

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

IN RE: YAMAHA WAVE RUNNER

HOLIDAY WATER SPORTS FT
MYERS BEACH, INC., as owner,

Case No: 2:18-cv-663-FtM-99CM

Petitioner.

**ORDER APPROVING *AD INTERIM* STIPULATION, NOTICE OF MONITION
AND INJUNCTION**

This matter comes before the Court upon review of the Motion for Entry of Order for Stipulation of Value, Monition, and Injunction and Supporting Memorandum of Law filed on October 10, 2018. Doc. 3. Petitioner Holiday Water Sports Fort Myers Beach, Inc. filed a Complaint in this matter as the owner of a Yamaha Wave Runner (the “Vessel”).¹² Doc. 1. Petitioner is claiming the benefits of exoneration from or limitation of liability provided in 46 U.S.C. § 30501, *et seq.*, together with all statutes supplementary thereof, and Rule F of the Supplemental

¹ The Complaint states that Maria Briem (“Briem”) filed an action against Petitioner on April 27, 2018, case number 18-cv-301, which relates to the incident described in the Complaint. Doc. 1 ¶ 21. In the complaint filed in case number 18-cv-301, Briem does not identify the particular Yamaha Wave Runner that caused her injury, and Petitioner is currently without sufficient information to identify it, so the Complaint lists the fleet of all Yamaha Wave Runners Petitioner owned on the date of the incident “out of an abundance of caution[.]” *Id.* ¶ 22.

² The Hull Identification Numbers of the Yamaha Wave Runners in the “fleet” are: (1) YAMA2654K112; (2) YAMA2219D010; (3) YAMA1527B414; (4) YAMA2474B111; (5) YAMA3246K112; (6) YAMA2469A212; (7) YAMA2662K112; (8) YAMA2657K112; (9) YAMA2151L001; (10) YAMA1529B414; (11) YAMA3781C111; (12) YAMA4944E606; (13) YAMA1204L415; (14) YAMA1528B414; (15) YAMA3760K314; and (16) YAMA4219B212. Doc. 1 at 1 n.1.

Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure. *See* Doc. 1 ¶¶ 1-5; Doc. 3 at 1-2, 5. Petitioner is also contesting liability independently of the limitation of liability claims under said Acts and Rules, for any loss, damages, deaths, personal injuries or destruction of property or other occurrences arising from the incident described in the Complaint, which occurred on or about April 27, 2015 on the navigable waters of the United States in and around Fort Myers Beach, Lee County, Florida. *See* Doc. 1 ¶¶ 12-13; Doc. 3 at 1, 5. Petitioner's Complaint states the facts and circumstances on which such exoneration from or limitation of liability is claimed; and on hearing counsel for Petitioner and on considering the Complaint and considering the amount is to be entered as surety until such time as Petitioner's interest in the Vessel can be more definitely ascertained, the Court finds that an *Ad Interim* Stipulation in the amount of \$7,601 fully covers the value of Petitioner's interest in the Vessel. *See generally* Docs. 1, 3-4.

ACCORDINGLY, it is

ORDERED:

1. The Motion for Entry of Order for Stipulation of Value Monition, and Injunction and Supporting Memorandum of Law (Doc. 3) is **GRANTED**.

2. The *Ad Interim Stipulation* filed by Petitioner (Doc. 4), which represents the value of Petitioner's interest in the Vessel and its pending freight, as fixed by the Court in the amount of \$7,601, with Petitioner being subject to such increases in the amount of such *Ad Interim* Stipulation, together with adequate surety, as the Court

may from time to time order according to the rules and practices of this Court, is
APPROVED.

3. If the amount of said *Ad Interim* Stipulation is not contested by any Claimant herein, said *Ad Interim* Stipulation shall stand as a stipulation for the value and an appraisal by a Commissioner will not be required.

4. The Monition and Injunction issue out of and under seal of this Court against all persons or corporations asserting claims for any and all losses, damages, injuries or destruction allegedly as a result of the occurrences described in the Complaint, to file their respective claims with the Clerk on or before **November 28, 2018**, and serve Petitioner's attorneys, Cole, Scott & Kissane, PA, Suite 1400, 9150 S. Dadeland Boulevard, Miami, Florida 33156, a copy thereof, or be defaulted. If any claimant desires to contest Petitioner's right to exoneration from or limitation of liability, Claimant shall file and serve on Petitioner's attorneys an answer to the Complaint, on or before said date, unless the claim included an answer to the Complaint so designated, or be defaulted.

5. The public notice of said Monition be given by publication as required by Rule F, once a week for four successive weeks in the *News Press—Fort Myers* prior to the date fixed for the filing of claims in accordance with Supplemental Rule F, and not later than the date of the second weekly publication, a copy of said notice be mailed by Petitioner to every person or corporation known to have a claim against Petitioner arising out of the incident described in the Complaint.

6. The commencement or further prosecution of any action or proceeding against Petitioner, the Vessels or any other property of Petitioner with respect to any claim arising out of, or connected with the casualty set forth in the Complaint, is **STAYED, ENJOINED AND RESTRAINED** until the final determination of these proceedings.

7. The service of this Order as a restraining order may be made by mailing a conformed copy of it to the person or persons to be restrained, or to their respective attorneys, or alternatively, by hand delivery.

DONE and **ORDERED** in Fort Myers, Florida on this 11th day of October, 2018.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record