APPENDIX

APPENDIX

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 20-30776

[Filed: October 1, 2021]

NEPTUNE SHIPMANAGEMENT SERVICES PTE, LIMITED; TALMIDGE INTERNATIONAL, LIMITED; AMERICAN EAGLE TANKERS INCORPORATED LIMITED; AMERICAN EAGLE TANKERS AGENCIES, INCORPORATED; BRITANNIA STEAM SHIP INSURANCE ASSOCIATION LIMITED,	)
Plaintiffs—Appellees,	)
versus	)
VINOD KUMAR DAHIYA,	)
Defendant—Appellant.	)

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:20-CV-1525

Before JONES, SOUTHWICK, and COSTA, *Circuit Judges*.

GREGG COSTA, *Circuit Judge*:

Last year, we noted that arbitration does not always fulfill its goal of avoiding court and "increas[ing] the speed of dispute resolution." *OJSC Ukrnafta v. Carpatsky Petroleum Corp.*, 957 F.3d 487, 493 (5th Cir. 2020) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 345 (2011)). That international dispute was tied up in arbitration and courts for thirteen years. *Id.*

This case involves even more protracted litigation arising out of an arbitration agreement. In a dispute dating back to the last century, the parties have turned to Louisiana state court, federal court, civil court in India, and arbitration to resolve their dispute. Although Vinod Kumar Dahiya has secured an arbitral award for his maritime injuries, he continues to pursue litigation against the alleged wrongdoers—and he still disputes that there was an enforceable agreement to arbitrate at all.

The district court concluded that, after two decades, the dispute was finally at an end. It confirmed the Indian arbitration award and enjoined further litigation. We agree and affirm.

I.

In the fall of 1999, Dahiya, an Indian national, began working as an engine cadet for the Singapore-based ship crewing agency Neptune Shipmanagement Services. He was soon assigned to the *M/T Eagle Austin*, an oil tanker owned by

Talmidge International, bareboat chartered[1] to American Eagle Tankers, insured by the Britannia Steam Ship Insurance Association, and crewed by Neptune (collectively known as "the Vessel Interests").

Dahiya's employment contract—which the parties refer to as "the Deed"—bound him to sail for Neptune, but it did not mention Talmidge, American Eagle, or Britannia. Only Dahiya signed it. The Deed contained a clause stating that any dispute arising out of the agreement would be subject to arbitration in either Singapore or India and governed by Indian law.

Dahiya joined the *Eagle Austin* crew in Texas and sailed on the vessel as it travelled along the Gulf Coast, making stops in Beaumont, Lake Charles, and other oil ports. In late 1999, while in international waters en route to Louisiana, Dahiya was severely burned as he operated the vessel's trash incinerator. He was evacuated by helicopter to Baton Rouge and treated for second- and third-degree burns and an infection.

After recovering, Dahiya sued the Vessel Interests in Louisiana state court. The Vessel Interests sought to compel arbitration under the Deed. They removed the case to federal court, invoking jurisdiction under the removal provision relating to the Convention on the Recognition and Enforcement of Foreign Arbitral

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[1] In a bareboat charter, "the vessel owner transfers full possession and control to the charterer, who in turn furnishes the crew and maintenance for the vessel (thus the term 'bareboat')." *Forrester v. Ocean Marine Indem. Co.*, 11 F.3d 1213, 1215 (5th Cir. 1993). The charterer therefore becomes responsible "for the negligence of the crew and the unseaworthiness of the vessel." *Id.*

Awards (New York Convention). *See* 9 U.S.C. § 205. But the district court denied the motion to compel arbitration, holding that forum selection clauses in employment contracts "contravene strong Louisiana public policy." *Dahiya v. Talmidge Int'l, Ltd.*, 2002 WL 31962151, at *2 (E.D. La. Oct. 11, 2002). The court also determined that, because the forum selection clause was invalid, no basis for removal existed, so it remanded the case to state court. *Id.*

We dismissed the Vessel Interests' appeal of that order. *Dahiya v. Talmidge Int'l, Ltd.*, 371 F.3d 207, 208 (5th Cir. 2004). The statute governing removal procedure, we explained, bars appellate review of a remand order "no matter how erroneous."[2] *Id.* at 209 (quoting *Arnold v. State Farm Fire & Cas. Co.*, 277 F.3d 772, 775 (5th Cir. 2001)); *see* 28 U.S.C. § 1447(d).

Back in state court, the trial court also denied the Vessel Interests' motion to compel arbitration. At the

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[2] The district court has since acknowledged that it made a mistake and should have enforced the arbitration clause. *Lejano v. Bandak*, 2004 U.S. Dist. LEXIS 27341, at *3 n.1 (E.D. La. May 27, 2004) (recognizing the error); *see Lim v. Offshore Specialty Fabricators, Inc.*, 404 F.3d 898, 906 (5th Cir. 2005) (holding that Louisiana law does not invalidate arbitration clauses in employment contracts of foreign seamen). But even apart from whether the district court correctly ruled on the clause's enforceability, removal jurisdiction exists under 9 U.S.C. § 205 as long as "there is a conceivable connection to an arbitration agreement." *OJSC Ukrnafta*, 957 F.3d at 495. "Removal to federal court may thus be proper even when it turns out there is no arbitration agreement." *Id.* at 496. The district court improperly raised this "low bar" for removal by assessing the validity of the agreement in the course of determining its jurisdiction. *Id.* at 495.

end of the resulting trial, the court awarded Dahiya more than $579,000.

It was a short-lived victory. A Louisiana appellate court reversed the judgment on the ground that the Deed's arbitration clause was enforceable. *Dahiya v. Talmidge Int'l Ltd.*, 931 So. 2d 1163, 1171–73 (La. Ct. App. 2006). It thus remanded the case to the trial court with instructions to stay the lawsuit and compel arbitration in India. *Id.* at 1173.

On remand, Dahiya argued that the case should be stayed only against Neptune because the remaining Vessel Interests were not parties to the Deed containing the arbitration clause. But the trial court stayed the case "in its entirety pending arbitration," halting Dahiya's lawsuit against all the defendants.

The parties then shifted their focus to arbitration. After various delays and procedural blunders in India, Dahiya at last obtained an award in early 2020. The arbitrator awarded Dahiya 95 Lakh (about $130,000) against Neptune; Dahiya had not named the other Vessel Interests as respondents. Although the Vessel Interests offered to satisfy the award, Dahiya refused to accept payment, preferring instead to rekindle the state-court litigation.

Following the award, Dahiya returned to Louisiana court. With the stay now expired, he sought to reinstate the previously rendered $579,000 judgment or obtain a new trial. The Vessel Interests again removed the lawsuit to federal court.

The Vessel Interests also filed a new federal lawsuit to confirm the Indian arbitration award under the New

York Convention (this time invoking 9 U.S.C. § 207) and to enjoin Dahiya from pursuing any further litigation. Although both of these cases were pending before the same district court, the court declined to consolidate them.

Dahiya then moved to dismiss the new, award-confirmation suit brought by the Vessel Interests, arguing that the district court's remand in the original case prevented federal jurisdiction from ever again being exercised over the dispute. Undeterred, the Vessel Interests sought summary judgment confirming the award and reiterated their request for injunctive relief "to bring this interminable litigation to an end."

The district court granted summary judgment, terminating Dahiya's "increasingly quixotic bid to win greater damages in the United States." *Neptune Shipmanagement Servs. (PTE.), Ltd. v. Dahiya*, 2020 WL 6059647, at *1 (E.D. La. Oct. 14, 2020). The court thus enforced the Indian arbitration award and enjoined all pending and future legal actions arising from Dahiya's 1999 injuries.

Following its ruling, the district court entered final judgment confirming Dahiya's arbitral award in the amount of $300,580, a figure the parties proposed that includes accrued interest. Days later, the Vessel Interests paid that amount in full.

These rulings came in the Vessel Interests' newly filed federal case seeking confirmation of the arbitration award. But as a result of the injunction it issued, the district court closed the original state-court

case that the Vessel Interests had again removed to federal court. Dahiya appeals only from the new federal case; he did not file a separate appeal of the removed action.

II.

Dahiya challenges the district court's subject matter jurisdiction to confirm the arbitral award, the enforceability of the arbitration clause itself, and the court's determination that the award prevents him from pursuing litigation even against the Vessel Interests that were not parties in the arbitration.

Our review begins with Dahiya's challenge to the district court's jurisdiction to confirm the award. Federal courts have the power to enforce awards subject to the New York Convention because these actions "arise under the laws and treaties of the United States." 9 U.S.C. § 203. Any party to an arbitration that falls under the Convention may apply to a federal court "for an order confirming the award as against any other party." *Id.* § 207. This case fits well within the heartland of that jurisdictional grant.[3]

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[3] As the district court held, Dahiya's award falls under the Convention's umbrella because it was issued in a signatory state (India), the parties seek enforcement in another signatory state (the United States), it arises from a commercial dispute, and it involves at least one non-U.S. citizen (Dahiya). *See Asignacion v. Rickmers Genoa Schiffahrtsgesellschaft mbH & Cie KG*, 783 F.3d 1010, 1015 (5th Cir. 2015).

It may be that, as the only plaintiff to participate in the arbitration, Neptune alone has a claim to confirm the award. But that provides the jurisdictional hook for the suit. The claims of the other Vessel Interests seeking to enjoin Dahiya from engaging in

Dahiya nonetheless argues that the district court lost its jurisdiction to enforce the award—or preside over any aspect of this dispute—in 2002, when it remanded the prearbitration suit to state court. He is mistaken. A remand order issued nineteen years ago in a different lawsuit has no impact on the district court's ability to confirm the award.

