**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

Case No. 07-23040-CIV-UNGARO

NICOLAE DANIEL VACARU,

Plaintiff,

vs.

ROYAL CARIBBEAN CRUISES, LTD.,
a Liberian Corporation,

Defendant.
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**ORDER ON PLAINTIFF'S MOTION TO AMEND COMPLAINT, PLAINTIFF'S MOTION FOR REMAND, AND DEFENDANT'S MOTION TO DISMISS COMPLAINT FOR IMPROPER VENUE AND TO COMPEL FOREIGN ARBITRATION**

THIS CAUSE is before the Court upon Plaintiff's Motion for Remand, filed December 7, 2007. (D.E. 4.) Defendant filed its Response on January 4, 2008, (D.E. 9), to which Plaintiff replied on January 8, 2008. (D.E. 11.) Also before the Court is Defendant's Motion to Dismiss Complaint for Improper Venue and to Compel Foreign Arbitration in the Bahamas, filed December 15, 2007. (D.E. 6.) Plaintiff did not file a Response. Also before the Court is Plaintiff's Motion to Amend Complaint, filed December 4, 2007, (D.E. 2), to which Defendant filed a Response on January 17, 2008. (D.E. 12.) The matters are ripe for disposition.

THE COURT has considered the motions, the pertinent portions of the record and is otherwise fully advised in the premises.

BACKGROUND

This action arises out of a back injury Plaintiff allegedly sustained on July 17, 2006 as a result of a slip and fall while acting within the scope and course of his employment as an assistant waiter on Defendant's ship, the M/V Adventure of the Seas. On April 24, 2007,

Plaintiff filed the original complaint in this action in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. (D.E. 1, Ex. A.) The complaint consists of three counts, including a claim for negligence under the Jones Act, 46 U.S.C. § 688 (Count I), and claims for unseaworthiness (Count II) and failure to provide entire maintenance and cure (Count III) under the general maritime law of the United States.

On November 19, 2007, Defendant removed the action to this Court pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, *opened for signature* June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3 (the "Convention"), and its implementing legislation, 9 U.S.C. § 202-208 (2002) (the "Convention Act"). Specifically, Defendant removed the action pursuant to section 205 of the Convention Act, which allows for removal at any time before trial where an action pending in state court relates to an arbitration agreement or award falling under the Convention. *See* 9 U.S.C. § 205.

Following removal, Defendant moved to dismiss and compel arbitration under the Convention pursuant to the arbitration agreement incorporated by reference in the employment contract signed by the parties. Plaintiff has moved to amend the complaint, and to remand the action to state court on grounds that there is no enforceable arbitration agreement between the parties.

PLAINTIFF'S MOTION TO AMEND THE COMPLAINT

As a preliminary matter, the Court addresses Plaintiff's motion to amend the complaint, in which Plaintiff seeks to drop his claims for unseaworthiness and failure to provide entire maintenance and cure under the general maritime law of the United States, which would leave Plaintiff proceeding only on the Jones Act claim for negligence. Defendant opposes Plaintiff's

motion to amend, or in the alternative, asks the Court to require Plaintiff to pay Defendant's costs and attorney fees incurred in litigating this action as a condition precedent, should Plaintiff seek to re-file his unseaworthiness and maintenance and cure claims at some point in the future.

Federal Rule of Civil Procedure 15(a) provides that leave to amend a complaint "shall be freely given when justice so requires." Fed. R. Civ. P. 15. However, denial of such a motion is proper when: (1) the amendment would be prejudicial to the opposing party; (2) there has been bad faith or undue delay on the part of the moving party; or (3) the amendment would be futile. *See Forman v. Davis*, 371 U.S. 178, 182 (1962). The Court agrees with Defendant's contention that as a result of granting Plaintiff leave to amend the complaint to drop the claims for unseaworthiness and maintenance and cure, Defendant would suffer prejudice if Plaintiff chooses to re-file these claims in state court at a later date, because Defendant would be caused to expend additional funds to re-litigate the issues related to arbitration that Defendant has already addressed in this action. However, the Court finds that the harm Defendant would suffer as a result of granting Plaintiff leave to amend would be ameliorated by the imposition of the condition requested by Defendant in response to Plaintiff's motion. Plaintiff has made no argument against the imposition of the condition Defendant requests in its response. Accordingly, the Court grants Plaintiff's motion for leave to amend on the condition that, should Plaintiff seek to re-file his unseaworthiness and maintenance and cure claims at some point in the future, Plaintiff will be required to pay Defendant's costs and attorney fees incurred in litigating these claims as part of this action.

