive weeks (ECF No. 101 at 2; ECF No. 38-1). River provides a copy of the Notice was mailed to each person, firm, corporation, and entity known to have a potential claim against it. (ECF No. 101 at 2–4). The only persons, firms, corporations, or entities that have submitted claims against River within the allotted time was Russell and Contanda. (*Id.* at 4; *see* ECF Nos. 14, 24). In making its claim, Contanda reserved the right “to supplement and amend its Claims as necessary and appropriate through the discovery of additional information relevant hereto.” (ECF No. 14 at 5). However, on September 12, 2022, River brought a Third-Party Demand against Lloyd Engineering, Inc. (“Lloyd”), in response to Contanda’s claims. (ECF No. 29). In response, Lloyd filed a Claim and Answer to River’s Claim in Limitation and Third-Party Demand and Rule 14(c) Tender on October 6, 2022. (ECF No. 44).

On March 17, 2023, the District Court Judge filed an Order, dismissing Contanda’s claims for contribution, indemnity, and attorney’s fees because

“Contanda does not contend that it has made a direct claim” and “not only are these claims [for contribution/indemnity/attorney’s fees] one step removed from a direct liability claim, but they are, at best, unripe claims that can never ripen unless the pleadings change.” (ECF No. 72 at 6). On June 1, 2023, Russell’s Motion to Dissolve Injunction and Stay Limitation Proceeding was granted, in which the injunction issued on July 26, 2022 (ECF No. 4) was vacated and the case was stayed until the final conclusion of the State Court Action. (ECF No. 82).

On June 21, 2024, Contanda filed a Seconded Amended Answer and Counterclaim in the State Court Action, asserting direct claims against River for breach of contract and negligence. (ECF No. 101 at 5; ECF No. 90-1 at 9). Because Contanda asserted a direct claim in the State Court Action, River filed a Motion to Re-Open Limitation Action and Re-Establish Limitation Injunction, requesting “an Order administratively reopening this limitation action and re-establishing the limitation injunction originally issued on July 26, 2022 (Rec. Doc. 4), prohibiting any and all claims from being filed against River Construction or against the RC-100 outside of this Limitation Action.” (ECF No. 90 at 1). This motion was granted, in which this Court held:

Civil Matter No. 4:22-cv-2413 is hereby reopened and the limitation injunction originally issued by this Court on July 26, 2022 (ECF No. 4) is hereby reinstated, restraining, staying, and enjoining any and all actions, suits, and proceedings already

commenced and commenced or prosecuted hereafter, and all actions, suits, or proceedings of any nature and description whatsoever in any jurisdiction against Limitation Petitioner, River Construction, or against the crane barge, the RC-100.

(ECF No. 100 at 7). Now before the Court is River's *Ex Parte* Motion for Entry of Default. (ECF No. 101).

II. Legal Standard

"The Limitation of Liability Act (the 'Limitation Act'), 46 U.S.C. § 30501 et seq., provides shipowners the opportunity to limit their liability to the value of the owner's interest in the vessel and its pending freight where an injury or loss occurs without the shipowner's privity or knowledge." *Matter of Gringo Honeymoon, Corp.*, No. 3:18-cv-00124, 2018 WL 6984838, at *2 (S.D. Tex. Nov. 27, 2018), *report and recommendation adopted*, No. 3:18-cv-00124, 2019 WL 147722 (S.D. Tex. Jan. 9, 2019). "Congress passed the Limitation Act in 1851 'to encourage ship-building and to induce capitalists to invest money in this branch of industry.'" *Id.* (quoting *Norwich & N.Y. Transp. Co. v. Wright*, 80 U.S. 104, 121 (1871)). "This purpose is achieved by exempting innocent shipowners from liability beyond the amount of their interest in the vessel and its pending freight." *Id.*

"The Limitation Act provides shipowners with two means to initiate their limitation of liability rights. A shipowner can assert the Limitation Act as an affirmative defense in any court, including a state court." *Matter of High*

Tide Enters., Inc., No. 1:23-cv-1494, 2024 WL 1292369, at *2 (W.D. Tex. Mar. 26, 2024) (citing *Langnes v. Green*, 282 U.S. 531, 543 (1931)). “Alternatively, a shipowner facing potential liability for an accident occurring on the high seas may file suit in federal court seeking protection under the Limitation Act.” *Id.* (citing 46 U.S.C. § 30511). “Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims sets forth the procedure for a limitation action.” *Id.* (citing FED. R. CIV. P. SUPP. R. F).