To support his view that the 2002 remand binds this case, Dahiya emphasizes that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal." 28 U.S.C. § 1447(d). True enough, and we followed that command when we dismissed the Vessel Interests' direct appeal from the 2002 remand order. *Dahiya*, 371 F.3d at 209. But the removal statutes also contemplate that a lawsuit not removable at its inception may later become removable. *See* 28 U.S.C. 1446(b)(3). Accordingly, we held that an earlier remand did not preclude a second removal based on diversity jurisdiction when a postremand deposition made clear the amount-in-controversy requirement was satisfied. *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996) ("The Fifth Circuit recognizes a defendant's right to seek subsequent removals after remand."). Thus, even in the same case, a defendant may seek removal more than once, so long as the request rests on different grounds, like new pleadings or ensuing events that reveal a basis for federal jurisdiction. *Id*.

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further litigation would come into federal court through supplemental jurisdiction. *See* 28 U.S.C. §§ 1367(a), 1441(a).

Surely, then, a federal court may hear a separate action premised on new factual developments that support federal jurisdiction. That describes this new case, as it seeks to confirm an arbitration award that did not exist back in 2002. This case was never pending in state court; it is a new action distinct from the litigation seeking to compel arbitration.

Dahiya attempts to circumvent this problem by arguing that even a new suit can be an impermissible collateral attack on a remand order issued in an earlier one. *See New Orleans Pub. Serv., Inc. v. Majoue*, 802 F.2d 166, 167–68 (5th Cir. 1986) (holding that there was no federal jurisdiction over an action that was "nothing more than an artful, if not subtle, attempt to circumvent . . . § 1447(d)"). Such a collateral attack occurs when the same arguments advanced in new litigation "were fully before the court on the petition for removal and subsequent petition for remand." *Id.* That is not what is happening here. The first lawsuit sought to compel arbitration before it had occurred. This one seeks to confirm an arbitration award that has now issued. This recent factual developmental—an award in an arbitration falling under the New York Convention—gives rise to federal jurisdiction. *See* 9 U.S.C. § 207.

Consider a suit alleging state-law unfair competition and trade secret claims. Absent diversity, such a case would not be removable. But if the plaintiff later obtains a patent on the technology at issue, she could then file an infringement suit in federal court. A remand in the first suit would not matter because the second one is based on an intervening event—the

acquisition of a patent—that gives rise to federal jurisdiction.

As this hypothetical illustrates, a remand order in an earlier case is not controlling in a new case with a new basis for federal jurisdiction. Yet Dahiya still pushes back, arguing that we must ignore the arbitral award in determining jurisdiction because the remand order in the earlier case held that no enforceable arbitration agreement existed. That earlier ruling, Dahiya contends, gave rise to issue preclusion.

The issue preclusion argument also fails, however, because an unappealable ruling like a remand order is not entitled to preclusive effect. *Beiser v. Weyler*, 284 F.3d 665, 673 (5th Cir. 2002) (explaining that when "a litigant, as a matter of law, has no right to appellate review, then he has not had a full and fair opportunity to litigate and the issue is not precluded"); *see Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 395 (5th Cir. 1998) (suggesting that "collateral estoppel may not be applied offensively to a jurisdictional decision—such as one granting a motion to remand—that is not capable of being subjected to appellate review"); 18A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4433 n.39 (3d ed. 2021).[4]

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[4] There is another reason issue preclusion does not apply: this case and the earlier one do not involve an "identical issue." *See B&B Hardware, Inc. v. Hargis Indus. Inc.*, 575 U.S. 138, 153 (2015) (observing that issue preclusion applies only when "the issues in the two cases are indeed identical" (quoting 6 J. THOMAS MCCARTHY, TRADEMARKS AND UNFAIR COMPETITION § 32:99, at 32–244) (4th ed. 2014)). As we have explained, the issue in this case—whether a federal court has jurisdiction in a suit to confirm

The unappealability of remand orders is why, after a remand, a state court may revisit the federal court's jurisdictional reasoning. *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 647 (2006); *Mo. Pac. Ry. Co. v. Fitzgerald*, 160 U.S. 556, 583 (1896). We recognized this principle in dismissing the appeal of the 2002 remand: "[T]he district court determined that the arbitration clause was invalid in the process of ascertaining whether it had subject matter jurisdiction," which meant the ruling "has no preclusive effect in state court." *Dahiya*, 371 F.3d at 211. The state court could freely reexamine the issue and "reach a different conclusion about [the] dispute's arbitrability." *Beiser*, 284 F.3d at 674.

The Louisiana Fourth Circuit Court of Appeal did just that, holding that federal law preempted the state statute prohibiting forum selection clauses and that the arbitration clause was enforceable. *Dahiya*, 931 So. 2d at 1172. The remand order lacked preclusive effect then as it does now. It determined the forum for the suit seeking to compel arbitration and nothing more. *See Kircher*, 547 U.S. at 647.

III.

Although a district court's remand order does not have preclusive effect, the judgment of a state appellate court surely may. That is the problem with Dahiya's final two arguments: first, that the arbitration clause is invalid because Neptune never signed it, and second,

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an arbitration award falling under the New York Convention—is not the same one decided in 2002 before Dahiya and Neptune arbitrated.

that Dahiya was not required to arbitrate his claims against the remaining Vessel Interests.

A.

To begin, Dahiya contends that the district court erred in confirming the arbitral award against Neptune because Neptune did not sign the contract containing the arbitration clause. He cites Article II of the New York Convention, which defines arbitration agreements as "agreement[s] in writing," a term that "include[s] an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams." Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3. Because Neptune never signed the Deed, and federal courts only have jurisdiction over awards "falling under the Convention," 9 U.S.C. § 207, Dahiya claims the district court had no authority to confirm the award.

But this case is not the first time Dahiya has raised an Article II issue with the Deed. Before the arbitration, he argued in front of the Louisiana appellate court that the agreement violated Article II because it was "signed only by him and not by Neptune." The state court did not buy the argument. It held that "Mr. Dahiya's arbitration clause easily meets all four requirements of the Convention," including Article II's agreement-in-writing provision. *Dahiya*, 931 So. 2d at 1172.

This ruling prevents us from revisiting whether the Deed contains an enforceable arbitration clause.

Federal courts must "give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so." *Allen v. McCurry*, 449 U.S. 90, 96 (1980) (citing 28 U.S.C. § 1738). And under Louisiana law, "[a] judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment." *In re Keaty*, 397 F.3d 264, 270 (5th Cir. 2005) (quoting LA. STAT. ANN. § 13:4231(3)). It would be hard to find an issue more essential to a decision compelling arbitration than the court's determination that there is a binding arbitration agreement.

Dahiya's argument that Neptune's signature was required would have fared no better in our court. Fifth Circuit caselaw holds that Article II does not require a signature when the arbitration clause is part of a broader contract. *Sphere Drake Ins. PLC v. Marine Towing, Inc.*, 16 F.3d 666, 669 (5th Cir. 1994). Our view may now be in the minority,[5] but even so, we did not

[5] Other circuits, led by the Second Circuit, have rejected *Sphere Drake*'s approach and held that Article II requires both stand-alone arbitration agreements and contracts containing an arbitration clause to be signed by the parties. *Kahn Lucas Lancaster, Inc. v. Lark Int'l Ltd.*, 186 F.3d 210, 218 (2d Cir. 1999), *abrogation on other grounds recognized by Marks on Behalf of SM v. Hochhauser*, 876 F.3d 416, 420 (2d Cir. 2017); *see also Yang v. Majestic Blue Fisheries, LLC*, 876 F.3d 996, 1001 (9th Cir. 2017) (calling *Sphere Drake* an "outlier decision" and questioning whether our court would reach the same conclusion today), *abrogated on other grounds by GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1642 (2020); *Czarina, LLC v. W.F. Poe Syndicate*, 358 F.3d 1286,

compel arbitration here—the state court did. Preclusion principles prevent us from revisiting that ruling. And the reliance interests that preclusion law protects are especially strong here as the parties have spent years pursuing arbitration in India. *See Montana v. United States*, 440 U.S. 147, 153–54 (1979) (explaining that preclusion protects against "the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions").

B.

Finally, Dahiya argues that the district court erred in barring him from litigating against Talmidge, American Eagle, and Britannia because only Neptune was a party to the Deed. But the state court's ruling is preclusive on this question, too.[6]

Dahiya argued before the Louisiana appellate court that "[e]ven if Neptune were entitled to have its liability arbitrated, there is no basis for an arbitration

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1290–91 (11th Cir. 2004) (following *Kahn Lucas* in holding that Article II requires a signed agreement); *Standard Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 449 (3d Cir. 2003) (adopting *Kahn Lucas*).

[6] The district court also held that Dahiya's claims against the Vessel Interests were intertwined, meaning that the entities excluded from the Deed could enforce its arbitration clause under the doctrine of equitable estoppel. *See Grigson v. Creative Artists Agency, L.L.C.*, 210 F.3d 524, 526–27 (5th Cir. 2000). We need not address this question as issue preclusion alone provides sufficient grounds to affirm the judgment.

defense for any of the other defendants." The court disagreed, ruling that "the *defendants'* Exceptions of No Right of Action, Improper Venue and Arbitration should have been sustained and the case stayed pending arbitration." *Dahiya*, 931 So. 2d at 1173 (emphasis added). Even more important than what the court said is what it did--reverse the verdict that had been entered against all the Vessel Interests. *Id*. The arbitration agreement was the only reason cited for undoing that verdict not just as to Neptune but for all the defendants. *See id*. Despite Dahiya's efforts, nothing in the state court's opinion segregated his claims against the different parties on the basis of only some being subject to arbitration.

