

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 14, 2026

Lyle W. Cayce
Clerk

No. 26-30226
Summary Calendar

IN THE MATTER OF THE COMPLAINT OF ARIES MARINE
CORPORATION, FOR EXONERATION FROM OR LIMITATION OF
LIABILITY

ARIES MARINE CORPORATION,

Petitioner—Appellee,

versus

AMERICAN LONGSHORE MUTUAL ASSOCIATION, LIMITED;
FLUID CRANE & CONSTRUCTION, INCORPORATED,

Claimants—Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:19-CV-10850

Before HAYNES, GRAVES, and RAMIREZ, *Circuit Judges*.

PER CURIAM: *

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Fluid Crane & Construction, Inc. and American Longshore Mutual Association, Ltd. appeal from the district court's denial of their motions to reopen and for reconsideration. Through these motions, they sought to litigate a negligence claim and Fluid's independent subrogation claim. The district court denied both motions. Finding no error, we affirm.

This limitation-of-liability action finds its origin in the listing of a liftboat—the L/B RAM XVII. Aries Marine Corporation operates liftboats and offshore supply vessels, and the RAM XVII is part of its fleet. Aries chartered the liftboat to Fieldwood Energy, LLC in connection with work conducted at one of Fieldwood's offshore platforms. However, after the liftboat's port leg started to sink into the seabed, the liftboat began to list and eventually capsized. Among its passengers were six of Fluid's (one of Fieldwood's subcontractors) employees. American (Fluid's insurance carrier) paid the employees benefits under the Longshore and Harbor Workers' Compensation Act.

Aries thereafter petitioned for limitation or exoneration from liability. With reimbursement in mind, Fluid and American were among those who filed a timely claim. The parties' contractual agreements are of critical importance when it comes to the availability of reimbursement. The master service contract between Fluid and Fieldwood contained a waiver-of-subrogation clause, which required American to execute such a waiver. Aries, for its part, answered Fluid and American's claim by pleading waiver of subrogation as an affirmative defense. At the parties' request, the district court postponed the trial so that it could consider a motion for summary judgment regarding the waiver-of-subrogation clause. The district court concluded that the clause favored Aries, granted the motion, and dismissed American's claim (but, on reconsideration, preserved its right to seek an offset under 33 U.S.C. § 933(f)). A panel of our court affirmed. *Aries Marine Corp. v. Am. Longshore Mut. Ass'n, Ltd. (In re Aries Marine Corp.)*, No. 23-

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30564, 2024 WL 1461945, at *1 (5th Cir. Apr. 4, 2024) (per curiam) (unpublished) (citing 5TH CIR. R. 47.6).

Back before the district court, a new trial date was set, the parties submitted a 294-page proposed pre-trial order, but, before trial commenced, Aries settled with many of the remaining claimants. Thereafter, the district court dismissed the case. But it directed “any party that contend[ed] that it ha[d] a live claim requiring further litigation” to “file a limited motion to reopen as to that purportedly live claim only.”

Fluid and American filed such a motion, identifying two “purportedly live claim[s].” In their view, they still possessed an independent general-maritime-law negligence cause of action (a *Burnside*¹ claim), and Fluid possessed an independent right of subrogation (apart from American’s). To demonstrate that these claims had been asserted, Fluid and American pointed primarily to their initial claim and the pre-trial order. After concluding that these causes of action were not adequately pleaded in their claim or properly incorporated into the pre-trial order, the district court denied the motion to reopen. Fluid and American then filed a motion for reconsideration, which the district court also denied. They promptly appealed.

We review denials of Rule 59(e) and Rule 60(b) motions for abuse of discretion. *Trevino v. City of Fort Worth*, 944 F.3d 567, 570–71 (5th Cir. 2019) (per curiam).

On appeal, Fluid and American contend that the district court abused its discretion when declining to reopen the case and to reconsider. That is because, they argue, they adequately pleaded their *Burnside* claim in their

¹ *Fed. Marine Terminals, Inc. v. Burnside Shipping Co.*, 394 U.S. 404 (1969).

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initial pleading and, in any event, incorporated that claim along with Fluid's independent right of subrogation in the joint pre-trial order. We disagree.