PLAINTIFF'S MOTION FOR REMAND AND
DEFENDANT'S MOTION TO DISMISS AND COMPEL ARBITRATION

A. FACTS

On July 17, 2006 Plaintiff allegedly sustained a back injury as a result of a slip and fall while acting within the scope and course of his employment as an assistant waiter on Defendant's ship, the M/V Adventure of the Seas. (Pl.'s Am. Compl. ¶ 7.) At the time of Plaintiff's alleged accident, Plaintiff's employment with Defendant was governed by the terms of a Sign-On Employment Agreement ("SOEA"). (Pl.'s Mot. for Remand at 2 & Ex. 2.) The SOEA, which Plaintiff signed on April 16, 2006, contains the following provision:

> I understand and accept that the employer may terminate this agreement without cause provided 7 days notice is given or 7 days pay in lieu of notice. I further understand and agree that the Collective Bargaining Agreement between the Company and the Union is incorporated into and made part of this Employment Agreement and that I and the Company are bound by its terms and conditions.

(Pl.'s Mot. for Remand, Ex. 2.) At the time he entered into the agreement, Plaintiff acknowledged receiving a copy of the collective bargaining agreement ("CBA") incorporated by reference in the SOEA.[1] Article 26 of the CBA between Defendant and Norwegian Seafarers' Union (the "Union"), effective on the date Plaintiff signed the SOEA,[2] sets forth procedures for grievance and dispute resolution, and—where a dispute cannot be resolved by the filing of a grievance with the ship's Human Resources Manager, the Master, or ultimately the Union and the company—requires arbitration under the Convention of any and all disputes related to the seafarer's employment. Specifically, the CBA provides in relevant part:

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[1]The SOEA Plaintiff signed on April 16, 2006 contains the following provision: "I acknowledge having received copies of: (1) the Collective Bargaining Agreement referred to above effective on the date of the Employment Agreement; (2) The Employee Handbook." (Pl.'s Mot. for Remand, Ex. 2.)

[2]The CBA's effective date is January 1, 2006. (Pl.'s Mot. for Remand, Ex. 3.)

Article 26—Grievance and Dispute Resolution Procedure

a) *** [T]he Seafarer shall have the right, either personally or through a fellow Seafarer spokesperson, to present the grievance or dispute to the ship's Human Resources Manager and if the Seafarer remains dissatisfied, to the Master.*** The Master shall decide the issue.

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c) If the Seafarer is dissatisfied with the decision of the Master . . . the Seafarer shall deliver written notice of the grievance's details and of his or her dissatisfaction with the Master's decision to the representatives of the Union in Oslo, Norway, and to the Owners/Company at Miami, Florida. . . . the representatives of the Union and the Owners/Company shall confer to resolve the dispute.

d) If not resolved by the Union, the Owners/Company, and/or the Seafarer, all grievances and any other dispute whatsoever, whether in contract, regulatory, tort or otherwise, including constitutional, statutory, common law, admiralty, intentional tort and equitable claims, relating to or in any way connected with the seafarer's service for the Owners/Company, including but not limited to claims for personal injury or death, no matter how described, pleaded or styled, and whether asserted against the Owners/Company, Master, Employer, Ship Owner, vessel or vessel operator, shall be referred to and resolved exclusively by binding arbitration pursuant to the United Nations Conventions on Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), 21 U.S.T. 2517, 330 U.N.T.S. ("The Convention"), except as otherwise provided in any government mandated contract, such as the Standard POEA Contract for Philippine Seafarers. Any arbitration shall take place in the Seafarer's country of citizenship or the ship's flag state, unless arbitration is unavailable under the Convention in those countries, in which case only said arbitration shall take place in Miami, Florida. Any arbitration in Miami, Florida shall be administered by the American Arbitration Association under its International Dispute Resolution Procedures. The Union shall appoint one arbitrator, the Owners/Company shall appoint one arbitrator and a third arbitrator shall to be jointly appointed by the Union and the Owners/Company. However, the Owners/Company and the Union, in their discretion, may jointly select a single arbitrator. The parties shall have the right in any arbitration to conduct examinations under oath of parties and witnesses, and medical examination necessary to verify any injuries or damages claimed. The Owners/Company, the Unions, and the Seafarer also acknowledge that they voluntarily and knowingly waive any right they have to a jury trial. The arbitration referred to in this Article is exclusive and mandatory. Claims and lawsuits may not be brought by any Seafarer or party thereto, except to enforce arbitration or a decision of the arbitrator.