After the Louisiana appellate court remanded the case for the trial court to issue a stay, Dahiya again argued that he should be allowed to litigate against the Vessel Interests other than Neptune. He maintained before the state trial court that the "defendants other than [Neptune were] not parties to the arbitration agreement, and have no right to avoid suit in favor of an arbitration to which they will not be a party." The state trial court nonetheless stayed the litigation "in its entirety." In doing so, the court rejected Dahiya's attempt to proceed to trial against some of the Vessel Interests while the arbitration was ongoing. *See M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 998 So. 2d 16, 26 (La. 2008) ("Generally, when a trial court judgment is silent as to a claim or demand, it is presumed the relief sought was denied." (citations omitted)). We must respect the state court's judgment. *See* U.S. CONST. art. IV, § 1.

After the Louisiana courts halted the litigation, ordering Dahiya to arbitrate his claims, Dahiya had the opportunity to do just that. He could have named all the Vessel Interests as respondents in the arbitration. In fact, Dahiya's submissions to the arbitrator included allegations, such as unseaworthiness, most appropriately directed at the *Eagle Austin*'s owner (Talmidge) or charterer (American Eagle). *See Forrester v. Ocean Marine Indem. Co.*, 11 F.3d 1213, 1215 (5th Cir. 1993). Yet Dahiya named only Neptune as the respondent.

Dahiya's failure to include Talmidge, American Eagle, and Britannia in the arbitration constitutes a failure to prosecute his claims against those entities. *See Griggs v. S.G.E. Mgmt., L.L.C.*, 905 F.3d 835, 845 (5th Cir. 2018) (affirming dismissal for failure to prosecute after plaintiff refused to initiate arbitration as ordered by court). Having secured an arbitral award for his injuries, Dahiya cannot now double dip via litigation.

* * *

The judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION NO. 20-1525

[Filed: November 5, 2020]

NEPTUNE SHIPMANAGEMENT SERVICES (PTE), LTD., TALMIDGE INTERNATIONAL LTD., AMERICAN EAGLE TANKERS, INC., LTD., AMERICAN EAGLE TANKERS AGENCIES, INC., AND THE BRITANNIA STEAM SHIP INSURANCE ASSOCIATION LTD.	)
VERSUS	)
VINOD KUMAR DAHIYA	)

JUDGE FELDMAN

MAGISTRATE JUDGE VAN MEERVELD

JUDGMENT

Considering the Unopposed Motion for Entry of Final Judgment Pursuant to Federal Rule of Civil Procedure 58(d) filed by plaintiffs Neptune Shipmanagement Services (PTE), Ltd., Talmidge

International Ltd., American Eagle Tankers, Inc., Ltd., American Eagle Tankers Agencies, Inc., and The Britannia Steam Ship Insurance Association Ltd.;

IT IS ORDERED that the Motion is **GRANTED**;

IT IS FURTHER ORDERED that Judgment is hereby entered in favor of plaintiffs Neptune Shipmanagement Services (PTE), Ltd., Talmidge International Ltd., American Eagle Tankers, Inc., Ltd., American Eagle Tankers Agencies, Inc., and The Britannia Steam Ship Insurance Association Ltd. and against defendant Vinod Kumar Dahiya as follows:

- **IT IS ORDERED** that the Arbitration Award entered on January 25, 2020 and attached to the Complaint in this matter as Exhibit B (Rec. Doc. 1-2) is hereby **CONFIRMED** and made a judgment of this Court pursuant to 9 U.S.C. § 207;

- Pursuant to the Arbitration Award, **IT IS FURTHER ORDERED** that judgment is entered in favor of Vinod Kumar Dahiya and against Neptune Shipmanagement Services (PTE), Ltd. in the full and total amount of $300,580.00, (THREE HUNDRED THOUSAND FIVE HUNDRED EIGHTY DOLLARS and 00/100), plus post-judgment interest at the rate specified in the Award, commencing to run 30 days from this date;

- **IT IS FURTHER ORDERED** that, upon satisfaction of this Judgment, and subject to defendant's right to appeal, plaintiffs Neptune Shipmanagement Services (PTE), Ltd., Talmidge

International Ltd., American Eagle Tankers, Inc., Ltd., American Eagle Tankers Agencies, Inc., and The Britannia Steam Ship Insurance Association Ltd. shall have no further liability to Vinod Kumar Dahiya arising from the personal injuries Vinod Kumar Dahiya allegedly sustained while aboard the M/T EAGLE AUSTIN in November, 1999;

- **IT IS FURTHER ORDERED** that, upon satisfaction of this Judgment (after appeal, if any), the Letter of Undertaking issued by Britannia Steam Ship Insurance Association Ltd. to Vinod Kumar Dahiya shall be null, void, and without further effect; and,

- **IT IS FURTHER ORDERED** that Vinod Kumar Dahiya, together with all of his agents, servants, employees, attorneys, and any other persons who are in active concert or participation with any of the foregoing, are **PERMANENTLY ENJOINED** from filing or prosecuting any pending or future legal action or arbitration arising from the personal injuries that Vinod Kumar Dahiya allegedly sustained while aboard the M/T EAGLE AUSTIN in 1999, excepting only and as may result from his right to appeal this Judgment.

New Orleans, Louisiana, this 5th day of November, 2020.

/s/ Martin L.C. Feldman
MARTIN L.C. FELDMAN
UNITED STATES DISTRICT JUDGE

APPENDIX C

United States Court of Appeals
for the Fifth Circuit

No. 20-30776

[Filed: November 4, 2021]

NEPTUNE SHIPMANAGEMENT SERVICES PTE, LIMITED; TALMIDGE INTERNATIONAL, LIMITED; AMERICAN EAGLE TANKERS INCORPORATED LIMITED; AMERICAN EAGLE TANKERS AGENCIES, INCORPORATED; BRITANNIA STEAM SHIP INSURANCE ASSOCIATION LIMITED,	)
Plaintiffs—Appellees,	)
versus	)
VINOD KUMAR DAHIYA,	)
Defendant—Appellant.	)

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:20-CV-1525

ON PETITION FOR REHEARING EN BANC

Before JONES, SOUTHWICK, and COSTA, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service having requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

APPENDIX D

COURT OF APPEAL OF LOUISIANA, FOURTH CIRCUIT

No. 2005-CA-0514

[Filed: May 26, 2006]

CHARLES R. JONES, Judge.

This matter results from the district court's judgment in favor of the plaintiff, Vinod Dahiya, in the total amount of $579,988.00, and against the defendants, Talmidge International, Ltd., Neptune Shipmanagement Services (PTE.), Ltd, and American Eagle Tankers Agencies, Inc. Prior to rendering judgment in this matter, the district court denied the defendants' Exceptions of No Right of Action, and Improper Venue, finding that a Louisiana statute that nullifies forum selection clauses in contracts of employment preempts federal law, specifically, The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter "the Convention"), an international treaty of the United States. Having reviewed the record before this Court, the judgment in favor of the plaintiff, Vinod Dahiya, is reversed, and this matter is *remanded* to the district court.

FACTS

This is a maritime personal injury case in which the district court awarded damages for extensive burn

injuries suffered by a seaman, Mr. Dahiya, in the service of his vessel. Mr. Dahiya is a citizen of India. In 1999, he applied for a job with Singapore-based Neptune Shipmanagement Services (Pte., Ltd.) (hereinafter "Neptune"), was hired, and signed a contract of employment or "deed" that specified the terms and conditions of his employment. Neptune then paid for Mr. Dahiya to be sent to a maritime training school and eventually employed him on the M/V EAGLE AUSTIN, a Singaporean flag vessel, as an engine room cadet.

The incident which gave rise to this litigation occurred on the vessel in November 1999, while Mr. Dahiya was operating an incinerator in the engine room. The cause of the incident was contested at trial, but the district court found that the cause of Mr. Dahiya's burn injuries was Neptune's negligence and the Eagle Austin's unseaworthiness. Judgment was entered against Neptune and against Talmidge International, Ltd., the vessel owner.[FN1] These liability findings are not contested on appeal.

> FN1. Judgment was rendered in favor of Mr. Dahiya in the total amount of $579,988.00. Mr. Dahiya has filed a cross-appeal alleging that this amount is inadequate. Mr. Dahiya's cross-appeal also alleges that the distiict court inadvertently omitted to include the defendants' insurer, The Britannia Steam Ship Insur. Assoc., Ltd., as a party cast in judgment.

The accident occurred while the vessel was on the high seas in international waters. Because the vessel was en route to Louisiana at the time, Mr. Dahiya was

transported to the burn unit at the Baton Rouge General Medical Center where he received medical care for approximately 30 days before being repatriated to his home in India. His employer paid all medical and travel expenses, so at trial there was no claim for past medical expenses.

Mr. Dahiya returned to Louisiana in 2001, when he came here on a student visa. He subsequently filed suit in 2002. While this suit was pending, Mr. Dahiya's status with the United States Immigration and Naturalization Service became tenuous because of his failure to maintain his status as a student. Whether Mr. Dahiya has been permitted to return to the United States as of this time is not of record.