We begin with their initial pleading. Specifically, Fluid and American say that they adequately alleged a *Burnside* cause of action in their initial claim. But, upon a close look at their allegations, the *Burnside* claim is nowhere to be found. They alleged that, to the extent that Aries was found liable due to "fault, negligence, or error," they sought recovery "for all damages incurred," including "reimbursement of . . . Act benefits provided to Fluid Crane employees" and "reimbursement for medical expenses, equipment, and personal effects sustained by Fluid Crane on account of its employees." As the district court pointed out, all these allegations are consistent with a right of subrogation and the requirements of the Act.

These allegations do not adequately state a *Burnside* claim, which "is entirely separate, both in nature and in origin, from an employer/carrier's subrogation right." *Hartford Acc. & Indem. Co. v. Costa Lines Cargo Servs., Inc.*, 903 F.2d 352, 357 (5th Cir. 1990). Such a claim "allows an employer/carrier who has paid [Act] compensation to assert a direct action in tort (or other applicable theory) against the third party or parties who caused the injury." *Id.* But to that point, Fluid and American said nothing in their claim about any alleged duty that Aries owed and breached. Then, though they used the word "negligence," that usage, as the district court concluded, was simply consistent with the requirements of the Act and their assertion of a subrogation claim. The district court did not abuse its discretion when concluding that Fluid and American failed to adequately allege a *Burnside* cause of action in their initial claim.²

² Relatedly, although Fluid and American do not seem to press this argument on appeal (merely mentioning it in the conclusion of their opening brief), the district court also correctly pointed out that they "did not allege any facts distinguishing any purported right

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We next turn to the pre-trial order. Fluid and American fall back on the pre-trial order, contending that no matter how their prior pleadings are construed, this order introduced both their *Burnside* claim and Fluid's independent subrogation claim into the litigation. Below, even though Fluid and American worked references to these claims into the joint pre-trial order (which the district court adopted in large part), the district court determined that those causes of action were not "properly incorporated."

Fluid and American fail to demonstrate that the district court abused its discretion by concluding that their claims were not properly incorporated. The pre-trial order clarifies "which of the claims pleaded will actually be tried," *Flannery v. Carroll*, 676 F.2d 126, 129 (5th Cir. 1982), and, of course, "supersede[s] all prior pleadings and control[s] the subsequent course of the action," *Rockwell Intern. Corp. v. United States*, 549 U.S. 457, 474 (2007) (citation modified). But "appellate courts are hesitant to interfere with [a district] court's discretion in creating, enforcing, and modifying such orders," and "[d]istrict courts are encouraged to construe pre-trial orders narrowly without fear of reversal." *Flannery*, 676 F.2d at 129 (citation modified). Here, the district court ordered that "section 3 of the proposed pretrial order" contain the discussion of the parties' "legal relationships" "with reference to *the claims*." But this section contains no reference to the claims Fluid and American seek to litigate. To be sure, they refer to these theories in other sections of the joint pre-trial order. Nonetheless, particularly where these claims had yet to be properly asserted and the amendment deadline had long passed, we cannot say that the district court abused its discretion when concluding that references buried in sections outside the appropriate (court ordered) one failed to provide the other parties

of subrogation held by A[merican] from" Fluid's "purported right of subrogation"; rather, Fluid and American "asserted a single limitation claim based on the same . . . facts."

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with adequate notice and properly amend the pleadings.³ See *Hodges v. United States*, 597 F.2d 1014, 1017 (5th Cir. 1979) (explaining that “[w]e cannot hold that the district court acted arbitrarily in viewing the unclear pretrial order as not fairly” providing notice); see also *Wilson v. Muckala*, 303 F.3d 1207, 1215–16 (10th Cir. 2002) (explaining that courts “do not normally expect to see claims” appear “for the first time in the pretrial order, especially in [a] cursory form,” as this “practice deprives one’s adversary of fair notice”).

* * *

We AFFIRM.

³ This case is unlike *Homoki v. Conversion Services, Inc.*, 717 F.3d 388, 403 (5th Cir. 2013). There, a panel of our court was tasked with deciding whether the district court was correct when determining that sufficient notice of a (conspiracy to breach fiduciary duty) claim was provided by way of the amended complaint and the pre-trial order, in combination. *Id.* at 402–04. The complaint “plausibly state[d] a claim for conspiracy to breach [a] fiduciary duty” and the pre-trial order simply “clarified” this, albeit in the wrong section. *Id.* at 403–04. Here, by contrast, the initial claim says nothing about the causes of action Fluid and American now seek to litigate. So, *Homoki* does not dictate the outcome.