e) The Owners/Company shall each bear the costs related to the arbitration process from beginning to end including, but not limited to, fees charges and expenses

> incurred by arbitrators, and any costs related to proceedings brought by the Union necessary to enforce a decision. The Union and the Owners/Company shall bear the costs of their own attorney fees and legal representation. If the Seafarer rejects the representation appointed by the Union at arbitration or thereafter, then he or she will cover the costs of his or her legal representation, if any. If the Seafarer is not represented by the Union, then the arbitrator shall seek the Union's opinion as to the interpretation of this agreement before making a decision.

(Pl.'s Mot. for Remand, Ex. 3.)

B. ANALYSIS

When deciding a motion to compel arbitration under the Convention Act, a court conducts "a very limited inquiry." *Bautista v. Star Cruises*, 396 F.3d 1289, 1294 (11th Cir. 2005) (citations omitted). There are four jurisdictional prerequisites for removal under the Convention. First, there must be an agreement in writing within the meaning of the Convention; second, the agreement must provide for arbitration in the territory of a signatory of the Convention; third, the agreement must arise out of a legal relationship, whether contractual or not, which is considered commercial; and fourth, there must be a party to the agreement that is not an American citizen, or the commercial relationship must have some reasonable relation with one or more foreign states. *Id*. at 1295 n.7. The Court must compel arbitration unless the four jurisdictional prerequisites are not satisfied or one of the Convention's affirmative defenses applies.[3] *Id*. at 1294-95. Plaintiff has not asserted any of the Convention's affirmative defenses. The only jurisdictional prerequisite at issue in this action is whether there exists an agreement in

[3]Under the Convention, courts must enforce an agreement to arbitrate unless the agreement is "null and void, inoperative or incapable of being performed." Convention, art. II (3), *available at* http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html; *see Bautista*, 396 F.3d at 1301-02 (explaining that "[d]omestic defenses to arbitration are transferable to a Convention Act case only if they fit within the limited scope of defenses" set forth in Article II of the Convention).

writing to arbitrate the matter in dispute.[4]

Under Article II of the Convention, agreements in writing include "an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams." Convention, art. II (2), *available at* http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html. In support of their respective motions, the parties have filed a copy of the SOEA signed by the parties, and a copy of the CBA in effect at the time that the SOEA was executed. (Pl.'s Mot. for Remand, Exs. 2 & 3.) Significantly, the SOEA executed by the parties expressly incorporates by reference the terms of the CBA and contains Plaintiff's acknowledgment that at the time of entering the employment agreement, he received a copy of the CBA effective on the date the parties entered into the SOEA. (Pl.'s Mot. for Remand, Ex. 2.) The Court finds that this evidence satisfies the jurisdictional prerequisite that there be an agreement in writing within the meaning of the Convention. *See Bautista*, 396 F.3d at 1300;[5] *see also Acosta v. Norwegian Cruise Line, LTD*, 303 F. Supp. 2d 1327, 1330 (S.D. Fla.

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[4]As to the third requirement, the Eleventh Circuit has held—and the parties do not appear to dispute this—that the Convention applies to the employment agreements of seafarers, and that a seafarer's employment agreement is commercial in nature for purposes of determining whether the Convention applies. *Bautista*, 396 F.3d at 1295-1300. As to the second and fourth requirements, the parties do not dispute that the agreement provides for arbitration in the territory of a signatory to the Convention, and that Plaintiff is a citizen of Romania, not an American citizen.

[5]In *Bautista*, the Eleventh Circuit found that the jurisdictional prerequisite that there be an agreement in writing was met where the defendant supplied the district court with copies of (1) the employment agreement, which incorporated by reference Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels ("Standard Terms"); and (2) the Standard Terms, which contained a mandatory arbitration clause. *Bautista*, 396 F.3d at 1300. The *Bautista* court rejected the plaintiffs' argument that the employment agreement's incorporation by reference of the Standard Terms failed to fulfill the "agreement in writing" requirement, pointing to the fact that the *Bautista* plaintiffs signed the Standard Terms, or "the document containing the arbitration provision." *Id*.