PROCEDURAL HISTORY

Although the legal issue before this Court is relatively narrow, the procedural history of this case is fairly convoluted. Mr. Dahiya filed suit in the 25th Judicial District Court for the Parish of Plaquemines in March, 2002, against his employer, Neptune Shipmanagement Services; the owner of the ship on which he was injured, Talmidge International; co-owners of the fleet to which the ship belongs, American Eagle Tankers and American Eagle Tankers Agencies; and the ship's insurer, Brittania Steam Ship Insurance Association. Pursuant to the Convention and the holding of the United States Fifth Circuit Court of Appeals in *Francisco v. Stolt Achievement,* 293 F.3d 270 (5th Cir.) *cert. den.* 537 U.S. 1030, 123 S.Ct. 561, 154 L.Ed.2d 445 (2002), the defendants removed the case to the United States District Court for the Eastern District of Louisiana on July 15, 2002. Once in federal court, the

defendants moved to compel arbitration and to stay the proceedings or, in the alternative, to dismiss Mr. Dahiya's suit. Mr. Dahiya moved to remand, arguing that the contract's terms did not qualify as an arbitration agreement under the Convention and therefore could not support removal under 9 U.S.C.A. § 205 [FN2] which provides in pertinent part that:

> FN2. Because the defendants failed to remove within thirty days, federal jurisdiction hinged entirely on § 205.

[w]here the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending.

Although finding that the arbitration clause in Mr. Dahiya's contract was applicable and virtually identical to the one enforced by the Fifth Circuit in Francisco, Judge Martin L.C. Feldman of the Eastern District remanded the case to state court on October 21, 2002, on the ground that Louisiana Revised Statute 23:921 precluded enforcement of the arbitration clause. With respect to § 205, the court reasoned that because the deed contained no valid forum selection clause, the parties had not entered into an agreement to arbitrate valid under the Convention.

From that point, parallel proceedings, one in federal court and one in state court, went forward. Defendants

filed a federal appeal of Judge Feldman's ruling. While that appeal was pending, Judge Feldman revisited the issue of the alleged preclusive affect of R.S. 23:921 in *Lejano v. K.S. BANDAK,* C.A. 00-2990, 2000 WL 33416866 (E.D.La.2000). In that decision, Judge Feldman recanted his prior remand order in this case with the following comment:

The plaintiffs' again argue that the Court's ruling in *Vinod Kumar Dahiya v. Talmidge International, Ltd., et al,* Civil Action No. 02-2135 (October 11, 2002), should apply to this case. The Court disagrees. Although the Court lacks jurisdiction to vacate its earlier ruling granting remand in *Dahiya,* after further review of the Supreme Court's ruling in *M/S Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972) and its reasoning in *Southland Corp. v. Keating,* 465 U.S. 1, 10, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984), the Court finds that its ruling in *Dahiya* was incorrect.

Because Judge Feldman no longer had jurisdiction at that point, however, he could not rectify his error and the federal appeal continued. Because of a general federal rule precluding appeals of remand orders, however, a split panel of the Fifth Circuit dismissed the appeal for lack of appellate jurisdiction, noting that federal statutory law "... bars a federal appellate court from reviewing the remand ruling 'no matter how erroneous.'" *Dahiya v. Talmidge International, Ltd., et al,* 371 F.3d 207, 209 (5th Cir.2004), citing *Arnold v. State Farm Fire & Cas. Co.*, 277 F.3d 772, 775 (5th Cir.2001); and 28 U.S.C.A. § 1447(d), (d) (West 1994).

DISCUSSION

In their first assignment of error, the Appellants assert that the district court erred as a matter of law when it failed to sustain the Appellants' Exceptions of No Right of Action, Improper Venue and Arbitration pursuant to an arbitration forum selection clause in Mr. Dahiya's contract of employment, or to dismiss or stay the case pending arbitration. We agree and find that federal law supercedes any state law that purports to nullify forum selection clauses in employment contracts and vitiate an international treaty obligation of the United States.

Standard of Review

We review the district court's failure to enforce the arbitration clause in Mr. Dahiya's employment contract *de novo* because it was based implicitly on the court's legal conclusion that Louisiana statutory law supercedes the Convention. The Louisiana Supreme Court stated in *Cleco Evangeline, LLC v. Louisiana Tax Commission,* 01-2162 (La.4/3/02), 813 So.2d 351, 353, with respect to an issue of law being reviewed on appeal that "[w]e review the matter *de novo,* and render judgment on the record, without deference to the legal conclusions of the tribunals below." The issue regarding whether federal law preempts state law is a question of law, so this issue must be reviewed *de novo* by this Court. *In Re Medical Review Panel Proceedings for the Claim of Allan Tinoco, et al. v. Meadowcrest Hospital, et al.,* 03-0272 (La.App. 4 Cir. 9/17/03), 858 So.2d 99, 103, citing *Crawford v. Blue Cross and Blue Shield of La.*, 00-2026, p. 3 (La.App. 4 Cir. 12/5/01), 814 So.2d 574, 577.

Analysis

The defendants contend that federal law, specifically the Convention, preempts state statutory law and thus, the arbitration clause in Mr. Dahiya's contract of employment is valid and should have been enforced. The Convention was negotiated in 1958 and entered into by the United States in 1970 pursuant to the Constitution's treaty power. That same year, Congress adopted enabling legislation, codified at 9 U.S.C. § 201 et seq., to make the Convention, "the highest law of the land." As such, the Convention must be enforced according to its terms over all prior inconsistent rules of law. *F.A. Richard and Associates, Inc. v. General Marine Catering Co., Inc.,* 688 So.2d 199, 202 (La.App. 4 Cir. 1/29/97), citing *Sedco, Inc. v. Petroleos Mexicanos Mexican National Oil Co.,* 767 F.2d 1140 (5th Cir.1985). The Supremacy Clause declares that federal law "shall be the supreme law of the land[,] ... any Thing [sic] in the Constitution or *Laws of any State* to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2 (emphasis added). See, *Lim v. Offshore Specialty Fabricators. Inc.,* 404 F.3d 898, 904 (5th Cir.2005). The Fifth Circuit has found that "Where [state] laws conflict with a treaty, they must bow to the *superior federal policy*." *Id. citing Zschernig v. Miller*, 389 U.S. 429, 441, 88 S.Ct. 664, 19 L.Ed.2d 683 (1968) (emphasis added).

Congress' implementing legislation for the Convention is found as part of the Arbitration Act. 9 U.S.C. § 1 et seq. Chapter 1 of Title 9 is the Federal Arbitration Act (hereinafter "FAA") passed long ago to overcome American courts' common law hostility to the

arbitration of disputes. *Id.* The Convention incorporates the terms of the FAA, codified at 9 U.S.C. § 1 et seq., which in turn specifically requires that a court stay litigation of a dispute that is subject to arbitration.

However, Louisiana law is completely inapposite. Louisiana Revised Statute 23:921(A)(2) states:

> The provisions of every employment contract or agreement, or provisions thereof, by which any foreign or domestic employer or other person or entity includes a choice of forum clause or choice of law clause in an employee's contract of employment or collective bargaining agreement, or attempts to enforce either a choice of forum clause or choice of law clause in any civil or administrative action involving an employee, shall be null and void except where the choice of forum clause or choice of law clause is expressly, knowingly, and voluntarily agreed to and ratified by the employee after the occurrence of the incident which is the subject of the civil or administrative action.

Louisiana Revised Statute 23:921(A)(2).

The Louisiana anti-forum-selection-clause statute conflicts directly with the Convention's mandate to enforce arbitration clauses.

Furthermore, while the United States Constitution grants jurisdiction to federal district courts in all "Cases of admiralty and maritime jurisdiction," U.S. Const. art. III, § 2, see also 28 U.S.C. § 1333(1), state courts have concurrent jurisdiction by virtue of the "saving to suitors" clause of the Judiciary Act of 1789 as amended.

In the present case, Mr. Dahiya, although his case falls within federal admiralty jurisdiction, brought his case in state court pursuant to the savings to suitors clause, designating his suit as a suit in admiralty or a general maritime claim in his original Petition for Damages: "This case is an admiralty and/or maritime claim brought in state court under the saving to suitors clause and is brought pursuant to Article 1732(6) of the Louisiana Code of Civil Procedure."

"As a general proposition, '[a] maritime claim brought in common law state courts ... is governed by the same principles as govern actions brought in admiralty, i.e., by federal maritime law.' " *Giorgio v. Alliance Operating Corp., et al,* 05-0002, pg. 10 (La.1/19/06), 921 So.2d 58, 67, citing *Green v. Industrial Helicopters, Inc.,* 593 So.2d 634, 637 (La.1992), *cert. denied,* 506 U.S. 819, 113 S.Ct. 65, 121 L.Ed.2d 32 (1992). "Thus, with admiralty jurisdiction comes the application of substantive admiralty law." *Giorgio,* at 921 So.2d 67, *citing New England Mut. Marine Ins. Co. v. Dunham,* 78 U.S. (11 Wall.) 1, 25, 20 L.Ed. 90 (1870).

However, the general maritime law is not a complete or all-inclusive system.

When new situations arise that are not directly governed by legislation or admiralty precedent, federal courts may fashion a rule for decision by a variety of methods. Federal courts may, and often do, look to state statutory law and to precepts of the common law which they "borrow" and apply as federal admiralty rule. Moreover, federal courts may apply state law, as such, to a case with the admiralty jurisdiction if the occurrence is "maritime but local" and there is no need

to fashion a uniform admiralty rule. Finally, federal courts may apply state law and regulations to supplement the general maritime law when there is no conflict between the two systems of law, and the need for uniformity of decision does not bar state action. *Giorgio* 921 So.2d at 67-68, citing T. Schoenbaum, Admiralty and Maritime Law § 4-1, pp. 158-59.