“A claimant who fails to file a claim in the limitation action faces the penalty of default.” *Id.* at *3. “This means that a claimant who fails to appear in the limitation action is forever prohibited from bringing a claim arising out of or in connection with the alleged incident.” *Id.* (citing FED. R. CIV. P. SUPP. R. F(5)). Under Federal Rule of Civil Procedure (“Rule”) 55, “a default occurs when a defendant fails to plead or otherwise respond to a complaint within the time required.” *Id.* (citing *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996)).

III. Discussion

River requests the Court note the Default of all persons, firms, corporations, or entities, with the exception of Russell, who have no claims before the Court. (ECF No. 101). Contanda is the only party that filed a

response. (ECF No. 102). Therefore, River's motion (ECF No. 101) is deemed unopposed as to the non-responding parties. *See* S.D. TEX. LOC. R. 7.4.

A. Contanda

River seeks default judgment against Contanda, arguing it has not asserted a timely claim currently before the Court. (*See* ECF No. 105). Contanda filed a response in opposition. (ECF No. 102).

For context, Contanda timely filed a claim on August 12, 2022. (ECF No. 14). However, Contanda's claim was dismissed on March 17, 2023. (ECF No. 72). Without any claims in this Court, Contanda filed a Seconded Amended Answer and Counterclaim in the State Court Action, asserting direct claims against River for breach of contract and negligence. (ECF No. 101 at 5; ECF No. 90-1 at 9). Because Contanda asserted direct claims in the State Court Action, River filed and the Court granted its Motion to Re-Open Limitation Action and Re-Establish Limitation Injunction. (ECF Nos. 90, 100). To date, Contanda has not attempted to assert new claims or request leave to file late claims.³ The question before the Court is whether default is warranted against Contanda.

³ Because Contanda did not file leave to file late claims, the Court will not address the factors set forth in *Texas Gulf Sulphur Company v. Blue Stack Towing Company*, 313 F.2d 359 (5th Cir. 1963). Rather, Contanda simply requests, in the event the Court find it not a claimant, be given "an opportunity to address and ameliorate any potential technicalities in lieu of grating a default." (ECF No. 102 at 4).

The Court finds default is not warranted. Contanda initially filed claims before the September 9, 2022 deadline. (*See* ECF No. 13). Although Contanda has no current pending claims against River in the instant action, it did not default. *See Plaquemine Point Shipyard, LLC v. Kirby Inland Marine, LP*, 472 F. Supp. 3d 313, 315 (E.D. La. 2020) (“Rule F(4) provides for notice to claimants and states that the court shall set a period during which claimants must file their respective claims or face default.”); *Matter of Beverly Indus., LLC*, No. 22-cv-1105, 2022 WL 8219664, at *1 (E.D. La. Sept. 13, 2022) (“District courts routinely grant motions for default judgment in limitation of liability proceedings where persons were properly notified of the proceeding and failed to timely file a claim.”); *Matter of Jack’d Up Charters, LLC*, No. 22-cv-4535, 2024 WL 5330066, at *1 (E.D. La. Sept. 5, 2024) (“Courts have recognized that a ‘limitation action also encourages uniformity by subjecting any claimant to a default judgment upon failure to file a claim within the prescribed time in the action.’” (citation omitted)); *In re Daigle Towing Serv., LLC*, No. 19-cv-0815, 2021 WL 6973799, at *1 (E.D. La. Mar. 8, 2021) (finding default judgment to be appropriate in a limitation of liability action where potential claimants did not file a claim within the monition period).

The Court has not located, and River fails to cite, authority where a party files timely claims, the claims are dismissed, and then a court finds default is

warranted. To the contrary, case law states that default is appropriate where a party does not appear or does not file a claim within the designated monition period. Neither of these instances apply to Contanda. Moreover, Contanda is a potential claimant in this action, as its previous claims were not dismissed with prejudice.⁴

Accordingly, the Court recommends River's *Ex Parte* Motion for Order Noting Default be denied without prejudice as to Contanda.

B. Lloyd

On September 12, 2022, River brought a Third-Party Demand against Lloyd, in response to Contanda's claims. (ECF No. 29). On October 6, 2022, Lloyd filed a Claim and Answer to River's Claim in Limitation and Third-Party Demand and Rule 14(c) Tender. (ECF No. 44).