The *Bautista* court also rejected the plaintiffs' argument that the Convention or the

2003) (finding that a written arbitration agreement existed between the parties where the plaintiff's employment contract did not expressly include an arbitration agreement, but the contract was an approved Philippines Overseas Employment Administration ("POEA") contract, and incorporated by reference the Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels, mandating arbitration of disputes arising out of POEA-approved contracts).

In making this determination that within the meaning of the Convention an agreement in writing to arbitrate exists between the parties, the Court acknowledges Plaintiff's argument that under *Brisentine v. Stone & Webster Engineering Corp.*, 117 F.3d 519 (11th Cir. 1997), there is no enforceable arbitration agreement governing his claim against Defendant. In *Brisentine*, the Eleventh Circuit set forth three requirements that must be met in order to enforce a mandatory arbitration clause, barring litigation of a federal statutory claim. *Id*. at 526-27.

> First, the employee must have agreed individually to the contract containing the arbitration clause—the union having agreed for the employee during collective bargaining does not count.
>
> Second, the agreement must authorize the arbitrator to resolve the federal statutory claims—it is not enough that the arbitrator can resolve contract claims, even if factual issues arising from those claims overlap with the statutory claim issues.
>
> Third, the agreement must give the employee the right to insist on arbitration if the federal statutory claim is not resolved to his satisfaction in the grievance process.

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Convention Act imposes a burden upon the party seeking arbitration to demonstrate notice or knowledgeable consent to arbitration, finding, "[i]n the limited jurisdictional inquiry prescribed by the Convention Act, [that it was] especially appropriate to abide by the general principle that '[o]ne who has executed a written contract and is ignorant of its contents cannot set up that ignorance to avoid the obligation absent fraud and misrepresentation." *Id*. at 1301 (citation omitted).

*Id*. Plaintiff argues that because the arbitration clause at issue in the present case is contained in a collective bargaining agreement, the first requirement set forth in *Brisentine* is not satisfied. According to Plaintiff, (1) the Union, not Plaintiff, agreed to the mandatory arbitration clause contained in the CBA; (2) Plaintiff is no longer a member of the Union; and (3) the Union will select the arbitrator to hear Plaintiff's case. (Pl.'s Mot. for Remand at 11.) Thus, Plaintiff argues that, as in *Brisentine*, there is a potential disparity between the Union's interests and Plaintiff's interests with respect to the prosecution of Plaintiff's rights under the Jones Act. *See id*. at 525.

In *Brisentine*, the Eleventh Circuit dealt with "the intersection of federal statutory . . . rights and mandatory grievance and arbitration clauses in a collective bargaining agreement."[6] *Id*. at 522. In so doing, the *Brisentine* court "examine[d] the precedential orbit" of two Supreme Court decisions, *Alexander v. Gardener-Denver Co.*, 415 U.S. 36 (1974)[7] and *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991),[8] and "decide[d] which one [the *Brisentine*]

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[6]The Court notes that *Brisentine* did not involve an arbitration agreement that fell within the scope of the Convention or the Convention Act.

[7]In *Alexander*, the Supreme Court unanimously held that a mandatory arbitration and grievance clause mandated by a collective bargaining agreement, and the result of the arbitration process, did not bar the plaintiff's cause of action in federal court under Title VII. *Brisentine*, 117 F.3d at 522 (citing *Alexander*, 415 U.S. at 59-60). The *Alexander* Court distinguished an employee's individual statutory rights from any contractual rights he might have as an employee under a collective bargaining agreement. *Id*. (citing *Alexander*, 415 U.S. at 49-50).