"It is well settled that by virtue of the savings clause 'a state, "having concurrent jurisdiction, is free to adopt such remedies, and to attach to them such incidents as it sees fit" so long as it does not attempt to make changes in the substantive maritime law.' " *Giorgio,* 921 So.2d at 67-68, citing *Green,* 593 So.2d at 637. The Court in *Giorgio* noted that:

The United States Supreme Court has made clear that the uniformity principle does not preclude the application of state law in admiralty; rather, the decision whether to apply state law in cases within admiralty jurisdiction must be based upon balancing state and federal interests:

[T]he fact that maritime law is-in a special sense at least ...-federal law and therefore supreme by virtue of Article VI of the Constitution carries with it the implication that wherever a maritime interest is involved, no matter how slight or marginal, it must displace a local interest, no matter how pressing or significant. But the process is surely rather one of accommodation, entirely familiar in many areas of overlapping state and federal concern, or a process somewhat analogous to the normal conflict of laws situation where two sovereignties assert divergent

interests in a transaction as to which both have some concern.

Giorgio, at pg. 11, 921 So.2d 58, *citing Kossick v. United Fruit Co.,* 365 U.S. 731, 739, 81 S.Ct. 886, 6 L.Ed.2d 56 (1961).

"Therefore, state law may be applied where the state's interest in a matter is greater than the federal interest." *Giorgio,* 921 So.2d at 68, citing *Green,* 593 So.2d at 638. However, we find that in the instant case, the interest in federal policy outweighs that of state policy; therefore, federal law preempts state law.

Repeatedly, Congress has endorsed arbitration clauses, first through the passage of the Federal Arbitration Act (hereinafter "FAA"), and then through adoption of the Convention and implementation of the Convention Act. *Lim,* 404 F.3d at 905. "In 1984, the United States Supreme Court held the Federal Arbitration Act preempts state law and concluded that state courts cannot apply state statutes that invalidate arbitration agreements." *F.A. Richard and Associates, Inc. v. General Maritime Catering Co., Inc.,* 96-1902 (La.App. 4 Cir. 1/29/97), 688 So.2d 199, 202, citing *Southland Corp. v. Keating,* 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984). "The Court reaffirmed its decision regarding the Federal Arbitration Act's preemption of state law in *Mastrobuono v. Shearson Lehman Hutton, Inc.,* 514 U.S. 52, 115 S.Ct. 1212, 131 L.Ed.2d 76 (1995) and *Allied-Bruce Terminix Companies, Inc. v. Dobson,* 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995). Thus, the Convention, which encompasses Chapter 2 of Title 9, The FAA, preempts any state law that would invalidate arbitration agreements." *F.A. Richard and*

Associates, Inc. v. General Marine Catering Co., *Inc.*, 688 So.2d at 202. The district court's finding otherwise is erroneous.

Moreover, federal courts have supported this strong policy in favor of arbitration. "[Q]uestions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Lim,* 404 F.3d at 906, quoting *Gilmer v. Interstate/Johnson Lane Corp.,* 500 U.S. 20, 26, 111 S.Ct. 1647, 114 L.Ed.2d 26 (1991). In the context of the Convention, the Supreme Court held: "[C]oncerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of the international commercial system for predictability in the resolution of disputes require that we enforce the parties' [arbitration] agreement, *even assuming that a contrary result would be forthcoming in a domestic context."* *Lim,* 404 F.3d at 906, quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985) (emphasis added). "More specifically, federal courts have endorsed federal arbitration policy by applying the Convention to seaman's employment contracts." *Lim,* citing *Francisco,* 293 F.3d at 274; *Bautista v. Star Cruises*, 396 F.3d 1289, 1300 (11th Cir.2005).

We note that in weighing these competing policy concerns, plaintiff's employment contract does not present the inequities the Louisiana statute was crafted to prevent. See Lim. "That statute seeks to protect Louisiana citizen-employees from being subjected to litigation in a foreign forum, under laws with which they are not familiar and before a foreign

body." *Lim,* citing Testimony of Representative Jackson, Official Minutes of Louisiana Senate Committee on Labor and Industrial Relations, Hearing on Senate Bill 915 (22 April 1999). Plaintiff in this case is a resident and citizen of India. His employment contract does not require him to bring claims in a foreign forum, but instead require him to submit to arbitration in his home country, before Mr. Dahiya's countrymen.

Nevertheless, the United States Supreme Court in *M/S Bremen v. Zapata Off-Shore Company,* 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972), held that a contractual choice-of-forum clause should be held unenforceable if its enforcement would contravene a strong public policy of the forum in which suit was brought, whether declared by statute or by judicial decision. *Id.,* 407 U.S. at 15-16, 92 S.Ct. at 1916.

While we acknowledge that the Louisiana Supreme Court did find in *Sawicki v. K/S Stavanger Prince,* 802 So.2d 598, 603 (La.2001) that La. R.S. 23:921 A(2) is an expression of strong Louisiana public policy concerning forum selection clauses, we note that the Court very recently stated in *Giorgio* that "federal courts may apply state law and regulations to supplement the general maritime law when there is **no conflict between the two systems of law, and the need for uniformity of decision does not bar state action.**" *Giorgio,* 921 So.2d at 67, quoting Schoenbaum, *supra,* at § 4-1, pp. 158-59. The Court further noted that "it is well settled that by virtue of the savings clause 'a state, having concurrent jurisdiction, is free to adopt such remedies, and to attach to them such incidents as it

sees fit' so long as it does not attempt to make changes in the substantive maritime law." *Giorgio* 921 So.2d at 67-68, citing *Green v. Industrial Helicopters, Inc.*, 593 So.2d 634, 637 (La.1992), *cert. denied,* 506 U.S. 819, 113 S.Ct. 65, 121 L.Ed.2d 32 (1992).

Thus, there would appear to be two competing policy interests here. By enacting § 23:921, the Louisiana legislature has expressed its concern that in order for forum selection and choice of law clauses in employment contracts to be valid, employees must ratify them subsequent to the incidents giving rise to the claims. La. R.S. § 23:921A(2) (West 2004). The Louisiana Supreme Court, in *Sawicki,* 802 So.2d at 603, stated that the statutory requirement that employees agree to the forum (arbitration versus court, or choice of court) and the law to be applied after the fact of their inquiry or dispute occurs reflects Louisiana's strong public policy concerning forum selection clauses.

However, the federal policy indicated by the Supreme Court in *Bremen* pulls in the opposite direction entirely. In *Bremen,* the ship at issue "was to traverse the waters of many jurisdictions ... [That] the accident occurred in the Gulf of Mexico and the barge was towed to Tampa in an emergency were mere fortuities." 407 U.S. at 13, 92 S.Ct. at 1915. The Court explained that the international contracting parties wanted to provide a neutral forum beforehand, so that there would be no question as to what would happen in case of a dispute. *Id.* This strong federal policy regarding the validity of pre-dispute selections of forum arises from "sensitivity to the need of the international commercial system for

predictability in the resolution of disputes." *Sedco, Inc. v. Petroleos Mexicanos Mexican National Oil Co. (Pemex),* 767 F.2d 1140, 1148-49 (5th Cir.1985). This Court also recognizes the strong federal policy in favor of rigorously enforcing the specific forum choice of arbitration and arbitration awards, as reflected by Congress in enacting the FAA and the Convention. See *Southland Corp. v. Keating*, 465 U.S. 1, 10, 104 S.Ct. 852, 858, 79 L.Ed.2d 1 (1984); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519-20, 94 S.Ct. 2449, 41 L.Ed.2d 270 (1974).

Predictability in the resolution of disputes is what the Appellants desired and what Mr. Dahiya expressly agreed to in his deed here, and precisely what § 23:921 conflicts with. If an accident or incident were to occur during and relating to Mr. Dahiya's training and employment under Neptune, notwithstanding in which body of water, Section II.8 of Mr. Dahiya's deed clearly anticipated the procedure to be followed-arbitration in either India or Singapore before a specific arbitrator who would apply Indian arbitration law. That this incident occurred in international waters near Louisiana and that Mr. Dahiya received emergency medical treatment in Louisiana are "mere fortuities" because Mr. Dahiya and Neptune had already agreed to submit to arbitration elsewhere.

Section 23:921 voids all arbitration clauses in employment contracts, regardless of their terms. We find that this policy not only directly conflicts with *Bremen's* presumption of validity for forum selection clauses in general, but it also conflicts with the proarbitration policy set out by Congress in the FAA

and the Convention that similarly presumes arbitration provisions to be "valid, irrevocable, and enforceable." 9 U.S.C.A. § 2. The presumption of validity of arbitration clauses is also what another public policy of Louisiana heavily favors, as evidenced by our legislature's enactment of La. R.S. § 9:4201, which closely minors § 2 of the FAA. *See Id;* La. R.S. § 9:4201. Thus, Louisiana's general policy on arbitration is consistent with federal policy that arbitration clauses should be considered presumptively valid.

Given the weight of these competing policy concerns, we find that Mr. Dahiya has not met his heavy burden of showing that the forum selection clause in his deed is unreasonable, and we thus find that the district court erred in concluding that Mr. Dahiya had made such a showing.

Additionally, we find that any argument that the arbitration clause in Mr. Dahiya's deed is foreclosed by La. R.S. § 23:921 must be tried and tested by preemption analysis. Federal statutes enacted pursuant to the United States Constitution are the supreme law of the land, "[A]ny state law, however clearly within a State's aclmowledged power, which interferes with or is contrary to federal law, must yield." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n,* 505 U.S. 88, 108, 112 S.Ct. 2374, 120 L.Ed.2d 73 (1992) (citations omitted). Section 2 of the FAA, enacted by Congress pursuant to the Commerce Clause and incorporated by the Convention in 9 U.S.C. § 208, "is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any

state substantive or procedural policies to the contrary." *Moses H. Cone Memorial Hosp v. Mercury Const. Corp,* 460 U.S. 1, 24, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983).