It appears River seeks default against Lloyd because Lloyd is "a direct defendant to Contanda" and Lloyd's "Third-Party Demand was rendered void

⁴ In *Matter of Westbank Fishing, LLC*, 738 F. Supp. 3d 730, 737 (E.D. La. 2024), the court denied the movants' motion to lift or modify stay because the stay could not be lifted without a stipulation from Picone Seafood, a potential claimant. The court noted, "[t]he primary considerations for this determination are: (1) Picone Seafood filed its claims within the monition period; (2) because the claims were filed within the monition period and had not yet been dismissed, they were not defaulted pursuant to the Court's July 29, 2022 Order; (3) when Picone Seafood's claims were dismissed on May 19, 2023, they were dismissed without prejudice; and (4) the record does not contain sufficient information for the Court to determine whether the dismissal was effectually with prejudice or whether, for some other reason, Picone Seafood would be barred from reasserting its claims against Westbank." *Id.* at 736–37. Similarly here, Contanda is a potential claimant as it filed its claims within the monition period, it was not defaulted pursuant to ECF No. 4, and there is no evidence its claims were dismissed with prejudice.

by the dismissal of Contanda’s Claim.” (ECF No. 105 at 8). However, Lloyd filed an Answer, and contrary to the facts here, “courts regularly grant a default judgment against claimants who do not answer.” *Matter of Duley*, No. 8:16-cv-00135, 2017 WL 8180609, at *2 (C.D. Cal. July 11, 2017). River provides no authority supporting these circumstances warranting default. As such, the Court recommends River’s *Ex Parte* Motion for Order Noting Default be denied without prejudice as to Lloyd.

C. Non-Appearing, Potential Claimants⁵

River seeks “the default of all persons, firms, corporations, or entities, except Russell . . ., claiming any injuries, deaths, property damages, and all other losses, damages, expenses, and costs caused, occasioned or occurring due to the alleged [Incident.]” (ECF No. 101 at 1).

Here, River fulfilled its obligation to publish notice of the limitation proceeding for four consecutive weeks, as required by Supplemental Rule F(4) and mailed each known potential claimant notice of the limitation proceeding. (See ECF No. 23 at 2–4; ECF No. 38-1; ECF No. 101-1). The notice expressly stated the deadline to file a claim was September 9, 2022. (See ECF Nos. 38-

⁵ According to River’s *Ex Parte* Motion for Order Noting Default (ECF No. 101), proof of servicing and publishing notice of the limitation proceeding (ECF Nos. 38-1, 101-1), and complaint (ECF No. 1), the non-appearing potential claimants are Kelley Construction, Inc., Hunter Fugate, Brian W. Zimmerman, James H. Jackson Industries, Inc. d/b/a Force Corporation, CRB Construction, Inc., Gullet & Associates, LLC, Engineering & Terminal Services, and Tolunay Wong Engineers, Inc.

1, 101-1). The deadline to file claims in this limitation proceeding has expired. (See ECF No. 4 at 2). All known potential claimants had an opportunity to either file a claim or to seek leave of court to extend the deadline and file an appropriate responsive pleading. See *In re Jana E. II, Inc.*, No. 2:13-cv-308, 2014 WL 991891, at *2 (S.D. Tex. Mar. 13, 2014). Under these circumstances, the Court recommends River's *Ex Parte* Motion for Order Noting Default be granted as to all persons, firms, corporations, or entities who have not filed and presented claims and answers in this action and be barred from filing any claims and answer in this or any other proceeding. See *id.* at *3; see *In re Daigle Towing Serv.*, 2021 WL 6973799, at *1 ("The Court finds that a default judgment against those who have not asserted an interest in the limitation proceeding is appropriate at this time.").

IV. Conclusion

Based on the foregoing, the Court **RECOMMENDS** River's *Ex Parte* Motion for Order Noting Default (ECF No. 101) be **DENIED IN PART** as to Contanda and Lloyd and be **GRANTED IN PART** as to all persons, firms, corporations, or entities who have not filed and presented claims and answers in this action.

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have fourteen days from the receipt thereof to file

written objections thereto pursuant to Federal Rule of Civil Procedure 72(b) and General Order 2002-13. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

SIGNED in Houston, Texas on August 25, 2025.

A handwritten signature in black ink, appearing to read "Richard W. Bennett", written over a horizontal line.

Richard W. Bennett
United States Magistrate Judge