[8]In *Gilmer*, the plaintiff had, as a condition of employment, personally agreed to arbitration as his exclusive remedy for any controversy arising out of his employment or the termination of it. *Brisentine*, 117 F.3d at 522-23 (citing *Gilmer*, 500 U.S. at 23). The plaintiff was fired, and brought an ADEA lawsuit in federal court. *Id*. at 523 (citing *Gilmer*, 500 U.S. at 24). The *Gilmer* Court held that the employer's motion to compel arbitration should have been granted. *Id*. In so holding, the *Gilmer* Court stated that it was "now clear that statutory claims [could] be the subject of an arbitration agreement, enforceable pursuant to the [FAA]," and held that "because the would-be-plaintiff in that case had 'made the bargain to arbitrate,' the burden was on him 'to show that Congress had intended to preclude a waiver of a judicial forum for ADEA claims.'" *Id*. (citing *Gilmer*, 500 U.S. at 26).

case [fell] within." *Brisentine*, 117 F.3d at 522. In determining whether the *Brisentine* plaintiff's ADEA claim was barred by a mandatory arbitration clause contained in a collective bargaining agreement, the *Brisentine* court discussed the three distinctions between *Gilmer* and *Alexander* that the Supreme Court drew in *Gilmer*.

First, "the *Gilmer* Court distinguished *Alexander* because it had involved an agreement to arbitrate contractual claims that did not extend to statutory claims."[9] *Id*. at 523 (citations omitted). The second distinction concerned "the individual versus collective nature of the agreements in the two cases." *Id*. at 524. The *Brisentine* court observed that "[a]n individual contractual agreement to submit a claim to arbitration was enforced in *Gilmer*," whereas "a collective bargaining agreement not to do so was not enforced in *Alexander*." *Id*. at 524-25. The *Gilmer* Court found that "in the context of collective bargaining agreements, employee-claimants are represented by their unions in arbitration proceedings," and "[a]s a result, there is a 'potential disparity in interests between a union and an employee' regarding the prosecution of the employee's individual statutory rights." *Id*. at 525 (citations omitted). The *Gilmer* Court found that the concern about the conflict between collective representation and individual statutory rights that was present in *Alexander* was not present in the context of individual employment contracts." *Id*. (citations omitted). The third distinction between *Gilmer* and *Alexander* was that the claim in *Gilmer* arose under the Federal Arbitration Act, ("FAA"), 9 U.S.C. § 1 *et seq.*, whereas the claim in *Alexander* did not. *Id*. (citations omitted). The FAA "reflects a 'liberal

[9]The *Brisentine* court explained that "the labor arbitrator's authority and power in *Alexander* were limited to interpretation of the collective bargaining agreement; the labor arbitrator was not authorized to resolve any statutory claims," whereas in *Gilmer*, "the agreement covered the arbitration of statutory as well as contractual claims." *Brisentine*, 117 F.3d at 523-34 (citations omitted).

federal policy favoring arbitration agreements,' which was another reason given for enforcing the arbitration clause in *Gilmer* but not in *Alexander*." *Id*.

Contrary to Plaintiff's contentions, and in contrast to *Brisentine*, the Court finds that the present case falls on the *Gilmer* side of the line, and that the three requirements necessary to enforce a mandatory arbitration clause, barring litigation of a federal statutory claim, are satisfied. First, the arbitration agreement at issue in this case clearly extends to statutory claims.[10] Second, although the arbitration agreement at issue in the present case is contained in a collective bargaining agreement, that collective bargaining agreement is expressly incorporated by reference in the employment agreement executed by the parties.[11] Moreover, the SOEA contains Plaintiff's acknowledgment that he received a copy of the CBA in effect at the time he executed the SOEA.[12] The Court notes that the Eleventh Circuit recently affirmed the district court's finding that a written agreement to arbitrate between the parties existed within the meaning of the Convention where the arbitration agreement was contained in a collective bargaining agreement incorporated by reference in the plaintiff's sign-on employment agreement. *Lobo v. Celebrity Cruises, Inc.*, 426 F. Supp. 2d 1296 (S.D. Fla. 2006), *aff'd*, 488 F.3d 891 (11th

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[10]Indeed, the arbitration agreement extends to any dispute "whatsoever, whether in contract, regulatory, tort or otherwise, including constitutional, statutory, common law, admiralty, intentional tort and equitable claims, relating to or in any way connected with the seafarer's service for the Owners/Company." (Pl.'s Mot. for Remand, Ex. 3.)

[11]The SOEA Plaintiff signed on April 16, 2006 expressly provides: "I further understand and agree that the Collective Bargaining Agreement between the Company and the Union is incorporated into and made part of this Employment Agreement and that I and the Company are bound by its terms and conditions." (Pl.'s Mot. for Remand, Ex. 2.)