Finally, the Convention contemplates a limited inquiry by courts when considering whether to compel arbitration. The inquiry questions (1) is there an agreement in writing to arbitrate the dispute; in other words, is the arbitration agreement broad or narrow; (2) does the agreement provide for arbitration in the territory of a Convention signatory; (3) does the agreement to arbitrate arise out of a commercial legal relationship; and (4) is a party to the agreement not an American citizen. If these requirements are met, the Convention requires the courts to order arbitration. *Sedco, Inc.,* 767 F.2d at 1144-45; *Ledee v. Ceramiche Ragno,* 684 F.2d 184, 185-186 (1 Cir.1982).

We find that Mr. Dahiya's arbitration clause easily meets all four requirements of the Convention and that the district court erred in not staying the proceedings and compelling arbitration per the Appellants' motions. In the instant case, Mr. Dahiya signed a deed covering his twelve months of practical training at-sea, which would be applied to his three-year Diploma in Maritime Studies. He also agreed in the deed to serve as an employee of Neptune or a company of Neptune's choosing for a bonded period of two years after receiving his degree and passing his Class V exam. Section I.17 outlined how much Neptune would pay Mr. Dahiya as "wages" for the two years remaining before receiving his degree-the first consisting of his at-sea training and the second year consisting of his

attendance of classes at the National Maritime Academy in Singapore. We find that because both parties exchanged promises in the deed, it served as an employment contract.

Both Singapore and India are signatories to the Convention.[FN3] Thus, the second requirement for the Convention to apply is met in the case *sub judice.* The third requirement for the Convention to apply is that the agreement mises out of a commercial legal relationship. *Francisco*, 293 F.3d at 273. The U.S. Fifth Circuit Court of Appeals held in *Francisco,* that seaman employment contracts are commercial legal relationships covered by the Convention, even though they are excepted by the FAA. *Id.* at 274-75. Accordingly, we find that the third requirement is also met.

FN3. In 1960, India acceded to the Convention; in 1986, Singapore acceded to the Convention.

Lastly, the final requirement for the Convention to apply is that there must be a party to the agreement who is not an American citizen. *Id.* at 273. It is clear that neither Mr. Dahiya, nor Neptune is an American citizen. Thus, we find that the final requirement is also met in this case.

Mr. Dahiya's contract of employment with Neptune contains an arbitration forum selection clause requiring all disputes to be resolved in arbitration in either Singapore or India, pursuant to Indian law. The arbitration clause brings the case within the scope of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, an international treaty of the

United States and, as such, the supreme law of the land. Federal law controls and makes clear that the Convention preempts state law, in this case a Louisiana statute that nullifies forum selection clauses in contracts of employment. We find that pursuant to The Convention and the Federal Arbitration Act, the defendants' Exceptions of No Right of Action, Improper Venue and Arbitration should have been sustained and the case stayed pending arbitration. Accordingly, we find that the Appellants' first assignment of error has merit and we therefore reverse the district court's ruling.

In their second assignment of error, the Appellants argue that the district court's award of general damages was improperly based on economic standards and legal precedent of the United States as opposed to that of India, Mr. Dahiya's native country.

In their third assignment of error, the Appellants contend that the district court's award for past lost wages and future medical expenses was not supported by the evidence. Because we find that the district court improperly applied Louisiana statutory law, rather than federal law, we pretermit any discussion of the appellants' second and third assignments of error that address general and special damages, as well as the cross-appeal of Mr. Dahiya, as they are now moot. Mr. Dahiya files a cross-appeal arguing that the district court inadvertently omitted the defendants' insurer, Britannia, and that the general damage award is inadequate. As stated previously, we pretermit any discussion of these issues for the reasons discussed supra.

Furthermore, we find Mr. Dahiya's argument that the law of the case doctrine bars any review of whether federal law preempts state law in this matter [FN4], to be inapplicable because the Louisiana Supreme Court has very recently ruled on this issue in *Giorgio v. Alliance Operating Corp., et al.* Thus, we must follow the law as set forth in *Giorgio*.

> FN4. The defendants previously filed an application for supervisory writs regarding the enforceability of the arbitration clause. This Court denied the application finding that La. R.S. 23:921 invalidates the arbitration clause. This application was denied prior to the Louisiana Supreme Court's ruling in *Giorgio*.

DECREE

For the foregoing reasons, we reverse the district court's judgment. The matter is remanded to the district court for further proceedings consistent with the reasons cited herein.

REVERSED AND REMANDED.

App. 42

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

410 Royal Street

New Orleans, LA 70130-2199

Clerk's Office, New Orleans, this June 30, 2006

To Whom It May Concern:

REHEARING WAS THIS DAY REFUSED IN THE CASE ENTITLED.

VINOD KUMAR DAHIYA

VERSUS

TALMIDGE INTERNATIONAL LTD., NEPTUNE SHIPMANAGEMENT SERVICES (PTE), LTD., AMERICAN EAGLE TANKERS, INC., LTD., AMERICAN EAGLE TANKERS AGENCIES, INC. AND THE BRITANIA STEAM SHIP INSURANCE ASSOCIATION LTD.

CASE NO. 2005-CA-0514

Sincerely,

DANIELLE A. SCHOTT

CLERK OF COURT

APPENDIX E

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial

under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect to which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are

imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing

any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interest party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 [27 LNTS 157; 92 LNTS 301] shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice [T.S. 993; 59 Stat. 1055], or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States refened to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-

General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to the extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

Convention on the Recognition and Enforement of Foreign Arbitral Awards. Done at New York June 10, 1958; entered into force for the United States December 29, 1970, subject to declarations.

Implementing Legislation Pub.L. 91-368, 84 Stat. 692, 9 USC 201-208

States which are parties:

India [FN12]

Singapore [FN22b]

United States [FN29]

(additional states omitted)

APPENDIX F

ARBITRATION AND CONCILIATION ACT, 1996 EXCERPTS

Section 1. Short title, extent and commencement.

(1) This Act may be called the Arbitration and Conciliation Act, 1996.

(2) It extends to the whole of India:

* * * * *

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

* * *

Section 2. Definitions.

(1) In this Part, unless the context otherwise requires,—

(a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;

(b) "arbitration agreement" means an agreement referred to in section 7;

(c) "arbitral award" includes an interim award;

(d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

[(e) "Court" means—

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]

(f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) *** an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country;

(g) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(h) "party" means a party to an arbitration agreement.

(2) This Part shall apply where the place of arbitration is in India:

[Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause *(a)* of sub-section *(1)* and sub-section *(3)* of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.]

(3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(4) This Part except sub-section *(1)* of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration

agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section *(4)*, and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

(6) Where this Part, except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including an institution, to determine that issue.

(7) An arbitral award made under this Part shall be considered as a domestic award.

(8) Where this Part—

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement.

(9) Where this Part, other than clause *(a)* of section 25 or clause *(a)* of sub-section *(2)* of section 32, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.

* * *

Section 4. Waiver of right to object.

A party who knows that—

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

* * *

Section 7. Arbitration agreement.

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Section 8. Power to refer parties to arbitration where there is an arbitration agreement.

[(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.]

(2) The application referred to in sub-section *(1)* shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

[Provided that where the original arbitration agreement or a certified copy thereof is not available

with the party applying for reference to arbitration under sub-section *(1)*, and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]

(3) Notwithstanding that an application has been made under sub-section *(1)* and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

* * *

Section 16. Competence of arbitral tribunal to rule on its jurisdiction.

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a

party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section *(2)* or sub-section *(3)*, admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section *(2)* or sub-section *(3)* and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

* * *

Section 19. Determination of rules of procedure.

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section *(2)*, the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section *(3)* includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

* * *

Section 21. Commencement of arbitral proceedings.

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

* * *

Section 23. Statements of claim and defence.

(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

[(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.]

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

[(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.]

* * *

Section 25. Default of a party.

Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section *(1)* of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant [and shall

have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited].

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

* * *

Section 28. Rules applicable to substance of dispute.

(1) Where the place of arbitration is situate in India,—

(a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

(b) in international commercial arbitration,—

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under clause *(a)* by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(2) The arbitral tribunal shall decide *ex aequo et bono or as amiable compositeur* only if the parties have expressly authorised it to do so.

[(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.]

* * *

Section 42. Jurisdiction.

Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all sequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NO. 20-1525

[Filed: October 14, 2020]

NEPTUNE SHIPMANAGEMENT SERVICES (PTE.), LTD., ET AL.	)
v.	)
VINOD KUMAR DAHIYA	)

CIVIL ACTION

SECTION "F"

ORDER AND REASONS

Before the Court is the plaintiffs' motion for summary judgment. For the following reasons, the motion is GRANTED.

Background

In this protracted litigation spanning multiple *decades*,[1] the plaintiffs[2] seek to confirm a much-awaited

[1] The twists and turns of this personal injury litigation are well known by the parties and the Court. As such, in the interest of efficiency, the Court assumes familiarity with the background

arbitration award. Despite the fact that that award represents a hard-fought (and sizable) monetary victory for the defendant Vinod Kumar Dahiya, Dahiya presses on in an increasingly quixotic bid to win greater damages in the United States.

The Court ends that effort today. As detailed below, the Vessel Interests are indeed entitled to summary judgment.

I.

The Vessel Interests seek summary judgment as to their entitlement to three related remedies: (1) a judicial confirmation of the Indian arbitrator's Award, (2) a permanent injunction barring Dahiya from any further attempts to relitigate the Award or prosecute other claims relating to the 1999 accident that underlies this litigation, and (3) a declaratory judgment that a Letter of Undertaking (LOU) issued by plaintiff Britannia Steam Ship Insurance Association Ltd. will be, upon the plaintiffs' satisfaction of the enforced Award, a legal nullity.