[12]The SOEA Plaintiff signed on April 16, 2006 contains the following provision: "I acknowledge having received copies of: (1) the Collective Bargaining Agreement referred to above effective on the date of the Employment Agreement; (2) The Employee Handbook." (Pl.'s Mot. for Remand, Ex. 2.)

Cir. 2007).[13] Moreover, the Court agrees with Defendant's contention that, as in *Gilmore*, the concern about the conflict between collective representation and individual statutory rights is not present in this action because the arbitration agreement allows Plaintiff the option of rejecting Union-appointed representation at arbitration, and Defendant, not the Union, bears the full costs of arbitration including any costs incurred by the Union to enforce the arbitration decision. (Pl.'s Mot. for Remand, Ex. 3.) Thus, the potential tensions present in *Brisentine*—where the union had the ultimate decision with respect to whether to submit a claim to arbitration, and the union would bear half the cost of arbitration, giving it an incentive against arbitrating the claim—are absent in this case. *See Brisentine*, 117 F.3d at 525. Accordingly, the Court finds that—because the SOEA incorporated by reference the CBA containing the arbitration agreement, and the evidence in the record demonstrates that Plaintiff was provided with a copy of the CBA at the time of executing the SOEA—the arbitration agreement at issue in this case is, like the agreement in *Gilmore*, an individual contractual agreement to submit to arbitration rather than a mere collective bargaining agreement not to do so, as in *Alexander*.

Third, this claim is governed by the Convention Act, which, like the FAA, reflects a liberal policy favoring arbitration agreements. *See Bautista*, 396 F.3d at 1299 ("The goal of the Convention, and the principal purpose underlying American adoption and implementation of it,

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[13]The Court notes, however, that in *Lobo*, the plaintiff's claim was based on the defendant's alleged violation of the collective bargaining agreement governing the terms of his employment, *Lobo*, 488 F.3d at 893, whereas in the present case, Plaintiff's claim is brought pursuant to the Jones Act, and is based on Defendant's alleged negligence. Nevertheless, the Court finds that despite this distinction, and in the absence of the potential tensions present in *Brisentine*, the SOEA's incorporation by reference of the CBA containing the arbitration agreement, and the evidence in the record demonstrating that Plaintiff was provided with a copy of the CBA at the time of executing the SOEA constitutes Plaintiff's individual agreement to submit to arbitration.

was *to encourage the recognition and enforcement of commercial arbitration agreements in the international contracts* and *to unify the standards by which agreements to arbitrate are observed* and arbitral awards are enforced in the signatory countries." (quoting *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974)). Indeed, as the Court has already noted, *supra*, "[i]n deciding a motion to compel arbitration under the Convention Act, a court conducts 'a very limited inquiry.'" *Id*. at 1294. Accordingly, for the foregoing reasons, the Court concludes that *Brisentine* does not compel a finding by this Court that there is no enforceable arbitration agreement governing Plaintiff's Jones Act claim against Defendant.[14] To the contrary, the Court finds that all three of the *Brisentine* requirements necessary to enforce a mandatory arbitration clause, barring litigation of Plaintiff's Jones Act claim, are satisfied.

Because the Court finds that the four jurisdictional prerequisites for removal under the Convention are met, the Court must deny the motion for remand. Moreover, because the Court finds that the arbitration agreement is enforceable, the Court must compel arbitration. Accordingly, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Motion for Remand is DENIED in accordance with this Order. It is further

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss and Compel Arbitration is GRANTED in accordance with this Order. It is further

ORDERED AND ADJUDGED that Plaintiff's Motion to Amend Complaint is

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[14]The Court notes that in this case Plaintiff has not demonstrated that Congress intended to preclude waiver of a judicial forum for Jones Act claims. *See Brisentine*, 117 F.3d at 523 (citing the *Gilmer* Court's holding that "because the would-be-plaintiff in that case had 'made the bargain to arbitrate,' the burden was on him 'to show that Congress had intended to preclude a waiver of a judicial forum for ADEA claims.'").

GRANTED in accordance with this Order. Should Plaintiff seek to re-file his unseaworthiness and maintenance and cure claims at some point in the future, Plaintiff shall be required to pay Defendant's costs and attorney fees incurred in litigating this action.

DONE AND ORDERED in Chambers at Miami, Florida, this 1st day of February, 2008.

URSULA UNGARO
UNITED STATES DISTRICT JUDGE

copies provided:
counsel of record