Federal Rule of Civil Procedure 56 provides that summary judgment is appropriate if the record reveals no genuine dispute as to any material fact such that

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outlined in the orders and reasons previously issued in this case and its most recent companion (case number 20-1527).

[2] The plaintiffs in this case, which the Court has dubbed the "Vessel Interests," are Neptune Shipmanagement Services (PTE.), Ltd., Talmidge International Ltd., American Eagle Tankers, Inc., American Eagle Tankers Agencies, Inc., and Britannia Steam Ship Insurance Association Ltd.

the moving party is entitled to judgment as a matter of law. No genuine dispute of fact exists if the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) A genuine dispute of fact exists only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The Supreme Court has emphasized that the mere assertion of a factual dispute does not defeat an otherwise properly supported motion. See id. As such, if evidence favoring the nonmoving party "is merely colorable, or is not significantly probative," summary judgment may be appropriate. Id. at 249-50 (citation omitted). Summary judgment is also proper if the party opposing the motion fails to establish an essential element of its case. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) In this regard, the nonmoving party must do more than simply deny the allegations raised by the moving party. See Donaghey v. Ocean Drilling & Expl. Co., 974 F.2d 646, 649 (5th Cir. 1992) Rather, it must come forward with competent evidence, such as affidavits or depositions, to buttress its competing claim. Id. Hearsay evidence and unsworn documents that cannot be presented in a form that would be admissible at trial do not qualify as competent opposing evidence. FED. R. CIV. P. 56(c) (2); Martin v. John W. Stone Oil Distrib., Inc., 819 F.2d 547, 549 (5th Cir. 1987) (per curiam). Finally, in evaluating a summary judgment motion, the Court must read the facts in the light most favorable to the nonmoving party. Anderson, 477 U.S. at 255.

II.

Applying the foregoing framework to the Vessel Interests' motion is relatively straightforward. As explained below, summary judgment is appropriate here because three plain legal conclusions flow directly from incontrovertible facts: first, that the Award is indeed subject to confirmation by this Court as a matter of federal law; second, that the Court's confirmation of the Award is binding on all parties to this litigation; and third, that the binding nature of that outcome precludes Dahiya's efforts to seek some other result.

These legal realities entitle the Vessel Interests to summary judgment on all issues presented by the motion. First, the Award can – and in fact must – be enforced by this Court. Second, the Court's enforcement of the Award settles this dispute as to all parties and claims, and as a result, merits permanent enjoinment of any attempts to disregard or upset that settlement. And third, the Court's final enforcement of the Award will render the LOU issued by Britannia a dead letter upon Dahiya's receipt of the Award.

The Court expounds on each of these findings in turn.

A.

The first issue raised by the Vessel Interests' motion is whether the Award falls under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as adopted in Title 9 of the U.S. Code. If so, the Award is presumptively subject to the Court's

confirmation as a matter of federal law. If not, the Vessel Interests' action is dead on arrival.

The Fifth Circuit has succinctly framed the issue on this threshold question as follows:

> The Convention applies when an arbitral award has been made in one state and recognition or enforcement is sought in another state. . . . [And an] award's enforcement is governed by the Convention, as implemented at 9 U.S.C. § 201 *et seq*., if the award arises out of a commercial dispute and at least one party is not a United States citizen.

Asignacion v. Rickmers Genoa Schiffahrtsgesellschaft mbH & Cie KG, 783 F.3d 1010, 1015 (5th Cir. 2015).

As this Court has previously explained, in the complaint on which they now seek summary judgment,

> the Vessel Interests allege that an arbitral award has been issued in one signatory state (India) and seek enforcement of that award in another signatory state (the United States); and, they allege that that award arises from a commercial dispute and includes as a party at least one non-U.S. citizen (Dahiya).

Neptune Shipmanagement Servs. (PTE.), Ltd. v. Dahiya, 2020 WL 5545689, at *2 (E.D. La. Sept. 16, 2020) (footnote omitted). These allegations are indisputably true.[3] Therefore, under 9 U.S.C. § 207, the

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[3] Five pertinent facts are beyond dispute on the record before the Court: (1) that the Award was issued in India, (2) that enforcement

Court "shall confirm" the Award, unless it "finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the . . . Convention."

The Fifth Circuit has supplied another tidy framework for this analysis. "Under the Convention, 'the country in which . . . an award was made' is said to have primary jurisdiction over the award. All other signatory states are secondary jurisdictions, in which parties can only contest whether the state should enforce the arbitral award." Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 364 F.3d 274, 287 (5th Cir. 2004) (footnote omitted) (quoting Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 335 F.3d 357, 364 (5th Cir. 2003)). Accordingly, the United States is indisputably a country of secondary jurisdiction with regard to the Award at issue.[4]

"[C]ourts in countries of secondary jurisdiction may refuse enforcement only on the grounds specified in Article V." Id. at 288; see also OJSC Ukrnafta v. Carpatsky Petroleum Corp., 957 F.3d 487, 497 (5th Cir.

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of the Award is being sought here, in the United States, (3) that India and the United States are signatories to the Convention, (4) that Dahiya is not a U.S. citizen, and (5) that the Award arises from an inherently "commercial" dispute between an employee and his employer. See Francisco v. STOLT ACHIEVEMENT MT, 293 F.3d 270, 274 (5th Cir. 2002) (observing that seamen employment contracts are "commercial" within the meaning of the Convention).

[4] There is no question that India is the country in which the Award was made. See, e.g., Mot., Ex. A-1.

2020) ("As a secondary jurisdiction, we can deny enforcement only on a ground listed in Article V. And we construe the Article V defenses 'narrowly [] "to encourage the recognition and enforcement of commercial arbitration agreements in international contracts."'" (alteration in original) (footnote omitted) (quoting Karaha II, 364 F.3d at 288)). No such grounds are present here.[5] Dahiya's repeated assertions – made at multiple stages of this litigation, including Dahiya's state-court motion to reinstate a defunct state-court judgment to the exclusion of the Award, as well as Dahiya's opposition to the present motion – as to the supposed invalidity of the agreement to arbitrate in Dahiya's Deed are disorganized and unpersuasive. Federal district courts sitting in secondary jurisdiction under the Convention may not overturn international arbitration awards on flimsy and indefinite grounds. To the contrary, they are bound to observe the resounding public policy in favor of arbitration, as confirmed in countless federal cases and by the United States' adoption of the Convention itself. It is for this reason that federal district courts are required to review arbitration awards in an "extraordinarily narrow" fashion. See, e.g., Asignacion, 783 F.3d at 1015 ("A district court's review of an award is 'extraordinarily narrow.'" (quoting Kergosien v. Ocean Energy, Inc., 390

[5] The Vessel Interests argue that the Court need not even reach this analysis. In their view, the Court need not consider the merits of any possible defenses to the Convention's application because Dahiya has waived such defenses by his failure to bring them in a timely fashion. While this may indeed be true, the Court declines to address that issue because all defenses Dahiya *has* urged are meritless in any event.

F.3d 346, 352 (5th Cir. 2004))); Karaha II, 364 F.3d at 306 (noting that Article V's catch-all public policy defense is "to be applied only where enforcement would violate the forum state's most basic notions of morality and justice" (quoting M & C Corp. v. Erwin Behr GmbH & Co., KG, 87 F.3d 844, 851 n.2 (6th Cir. 1996))).

Proceeding to the merits here, the Court sees no legitimate basis for overriding the Award in service of Dahiya's quest to achieve greater damages in yet further prosecution of this 20-year-old litigation. Ultimately, Dahiya is the *beneficiary* of an arbitration agreement that has already been deemed enforceable by both an American court[6] and an Indian arbitrator, so his scattershot attempts to evade confirmation of an award under that very agreement ring particularly hollow.

Dahiya's principal ground for opposing the Vessel Interests' motion for summary judgment relates to the extension of the Award to nonparties to Dahiya's Deed (and the arbitration agreement therein). In Dahiya's view, the analysis on this point is quite simple: because none of the Vessel Interests but Neptune Shipmanagement Services (PTE.), Ltd. are party to Dahiya's Deed, none of the Vessel Interests but Neptune have standing to seek confirmation of the Award rendered under such Deed.

This contention is unavailing for two reasons. For one, it counteracts the Louisiana Fourth Circuit Court

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[6] See Dahiya v. Talmidge Int'l Ltd., 931 So. 2d 1163 (La. App. 4th Cir. 2006).

of Appeal's preclusive determination that Dahiya was required to arbitrate his claims against *all* of the Vessel Interests. Indeed, a close analogue of Dahiya's argument on this point was rejected by the Louisiana Fourth Circuit on multiple occasions. See Dahiya, 931 So. 2d at 1173 (holding that "the *defendants*' Exceptions of No Right of Action, Improper Venue and Arbitration should have been sustained and the case stayed pending arbitration" (emphasis added)); Mot., Ex. E at 4-6 (similar arguments in application for rehearing that was subsequently denied). On remand after those rejections, the Louisiana District Court followed suit and stayed the case as to *all* defendants pending arbitration – in spite of Dahiya's argument that a stay should lie with respect to Neptune only. See Mot., Exs. G at 1, F at 10-12.

Perhaps more importantly though, the doctrine of equitable estoppel provides that an entity need not be a formal signatory to enforce an agreement to arbitrate in certain circumstances. In Grigson v. Creative Artists Agency L.L.C., the Fifth Circuit explicitly adopted the "intertwined-claims test formulated by the Eleventh Circuit" for use in situations just like this. 210 F.3d 524, 527 (5th Cir. 2000). That doctrine, now twenty years old in this circuit, provides that equitable estoppel

> is warranted when the signatory to a contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract. Otherwise the arbitration proceedings

> between the two signatories would be rendered meaningless and the federal policy in favor of arbitration effectively thwarted.

Id. (emphasis omitted) (quoting MS Dealer Serv. Corp. v. Franklin, 177 F.3d 942, 947 (11th Cir. 1999)).

So too here. The Vessel Interests are obviously "interdependent" for purposes of this litigation, as all are entities and insurers bearing some practical or legal connection to the injuries Dahiya suffered while aboard the M/T EAGLE AUSTIN in 1999. Consequently, because Dahiya's Deed obligates him to arbitrate his personal injury claims with respect to that incident against *one* Vessel Interest, Dahiya is equitably estopped from disclaiming the outcome and findings of that arbitration as against *the other* Vessel Interests.[7] The Fourth Circuit case of Aggarao v. MOL Ship Management Co. provides a direct parallel. 675 F.3d 355 (4th Cir. 2012). There, the court applied the equitable estoppel doctrine where a seaman's claims against signatory and nonsignatory entities alike arose from "the same 'occurrence' or 'incident,' i.e., the tragic circumstances on the Asian Spirit in August 2008 resulting in [the plaintiff's] injuries." See id. at 373-75.

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[7] There is very good reason for this. Perhaps the most obvious is the avoidance of overlapping litigation and the corresponding possibility of conflicting results and/or double recoveries. Indeed, the claims and issues in an arbitration with some Vessel Interests, and a legal action with others, would obviously mirror each other in many key respects. In either dispute resolution forum, the tribunal would need to get to the bottom of what actually occurred, who is to blame, what is needed to make the plaintiff whole, and the like.

For the same reasons, Dahiya's assertion that the Award is binding solely as between him and Neptune is incorrect.

Accordingly, the indisputable facts before the Court allow just one conclusion on the central issue raised by the Vessel Interests' complaint and motion for summary judgment: The Award is legally binding as between Dahiya and each of the Vessel Interests, and the Court is compelled to confirm it as such under 9 U.S.C. § 207.

B.

The Court turns next to the scope and effect of its confirmation of the Award. In their motion, the Vessel Interests urge the Court to impose a permanent injunction to bar Dahiya from any further attempts to relitigate the Award or the underlying controversy. The Court agrees that a permanent injunction is warranted.

To obtain a permanent injunction, the Vessel Interests "must show: (1) success on the merits; (2) the failure to grant the injunction will result in irreparable injury; (3) the injury outweighs any damage that the injunction will cause the opposing party; and (4) the injunction will not disserve the public interest." United Motorcoach Ass'n v. City of Austin, 851 F.3d 489, 492-93 (5th Cir. 2017).

Each of those elements is met here.

1. Actual Success on the Merits

The Court's confirmation of the Award accords the Vessel Interests actual success on the merits in this action. Indeed, confirmation and the corresponding finality it promotes are the principal remedies the Vessel Interests seek. For the reasons discussed in Section I.A, the Vessel Interests have prevailed on the merits of that claim.

Taken together, the successful arbitration of Dahiya's personal injury claim and this Court's confirmation of the Award Dahiya received in that arbitration have conclusively resolved Dahiya's legal entitlements with respect to the 1999 accident at issue. Indeed, where a plaintiff suffers an injury, is ordered to arbitrate his claims with respect to that injury, does in fact arbitrate those claims, and then has his arbitration award confirmed by a federal court of competent jurisdiction, his claim has in all senses been fully litigated and finally determined. Such is the case for Dahiya here.

2. Irreparable Injury

In a similar vein, the Vessel Interests will be irreparably harmed if they are forced to continue in never-ending litigation of Dahiya's futile attempts to resurrect a defunct state-court judgment and set aside a confirmed arbitration award.

3. Balance of the Equities

For similar reasons, the equities firmly favor the Vessel Interests' plea for an injunction. While the Vessel Interests are asking to *pay* Dahiya the damages

he was granted in arbitration, Dahiya is resisting that attempt to the collective detriment and expense of virtually everyone else.

The ultimate fact of the matter is that the Louisiana courts determined that Dahiya was legally obligated to arbitrate his claims against the Vessel Interests. Dahiya did so, in his home country, and received a substantial award. As such, there is no good reason for Dahiya to draw this decades-long litigation out any further. To the contrary, there *is* compelling good reason for the Vessel Interests to seek this injunction.

In the absence of an injunction, the Vessel Interests will be forced to engage in needless expenditures of time and money. In the issuance of an injunction, Dahiya will receive a substantial amount of money that – in the view of a good-faith arbitrator – makes him whole.

4. Public Interest

Because Dahiya's forlorn attempts to achieve a different outcome would also cost the courts and the taxpayers money, the public interest decisively favors an injunction as well. The public also has an interest in the observance and enforcement of valid arbitration agreements, as articulated by Congress. See, e.g., 9 U.S.C. § 2.

5. The Anti-Injunction Act Does Not Preclude an Injunction

The Anti-Injunction Act does not bar the Court from enjoining parallel state-court proceedings regarding Dahiya's 1999 injury. The Act explicitly provides that

"[a] court of the United States may not grant an injunction to stay proceedings in a State court *except* . . . where necessary . . . to protect or effectuate its judgments." 28 U.S.C. § 2283. For this reason, "it is well settled among the circuit courts . . . which have reviewed the grant of an antisuit injunction that the federal courts have the power to enjoin persons subject to their jurisdiction from prosecuting foreign suits." Kaepa, Inc. v. Achilles Corp., 76 F.3d 624, 626-27 (5th Cir. 1996) (also observing "the need to prevent vexatious or oppressive litigation"). Here, a failure to enjoin state-court proceedings initiated by Dahiya would do anything but "protect or effectuate" this Court's judgment – instead, it would do just the opposite, by allowing Dahiya to collaterally attack the Award and this Court's confirmation of it. A federal district court is well within its authority to enjoin vexatious parallel proceedings in such a situation.

C.

The Vessel Interests lastly request a declaratory judgment that the Letter of Undertaking issued by plaintiff Britannia Steam Ship Insurance Association Ltd. must be canceled and returned to Britannia upon the Vessel Interests' satisfaction of the Award.

The Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, "offers the court an opportunity to afford a plaintiff equitable relief when legal relief is not yet available to him, so as to avoid inequities which might result from a delay in assessing the parties' legal obligations." Venator Grp. Specialty, Inc. v. Matthew/Muniot Family, LLC, 322 F.3d 835, 839-40 (5th Cir. 2003). While courts must take care to avoid

issuing advisory opinions on issues that are not yet ripe for judicial resolution,[8] they nevertheless "must [] assess the likelihood that future [harmful] events will occur." Id. at 840.

In service of this equitable imperative, the Declaratory Judgment Act specifically authorizes federal courts to "declare the legal rights and other legal relations of any interested party seeking such relief" "[i]n a case of actual controversy within its jurisdiction." 28 U.S.C. § 2201. The jurisdictional predicate for this action is clear; the Vessel Interests' principal claim (for judicial confirmation of a foreign arbitration award) arises under federal law. See U.S. CONST. art. III,§ 2; 28 U.S.C. § 1331. Therefore, the Court has discretion to "declare the legal rights" of Britannia as it deems appropriate.

Here, the circumstances plainly warrant the relatively modest and straightforward declaration the Vessel Interests seek. While the possibility that Dahiya might refuse to honor this ruling and void the LOU on his own accord is exceedingly remote, declaring once and for all that Dahiya must indeed do so does not prejudice Dahiya and serves a substantial interest in bringing this decades-old litigation to an end.

* * *

The undisputed facts in this case paint a clear picture.

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[8] See, e.g., U.S. CONST. art. III, § 2 (confining the federal judicial power to cases and controversies).

When the Louisiana state courts required Dahiya to honor his agreement to arbitrate his personal injury claims relating to a 1999 accident aboard the M/T EAGLE AUSTIN, Dahiya proceeded to arbitration. That arbitration yielded a substantial Award for Dahiya. When Dahiya laid renewed claim to a greater damages award which was initially granted but subsequently vacated in Louisiana state court, the Vessel Interests brought this federal action in an effort to confirm the Award Dahiya received in arbitration. The Court is required to confirm the Award as a matter of federal law, and because it has done so, the parties' legal relations with regard to the 1999 accident have been finally determined and fixed. That reality merits the Court's enjoinment of all parallel actions relating to the 1999 accident, and counsels in favor of the Court's declaration of the parties' legal rights concerning the Letter of Undertaking plaintiff Britannia issued in relation to the same.

Accordingly, IT IS ORDERED:

1. That the plaintiffs' motion for summary judgment is GRANTED;

2. That the Arbitration Award dated January 25, 2020 and attached to the plaintiffs' complaint as Exhibit B is hereby CONFIRMED in accordance with 9 U.S.C. § 207;

3. That all pending or future legal actions arising from the personal injuries the defendant sustained while aboard the M/T EAGLE AUSTIN in 1999 are PERMANENTLY ENJOINED; and

4. That the Clerk of Court shall close Civil Action Number 20-1527 in light of this Order.

And, IT IS DECLARED:

1. That the Letter of Undertaking issued by plaintiff Britannia Steam Ship Insurance Association Ltd. shall be null and void upon the plaintiffs' satisfaction of the Arbitration Award.

New Orleans, Louisiana, October 14, 2020

/s/ Martin L. C. Feldman
MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE